



Speak Up for Women
Briefing to the
Incoming Minister of Justice
& Attorney General

December 13th 2023



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1. Briefing purpose

This briefing document is to provide information about the areas of your ministerial portfolio that relate to the interests of women and girls based on sex, and where Speak Up for Women (SUFW) provides advocacy and representation.

Speak Up for Women welcomes your recent announcement that Paul Hunt will not be reappointed as Chief Human Rights Commissioner when his term ends in early 2024. Under the leadership of Mr Hunt the Human Rights Commission has actively worked to undermine the ability of women and girls to access single sex services, facilities, sport, and opportunities set out in the Human Rights Act 1993.

We are hopeful that the new Chief Human Rights Commissioner will be committed to upholding the Human Rights Act 1993 as it is written as Parliament intended, not advocating and advising others to implement their preferred alternative interpretation.

We are also concerned by the recent trends of justice related agencies, including the courts and parole board, to record and refer to male violent and sexual offenders as female. Accurate sex based reporting of crime and those convicted of crimes is important and there is a strong public interest element in the community having this information accurately recorded.

We are taking this opportunity to [outline some of the areas](#) where we can provide ideas and suggestions. We would like to meet with you to discuss these matters further.

SUFW is one of the largest and well-known women's advocacy organisations in New Zealand supporting women and girls' safety, freedoms and identities and we have good working relationships with other gender critical groups.

We will actively and publicly support you when your decisions and policies support the interests of women and girls in relation to single sex facilities, sports, and opportunities and the factual recording and reporting of information in the public interest.

2. Background – Sex realism vs gender ideology

Many countries including New Zealand are undergoing a political and cultural struggle between those who are sex realists and those who promote gender identity ideology.

Sex realists are those who know that biological sex is real and immutable, and that in certain situations sex really matters. In opposition to this, people who believe gender identity ideology assert that all humans have an innate, subjective gender identity, and that this gender identity should overwrite sex in custom, policy and law.

People who oppose gender identity ideology taking precedence over sex are often referred to as “gender critical”.

Sex matters

Female people have historically been subjected to discrimination and restrictions in a male dominated society that seeks to exploit our reproductive and sexual capacity. Additionally women are on average smaller, physically weaker, less prone to violence and more likely to be sexually victimised by predatory male sexual behaviours than the reverse.

For these reasons single sex services have historically been provided to enable women to have equal opportunities to participate in society.

The Human Rights Act 1993 (HRA) allows for single sex services, sports, facilities, services, and opportunities. To be clear, the HRA allows provision for females only, and the exclusion of males who assert a female gender identity (“Trans women”).

Sex

Human beings are mammals, evolved over millennia via sexual selection. There are only two sexes involved in this process – males, which develop along a pathway to produce small gametes, and females which develop along a pathway to produce large gametes. The development pathway of an individual is determined by their chromosomes at conception.

That some humans cannot reproduce does not change the fact that sex is binary and immutable in humans.

The reproductive strategies of other species such as fish and fungi do not prove that sex isn't binary and immutable in humans. No human has ever changed sex and there are no hermaphrodites or third sexes in humans.

There is no scientific evidence for transgender, for example “a female brain in a man's body”. Transgender-identifying people have brains and bodies typical of their sex.

Gender

It is useful in this discussion not to use *gender* as a synonym for *sex*. Instead *gender*, for the purposes of discussing gender ideology, refers to gender identity - the inner sense some people experience of being male, female or neither (and arguably, how much importance they place on this or spend ruminating on it).

Thus, a “transgender woman” is a male who asserts that he is a woman, and a “transgender man” is a woman who asserts that she is a man. A “non-binary” person asserts that they are neither male or female. (i.e., they do not feel male or female – whatever that means to them).

Notwithstanding the intensity with which the trans-identified assert their feelings of gender, it is clear that the concept merely relates to personality - whether someone believes themselves to be masculine or feminine, and the extent to which they choose to conform to sex role stereotypes or cultural norms.

Of course, this also means “gender” is subjective and unfalsifiable, as we cannot claim to know how others feel. This is why gender identity ideology places great emphasis on self-declaration, as unlike sex “gender” is not observable.

It is worth noting here that legislation that protects people on the basis of sex protects them from discrimination on the grounds of sex role conformity and presentation.

