LGBTI+ rights in Aotearoa New Zealand: the past and the future

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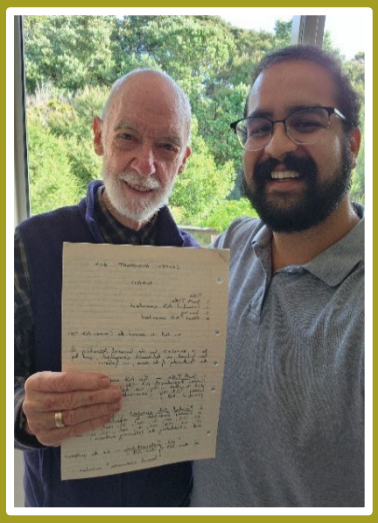

Bill Logan, an LGBTI+ rights activist who contributed immensely to homosexual law reform, provided useful insights and narratives that helped situate my understandings of LGBTI+ law reform in this country. He is a LGBTI+ rights hero. Lastly, Professor Don McMorland, formerly a legal academic at the University of Auckland. Professor McMorland was one of the two lawyers who drafted the Bill that later became the Homosexual Law Reform Act 1986. He was also one of the two gay men featured in an unprecedented 1979 article in the *NZ Listener*, which I am told helped contribute, in its own way, to the destigmatisation of homosexuality.[1] I met him in May 2024. As we trawled through his personal archive from the homosexual law reform-era, we found the first draft of the Bill. I took a photo of Professor McMorland and I, along with the draft Bill. It remains one of my most cherished images.

Finally, I acknowledge LGBTI+ rights defenders across Aotearoa New Zealand and across the globe. The rights that LGBTI+ people enjoy in this country were not gifted by benevolent institutions nor arrived at inevitably; they were won through sustained, courageous, and deeply personal advocacy. Many of these struggles unfolded in a hostile legal, political, and social environment, and frequently at significant personal cost. The legal protections and recognition that now exist are built on decades of organising and resistance, much of it undertaken by individuals whose names will never appear in statutes, judgments, newspaper clippings, or who will be known by LGBTI+ people of today. This report is written in deep recognition of that legacy. It proceeds from the understanding that law reform is not just a technical exercise, but one that is tied to lived experience and dignity.

For those who fought when success was uncertain, when loss was common, and when the law itself was a source of harm rather than protection, this work is offered as an act of respect and remembrance. It is also written with the hope that future reform will continue to be informed by the same courage, imagination, and insistence on justice that has carried LGBTI+ communities this far. It is written with an awareness that the responsibility to protect, extend, and deepen those rights now rests with the present generation:

> *Kia whakatōmuri te haere whakamua: I walk backwards into the future with my eyes fixed on my past.*

Vinod Bal

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[1] See Geoff Chapple "Visible Gays" (12 May 1979) *NZ Listener* at 13-16.

About the author

Vinod Bal is a co-founder and the advocacy lead of Adhikaar Aotearoa, a New Zealand-national charity that advocates for LGBTI+ people of colour.

He has worked on LGBTI+ law reform in Aotearoa New Zealand and is an emerging scholar and commentator with expertise in LGBTI+ rights within the domestic and international legal framework.

He has a Bachelor of Laws with First Class Honours and a Bachelor of Social Sciences (Political Science and Sociology) from the University of Waikato. He has also studied human rights at the Humboldt University of Berlin in Germany, and comparative sexual orientation and gender identity law at Leiden University in the Netherlands.

Executive summary

Part one: Introduction

This report is driven by a central question: is LGBTI+ law reform in Aotearoa New Zealand complete, or is it an ongoing and unfinished project?

The question arises from a recurring assumption that LGBTI+ rights can reach an endpoint. In 1993, following the adoption of the "O'Regan Amendment" to the Human Rights Bill, which introduced protections against discrimination on the grounds of sexual orientation and "the presence in the body of organisms capable of causing illness" (i.e. having HIV), political commentary suggested that sweeping gay law reform had "completed" the reform agenda. The subsequent decades in Aotearoa New Zealand suggest otherwise.

Since early anti-discrimination protections were enacted, the country has undertaken further reforms, including civil unions, marriage equality, prohibition of conversion practices, and reforms to legal gender recognition. Each of these developments reflects evolving expectations of equality and demonstrates that LGBTI+ law reform has not ended.

This report was prompted by a contemporary version of this question: what comes next, particularly after marriage equality? Because marriage equality is often treated as the apex of LGBTI+ demands, I have heard some describe Aotearoa New Zealand as a "gay utopia." This report challenges that framing. Treating marriage equality as an endpoint risks obscuring ongoing legal gaps and the lived realities of LGBTI+ people whose experiences have not historically driven reform agendas.

To answer the question of what comes next, the report looks both backward and forward. Part two explores New Zealand's LGBTI+ legal history, examining statutory developments, political-legal advocacy, and case law to identify historic reform priorities and exclusions. Part three considers articulated and emerging rights demands that remain unresolved. Part four sets out recommendations.

The report draws on comparative practice, experiential knowledge from engagement in the LGBTI+ sector, and targeted legal research. It is deliberately legal in orientation, privileging statutes and case law rather than providing a comprehensive socio-political history. It does not claim to be exhaustive but aims to illuminate underexamined legal histories and contribute to the development of LGBTI+ law as a coherent field in Aotearoa New Zealand.

The report is written at a moment of heightened contestation. Domestically and internationally, LGBTI+ rights face regression as well as reform. Legislative initiatives restricting gender diversity, changes to education and healthcare policy, and renewed moral and religious opposition demonstrate that legal gains are not immune from rollback. In this context, the report rejects complacency and proceeds on the premise that LGBTI+ law reform remains unfinished and requires both vigilance and imagination.

Part two: LGBTI+ legal history

(a) Political-legal advocacy, legislation, bills, and law reform

Part two examines how LGBTI+ legal recognition in Aotearoa New Zealand has been incrementally developed through law. Its purpose is not to offer a complete social history, but to illuminate the historic priorities and exclusions that have characterised LGBTI+ law reform. The analysis proceeds chronologically, reflecting shifts in legal context, political strategy, and advocacy priorities.

A foundational point is that criminalisation of same-sex intimacy was a colonial imposition, not a feature of tikanga or pre-colonial legal norms. The earliest criminal regulation of sexuality and gender entered Aotearoa New Zealand through the reception of English law, embedding a punitive moral framework within the colonial legal system.

(1) Early history (before 1980)

From the outset of colonial governance, male same-sex intimacy was treated as a serious criminal offence. English statutes imported into Aotearoa New Zealand criminalised such conduct with extreme penalties, initially including death, later replaced by long-term imprisonment and hard labour. These laws did not simply regulate sexual acts; they portrayed male homosexuality as a moral threat.

Over time, criminalisation was not merely inherited but domesticated and reinforced. New Zealand's own criminal codes retained life imprisonment for male same-sex intimacy and, at points, added corporal punishment. Alongside "core" sexual offences, public order legislation such as vagrancy and public order provisions enabled indirect policing of sexuality and gender nonconformity, particularly in public spaces.

Twentieth-century reforms removed the most overtly brutal penalties but left the underlying structure intact. By the mid-twentieth century, consensual sex between adult men remained criminalised, punishable by imprisonment, and accompanied by offences targeting the social infrastructure of gay life, including meeting places and venues. Sex between adult women, by contrast, was never criminalised, reflecting not tolerance but legal invisibility.

The Crimes Act 1961 consolidated this regime. It established a framework criminalising indecency between males, sodomy, and the keeping of places used for homosexual acts. Together, these provisions show that the state's concern extended beyond conduct to the formation of gay community and association.

At the same time, early moves toward statutory non-discrimination emerged in the 1960s, most notably in the Sale of Liquor Act 1962, which prohibited discrimination on certain grounds in hotels and bars (and similar establishments). Sexual orientation was conspicuously absent, leaving open discrimination against lesbians and gay men even as other forms of exclusion were regulated.

(2) Early reform advocacy and parliamentary resistance

The 1968 petition to Parliament by the New Zealand Homosexual Law Reform Society marked the first comprehensive challenge to criminalisation. Drawing explicitly on developments in the United Kingdom, the petition framed reform as a matter of rational lawmaking rather than moral endorsement. It emphasised privacy, consent, internal inconsistency in the law, the human suffering caused by criminalisation, and uneven enforcement.

The Department of Justice's response acknowledged many of these critiques. However, it declined to recommend reform. Parliament reported the petition back without recommendation, and criminalisation remained unchanged.

Throughout the 1970s, the debate continued in Parliament, the legal academy, and civil society. Academic exchanges highlighted a growing divide between humanitarian, rule of law arguments for reform, and moral justifications for retaining criminal sanctions.

(3) Failed decriminalisation efforts in the 1970s and early 1980s

Between 1974 and 1980, several Members' Bills sought to decriminalise consensual male same-sex intimacy. These proposals consistently adopted partial reform models, typically decriminalising private adult conduct while retaining unequal ages of consent, enhanced penalties for paedophilia (signalling an incorrect, yet popular, connection between homosexuality and paedophilia), and exceptions for institutions such as Police and the armed forces.

These bills exposed deep strategic divisions within the gay rights movement. While some advocates supported incremental reform as a pragmatic step forward, others, particularly the National Gay Rights Coalition, rejected any reform that entrenched inequality. For these activists, unequal ages of consent were not compromises but legislative declarations of inferiority. They warned that partial reform risked stagnation by allowing Parliament to claim progress while structural discrimination persisted. These divisions proved decisive. Successive bills collapsed either in Parliament or before introduction.

(4) Anti-discrimination advocacy and institutional rejection

As criminal law reform stalled, advocacy increasingly turned toward anti-discrimination law. Submissions to include sexual orientation in the Human Rights Commission Act 1977, a law that prohibited discrimination by private bodies, were rejected, despite comparative precedents and medical consensus that homosexuality was not a psychological disorder.

The Human Rights Commission itself declined to recognise sexual orientation as a protected "status" under international human rights law, adopting a narrow interpretation. While the Commission acknowledged some internal inconsistencies in the criminal law, it refused to treat homosexuality as a human rights issue, prompting strong criticism from gay and lesbian organisations. The Government

accepted the Commission's position, leaving sexual orientation unprotected throughout the late 1970s and 1980s.

(5) The breakthrough: Homosexual Law Reform Act 1986

The Homosexual Law Reform Act 1986 marked the turning point. Following nearly two decades of sustained advocacy, Parliament decriminalised consensual male adult same-sex intimacy and repealed provisions that targeted gay social spaces.

However, the Act reflected compromise. Provisions prohibiting discrimination on the ground of sexual orientation were removed during the legislative process, and exceptions were retained for Police and the armed forces. While decriminalisation was achieved, equality was deferred.

(6) Anti-discrimination protection in the 1990s

The early 1990s saw renewed focus on discrimination. Reports by the Human Rights Commission documented widespread exclusion of lesbians and gay men, and linked legal protection to effective HIV prevention. Despite this, attempts to include sexual orientation in the New Zealand Bill of Rights Act 1990, a law that outlines the rights and freedoms those in New Zealand have, failed.

Comprehensive protection was finally achieved through the Human Rights Act 1993, a law that prohibits discrimination by private bodies (and the government), following the adoption of a supplementary order paper adding sexual orientation and "the presence in the body of organisms capable of causing illness" (i.e. having HIV) as prohibited grounds of discrimination. Attempts to dilute the amendment were rejected, establishing a non-discrimination framework for sexuality, though not explicitly for gender identity or having an innate variation of sex characteristics.

(7) Recognition and consolidation (1990s–2000s)

From the mid-1990s onward, legislative reform shifted toward relationship recognition. Same-sex partners were gradually included across discrete statutes, and the Law Commission played a central role in articulating coherent models for recognition. While rejecting marriage reform, the Commission endorsed registered partnerships as a means of achieving substantive equality without redefining marriage. This and other work culminated in the Civil Union Act 2004, followed by extensive reforms across the statute book. Criminal law reform during this period also addressed hate-motivated offending and removed doctrines that had legitimised prejudice.

A statutory legal gender recognition framework was introduced in 1995, enabling transgender, non-binary and intersex people to change their sex markers.

(8) Marriage equality and retrospective justice (2010s)

The Marriage (Definition of Marriage) Amendment Act 2013 completed the transition to formal equality in relationship recognition. Later in the decade, the state moved beyond prospective reform to address historical injustice through the Criminal

Records (Expungement of Convictions for Historical Homosexual Offences) Act 2018, acknowledging the harm caused by criminalisation itself.

(9) Gender diversity and renewed contestation (2000s–2020s)

Efforts to secure explicit protection for transgender, non-binary and intersex people have followed a more uneven path. While legal opinion suggested existing protections might suffice for transgender people, repeated attempts to amend the Human Rights Act to include gender identity were unsuccessful. In practice, discrimination persists, as documented in the Human Rights Commission's landmark *Transgender Inquiry* and the Law Commission's *Ia Tangata*.

The Births, Deaths, Marriages, and Relationships Registration Act 2021 marked a significant shift to self-identification for sex registration, and the Conversion Practices Prohibition Legislation Act 2022 recognised conversion practices as inherently harmful. At the same time, the 2020s have seen renewed political contestation, including bills seeking to define sex in biological terms or restrict access to gender-affirming spaces.

In 2025, the Law Commission concluded that the Human Rights Act remains inadequate in its protection of transgender, non-binary, and intersex people, recommending explicit new prohibited grounds and reform of existing exceptions.

(b) Case law

This section examines significant LGBTI+ case law: decisions that engaged directly with sexuality or gender identity and produced, or had the capacity to produce, system-level legal effects. The focus is not on criminal prosecutions, procedural matters, or limited substantive wins, but on cases that shaped LGBTI+ rights.

The backdrop to all such jurisprudence is the long period of criminalisation and moral regulation preceding decriminalisation in 1986. Early policing practices, including entrapment and public order charges, created a climate of surveillance. The existence of criminal liability shaped judicial assumptions about sexuality, morality, and public order. Later case law must therefore be understood as emerging from that foundational hostility.

(1) Early cases (before 1980)

Before modern human rights frameworks, LGBTI+ lives appeared in court primarily through criminal law, administrative non-recognition, and public stigma.

Police v Rupe (1966) stands as a foundational decision on gender expression. A transgender woman charged with behaving offensively for wearing women's clothing in public was acquitted. The Magistrates' Court confirmed there was no legal prohibition on cross-dressing and held that gender nonconforming attire, without more, could not meet the criminal standard of "offensive behaviour." At a time of social hostility, the case affirmed that alternative gender expression alone is not criminal.

Re T (1975) exposed the limits of judicial power in the absence of statutory gender recognition mechanisms. Although the High Court (then known as the Supreme Court) accepted extensive medical evidence that the applicant lived as female following gender-affirming treatment, it held it lacked jurisdiction under the Declaratory Judgments Act to declare her sex legally changed. The decision is significant not for recognition, but for explicitly directing reform responsibility to Parliament.

The broader social climate is illustrated by the Hagley Park killing in 1964, in which a group of youths targeted a man they identified as gay and were acquitted. The case, though not legally transformative, became a galvanising event in homosexual law reform advocacy.

(2) The 1980s

The 1980s sit between overt criminalisation and the emergence of rights discourse. Courts were increasingly required to address gender diversity, homosexuality, and censorship within existing statutory frameworks.

In *B v B* (1981) and *C v D* (1991), courts rejected the assumption that transgender identity or same-sex relationships automatically undermined parental fitness. Both decisions relied heavily on expert evidence, insisted on child welfare as the paramount consideration, and refused to treat social prejudice as determinative. These cases mark an early judicial move away from moral panic toward evidence-based reasoning in family law.

Palmer-Brown v Police (1984) confined the use of public order offences. The Court of Appeal held that suspicion, for the purposes of a summary offence, must arise from contemporaneous observable behaviour, not moral disapproval or later-elicited admissions. The decision limited the use of summary offences as tools of moral enforcement against homosexuals.

In *Collector of Customs v Lawrence Publishing* (1986), the Court of Appeal tied "indecency" to 'demonstrable harm to the public good' rather than 'mere offence to community standards'. The case narrowed the moralistic use of censorship laws that had historically been deployed against gay publications.

(3) The 1990s

The 1990s mark the emergence of LGBTI+ rights discourse. Courts were increasingly asked to determine whether LGBTI+ people could participate in core institutions: marriage, parenting, social welfare, and refugee protection.

In *M v M* (1991) and *Attorney-General v Otahuhu Family Court* (1995), courts rejected biological essentialism in determining sex for marriage. Both decisions held that transgender people who had undergone medical transition could marry in their affirmed sex. These rulings moved Aotearoa New Zealand away from the strict biological test in *Corbett v Corbett* and toward recognition grounded in lived reality and medical evidence.

In *Re GJ* (1995), the Refugee Status Appeals Authority held that sexual orientation could constitute a "particular social group" under the Refugee Convention and rejected the notion that safety could be secured through concealment. The decision affirmed that enforced self-erasure is incompatible with dignity.

Other 1990s cases illustrate uneven progress. *Gilmour v ACC* (1995) confirmed that statutory definition of "spouse" in the Accident Rehabilitation and Compensation Insurance Act 1992 was confined to opposite-sex partners. In *Quilter v Attorney-General* (1997), the Court of Appeal held that the Marriage Act 1955 confined marriage to opposite-sex couples and that any change was for Parliament, not the courts. Although Thomas J dissented on discrimination, the Court declined to extend marriage judicially.

At the same time, family law cases such as *P v M* (1998) and *V P v P M* (1998) treated same-sex relationships as functionally equivalent to marriage for domestic violence protection and custody decisions, insisting on welfare-based analysis rather than orientation-based exclusion. *A v R* (1999) further recognised lesbian parenting by holding that a former same-sex partner could be declared a step-parent for child support purposes.

(4) The 2000s

The 2000s reflect the translation of equality principles into the mechanics of everyday legal life.

In *King v Church* (2002), the Court of Appeal recognised equitable property interests arising from a long-term same-sex relationship, affirming that domestic contributions generate enforceable expectations, even in a same-sex context.

Adoption Application by T (2007) confirmed that being a single gay male is not a barrier to adoption and that the inquiry must be child-centred and evidence-driven. The Family Court explicitly acknowledged the Human Rights Act's normative backdrop, even within the constraints of the Adoption Act 1955.

In *"Michael" v Registrar-General* (2008), the Family Court rejected a "full surgery" threshold for legal gender recognition. It held that the statutory test for a change of sex marker did not require complete genital surgery and that assessment must be case-specific. This decision reduced coercive medical burdens and affirmed transgender autonomy within the limits of the statutory scheme.

(5) The 2010s

The 2010s were shaped by marriage equality but also revealed structural gaps in older legislation.

In *Re Pierney* (2015), the Family Court confirmed that same-sex de facto couples could jointly adopt following the 2013 marriage reforms, bridging marriage equality and family formation.

In *Adoption Action Inc v Attorney-General* (2016), the Human Rights Review Tribunal found aspects of the Adoption Act 1955 unjustifiably discriminatory, particularly its limitation of joint adoption and consent provisions to "spouses," excluding civil union and de facto couples (it is unclear whether the Tribunal was aware of the Family Court's decision in *Re Pierney*). The Tribunal declined to read the statute differently under section six of the New Zealand Bill of Rights Act.

(6) The 2020s

The 2020s reflect heightened judicial awareness of vulnerability alongside ongoing structural constraints.

In *Registrar-General v Nelson* (2022), the Family Court acknowledged the importance of legal recognition for intersex people but held that the statutory framework confined sex markers to limited categories, not including "intersex". The case shows the limits of legal recognition regimes.

Administrative law litigation has emerged as a significant tool. In *Auckland Pride v Minister of Immigration* (2023), the High Court refused interim relief preventing entry of an anti-transgender speaker but recognised that freedom of expression may, in principle, be justifiably limited to protect vulnerable communities.

In *Hoban v Attorney-General* (2025), the Court of Appeal accepted that hate speech protections are underinclusive in excluding sexual orientation, but held the omission was a justified positive measure. The decision underscores the political nature of expanding group-based protections.

In *Professional Association for Transgender Health Aotearoa v Minister of Health* (2025–2026), the High Court granted interim non-enforcement relief against regulations banning new puberty blocker prescriptions for gender dysphoria and gender incongruence, recognising arguable deficiencies in consultation and evidential basis. The Court of Appeal affirmed that the declaration protected clinicians and patients pending substantive review. These decisions demonstrate the growing role of administrative law litigation.

Ongoing cases about transgender protection under the Human Rights Act, and government decisions affecting inclusion in sport, illustrate that foundational questions about the scope of "sex" discrimination protections remain unresolved.

(c) Historic priorities and exclusions in LGBTI+ law reform

(1) Historic priorities

The political–legal record and case law show a consistent sequencing. The first priority was ending criminalisation, especially of consensual male same-sex intimacy; advocacy and litigation largely targeted the criminal and quasi-criminal tools used to police gay men (public order and censorship) rather than seeking broad recognition. Reform was then framed through privacy, consent, and harm-minimisation. Another priority was incrementalism and institutional legitimacy:

decriminalisation proposals were often coupled with child protection measures, higher ages of consent, and institutional carve outs, and even when reforms succeeded, non-discrimination provisions were frequently deferred (as with the anti-discrimination limb removed from the 1986 reform package).

From the 1990s, focus shifted toward functional relationship and family recognition (property, child welfare and protection from violence), with equality arriving later through civil unions and eventually marriage. Explicit anti-discrimination protection emerged late and unevenly: sexual orientation was not protected until 1993, and protections for transgender, non-binary, and intersex people have long remained uncertain or implicit.

(2) Historic exclusions

The same history also reveals persistent gaps. Reform was male-centred, because criminalisation targeted men, and lesbian experiences were often sidelined. Transgender people appeared mainly through courts and administrative processes that were sympathetic but constrained, with recognition historically contingent on medicalisation and surgery thresholds, and discrimination protection left unclear.

Intersex people were largely absent from historic reform agendas, appearing only marginally, with their distinct issues: medical intervention, legal classification, discrimination based on sex characteristics, rarely prioritised. Limited visibility and differing community identification likely contributed to this omission.

Finally, broader intersections such as race, indigeneity, class, and disability, were rarely integrated into legal framing, even though sexuality regulation was colonial in origin and reform impacts have been uneven across communities, including takatāpui and rainbow people of colour.

Part three: what's next for LGBTI+ rights in Aotearoa New Zealand

(a) Introduction

Part three proceeds from the recognition that law reform itself is necessary but insufficient. Formal legal equality does not automatically translate into substantive equality. Discrimination, stigma, and exclusion persist even where rights exist on paper.

Against this backdrop, part three examines what "comes next" for LGBTI+ rights in Aotearoa New Zealand. It does not claim completeness, nor does it assume that all reforms should be pursued simultaneously. Instead, it identifies key areas where legal frameworks remain misaligned with lived realities, focusing on LGBTI+-specific issues rather than general reforms. The analysis prioritises the nature of the problem over detailed reform proposals and emphasises that sequencing, timing, and community readiness are critical to effective reform.

(b) Anti-discrimination law

New Zealand's anti-discrimination framework is anchored in the Human Rights Act and section 19 of the New Zealand Bill of Rights Act. While this former framework provides important protections, it is structurally dated and increasingly misaligned with contemporary understandings of sexuality, gender, and sex characteristics.

The most significant deficiency is the absence of explicit protection for transgender, non-binary, and intersex people. Although governments have asserted that the ground of "sex" offers indirect protection for transgender people, this position remains legally untested. The lack of express inclusion undermines legal certainty, discourages complaints, and weakens the expressive function the law.

A second weakness lies in the outdated definition of sexual orientation, which exhaustively lists heterosexual, homosexual, lesbian, and bisexual orientations. This fails to reflect contemporary understandings of sexuality as fluid and diverse, risks (self-)excluding pansexual, asexual and culturally specific identities, and places an unnecessary interpretive burden on complainants.

The section also highlights HIV-related discrimination in insurance, where insurers continue to rely on exclusions that may no longer be justified by contemporary medical evidence. The Human Rights Act already contains mechanisms requiring actuarial justification for differential treatment; these oversight tools may provide a principled pathway for reform without blunt legislative intervention.

(c) Hate speech

Aotearoa New Zealand has an exceptionally narrow hate speech regime, confined to sections 61 and 131 of the Human Rights Act and limited to race-based characteristics. There are other laws that regulate speech generally. LGBTI+ communities are entirely excluded from Human Rights Act-hate speech protection, even where speech explicitly incites violence. This exclusion is not merely technical. It leaves LGBTI+ people without recourse against serious group-based vilification. Courts have acknowledged this gap and expressed discomfort, even while upholding its validity.

The case for reform does not require lowering thresholds or suppressing legitimate expression. A principled option would be to extend existing hate speech provisions to sexual orientation, gender identity, and sex characteristics, preserving high thresholds and consistency with existing jurisprudence. Given broader concerns about the adequacy of hate speech law, the section argues strongly for an independent and expert-led review rather than ad hoc expansion.

(d) Family formation and recognition

Family law exposes one of the clearest gaps between formal equality and lived equality for LGBTI+ people. While relationship recognition has advanced, pathways to parenthood remain structured around heterosexual and two-parent assumptions, producing delay, expense, and insecurity.

Surrogacy is central for many LGBTI+ families, particularly gay male couples. Yet Aotearoa New Zealand continues to treat surrogacy as a form of adoption, requiring intended parents to adopt their own children through intrusive and outdated processes. This framework is misaligned with the realities of surrogacy and imposes disproportionate burdens.

Discrimination also arises in fertility funding, where criteria privilege biological infertility and force same-sex couples to self-fund to demonstrate eligibility. Comparative experience shows these criteria can be redesigned to recognise 'social infertility' without abandoning prioritisation.

The section also identifies emerging issues around birth registration and parentage, including the rigidity of the two-parent model, which fails to reflect multi-parent families such as those formed through assisted reproduction. Comparative models demonstrate that recognising more than two parents does not need to be arduous.

Finally, it explores chosen family and polyamorous relationships as emerging areas where legal invisibility may produce harm. While community demand varies, the absence of legal tools to recognise such relationships creates risks.

(e) Intersex legal issues

Intersex issues raise distinct questions of bodily integrity, consent, medicine, and data governance. Current frameworks struggle to prevent irreversible medical interventions performed in childhood without consent or provide effective remedies.

Despite evolving clinical guidance, unnecessary medical interventions on intersex minors continue to occur, and data gaps make oversight difficult. International human rights bodies have repeatedly criticised Aotearoa New Zealand for failing to prohibit medically unnecessary interventions on intersex minors and for relying on clinical discretion alone. Existing rights, including the right to refuse medical treatment and freedom from discrimination, offer only limited protection to intersex people, and have not been tested in the courts. The section points to legislative models, such as the Australian Capital Territory regime, which restrict deferrable interventions while permitting urgent care and introducing independent oversight.

Equally important are issues of data retention and access. Many intersex people cannot obtain records of interventions performed on their bodies, undermining accountability and compounding harm. Enhanced retention, proactive disclosure, and improved data governance are identified as reforms.

On legal gender recognition, the section cautions against mandatory intersex classification at birth while acknowledging that self-identification options later in life may be appropriate if driven by community demand.

(f) Legal gender recognition

The Births, Deaths, Marriages, and Relationships Registration Act 2021 introduced self-identification for people born in Aotearoa New Zealand, marking a significant

advance. However, the reforms simultaneously removed the Declaration as to Sex pathway available for people born overseas. Overseas-born transgender, non-binary, and intersex people, including refugees, asylum seekers, and migrants, now lack any functional pathway to obtain New Zealand recognition of their sex. This exclusion has cascading effects across immigration, employment, housing, healthcare, and personal safety and raises serious discrimination concerns based on national origin.

Community-led proposals emphasise extending recognition to all residents and ensuring that recognition produces usable identity documents across government systems. Comparative jurisprudence suggests that justifications for exclusion based on administrative convenience or international law are weak.

(g) Healthcare legal issues

This section illustrates how health inequity is often produced indirectly through insurance design, immigration settings, and regulatory decisions.

Private health insurers frequently apply exclusions that deny transgender people coverage for routine healthcare, not just gender-affirming procedures. This raises strong discrimination concerns and may exceed what the law permits.

International students face structural barriers to accessing LGBTI+ healthcare due to visa-linked insurance requirements and institutional gatekeeping, particularly for sexual health services such as PrEP (pre-exposure prophylaxis). Reform could be achieved by prescribing minimum coverage standards.

The ban on puberty blockers for new patients for gender dysphoria and gender incongruence raises an unusually strong discrimination issue because the same medicines remain available for other indications. The High Court has already acknowledged the equality concern. The absence of a compelling justification suggests the policy warrants urgent reconsideration and removal.

(h) HIV non-disclosure

The criminalisation of HIV non-disclosure in Aotearoa New Zealand creates legal uncertainty and misalignment with contemporary medical science. Modern evidence establishes that people with an undetectable viral load cannot transmit HIV, yet the law continues to rely on outdated risk assumptions. This undermines legal certainty, reinforces stigma, and may discourage testing and treatment. The section argues against broad legislative reform and instead supports clarification through prosecutorial guidance and judicial development, limiting criminal law to cases of intentional transmission.

(i) Other Issues

A number of indirect legal and administrative settings continue to disadvantage LGBTI+ people despite appearing neutral. These issues demonstrate how legal infrastructure can produce exclusion when it fails to adapt to lived realities.

Medicine approval rules can impede urgent public health communication. Restrictions on advertising provisionally approved medicines limited outreach during the Mpox outbreak among men who have sex with men, contributing to low uptake. A narrow public interest exception would better balance safety and equity.

Education zoning can compel transgender and non-binary students to attend single-sex schools that do not align with their identity. Discretionary enrolment remedies are inadequate. Targeted statutory reform would address this structural inequity.

The conversion practices law does not clearly capture offshore practices arranged from Aotearoa New Zealand. Explicit extraterritorial coverage would strengthen deterrence and align with existing approaches to serious harm prevention.

Transgender people may be misgendered or deadnamed on death certificates. Current correction mechanisms are insufficient. Reform should prioritise the deceased's affirmed identity.

Finally, the absence of a general right to privacy limits protection against forced disclosure of intimate identity information. A substantive privacy right would strengthen protections for LGBTI+ people.

Part four: recommendations

This report recommends a sequenced programme of LGBTI+ law reform that balances urgency with appropriateness.

(a) Anti-discrimination law

The Government should undertake a systematic review of the Human Rights Act, including modernising the definition of sexual orientation and explicitly protecting transgender, non-binary, and intersex people, consistent with the Law Commission's recommendations. The Human Rights Commission should use its statutory powers to scrutinise and, where necessary, challenge discriminatory insurance practices affecting people living with HIV and transgender people.

(b) Hate speech

The Government should commission an independent review of hate speech law, with a view to assessing adequacy, thresholds, and scope. In principle, hate speech protections, narrowly defined, should be extended to cover sexual orientation, gender identity, and innate variations of sex characteristics.

(c) Family formation and recognition

The Government should implement the Law Commission's surrogacy recommendations, reform fertility funding to recognise social infertility, and explore reform of birth registration to move beyond a rigid two-parent model. Further work

should examine recognition pathways for chosen families and assess community demand for any legal recognition of polyamorous relationships.

(d) Intersex legal issues

Legislation should prohibit medically unnecessary surgical interventions on intersex minors, supported by strengthened data retention, access, and reporting obligations. An "intersex" sex marker should be available only through self-identification later in life, not at birth.

(e) Legal gender recognition

The Government should urgently create pathways for transgender, non-binary, and intersex people born overseas to obtain usable New Zealand identity documents, including extending name and gender marker changes across immigration and other official records.

(f) Healthcare legal issues

Regulatory and human rights oversight should be used to address discriminatory insurance exclusions affecting transgender people. Student visa and education settings should require minimum health insurance coverage. The ban on puberty blockers for new patients for gender dysphoria and gender incongruence should be reconsidered and removed.

(g) HIV non-disclosure

Prosecutorial guidance should direct against prosecution where there is no realistic possibility of HIV transmission. Community advocacy should seek authoritative clarification from the Crown Law Office on the application of criminal law in the light of modern HIV science.

(h) Other issues

Targeted reforms should permit limited public health advertising of provisionally approved medicines, enable gender-diverse students to enrol in co-educational schools, extend conversion practices prohibitions extraterritorially, ensure respect for gender identity after death, and consider recognising a general right to privacy within the New Zealand Bill of Rights Act 1990.

Introduction

Part one

On 29 July 1993, political journalist Peter Luke published an article in *The Press* commenting on what became known as the "O'Regan Amendment": a Supplementary Order Paper introduced by Associate Minister of Health, The Honourable Katherine O'Regan MP (National) to the Human Rights Bill.[2] The amendment sought to prohibit discrimination on the grounds of "sexual orientation" and "the presence in the body of organisms capable of causing illness" – the latter being intended to prohibit discrimination on the basis of a person having the Human Immunodeficiency Virus (HIV).[3] The Supplementary Order Paper was adopted, and the Bill was enacted as the Human Rights Act 1993 which has prohibited discrimination on those grounds ever since.[4] The episode is a significant moment in Aotearoa New Zealand's LGBTI+ legal history, marking an expansion of non-discrimination protections. However, what interested me in Luke's reporting was not the substance of the amendment, but the title of his article: "Sweeping gay law completes reform agenda." With the benefit of hindsight, that claim reads as premature.

Luke's publication raises an assumption about the nature and trajectory of LGBTI+ law reform: that as jurisdictions move through stages of reform, there may come a point at which equality is effectively achieved. Yet this framing invites closer scrutiny. If legal systems progress through these steps, does reform eventually reach an endpoint, or is LGBTI+ law reform a continuing and unfinished project that responds to the evolving understandings of equality, dignity, and lived experience? The experience of subsequent decades suggests the latter.

Since the enactment of early anti-discrimination protections, jurisdictions such as Aotearoa New Zealand have continued to undertake significant reforms, including the introduction of civil unions, marriage equality, and the prohibition of conversion practices, alongside developments of particular importance to transgender, non-binary, and intersex communities, such as reforms to legal gender recognition. Each of these LGBTI+ rights demands have followed from evolving expectations of equality.

My own reckoning with these questions began when I was asked a deceptively simple question: "What comes next?" A colleague posed it in the context of LGBTI+ rights in Aotearoa New Zealand, during a discussion about the absence of a clearly articulated LGBTI+ rights agenda particularly after the enactment of same-sex marriage. Because marriage equality is so often treated as the apex of LGBTI+ legal demands, I have heard some of my contemporaries describe Aotearoa New Zealand as a "gay utopia", a jurisdiction in which the work of realising LGBTI+ rights is complete.

That characterisation sat with me. Is New Zealand truly a gay utopia? Are we, in fact, finished with LGBTI+ law reform? It is my view that we are not. The framing of

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[2] Peter Luke "Sweeping gay law completes reform agenda" *The Press* (29 July 1993) at 6.
[3] Supplementary Order Paper 1993 (238) Human Rights Bill (214-2).
[4] See Human Rights Act 1993, s 21(h)(vii) and (m).

marriage equality as an endpoint, risks obscuring both the ongoing legal gaps that remain and the lived realities of many LGBTI+ people, particularly those whom historic LGBTI+ law reform efforts have not focused on. These questions, about finality, progress, and what comes next, are the impetus of this report. In a desire to understand historic LGBTI+ law reform priorities, this report also considers New Zealand's LGBTI+ legal history.

This report is split into four parts. Part one, the introduction, has and does introduce(d) the origins and focus of the project. Part two provides a LGBTI+ legal history: it discusses relevant statutory developments, case law, political-legal advocacy, and legislative and litigatory attempts. Part three focuses on the question: what is next for LGBTI+ rights in Aotearoa New Zealand? Part four provides recommendations.

This report has been informed by three principal sources. First, it draws on comparative practice, examining how other jurisdictions have articulated, expanded, and debated LGBTI+ rights. Secondly, it is shaped by my own experiential knowledge, particularly my work in the LGBTI+ sector and conversations with LGBTI+ rights defenders and community members. Thirdly, it is grounded in targeted legal research, directed at identifying both the contours of the existing law in Aotearoa New Zealand and the areas in which further development appears necessary or likely.

It is important to be clear about what this report is and what it is not. It is not exhaustive. For example, part two, which addresses LGBTI+ legal history, focuses primarily on law and, to a lesser extent, politics and policy. While it aims to be comprehensive within those parameters, it does not purport to be a complete history. For example, it does not analyse government policy documents, Police records, or Hansard; a full legal and political history of LGBTI+ law reform in Aotearoa New Zealand would be a substantial, original, and valuable project in its own right. Part three, which looks to the future, predominantly focuses on articulated rights demands: those that have been advanced by civil society but not yet enacted in law. It also touches on emerging rights claims, though, by their nature, these may not yet be fully visible in comparative practice, civil society discourse, or the existing literature. These emerging issues remain in a state of flux and warrant ongoing consideration. Part four asserts recommendations based on part three, so will also not reflect the demands part three does not address.

The report is deliberately legal in orientation. It privileges statutes and case law and accordingly places less emphasis on narratives or socio-historical storytelling.[5] The report aims to be illuminating. To my knowledge, there has been no prior work that comprehensively discusses LGBTI+ legal histories in Aotearoa New Zealand, in

[5] That work is being done elsewhere, for example, in Gavin Young's forthcoming book covering the lives of rainbow people and how social and legal change was brought about between 1960 and 1986.

particular, landmark LGBTI+ judgments. In this way, it may illuminate legal histories that have been lost or forgotten.

Finally, this report is animated by a set of broader hopes. In many jurisdictions, LGBTI+ law is recognised as a legal domain in its own right. That is not the case in Aotearoa New Zealand. One reason is the understanding that the country's LGBTI+ legal regime is well-advanced, providing little space for academic consideration. Another is the absence of a clearly identifiable expert or authoritative voice comparable to figures such as Stephen Whittle in the United Kingdom or Kees Waaldijk in the Netherlands, scholars who have played a central role in shaping national LGBTI+ legal discourse. There are also no authoritative and consolidated resources on LGBTI+ legal matters. Compounding this is the relative scarcity of litigation framed explicitly in LGBTI+ rights terms, which in turn limits the development of case law and the broader legal imaginary.[6] It is my hope that this report contributes, albeit in a small way, to the emergence of LGBTI+ law as a coherent legal field in Aotearoa New Zealand, sparks informed conversations about future progress, and encourages others to undertake further research in this area. It is also my hope that part two, in particular, serves as a useful teaching resource and helps to generate interest and enthusiasm for this area of law.

It is also necessary to acknowledge the moment in which this report was written. It was prepared at a time when LGBTI+ rights are not steadily advancing, but, in many respects, regressing, both in Aotearoa New Zealand and internationally.

Domestically, this regression is visible in law and policy, including the removal of the Relationships and Sexuality Education guidelines,[7] the banning of puberty blockers for transgender and gender-diverse young people,[8] and the introduction to the ballot of a Member's Bill seeking to define sex in law as exclusively biological.[9] Beyond law, it is also evident in public life: the intimidation of drag story time events

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[6] For some reasons for a comparative lack of LGBTI+ rights litigation in Aotearoa New Zealand, see Vinod Bal "Queer in the Courts: LGBT+ engagements with New Zealand's human rights law" (paper presented to Bill of Rights Act: Legacy and Lessons - Where to now conference, Christchurch, October 2025).

[7] See Alex Casey "Schools 'in limbo' after removal of relationship and sexuality guidelines" (14 March 2025) The Spinoff <thespinoff.co.nz>.

[8] See Eva Corlett "New Zealand bans puberty blockers for young transgender people" (19 November 2025) The Guardian <theguardian.com>. Though the High Court (affirmed by the Court of Appeal) has temporarily blocked the enforcement of the ban to allow for judicial review: *Professional Association for Transgender Health Aotearoa Incorporated v Minister of Health* [2025] NZHC 4045; and *Professional Association for Transgender Health Aotearoa Incorporated v Minister of Health* [2026] NZCA 8.

[9] See New Zealand First "New Zealand First Introduces Bill Defining 'Woman' and 'Man' in Law" (press release, 22 April 2025).

and Pride parades by groups such as Destiny Church,[10] and a spate of violent gay bashings in Christchurch.[11]

Internationally, the picture is equally troubling. A new wave of criminalisation of same-sex intimacy has emerged, including unprecedented identity-based criminalisation (as opposed to sexual conduct-based criminalisation), reversing progress that once seemed settled.[12] At the same time, the dignity and legal recognition of transgender and other gender-diverse people is being actively undermined through regressive laws and policies.[13] Public support for LGBTI+ inclusion is increasingly being contested through expansive claims of religious freedom.[14] These global developments do not remain confined to their countries of origin; they travel, shaping discourse, emboldening opposition, and feeding a broader illiberal culture war. Indeed, there is a wide body of conservative and illiberal infrastructure dedicated to spreading the culture war around the world, including to Aotearoa New Zealand.[15] These developments challenge any complacent assumption that legal equality, once achieved, is secure. As is often said: the cost of liberty is eternal vigilance.

In this context, writing about future-focused reform is itself a privilege. For our LGBTI+ community, the more urgent task is not imagining what comes next but preserving the gains that have already been won and resisting their rollback. There is a real risk that regressive and rhetorically powerful narratives imported from elsewhere could undo decades of careful progress.

At moments like this, I am reminded of the words of The Honourable Justice Michael Kirby AC CMG, Australia's first openly gay High Court judge and advocate for LGBTI+ rights, shared with me when I interviewed him in October 2025:

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[10] See, for example 1News "Drag queen reading group cancels nationwide tour amid protests" (26 April 2024) <1news.co.nz>; and RNZ "Destiny Church library protest 'intimidating and unacceptable' – police" (17 February 2025) <rnz.co.nz>.

[11] See Sinead Gill "How a vicious gay-bashing ring unfolded in Christchurch" (26 May 2024) Sunday Star Times <thepress.co.nz>.

[12] See, for example The Anti-Homosexuality Act 2023 (Uganda); Human Dignity Trust "Mali passes new law criminalising same-sex sexual activity" (30 January 2025) <humandignitytrust.org>; Alex Müller "Burkina Faso Criminalizes Same-Sex Conduct" (3 September 2025) Human Rights Watch <hrw.org>; and Joshua Surtees "Activist takes case over Trinidad's homophobic laws to UK's privy council" (4 April 2025) The Guardian <theguardian.com>.

[13] See, for example Executive Order No 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Fed Reg 2025-02090 (20 January 2025).

[14] See, for example Shilpy Arora "Muslim parents encouraged to share their concerns about 'Pride Week' by Islamic association" (6 June 2023) Stuff <stuff.co.nz>; Cait Kelly and Mostafa Rachwani "What's behind the 'terrifying' backlash against Australia's queer community?" (24 March 2023) The Guardian <theguardian.com>; Finn Blackwell "Rainbow community stands against Tamaki, Destiny Church at Auckland's Albert Park" (23 February 2025) RNZ <rnz.co.nz>; and *303 Creative LLC v Elenis* 600 US 570.

[15] See, for example ADF International *Universal Periodic Review – Fourth Cycle, Submission to the 46th Session of the Human Rights Council's University Periodic Review Working Group – New Zealand* (October 2023, Geneva).

> "You're down there in the far distances of the world. In a very beautiful country — more beautiful than Australia. You're living in a very beautiful place and a generally fair place, I think. And socially, a slightly boring place — like Australia. But with that boredom, you're not inclined to be truly nasty to people about something they don't choose and can't change, and I think that means we take things sometimes a bit slowly, but we ultimately get to the right place."

Those words capture both the fragility and the promise of the present moment. They serve as a reminder that progress is neither inevitable nor irreversible, but that, with care, vigilance, and commitment to fairness, it remains possible.

Aotearoa New Zealand's LGBTI+ legal history

Part two

Introduction

Part two of this report focuses on LGBTI+ legal histories in Aotearoa New Zealand. As noted in the introduction, this section does not purport to offer a complete history. It is, however, intended to be comprehensive within its scope. The purpose of part two is to provide an account of how LGBTI+ rights have been incrementally shaped through law. The end goal of this exercise is to illuminate the historic priorities of LGBTI+ law reform in this country.

Part two is divided into two subparts. The first examines political–legal advocacy, legislation, bills, and broader law reform processes. This subpart necessarily draws on a range of different sources that are difficult to disentangle or discuss in isolation: advocacy and legislative change, are deeply interconnected, and in practice they evolve together. Rather than artificially separating these strands, this section traces them together.

The second subpart turns to case law. It provides a focused discussion of a selection of judicial decisions that are illustrative of LGBTI+ struggles in the courts. It does not attempt to catalogue every case touching on LGBTI+ issues. For example, some decisions are substantively inconsequential in the sense that they do not produce system-level impacts or meaningfully advance, or restrict, LGBTI+ rights. Those cases are not the focus here. In addition, I do not undertake extensive research into early (pre-1980) cases. Many such decisions are difficult to access, and it is likely that a significant proportion involved the prosecution of LGBTI+ people under the criminal law, including legislation such as the Police Offences Act 1927. While historically important, those prosecutions fall outside the central focus of this research. For clarity and coherence, the case law discussed in this subpart is organised by time period, reflecting shifts in legal context and judicial attitudes.

Before turning to the post-colonial legal record, a brief but important observation must be made about LGBTI+ legal histories prior to colonisation. There is no evidence of tikanga or pre-colonial legal norms that prohibited consensual same-sex intimacy. The criminalisation of same-sex relationships were colonial impositions, not indigenous ones.[16] Any account of LGBTI+ legal history in Aotearoa New Zealand must therefore begin with an acknowledgement that the earliest prohibitions on same-sex intimacy arrived with colonial law, rather than arising from the legal or cultural traditions that preceded it.

[16] See generally Elizabeth Kerekere "Part of The Whānau: The Emergence of Takatāpui Identity – He Whāriki Takatāpui" (PhD Thesis, Victoria University of Wellington, 2017).

Political-legal advocacy, legislation, bills, and law reform

This part considers political-legal advocacy, legislation, bills and law reform. The focus here is on law or law-adjacent machinations. Advocacy that is not based on law or legal infrastructure is generally not discussed. As a result, the history here does not purport to be a complete one. This point must be belaboured.

For clarity and coherence, the matters discussed in this subpart are organised by time period, reflecting shifts in legal and political attitudes. Further, because this subsection is intended to reveal LGBTI+ legal histories that may be little-known, more attention and detail is given to earlier time periods. Contemporary time periods are given less consideration.

(a) Early history (before 1980)

(1) The importation of criminalisation

From the beginning of formal colonial governance, the legal regulation of sexuality and gender in Aotearoa New Zealand was shaped by the transplantation of English criminal law. Although British authorities tended to assume that English law travelled automatically with (their self-proclaimed) sovereignty after 1840, the English Laws Act 1858 provided the formal legislative basis for the reception of English law, giving it retrospective effect to 1840. The effect was to import not just general legal institutions, but a punitive moral code in which male same-sex intimacy was treated as a grave criminal wrong.

Two imported statutes were especially consequential. First, the Offences Against the Person Act 1828 (UK) treated male same-sex intimacy as a capital offence, meaning that, at least in formal legal terms, consensual sex between adult men was punishable by death. Second, the Vagrancy Act 1824 (UK) provided a flexible public order toolkit, an early illustration of how "vagrancy" offences could be used to police sexuality and gender nonconformity indirectly through the language of public order. Together, these statutes reveal a key feature of early LGBTI+ legal history: before "rights" entered legal vocabulary, queer life was governed through criminalisation and public order control.

The mid-nineteenth century did not so much soften the law as recalibrate punishment. The Offences Against the Person Act 1861 (UK) abolished the death penalty for male same-sex intimacy but replaced it with a maximum penalty of hard labour for life, or for a term of not less than ten years.[17] The Act also criminalised attempts to engage in such conduct, widening the net of liability and enabling punishment short of completed acts.[18]

[17] s 61.
[18] s 62.

(2) The domestication of criminalisation

New Zealand's Offences Against the Person Act 1867 followed the English model, instituting a maximum penalty of hard labour for male same-sex intimacy and similarly criminalising attempts.[19] This is a familiar pattern in the history of sexuality regulation: formal "reform" (abolishing the death penalty) sits alongside the entrenchment of a system of long-term incarceration.

This legal hardening becomes even clearer through further domestic codification. Aotearoa New Zealand consolidated its criminal law through the Criminal Code Act 1893. The Act retained a maximum penalty of hard labour for life for adult male same-sex intimacy, continued to criminalise attempts,[20] and added an explicitly violent sanction: those convicted were also liable "according to his age, to be flogged or whipped once, twice, or thrice."[21] The addition of this type of punishment suggests not moderation but intensification. The Code therefore marks a moment where the state's regulation of male homosexuality was not merely inherited from the United Kingdom but affirmatively reinforced through local legislative choice.

Alongside these "core" sexual offences, the architecture of public order policing continued to expand. The Police Offences Act 1884 introduced vagrancy and public disorder offences that functioned as a parallel system of control, later replaced by the Police Offences Act 1927. Such provisions mattered because they enabled policing of sexuality and gender expression even where the more serious "offences" of same-sex intimacy were difficult to prove.

Twentieth-century revisions removed some of the most visibly brutal punishments while leaving the underlying criminalisation intact. In 1908, the criminal code was revised but retained the same core penalties for male same-sex intimacy and attempts.[22] In 1941, a general ban on whipping removed corporal punishment as a sentencing option,[23] and in 1954, the Criminal Justice Act removed hard labour from the criminal law.[24] Yet, these changes did not dismantle the central structure: life imprisonment remained available, and male same-sex intimacy continued to be treated as conduct warranting the highest level of criminal condemnation. In historical terms, this period shows how the state built, and then maintained, an enduring legal regime in which male homosexuality was constructed as both a moral threat and a public order problem.

By the late 1950s there were early signs, at least within parts of government, of unease about the severity of Aotearoa New Zealand's criminal penalties for male same-sex intimacy. In 1959, the Attorney-General and Minister of Justice, The Honourable Henry Greathead Rex Mason MP (Labour), reportedly considered

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[19] ss 58 and 59.
[20] s 137.
[21] Criminal Code Act 1893, s 136.
[22] Crimes Act 1908, ss 153 and 154: "unnatural offence" and "attempt to commit unnatural offence".
[23] Crimes Amendment Act 1941, s 3.
[24] s 40.

reducing those penalties, influenced by the suicide of a homosexual friend.[25] That impulse did not translate into reform. Opposition to liberalisation prevailed, and the comprehensive codification of criminal law in the Crimes Act 1961 instead maintained key offences used to police sex between men. Sex between adult women has never been criminalised in Aotearoa New Zealand.[26]

The Act established a framework of criminalisation. Section 141 prohibited "indecency between males", capturing a wide range of sexual conduct through three limbs: indecent assault of another male; doing "any indecent act with or upon" another male; or inducing or permitting another male to do an indecent act with or upon them. The maximum penalty was five years' imprisonment. Section 142 separately criminalised "sodomy", punishable by up to seven years' imprisonment. Section 146 extended criminal liability beyond the sexual acts themselves to the social infrastructure of gay life, prohibiting keeping a "place of resort for homosexual acts", with a maximum penalty of ten years' imprisonment. These provisions show that the state's concern was not limited to sexual acts; it also targeted the places where gay men met, socialised, and formed community.

It is important to note that the Act also contained offences addressing sexual offending against children of the same sex and non-consensual conduct. Those provisions are not the focus here. Homosexual law reform efforts in Aotearoa New Zealand were directed primarily at the criminalisation of mutually consenting intimacy between adult men.

(3) A nascent (and exclusive) anti-discrimination law

Alongside this continuing criminalisation of consensual adult male intimacy, the early 1960s also saw the first moves toward statutory non-discrimination, albeit in a form that excluded sexuality.

An early (and limited) precursor to modern anti-discrimination law appeared in section 199 of the Sale of Liquor Act 1962. It made it an offence for a licensee, manager, or employee of licensed premises to refuse entry, order a person to leave, or refuse to supply accommodation, meals, or liquor "by reason only" of that person's "race, colour, nationality, beliefs, or opinions". In other words, Parliament had already accepted, at least in the context of public facing hospitality, that some forms of exclusion were sufficiently harmful to justify direct statutory regulation.

What is just as revealing, for LGBTI+ legal history, is what the provision did not include. Sexual orientation was absent. The result was that, even as the law prohibited certain kinds of discrimination in bars and hotels, it still permitted open exclusion of lesbians and gay men from the same spaces. That gap is noted explicitly in a 1980 report by the National Gay Rights Coalition which observed that

[25] See Alison J Laurie "The Aotearoa/New Zealand Homosexual Law Reform Campaign, 1985-1986" in Alison J Laurie and Linda Evans *Twenty Years On: Histories of Homosexual Law Reform in New Zealand* (Lesbian & Gay Archives of New Zealand, Wellington, 2009) 14 at 15.
[26] Though there has been prohibition on indecent acts between women and girls: Crimes Act 1961, s 139.

the Act "allows open discrimination on the grounds of sexual orientation" and recorded that such a case occurred in late 1979 at a Wellington bar.[27]

This is an instructive snapshot of the pre-Human Rights Act era: the state was willing to legislate against discrimination in some dimensions of identity, while leaving sexuality entirely unprotected, reinforcing the point that early anti-discrimination law in Aotearoa New Zealand developed unevenly.

(4) The 1968 petition to Parliament

Against this backdrop of uneven legal protection, organised challenges to the criminalisation of homosexuality began to emerge more explicitly. One of the earliest and most comprehensive was the 1968 petition of the New Zealand Homosexual Law Reform Society, which asked Parliament to confront directly the continued criminalisation of consensual male same-sex intimacy. The petitioners framed their submission as a reasoned and evidence-based intervention, with reform presented not as a moral demand for special treatment, but as a question of rational lawmaking and social harm.

The petition situated New Zealand's law within an international context, pointing to developments in England as both precedent and persuasive authority. It noted that in 1967 "the British Parliament passed the Sexual Offences Act by which homosexual acts between consenting adults in private are no longer criminal offences"[28] following the recommendations of the Wolfenden Report.[29] The petitioners urged that "a responsible consideration of this petition demands, at the very least, a careful reading of the Wolfenden Report", signalling that continued criminalisation in Aotearoa New Zealand could no longer be defended as inevitable.[30]

At the same time, the petition was careful to define the limits of what it sought. It expressly disavowed any attempt to liberalise public conduct or non-consensual acts, emphasising that it did "not seek any change in the law relating to homosexual acts in public, to any form of assault, or to molesting boys, or in relation to the soliciting or procurement of homosexual acts".[31] Instead, it proposed a narrow reform focused on privacy and consent, suggesting that Aotearoa New Zealand adopt an approach under which the prosecution would bear the burden of proving that an act was not private, not consensual, or involved a person under the age of

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[27] National Gay Rights Coalition of New Zealand *A report to members of the International Gay Association on conditions for lesbians & gay men in New Zealand* (New Zealand, March 1980) at 3-4.
[28] *Submission from the New Zealand Homosexual Law Reform Society to the Petitions Committee regarding reform of sections 141 and 142 of the Crimes Act 1961* (1968) at [6].
[29] The Wolfenden Report was a landmark United Kingdom review that recommended the decriminalization of private and consensual male same-sex acts between men over 21. Chaired by Sir John Wolfenden, the committee argued that the law should not intervene in private morality, initiating a major shift toward LGBTI+ rights and forming the basis for the Sexual Offences Act 1967 (UK).
[30] *Submission from the New Zealand Homosexual Law Reform Society to the Petitions Committee regarding reform of sections 141 and 142 of the Crimes Act 1961* (1968) at [6].
[31] At [9].

consent.[32] In practical terms, the petitioners argued that reform would require only targeted amendments to sections 141 and 142 of the Crimes Act 1961.[33]

A central argument advanced was the internal incoherence of the law itself. The petition described it as "an anomaly to make homosexual acts between consenting adult males in private an offence while homosexual acts between consenting adult females in private are not an offence".[34] More fundamentally, it challenged the legitimacy of using the criminal law to regulate private morality at all, adopting the Wolfenden Committee's formulation of the proper function of the law as preserving public order and decency, protecting citizens from harm and safeguarding the vulnerable.[35] Private and consensual sexual conduct between adults, the petitioners argued, fell outside those purposes.

The petition also addressed claims that decriminalisation would increase homosexuality or undermine social values. It argued that "general moral and social pressures will be more than enough to ensure that a change of the law will not result in a vast increase of homosexual acts" and cited evidence that, unless homosexuality is "relatively firmly implanted", most people have no inclination to it.[36] It further observed that "in the present state of knowledge, treatment to change homosexuals into heterosexuals is usually ineffective", undercutting both deterrence- and rehabilitation-based justifications for punishment.[37]

Drawing these strands together, the petition identified four principal reasons for reform: that it would substantially reduce human suffering; that the existing law was illogical in its gendered distinctions; that enforcement was necessarily haphazard; and that punishment of homosexuals was, on balance, "a greater evil than the evil it is designed to prevent".[38] On suffering, the petition emphasised not only those convicted, but also "the considerable number of practising homosexuals who are not caught but who live in fear of exposure", arguing that the criminal law should not add "a sense of legal guilt and fear to the burden of social strain and fear where the private behaviour of consenting adults is concerned".[39] On enforcement, it noted that detection depended heavily on chance and Police discretion, with markedly different practices across the country.[40] On punishment, it argued that the social cost: ruined careers, the cost of imprisonment, family hardship, diversion of Police resources, and exposure to hardened criminal environments, was disproportionate and ineffective, particularly given the absence of any prospect of treatment.[41]

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[32] At [9].
[33] At [9].
[34] At [13].
[35] At [13].
[36] At [14].
[37] At [15].
[38] At [16].
[39] At [17].
[40] At [21].
[41] At [22].

The petition concluded that the existing legal approach was "ineffective and unjust" and that both society and individuals would be better served if homosexuals could "take their place in the community without comment".[42] On that basis, it formally petitioned that Parliament amend the Crimes Act 1961 so that sections 141 and 142 "shall no longer apply to consenting adults who perform homosexual acts in private".[43]

Following the petition, the Department of Justice provided advice to the Petitions Committee on whether the criminal law governing male same-sex intimacy should be altered.[44] The advice framed the issue as turning on three prior questions: "How far should the criminal law enter the field of moral conduct?"; if it is confined to harmful behaviour, whether "private homosexual conduct between consenting adults [is] sufficiently harmful to society to justify making it a criminal offence"; and, if so, whether it is "expedient" to criminalise such behaviour, including whether the law is enforceable at all.[45] By way of analogy, the advice noted that not all socially harmful conduct is criminalised, citing adultery as behaviour many regard as harmful but which "our criminal law has never proscribed".[46]

The advice then canvassed the principal arguments advanced in favour of reform. It recorded the view that "it is not the function of the criminal law to preserve morality as such", and that there was no evidence that "homosexual acts committed in private between consenting adults do in fact harm society".[47] Reform, it observed, would "substantially reduce the suffering of homosexuals", many of whom, "unable or unwilling to change their sexual tendencies, live in constant fear of exposure and prosecution".[48] The Department acknowledged serious rule of law concerns, noting that because such conduct occurs "with consent and in private" it can "only rarely be enforced, and then usually by accident and haphazardly".[49] It further recognised the vulnerability created by criminalisation, observing that "blackmail […] may be used with impunity against homosexuals who cannot complain to the police without fear of themselves being prosecuted".[50] Arguments for reform also addressed child protection: decriminalisation would give adults "a non-criminal outlet", offences involving children would remain criminal, and in any event "there is evidence that men who have homosexual relations with adult partners seldom turn to children".[51] The advice also accepted that the law was internally inconsistent, given that "homosexual acts between adult females […] are not crimes" while those between

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[42] At [38].
[43] At [48(xiv)].
[44] J L Robson (Secretary for Justice) to the Clerk of the Petitions Committee regarding Petition No. 1968/16 – New Zealand Homosexual Law Reform Society: Report of the Department of Justice (21 October 1968).
[45] At 1.
[46] At 1.
[47] At 6.
[48] At 6.
[49] At 6.
[50] At 6.
[51] At 6-7.

adult males are, and that male homosexual conduct "certainly inflicts no greater damage on family life than adultery", which has never been criminalised.[52]

The Department also set out arguments against reform without endorsing them. These included claims that the criminal law may properly intervene to prevent "the harm and unhappiness which homosexual acts cause to the person committing them and his associates", likening such intervention to drug control.[53] It recorded the view that one function of the criminal law is expressive: "to express the detestation felt by society for certain acts, and to vindicate what right-thinking people regard as a minimum tolerable standard of conduct".[54] Other objections included fears that adult male same-sex intimacy might lead to offending against boys, that legal tolerance would reduce incentives to suppress homosexual tendencies, and that behaviour would "spread by example" if no longer criminal.[55] The advice also noted the argument that consent does not always excuse harmful conduct under criminal law,[56] that repeal might be harder where conduct is already criminalised, and that, so long as homosexuality was widely regarded with "abhorrence", the threat of blackmail and social harm from exposure would persist even if the law changed.[57] The advice ultimately adopted a neutral stance, expressly declining to recommend for or against reform.

In October 1968, the petition was reported back without recommendation. The Chairman of the Petitions Committee, Gordon Grieve MP (National), remarked "I believe that the practice of homosexuality is revolting. We all stand for certain moral principles and the legalising of homosexuality would indicate to society that we do not really condemn homosexual behaviour. […] An expert witness in favour of legalising homosexuality told the Committee that he knew of many men who lived in fear of the law as it stands. […] Surely this shows that the law as it stands is a deterrent to this illegal, revolting and unnatural behaviour."[58]

In the immediate term, no reform followed, and the Crimes Act provisions criminalising consensual male same-sex intimacy remained in force.

(5) The Mathieson-O'Neill debate

This debate was not confined to Parliament, but also played out, albeit to a more limited extent, within the legal academy itself. A notable example is the exchange published in the New Zealand Law Journal in 1972, which brought the competing arguments for and against homosexual law reform into a mainstream legal forum.

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[52] At 7.
[53] At 7.
[54] At 7.
[55] At 7.
[56] At 7–8.
[57] At 8.
[58] Auckland Lesbian & Gay Lawyers Group *Outlaw: A Legal Guide for Lesbians & Gay Men in New Zealand* (Auckland, 1994) at 93.

Professor Don Mathieson, a legal academic at Victoria University of Wellington argued for reform on humanitarian, logical, and rule of law grounds, emphasising reduced suffering, the illogical distinction between male and female homosexuality, haphazard enforcement, and the claim that punishment caused greater harm than the conduct itself, while also rejecting the idea that criminal law could meaningfully enforce morality.[59] J S O'Neill, a lawyer, argued for the status quo. His response defended retention of criminalisation on moral and protective grounds, disputing claims of harmlessness and immutability, warning of social contagion and family harm, and asserting the expressive and educative function of criminal law.[60]

(6) The first attempt at decriminalisation: the 'Venn Young Bill'

The first serious parliamentary attempt to reform Aotearoa New Zealand's criminal law on homosexuality came with the Crimes Amendment Bill 1974, introduced as a Member's Bill by opposition Member of Parliament, Venn Young (National). The Bill proposed a limited but principled reform: the decriminalisation of same-sex intimacy in private between consenting adult males 21 years and over. Reporting noted that it was introduced to the House and "no member voted against" its referral to select committee.[61]

As introduced, the Bill set out four objectives.