Sexuality

Sexual orientation or sexuality is another important concept in this discussion. Sexual orientation refers to heterosexuality (attracted to the opposite sex), homosexuality (same sex attracted) and bisexuality (attracted to both sexes). These are not gender identities or different sexes, a gay man is still male, and a lesbian is still female.

Intersex

Intersex conditions, also referred to as DSDs or disorders/differences in sexual development, are medical conditions. While intersex people may have atypical chromosomes and bodies, they are still all male or female - these are the only two development pathways in humans. Intersex is not an “identity”.

3. About Speak Up for Women

Speak up For Women (SUFW) is seeking to ensure freedoms, safety and identities are protected for women and girls in New Zealand.

Formed in 2018, SUFW is a diverse group of ordinary women who are concerned about the impact of gender identity politics, as we realised that previously dedicated women's groups now focus heavily on gender identity and what is left is a void of services and advocates for women. We were also dismayed by the way women's voices have been silenced by slurs, smears and targeted harassment campaigns.

We came together to campaign against the sex self-ID amendment being pushed through as part of the BDMRR Bill and our hard work resulted in the inclusion of article 79(2) in the BDMRR Act 2021 which allows for the existence of women-only services and sex-segregated spaces on the bases of biological sex, not gender identity.

Our discussion group includes teachers, academics, health professionals, care workers, activists, lawyers, retirees, students, mums, aunties, sisters and daughters.

SUFW is run entirely by volunteers and receives no public funds or funds from external organisations. We are not affiliated to any political party or religious organisation.

Our **mission** is to advocate for the sex-based rights of women and girls, with a primary focus of bringing attention to the eroding of women's and girls' rights and language.

Our **vision** is for women and girls to maintain their access to sex-based services, spaces and opportunities in New Zealand and for government agencies to protect this access.

4. Portfolio areas of interest

There are important areas within your portfolio that act to protect the interests of women and girls but also the wider public. We would like to take this opportunity to outline some of the areas where we can provide ideas and suggestions.

The Human Rights Act 1993 (HRA) and Sex

Section 21 of the Human Rights Act establishes the prohibited grounds of discrimination in New Zealand with sex being the first ground listed (1)(a) *sex, which includes pregnancy and childbirth*. By including pregnancy and childbirth, which are only possible in female people, it is clear that Parliament's definition of sex is grounded in the material reality of peoples' biological sex.

Following on from the general prohibited discrimination in section 21 the ability for women and girls (females) to access single sex facilities, services, sports, and opportunities and the ability for organisations or individuals to provide are covered in multiple exceptions throughout the Act.

These include:

- Section 26: Exception in relation to work performed outside of New Zealand
- Section 27: Exceptions in relation to authenticity and privacy
- Section 28: Exceptions for the purposes of religion
- Section 39: Exceptions in relation to qualifying bodies
- Section 43: Exceptions in relation to access by the public to places, vehicles, and facilities
- Section 45 and Section 59: Exception in relation to courses and counselling
- Section 46: Exception in relation to public decency or safety
- Section 47: Exception in relation to skill
- Section 48: Exception in relation to insurance
- Section 49: Exception in relation to sport
- Section 55: Exception in relation to hostels, institutions etc
- Section 58: Exceptions in relation to establishments for particular groups

It is clear from the Hansard when the Human Rights Act 1993 was being debated and passed that Parliament was very clear that the intent of these provisions was to provide for sex separated spaces, sports, services, and facilities. There is no evidence anywhere that Parliament ever contemplated or intended that these exceptions could be extended to include people of the opposite sex who claimed a different gender identity.

In fact, it is clear that is the *opposite* of Parliament's intent for the provisions to be extended to people of the opposite sex. Extending the exceptions in this way

undermines the entire reason for their existence in the Act - which is sex separation or segregation in specific circumstances where it is deemed necessary for safety, dignity, fairness, or privacy or for other reasons (for example, the ability for an organisation to employ people of only one sex due to the sensitive nature of their work such as rape counselling).

Crown Law opinion on Section 21, Sex, and Gender identity in 2006

In 2006 the Attorney-General, Michael Cullen, sought an [opinion from Crown Law](#) on a private members bill by Georgina Beyer which sought to introduce gender identity as a prohibited ground of discrimination under Section 21 of the HRA (attached as Annex 1).

The opinion of the Acting Solicitor-General at the time, based on cases in the UK/Europe and Canada, was that based on these cases the prohibition of sex discrimination in Section 21 could be extended to include prohibition based on gender identity/transgender people.

The opinion did not cover at all the exceptions provided later in the Act for the provision of single sex services, facilities, sports, and opportunities. However, the opinion did importantly note the Canadian case of the *Vancouver Rape Relief Society v British Columbia Human Rights Commission and British Columbia Human Rights Tribunal* (paras 11-12). This case involved a male who had undergone gender reassignment surgery and had taken a case alleging discrimination as the Society would not allow them to be a rape counsellor on the basis that they were not born female/had not always been a woman.

The British Columbia Supreme Court held that while the refusal to hire the person did constitute discrimination on the basis of sex the Society was protected by their exemption under the code ie. **the Society was legally entitled to refuse to hire someone who was male as a rape counsellor, even though that person had had gender reassignment surgery and now identified as a woman.**

Given the weight that Crown Law put on the precedent of the UK/Europe and Canadian cases and given the determination made in the Canadian cases, if Crown Law had turned their mind to the various exceptions in the Human Rights Act it is difficult to see how they would have not reached the same conclusion ie. that the exceptions that allowed for the provision of single sex services, facilities, sport and opportunities were for the purposes of sex only and could not be reasonably extended to include gender identity. In addition, since 2006 there have been a number of other relevant cases, especially in the UK that have added to precedent and case law in this area.

Finally, it is important to note that this opinion remains just that. It has never been tested in court. As you will know, there have been a number of cases where Crown Law opinions have not been upheld by courts.

The Human Rights Commission, the Crown Law Opinion, and the undermining of sex-based exceptions in the Human Rights Act

Despite the Crown Law opinion not covering the single sex exceptions in the Human Rights Act the Human Rights Commission (HRC) has taken the same position in recent years as many other activist organisations of stating the law *as they want it to be not as it is* and provided advice on that basis. Both their public and private advice that we have received via Official Act Requests been:

1. That discrimination on the grounds of gender or gender identity is specifically prohibited in the Human Rights Act; and
2. Therefore, individuals who identify as transgender have the right to access single sex services, sports, facilities and opportunities for the opposite sex.

In doing this they have not only undermined the sovereignty of Parliament but have misled many government agencies, councils, sporting organisations, and other providers both in terms of what the Act actually says but also the practical implications.

As a result of the Human Rights Commission misstating what the law actually says, many organisations like [Community Law](#) provide advice like, *“The Human Rights Act (the Act) makes certain types discrimination illegal. Discrimination is against the law if it happens because of certain reasons that are in the Act (this includes race, gender, religion, or sexuality)”* and *“you have the right to freedom from discrimination on the grounds of “sex”, which includes gender and gender identity”* and *“You have a right to enrol in a single-sex school that matches your identity”* even though the words gender and gender identity appear nowhere in the Act.

After a query from SUFW in June 2023, HRC updated their [website FAQ](#) page to include this disclaimer:

“This page addresses some frequently asked questions about discrimination and human rights. This guidance is intended to provide general information. It is not legal advice and should not be relied on as such. Human rights are a complex and evolving area of law, and some of the questions may be considered by the Human Rights Review Tribunal and courts in the future. Please contact us if you have questions or want more information.”

SUFW did query whether the HRC had any plans to reach out to the organisations who had previously relied on this advice as legal advice but were told they were not prepared to do this.

We are aware of a number of cases where the Commission actively intervened to advise organisations who wanted to provide single sex facilities or services that they could not do so. For example;

1. The Christchurch City Council wanted to provide women (female) only swimming sessions for women who for religious, cultural, or other women

would only swim if there were no males present. The HRC intervened and advised the council that this would be discriminatory and that they would have to allow anyone who said that they identified as a woman, regardless of sex, into the session. The council accepted their advice. As a result women who were supposed to be the beneficiaries of these sessions often stay away as the council cannot guarantee that the women only swim session will only have female participants.