Clause 3 was the core reform provision, removing criminal liability for private and consensual same-sex intimacy between adult males aged 21 or over. That reform was explicitly circumscribed: it did not apply where one party was a patient under the Mental Health Act 1969, where consent was obtained involuntarily, or where the conduct amounted to indecent assault. Clause 2 simultaneously increased the maximum penalty for sexual offending by adult men against male children under 16 from 10 to 14 years imprisonment, underscoring the Bill's attempt to couple decriminalisation with child protection. Clauses 4 to 7 amended existing offences so that prostitution-related offences applied equally regardless of the sex of those involved, addressing what the Bill identified as an anomaly whereby male prostitution was not then criminalised. Clause 8 provided for the withdrawal of certain pending prosecutions upon enactment. The Bill justified this on three grounds: to ensure national consistency between magistrates, to recognise that homosexual offences were often detected long after commission and that "it is only humanitarian that no prosecution should be brought for a stale offence", and to follow the precedent set by the British Parliament in its 1967 reform.

The select committee reported the Bill back with amendments, most notably lowering the proposed age of consent from 21 to 20.[62] The Bill failed at second reading, being voted down by 34 votes to 29.[63]

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[59] D L Mathieson "Homosexual Acts – Why The Law Must Be Changed" (1972) NZLJ 1.
[60] J S O'Neill "Homosexual Acts – Why the Law Must Not Be Changed" (1972) NZLJ 241.
[61] "Homosexual reform bill will go to select committee" *The Press* (25 July 1974) at 1.
[62] "Committee wants age of consent lowered" *The Press* (3 May 1975) at 3.
[63] "Homosexual bill voted out" *The Press* (5 July 1975) at 2.

(7) The 'Wall Amendment'

One of the most revealing legal features of the debate surrounding Venn Young's Crimes Amendment Bill 1974 was a controversial amendment proposed by Dr Gerard Wall MP (Labour). Dr Wall proposed the insertion of a new clause, which would have created a criminal offence aimed not at homosexual conduct, but at the propagation of acceptance of homosexual behaviour.

The proposed clause would have made it an offence, punishable by up to two years' imprisonment, for any person who, in relation to a person under the age of 20:[64]

> (a) "wilfully says, writes, or does anything […] that leads or is likely to lead that person to believe that homosexual behaviour is normal";
>
> (b) "wilfully publishes or distributes" any written, visual, or audio material likely to lead a person under 20 to believe that homosexual behaviour is normal; or
>
> (c) "wilfully counsels or persuades or invites" such a person to join any organisation whose aim included "the propagation or promotion of the view that homosexual behaviour is normal".

In effect, the amendment sought to criminalise speech, publication, education, and association relating to homosexuality where the audience included young people, even as the parent Bill proposed decriminalising private consensual conduct between adults. The amendment therefore marked a significant shift from regulating behaviour to regulating ideas.

Dr Wall defended the proposal on the basis that it would not infringe the freedom of expression of adults. He instead argued that society had "always accepted some limitation on the way in which we speak to children" and characterised the amendment as no more than an extension of "customary social usage" into statutory form.[65] This framing positioned the amendment as protective rather than punitive, rationalising it by virtue of childhood safeguarding.

The proposal nevertheless provoked unease within government. The amendment was swiftly and publicly distanced by Prime Minister, The Right Honourable Bill Rowling, with reporting indicating that it was "virtually killed" at the executive level.[66] While the Bill itself ultimately failed at second reading, the fate of the Wall amendment is significant in its own right. The episode is significant for LGBTI+ legal history because it demonstrates that by the mid-1970s, decriminalisation had entered Parliament as a serious legislative proposition, but remained politically fragile.

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[64] A copy of the proposed amendment is on file with the author.
[65] "Dr Wall: no attack on free speech" *The Press* (19 June 1975) at 5.
[66] "Dr Wall's amendment may go no further" *The Press* (20 June 1975) at 1.

(8) Anti-discrimination advocacy: the Human Rights Commission Act 1977

While criminal law reform stalled, attention increasingly turned to discrimination. In 1977, the New Zealand Homosexual Law Reform Society made submissions to the select committee considering the Human Rights Commission Bill, urging that "sexual orientation" be included as a prohibited ground of discrimination. The Society argued that many forms of discrimination based on "sex, marital status, religious or ethical belief" in practice operated against homosexual men and women as well and therefore proposed that "to these categories there should be added 'sexual orientation'".[67]

The submission explicitly drew the Committee's attention to comparative developments, particularly in New South Wales, where "the characteristic of 'homosexuality'" had already been added as a prohibited ground of discrimination.[68] It also articulated a distinction: lesbian women, while not criminalised, nonetheless faced discrimination in employment, accommodation, and recognition of domestic partnerships "which can be as stable as any other de facto relationship".[69] Homosexual men, the submission continued, were similarly affected, and were "law-abiding citizens", underscoring that "the real distinction between the homosexual condition and homosexual acts" must not be elided.[70]

The Society grounded its argument in contemporary medical consensus, noting that homosexuality was "an aspect of personality which the American Psychiatric Association and the Australian and New Zealand College of Psychiatrists no longer consider to be a neurotic disorder any more than left-handedness or colour-blindness".[71] It therefore argued that "it is totally wrong in fact, as it is unjust in practice, to confuse homosexuality with homosexual acts".[72] Addressing concerns about enforceability, the submission observed that discrimination prohibitions on grounds such as race or religion were no easier to prove, yet had not deterred legislatures elsewhere from acting.[73]

The submission closed with a pointed challenge. Any difficulty in protecting homosexuals, it argued, would be "emotional ones and not legalistic", and would "provide the real test of the sincerity of the Government".[74] If the Human Rights Commission were confined to what was already "understood and approved by that mythical 'decent, right-minded person'", it would fail its purpose; it was precisely

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[67] *Submission of the New Zealand Homosexual Law Reform Society Inc to the Select Committee on the Human Rights Commission Bill, 1977* (March 1977).
[68] At 1.
[69] At 1-2.
[70] At 2.
[71] At 2.
[72] At 2.
[73] At 3.
[74] At 4.

"the socially disadvantaged, the voiceless minorities, and the unpopular though law-abiding sections of the community" who would require its protection.[75]

Despite these arguments, the select committee rejected the inclusion of sexual orientation. Reporting noted that while gay advocacy groups had pressed for its inclusion alongside sex, marital status, race, and religion, "their representations were not accepted by the committee".[76]

(9) The Mathieson opinion

Concerns that sexual orientation might nonetheless be protected indirectly under the ground of "sex" were addressed in a contemporaneous legal opinion by Professor Don Mathieson, provided in June 1977. Mathieson rejected the suggestion that discrimination against homosexual men or women would fall within the ordinary meaning of sex discrimination, an argument made elsewhere.[77] He explained that sex discrimination is: "I am not going to employ you because you are female", and he was "confident that no court or tribunal would regard 'sex' as connecting not only gender, but also sexual orientation".

His reasoning relied on both interpretation and judicial practice. Courts, he observed (citing English jurisprudence), had not historically shown themselves "astute to extend the ordinary meaning of words when interpreting anti-discrimination legislation", making it unlikely that sexual orientation would be read in. Mathieson suggested that any contrary view reflected confusion between homosexuality and "transsexuality", noting that discrimination against a 'transsexual' person might arguably be characterised as discrimination on the ground of sex where gender itself was contested, but that this logic could not be extended to homosexuality.[78]

Mathieson's opinion underscored that, absent explicit legislative inclusion, sexual orientation would remain legally unprotected, reinforcing the structural exclusion that characterised New Zealand's equality framework until the 1990s.

(10) The second attempt at decriminalisation: Freer's proposed Bill

In 1979, The Honourable Warren Freer MP (Labour) sought to advance homosexual law reform through a Member's Bill aimed at amending sections 141 and 142 of the Crimes Act 1961. The Bill was proposed but never introduced to Parliament. Like Venn Young's earlier effort, Freer's proposal was directed at removing criminal

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[75] At 4.
[76] "Homosexuals Could Get Equal Status" *Evening Post* (18 August 1977).
[77] In earlier times, it was unsuccessful: see, for example *Re Board of Governors of the University of Saskatchewan and Saskatchewan Human Rights Commission* (1976) 66 DLR (3d) 561 (SKQB). However, in later times, this argument was successful: see, for example *P v S and Cornwall County Council* (C-13/94) [1996] ECR I-2143; *Schroer v Billington* 577 F Supp 2d 293 (D DC 2008); and *Bostock v Clayton County* 590 US___ (2020).
[78] Don Mathieson (Professor of Law, Victoria University of Wellington) to Russell Wells (Lawyer) regarding the "sex" ground in the Human Rights Commission Bill 1977 (8 June 1977).

liability for consensual male same-sex intimacy, but it did so through a conditional reform model.[79]

Freer's draft recast section 141 so that consensual sexual activity between adult men was no longer criminal per se, provided both parties were aged 20 years or over and capable of giving genuine consent. The provision preserved criminal liability for a wide range of circumstances: non-consensual conduct; conduct involving force, threats, fear of bodily harm, or deception as to the nature of the act; conduct involving males under 20; and conduct involving persons who were "severely subnormal" or "mentally disordered" within the meaning of the Mental Health Act 1969, particularly where the act occurred in an institutional setting. Consent was expressly excluded as a defence in these latter categories. The structure of the clause reflects a deliberate attempt to draw sharp boundaries between decriminalised adult intimacy and conduct framed as exploitative, coercive, or socially dangerous.

Section 142 was similarly reworked. The offence was confined to non-consensual acts, acts involving persons under the age of 20, or acts involving persons lacking capacity by reason of "severe subnormality" or mental disorder. Distinct maximum penalties were retained depending on the sex and age of the complainant, with the most severe penalties applying where the act involved a person under 16 or occurred without consent. Minors under 16 were shielded from prosecution as parties to sodomy offences.

Beyond decriminalisation, Freer's bill also proposed amendments to offences relating to procuring for reward, brothel keeping, and importuning, with the express intention of equalising the treatment of homosexual and heterosexual prostitution-related conduct. This continued a theme already visible in Venn Young's Bill: reform was framed not as deregulation, but as rebalancing, removing criminal liability for private adult intimacy while tightening regulation in other areas.

Notably, the Bill included explicit exceptions for Police and the armed forces, providing that nothing in the amendments affected how those institutions might regulate or discipline their own personnel in relation to male same-sex intimacy. This carve out is legally and symbolically significant. It reflects an assumption, still prevalent in the late 1970s, that even if homosexuality were tolerated in civilian life, it remained incompatible with certain state institutions associated with discipline, authority, and national security.

Activist commentary at the time reveals that Freer's proposal was not merely contested in Parliament, but also deeply divisive within the organised gay rights movement itself. Freer was said to believe, following lobbying, that he might secure a reduction of the proposed age of consent to 18, but that parity at 16 was politically "impossible". That assessment proved decisive. For the National Gay Rights

[79] A copy of the proposed bill is held on file with the author.

Coalition, any reform that entrenched an unequal age of consent was viewed not as a pragmatic step forward but as a betrayal of the principle of equality.[80]

The Coalition's opposition was strategic. Some activists argued that proposing an equal age of consent at 16 was itself a deliberate tactic: it would force conservative "liberal" MPs to defend higher ages (18 or 20), thereby placing them on the defensive and exposing the discriminatory logic underpinning differential treatment. As the Coalition framed it, accepting a higher age of consent for gay men would mean Parliament affirmatively legislating homosexual inferiority.[81]

That position was strongly endorsed by the Coalition's membership. A poll of 35 Coalition-affiliated groups showed only two prepared to accept Freer's Bill as drafted. Even allowing for non-responses, at most, four groups nationwide were willing to support any legislation that did not "guarantee complete equality, under the law, with heterosexuals". In the light of that "overwhelming" opposition, the Coalition's Executive resolved not only to withhold support, but to actively oppose the Bill. Press statements were released setting out the Coalition's objections, and letters were sent to 16 Members of Parliament identified as gay rights supporters, urging them not to support the Bill when introduced.[82]

The Coalition articulated a detailed set of reasons for rejecting any age of consent other than 16. To do otherwise, it argued, was "to legislate us as inferior" by asserting that gay men required "four more years maturity" to consent to sexual intimacy. The Coalition also rejected the premise implicit in partial reform, arguing that such legislation would "give credence to the belief that Parliament can legislate morality and that there is something inherently wrong with homosexuality per se". Of particular concern was the risk of reform stagnation: overseas experience, it warned, showed that once "non-equality" legislation was passed, there was often "little progress after the acceptance" of such measures, allowing lawmakers to believe they had "done their bit" while structural injustices persisted.[83]

The critique extended beyond gay men. The Coalition emphasised that Freer's proposal did "nothing to secure the rights and protect the status of lesbian women in New Zealand", underscoring a broader concern that piecemeal criminal law reform could entrench a male-centric and incomplete vision of sexual equality. For the Coalition, equality was indivisible: reform that sacrificed younger gay men, accepted moral policing, or left lesbians invisible was not a step toward liberation, but a codification of hierarchy.[84]

In the end, Freer's proposed Bill collapsed. Media coverage in August 1979 framed the collapse as the product of deep division within the homosexual law reform movement itself. *The Dominion* reported that the Homosexual Law Reform Society

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[80] "Equality or Nothing" (17 September 1979) 4 *Pink Triangle* at 1.
[81] At 1.
[82] At 1.
[83] At 1.
[84] At 1.

(who supported the Bill) expressed surprise at the National Gay Rights Coalition's opposition to liberalisation, observing that views on reform now "differed" sharply between organisations that had previously been aligned.[85] This framing presented the debate as one between moderation and radicalism, rather than as a disagreement over equality and strategy. That narrative was sharpened in more overtly critical terms by the *Auckland Star*, which ran the headline "Radicals ruin it for homosexuals". The article asserted that "plans by senior Labour member Mr Warren Freer to reform the homosexual law have been crushed by the demands of radical homosexuals that the age of consent be set at 16".[86]

Freer formalised that position in a press statement released on 22 August 1979. While reiterating his substantive support for reform, describing the existing law as "an absurdity", he announced that he would not proceed with introducing a Member's Bill. Freer explained that he had previously believed there was a majority in the House prepared to legalise male same-sex intimacy between consenting adults aged 20 years or more, but that pressure to reduce the age of consent to 16 had produced "a swing against reform from some members". In those circumstances, he concluded, "there is therefore little justification for proceeding with legislation when the people I hoped Parliament would assist are so divided in their personal approach to this problem". Freer expressed regret that what he described as "the attitude of a vociferous group" had prevented what he regarded as a "progressive step forward" that would have afforded "a degree of protection to many men who have lived their lives under the constant threat of blackmail or police action".[87] The proposed bill was dropped.[88]

(b) The 1980s

(1) A third attempt at decriminalisation: Freer's 1980s revival

In 1980, Warren Freer made a further attempt to advance homosexual law reform, proposing a revised decriminalisation model that retained the core structure of his earlier initiative but incorporated several changes intended to broaden acceptability. According to activist commentary at the time, the proposed "improvements" included lowering the age of consent from 20 to 18, and removing the earlier carve outs for Police and the armed forces, meaning that sexual orientation would no longer operate as a basis for exclusion from the armed forces or Police.[89] These changes were designed to address some of the equality concerns raised in 1979, while still stopping short of full parity with heterosexuals.

At the same time, the proposal intensified other inequalities. While consensual acts between adult men would have been decriminalised at 18, the Bill would have extended the most serious criminal penalties, up to 10 years' imprisonment, to

[85] "Homosexual law change views differs" *The Dominion* (20 August 1979) at 3.
[86] "Radicals ruin it for homosexuals" *Auckland Star* (22 August 1979).
[87] Warren Freer "Press Statement" (press release, 22 August 1979).
[88] "Homosexual reform bill dropped" *The Press* (23 August 1979) at 2.
[89] Hugh Gaw "Free or Freer?" *Pink Triangle* 13 (July 1980) at 1.

situations where sexual relations occurred with a person under 18, rather than under 16.[90]

These features drew sharp criticism from within the gay rights movement. Writing in *Pink Triangle* in July 1980, activist Hugh Gaw rejected the proposal in explicitly equality-based terms. He condemned the proposal, asserting "[h]ow ridiculous that we should be expected to agree to be categorised as people who do not have sexual relations, only commit indecent acts, and who cannot make up our own minds about our sexual preference until we are two or four, or maybe more, years older than heterosexuals." Framing the issue as one of dignity rather than pragmatism, Gaw criticised the expectation that gay men should "settle for crumbs" when political parties and youth wings were already conceding that equality was the appropriate endpoint. His closing challenge, "[s]o what do we want? Do we want to be Free or Freer?", captured the growing impatience with incrementalism that preserved unequal citizenship.[91]

Ultimately, Freer's 1980 proposal never progressed to the point of being tabled in Parliament. Its failure underscores a recurring pattern in the pre-1986 period: legislative initiatives that sought to trade decriminalisation for continued inequality increasingly lacked legitimacy within organised gay advocacy. By 1980, the centre of gravity within the movement had shifted decisively toward an insistence on full equality, setting the stage for the more uncompromising, and ultimately successful, reform campaign of the mid-1980s.

(2) The Human Rights Commission says 'no' to anti-discrimination protection

As parliamentary routes to decriminalisation stalled, organised gay groups began testing whether emerging public bodies, most notably, the newly established Human Rights Commission, could be used to challenge both the continued criminalisation of male same-sex intimacy and the absence of protection against discrimination. It was against this backdrop that the Coalition engaged the Commission in 1979–1980, seeking to reposition homosexuality not merely as a question of criminal law policy, but as a matter of human rights.

Following correspondence, the Commission agreed to hear representations from the Coalition, and a meeting was held in August 1979 between Coalition representatives and three Human Rights Commissioners. The Coalition lodged written submissions, expanded orally, advancing two core recommendations: first, that the Human Rights Commission Act 1977, a law that prohibited discrimination by private bodies, be amended to add "sexual orientation" as a prohibited ground of discrimination; and secondly, that the Crimes Act 1961 be amended to remove

[90] At 1.
[91] At 1.

distinctions between male and female sexual acts, and between homosexual and heterosexual conduct.[92]

The Commission approached these submissions through an internationalist lens. Although "human rights" were not defined in the Human Rights Commission Act, the Preamble stated that its purpose was the advancement of human rights in general accordance with "United Nations International Covenants on Human Rights". On that basis, the Commission emphasised that it was bound to look to international instruments for guidance, and made clear to the Coalition that the threshold question was whether their claims were properly characterised as "human rights" issues at all, rather than matters of social or political preference.[93] In response, the Coalition grounded its arguments in international law, relying in particular on Article 26 of the International Covenant on Civil and Political Rights, which guarantees equality before the law and protection against discrimination on grounds including "other status",[94] as well as Article 7(c) of the Covenant on Economic, Social and Cultural Rights which guarantees equal opportunity in promotion opportunities for "everyone".[95]

The central dispute focused on the meaning of "status". The Coalition argued that being homosexual constituted a "status" for the purposes of Article 26. The Commission rejected this contention, relying on a dictionary definition of legal status as "the legal standing or position of a person as determined by his membership of some class of person legally enjoying certain rights or subject to certain limitations", and concluding that homosexuality could not be regarded as a status by analogy with race, colour, sex, or language.[96] It further held that the international covenants gave "no clear guidance" on whether homosexuality was a basic human right or fundamental freedom, and that even if the Coalition's arguments were accepted in principle, the Commission would still need to decide whether it was appropriate to recommend adding "sexual orientation" to the Act and whether such protection should apply across all areas of life (specified areas in which discrimination is prohibited, such as employment and accommodation).[97]

On discrimination more generally, the Commission articulated a cautious philosophy. While agreeing that people should be treated as individuals "in accordance with their merits and qualifications" in areas covered by the Act, it rejected the proposition that all discrimination should be made unlawful and subject to sanctions, stating that "in present circumstances this would be neither reasonable nor effective".[98] The Commission declined to take further action on complaints it had received alleging discrimination on ground of sexual orientation,

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[92] Human Rights Commission *Gay Rights: Report on Representations by the National Gay Rights Coalition* (December 1980) at 1.
[93] At 2.
[94] At 2.
[95] At 3.
[96] At 3.
[97] At 4.
[98] At 4.

noting that no such ground existed in the Act and that it did not propose to pursue those matters.[99]

However, the Commission did accept one aspect of the Coalition's critique. It identified an apparent inconsistency in the Crimes Act 1961 between section 139 (indecent acts between woman and girl, maximum seven years' imprisonment) and section 140 (indecency between man and boy, maximum ten years' imprisonment). On its face, this disparity in penalty involved discrimination based on sex. The Commission therefore recommended to the Prime Minister that these provisions be referred to the Criminal Law Reform Committee to be reframed so as to make no distinction between males and females.[100]

The Commission concluded with an explicit delineation of institutional responsibility. It stressed that its conclusions were confined to whether homosexuality, "in whatever sense it is understood", constituted a status attracting protection as a matter of human rights. Its refusal to recognise such a status did not mean there were no "other social or political reasons" for altering the criminal law; rather, those considerations lay outside the Commission's statutory remit.[101]

The response from gay and lesbian organisations was sharply critical. In January 1981, Coalition co-ordinator Kevin Green described the report as "a farce from beginning to end", arguing that the Commission's definition of status was "simplistic, naive, and incompetent", and that proper research would have revealed European human rights jurisprudence recognising homosexuality as a protected status.[102] The following month, the Lesbian Legal Advisory Committee went further, petitioning the Governor-General to remove the Human Rights Commissioners and declare the report invalid, characterising it as "inadequately reasoned, badly flawed, and based in part on an erroneous interpretation" of the Act.[103] Despite this opposition, the Government accepted the Commission's position. In February 1981, the Minister of Justice announced that the law would remain unchanged and that "sexual orientation" would not be added as a prohibited ground of discrimination.[104]

(3) A fourth attempt at decriminalisation: the Equality Bill Campaign

In the wake of the failed Freer initiatives and the Human Rights Commission's refusal to recognise sexual orientation as a prohibited ground of discrimination, a more ambitious reform strategy emerged in 1980 through the Equality Bill Campaign. The Campaign was established by a task force of lawyers and other professionals early in 1980, with the express intention of drafting a comprehensive bill that would amend the Crimes Act 1961 so as to remove all legal discrimination against homosexuals. The proposed legislation was drafted by Professor Don

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[99] At 5.
[100] At 4-5.
[101] At 5.
[102] "Report on gays 'a farce'" *The Press* (14 January 1981) at 9.
[103] "Lesbian group says report badly flawed" *The Press* (24 February 1981) at 13.
[104] "Law on homosexuals will be unchanged" *The Press* (18 February 1981) at 6.

McMorland of the University of Auckland Law School, reviewed by a group of Auckland lawyers, and quietly circulated to members of parliament as part of an initial lobbying effort during 1980, with plans for continued lobbying through 1981 and introduction to Parliament in 1982.[105]

Following the release of the Human Rights Commission's report rejecting sexual orientation as a human rights issue, the Campaign resolved to bring forward its public release. It said, the proposed Bill "provides a clear and workable law for modern society", eliminating distinctions between males and females and between heterosexuals and homosexuals under the criminal law, while also expressly forbidding discrimination on those grounds.[106] The Campaign bolstered its position with public opinion research: a poll commissioned from the Heylen Research Centre found that a majority of respondents supported the proposed law change, rising to over 70 percent among those under thirty.[107] This was used to counter claims that equality-based reform lacked public legitimacy.

Substantively, the Equality Bill represented a marked departure from the earlier incremental decriminalisation proposals. Rather than carving out limited exceptions for private consensual acts between adult men, the Bill sought to make the law governing sexual activity uniform across sex and sexual orientation. It proceeded from two core premises: first, that men and women are equal and should not be treated differently in respect of sexual offences; and secondly, that the criminal law should intervene in homosexual activity only to the same extent that it intervenes in heterosexual activity.

The Bill proposed wide-ranging amendments to sections 127 to 149 of the Crimes Act 1961, repealing most existing provisions and replacing them with a streamlined, gender-neutral framework. Certain offences were already applicable irrespective of sex: bestiality (sections 143 and 144), criminal nuisance (section 145), and living on the earnings of prostitution (section 148), were left untouched. Central to the reform was a new, expanded definition of "sexual intercourse", which would encompass vaginal, anal, and oral intercourse. This change abolished the legal distinction between vaginal intercourse and sodomy, rendering anal intercourse no longer a separate offence.[108]

Other proposed provisions followed the same logic of neutrality and parity. Rape was defined purely in terms of non-consensual sexual intercourse, irrespective of the sex of either the offender or the victim. Offences relating to incest, sexual intercourse with persons under care or protection, and sexual offending against children were rewritten to apply equally to men and women, while retaining existing penalty levels. Indecent assault provisions were consolidated into a single offence with a uniform maximum penalty of seven years, again without regard to

[105] *Equality Bill Campaign* (1980) at 2.
[106] At 2.
[107] At 3.
[108] A copy of the Equality Bill is on file with the author.

sex. Brothel-keeping and procuring offences were similarly amended to apply to all persons, regardless of the sex of those involved.

Significantly, the Bill also addressed discrimination. Clause 4 proposed an amendment to the Human Rights Commission Act 1977 to add "sexual orientation" as a prohibited ground of discrimination, thereby integrating criminal law reform with non-discrimination protections. This reflected the post-1979 insistence within organised gay advocacy that decriminalisation without equality was no longer sufficient.

Despite its ambition, the Equality Bill ultimately failed to progress. In June 1980, The Honourable Fran Wilde MP (Labour) announced that she would not proceed with introducing the Bill, a decision described as both a major setback for the Campaign and a victory for women, particularly lesbian activists, who had mounted sustained opposition to aspects of the proposal. Those activists argued that the Bill risked defining lesbians in law, assumed that women could rape in ways that might facilitate harassment, and would criminalise forms of lesbian behaviour not previously caught by the law.[109]

(4) Public order regulation: the Summary Offences Act 1981

That failure did not mark an end to the law's practical engagement with homosexuality. Rather, it underscored a persistent feature of the period: while ambitious reform projects aimed at equality and decriminalisation repeatedly stalled at the legislative level, the everyday regulation of sexuality continued through more indirect mechanisms. In the early 1980s, this dynamic became especially visible in the field of public order law, where general offences were used to maintain moral control in circumstances where explicit sexual criminalisation was increasingly contested. It is against that backdrop that the Summary Offences Act 1981 assumes particular significance.

The Summary Offences Act 1981 came into force on 1 February 1982, replacing the Police Offences Act 1927.[110] While neutral in its drafting, the Act quickly assumed significance in LGBTI+ legal history because it became a tool for continued morality policing in the period immediately preceding homosexual law reform. In particular, provisions relating to disorderly behaviour, offensive behaviour, and loitering were used by Police to regulate and suppress gay male social and sexual practices, especially public cruising.

(5) The fifth, final and successful attempt at decriminalisation: the Homosexual Law Reform Act 1986

The Homosexual Law Reform Act 1986 marked the culmination of nearly two decades of sustained legal, political, and community advocacy aimed at dismantling the criminalisation of consensual male same-sex intimacy in Aotearoa New

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[109] Gavin Young "Equality Bill Dumped" *Pink Triangle* 44 (July/August/September, 1983) at 1.
[110] Summary Offences Act 1981, s 1(2).

Zealand. The Bill was drafted by Auckland barrister Alan Ivory and University of Auckland law academic, Professor Don McMorland, and was taken forward politically by The Honourable Fran Wilde MP (Labour).[111]

The Homosexual Law Reform Bill 1985 (which then became the 1986 Act) was introduced as an omnibus Bill with two stated objectives: "to remove criminal sanctions against consensual homosexual acts by males, and to outlaw discrimination against persons on the ground of sexual orientation." These objectives were addressed separately in Part I (amendments to the Crimes Act 1961) and Part II (amendments to the Human Rights Commission Act 1977), with the explanatory notes stating that the Bill would later be split into two component Acts to facilitate passage.[112]

Part I of the Bill undertook a detailed restructuring of sexual offence provisions. Clause 3 repealed section 140 and replaced it with new provisions differentiating between boys under 12 and those aged 12 to 16, aligning the treatment of male victims with existing provisions governing girls. Clause 4 repealed section 141 (indecency between males) and substituted a new offence modelled on section 135 (indecent assault on a woman or girl), increasing the maximum penalty to seven years' imprisonment. Clause 5 repealed the sodomy offence in section 142 and replaced it with a narrowly confined provision addressing consensual anal intercourse only where the complainant was under 16 or 'severely subnormal'. Clause 6 repealed section 146 (keeping a place of resort for homosexual acts), thereby removing a longstanding mechanism for policing gay social spaces, and amended the brothel-keeping provision to apply equally regardless of the sex of prostitutes or clients. Clause 7 introduced transitional protections, ensuring that individuals would not be retrospectively criminalised for conduct rendered lawful by the Bill. When the Bill was reported back from Select Committee, clause 7 was amended to allow defendants in pending proceedings to rely on defences that would have been available under the new law, reflecting a concern for procedural fairness in the transition to decriminalisation.[113]

Part II of the Bill proposed to amend the Human Rights Commission Act 1977 by rendering it unlawful to discriminate against a person on the ground of sexual orientation in circumstances where discrimination on the ground of sex was already prohibited.

In May 1985, the Human Rights Commission publicly endorsed the core objective of decriminalisation, stating that it was "firmly of the opinion that private homosexual acts between consenting adults should not remain a criminal offence".[114] The Commission identified several factors supporting this view, including the weight of

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[111] See Letter to Fran Wilde (MP) from Alan Ivory (Auckland Barrister) regarding the Crimes Amendment Bill (Homosexual Law Reform Bill) (19 January 1985).
[112] Homosexual Law Reform Bill 1985 (86-1).
[113] Homosexual Law Reform Bill 1985 (86-2).
[114] Human Rights Commission *Public Statement on the Homosexual Law Reform Bill* (20 May 1985) at 1.

research indicating that homosexuality is an orientation rather than an illness, established early in life and present in "some 5–10% of a given population".[115] It emphasised that the criminal law should not police morality, noting that conduct regarded by many as immoral, such as adultery, was not treated as a criminal matter.[116] The Commission also stressed the importance of consistency and equality in criminal law enforcement, warning that uneven or rare enforcement undermines respect for the rule of law, and observed that New Zealand was "one of the few remaining Western democracies to retain criminal sanctions against consensual adult homosexual acts".[117] It further noted the social and potential medical disadvantages of laws that encouraged homosexuals to conceal their sexual orientation.[118]

The Commission acknowledged divisions over the appropriate age of consent, recording that some Human Rights Commissioners favoured 16 and others 18, while agreeing that safeguards were needed to prevent abuse of power by adults in positions of authority.[119] It supported the inclusion of sexual orientation as a prohibited ground of discrimination, stating that it "cannot and does not support discrimination based on sexual orientation",[120] while recommending the inclusion of carefully framed exceptions analogous to those present for sex and religion.[121]

Parliamentary debate on the Bill was intense and closely contested. When introduced in March 1985, it passed its first reading by 51 votes to 24, with all members exercising a conscience vote. The Honourable Fran Wilde MP (Labour) acknowledged at the time that the age of consent would be the central battleground, noting that success at first reading was "not necessarily an indication of the amount of support for the measure".[122] Attempts were made to raise the age of consent, with opponents arguing on "clinical" grounds that legalisation at 16 was inappropriate.[123] In March 1986, Parliament approved the age of consent at age 16 by 41 votes to 36, rejecting amendments to raise the age to either 18 or 20.[124]

The Bill itself was passed on 9 July 1986 by a narrow margin of 49 votes to 44, in what was described as one of the fullest votes ever recorded in New Zealand parliamentary history.[125] Part II, which would have prohibited discrimination on the ground of sexual orientation, was removed, and exceptions were introduced for Police and the armed forces. While activists welcomed the passage of decriminalisation, many expressed disappointment that equality protections had

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[115] At 1.
[116] At 2.
[117] At 2.
[118] At 3.
[119] At 4–5.
[120] At 6.
[121] At 6–7.
[122] Oliver Riddell "Fight likely over age of consent for 'gays'" *The Press* (9 March 1985) at 1.
[123] Patricia Herbert "Age amendment planned by Nat MP" *The Press* (17 October 1985) at 4.
[124] Patricia Herbert "'Gay' consent age to be 16" *The Press* (27 March 1986) at 1.
[125] Patricia Herbert "Five votes pass homosexual law reform" *The Press* (10 July 1986) at 1.

once again been deferred.[126] The 1986 Act is notable for the fact it achieved contemporaneously, an equal age of consent and decriminalisation: a feat not typical in comparable jurisdictions.