2. In another instance a sporting organisation refused to allow a male who said they identified as transgender to enter the women's category citing the provision in section 49 of the Act that allows for single sex sport where strength, stamina, or physique is relevant. Upon receiving a complaint from the individual the Commission said that the sport had to allow the male to enter the women's category and that if they did not do so then they would take them to the Human Rights Review Tribunal. The sport relented and allowed that male access. That same sport now has multiple males competing in the female category and taking prize money, placings, and opportunities from female athletes.
3. Employment New Zealand have the following advice on their [website](#) in a section labelled Dismissal or Refusal to Hire, this is typical of advice provided by the HRC.

“In some specific employment situations, an employer can lawfully treat job applicants or employees differently on the basis of sex (eg by having men-only and women-only positions). Where treating people differently on the basis of sex is lawful, (ie lawful discrimination) the employer should treat a trans woman (male to female) the same as other women, and a trans man (female to male) the same as other men.”

The recording and reporting of people in the criminal justice system who self identify as having a gender identity different to their sex

The accurate recording and reporting of the sex of people in the criminal justice system is important for statistical, evidence and research, and public interest reasons.

In addition, there are a number of crimes that are sex specific. For example, the charge of 'male assaults female' exists to reflect the greater physical advantages that (in general) male people have over females. Similarly, rape is defined in section 128(2) of the Crimes Act 1961 as penetration by a penis.

In recent years, and without public consultation or explanation, the courts have adopted a position of prioritising a person's gender identity over their sex, where the two differ. This had led to sexual and/or violent crimes being recorded and reported as if they were committed by women, when they were committed by men. Examples include [Toko \(Ashley\) Shane Winter, who was the ringleader of the group that](#)

[tortured and killed Demetrius Pairama](#), [Matthew Richard Nelson aka Emma Nelson aka Pandora Electra who stabbed three people in a restaurant](#) and [Alex Seu who stalked, assaulted, and violently raped](#) a young man as he walked home from watching an All Blacks game at a pub.

Court and/or parole board hearings and records for these offenders, and other violent and/or sexual offenders, now often refer to the offender as their preferred name (even if it is not their legal name) and their preferred pronouns. In [some cases](#) the records do not even reflect that the person is transgender, meaning that anyone reviewing or researching the case subsequently would have no way of knowing that the offender is actually male. The media also subsequently report these crimes as having been committed as women, with the New Zealand Herald often doubling down with headlines such as *Woman jailed for life for torture and murder denied leave to appeal to Supreme Court* and *Woman who sexually assaulted Dunedin man after All Blacks game denied parole again*.

When [complaints have been made to the Media Council](#) about the misleading nature of these headlines attributing violent male crimes to women the media have argued, and the Media Council have accepted, that they are simply following the position taken by courts.

Given that over 90% of violent and sexual crimes are committed by males, making crimes of this nature committed by women rare and exceptional, it is clearly in the public interest that the recording and reporting of information about these offenders is clear on their sex. This is particularly important given the significant statistical impact that recording crimes of this nature as being committed by women would have on our criminal justice statistics.

For example, in the UK, when some police forces changes from recording [the sex of an offender to their gender identity](#) the [BBC breathlessly reported](#) that the sexual abuse of children perpetrated by females had risen 84% between 2015 and 2019, whilst making no mention of the fact that the data set now included male sexual offenders who said they identify as women.

From official statistics in the UK it is now impossible to know whether the prevalence of female sexual offenders is increasing, staying static, or decreasing, as the data set is corrupted by some police forces recording male sexual offenders (including rapists) as female based entirely on their self-identification.

Speak Up for Women supports people who identify as transgender or another gender diverse identity having that reflected in records and reporting. However, we believe that the records and reporting also need to make it clear where sex is reported in the male/female binary that offenders are correctly recorded and reported as their actual biological sex, regardless of their gender identity.

We also support official statistics recording and reporting differentiated information based on gender identity. This would provide important information and clarity about

the number of people who identify as transgender women or transgender men who have been convicted of crimes and what kind of crimes those are. We think that this would be really useful information to collect and in the public interest. For example, it would provide New Zealand specific information about whether males who identify as transgender and are convicted of criminal offences retain male pattern types and prevalence of criminal offending.

Our policy priorities in your portfolios

1. A Chief Human Rights Commissioner who will uphold the Human Rights Act 1993 as it is written, not preferred alternative interpretation, and support the ability of women and girls (females) to access the single sex exceptions set out on the Act and for organisations or individuals to provide them;
2. An updated Crown Law opinion on sex and gender/gender identity in relation to the Human Rights Act 1993 considering not just section 21 but all of the existing exceptions relating to sex;
3. If necessary, amending/updating the Human Rights Act 1993 to clarify existing provisions as they relate to sex and gender/gender identity and ensuring the continued provision and protection of single sex services, facilities, sports and opportunities. This should include clarifying that a person whose self-identified gender identity is different from their sex is not entitled to access services, facilities, or sport designated for the opposite sex (for example, clarifying that a male person who self identifies as non-binary or transgender does not have a right to access changing rooms designated for females only); and
4. Clarification that the recording of information in official justice related records (police, justice statistics, courts etc) should reflect the public interest in the sex of a person being charged and/or convicted of a crime. Including, where a person claims a gender identity that is different to their sex both their sex and gender identity are clearly designated and recorded separately (meaning, for example, that official records and statistics clearly differentiate between crimes committed by women (female) and transgender women (male)).

5. Our advocacy

Human rights, freedoms, safety and autonomy for women and girls have seen large gains in the West over the last century.

While progress in the transgender community being treated with humanity and compassion is broadly positive, it is resulting, in some cases, at the expense of hard won and fragile gains made by the women's rights movement. Notably, it is coming at the expense of girls and women who wish to preserve their own spaces, freedoms and safety in contexts like sports, bathrooms and changing rooms, and their own language and identities.

Our principles are core to our advocacy work.

These eight principles form the basis of how we represent our causes and who we partner with.

1. *Women are adult human females; girls are human female children.*
2. *Women and girls have the right to live free of violence, including sexual, physical and emotional.*
3. *Women and girls have the right to organise and gather in safe, sex-segregated spaces.*
4. *Women and girls have the right to reproductive sovereignty.*
5. *Women and girls have the right to live free from commercial sexual exploitation.*
6. *Women and girls have the right to economic independence, pay equity, and living wages.*
7. *Lesbians are exclusively same-sex attracted females and have the right to assert their same-sex attraction without facing harassment.*
8. *'Sex' refers to the biological characteristics that distinguish males from females. Sex is immutable. 'Gender' refers to the stereotyped roles, cultural norms, behaviours and attributes that society at a given time associates with males and females.*

There are many times when sex doesn't matter, we encourage freedom of gender expression and we want our children to grow up without narrow definitions of what it means to be a woman or a man.

But sometimes sex really does matter - and this is where we are focussed.

See www.speakupforwomen.nz for more details.

6. Gender identity politics and the “Rainbow Community”

As part of the cultural and political changes around gender ideology, the cultural and political constructs “the Rainbow Community” and “LGBTQIA+” have developed and been popularised by activists, the civil service and the media. It is important to understand that these terms group together very different populations.

We highly recommend that if you receive advice from officials related to the “Rainbow community” or “LGBTQIA+” you seek clarification about the particular demographic that is being discussed, the recommendations being made, and why it being asserted that these very different populations share the same needs.

LGBTQIA+

LGB relates to **sexuality** and refers to Lesbian, Gay and Bisexual. These are people who experience **same sex attraction** and historically have organised politically to achieve law reforms (decriminalisation of homosexual acts, same sex marriage). This is a distinct group. Many SUFW supporters (including our spokeswoman) are LGB.

T relates to **gender identity** and refers to trans or transgender – an umbrella term for those who assert a gender identity. This includes extremely varied demographic groups, for example heterosexual, middle aged, married, professionally successful fathers; and depressed, anxious NEET (not in education, employment or training) teenage girls.

Q stands for **Queer** and can relate to sexuality or gender identity. It is an umbrella term used by some people who assert a gender identity, some same-sex attracted people, and people who believe themselves to be upending what they perceive as sexual or sex role norms.

I refers to **Intersex** – a medical condition - see [here](#)

A refers to **Asexual** – operates as an identity but relates to sexuality. An umbrella term for people who identify as part of the Rainbow Community, based in whole or part on an asserted lack of experiencing sexual attraction. Notwithstanding this, many of those who identify as asexual also say they are sexually active. However they believe themselves to be a sexual (sexuality) minority in need of political and cultural rights and protections.