(6) The Human Rights Commission's 1987 review

The aftermath of the Act reinforced that point. In its 1987 review of the Human Rights Commission Act, the Commission recommended extending the prohibited grounds of discrimination to include sexual orientation, among other characteristics, describing such an extension as "highly desirable".[127] It noted, however, that Parliament had declined to create an anti-discrimination jurisdiction in relation to sexual orientation during the 1986 reform process.[128] Public discussion at the time increasingly linked sexual orientation discrimination with emerging concerns around HIV, further underscoring the inadequacy of existing legal protections.[129]

(c) The 1990s

(1) The Human Rights Commission's 1992 report

By the early 1990s, attention increasingly shifted from criminal law reform to the question of formal equality and protection from discrimination. In April 1992, the Human Rights Commission published *Discrimination on the Ground of Sexual Orientation*, a report that set out a comprehensive case for including sexual orientation as a prohibited ground of discrimination under New Zealand law. The Commission identified clear evidence of discrimination against lesbians and gay men in Aotearoa New Zealand and noted that public opinion surveys showed substantial support for making such discrimination unlawful. It further recorded that those involved in combating HIV viewed appropriate anti-discrimination legislation as vital to effective public health responses, and framed reform as consistent with New Zealand's international human rights commitments.

Empirical evidence featured in the Commission's analysis. For the year ending 30 June 1991, the Commission recorded 65 complaints and enquiries relating to sexual orientation, an increase from 58 in the preceding 15-month period and from 31 in the year to March 1989. These figures were described as representing only "the tip of an iceberg", as the Commission lacked formal complaints jurisdiction in this area, meaning many affected individuals were unlikely to report discrimination. The Commission further observed that many complaints were based on entrenched stereotypes, such as the belief that homosexuals molest children and therefore should not be employed as teachers, demonstrating that discrimination was often grounded in false assumptions rather than evidence. Reference was also made to a

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[126] At 1.
[127] Human Rights Commission *Review of the Human Rights Commission Act 1977: Report to the Minister of Justice* (21 August 1987) at [5.5].
[128] At [5.5].
[129] Oliver Riddell "Discrimination for A.I.D.S. to come under rights act?" *The Press* (17 November 1987) at 4.

New Zealand AIDS Foundation survey documenting a range of discriminatory experiences faced by gay men and lesbians.

The report situated domestic reform within a broader international context. It noted that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights all guarantee rights without discrimination on enumerated grounds including "other status", and that there was international precedent for treating sexual orientation as falling within that category. Comparative analysis showed that discrimination on the ground of sexual orientation was already unlawful in a number of jurisdictions, including several European states, Australia, Canada, and multiple states in the United States of America.

A central plank of the Commission's argument concerned HIV policy. It concluded that anti-discrimination legislation addressing both "sexual orientation and health status" was essential to effective prevention strategies. Prohibiting discrimination on health status alone while permitting discrimination on the basis of sexual orientation would undermine public health objectives by marginalising high-risk groups and deterring engagement with screening, treatment, and education programmes. The Commission emphasised that HIV prevention could succeed only through prevention and health promotion, both of which depended on legal protections that assured affected communities of freedom from discrimination.

On these bases, the Commission concluded that sexual orientation should be included as a ground on which discrimination is unlawful in New Zealand.[130]

As a brief aside, at the same time as the Human Rights Commission's report, immigration policy changed to enable same-sex partners to gain residence in New Zealand.[131]

(2) Failed and dropped attempts at anti-discrimination protection

At the same time, the New Zealand Bill of Rights Act 1990 introduced a general prohibition on discrimination by the government and those acting in its shoes.[132] At the time of enactment, the Act listed prohibited grounds of discrimination.[133] The prohibited grounds listed were drawn from the Human Rights Commission Act 1977 and the Race Relations Act 1971, and did not include sexual orientation. During the drafting process, campaigners sought the inclusion of explicit protections for lesbians, gay men, and people living with HIV. Reporting recorded lobbying by the New Zealand AIDS Foundation and gay organisations nationwide, supported by statements from professional bodies such as the New Zealand Medical Association. Nevertheless, key decision makers, Prime Minister, The Right Honourable Geoffrey Palmer MP (Labour) and Minister of Justice, The Honourable Bill Jeffries MP

[130] Human Rights Commission *Discrimination on the Ground of Sexual Orientation* (April 1992) at i-iv.
[131] Randolph Hollingsworth "Milestones: Legal Status and Sexual Orientation/Identity" (15 December 2022) National Council of Women of New Zealand <ncwnz.org.nz>.
[132] See New Zealand Bill of Rights Act 1990, s 19.
[133] That is no longer the case. Now, it imports grounds from section 21 of the Human Rights Act 1993.

(Labour), were described as blocking any expansion of the grounds, despite public opinion and medical advice favouring reform.[134] While some Labour Members of Parliament pointed to parallel anti-discrimination reform through amendments to the Human Rights Commission Act (see below), commentators expressed concern that the Government was not committed to passing that legislation before the election, rendering reform uncertain.[135]

The Human Rights Commission Amendment Bill 1990 was presented as the first stage in a broader review of the 1977 Act, expanding the list of prohibited grounds. It proposed the inclusion of sexual orientation, defined to encompass heterosexual, homosexual, and bisexual orientation, and including "transsexual, transvestite, and hermaphroditic" conditions, and expressly excluded paedophilic orientation.[136] However, following the change of government from Labour to National, the scope of reform narrowed considerably. Ultimately, only age was added as a prohibited ground, and more substantive reform was deferred, prompting criticism that the law remained too limited.[137]

(3) Anti-discrimination protection at last (for sexuality, at least): the Human Rights Act 1993

More comprehensive reform arrived with the Human Rights Act 1993, a law that prohibits discrimination by private bodies (and the government), though not without political resistance. Reporting in late 1992 recorded that Associate Minister of Health, The Honourable Katherine O'Regan MP (National) would sponsor a move to outlaw discrimination on the grounds of sexual orientation and "the presence in the body of organisms capable of causing illness" (i.e. having HIV), explicitly framing the proposal on public health grounds and not including exceptions for Police. Reporting confirmed that the Government caucus was unwilling to include such protections as part of its core human rights legislation, instead relegating them to a Member's initiative.[138] Subsequent attempts to include sexual orientation were twice defeated within caucus, on the basis that inclusion would imply government endorsement, leaving the proposed amendments to be pursued during the Committee of the Whole.[139] In contrast, the Justice and Law Reform Committee concluded, on the weight of evidence, that there was no justification for excluding sexual orientation from the list of prohibited grounds.[140]

The issue was ultimately resolved through a Supplementary Order Paper (which enable amendments to bills during the parliamentary process), including proposals to add "[t]he presence in the body of organisms capable of causing illness" and

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[134] "Palmer deaf to gay concerns" *Pink Triangle* (September/October 1990) at 7.
[135] At 7.
[136] Human Rights Commission Amendment Bill 1990 (58-1).
[137] See Chris Topp "Human Rights law called too limited" *The Press* (21 February 1991) at 7. These amendments were enacted in the Human Rights Commission Amendment Act 1992.
[138] Peter Luke "Bid to outlaw sexual barrier" *The Press* (10 November 1992) at 1.
[139] Peter Luke "Gay rights move defeated" *The Press* (11 June 1993) at 3.
[140] House of Representatives *Report of the Justice and Law Reform Committee on the Human Rights Bill* (1993).

"[s]exual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation" as prohibited grounds of discrimination.[141] The wording of the former prohibits discrimination on the basis of having HIV and was provided to Minister O'Regan by Tony Hughes QSM.[142] When the amendment was finally voted on, it passed decisively by 48 votes to 26.[143] Attempts to dilute its effect, such as amendments permitting discrimination within Police and armed forces, or broad religious employer exceptions, were overwhelmingly rejected.[144]

The Human Rights Act has protected people on the basis of sexuality and to those living with HIV, ever since. However, it has not expressly protected transgender, non-binary and intersex people. This is discussed further below.

(4) Legislative developments

The mid-1990s also saw significant developments in relation to gender identity. The Births, Deaths, Marriages, and Relationships Registration Act 1995 introduced a statutory mechanism enabling adults to apply to the Family Court for a declaration that their birth certificates record their nominated sex.[145] The provision required the Court to be satisfied as to the applicant's gender identity, intentions, and either relevant medical treatment or overseas legal recognition, marking a formal legal pathway for sex marker change within New Zealand's registration framework.

Alongside these headline reforms, same-sex relationships began to receive limited recognition across a range of statutes. These included the Electricity Act 1992, the Domestic Violence Act 1995, the Harassment Act 1997, and the Accident Insurance Act 1998, each of which recognised same-sex partners within specific definitions for discrete legal purposes. While piecemeal, these changes signalled a gradual normalisation of same-sex relationships within ordinary legislative schemes.

(5) Law Commission consideration of succession and same-sex relationships

At this time, LGBTI+ people were starting to be considered by law reform agencies, most notably, the Law Commission, starting with a 1997 report on succession. The Commission observed that the courts had increasingly relied on constructive trusts to recognise the contributions of de facto partners, including same-sex partners, but that this approach was expensive, unpredictable, and ill-suited to resolving claims on death.[146] It argued that de facto partners should be as entitled as married partners to a statutory regime governing property and support, and that excluding same-sex couples would be inconsistent with the New Zealand Bill of Rights Act and the Human Rights Act.[147] While acknowledging controversy surrounding the

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[141] Supplementary Order Paper 1993 (238) Human Rights Bill (214-2). This Supplementary Order Paper followed from an earlier one from Minister O'Regan: Supplementary Order Paper 1992 (182) Human Rights Bill (214-2).
[142] Personal communication with Warren Lindberg MNZM (9 March 2023).
[143] Peter Luke "Gay law passes easily after it becomes a health issue" *The Press* (31 July 1993) at 22.
[144] At 22.
[145] s 28.
[146] Law Commission *Succession Law: A Succession (Adjustment) Act* (NZLC R39, August 1997) at [21].
[147] At [25].

linkage of same-sex relationships to concepts "in the nature of marriage", the Commission concluded that considerations of clarity and drafting precision justified that approach.[148] It further warned that exclusion would trigger Bill of Rights scrutiny, Attorney-General reporting obligations, Human Rights Commission intervention, and public controversy.[149]

The Law Commission returned to these issues in greater depth in its 1999 study paper *Recognising Same-Sex Relationships*. It noted that relationship property bills introduced in 1998 created marked disparities between married and de facto partners and made no provision for same-sex couples.[150] This was the impetus for the Commission to consider the recognition of same-sex relationships in law. The Commission distinguished the rationale for decriminalisation: respecting the limits of state power, from the case for affirmative legal recognition, which it characterised as an exercise of acceptance rather than tolerance.[151] It cautioned that, in New Zealand's statutory framework, rights discourse alone could not resolve the issue, a point reinforced by the Court of Appeal's decision in *Quilter v Attorney-General* (discussed in the next subpart).[152] Instead, it identified the most compelling argument for recognition as one grounded in autonomy and the social reality of enduring and publicly avowed same-sex relationships.[153]

Against this backdrop, the Commission identified six broad legislative responses available to Parliament: maintaining the status quo; extending limited recognition to cohabitants without requiring a marriage-like association; recognising same-sex couples for specified purposes only; recognising them for most or all purposes; recognising them for most or all purposes subject to registration; or altering the definition of marriage itself to include same-sex couples.[154]

The Commission rejected a "do nothing" approach, though it acknowledged two arguments sometimes raised in its support. First, it observed that in jurisdictions that had introduced registered partnership schemes, uptake had often been lower than anticipated, suggesting that formal recognition mechanisms may not be universally attractive even where available.[155] Secondly, it noted the existence of intellectual and activist traditions, particularly associated with North American queer jurisprudence, that were sceptical of marriage or marriage-like institutions, viewing them as reinforcing monogamy and heterosexuality in ways that conflict with more fluid conceptions of sexuality.[156] However, the Commission concluded that neither argument justified legislative inaction. The absence of universal uptake did not undermine the legitimacy of reform, as legal recognition would be

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[148] At [66]-[67].
[149] At fn 20.
[150] Law Commission *Recognising Same-Sex Relationships* (NZLC SP4, December 1999) at v.
[151] At [2] and [4].
[152] At [7]-[8].
[153] At [9].
[154] At [11].
[155] At [12].
[156] At [13].

permissive rather than compulsory, and the objections of some groups could not rationally ground the denial of choice to others.[157] In the Commission's view, the availability of legal recognition expanded autonomy rather than constrained it.

One alternative model was the use of cohabitation as the determinant of legal recognition, drawing on developments in New South Wales, Australia. The De Facto Relationships Act 1984 (NSW) introduced a regime for de facto partners, defined as persons living together "as husband and wife on a bona fide domestic basis". Amendments enacted in 1999 broadened this framework by introducing the concept of a "domestic relationship", carefully framed to include same-sex couples.[158] Under this model, same-sex partners were granted a wide array of consequential rights, including intestacy entitlements, family provision claims, compensation following accidental death, pension rights, and participation in personal welfare and medical decision-making.[159] At the same time, the regime preserved existing limits on adoption and left the law of marriage formally untouched.[160]

Despite its breadth, the Commission identified several objections to adopting the New South Wales model in Aotearoa New Zealand. Politically, it would be difficult to extend such rights to same-sex couples without also conferring them on opposite-sex de facto couples, even though the latter group retained the option of marriage, whereas same-sex couples did not.[161] Doctrinally, the model risked extensive litigation over whether a relationship met the statutory threshold of a "domestic relationship", raising the prospect of judicial inquiries.[162] The Commission further noted that New South Wales' approach was shaped by constitutional constraints on state power over marriage, constraints not present in Aotearoa New Zealand. Finally, the model was criticised as fragmented and piecemeal, relying on cascading amendments rather than a coherent legislative scheme.[163]

The Commission also considered the status quo of limited and ad hoc recognition within New Zealand law. At the time, only four statutes acknowledged same-sex relationships in a marriage-like capacity. Outside these narrow contexts, same-sex couples were left to resolve property disputes through general legal principles, most commonly via implied or constructive trusts.[164] While courts had shown increasing willingness to recognise contributions within same-sex relationships, this approach was characterised as uncertain. The Commission warned that piecemeal statutory reform carried a high risk of incoherence, describing it as a "clumsy technique".[165]

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[157] At [14].
[158] At [15].
[159] At [16]-[17].
[160] At [18].
[161] At [19].
[162] At [19].
[163] At [19].
[164] At [20].
[165] At [21].

Turning to registration-based models, the Commission undertook a survey of overseas regimes. The Danish Registered Partnership Act 1989 was identified as the pioneering statute, conferring on registered partners legal effects equivalent to marriage, subject initially to limited exceptions such as adoption.[166] Similar models had been adopted in Norway, Sweden, and Iceland, while variations existed in Spain, the Netherlands, and France, some of which extended registration to opposite-sex couples or softened distinctions between marriage and partnership.[167] These regimes demonstrated that registration could function as a stable administrable mechanism for conferring near-equivalent legal status without formally redefining marriage.

By contrast, the Commission firmly rejected altering the definition of marriage to include same-sex couples. It considered: "[n]o country has altered its definition of marriage to include same-sex couples. To attempt to do so in New Zealand would cause unnecessary and understandable offence."[168] However, the Commission was careful to emphasise that rejecting marriage reform did not entail accepting second-class status for same-sex couples. Where registered partnerships conferred rights and obligations virtually identical to marriage, the Commission argued that equality of substance could coexist with institutional distinction. In this framing, toleration was conceived as reciprocal: just as society accommodates diversity in sexual orientation, same-sex couples might reasonably accept legal forms designed to avoid "gratuitous offence" to others.[169]

On this basis, the Commission recommended that Aotearoa New Zealand adopt a registered partnership regime analogous to the Danish model. It suggested that registration should be available only to same-sex couples and should confer rights and liabilities equivalent to marriage, ensuring parity.[170] Opposite-sex couples, by contrast, would retain the option of marriage or non-marriage but would not gain access to registration, a distinction the Commission justified on the basis that opposite-sex couples already possessed legal choice unavailable to same-sex couples.[171] The Commission stressed that any such regime should be elegantly drafted, comprehensive, and non-stigmatising, with registered partnerships ranking equally with marriage in legal status and effect.[172] While adoption rights were deferred for separate consideration, the Commission underscored that registered partnerships should not be regarded as inferior, and that couples who chose not to register should nonetheless be governed by the same legal principles applicable to unregistered opposite-sex relationships.[173]

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[166] At [23].
[167] At [25]–[27].
[168] At [28].
[169] At [28].
[170] At [29].
[171] At [31].
[172] At [33.1] and [33.3].
[173] At [33.2]–[33.4].

(d) The 2000s

(1) Legislative developments

The early 2000s saw a rapid consolidation of legislative reforms aimed at equalising the legal treatment of same-sex couples in core areas of private law. A cluster of statutes enacted between 2001 and 2005 dismantled many of the remaining formal distinctions that had previously attached to sexual orientation or marital status. The Property (Relationships) Amendment Act 2001 extended the relationship property regime to de facto couples, whether opposite- or same-sex. Parallel amendments including in the Administration Amendment Act 2001 and the Family Protection Amendment Act 2001 ensured that same-sex partners could inherit on intestacy and bring family provision claims in the same manner as spouses. Together, these reforms signalled Parliament's acceptance that functional equivalence, rather than formal marital status, should determine legal consequence at relationship breakdown and death.

Criminal law reform during the decade further embedded equality principles. The Sentencing Act 2002 expressly recognised hostility based on sexual orientation or gender identity as an aggravating factor, marking an important shift in the law's expressive stance toward homophobic and transphobic violence.[174] The repeal of the partial defence of provocation in the Crimes (Provocation Repeal) Amendment Act 2009 removed the doctrinal space in which "gay panic" arguments had historically been advanced, closing a channel through which prejudice had been legitimised within criminal adjudication.

Formal relationship recognition was addressed through the Civil Union Act 2004, which introduced a legally recognised status open to both same-sex and opposite-sex couples, and carried rights and obligations equivalent to marriage. The accompanying Relationships (Statutory References) Act 2005 amended approximately 100 statutes to ensure consistency across the statute book, avoiding a piecemeal approach. Related reforms to family status and identity documentation followed. The Status of Children Amendment Act 2004 conferred parental status on the consenting same-sex partner of a birth mother where assisted reproduction was used, while the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 extended access to sex marker changes on birth certificates to overseas-born New Zealand residents and citizens.[175]

(2) Bills

Notwithstanding this legislative momentum, certain areas remained politically sensitive and resistant to reform. Adoption law was one such site. The Adoption (Equity) Amendment Bill 2005, introduced by Metiria Turei MP (Green), sought to remove the exclusion of same-sex and de facto couples from joint adoption, an exclusion that persisted because adoption as a couple remained confined to

[174] s 9(h).
[175] s 15.

married spouses. Turei characterised the existing law as "hopelessly outdated and discriminatory", arguing that the Bill would fill a "very small legislative hole" with large consequences for same-sex families. Although there were indications that the Government might absorb the proposal, adoption reform was ultimately deferred, reportedly because it was regarded as politically too sensitive in the aftermath of civil union reform.[176]

The decade also witnessed an attempted legislative retrenchment. The Marriage Amendment (Gender Clarification) Bill 2005, selected from the ballot in the name of Larry Baldock MP (United Future), though it was his colleague, Gordon Copeland MP (United Future) who initially sponsored it, sought to entrench a heterosexual definition of marriage and to amend section 19 of the New Zealand Bill of Rights Act.[177] In his section seven compliance report, the Attorney-General concluded that clause 7 (that sought amend the New Zealand Bill of Rights Act to insulate pro-heterosexual marriage advocacy from anti-discrimination challenges under section 19) would unjustifiably limit the right to freedom from discrimination by disadvantaging same-sex couples on the grounds of marital status and sexual orientation.[178] The Bill was defeated at first reading by 73 votes to 47, reinforcing Parliament's unwillingness to reverse the broader equality trajectory established during the decade.[179]

(3) Georgina Beyer's Bill and the Crown Law opinion

In 2004, a Member's Bill sponsored by Georgina Beyer MP (Labour) sought to amend the Human Rights Act to explicitly include "gender identity" as a prohibited ground of discrimination. The Bill was premised on the view that transgender people experienced discrimination across areas such as employment and housing, yet were not clearly protected under existing grounds, and that reliance on litigation to clarify coverage under "sex" or "sexual orientation" was impractical. Explicit legislative recognition was therefore considered necessary to place the scope of protection beyond doubt and to provide a clear signal that discrimination on this basis was unlawful.[180]

The Bill proposed a broad definition of gender identity: "gender identity, which refers to the identification by a person with a gender that is different from the birth gender of that person, or the gender assigned to that person at birth, and may include persons who call themselves transsexual, transvestite, transgender, crossdresser, or other description."[181] The explanatory notes describe that the definition was supposed to protect (some) intersex people as well: "[s]ometimes, but not always,

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[176] See "Government plays down gay adoption" (12 July 2006) The New Zealand Herald <nzherald.co.nz>; and Ruth Berry "Government may update law on gay adoptions" (11 July 2006) The New Zealand Herald <nzherald.co.nz>.
[177] Marriage (Gender Clarification) Amendment Bill (259-1).
[178] *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Marriage (Gender Clarification) Amendment Bill 2005* at 1.
[179] "Anti-gay marriage bill thrown out" (8 December 2005) Pride NZ <pridenz.com>.
[180] Human Rights (Gender Identity) Amendment Bill 2004 (225-1).
[181] cl 4.

"intersex" people are assigned the "wrong" gender. The section is intended to apply to an individual for whom that assigned gender is not the gender the individual identifies with later in life." In addition to adding a new prohibited ground, the Bill proposed amendments to certain exceptions in the Act relating to authenticity and privacy, and to treat "sex" as including gender identity for limited purposes.[182]

Beyer withdrew this Bill after a legal opinion from the Acting Solicitor-General concluded that discrimination against transgender people was likely already protected by the Human Rights Act.[183]

The opinion relied heavily on comparative jurisprudence from the United Kingdom, Europe, and Canada, where courts had consistently interpreted prohibitions on sex discrimination as extending to discrimination arising from gender reassignment or gender identity. European authority was cited for the proposition that discrimination based on gender reassignment is discrimination "on grounds of sex", grounded in principles of equality and human dignity rather than narrow semantic distinctions. Canadian courts were similarly said to adopt a broad and purposive understanding of sex discrimination that protects transgender people, regardless of whether they have undergone medical transition.[184]

By contrast, the opinion characterised United States jurisprudence as inconsistent and unsettled. However, the Acting Solicitor-General considered American authority to be of limited persuasive value in the New Zealand context compared with United Kingdom, European, and Canadian approaches.[185]

Overall, the Acting Solicitor-General concluded that New Zealand courts would likely follow the purposive and equality-based reasoning adopted in comparable jurisdictions and interpret the Act's prohibition on sex discrimination as encompassing discrimination against transgender people. On that basis, the opinion advised that amendment of the Act to add gender identity as a distinct prohibited ground was unnecessary, and that there was no reason to expect New Zealand courts to construe "sex" narrowly so as to exclude transgender people from protection. The Acting Solicitor-General also considered that discrimination against transgender people could be covered by the ground of disability, particularly where discrimination related to diagnoses such as gender dysphoria.[186]

(4) Law Commission consideration of adoption

Alongside these legislative developments, the Law Commission continued to provide the sustained analysis of unresolved questions relating to same-sex relationships and family formation. In *Adoption and Its Alternatives: A Different*

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[182] Explanatory notes.
[183] "Beyer to withdraw transgender rights bill" (22 August 2006) The New Zealand Herald <nzherald.co.nz>.
[184] Letter from Cheryl Gwyn (Acting Solicitor-General) to the Attorney-General "Human Rights (Gender Identity) Amendment Bill" (2 August 2006) at 2-4.
[185] At 5-6.
[186] At 7.

Approach and a New Framework, the Commission recommended abandoning status-based eligibility criteria for adoption in favour of a suitability and best-interests framework. It proposed that single people and couples, whether married, de facto, or same-sex, should all be eligible to apply, with the Family Court determining suitability on a case-by-case basis.[187] The Commission rejected blanket exclusions of same-sex couples, concluding that there was insufficient evidence to justify disqualification and that the main consideration must always be the child's welfare.[188] While acknowledging contested public opinion and concerns raised by Child, Youth and Family, it emphasised that there was no "right" to adopt, only a right of the child to the best attainable placement.[189]

The Commission also addressed assisted reproduction and the status of children in same-sex families. It identified the legal vulnerability of co-mothers in lesbian relationships, where only the birth mother was recognised as a legal parent and the other mother relied on discretionary guardianship orders (this was before the enactment of the Status of Children Amendment Act 2004).[190] The Commission regarded this as an unsatisfactory position, noting that equivalent heterosexual couples benefited from statutory presumptions under the Status of Children Amendment Act 1987. With respect to male same-sex couples, the Commission acknowledged the distinct legal complexities arising from surrogacy arrangements, observing that biological realities meant such couples could never rely on parentage presumptions and would inevitably be subject to regulatory oversight.[191] These analyses framed same-sex parenting not as an anomaly, but as a legitimate feature of contemporary family life.

(5) The Human Rights Commission's *Transgender Inquiry*

To Be Who I Am reports on the Human Rights Commission's nationwide inquiry into discrimination experienced by transgender people in Aotearoa New Zealand.[192] It was the world's first inquiry by a National Human Rights Institution into discrimination experienced by transgender people.[193] Based on engagement with over 200 submitters across the country, the Inquiry documented how transgender people face systemic barriers to full participation in society including in employment, education, housing, access to goods and services, participation in sports, access to public places and when interacting with the justice system. The Commission emphasised that transgender people were not seeking special rights,

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[187] Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework* (NZLC R65, September 2000).
At [141].
[188] At [258]-[360].
[189] At [358].
[190] At [583]-[584].
[191] At [593]-[595].
[192] Human Rights Commission *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People* (2008).
[193] "To Be Who I Am: Report on the Inquiry into Discrimination Experienced by Transgender People" (14 January 2008) Human Rights Commission <tikatangata.org.nz>.

but "simply recognition of the rights that other New Zealanders take for granted",[194] and framed the *Inquiry* as an assessment of whether existing human rights protections were being realised equally in practice.

The report identified healthcare as a central site of inequality. It found gaps and inconsistencies in the provision of health services. As a result, many transgender people faced long delays, substantial personal cost, or the need to seek treatment privately or overseas. The *Inquiry* concluded that the lack of coordinated and accessible services undermined health outcomes and dignity, recommending nationally consistent treatment pathways and standards developed in collaboration with transgender communities and health professionals.[195]

Legal recognition was identified as another major barrier to full participation in society. The report documented how complex, intrusive, and inconsistent processes for changing sex markers on identity documents exposed transgender people to discrimination and risk, noting that many did not have or could not get usable identification documents that reflected their gender identity and expression.[196]

While focused on transgender experiences, the *Inquiry* also acknowledged concerns raised by intersex submitters, particularly regarding non-consensual medical interventions and lack of access to medical records.[197]

The Commission made a number of recommendations including clearer legal protections, including explicit recognition of gender identity under the Human Rights Act, alongside further consultation on intersex-specific human rights issues.[198]

(e) The 2010s

(1) Legislative and parliamentary developments

The 2010s marked the culmination of New Zealand's transition from partial recognition to legal equality for same-sex couples, alongside a growing willingness to address the historical harms produced by earlier regimes of criminalisation.

A significant reform was the enactment of the Marriage (Definition of Marriage) Amendment Act 2013. Introduced as a Member's Bill by Louisa Wall MP (Labour) and accompanied by a parallel Bill submitted to the ballot by Kevin Hague MP (Green), the legislation reframed marriage in explicitly inclusive terms.[199] Clause 5 amended the Marriage Act 1955 to provide that "marriage means the union of 2 people, regardless of their sex, sexual orientation, or gender identity". The Bill passed at third reading by a margin of 77 votes to 44, following a conscience vote,

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[194] At 1.
[195] At 50-64.
[196] At 66-79.
[197] At 80-86.
[198] At 94-100.
[199] "Both Hague and Wall's Bills go into ballot" (14 June 2012) Gay NZ <gaynz.com>.

and was accompanied by consequential amendments to ensure statutory coherence.[200]

In 2014, the Sullivan Birth Registration Act 2014, a Private Act, was enacted to remedy a gap in the law that prevented full legal recognition of a same-sex family. Because Diane Sullivan and Doreen Shields were unable to marry or jointly adopt prior to marriage equality (Diane Sullivan died before the passage of marriage equality), an adoption order made in 2013 recognised Doreen Shields as a parent only by removing Diane Sullivan's name from their daughter, Rowen Sullivan's birth certificate. As there was no statutory mechanism to record both parents, the Act allowed that both parents could be stated as mothers on Rowen Sullivan's birth certificate.[201]

At around the same time, a petition sought government action to address inadequate and inconsistent access to publicly funded gender-affirming health services, including counselling, endocrinology, and surgery. The petitioner highlighted long waiting times, limited funding, uneven District Health Board provision, and associated mental health harms, with some people forced to seek costly or risky treatment overseas.

The Health Committee acknowledged significant unmet demand and "health by postcode" inequities, supported reviewing funding caps, and endorsed regional integrated care models. A minority view criticised the response as insufficient, calling for a national surgical service, minimum District Health Board service standards, and improved non-surgical care and training.[202]

In another petition, Parliament was called on to formally apologise to people convicted of consensual adult male same-sex intimacy prior to the Homosexual Law Reform Act 1986 and to establish a process to reverse those convictions. The petitioner argued that historical convictions caused enduring stigma, social exclusion, and psychological harm, and that an apology and reversal process were necessary to acknowledge past state-sanctioned injustice and support reconciliation with rainbow communities.[203]

In response, the Justice Committee considered the petition alongside related legislative developments addressing the same subject matter (discussed below). The Committee acknowledged the real harm caused by historical convictions and supported mechanisms to remove the ongoing effects of those convictions, while

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[200] "Gay marriage: How MPs voted" (18 April 2013) The New Zealand Herald <nzherald.co.nz>.
[201] Sullivan Birth Registration Act 2014.
[202] *Petition 2011/107 of Thomas Hamilton and 435 others: Report of the Health Committee* (2014).
[203] Letter from Wiremu Demchick (Organiser of the Campaign to Pardon Gays in Aotearoa) to the Justice and Electoral Committee regarding the pardoning of men convicted of same-sex intimacy (7 August 2016).

emphasising that the purpose of the response was to prevent continuing stigma rather than to provide compensation.[204]

Following the petition, legislative action occurred. The Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Act 2018 established a formal scheme allowing men convicted of certain consensual homosexual offences to apply to have those convictions expunged. The scheme applies where the conduct in question would not constitute an offence under contemporary law, and covers convictions under sections 141 (indecency between males), 142 (sodomy), and 146 (keeping place of resort for homosexual acts) of the Crimes Act 1961, as well as sections 153 and 154 of the Crimes Act 1908 insofar as they related to consensual male same-sex activity. Successful applicants are to be treated in law as if they had never been convicted.