Gender in non-Western cultures

Many cultures include “third gender” roles. These categories are a way of accommodating sex role nonconformity and in particular male homosexuality, in cultures where male roles are very masculine and rigid. Gender identity activists claim that traditional “third gender” roles are proof of and part of the (Western-origin) “LGBTQIA+” construct. North American gender activists may include “2S” in their

acronym, meaning “Two Spirit”, a (relatively recent and contentious) Native American term for those who assert both a masculine and feminine spirit.

Out of the claim that non Western cultures recognise other “genders”, activists mount the argument that to assert the sex binary and its importance is “colonisation” and even “white supremacy”.

Activists in New Zealand may use the word *takatapui*, which translates as “intimate friend of the same sex”. This term has been co-opted by activists to include trans and other identities.

You may see the acronym *MVPFAFF* used. This includes Pasifika gender roles such as Samoan fa'afafine.

Gender ideology in other countries

Other countries experiencing this political and cultural phenomenon include Australia, the USA, Canada, the UK, Ireland, Mexico, Argentina, France, Iceland, and India. This political and cultural movement owes its genesis to a number of influences including but not limited to the internet/social media, with increasing numbers of people looking for community and meaning via personas and avatars they curate online and attempt to realise offline.

Opposition to gender

In modern, democratic societies sex does not, and should not determine life choices or personal expression. However this does not make it irrelevant to how we should organise society. Women by virtue of being female bear by far the greater physical burdens and responsibilities in reproduction. Men are on average bigger and stronger than women and are more inclined to use physical violence including sexual violence. This means women and girls require particular accommodations on the basis of sex to ensure we can safely and fairly participate in society

Speak Up for Women and those opposed to gender identity ideology consider gender to be a moot construct in modern democratic societies, as people are generally free to pursue their life path, express their personalities and choose personal styling in any way they choose, regardless of what is claimed to be typical or appropriate for males or females.

We do not think that refusal to abide by sex stereotypes warrants the construction of a gender identity, rather we think women, girls and society are better served by the equal opportunities feminism of the twentieth century - that understood female oppression was targeted at our physical characteristics, and best countered with the old rallying cry of “girls can do anything”. At its core, gender ideology is regressive and sexist as it asserts sex must be denied, even to the point of surgically changing bodies, to match personalities – as opposed to supporting women and girls, and men and boys, to express themselves and pursue their interests across traditional sex role boundaries if they wish.

7. Why Speak Up for Women exist

Speak Up for Women was formed in 2018 and is a diverse group of ordinary women who initially came together to campaign against the introduction of sex self-identification on birth certificates being pursued by the previous Government as part of the Births, Deaths, Marriages and Relationships Registration (BDMRR) Bill.

We began with a shared concern about the impact of gender identity activism (including sex self-ID) on the rights of women and girls. We quickly realised that there was no one advocating for women across the board.

Previously dedicated women's groups such as the National Council for Women now focus heavily on gender identity and the contested belief that to be a woman is a state of mind or a feeling rather than a material reality. What is left is a void of services and advocates for women/females as a sex class separate and distinct from men/males.

That sex matters, that sex (an objective material reality) is different from gender identity (a subjective inner feeling felt by some) and that in some circumstances, women need specific advocacy and representation on the basis of sex. This includes strongly advocating for the women and providers to be able to access and offer the existing exclusions in the Human Rights Act 1993 that allow for single sex services, sports, facilities, services, and opportunities.

After our attempts to meet in public venues to discuss to proposed changes in the BDMRR Bill were consistently cancelled by council facilities and being labelled as “transphobic”, “bigoted” and a “hate group” by a number of organisations and individuals (including MPs), we took one of the most recent and important court cases regarding freedom of association and speech and the Bill of Rights Act in recent times ([Whitmore vs Palmerston North City Council](#)).

Despite over two-thirds of submitters to the Select Committee opposing the introduction of sex self-identification on birth certifications, the Births, Deaths Marriages and Relationships Registration Act was passed in 2021. However, the advocacy of SUFW, alongside other groups and individuals, resulted in the inclusion of section 79(2). This section states that a birth certificate is not determinate of sex and allows for the existence of women only services and sex segregated spaces on the bases of biological sex, not gender identity.

8. Contact us

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