(2) Bills

Not all reform proposals during the decade reached enactment. In the family law sphere, Kevin Hague MP (Green) placed his Care of Children (Adoption and Surrogacy) Amendment Bill into the Parliamentary ballot. The Bill would have repealed the Adoption Act 1955 and Adoption (Intercountry) Act 1997 and relocated adoption law within the Care of Children Act framework, closely following the Law Commission's recommendations. Many of its provisions reflected reforms already accepted in principle by Ministry of Justice officials, including a move away from status-based exclusions and toward a best interests of the child assessment for all applicants, regardless of sexual orientation. The Bill was never drawn from the ballot and was ultimately removed, illustrating that despite the advances of the 2010s, adoption and surrogacy remained areas of particular political sensitivity.[205]

In 2014, the matter of transgender protection under the Human Rights Act resurfaced again when Louisa Wall MP (Labour) proposed an amendment to section 21 of the Human Rights Act to add "gender identity" as a prohibited ground, through a Statutes Amendment Bill. Such Bills are limited to "technical, short, and non-controversial amendments"[206] and may proceed only with the unanimous agreement of the House.[207] Wall's proposed amendment ultimately did not advance, as it did not secure the necessary level of parliamentary support.[208]

(f) The 2020s

(1) Legislative developments

A major milestone was the enactment of the Births, Deaths, Marriages, and Relationships Registration Act 2021, which fundamentally reoriented the legal

[204] Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Bill as reported from the Justice Committee (2018).
[205] See Green Party "Comprehensive modernisation of adoption law to enter ballot" (14 October 2012) <scoop.co.nz>.
[206] Currently Cabinet Office *Cabinet Manual 2023* at [7.72].
[207] Currently Standing Orders of the House of Representatives 2023, SO 313(2).
[208] See (11 March 2015) 703 NZPD 2185 (Simon O'Connor MP).

framework governing sex registration toward a self-identification model. The Act removed the requirement for Family Court involvement and medical evidence, replacing it with a statutory declaration process. Adults aged 18 and over may change their nominated sex by declaration alone. Young people aged 16 or 17 may also do so without parental consent, provided the application is accompanied by a letter of recommendation from a suitable third party with sufficient professional or community standing and an established relationship with the applicant. For children under 16, a guardian may apply on the child's behalf, again supported by third-party recommendation. The reform is legally significant both for what it removes: judicial and medical gatekeeping, and for what it affirms: that sex registration is a matter of personal identity rather than pathology. However, the Act took away a process for legal gender recognition for overseas-born New Zealanders (discussed in part three).

In 2022, the House of Representatives enacted the Conversion Practices Prohibition Legislation Act, criminalising and regulating practices intended to change or suppress a person's sexual orientation, gender identity, or gender expression. This reflected a shift from toleration of such practices under the guise of counselling or religious intervention to their recognition as inherently harmful. The legislation situates protection from conversion practices within a broader public health and human rights framework, aligning Aotearoa New Zealand with an emerging international consensus that such practices constitute a form of abuse, and cruel and degrading treatment, rather than a legitimate therapeutic or pastoral activity.

(2) Bills

Alongside these enacted reforms, the decade has also seen a variety of LGBTI+ issues attempted to be filled by bills.

Rachel Boyack MP (Labour) introduced a Member's Bill to the ballot which proposes amending the Education and Training Act 2020 to allow transgender and gender-diverse students to automatically enrol at their nearest co-educational state school, even if they live outside that school's enrolment zone. The Bill is intended to address situations where zoning rules leave students effectively limited to single-sex schools, which can be challenging for transgender and gender-diverse learners due to issues such as uniforms, bathrooms, and heightened risks of isolation and discrimination. At present, such students may seek access to a co-educational school only through directed enrolment, a process Boyack describes as complex. The Bill would remove those hurdles by creating a clear statutory pathway for eligible students to work directly with the Ministry of Education to enrol in a co-educational school as of right.[209]

There has been renewed attention given to family formation through assisted reproduction and surrogacy. The Improving Arrangements for Surrogacy Bill 2021

[209] Katy Jones "Transgender students should automatically get into nearest co-ed school, MP says" (2 January 2023) Stuff <stuff.co.nz>.

seeks to address long-standing deficiencies in New Zealand's surrogacy regime. Under existing law, intending parents do not acquire automatic legal status at birth; the surrogate (and their partner, if any) are the child's legal parents, requiring subsequent adoption proceedings. The Bill proposes to recognise intending parents as the child's legal parents once custody is transferred. Although not enacted yet, the Bill reflects an increasing willingness to confront the legal uncertainty faced by same-sex couples, particularly male couples, who rely disproportionately on surrogacy arrangements.

In August 2023, Dr Elizabeth Kerekere MP's (Green, at the time) Human Rights (Prohibition of Discrimination on Grounds of Gender Identity or Expression, and Variations of Sex Characteristics) Amendment Bill, was pulled from the ballot.[210] It is a Member's Bill aimed at strengthening explicit anti-discrimination protections for transgender, non-binary and intersex communities. The Bill has been expressly framed as giving effect to Te Tiriti o Waitangi, recognising both the contemporary discrimination experienced by takatāpui and rainbow people and the historical harm caused by colonisation, which disrupted Māori understandings that had traditionally accepted gender and sex diversity as part of social life. The Bill proposes to amend section 21 of the Human Rights Act by adding two new prohibited grounds of discrimination: "gender identity or expression, which means the self-identified gender, name, pronoun, appearance, mannerisms or other gender-related characteristics of a person, with or without regard to the person's assigned sex at birth:" and "variations of sex characteristics".[211] Sex characteristics are defined as "a person's physical, hormonal, or genetic features relating to sex, including any of the following: (a) genitalia and other sexual and reproductive anatomy: (b) chromosomes: (c) genes: (d) hormones: (e) secondary sex characteristics."[212]

The Bill's stated purpose is to address the absence of explicit protection for people who experience discrimination on the basis of gender identity, gender expression, and sex characteristics, and to provide greater legal certainty for affected individuals in accessing remedies through the Human Rights Commission. The Bill does not seek to remove or redefine existing grounds such as "sex" or "sexual orientation" but sought to supplement them to better reflect lived realities and patterns of discrimination.[213] Dr Kerekere left Parliament at the October 2023 general election. The Bill is now sponsored by Debbie Ngarewa-Packer MP (Te Pāti Māori). On 6 December 2023, the Business Committee agreed to postpone the first reading of the Bill until further notice.[214]

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[210] "Members bills drawn: Rainbow protections, prescriptions and Samoan citizens" (3 August 2023) RNZ <rnz.co.nz>.
[211] Human Rights (Prohibition of Discrimination on Grounds of Gender Identity or Expression, and Variations of Sex Characteristics) Amendment Bill 2023 (275-1), cl 4.
[212] cl 5 and sch.
[213] Explanatory notes.
[214] Business Committee "Determinations of the Business Committee for Wednesday, 6 December 2023" New Zealand Parliament (6 December 2023) <selectcommittees.parliament.nz>.

By contrast, the Fair Access to Bathrooms Bill, promoted by New Zealand First, proposed mandatory provision of separate unisex and single-sex bathrooms in new public buildings and would have introduced fines for individuals using a single-sex facility not designated for their sex. Framed in terms of privacy and safety, the Bill was notable for proposing penalties for bathroom use inconsistent with sex designation.[215] The Bill was ultimately withdrawn and replaced with a broader definitional proposal.[216]

That successor proposal, the Legislation (Definitions of Woman and Man) Amendment Bill, seeks to insert biologically grounded definitions of "woman" and "man" into the Legislation Act 2019. The Bill would define a woman as "an adult human biological female" and a man as "an adult human biological male", with the stated aim of safeguarding sex-based rights and ensuring consistency across the statute book.[217] Its introduction illustrates an important feature of the 2020s: even as gender diversity has been increasingly recognised in enacted law, that recognition has provoked counter-mobilisation.

(3) Law Commission consideration of protections in the Human Rights Act 1993

In 2021, the Government proposed amendments to section 21 of the Human Rights Act to clarify that transgender, gender-diverse, and intersex people are protected from discrimination. The proposal involved redefining the prohibited ground of sex to encompass "sex characteristics or intersex status" and introducing a new prohibited ground of "gender including gender expression and gender identity".[218] After public consultation (in conjunction with consultation on hate speech proposals), these reforms were not advanced. Instead, in November 2022, the Minister responsible for the Law Commission, The Honourable Kiritapu Allan MP (Labour), formally referred the matter to the Law Commission for review.

In August 2025, the Law Commission reported on its review. The Commission concludes that, although some public bodies proceed on the assumption that discrimination on these bases is already covered under the ground of "sex", the current law is uncertain, inaccessible, and lacks authoritative judicial confirmation, undermining protection for affected individuals and clarity for those with obligations under the Act.[219]

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[215] New Zealand First "New Zealand First Member's Bill to protect women's spaces" (10 May 2024) <nzfirst.nz>.
[216] Craig McCulloch "What is a woman? NZ First's revolving door of member's bills" (22 April 2025) RNZ <rnz.co.nz>.
[217] New Zealand First "New Zealand First Introduces Bill Defining 'Woman' and 'Man' in Law" (22 April 2025) <nzfirst.nz>.
[218] See Ministry of Justice *Proposals against incitement of hatred and discrimination* (2021) <www.justice.govt.nz> at 5 and 23.
[219] Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025) at [26]-[29].

The Commission's central recommendation is that section 21 of the Act be amended to include two new prohibited grounds of discrimination: (1) gender identity or its equivalents in the cultures of the person, defined to include gender expression and the relationship between gender identity and sex assigned at birth; and (2) having an innate variation of sex characteristics. The Commission considered that adding these grounds would provide protection from discrimination for the groups covered by the review, resolving significant uncertainty in the current law and better enabling individuals and organisations to understand their rights and obligations.[220]

In support of reform, the Commission identified six interrelated rationales commonly relied upon in anti-discrimination law when considering what grounds should attract protection. These include the long histories of discrimination, stigma, and marginalisation experienced by these groups; the fact that gender identity and sex characteristics are immutable or deeply tied to personal identity and dignity; the particular harm to human dignity caused by discrimination on these bases; consistency with developments in international human rights law; alignment with the approach taken in comparable liberal democratic jurisdictions; and evidence of evolving social norms supporting protection from discrimination.[221] Taken together, these considerations strongly supported explicit legislative protection.[222]

The Commission emphasised that reform of section 21 cannot occur in isolation. Adding new prohibited grounds has implications for the operation of existing exceptions (provisions that make discrimination lawful in certain circumstances) in Part 2 of the Act, particularly the 19 exceptions that currently permit differential treatment on the basis of sex. To maintain coherence and ensure a fair balance between equality and other protected interests, such as privacy, the Commission recommended a package of amendments, assessed on a case-by-case basis according to the rationale underlying each exception.[223]

[220] At [3]-[4].
[221] At [24]-[25].
[222] At [25].
[223] At [8] and [61]-[65].

Case law

This part considers significant LGBTI+ case law. By that, I mean judicial decisions that engage directly with LGBTI+ issues and are significant because they produced or had the capacity to produce system-level change. The focus is therefore on cases that shaped legal principles, altered practices, or influenced the broader legal and social landscape, rather than decisions that merely applied existing law without wider consequence.[224]

There are many early cases arising from the criminal prohibition on same-sex intimacy.[225] These include cases where Police entrapped gay men or raided gay facilities.[226] Similarly, there are many custody cases where gay men and lesbians were viewed by suspicion by the courts, and often, had their children removed from their care.[227] These cases are not the focus of this part, as they do not, in most instances, produce system-level legal change (those that do within this context are discussed). However, it is important to bear in mind that this criminalisation and regulation forms the legal and social backdrop against which later LGBTI+ case law emerged and was adjudicated, shaping the assumptions and constraints that early courts brought to questions of sexuality and gender.

Where I have the original judgments, they are formatted as case briefs. Where I have been unable to source the original judgments, they are formatted in sections entitled "other relevant information".

As to not double up, HIV non-disclosure cases are discussed in part three.

(a) Early cases (before 1980)

The following materials illustrate how, well before decriminalisation and modern human rights protections, LGBTI+ lives in Aotearoa New Zealand were encountered through criminal law, administrative non-recognition, and public stigma, and how courts sometimes resisted (and sometimes reinforced) that landscape. Read

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[224] For cases which I consider do not produce wider consequences for LGBTI+ people, see, for example *Radcliff v Culmer Real Estate* Tenancy Tribunal Auckland TT 82/97 & 83/97, 7 November 1997; *Living Word Distributors Ltd v Human Rights Action Group Inc* (Wellington) [2000] 3 NZLR 570 (CA); *Carruthers v Real Groovy Records Ltd* Employment Relations Authority Auckland AEA 50/01, 17 September 2001; *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 75 (CA); *Gay and Lesbian Clergy Anti-Discrimination Society Ltd v The Bishop of Auckland* [2013] NZHRRT 36, (2013) 9 HRNZ 612; P v Q [2014] NZERA 8; *Handy v New Zealand Fire Service Commission (Strike-Out Application)* [2018] NZHRRT 27; and *Handy v New Zealand Fire Service Commission (Strike-Out Application No. 2)* [2019] NZHRRT 19.

[225] See, for example "Sexual offences. No effective cure. Submissions by counsel." *Auckland Star* (13 February 1937) at 7; "Eight prisoners sentenced" *Dominion* (3 November 1944) at 7; "Cook found guilty" *The New Zealand Herald* (22 July 1939) at 19; "Men committed for sentence" *The Press* (1 November 1958) at 14; "Prison term to stand" *The Press* (10 September 1960) at 7; and "Judge reverses determination of homosexual charges" *The Press* (2 September 1967) at 19.

[226] See, for example "Police Coverup" *Pink Triangle* (February 1982) at 5; "Fireworks of a different sort: Wellington Sauna raided" *Pink Triangle* (December 1981) at 1; and "Judge slams cop lure" *Pink Triangle* (Summer 1984/85) at 1.

[227] See "Courts 'anti-homosexual' *The Press* (21 April 1981) at 6.

together, they show three overlapping dynamics: first, the policing of gender nonconformity through public order offences; second, the limits of judicial capacity to deliver legal gender recognition in the absence of a statutory pathway; and third, the broader social climate in which queer people were treated as legitimate targets of violence.

Police v Rupe (1966)

In January 1966, Carmen Rupe, a transgender woman, was arrested in Auckland and charged with behaving in an offensive manner in a public place after Police objected to her wearing women's clothing. Police did not assert any additional conduct beyond her mode of dress; rather, the charge proceeded on the assumption that 'cross-dressing' itself was offensive.

In dismissing the charge, Magistrate McCarthy made two findings of lasting legal significance. First, he addressed whether there was any legal prohibition on cross-dressing. After careful consideration, he concluded that there was none, stating: "I must confess that after careful research I am quite unable to find anything in our law which says that it is unlawful for a male to attire himself in female clothing. It is true the Judaic Code contained a prohibition against such a course of conduct […] and I agree […] that provided the transvestite does not bring himself within […] other criminal provisions […] he does not commit any offence under our law so far as the wearing of feminine attire of itself is concerned."[228]

Secondly, the Magistrate considered whether Rupe's conduct could properly be characterised as "offensive". He held that he was not satisfied beyond reasonable doubt that Rupe's actions were "calculated to cause resentment or a revulsion in right-thinking persons".[229] He continued: "[her] actions in my view amount to nothing more than a female impersonator who was clothed in the garb of his calling…"[230]

Police v Rupe is a landmark decision in Aotearoa New Zealand's LGBTI+ legal history. It confirmed, at a time of widespread social hostility, that there was no legal prohibition on cross-dressing and that gender nonconformity through dress, without more, could not be criminalised as "offensive" conduct.

Re T (1975)

In *Re T*, the Supreme Court[231] considered an application by a "transsexual" woman seeking a declaration that her sex was female following gender-affirming surgery and medical treatment.[232] The applicant had been registered male at birth, and in 1973 the Registrar-General declined to amend the birth register on the basis that it correctly recorded the facts as they existed at the time of birth. The application was

[228] Magistrate McCarthy SM "Police v Rupe" (1966) 30 NZ Police Association Journal 96 at 96-97.
[229] At 97.
[230] At 97.
[231] Supreme Courts were renamed High Courts in 1980: Judicature Amendment Act 1979.
[232] *Re T* (1975) 2 NZLR 449 (SC) at 451.

therefore framed as a request for a declaratory judgment "determining and declaring the sex of the applicant" under the Declaratory Judgments Act 1908.[233]

McMullin J accepted, in careful and sympathetic terms, the extensive medical evidence before the Court. His Honour recorded that the applicant was regarded by medical practitioners as female "in all respects except [her] genetic sex and [her] lack of uterus and ovaries".[234] The Court also acknowledged the legal and social difficulties the applicant faced, including barriers relating to marriage, potential criminal liability, employment, and estate planning, emphasising that these issues illustrated the practical consequences of the absence of legal gender recognition.[235]

Despite this, the application failed on jurisdictional grounds. McMullin J held that the Court had no power under section three of the Declaratory Judgments Act 1908 to grant the declaration sought, as there was "no question of construction or validity" of any statute or legal instrument to be determined.[236] A declaratory judgment, his Honour stressed, "can only be given on a justiciable issue," and the applicant's circumstances did not fall within the scope of the Act.[237]

While noting that legislative and administrative mechanisms for legal gender recognition existed in some overseas jurisdictions, McMullin J concluded that "only a legislative enactment" could provide the recognition sought.[238] *Re T* is therefore significant not for recognising gender identity, but for clearly identifying the limits of judicial power and directing responsibility for reform squarely to Parliament.[239]

Other relevant information

Reporting from 1964 describes closing addresses in the Christchurch Supreme Court trial of six youths arising from the death of Charles Arthur Allan Aberhart in Hagley Park. The Crown's case was that the youths went to the park together to find a "queer" and assault him, with the article recounting (from statements attributed to

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[233] At 449.
[234] At 450.
[235] At 451–452.
[236] At 452.
[237] At 452.
[238] At 453.
[239] See also "She's a woman: sex-change man a female, jury decides" *NZ Truth* (New Zealand, 21 May 1974) at 7: the article reports a Wellington Supreme Court trial in which Carole de Winter and Carmen Rupe, both transgender women, faced alternative procuring-related charges because de Winter's sex was said to be "in dispute". The Crown alleged they were parties either to an attempt "by a male […] to do an indecent act" on a police officer or, alternatively, to attempt to procure "a female" to have unlawful carnal knowledge with a man not her husband. The trial featured detailed expert evidence about gender reassignment surgery. The jury acquitted both on the first charge but convicted them on the second (procuring "a female"), and they were remanded for probation. Chief Justice Sir Richard Wild also refused name suppression, saying the public had "a right to know what is going on". The case is significant because it represents early legal gender recognition, though jury-mandated and *only* for criminal purposes: it was not a global recognition meaning it had no broader application to other legal contexts. I have been unable to locate the original text of the judgment, and therefore have relied upon its reporting in this newspaper. See also Jacquie Grant "Defining a woman: transsexual isn't a dirty word – it might save us" (14 May 2025) Gay Express <gayexpress.co.nz>.

the accused) that they questioned men to identify who was or was not a "queer", restrained Aberhart, and that at least two admitted striking him, while others were alleged to have assisted by luring him, standing by, checking his identity, and taking money. Defence counsel argued variously that some accused were merely present or on the "fringe" of events, and emphasised the difficulty of attributing the fatal blow to any individual, while the Crown stressed that "[w]hatever [Aberhart's] shortcomings were, he did not seek out his assailants; they sought him" and characterised the group's conduct as a "concerted effort".[240] The six youths were acquitted. The case is significant in LGBTI+ legal history because Aberhart's death became a galvanising event that spurred later homosexual law reform efforts, including the development of advocacy infrastructure for decriminalisation.

(b) The 1980s

The 1980s illustrate how LGBTI+ lives were still routinely mediated through criminal law, custody disputes, and censorship regimes, even as social attitudes and legal reasoning began to shift. It is a decade where courts were asked, often indirectly, to decide whether gender diversity undermined parental fitness, whether public order offences could be stretched to police gay men's sexuality, and whether sexual expression could be suppressed simply because it offended "community standards". The decisions discussed below show an emerging judicial willingness to resist moral panic by insisting on evidence, restraint, and demonstrable harm. In that sense, the 1980s sit as a bridge between overt legal hostility and the more rights-attentive frameworks that take hold in the 1990s and beyond.

***B v B* (1981)**

B v B concerned a custody dispute arising after the appellant mother left the family home to live with Mr Dan, a "transexual" man.[241] The central issue was whether the best interests of the parties' five daughters, particularly the three younger children living with their mother, were compromised by being raised in a household headed by a "transsexual" parent. The District Court had awarded custody of all five children to the father, largely on the basis that the mother's relationship was "lesbian" in character and that exposing the children to it involved unacceptable risk.[242] The High Court heard the matter on appeal.

A substantial part of the judgment addressed the nature of Mr Dan's gender and parental role. Chilwell J accepted extensive expert evidence that Dan "looks, acts and walks and moves like a man" and that his transition had been "remarkably successful".[243] Medical and psychological experts described Dan as "to all intents and purposes a male" who provided the children with "a consistent male model" and "a father figure".[244] The Court accepted that, psychologically and socially, Dan

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[240] "Supreme Court: Jury hears addresses in trial of six youths" *The Press* (9 May 1964).
[241] *B v B* (1981) HC Auckland 689/80, 18 June 1981.
[242] At 3.
[243] At 7.
[244] At 7.

functioned as male, notwithstanding his chromosomal makeup, and rejected the suggestion that his presence would confuse the children's understanding of parental roles.

The Court also examined claims that the children might suffer harm through ostracism or adverse effects on their psychosexual development. Chilwell J noted that evidence of actual harassment was slight and that "there is no evidence yet of ostracism".[245] Expert evidence suggested that gender identity is established before early childhood and that "sexuality […] is not socially contagious, and cannot be caught by children from adults, nor taught to them".[246] While acknowledging a theoretical risk, particularly during adolescence, the Court stressed that all family arrangements involve uncertainty and that there was no evidential basis for treating a household headed by a 'transsexual' parent as uniquely harmful.

Ultimately, Chilwell J declined to make a final custody determination at that stage, concluding that it would be wrong to decide on the basis of an inadequately assessed risk. The main consideration remained "the welfare of the children," and further evidence was required before custody could be shifted on speculative grounds. *B v B* is significant in LGBTI+ legal history for its careful rejection of moral panic and its reliance on expert evidence rather than prejudice.

***Palmer-Brown v Police* (1984)**

In *Palmer-Brown v Police*, the Court of Appeal considered the scope of section 28(1) of the Summary Offences Act 1981, which criminalised being "found in any public place behaving in a manner from which it can reasonably be inferred that he is preparing to commit a crime".[247] The case arose from a Police sting operation in central Wellington, in which a plain-clothes constable engaged the appellant, a gay man, in conversation outside public toilets before accepting an invitation to go to the appellant's car, where the appellant suggested going to his flat for a "screw". This conduct, Police alleged, amounted to preparation to commit sodomy, at the time a criminal offence. The District Court dismissed the charge, the High Court upheld it, with the matter ultimately being appealed to the Court of Appeal.

The central issue was whether the appellant had been "found" by the constable "behaving" in the relevant way at the material time. McMullin J emphasised that section 28(1) required a strict contemporaneity between the act of being found and the incriminating behaviour. The language of the section created an "obvious link" between the expressions "is found", "behaving in a manner", and "is preparing to commit a crime", such that the inference must be drawn from behaviour occurring "at the time of finding".[248] Subsequent conduct could not be used to "put a complexion on earlier conduct, innocent in itself".[249]

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[245] At 9.
[246] At 11.
[247] Summary Offences Act 1981, s 28(1).
[248] *Palmer-Brown v Police* (1984) 1 NZLR 365 (CA) at 368.
[249] At 369.

On the facts, this requirement was not met. The constable conceded that when the appellant was first encountered, there was "nothing in the defendant's actions […] which gave him any suspicion that the defendant was preparing to commit a crime".[250] The 'incriminating' conversation occurred only after the constable had joined the appellant and accompanied him to the car. As McMullin J put it, "however much the defendant's conduct may offend against any moral code […] no offence against section 28 was disclosed on the evidence".[251] The appellant had not been discovered or seen in a public place engaging in conduct from which it could reasonably be inferred that he was then preparing to commit a crime.

The Court unanimously allowed the appeal. In doing so, it confined the reach of section 28 and rejected its use as a broad tool for policing morality or consensual same-sex conduct. *Palmer-Brown* is significant in LGBTI+ legal history because it curtailed the use of public order offences to criminalise gay men through Police entrapment, insisting that suspicion must arise from objectively observable behaviour at the moment of "finding", rather than from later-elicited admissions or moral disapproval of homosexuality.

***Collector of Customs v Lawrence Publishing Co Ltd* (1986)**

In *Collector of Customs v Lawrence Publishing Co Ltd*, the Court of Appeal dealt with a seizure by Customs of 20 calendars depicting nude males, treated as prohibited imports on the basis they were "indecent" under the Indecent Publications Act 1963. The statutory definition linked indecency to publications dealing with sex (and related matters) "in a manner that is injurious to the public good".[252] The key issue was whether "injurious to the public good" is an essential element of indecency, or whether material could be deemed indecent simply because it was "an affront to the commonly accepted standards of the community".[253]

On the test for indecency, the majority affirmed that, for the purposes of the Indecent Publications Act 1963, a document cannot be classified as "indecent" unless it is shown that publication is "injurious to the public good": "indecency" is not established merely by material being an affront to commonly accepted standards. Applying that interpretation, the Court concluded the District Court had used the correct legal test and therefore dismissed the appeal, reversing the confiscation.[254]

By tying "indecency" to demonstrable harm rather than mere offence to "commonly accepted standards", the judgment provided a more contestable legal basis for challenging moralistic censorship.

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[250] At 367.
[251] At 369.
[252] *Collector of Customs v Lawrence Publishing Co Ltd* (1986) 1 NZLR 404 (CA) at 406.
[253] At 406.
[254] At 404.

(c) The 1990s

The 1990s were a pivotal and transitional decade in New Zealand's LGBTI+ legal history: a period where decriminalisation's aftershocks met the new constitutional language of rights, while older doctrines and statutes still pulled strongly in the opposite direction. Courts and tribunals were repeatedly asked to decide whether LGBTI+ people could participate in core legal institutions: marriage, parenting, censorship, social welfare entitlements, refugee protection, and relationship-based legal obligations, and the answers were uneven. The decade contains both expansive and dignity-affirming reasoning and blunt reminders of exclusion. It is, in short, the decade in which LGBTI+ rights begin to appear as a recognisable legal field, but one marked by contestation and caution.

M v M (marriage: transexuals) (1991)

In *M v M (marriage: transexuals),* a transgender woman applied for a declaration that her 1977 marriage to Mr M was invalid, arguing that New Zealand law required marriage to be between "a man and a woman" and that because her chromosomes remained male, she was not a "woman" for matrimonial purposes.[255] The factual background mattered: she had transitioned socially from the mid-1960s, underwent sex reassignment surgery in 1969, had lived as a woman for years, and the marriage lasted for over 12 years before ending.[256]

Judge Aubin framed the legal problem as the elusive meaning of "woman" in the marital context, noting there was no statutory definition in the Marriage Act 1955 and the case therefore turned on common law reasoning.[257] The Court confronted the English decision of *Corbett v Corbett*, where the High Court of England and Wales insisted that "sex for marriage" was fixed by "biological" criteria including chromosomal, gonadal and genital while excluding psychological factors and treating surgery as irrelevant.[258] Against that, Judge Aubin canvassed later developments and alternative approaches, including the American case of *MT v JT*, which rejected the view that sex is "irrevocably cast at the moment of birth" and treated "sex for marital purposes" as embracing gender identity and sexual capacity, especially where reassignment had harmonised anatomy and self-image.[259]

The Court ultimately held the marriage valid, finding that in an appropriate case the "cumulative effect of changes" may amount to a "change of sex in a real sense" even if chromosomes are unchanged and organs are medically constructed.[260] In this case, there was no medical evidence persuading the Court that "genetic considerations" had to be decisive. In the absence of binding authority requiring

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[255] *M v M (marriage: transexuals)* (1991) NZFLR 337 (FC) at 337–338.
[256] At 337.
[257] At 340.
[258] At 340–341.
[259] At 343–344.
[260] At 337.

chromosomal precedence, the applicant "came within" the definition of "woman" for the purposes of marriage at the time of the ceremony.[261]

The case is an early New Zealand decision resisting a rigid biological essentialism and instead recognising that legal sex (for marriage) can reflect lived gender and the realities of transition. In doing so, before marriage equality and modern gender recognition reform, it offered judicial notice of transgender identity in intimate life.

C v D (1991)

In *C v D*, a father applied for access to his two children after transitioning and living as a woman. The parents had separated, and in 1988 the applicant began living "for all intents and purposes as a woman", changed her name, underwent surgery, and was engaged to marry a man; the mother opposed access entirely, contending the transition had a "considerable impact" on the children and that one child in particular struggled to accept it.[262]

The Court's task was framed squarely by the Guardianship Act 1968: both parents remained guardians, and the "paramountcy of the children's welfare" governed the decision.[263] Psychological evidence indicated one child did not wish contact, though the psychologist suggested "some continued contact might be profitable" and proposed maintaining an "opening" through letters until that child was ready.[264] For the other child, the psychologist reported there was "nothing […] which would counsel against continued contact except for Mrs D's extreme objections".[265]

Judge Boshier also relied on psychiatric evidence that the applicant had adjusted well and presented in a consistently female role: "there is nothing in the report suggestive of any other difficulty with the applicant at all".[266] The Judge explicitly located the case in a shifting socio-legal landscape, observing that "attitudes have changed, thinking has developed", and that it was "now not novel for children to have contact with lesbian or homosexual parents".[267] Drawing on *M v M (marriage: transexuals)*, he concluded that "pressing societal attitudes […] might now be less influential", and that the Court should focus instead on the "personal qualities of parties" when exercising judgment in family matters.[268] On the merits, the Court found "nothing to suggest that the children here would be at any risk" from contact: there was "no evidence of possible abuse, nor of neglect".[269] Interim access was therefore ordered.[270]

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[261] At 337.
[262] *C v D* (1992) NZFLR 537 (DC) at 538–539.
[263] At 541.
[264] At 539.
[265] At 539.
[266] At 540.
[267] At 542.
[268] At 542.
[269] At 542.
[270] At 543.

Following *B v B, C v D* is an explicit rejection of treating transgender identity as an automatic bar to parenting contact. It affirms, first, a welfare-based and evidence-driven approach rather than moral panic, and second, a judicial willingness to discount "pressing societal attitudes" in favour of the parties' actual capacities and the children's long-term interests.

***Audley v Hart* (1993)**

This case concerned a claim under the Family Protection Act 1955. The deceased made no provision for her only child, Sandra Audley. A central feature was the deceased's objection to her daughter's relationship with another woman and her desire to avoid the partner "eventually benefiting" from inherited assets ("I do not approve or agree with this relationship […] and do not wish there to be any chance of that companion eventually benefiting…").[271] Blanchard J considered that the deceased objected to the partner generally, rather than punishing lesbianism as such. The Court held the deceased had breached her "moral duty" under the Family Protection Act; the will was adjusted so the estate was divided equally between the daughter and the other beneficiary.[272]

The case is notable for Blanchard J's explicit statement that the claimant's "sexual preference does not amount to disentitling conduct," and his observation that these "changing social attitudes" were about to be reflected in law through the Human Rights Act.[273]

***Decision No 145/93* (1993)**

This was a reconsideration by the Indecent Publications Tribunal (prompted by an application by the Lesbian and Gay Archives of New Zealand Trust) of a set of older censorship classifications, many made before decriminalisation, so the Tribunal could reassess them in the light of the shift in classification standards.[274] The Minister granted leave noting, among other things, that the Tribunal's approach to homosexuality had "changed markedly" after decriminalisation and that the new classification framework might no longer justify blanket indecency findings.[275]

The Tribunal openly acknowledged the earlier discriminatory logic: before 1986, even non-erotic material was sometimes classified indecent "merely" because it was intended for a homosexual audience, or because male same-sex intimacy was criminal and discussion was treated as dealing with "crime".[276] It stated that contemporary standards no longer treated "homosexuality per se" as pointing

[271] *Audley v Hart* (1993) HC Auckland 711/93, 17 November 1993 at 7.
[272] At 8.
[273] At 8.
[274] Decision No 145/93 (1993) Indecent Publications Tribunal, 17 December 1993 at 1-2.
[275] At 2.
[276] At 2.

toward prohibition,[277] and it reclassified a number of the publications accordingly: several to "not indecent" and others to age-restricted categories.[278]

Decision 145/93 is a rare and explicit reckoning with how censorship law had functioned as a tool of structural discrimination against gay content and community publishing.

***Attorney-General v Otahuhu Family Court* (1995)**

The Attorney-General (for the Registrar of Marriages) sought a declaration about whether a marriage could be valid where one of the parties had transitioned through medical treatment.[279] Ellis J affirmed the common law definition of marriage as the voluntary union for life of "one man and one woman", but rejected strict biological essentialism.[280] He held that New Zealand law no longer treated sexual intercourse or procreation as defining features of marriage, and that "gender issues" and social/psychological realities had a proper place in determining sex for matrimonial purposes.[281] Drawing on *M v M (marriage: transexuals)*, and overseas authorities, Ellis J concluded that a person who has undergone surgical and medical procedures effectively giving them the physical conformation of a specified sex has "no lawful impediment" to marrying as a person of that sex under the Marriage Act 1955.[282] In other words, the law could recognise reassigned sex for marriage, even though chromosomes remained unchanged, provided the transition was medically and socially real.[283]

A notable feature of the judgment is its insistence on reality rather than formal biology. Ellis J treated the question as one of legal capacity and social institution, not an abstract classification exercise: the inquiry was whether the person's reassigned sex was sufficiently established that there was no "lawful impediment" to the marriage, not whether every biological marker aligned.[284] The case is a landmark affirmation of transgender people's ability to marry in their affirmed sex in Aotearoa New Zealand.

***Re GJ* (1995)**

In *Re GJ*, the Refugee Status Appeals Authority accepted that sexual orientation can be a "particular social group" claim under the Refugee Convention, and emphasised that the key question is not strict "immutability" but whether the characteristic is

[277] At 2.
[278] At 3 and 5-6.
[279] *Attorney-General v Otahuhu Family Court* (1995) 1 NZLR 603 (HC) at 603.
[280] At 604-605.
[281] At 606.
[282] At 606-608.
[283] At 606-608.
[284] At 606-608.

"fundamental to one's identity"[285] and therefore something a person "ought not be required to be changed".[286]

Applying that approach, the Authority held that "homosexuals in Iran are a cognisable social group", united by the shared internal characteristic of "their sexual orientation".[287] Crucially, the Authority rejected the idea that safety could be achieved through concealment: while it might be argued the appellant could live "a hidden and inconspicuous life", requiring "the total denial of an essential part of his identity" was "inappropriate and unacceptable".[288] On that basis, the Authority considered the "real chance" threshold for persecution met.[289]

Re GJ is foundational in New Zealand refugee jurisprudence for affirming that LGBTI+ claimants are not to be told, in effect, to avoid persecution by self-erasure, because the law recognises sexual orientation as fundamental, and treats enforced concealment as incompatible with dignity. It is also foundational for the holding that sexual orientation can be a "particular social group" claim under the Refugee Convention.

***Gilmour v Accident Rehabilitation and Compensation Insurance Corporation* (1995)**

This appeal concerned whether a surviving same-sex partner could qualify as a "spouse" for entitlements under the Accident Rehabilitation and Compensation Insurance Act 1992. The Court recorded that Ms Gilmour had been living "in a lesbian relationship" with Ms Bramwell, and died in a motor vehicle accident in 1994.[290] Ms Bramwell applied for awards claiming she was, "to all intents and purposes Ms Gilmour's spouse".[291] The Corporation declined the claim on the basis that the statutory definition of spouse did not extend to a lesbian relationship, and the Review Officer upheld that decision.[292] The appellant argued that the 1992 definition breached the Human Rights Act and the New Zealand Bill of Rights Act.[293]

The Corporation responded that the definition was "clear and unambiguous" and referred to "a person of the opposite sex", so the only issue was whether Ms Bramwell could fit within that wording.[294] The Judge accepted that framing. The Judge agreed that Ms Bramwell "must be a person 'of the opposite sex' from the deceased and clearly she is not".[295] The Court declined to make any broader rights-based statement, holding that any alleged failure by the legislature to have regard

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[285] *Re GJ, Refugee Appeal No 1312/93* (1995), Refugee Status Appeals Authority New Zealand, 30 August 1995 at 43.
[286] At 57.
[287] At 62.
[288] At 62.
[289] At 62.
[290] *Gilmour v Accident Rehabilitation and Compensation Insurance Corporation* (1995) DC Hamilton 104/95, 23 August 1995 at 1.
[291] At 2.
[292] At 2.
[293] At 2.
[294] At 2.
[295] At 2.

to the New Zealand Bill of Rights Act or the Human Rights Act when drafting the 1992 legislation was "not within the prerogative of the Court"; if the appellant wished to pursue those issues, they had to be taken "in a different jurisdiction".[296]

The decision is a blunt illustration of how core social welfare statutes still operated through formal opposite-sex definitions that excluded lesbian and gay partnerships from recognition and support.

Quilter v Attorney-General (1997)

In *Quilter v Attorney-General*, the Court of Appeal rejected the argument that the Marriage Act 1955 could be read, via section six of the New Zealand Bill of Rights Act, as permitting same-sex marriage to avoid discrimination under section 19.[297] The Court was unanimous on the section six point. Most of the Court agreed that the Marriage Act 1995 was not discriminatory, with Thomas J dissenting on this point.

Richardson P held the statutory scheme and its history were clear: marriage legislation proceeded on the orthodox premise of marriage as between a man and a woman, and there was no basis on which the Act could be interpreted as permitting same-sex marriage. He treated the issue as one for Parliament.[298]

Gault J likewise concluded that the meaning of the Marriage Act confined marriage to opposite-sex couples and that section six could not be used to transform that meaning in the face of clear legislative intent. He accepted that the New Zealand Bill of Rights Act informs interpretation but stressed that where Parliament's purpose is unmistakable the Court's role is limited to declaring the meaning, leaving any change to the democratic process.[299]

Keith J approached the question similarly, emphasising the constitutional boundary between interpretation and legislation. He treated the applicants' argument as requiring the Court to rewrite the Marriage Act rather than interpret it, something section six does not authorise where the text points firmly the other way. He also noted that the remedy lay with Parliament.[300]

Tipping J said that while section six requires giving the New Zealand Bill of Rights Act "full effect", it "may not be used as a concealed legislative tool": courts "may interpret, but […] cannot rewrite or legislate," and a "substantial change" to an

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[296] At 3.

[297] *Quilter* apparently was not the first time same-sex marriage was before the courts. Julie Glamuzina reports that in 1945, there was a case of "two women" breaching the Marriage Act by getting married to each other. It was reported that the "older woman had dressed and lived as a man for over ten years, even having her breasts surgically removed so that she could pass more easily": Julie Glamuzina *Out Front: Lesbian Political Activity in Aotearoa, 1962 to 1985* (Lesbian Press, Mangawhai, 1993) at 9-10. However, the original newspaper article has no mention of the Marriage Act breach, and reads perhaps as a case of a transgender man and a cisgender woman marrying, as opposed to two cisgender women, though this is speculation: "Astounding masquerade: woman's life as man, recent "marriage" to young girl" *Auckland Star* (26 September 1945).

[298] *Quilter v Attorney-General* (1997) 4 HRNZ 170 (CA) at 177 per Richardson P.

[299] At 178-179 per Gault J.

[300] At 206-222 per Keith J.

institution "so fundamental […] as marriage" should occur only where Parliament's intention is clear. If the opposite-sex limitation is discriminatory, he said, it is discrimination Parliament has "expressly sanctioned".[301]

Thomas J differed on the discrimination point. He described marriage as "the single most significant communal ceremony of belonging," conferring "many consequential legal benefits," and held that excluding "gays and lesbians who live in enduring and committed relationships" is "necessarily discriminatory," "inescapably based" on sex or sexual orientation, and inconsistent with "human dignity". While holding discrimination, he accepted that section six could not be used to read the Marriage Act to enable same-sex marriage where Parliament's meaning was clear.[302]

P v M (1998)

P v M was an appeal from the Family Court, which had granted final protection orders in favour of Mr M and his family against four appellants comprising two lesbian couples, including the same-sex partner of Mr M's sister (known in the case as "P"). The Family Court accepted evidence of a sustained campaign of intimidation and harassment by P.[303]

The principal legal issue in the High Court was jurisdiction: whether Mr M was in a "domestic relationship" with P so that a protection order could be made under the Domestic Violence Act 1995.[304] Fisher J held the answer "flows directly from the statute".[305] He explained that the Act's definitions deliberately equate a live-in same-sex relationship with legal marriage for these purposes: "partner" expressly includes a person "whether the same or the opposite gender" who lives in a relationship in the nature of marriage, even if the parties are "not […] able to be legally married".[306] On that basis, P was treated as Mr M's family member (via his sister), establishing the requisite domestic relationship; *Quilter* was distinguished because the Domestic Violence Act intentionally reached more broadly than the Marriage Act.[307]

P v M is important because it is an early and explicit judicial statement that same-sex partnerships are to be treated as functionally equivalent to marriage (where Parliament has chosen that approach), and that LGBTI+ people are entitled to equal access to protective legal regimes, here, protection from domestic violence.

V P v P M (1998)

This was a custody dispute under the Guardianship Act 1968 following separation and parental conflict. Both parents were assessed as loving and capable, but cooperation was "impossible to achieve" and the Court had to decide where the

[301] At 222-232 per Tipping J.
[302] At 180-206 per Thomas J.
[303] *P v M* (1998) 3 NZLR 246 (HC) at 246-248.
[304] At 249.
[305] At 251.
[306] At 250-252.
[307] At 251-252.

children's welfare would best be secured.[308] A key contested issue was the mother's lesbian relationship and the father's argument that he could offer a "more conventional" heterosexual household.[309]

Judge Mahony held that the determinant is "good parenting", not sexual orientation.[310] He noted research indicating a mother's sexual orientation "does not appear to influence the child's well-being" and that decisions should focus on "the quality of parenting".[311] While acknowledging prejudice can harm some children, the Judge was satisfied the mother would manage openness about her relationship "carefully and responsibly" and that the children would not be "damaged" by it.[312] The Court was also influenced by evidence that the father made "negative attributions" about the mother and sought to "exercise control over her", creating a strong risk of psychological harm if he had primary care.[313] Custody was therefore awarded to the mother, with access to the father.[314]

V P v P M is a clear and reasoned rejection of the idea that children are inherently worse off with a lesbian custodial parent. It mainstreams the literature that a mother's sexual orientation does not appear to impact child wellbeing and insists that legal decision-making should focus instead on the quality of parenting.

A v R (1999)

A v R considered whether a former partner in a long-term lesbian relationship could be declared a "step-parent" and made liable for child support under the Child Support Act 1991. The parties lived together for 14 years, and R had three children via artificial insemination; during the relationship A became a court-appointed guardian of the children.[315] After separation, R removed A's guardianship and then sought a step-parent declaration so A would have ongoing support liability.[316]

The High Court held the Act was not confined to heterosexual relationships. It adopted an "ordinary, every-day meaning" of "relationship in the nature of marriage", treated the statute as gender-neutral absent clear contrary wording, and stressed the Act's protective purpose of affirming children's right to maintenance.[317] On the facts, it was appropriate to make the declaration: A had assumed responsibility for the children's support from birth, no other person had support liability, and A's prior guardianship and parental role supported imposing step-parent obligations.[318]

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[308] *V P v P M* (1990) 16 FRNZ 621 (FC) at 621-622.
[309] At 621.
[310] At 630.
[311] At 629.
[312] At 628 and 630.
[313] At 631-632.
[314] At 633.
[315] *A v R* (1999) NZFLR 249 (HC) at 249-251.
[316] At 250-251.
[317] At 255-256.
[318] At 257-258.

A v R is a landmark in the legal recognition of same-sex families in Aotearoa New Zealand because it treats homosexual relationships as capable, on ordinary statutory meaning, of being "in the nature of marriage" for consequential legal purposes, notwithstanding *Quilter's* confirmation that same-sex couples could not marry under the Marriage Act. It is also a significant example of recognition through responsibility: the Court framed Parliament's choice as child-centred.

Other relevant information

There are three other themes involving the courts but reported in newspapers that I consider merit discussion: family formation, discrimination, and public decision making.

A consistent theme in the 1990s was that institutions that were slow (or unwilling) to accommodate lesbian and gay family formation. In 1981, speakers at a gay rights conference argued that courts were "anti-homosexual", especially in custody disputes where homosexuality was treated as incompatible with children's welfare and judges were said to impose explicitly discriminatory conditions.[319] A decade later, two articles from 1991 and 1992 track a Wellington lesbian couple's attempt to secure adoption rights so the non-birth mother could adopt a child conceived by artificial insemination and thereby obtain legal parental status (including protection if the relationship ended). The High Court's refused, describing such an adoption as "legal fiction" and expressing concern it might cause the child "difficulty and embarrassment"; while emphasising it was not criticising the couple's caregiving.[320]

In 1994, reporting noted that a lesbian woman complained to the Human Rights Commission after the Christchurch donor insemination programme refused even to provide information because she was lesbian, with the clinic defending its policy as limited to women with a "male factor" infertility problem, illustrating how barriers to family formation persisted even after sexual orientation protections were enacted in the Human Rights Act.[321]

Reporting also capture a moment when discrimination affecting gay people had to be fought indirectly, through "marital status", because sexual orientation was not yet a prohibited ground. In December 1990, *The Press* reported the Human Rights Commission had found Air New Zealand "openly" discriminated by withholding staff travel benefits from homosexual staff because they were not married, and that the matter would proceed to the Equal Opportunities Tribunal as a marital status case.[322] The next day's report added detail: one complaint involved a steward wanting to take his male partner on staff travel, and another a pilot wanting his mother to accompany him; the Proceedings Commissioner said the scheme's focus on "spouse or children" excluded the people many single staff saw as their closest

[319] "Courts 'anti-homosexual'" *The Press* (21 April 1981) at 6.
[320] "Lesbians seek adoption rights" *The Press* (9 September 1991) at 3; and "Lesbian denied right to adopt" *The Press* (27 April 1992).
[321] Sarona Iosefa "Lesbian protests against insemination rejection" *The Press* (19 July 1994) at 31.
[322] "Airline 'openly discriminates'" *The Press* (13 December 1990) at 8.

family.[323] In August 1991, reporting indicated that the Proceedings Commissioner was applying to the High Court for a declaratory judgment to clarify the meaning of marital status discrimination provisions in the Human Rights Commission Act 1977 after nine staff complaints about the same scheme (including five seeking to nominate homosexual partners and others seeking to nominate close relatives), and Tribunal proceedings were put on hold pending that ruling.[324] I was unable to find any judgments on this matter from the Equal Opportunities Tribunal or the High Court, suggesting settlement or non-pursuance.

1991 reporting indicated that the Auckland Lesbian Gay Youth Group (ALGY) planned to sue the Minister of Internal Affairs, The Honourable Graeme Lee (National, at the time), alleging he had improperly influenced Lottery Grants Board funding decisions after publicly criticising a $26,000 grant to ALGY, and asking a lottery funding committee to review grants to "publicly criticised groups". After ALGY reapplied for the same annual grant and was declined by the Board's youth distribution committee, it filed High Court papers naming the Minister and several other defendants seeking an order to freeze Lottery Grants Board funds and obtain a declaration that it was illegal for the Board to discriminate on the ground of sexual orientation. It withdrew such action after Government undertakings were given.[325]

(d) The 2000s

The 2000s were a decade in which LGBTI+ rights in Aotearoa New Zealand increasingly moved from headline reforms into the everyday mechanics of legal life: property, parenting, and identity. Courts began translating equality norms into practical outcomes: recognising that same-sex relationships can generate enforceable economic expectations, confirming that being gay is not a barrier to adoption in a child-centred welfare inquiry, and clarifying that legal gender recognition should not depend on coercive "full surgery" thresholds.

***King v Church* (2002)**

King v Church concerned the property consequences of the breakdown of a long-term same-sex de facto relationship (about 16 years). Mr King held a home in his name and had brought substantial assets into the relationship, while Mr Church contributed over time through domestic work, running the household and property, and periods of unpaid- and low-paid work connected to Mr King's activities.[326] Because the relationship ended before the 2001 relationship property reforms took effect, the Court applied equitable "reasonable expectation" principles rather than the statutory equal-sharing regime. The Court upheld an equitable interest for Mr Church in the home, emphasising that indirect contributions (including household duties) can ground a proprietary share and that assessment of expectations is

[323] "Airline discrimination claims" *The Press* (14 December 1990) at 8.
[324] "Rights ruling sought" *The Press* (10 August 1991) at 5.
[325] "Gay group to sue Minister" *The Press* (15 August 1991) at 6.
[326] *King v Church* [2002] NZFLR 555 (CA) at 555-557.

informed by "current social norms", which may treat a same-sex relationship as analogous to an opposite-sex partnership.[327]

King v Church is one of the clearest statements that same-sex relationships are not legally invisible in the private law of property. It translated LGBTI+ relationship recognition into real economic protection, expressly aligning the common law with "current social norms" and with Parliament's emerging policy trend toward equal treatment of same-sex and opposite-sex de facto couples.[328] Just as importantly, it located equality in the valuation of care: the Court held that domestic labour is a contribution the law must recognise, and that excluding it, especially simply because the caregiver is male in a same-sex relationship, would be contrary to New Zealand's values system.[329] In doing so, it helped normalise same-sex partnerships as capable of generating mutual obligations and enforceable expectations.

***Adoption Application by T* (2007)**

T, a single gay man, applied to adopt his two-year-old nephew, whom he had effectively parented since birth, with the mother's consent and the father absent.[330] It was the first time a gay single male applied to adopt a male child.[331]

The Court held there was no statutory impediment to the adoption.[332] The case therefore turned on the usual welfare-based inquiry under section 11, informed by "current societal mores", with Judge Fraser treating the Human Rights Act's "underpinning philosophy" (namely, its prohibition on sexual orientation discrimination) as relevant background.[333] On the evidence, particularly a supportive social work report, the Court found T fit and proper, the placement stable and whānau-supported, and granted the final adoption order.[334]

This is an important New Zealand decision explicitly confirming that being a single gay male is not, of itself, a barrier to adoption under the Adoption Act framework, and that the inquiry must be child-centred and evidence-driven rather than class-based stereotyping.

***"Michael" v Registrar-General of Births, Deaths and Marriages* (2008)**

"Michael" sought a declaration under section 28 of Births, Deaths and Marriages Registration Act 1995 that his birth certificate record him as male and in his male name.[335] The Registrar-General treated the case as raising novel public interest

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[327] At 556.
[328] At 562.
[329] At 567-568.
[330] *Adoption Application by T* (2007) NZFLR 185 (FC) at [1]-[4].
[331] At [5].
[332] At [12].
[333] At [19].
[334] At [44]-[50] and [55]-[58].
[335] *"Michael" v Registrar-General of Births, Deaths and Marriages* (2008) FC Auckland FAM-2006-004-002325, 9 June 2008 at [1]-[2].

questions, especially how much medical (including surgical) intervention is required before the statutory test is met.[336]

Judge Fitzgerald held that the statute does not impose a single "full surgery" threshold. Tracing the legislative history, the Judge noted Parliament moved away from requiring "all" procedures and relaxed the criteria so the focus became whether the applicant has undergone "such medical treatment as is […] desirable" to acquire a physical conformation that "accords with" the nominated sex.[337] In interpreting section 28(3)(c)(i)(B), the Judge emphasised that "medical" includes psychological and surgical treatment, "desirable" does not mean necessary, and "a" physical conformation (not "the") suggests conformity need not be complete; the assessment is case-by-case and it is not appropriate to talk in generalised "thresholds".[338]

On the facts, "Michael" had lived openly as male for years, had changed his name, undertaken counselling and long-term testosterone therapy, and had a bilateral mastectomy; expert evidence supported that this was the medical treatment "desirable" for him, and that further genital surgery was not essential or recommended.[339] Judge Fitzgerald accepted that, although "Michael" had not undertaken genital surgery, the evidence established he had assumed and would maintain a male gender identity, with some irreversible physical change and ongoing treatment supporting permanence.[340] The Court therefore granted the declaration[341].

"Michael" is a landmark case in New Zealand's legal gender recognition jurisprudence because it rejects a "full reassignment surgery" gatekeeping model and interprets section 28 in a way that is attentive to medical reality, autonomy, and the disproportionate burdens on transgender people, given cost, availability, risk, and clinical appropriateness. It also squarely acknowledges that the law must keep pace: the Court noted confusion and inequity created when officials or institutions assume "full surgery" is required, and endorses an approach where pre- or post-operative status should not be determinative.[342]

(e) The 2010s

The 2010s were a decade of formal equality crystallising into family law, and, at the same time, a decade that exposed the stubborn friction between modern LGBTI+ lives and old statutory language. Marriage equality in 2013 created new interpretive and legislative pathways, and courts began translating that shift into practical recognition of same-sex families (especially in adoption and parentage contexts). But the decade also revealed the limits of rights protection where Parliament had

[336] At [3]-[5].
[337] At [41]-[51].
[338] At [62]-[72].
[339] At [10]-[20] and [88]-[90].
[340] At [85]-[91].
[341] At [92]-[94].
[342] At [110]-[113].

not updated foundational statutes like the Adoption Act 1955: even as some judges read the law in the light of contemporary equality norms, other decision makers treated key exclusions as unlawful yet were not able to do anything about it.

Re Pierney (2015)

The applicants, in a stable same-sex de facto relationship for nearly 10 years, applied jointly to adopt two children born through a surrogacy arrangement with the birth mother's full support and consent; one applicant was the genetic father, but not a legal father as per the Status of Children Act 1969, and the other was guardian of one child but not the other.[343] The social worker recommended the adoptions, recording that the children were "settled and flourishing" and that it was in their best interests to be "legally recognised as the daughters of Mr Pierney and Mr Hsieh".[344]

On jurisdiction, Judge McHardy held there was no barrier to joint adoption by a same-sex de facto couple. The Judge relied on the post-2013 legislative context (Marriage (Definition of Marriage) Amendment Act 2013 and consequent Adoption Act changes) and the Interpretation Act to conclude "spouse" can be interpreted to include de facto couples of the same-sex, and that continuing to interpret it a different way would entail discrimination on the basis of sexual orientation.[345] The Judge accepted the welfare evidence and made the adoption orders final immediately, finding "special circumstances" given the surrogacy context and the fact the applicants had raised the children since birth.[346]

Re Pierney is a practical and rights-attentive bridge between marriage equality and family formation. It confirms that, post-2013, same-sex de facto couples are not jurisdictionally shut out of joint adoption, providing clarity on the matter.

Adoption Action Inc v Attorney-General (2016)

In *Adoption Action Inc*, the Human Rights Review Tribunal heard a suite of discrimination complaints about New Zealand's adoption regime. Two findings were especially salient for LGBTI+ people.

First, the Tribunal examined section 3(2) of the Adoption Act 1955, which permits joint adoption only by "spouses". It held that "spouse" means married couples, which, after 2013, includes both opposite-sex and same-sex marriages, but does not include civil union partners or same-sex de facto couples.[347] That exclusion was found to breach the right to freedom from discrimination on the ground of marital status found in section 19 of the New Zealand Bill of Rights Act.[348] The Government's attempt to justify the distinction by equating marriage with stability was rejected[349].

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[343] *Re Pierney* [2015] NZFC 9404 at [1]-[5].
[344] At [7].
[345] At [12]-[15].
[346] At [16]-[18].
[347] *Adoption Action Inc v Attorney-General* [2016] NZHRRT 9, [2016] NZFLR 113 at [142]-[145].
[348] At [149].
[349] At [152].

However, the Tribunal considered that expanding "spouses" further through section six of the New Zealand Bill of Rights Act would cross the line into judicial law-making, so it issued a declaration of inconsistency rather than "reading in" a broader meaning.[350] In this way, it was at odds with *Re Pierney*, though given *Re Pierney* was handed down by the Family Court, it took precedence.

Second, the Tribunal considered section 7(2)(b), which requires the consent of the spouse where a married person applies to adopt alone. Because "spouse" did not extend to civil union partners or same-sex de facto partners, those partners had no equivalent consent right, even though the adoption would directly shape their family life. The Tribunal held that this differential treatment was discriminatory on the grounds of marital status and sexual orientation, pointing to practical consequences: married spouses were given a formal role in the process, while partners in civil unions and same-sex de facto relationships were excluded, creating unequal parenting status, relationship strain, and potential risks to the child's welfare.[351] The distinction was unjustified under section five, but the Tribunal refused to use section six to interpret the statute in a rights-consistent manner, and issued a further declaration of inconsistency.[352]

Adoption Action Inc is significant for LGBTI+ rights because it formally identifies key parts of the Adoption Act 1955 as unjustifiably discriminatory.

(f) The 2020s

LGBTI+ case law in the 2020s reflects a period of transition marked by increased judicial awareness of vulnerability but continuing structural limits in the law. Courts have increasingly acknowledged the importance of legal recognition for gender-diverse and intersex people, as well as the real harms caused by misgendering, exclusion, and sudden policy shifts. At the same time, outcomes have often been constrained by narrow statutory frameworks. Public law litigation has emerged as a key tool.

Registrar-General of Births, Deaths, Marriages and Relationships v Nelson (2022)

In this case, the Family Court was asked to determine whether the sex recorded on Mx Hannah Nelson's first birth certificate, recorded as male at birth in 1985, was "incorrect" for the purposes of section 84 of the Births, Deaths, Marriages, and Relationships Registration Act 1995. Mx Nelson had previously obtained a declaration under section 28 in 2014 changing their birth certificate to record their sex as female. In 2020, Mx Nelson sought to have their sex recorded as "intersex," prompting the Registrar-General to apply under section 85 for judicial determination, given uncertainty as to whether the original record was factually wrong and the Act's limitation to the categories "male, female, or indeterminate."

[350] At [158].
[351] At [167].
[352] At [172].

The Court observed that "s 84 of the Act appears to be limited to the correction of information which was factually incorrect at the time it was recorded."[353]

The Court accepted "entirely, and without reservation" that Mx Nelson "currently identifies as intersex",[354] but held that the relevant legal question was whether their sex at birth had been incorrectly recorded. It found there was "absolutely no medical evidence or any corroboration at all" supporting the claim that Mx Nelson was of indeterminate sex at birth or that their genitalia had been altered through non-consensual medical intervention.[355] The Court concluded that "the evidence points to Mx [Nelson]'s sex at birth as properly being assigned as male."[356] As a result, no correction was required under section 84, and the Registrar-General was "specifically prohibited" from altering the current birth certificate, which recorded Mx Nelson's sex as female, absent a further section 28 declaration.[357] At the same time, the Court acknowledged the human impact of the outcome, noting that the decision would be "deeply distressing and disappointing" and was not intended "to deny Mx [Nelson]'s lived experience, or their self-identification as intersex."[358]

The case is significant because it exposes the limitations of New Zealand's framework for sex and gender recognition. The Court recognised that for many intersex people, legal recognition is "highly important, if not psychologically critical," and that denial of recognition can be "simply withering".[359] Yet *Nelson* demonstrates how the statutory scheme confined recognition to narrow biological categories, excluding identities such as intersex. The judgment situates itself at a moment of transition, explicitly referencing the Births, Deaths, Marriages, and Relationships Registration Act 2021.[360] Though, the 2021 Act also would produce a similar result: it does not enable the designation of intersex as a sex marker. While the Court was bound to apply the law as it stood, the decision documents the human cost of the earlier regime.

***Auckland Pride v Minister of Immigration* (2023)**

The applicants sought urgent interim orders to stop Kellie-Jay Keen-Minshull entering Aotearoa New Zealand, pending judicial review of the Minister's decision not to revoke her travel authorisation.[361] A delegated decision-maker had concluded that Parker was not likely to commit an imprisonable offence or pose a risk to

[353] *Registrar-General of Births, Deaths, Marriages and Relationships v Nelson* [2022] NZFC 3065 at [19].
[354] At [82].
[355] At [83].
[356] At [85].
[357] At [86].
[358] At [87].
[359] At [29].
[360] At [44].
[361] *Auckland Pride v Minister of Immigration* [2023] NZHC 758, 2 NZLR 651 at [1] and [6]–[12].

security, public order, or the public interest, and the Minister declined to intervene.[362]

Gendall J held that there was a "position to preserve": if the Minister's decision were unlawful, allowing entry could "encourage and deepen" the alleged illegality, even though advice suggested events would likely proceed regardless.[363] But interim relief was refused, mainly because the affected person had not been served or heard, despite the orders having "dramatic" consequences for her (natural justice);[364] and the orders were effectively substitutive, requiring the Court to step into the Minister's shoes or compel reconsideration with only one realistic outcome, an approach inappropriate on an interim basis unless the Court is "almost certain" the decision is unlawful, especially given the immigration and national interest context.[365] The Court also noted, preliminarily, that freedom of expression is not absolute and may, in some circumstances, be justifiably limited to protect vulnerable communities; an exclusion decision could be a justified limit.[366]

The judgment is significant because it records judicial recognition of the vulnerability of transgender and gender-diverse communities to harm and discrimination.

***Hoban v Attorney-General* (2025)**

Mr Hoban argued that the Human Rights Act "hate speech" civil provision (section 61) is inconsistent with section 19 of the New Zealand Bill of Rights Act because it prohibits hate speech only on "colour, race, or ethnic or national origins", and not on sexual orientation.[367] The Court accepted "underinclusion" as discriminatory: when Parliament enacts "a measure directed to only one type of prohibited discrimination", other disadvantaged groups "are, by definition, treated differently" and "that different treatment causes disadvantage".[368]

But the appeal still failed on justification. The Court ultimately held that section 61 was a positive measure under section 19(2) of the New Zealand Bill of Rights Act. It said the claim was for "an additional layer of protection" via section 61, and "in a free and democratic society it is not required or practicable for every possible improvement to human rights protection to be enshrined in legislation".[369] Consistently with that conclusion, it dismissed the appeal and declined any declaration of inconsistency.[370]

Hoban confirms that underinclusion alone will not render a protective measure as unjustifiably discriminatory. Even where differential treatment is arguable, the

[362] At [10]-[12].
[363] At [51]-[53].
[364] At [57]-[58].
[365] At [59]-[66].
[366] At [67]-[72].
[367] *Hoban v Attorney-General* [2025] NZCA 644 at [1].
[368] At [30].
[369] At [60].
[370] At [126]-[127].

Court was prepared to characterise section 61 as a permissible positive measure, emphasising Parliament's freedom to pursue incremental human rights protection and leaving any extension of hate speech protections to legislative choice rather than judicial mandate.

***Professional Association for Transgender Health Aotearoa Inc v Minister of Health* (2025 and 2026)**

The Professional Association for Transgender Health Aotearoa (PATHA) sought urgent interim relief to stop regulations (due to commence 19 December 2025) banning new prescriptions of puberty blockers for young people with gender incongruence and gender dysphoria.[371] Wilkinson-Smith J refused PATHA's primary "stop-the-regulations" remedy as constitutionally inappropriate: an "extraordinary step" the Court could not effectively compel via directions to the executive.[372] Instead, she granted a different form of interim relief: a declaration that the Government should take no steps to enforce the regulations pending the judicial review.[373]

The Court held key public law grounds were clearly arguable, including lack of consultation and that Cabinet favoured a ban despite Ministry advice saying the evidential basis for a "total ban" was "scant".[374] It also stressed the surprise timing and lack of notice, taking PATHA and "the whole transgender community by surprise", which made orthodox interim relief pathways impracticable and supported a non-enforcement order as the best available mechanism.[375]

This decision is significant because the Court explicitly recognised the disproportionate stakes for "the whole transgender community" and treated the surprise timing and lack of notice as a serious rule of law concern, effectively acknowledging that procedural manoeuvre can itself undermine access to justice. Doctrinally, it also shows how transgender rights litigation can succeed even at the interim stage through public law principles, without the Court needing to finally resolve the deeper merits about best medical policy.

PATHA appealed the ruling seeking stronger interim relief. The Court of Appeal dismissed the appeal holding that the High Court's declaration that the Government should take no steps to enforce the regulations was sufficient pending judicial review.[376] Of particular significance, the Court clarified that the non-enforcement declaration effectively protects clinicians and patients in practice, stating it would be "extraordinary" for public bodies or regulators to pursue prosecutions or

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[371] *Professional Association for Transgender Health Aotearoa Inc v Minister of Health* [2025] NZHC 4045 at [1]–[6].
[372] At [183].
[373] At [186]–[188].
[374] At [174]–[180].
[375] At [184]–[185].
[376] *Professional Association for Transgender Health Aotearoa Inc v Minister of Health* [2026] NZCA 8 at [1]–[2], [38] and [42]–[44].

disciplinary action while enforcement is suspended, as this would undermine the rule of law.[377]

Other relevant information

There are three other developments that merit discussion: first, a District Court response to deadnaming and misgendering as harmful online conduct, second, Auckland Pride's judicial review over the Government's cancellation of transgender inclusion sport guidance, and third, anti-discrimination cases relating to transgender protection under the Human Rights Act.

Reporting on Jacquie Grant's case describes a court order requiring two individuals to remove "offensive" online material after a private prosecution under the Harmful Digital Communications Act, illustrating that misgendering and deadnaming can be treated as legally actionable harm in the right factual context.[378]

Auckland Pride, in late 2025, said it had filed High Court proceedings challenging the Minister for Sport and Recreation's direction to Sport NZ to withdraw its "Guiding Principles for the Inclusion of Transgender People in Community Sport", arguing that the Minister did not consider the New Zealand Bill of Rights Act, the Human Rights Act, or Sport NZ's legal obligations when making the decision.[379]

There are two anti-discrimination cases relating to whether transgender people are protected under the Human Rights Act. One pertains to the Wellington Pride Festival, while the other pertains to the Department of Corrections.

The Wellington Pride Festival dispute arose after organisers refused a stall to an anti-transgender lesbian group, citing the need to protect transgender community members from harm. The resulting Human Rights Review Tribunal proceedings raise difficult questions about the boundary between protected expression and discriminatory conduct, whether trans-exclusionary views can attract protection under the Human Rights Act when expressed in community spaces, and whether transgender people are covered by the ground of sex (an argument necessary for the success of a section 73, positive measure, defence). The case highlights growing legal tension around inclusion, safety, and disagreement within the rainbow community itself.[380] The substantive hearing has concluded.

By contrast, the Corrections case involves a transgender man and corrections officer, alleging persistent workplace discrimination, including deadnaming, misgendering, and harassment by colleagues, and a failure by his employer to provide a safe working environment. It is significant because it directly tests

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[377] At [37]–[38].
[378] Joanne Nalsh "Pair ordered to remove offensive material after 'dead-naming' Hokitika businesswoman" (20 April 2021) Stuff <stuff.co.nz>.
[379] "Auckland Pride takes Government to court for cancelling trans inclusion guidelines" (21 November 2025) Auckland Pride <aucklandpride.org.nz>.
[380] Lyric Waiwiri-Smith "Inside the clash between a Wellington pride festival and anti-trans lesbian activists" (8 September 2025) The Spinoff <thespinoff.co.nz>.

whether the existing ground of sex under the Human Rights Act adequately protects transgender people from day-to-day discrimination, particularly in employment.[381]

The two cases are landmark as they will finally provide clarity on whether transgender people are protected under the Human Rights Act.

[381] Alex Casey "Deadnaming, insults and harassment: trans Corrections officer brings landmark human rights case against employer" (16 May 2024) The Spinoff <thespinoff.co.nz>.

Historic priorities and exclusions in LGBTI+ law reform

(a) Historic priorities

(1) First, the dominant priority was the dismantling of criminalisation, particularly of consensual male same-sex intimacy

For much of the twentieth century, LGBTI+ people encountered the law primarily through criminal prohibition, public order policing, and the threat of imprisonment. Unsurprisingly, early organised advocacy concentrated on removing the most punitive aspects of the criminal law. From the 1968 Homosexual Law Reform Society petition through successive members' bills and ultimately the Homosexual Law Reform Act 1986, reform efforts were overwhelmingly directed at decriminalisation. This focus is mirrored in case law, where courts were repeatedly asked to constrain the reach of criminal and quasi-criminal provisions used to police gay men's sexuality (for example, through public order offences or censorship regimes), rather than to affirmatively recognise LGBTI+ identities or relationships.

(2) Secondly, reform was framed narrowly around privacy, consent, and harm minimisation rather than equality or dignity which came after

Early reform arguments consistently emphasised that the criminal law should not intrude into private and consensual conduct between adults, and that such intrusion produced disproportionate suffering, haphazard enforcement, and opportunities for blackmail. These arguments, drawing heavily on the Wolfenden framework, were strategically effective but normatively limited. They sought toleration rather than recognition, and restraint rather than equality. This framing shaped both legislation and judicial reasoning: courts were more willing to reject moral panic where no demonstrable harm could be shown (as in public order and censorship cases) than to ground protection in a positive conception of LGBTI+ identity or status.

(3) Third, relationship recognition and family law reform emerged later, and initially in functional rather than symbolic form

From the 1990s onwards, the centre of gravity shifted from criminal law to private law and social welfare. Courts began recognising same-sex relationships and families pragmatically, through doctrines of guardianship, child welfare, property, and statutory purpose, often without conferring full symbolic equality. Legislative reform followed a similar pattern: piecemeal recognition across statutes preceded more comprehensive regimes such as civil unions and, eventually, marriage equality. The emphasis throughout was on practical consequences (property division, child support, protection from violence) rather than identity-based recognition.

(4) Finally, explicit rights-based protection against discrimination emerged late and unevenly

Although discrimination was a persistent feature of LGBTI+ experience, sexual orientation was excluded from statutory non-discrimination regimes for decades until 1993. Protection for transgender people was left to implication and uncertainty, while the position of anti-discrimination protection for non-binary and intersex people has not been substantially considered by the Government (the Law Commission being distinct from the Government as an Independent Crown Entity). This sequencing entrenched a hierarchy of reform in which decriminalisation preceded equality, and equality itself was and is fragmented and delayed.

(b) Historic exclusions

(1) Most fundamentally, historic LGBTI+ law reform was highly male-centred

Criminalisation targeted male same-sex intimacy, and reform efforts responded accordingly. While lesbians experienced discrimination and social stigma, they were largely absent from early criminal law debates and frequently sidelined in reform proposals that focused on "homosexual acts" between men. This male-centric framing also shaped later disputes, including internal movement conflicts over age of consent reform, where lesbian equality concerns were explicitly noted as unaddressed by proposed legislation.

(2) Transgender and gender-diverse people were addressed through medicalised or jurisdictionally constrained lenses

Early cases involving transgender people demonstrate both judicial sympathy and structural limitation. Courts could acknowledge lived gender and reject moralism yet consistently characterised the absence of recognition as a legislative problem beyond judicial competence. Where recognition was eventually afforded, it was typically mediated through medical evidence and surgical intervention, reinforcing a model of legitimacy grounded in clinical validation rather than self-determination.

(3) Intersex people were almost entirely not included in historic LGBTI+ law reform

Across the legislative history, advocacy materials, and case law surveyed, intersex people appear, at most, at the margins: occasionally referenced through outdated terminology or subsumed within broader discussions of sex or gender identity. Their specific experiences of non-consensual medical intervention, legal misclassification, and discrimination based on variations of sex characteristics were not a focus of early reform agendas. Unlike decriminalisation or relationship recognition, intersex issues did not align with the prevailing reform frames of privacy, consent between adults, or functional equality in family law. As a result, intersex advocacy was neither prioritised nor systematically incorporated into legal reform processes, leaving significant gaps in protection that persist into the present.

With this being said, this exclusion from historic LGBTI+ law reform could be reflective of the notion that some intersex people do not align or see themselves as LGBTI+: they see their intersex variation as a purely medical issue. Further, intersex visibility has recently become more evident, with historic visibility being low, not by choice, but by structural design.

(4) Finally, broader intersections: race, indigeneity, class, and disability were largely absent from the legal framing of LGBTI+ reform

With limited exceptions, historic law reform proceeded as if LGBTI+ people constituted a homogeneous group, obscuring how criminalisation, discrimination, and non-recognition interacted with other axes of marginalisation. The colonial origins of sexuality regulation, and the disruption of Māori approaches to gender and sexuality, were rarely foregrounded in reform debates, despite their foundational significance. Law reform has had asymmetrical impacts on LGBTI+ lives, particularly on the bases of race and religion.

What's next for LGBTI+ rights in Aotearoa New Zealand?

Part three

Introduction

I proceed from the recognition that law is only one part of the story. Law reform matters, but its effects are felt unevenly, and it cannot, on its own, deliver equality in lived experience. Cultural attitudes, social norms, and institutional practices shape how law operates on the ground. Law reform in and of itself is therefore insufficient. For example, discrimination against gays and lesbians still exists despite these groups being protected by anti-discrimination law. Governments can legislate rights, but they cannot legislate tolerance. The distance between formal legal equality and substantive equality remains a defining challenge of LGBTI+ law reform. The idea that law reform is only one part of the story reminds me of a paper written by an American LGBT+ rights lawyer and academic, Thomas Stoddard. He visited Aotearoa New Zealand in April 1996 to speak at a conference of the New Zealand Law Society.[382]

At the time, Stoddard viewed Aotearoa New Zealand with a sense of optimism, describing it, at least in comparison to the United States, as a "Promised Land" for LGBT+ people. New Zealand had already achieved many of the formal legal milestones that advocates elsewhere were still fighting for: decriminalisation, anti-discrimination protections, and immigration recognition for same-sex partners. Yet his experience on the ground complicated that picture. As he observed, "in flying to Auckland, I was eager to see how such a gay-friendly world—a world unimaginable to gay people living in the United States in 1996—would look and feel. After a few days in Auckland, I had my answer: Auckland in 1996, from the point of view of a gay man, looked and felt very much like a large American city […] twenty years earlier."[383] He concluded that "New Zealand was not utopia—it merely had the formal rules that ought to govern any utopia that includes lesbians and gay men."[384]

Stoddard's most enduring lesson, however, lies in his warning about the limits of law reform. Reflecting on his visit, he wrote: "My experience in New Zealand […] has reminded me that social change and legal change do not always walk hand-in-hand. One does not always stimulate the other. Attempts to reform the law may succeed as a formal matter but have only modest effects on the larger cultural context into which they fit." That observation remains deeply resonant today. It underscores why this report treats law reform as necessary but not sufficient, and why it resists framing any single legislative intervention as an endpoint.

Against that backdrop, part three of this report turns to the future. It is structured around a series of thematic subparts, eight in total, each addressing a different dimension of what "comes next" for LGBTI+ rights. Together, they are intended not as a claim to completeness, but as an invitation to think critically about the

[382] Thomas B Stoddard "Bleeding heart: reflections on using the law to make social change" (1997) 72 New York University Law Review 967.
[383] At 969.
[384] At 969.

relationship between law, culture, and lived experience, and about how law reform might better support dignity and equality.

It is also important to note what this part does not address. There are a number of macro-level legal issues that are relevant to all people, and which would also materially benefit LGBTI+ communities, but which, generally, sit outside the scope of this report. This includes, for example, the introduction of a positive equality duty, which are commonplace in Australian anti-discrimination legislation.[385] This would obviously be useful to LGBTI+ communities, but it is relevant to all people. While such issues are generally not discussed here, they remain highly relevant and would warrant careful consideration in any comprehensive reform agenda. Instead, this part generally focuses on LGBTI+ specific legal issues. It does discuss some policy issues, but not all.

I do not intend to discuss reform options in depth; rather, I want to focus on the nature of the issue. However, reform options will be discussed where relevant.

[385] See, for example Equality Opportunity Act 2010 (V), s 15; and Discrimination Act 1991 (ACT), s 75.

Anti-discrimination law

Overview of the anti-discrimination framework in Aotearoa New Zealand

Anti-discrimination law in Aotearoa New Zealand is structured around two core statutes: section 19 of the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993. Together, these instruments provide the principal legal architecture through which non-discrimination rights are protected. However, they operate in distinct spheres, are framed in materially different ways, and generate different forms of legal protection and remedies for LGBTI+ communities.

Section 19 of the New Zealand Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds set out in the Human Rights Act. Its reach is confined to the actions of the Government and other bodies exercising public power.[386] A similar prohibition is found in Part 1A of the Human Rights Act, with slightly different representation models (a claim under Part 1A would enable an application for legal representation to the Office of Human Rights Proceedings; a claim directly under the New Zealand Bill of Rights Act does not allow for this). These provisions function as a constitutional restraint on public authority, rather than a comprehensive non-discrimination code. They do not regulate discrimination by private actors, nor do they prescribe detailed standards of conduct or enforcement mechanisms. Instead, they rely heavily on judicial interpretation to give substance to their guarantee, with the courts developing tests for discrimination, justification, and proportionality over time.

Part 2 of the Human Rights Act, by contrast, is the primary legislative vehicle for regulating discrimination in the private sphere. It prohibits discrimination in specified 'areas of life' such as employment, education, accommodation, goods and services, and access to public places. Importantly, the Act only captures differential treatment where it occurs by reason of a prohibited ground of discrimination. There are 13 prohibited grounds in the Act: sex; marital status; religious belief; ethical belief; colour; race; ethnic or national origins; disability including "the presence in the body of organisms capable of causing illness"; age; political opinion; employment status; family status; and sexual orientation "which means a heterosexual, homosexual, lesbian, or bisexual orientation."[387]

The Act is further shaped by a series of exceptions which enumerate circumstances in which discrimination is not unlawful and allowed (though not obligated). For example, there is an exception that allows political parties to discriminate against people in employment based on their political opinions (a prohibited ground of discrimination).[388] This means that a political party is allowed to hire people specifically whose political opinions align with theirs.

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[386] New Zealand Bill of Rights Act 1990, s 3.
[387] Human Rights Act 1993, s 21.
[388] s 31.

Because section 19 of the New Zealand Bill of Rights Act imports its grounds directly from the Human Rights Act, any reform to the grounds in the Human Rights Act would have consequential effects for the New Zealand Bill of Rights Act. For this reason, and because section 19 (as well as Part 1A of the Human Rights Act) is drafted in general terms, this thematic area focuses on Part 2 of Human Rights Act as the site where the most immediate and concrete reforms for LGBTI+ equality are both necessary and possible.

The need for systematic review

Any discussion of LGBTI+-specific reform must be situated within a broader recognition that the Human Rights Act itself is structurally dated. As the Law Commission has observed, "[t]he Act is over 30 years old. Some parts of it (including those most relevant to this review) have not been systematically reviewed since enactment. Even when it was enacted, the Act drew heavily on earlier anti-discrimination laws from the 1970s. It continues to reflect attitudes and compromises made in the context of 1970s Aotearoa New Zealand. The drafting of some provisions could be improved to make their meaning clearer."[389]

This historical layering matters. Anti-discrimination law is not static: it is shaped by evolving understandings of identity, harm, and equality. An Act that remains tethered to the compromises and assumptions of 1970s Aotearoa New Zealand risks falling out of step with contemporary social realities, particularly for communities, such as LGBTI+ people, whose legal recognition has developed rapidly over the past three decades.

Absence of explicit protection for transgender, non-binary and intersex people

The Human Rights Act currently recognises thirteen prohibited grounds of discrimination. The Act does not explicitly protect people on the basis of gender identity, gender expression or having an innate variation of sex characteristics. Although there have been multiple legislative attempts to address this omission (as discussed in part two), none have succeeded. Political momentum has remained limited, in part, because successive governments have taken the view that existing protections, particularly the ground of "sex", are sufficient. This position has not been confirmed by a tribunal or court.

That position is, also, increasingly unstable.[390] While indirect protection may exist in theory, it is legally fragile and socially opaque. It requires affected individuals to infer their protection from judicial interpretation rather than statutory text, and it leaves the scope of protection vulnerable to shifts in the law. Moreover, it fails to perform the expressive function of law: explicitly naming a protected group is itself a form of recognition that affirms dignity and belonging.

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[389] Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025) at [1.51].
[390] See, for example *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16, [2025] 2 WLR 879.

The Law Commission has undertaken a detailed and rigorous review of this issue, examining the nature of the issue, the interaction with existing exceptions, and a range of reform options (as discussed in part two).[391] Given the depth of that analysis, I do not consider this issue in further detail here. I endorse the Commission's recommendations wholeheartedly.

An outdated definition of sexual orientation

A second, and less frequently examined, deficiency lies in the statutory definition of sexual orientation itself. Sexual orientation is defined exhaustively as "a heterosexual, homosexual, lesbian, or bisexual orientation".[392] By limiting protection to heterosexual, homosexual, lesbian and bisexual orientations, the Act fails to reflect contemporary understandings of sexuality as fluid, diverse, and not exhaustively captured by fixed categories.

This limitation has a chilling effect on access to justice. While anti-discrimination law is concerned with the discriminator's perception rather than the complainant's self-identification, legally untrained people may conclude that they fall outside the scope of protection if their identity is not named in the statute. This is particularly acute for people who identify as pansexual, asexual or who have culturally specific identities.

Both the Human Rights Commission and the Ministry of Justice have acknowledged that the current definition is misaligned with contemporary social understandings of sexual orientation.[393] The latter stated that "the definition of 'sexual orientation' in the Human Rights Act is rather limited, listing only heterosexual, homosexual, lesbian and bisexual orientations. This definition likely does not reflect contemporary social understandings of sexual orientation."[394] The simplest and most future-proof reform option would be to remove the exhaustive definition altogether, allowing courts and tribunals to interpret the ground in the light of evolving social realities. Attempts to modernise the definition through an expanded lists risk reproducing the very problem they seek to solve: not keeping pace with the time.

HIV and insurance discrimination

A third area of concern arises at the intersection of discrimination, HIV, and insurance. HIV is clearly captured within the Act's definition of disability, which includes "the presence in the body of organisms capable of causing illness".[395]

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[391] Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025).
[392] s 21(m).
[393] Ministry of Justice *Departmental Report: Conversion Practices Prohibition Legislation Bill* (January 2022) at [143] and [145].
[394] At [145].
[395] Human Rights Act 1993, s 21(h)(vii).

The Burnett Foundation has said that "the HRA allows insurance companies to discriminate against people living with HIV. Most insurance providers currently exclude coverage of any costs relating to HIV for health insurance, and exclude people living with HIV from life insurance products."[396] This persists despite dramatic advances in HIV treatment: for individuals whose HIV is effectively managed through antiretroviral therapy and who have an undetectable viral load, life expectancy and health outcomes are now comparable to those of the general population.

While the Act also contains a specific exception allowing insurers to offer insurance on different terms on the basis of disability which includes people living with HIV, it is not unqualified. Insurers must rely on reasonable actuarial or statistical data, or reputable medical or actuarial advice, and any differential treatment must be reasonable in the circumstances.[397] The Act also empowers the Human Rights Commission to require justification for reliance on such data and to seek independent actuarial views.[398]

This oversight mechanism may provide a meaningful pathway for reform without resorting to blunt legislative prohibition. It creates an opportunity to test whether current insurance practices are genuinely grounded in up-to-date medical evidence, or whether they reflect outdated assumptions. The reasonableness of differential treatment may also vary depending on the type of insurance product, suggesting the need for a more nuanced and evidence-based approach. For example, the Burnett Foundation says that "[a]cknowleding the advances in HIV medications, some insurance companies will now offer life insurance to people living with HIV."[399]

Should the data, advice or opinions which ground the different treatment not be reasonable, recourse to human rights adjudication may be available, should be a willing, affected and contextually-suited plaintiff be found.

At the same time, blanket legislative removal of the insurance exception for people living with HIV may be overly prescriptive. Insurers may still be able to identify residual risks associated with treatment adherence, medication access, or interruptions due to travel or supply constraints. A future-focused reform agenda must therefore balance equality, evidence, and risk in a way that is principled rather than categorical. That is the important role that exceptions play in anti-discrimination law.

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[396] "HIV and the law" Burnett Foundation <burnettfoundation.org>.
[397] Human Rights Act 1993, s 48(1)(a).
[398] s 48(2).
[399] "HIV and the law" Burnett Foundation <burnettfoundation.org>.

Hate speech

Overview: the narrow scope of hate speech law in Aotearoa New Zealand

Aotearoa New Zealand has exceptionally limited legal protection against hate speech. Unlike many comparable liberal democracies, it has not developed a comprehensive or modernised framework for specifically addressing group-based vilification. Instead, regulation of such speech is confined to two provisions in the Human Rights Act: sections 61 (civil prohibition) and 131 (criminal offence).[400]

These provisions are narrow in their reach, high in their thresholds, and, most significantly for this report, restricted to a small set of grounds. As a result, large categories of people who experience persistent, targeted, and harmful hate speech, including LGBTI+ communities, are entirely excluded from protection.

This exclusion is not merely a technical defect. It affects equality and engages the role of the state in responding to group-based harm.

The statutory framework: sections 61 and 131 of the Human Rights Act

(a) Section 61: civil hate speech

Section 61 provides that it is unlawful for any person to publish, broadcast, or use in public words that are "threatening, abusive, or insulting" where those words are likely to excite hostility against, or bring into contempt, any group of persons on the ground of the colour, race, or ethnic or national origins of that group. The provision is carefully framed. It does not prohibit mere offence, disagreement, or unpopular opinion. It targets speech that crosses a threshold (threatening, abusive, or insulting) and that has a social effect (exciting hostility or contempt). It is also limited to public contexts. Despite this careful calibration, its protection is confined to race-based characteristics.

(b) Section 131: criminal offence

Section 131 creates a criminal offence where a person intentionally publishes or uses threatening, abusive, or insulting words with the intention of exciting hostility against or bringing into contempt a protected group. The grounds mirror section 61 exactly. The offence has been rarely prosecuted. Its existence nonetheless confirms that Parliament has accepted, in principle, that some forms of expression are sufficiently harmful to justify legal sanction, including criminal sanction.

Historical origins and the problem of inherited limits

The narrow scope of sections 61 and 131 is best understood as a historical artefact. These provisions are descended from earlier hate speech laws enacted in response to international obligations, particularly those arising from post-war efforts to

[400] There are, however, other laws that regulate speech generally, and may capture hate speech: see, for example Summary Offences Act 1981, s 4.

address racial discrimination and incitement to racial hatred. At the time these laws were first developed, race and ethnicity were the dominant lenses through which group-based harm was understood in international human rights law. Sexual orientation, gender identity, and sex characteristics were largely invisible within those frameworks.

However, the fact that hate speech law developed in a particular historical moment does not provide a principled justification for freezing its scope indefinitely. Anti-discrimination law elsewhere in the Human Rights Act has evolved to recognise new forms of disadvantage and vulnerability. Hate speech law, by contrast, has remained largely static. This has produced a situation in which legal protection against hate speech is disconnected from contemporary patterns of harm.

The exclusion of LGBTI+ people and lived experiences of harm

The exclusion of LGBTI+ communities from hate speech protections is especially striking given the prevalence of anti-LGBTI+ hate speech in Aotearoa New Zealand.

A stark illustration of this gap is the widely reported statement by a West Auckland pastor, who said during a sermon: "[m]y view on homo marriage is that the Bible never mentions it so I'm not against them getting married, as long as a bullet goes through their head the moment they kiss … Because that's what it talks about – not homo marriage but homo death."[401] Despite the explicit invocation of lethal violence, this speech did not fall within sections 61 or 131 of the Human Rights Act, solely because it targeted people on the basis of sexual orientation rather than race or ethnicity.[402] It was also not captured by other legislation that regulates speech more generally.[403] The law's response was therefore not that the speech was permissible because it was insufficiently serious, but that it was irrelevant to the hate speech framework altogether. This distinction matters. It sends a powerful signal about whose safety and dignity the law is prepared to protect.

Litigation and judicial recognition of the gap

The limited scope of hate speech law has been challenged through an anti-discrimination claim arguing that the omission of sexual orientation from section 61 constitutes unlawful discrimination under section 19 of the New Zealand Bill of Rights Act.

The Court of Appeal accepted that the exclusion amounted to differential treatment and therefore engaged section 19(1). In other words, the Court recognised that the legislative scheme treats LGBTI+ people differently by denying them protection afforded to others. However, the Court held that the omission did not amount to unlawful discrimination, relying on section 19(2), which permits measures designed

[401] Dubby Henry "West Auckland pastor preaches gay people should be shot" (15 August 2017) The New Zealand Herald <nzherald.co.nz>.
[402] Matt Burrows "'No criminal offence' committed by anti-gay Auckland pastor – police" (18 August 2017) Stuff <stuff.co.nz>.
[403] See, for example Summary Offences Act 1981, s 4.

to assist disadvantaged groups. On this reasoning, Parliament's choice to protect some groups from hate speech but not others was permissible.[404]

Crucially, though, the Court did not suggest that the outcome was satisfactory or just. It observed: "[i]n the circumstances we endorse the High Court's expression of sympathy for Mr Hoban, and agree with its observation that many in the community would be surprised that the comments made by the pastor were not unlawful under New Zealand law."[405]

This passage is significant. It reflects judicial acknowledgement that the law, while technically defensible, is out of alignment with contemporary community expectations and understandings of harm.

Free speech concerns and their limits in the New Zealand context

Proposals to expand hate speech protections inevitably raise concerns about freedom of expression. These concerns must be taken seriously, particularly given the historical importance of free speech to LGBTI+ liberation movements. Queer communities have relied on expressive freedom to challenge criminalisation, stigma, and silence. However, several clarifications are essential.

First, freedom of expression in New Zealand is not absolute. Section 14 of the New Zealand Bill of Rights Act protects expression, but section five expressly permits reasonable and demonstrably justified limits. This proportionality framework already governs defamation, suppression orders, advertising regulation, and existing hate speech laws. Second, much of the resistance to hate speech reform in Aotearoa New Zealand draws on American free speech absolutism, which is constitutionally and culturally distinct. The United States is an outlier in its near-categorical protection of even the most extreme forms of hate speech. Aotearoa New Zealand has never adopted that model. Third, comparative experience undermines the claim that narrowly framed hate speech laws necessarily lead to authoritarian outcomes. Jurisdictions such as the United Kingdom, Canada, Ireland, and several Australian states prohibit hate speech targeting sexual orientation and gender identity while maintaining robust democratic cultures. The real question is not whether hate speech should be regulated, but where the line is drawn and how carefully it is policed.

The case for reform: narrow, principled, and consistent with existing law

The case for extending hate speech protections to LGBTI+ communities does not require the creation of new, vague, or expansive speech offences. Nor does it require criminalising mere offence or controversial belief. A principled reform option would be to extend the existing section 61 framework to include sexual orientation, gender identity, and sex characteristics. This would:

- preserve the high threshold of "threatening, abusive, or insulting" speech;

[404] *Hoban v Attorney-General* [2025] NZCA 644.
[405] At [125].

- retain the requirement that the speech be likely to excite hostility or contempt; and
- maintain consistency with decades of jurisprudence.

Such an approach would place LGBTI+ communities on an equal footing with groups already protected, without expanding the scope of regulation beyond what Parliament has already accepted as legitimate. Importantly, this would not suppress theological belief, moral disagreement, or political advocacy. It would target only the most serious and socially corrosive forms of group-based vilification. However, this is not the only reform option. Indeed, it is necessary to have an independent review on hate speech laws in Aotearoa New Zealand, which may suggest alternative models.

The need for an independent review

While LGBTI+ inclusion is a pressing concern, it is unlikely to be the only group for whom current hate speech protections are inadequate. Disability, sex, and other characteristics may also warrant consideration.

For this reason, there is a strong case for an independent and expert-led review of hate speech laws as a whole. An organisation such as the Law Commission would be particularly well-suited to undertake such work, given its institutional expertise in rights balancing, public consultation, and principled law reform.

A comprehensive review could:

- assess the adequacy of existing thresholds;
- examine comparative models;
- evaluate New Zealand Bill of Rights Act compatibility; and
- recommend a coherent and future-proofed framework.

Family formation and recognition

Family law is one of the clearest examples of the difference between formal equality and lived equality for LGBTI+ people. Aotearoa New Zealand has made major gains in relationship recognition, yet many pathways to becoming (and being recognised as) a parent are still built around assumptions of heterosexual conception within a two-parent nuclear model. The result is that LGBTI+ people can form families, but often only through legal pathways that are slower, more expensive, more intrusive, or less secure than those faced by similarly situated heterosexual cisgender people.

This omnibus chapter highlights four linked clusters of issues: surrogacy law (including legal parentage), discrimination in fertility funding, limits in birth registration and parentage models (including the two-parent cap), and emerging demands for recognition of non-traditional family structures (chosen family and, potentially, polyamorous relationships).

Issues with surrogacy law

(a) The structural role of surrogacy for LGBTI+ family formation

Surrogacy is not marginal to LGBTI+ family formation. As the Law Commission explains, surrogacy provides intended parents with the opportunity to have a child when they are otherwise unable to; one key group includes "[p]eople who lack the sex characteristics to become pregnant", which explicitly includes male couples, single men, and some transgender people.[406]

The Law Commission's work is particularly valuable because it frames surrogacy not as an exceptional practice, but as a legitimate family formation pathway that requires coherent, child-centred, and rights-consistent regulation.

(b) The ECART approval bottleneck and the "slow and complex" pathway

New Zealand's regulatory architecture treats many aspects of surrogacy as a form of assisted reproductive practice requiring ethics approval. Under the Human Assisted Reproductive Technology Act 2004, assisted reproductive procedures that are not "established procedures" must be approved by the Ethics Committee on Assisted Reproductive Technology (ECART).[407] Here, a key practical divergence arises between traditional and gestational surrogacy. Traditional surrogacy arrangements often rely on artificial insemination (not an "established procedure") and therefore do not require ECART approval and can occur privately without a fertility clinic.[408] By contrast, gestational surrogacy usually involves in vitro

[406] Law Commission *Te Kōpū Whāngai: He Arotake / Review of Surrogacy* (NZLC R146, April 2022) at [2.19(b)].
[407] At [4.3].
[408] At [4.5].

fertilisation (an "established procedure") and therefore will usually require ECART approval.[409]

The Commission identified the central problem bluntly: the pathway is "slow and complex".[410] Compiling an ECART application typically requires counselling, legal advice, medical advice, and in-principle approval from Oranga Tamariki, and can take a long time; delays are exacerbated by resourcing constraints.[411] It also recorded other practical concerns, including the invasiveness of aspects of the process (notably the role of Oranga Tamariki under the Adoption Act 1955), the lack of independent appeal or review of ECART decisions, and the costs of compiling an application.[412]

For LGBTI+ intended parents, these problems can have compounding effects. Where surrogacy is used precisely because gestation is not possible for the intended parent(s), delays translate directly into postponed parenthood. Where intended parents are also navigating cross-border arrangements, immigration processes, or donor pathways, delay can become both financially and emotionally destabilising.

(c) Legal parentage: surrogacy treated as adoption rather than parentage

The parentage problem is the heart of the inequity. As the Commission states, Aotearoa New Zealand has no specific legal parenthood framework that reflects the unique relationships created by surrogacy; parties must instead rely on adoption to transfer parenthood from the surrogate (and any partner) to the intended parents.[413]

Legal parents are determined by the Status of Children Act 1969. The statutory expression of the gestational rule is found in this Act: the person who becomes pregnant and gives birth is the legal mother, even if the egg was donated by another person.[414] The surrogate's partner is also typically treated as a legal parent unless there is evidence they did not consent.[415] The intended parents are not legal parents even where the child is genetically related to one or both intended parents (unless the egg donor is the mother's partner at the time of conception; this enables lesbian couples to be registered as parents in the correct context).[416]

This structure is old and misaligned. The intended parents are the social and psychological parents from the outset, often the genetic parents, and the parents for whom the child is being brought into existence. Yet the law insists they must adopt their own child.

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[409] At [4.4]
[410] At [4.22].
[411] At [4.22].
[412] At [4.23].
[413] At [6.1].
[414] Status of Children Act 1969, s 17.
[415] ss 18 and 27.
[416] s 19. See also ss 20–22.

(d) Adoption as a disproportionate and intrusive pathway

The adoption pathway adds multiple layers of intrusion and delay. Before making an adoption order, the Family Court must obtain a report from an Oranga Tamariki social worker.[417] Adoption generally depends on the surrogate's consent, and consent cannot be given until at least 10 days after birth.[418]

The adoption overlay is especially burdensome for male couples because surrogacy is often the primary pathway by which two men can have a child genetically related to an intended parent. The law therefore routes gay male parenthood through an adoption framework that requires proof of "fitness", state scrutiny, and post-birth waiting periods. The adoption framework was not designed for this context.

(e) An endorsement for reform

I endorse the Commission's recommendation to move from an adoption- to a surrogacy-specific legal parentage mechanism, so intended parents can be recognised as legal parents through a process designed for surrogacy rather than through a framework designed for child placement.[419]

Discrimination in fertility funding

(a) Funding criteria and "social infertility"

Fertility treatment funding in Aotearoa New Zealand is allocated using the Clinical Priority Assessment Criteria system, which scores people against diagnostic and social criteria, and determines eligibility thresholds. In practice, diagnostic criteria tend to focus on "biological" or "organic" infertility, an approach that fits heterosexual couples with reproductive anatomy capable of conception but who cannot conceive, yet fits poorly for same-sex couples for whom the barrier to conception is not a pathology but anatomy and family structure.[420]

This criteria typically requires either clear biological causes of infertility; or failure to become pregnant after at least 12 cycles of donor insemination, of which six must occur in a certified clinic.[421] This creates a predictable "self-funding hurdle": a same-sex couple has to incur significant costs to demonstrate "infertility" through repeated donor insemination cycles, despite being structurally unable to conceive without assistance in the first place.[422]

Comparative experience shows this is not inevitable. Overseas challenges, including in the United Kingdom and the United States, have increasingly framed

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[417] Adoption Act 1955, s 10.
[418] s 7(7).
[419] Law Commission *Te Kōpū Whāngai: He Arotake / Review of Surrogacy* (NZLC R146, April 2022) at R17.
[420] At [10.101].
[421] Victoria Berquist and Gabrielle-Armstrong-Scott "The hidden tax on same-sex couples in NZ" (24 April 2023) stuff <stuff.co.nz>.
[422] See Laura Frykberg "'Outdated' laws for same-sex male couples who want a baby" (9 January 2024) TVNZ <1news.co.nz>.

such requirements as discriminatory because they impose burdens on same-sex couples that are not imposed on different-sex couples seeking publicly- (or privately-, in the case of the United States) funded fertility care. The broader policy direction in those jurisdictions has been to equalise eligibility criteria so that access is not mediated through heterosexual baselines.[423]

The Law Commission recorded a "common concern" that public funding for surrogacy-related fertility treatment is discriminatory[424] and observed that people who lack the sex characteristics to become pregnant (including male couples) cannot qualify under Clinical Priority Assessment Criteria for surrogacy-related fertility treatment.[425] It also stated the policy goal plainly: government funding for surrogacy and other fertility treatment should be "consistent and non-discriminatory".[426]

(b) The discrimination argument and section five justifications (and rebuttals)

The Human Rights Commission has observed that this the issue has not been tested in court.[427] This signals both uncertainty and opportunity. The funding settings raise a credible argument of indirect discrimination: criteria that appear neutral (requiring "biological infertility") disproportionately exclude those whose infertility is "social" (for example, same-sex couples), with a predictable and adverse impact on family formation opportunities.

As this is discrimination by the State, any limit would be assessed under section five of the New Zealand Bill of Rights Act: the Government would bear the burden of demonstrating that the limitation is a reasonable one, demonstrably justified in a free and democratic society. Likely justifications and rebuttals include:

- Scarce resources and prioritisation: the state may argue public funding is finite and must be allocated to those with medical infertility.

  Rebuttal: scarcity does not justify discriminatory criteria where alternative criteria could allocate resources fairly without excluding groups based on family structure. A prioritisation model can include "social infertility" while still controlling costs through scoring and caps, for example.

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[423] See "Same-sex couple issues judicial review against "discriminatory" IVF policy" (10 November 2021) Leigh Day <leighday.co.uk>; and Erin Kilbride "England To End LBQ+ Discrimination in Access to Fertility Services" Human Rights Watch <hrw.org>. See also *Berton v Atena Inc* (United States District Court, ND Cal, 2024) which was later settled: "CA Court Grants Preliminary Approval Guaranteeing Equitable Fertility Coverage for LGBTQ+ Families" (19 December 2025) National Women's Law Center <nwlc.org>.

[424] Law Commission *Te Kōpū Whāngai: He Arotake / Review of Surrogacy* (NZLC R146, April 2022) at [10.100].

[425] At [10.102].

[426] At [10.116].

[427] "Frequently Asked Questions" Human Rights Commission <tikatangata.org.nz>.

- Clinical effectiveness and safety: the state may argue the Clinical Priority Assessment Criteria is built around clinical indicators correlated with success rates (age, BMI and diagnostic categories).

  Rebuttal: many of those indicators can remain relevant regardless of couple type. The discriminatory element is not clinical scoring per se; it is the threshold requirement that assumes heterosexual intercourse is the default baseline for proving infertility.

- Administrative simplicity: the state may argue the system requires clear lines.

  Rebuttal: administrative simplicity is a weak basis for excluding entire groups from eligibility. Comparable jurisdictions have modified criteria to ensure that same-sex couples are not required to "self-fund into eligibility" simply because they cannot meet heterosexual-intercourse proof requirements.

(c) A principled reform

To ameliorate the issue, eligibility could be redefined so that "social infertility" (including same-sex couples) is recognised as a legitimate gateway into Clinical Priority Assessment Criteria scoring, rather than being excluded at the threshold. This preserves prioritisation while removing the discriminatory gate.

Birth certificates and parentage

(a) Current law and administrative practice: two-parent architecture

In Aotearoa New Zealand, the legal and administrative architecture of birth registration has historically assumed that a child's birth record (and resulting certificate) will reflect two parents. That model has become more inclusive in who can be recorded (for example, recognising same-sex parents), but it still operates as a largely two-parent framework in design and in everyday practice. The Births, Deaths, Marriages, and Relationships Registration Act 2021 requires the Registrar-General to register information about "the identity of the parent or parents" on a child's birth record, and it contemplates birth notification being undertaken by parents.[428] Even where the statutory language is capable of describing "parent or parents", the surrounding institutional assumptions, forms, and processes have tended to reflect the idea of two legal parents as the norm.

For LGBTI+ communities, the two-parent architecture matters because it sits uneasily with the diversity of contemporary family formation. It can fail to reflect the: biological and gestational realities in assisted reproduction; intentional parenting agreements that include more than two adults; and whānau-centred or

[428] s 12.

community parenting models where caregiving and parenthood are intentionally distributed beyond two people.

(b) The next frontier: more than two parents

The two-parent model is increasingly misaligned with how many families are formed in practice.[429] Assisted reproduction and collaborative parenting can involve configurations such as: a birth mother and her partner plus a known donor who is actively parenting; or two couples (a gay couple and a lesbian couple) intentionally co-parenting; or arrangements where a non-biological parent's role is socially and functionally indistinguishable from a legal parent's role.[430] These structures are not theoretical. They are foreseeable outcomes of modern reproductive technology, evolving kinship norms, and deliberate choices by many LGBTI+ people to form families in ways that depart from the nuclear template.

The problem with a hard two-parent limit is that it may prevent the law from recognising the full set of adults who actually provide parenting, financial support, stability, and identity formation. Where the state recognises only two parents, it can create avoidable gaps: a third (or fourth) parent may lack standing in healthcare decision-making, school engagement, travel consent, and day-to-day legal interactions. Those gaps can become acute during relationship breakdowns, bereavement, or conflict between adults. In short, the "two-parent" ceiling can operate as a legal mechanism for rendering some families partially invisible, even where the child's welfare would be better served by acknowledging the realities of their caregiving network.

(c) Comparative approaches and reform: targeted removal of the two-parent ceiling

Other jurisdictions have moved toward models that permit recognition of more than two legal parents in defined circumstances.

California's SB 274 authorises courts to recognise more than two legal parents where recognising only two would be "detrimental to the child."[431] The rationale seems to be child protection: where multiple adults have established parentage claims and separating a child from one would cause harm, the court is empowered to recognise the reality rather than force an artificial two-parent outcome.

British Columbia's Family Law Act provides for multi-parent recognition in assisted reproduction contexts where there is an agreement made before conception.[432] This approach is structured around intention and consent at the outset: it recognises

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[429] See generally Ruth Ballantyne "Legal Parentage "By Design": Reimagining Birth Certificates in Aotearoa New Zealand" (LLM Thesis, Victoria University of Wellington, 2019).
[430] See Paula Gerber and Phoebe Irving Linder "Modern Families: Should children be able to have more than two parents recorded on their birth certificates?" (2015) 5(1) Victoria University Law and Justice Journal 34.
[431] Senate Bill No. 274, Chapter 564 <leginfo.legislature.ca.gov>. The California Governor signed the Bill into law in October 2013: Patrick McGreevy and Melanie Mason "Brown signs bill to allow children more than two legal parents" (4 October 2013) Los Angeles Times <www.latimes.com>.
[432] Family Law Act SBC 2011 c 25, s 30.

that, in medically assisted conception, parentage is often a planned legal and social project rather than an inference from intercourse or birth alone.

These models matter for Aotearoa New Zealand because they show that "more than two parents" recognition need not be a radical rewriting of family law. It can be implemented through gateways that preserve certainty while preventing avoidable injustice. A credible reform direction is to explore the desirability of removing the two-parent limitation as a matter of birth registration design, and to do so in a way that is coherent with wider parentage law.

Legal recognition of chosen family

(a) Concept and origins: why "chosen family" matters for LGBTI+ communities

"Chosen family" is a term used to describe non-biological kinship bonds deliberately formed for mutual support and care, whether or not the law recognises them. The concept has particular salience for LGBTI+ communities because it captures a lived reality: many people rely on networks of friends, housemates, and community members for emotional support, caregiving, and practical survival. These networks can function like "family" in the ordinary sense, providing housing, financial support, accompaniment to medical appointments, care during illness, and end of life support, yet remain legally invisible in many systems that presume kinship must be traced through birth, marriage, civil union, or adoption.[433]

(b) The legal problem: when lived family is treated as legal strangers

The core legal difficulty is structural rather than symbolic. New Zealand's legal system distributes rights, responsibilities, and institutional standing through a set of "status gateways": spouse/partner, parent/child, guardian, next of kin, executor/administrator, for example. Where chosen family relationships do not map onto these gateways, the waters become murky.

(c) Comparative developments: courts recognising "family" beyond marriage

Recent comparative jurisprudence illustrates the direction of travel: courts increasingly acknowledge that "family" is not premised on marriage.

In India, litigation around marriage equality also generated broader claims about recognition of non-traditional families and the practical need to nominate trusted persons for key decisions. The Rituparna Borah petition (heard alongside other petitions by the Indian Supreme Court in the marriage equality case)[434] sought recognition of the right to nominate "any person" to make decisions in incapacity and to receive legal benefits, reflecting the reality that many queer people rely on support networks outside birth or marriage.[435] Further, in 2025, the Madras High

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[433] Trevor G Gates "Chosen Family" *SAGE Encyclopedia of Marriage, Family, and Couples Counseling* <sk.sagepub.com>.
[434] *Supriyo v Union of India* (2023) INSC 920.
[435] Rakshita Goyal and Shreyashi Ray "Why the Law Should Recognise Chosen Families" (7 July 2025) The Wire <thewire.in>.

Court, in *MA v Superintendent of Police* adopted an explicitly expansive view of "family", stating that marriage is not the sole way to found a family. It recognised the concept of "chosen family" within LGBTI+ jurisprudence.[436]

Although the legal and constitutional context differs from Aotearoa New Zealand, these developments are conceptually useful: they show family can be viewed as a functional category (care, interdependence, and shared life) rather than solely a formal category (recognised status).

(d) What recognition could look like in Aotearoa New Zealand

A credible reform agenda could proceed on two tracks.

First, a civil status pathway decoupled from romance. A dedicated regime could allow a person to register a designated person(s) for specified legal purposes, grounded in care, interdependence, or shared residence. This would address the key issue: if a network provides the care and safety expected of family, it should be capable, at least in limited domains, of being treated as family in law. The regime would not be a second marriage; it would be a targeted recognition mechanism. Crucially, it would be inclusive of arrangements that are common in queer communities (for example, two transgender friends providing mutual care, or a close friend acting as principal support where their family is unsafe). Romance, which is imbued in marriage and civil union regimes, would not be determinative.

Second, a system-wide adjustment to "family" entitlements. This approach is incremental but powerful: amending key statutes and policies that confer entitlements on "family" to also include nominated designated persons. Californian reforms provide an illustrative model. By allowing employment leave to care for a "designated person", California law acknowledges that caregiving relationships often extend beyond traditional kinship, and it reduces the dependence of basic social entitlements on formal status categories.[437] Even though this is an employment leave context, the underlying legislative technique is transferable: a person can name who counts, and the system respects that nomination for the purpose of specific rights and responsibilities.

Polyamorous legal recognition

(a) Concept and relevance for LGBTI+ communities

Polyamorous relationships are typically defined by consensual, ethical non-monogamy: participants knowingly agree that more than two people may be involved in emotionally and/or sexually intimate relationships, with transparency and consent as central norms. While polyamory is not exclusive to LGBTI+ communities, empirical research suggests that LGBTQ+ people are more likely than heterosexual cisgender people to engage in consensually non-monogamous

[436] *MA v Superintendent of Police* (High Court of Judicature at Madras, 22 May 2025) at [8].
[437] AB-1041 (2022) <leginfo.legislature.ca.gov>.

relationship structures.[438] This higher prevalence makes the question of legal recognition and protection particularly salient in an LGBTI+ legal futures context.

The relevance concerns the legal consequences that flow from non-recognition. Where the law assumes that intimate life is organised around couples, those who live outside that model may encounter systematic gaps in protection. These gaps can become acute during relationship breakdown, illness, or death.

(b) Comparative developments: incremental recognition without "marriage"

Globally, most jurisdictions do not permit marriages or civil unions involving more than two people. However, some legal systems have experimented with limited forms of recognition. In Brazil, for example, notary acts have been used to record three-person unions, recognising them for certain legal purposes without redefining marriage as such.[439] In Colombia, a three-person relationship between men was formalised through what was described as a "special patrimonial union", explicitly acknowledging the parties as a family and as each other's legal partners, while maintaining that marriage under domestic law remains a two-person institution.[440] These developments illustrate a recurring pattern: legal systems may be willing to recognise economic interdependence and caregiving obligations among more than two adults, even while resisting symbolic redefinition of marriage.

(c) Current position in Aotearoa New Zealand

New Zealand law is structurally committed to a two-person model of formal intimate relationships. Bigamy remains a criminal offence under section 205 of the Crimes Act 1961, and marriages or civil unions involving more than two people cannot be solemnised domestically. At the same time, the law recognises that family forms are more complex than this binary suggests, and limited accommodation already exists.

Under the Family Proceedings Act 1980, polygamous marriages entered into overseas may be recognised for certain purposes "where the law of the country in which each of the parties is domiciled at the time of the union then permits polygamy".[441] This recognition is narrow and pragmatic, but it demonstrates that New Zealand law can, in some contexts, acknowledge multilateral relationships without endorsing their formation domestically.

The most significant domestic development is the Supreme Court's decision in *Paul v Mead* which addressed the application of the Property (Relationships) Act 1976

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[438] See Fabio Cannas Aghedu, Martin Blais, Léa J Séguin and Isabel Côté "Romantic relationship configurations and their correlates among LGBTQ+ persons: A latent class analysis" (2024) PLoS One 19(9): e0309954.
[439] María Martín "Las tres novias que desafían el modelo de 'familia tradicional brasileña'" (26 October 2015) El Pais <elpais.com>.
[440] Sibylla Brodzinsky "Colombia legally recognises union between three men" (3 July 2017) The Guardian <theguardian.com>.
[441] See Family Proceedings Act 1980, s 2 definition of "marriage".

(PRA) to a polyamorous relationship. While the Court confirmed that a three-person relationship could not itself constitute a single qualifying relationship under the PRA, it also held that a de facto relationship need not be exclusive. The Court reasoned that within a throuple, there may exist multiple qualifying relationships, each capable of engaging the PRA.[442] This approach avoids outright exclusion, but it also reveals doctrinal strain: polyamorous families are effectively forced into a series of overlapping couples, even where the lived reality is collective rather than bilateral.

(d) The utility and demand for reform

The central question for law reform is whether the absence of legal tools recognising polyamorous relationships creates foreseeable and unjustified harm. In areas such as parental responsibility, existing frameworks can produce outcomes that fail to reflect contribution, reliance, or the best interests of children. For example, where three adults jointly raise a child, the two-parent limitation in parentage may leave one caregiver legally marginalised, despite their substantive role in the child's life.

This is an emerging demand that I have not heard much about in Aotearoa New Zealand; I learnt about it in the United States.[443] Polyamory is eclectic, encompassing arrangements that range from relatively informal to highly structured. Any reform agenda would need to be attentive to variety and community demand.

[442] *Paul v Mead* [2023] NZSC 70.
[443] See, for example "Poly Families Project" Chosen Family Law Center <chosenfamilylawcenter.org>.

Intersex legal issues

Intersex legal issues occupy a distinct place within LGBTI+ legal futures. While often grouped within broader sex and gender debates, intersex concerns raise unique questions of bodily integrity, consent, medicine, and data governance, many of which arise at the earliest stages of life and persist across decades. This thematic area therefore focuses on three interconnected domains: medical interventions, data collection, and legal gender recognition.

Across all three domains, a common thread emerges: decisions made on behalf of intersex people, often without their consent, can have irreversible legal, medical, and personal consequences, and current legal frameworks struggle to provide either adequate prevention or effective remedies.

Medical interventions on children with innate variations of sex characteristics

(a) The contested medical landscape

The current approach to medical treatment of infants and children with innate variations of sex characteristics is opaque, contested, and unevenly regulated. On one hand, expressed by many intersex community experts and researchers, medical interventions, particularly irreversible surgical interventions, continue to occur too frequently and in circumstances where they are not medically necessary.[444]

Professional consensus remains fragile: divergent views exist on medical necessity depending on the type of variation, the nature of the intervention, and beliefs about the benefits of early surgery.[445] This lack of consensus matters legally. Where medical necessity is uncertain and professional opinion is divided, reliance on clinical discretion alone becomes increasingly difficult to reconcile with principles of bodily autonomy, informed consent, and child rights.

(b) What the data reveals, and what it does not

Available data complicates the picture. Ministry of Health data indicates that, between 2015 and 2019, an average of 563 children under the age of 10 underwent surgery on their genital or reproductive organs each year.[446] This data is general,

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[444] See, for example Claire Breen and Katrina Roen "The Rights of Intersex Children in Aotearoa New Zealand: What Surgery is being Consented to, and Why?" (2023) 31 Int J Child Rights 533; Human Rights Commission *Prism: Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Aotearoa New Zealand – A report with recommendations* (June 2020) at 41–42; and Intersex Aotearoa *Thematic Report to the United Nations Committee on the Rights of the Child* (August 2022).

[445] See Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025) at [17.13]-[17.14].

[446] Claire Breen and Katrina Roen "The Rights of Intersex Children in Aotearoa New Zealand: What Surgery is being Consented to, and Why?" (2023) 31 International Journal of Children's Rights 533 at 537.

not disclosing the specific nature of the procedures, the underlying diagnoses, or the clinical rationale. In 2020, the Government stated that seven children with an "intersex condition" had undergone "limited surgery" since 2014, all of which was said to address a specific functional problem and not involve sex assignment or reassignment.[447]

(c) Human rights objections and community demands for prohibition

In response to these concerns, intersex organisations and advocates in Australia and Aotearoa New Zealand issued a joint consensus statement in 2017 calling for the immediate prohibition, as a criminal act, of deferrable medical interventions, including surgical and hormonal interventions, which alter sex characteristics of infants and children without their personal consent.[448]

The statement does not oppose all medical treatment. Rather, it draws a principled distinction between: strictly necessary and urgent interventions required to protect life or physical health and deferrable interventions aimed at normalising bodies or reinforcing social expectations of male and female anatomy.

Advocates emphasise several recurring concerns:[449]

- many interventions are not medically necessary;
- some interventions are driven by social or cosmetic norms, rather than health needs;
- interventions can result in lifelong physical and psychological harm; and
- childhood interventions are often accompanied by secrecy, incomplete disclosure, and loss of access to information later in life.

(d) International human rights scrutiny

International human rights bodies have repeatedly criticised New Zealand's approach. Multiple United Nations treaty monitoring committees have called for the legislative prohibition of unnecessary medical interventions on intersex children.[450]

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[447] *Seventh periodic report submitted by New Zealand under article 19 of the Convention pursuant to the simplified report procedure* UN Doc CAT/C/NZL/7 (16 March 2020) at [329].
[448] InterAction *Darlington Statement* (10 March 2017) <interaction.org.au>.
[449] See generally Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025) at 392–394.
[450] United Nations Committee on the Rights of the Child *Concluding observations on the fifth periodic report of New Zealand* UN Doc CRC/C/NZL/CO/5 (21 October 2016) at [25(b)]; United Nations Committee on the Elimination of Discrimination against Women *Concluding observations on the eighth periodic report of New Zealand* UN Doc CEDAW/C/NZL/CO/8 (25 July 2018) at [24(c)]; United Nations Committee on the Rights of Persons with Disabilities *Concluding observations on the combined second and third periodic reports of New Zealand* UN Doc CRPD/C/NZL/CO/2-3 (26 September 2022); United Nations Committee on the Rights of the Child *Concluding observations on the sixth periodic report of New Zealand* UN Doc CRC/C/NZL/CO/6 (28 February 2023); and United Nations Committee against Torture *Concluding Observations on the seventh periodic report of New Zealand* UN Doc CAT/C/NZL/CO/7 (24 August 2023) at [53]–[54].

These critiques consistently link intersex medical interventions to obligations under international human rights law. The repeated nature of these recommendations signals that this is not a marginal issue of clinical discretion, but a structural human rights concern.

(e) Existing legal protections and their limits

(1) Right to refuse medical treatment

Section 11 of the New Zealand Bill of Rights Act affirms the right to refuse medical treatment. Participants at the 2016 Intersex Roundtable acknowledged that medically unnecessary interventions on intersex infants raise serious questions under this provision.[451]

The Law Commission has similarly observed that medical interventions on intersex minors have implications for human rights, and that the New Zealand Bill of Rights Act's right to refuse treatment may be implicated.[452] However, the right's practical operation is limited in this context: infants cannot exercise refusal, and parental consent operates in a context shaped by medical authority, incomplete information, and social pressure.

(2) Freedom from discrimination and analogies with female genital mutilation

A further legal dimension arises under the right to freedom from discrimination.[453] The Crimes Act 1961 criminalises female genital mutilation, explicitly providing that consent is not a defence.[454] However, the offence does not apply to medical or surgical procedures, including "sexual reassignment" procedures, performed by medical practitioners for the benefit of physical or mental health.[455]

This creates a troubling asymmetry. Irreversible genital interventions are criminalised for some bodies regardless of consent, while similar interventions on intersex infants remain lawful.

Comparative constitutional litigation is useful here. In Canada, Egale (a LGBTI+ rights organisation) and intersex scholars Morgan Holmes and Janik Bastien-Charlebois have challenged Criminal Code exemptions that permit intersex genital surgeries while criminalising female genital mutilation. The challenge argues that these exemptions violate rights to liberty, security of the person, freedom from cruel and unusual treatment, and equality under the Canadian Charter. Central to

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[451] Human Rights Commission *Intersex Roundtable Report 2016: The practice of genital normalisation on intersex children in Aotearoa New Zealand* (November 2016) at 3.
[452] Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC 150, August 2025) at [17.66].
[453] New Zealand Bill of Rights Act 1990, s 19.
[454] Crimes Act 1961, s 204A.
[455] s 204A(3).

the argument is that intersex children are denied protections afforded to others purely because their bodies do not conform to normative expectations of sex.[456]

A similar argument is available in Aotearoa New Zealand, grounded in sections nine (freedom from cruel treatment), 11 (refusal of medical treatment), and 19 (freedom from discrimination) of the New Zealand Bill of Rights Act. The absence of explicit legislative protection does not foreclose the possibility that some interventions are already inconsistent with these rights.

(f) Legislative reform options: restricting deferrable interventions

One legislative model is provided by reforms in the Australian Capital Territory (ACT). ACT legislation defines sex characteristics and variations, specifies which procedures are restricted, and establishes a formal approval process for proposed treatments.[457] It also contains a regulation-making power allowing specific variations to be excluded from the regime where appropriate.[458]

This approach has several advantages: it draws clear statutory lines between permissible and restricted interventions, it allows urgent or life-saving treatment to proceed without delay, it introduces independent oversight rather than sole reliance on clinician discretion, and it provides flexibility to respond to evolving medical evidence. Aotearoa New Zealand could adopt this model.

(g) Work already underway, and its limits

In 2022, the Government announced funding for a rights-based approach to intersex healthcare, including updated clinical guidance and peer support. This work is ongoing.[459] While welcome, guidance alone may be insufficient. Its effectiveness will depend on whether it contains clear and enforceable standards; if breaches give rise to consequences through existing mechanisms (such as the Health and Disability Commissioner or the Medical Council); and if affected individuals have realistic pathways to redress. Without an enforcement mechanism, guidance risks reproducing the very problem it seeks to address: continued variability in practice with limited accountability.

Data collection, retention, and access

(a) Structural barriers to accessing medical records

Concerns about data collection, retention, and access are not secondary to intersex legal issues; they are central to the ability of intersex people to understand, contest, and recover from medical interventions performed on their bodies. Intersex groups have consistently raised that many intersex people face significant difficulty

[456] "Egale Canada, Morgan Holmes and Janik Bastien-Charlebois v. Canada (A.G.)" Egale <egale.ca>.
[457] Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023 (ACT).
[458] Variation in Sex Characteristics (Restricted Medical Treatment) Regulation 2023 (ACT), reg 3.
[459] "Government boosts funding for rainbow and intersex health services" (5 June 2022) RNZ <rnz.co.nz>.

accessing their medical records, including cases where records are incomplete, inaccessible, or reported to have been destroyed.[460]

These barriers are particularly acute given that many intersex variations are not externally visible and not disclosed, meaning that individuals often only discover they are intersex later in life, commonly during puberty, family formation, or unrelated medical care. Where records are unavailable or fragmented, individuals are left without basic information about what procedures were performed, the clinical justifications relied upon, whether alternatives were considered, the nature and extent of any irreversible changes and potential long-term health implications.

(b) Existing legal obligations, and why they are insufficient in practice

Aotearoa New Zealand already has a framework governing health information:

- Rule six of the Health Information Privacy Code provides that individuals are entitled to access health information held about them, subject only to narrow withholding grounds (for example, serious risk to wellbeing).[461]
- The Health (Retention of Health Information) Regulations 1996 require health records to be retained for a minimum of 10 years from the last date of treatment.[462]
- The Public Records Act 2005, administered by Archives New Zealand, applies to public health records and requires district health boards (now Health New Zealand entities) to retain paediatric health records for at least 20 years from the date of care or until the child reaches 25.[463]

Despite this framework, intersex experiences demonstrate that retention rules do not necessarily translate into effective access. Several structural factors undermine their effect: minimum retention periods may expire before an intersex person becomes aware of their variation, records may be dispersed across multiple providers, facilities, or legacy systems following health system restructures, records may be technically retained but practically inaccessible, poorly indexed, or unintelligible without specialist interpretation, and past clinical cultures of secrecy and non-disclosure mean that records, even where available, may omit critical contextual information or use misleading language. In short, compliance with baseline retention obligations does not ensure that intersex people can meaningfully exercise their right to know what was done to their bodies.

(c) Data governance as a human rights issue

From a human rights perspective, access to medical records is not merely an administrative entitlement; it is a precondition for the exercise of multiple

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[460] See generally Vanessa Blackwood "Handling health information of intersex individuals" (2 March 2018) Office of the Privacy Commissioner <privacy.org.nz>.
[461] See Privacy Act 2020, s 49.
[462] reg 5.
[463] Vanessa Blackwood "Handling health information of intersex individuals" (2 March 2018) Office of the Privacy Commissioner <privacy.org.nz>.

substantive rights. Where individuals cannot access accurate information about irreversible medical interventions performed in childhood, their ability to pursue accountability, through complaints mechanisms, professional discipline, or litigation, is significantly impaired. In this sense, poor data governance operates as a secondary rights violation.

(d) The case for enhanced retention and access obligations for intersex-related interventions

Given the distinctive features of intersex-related medical care, there is a strong case for enhanced and tailored data governance rules. Possible reform options include:

- Extended retention of records relating to intersex variations and any associated medical interventions, recognising that relevance may only emerge decades later.
- Mandatory flagging of intersex-related records within public health systems to ensure continuity and retrievability.
- Proactive disclosure obligations, requiring health providers to inform individuals, at an appropriate age, of the existence of relevant records and their right to access them.

(e) Data collection, accountability, and future oversight

Finally, improved data governance is essential not only for individual rights, but also for systemic accountability. Current aggregate data, such as procedure counts, lack sufficient specificity to support informed public debate or regulatory oversight. Without clearer information about: the types of procedures performed, the ages at which they occur, the clinical rationales invoked, and the availability of non-surgical alternatives, it is difficult to assess whether stated shifts in clinical practice are occurring in reality.

A future-focused framework should therefore pair individual access rights with transparent, anonymised, and disaggregated reporting on intersex-related interventions. This would support evidence-based policy, enable monitoring of compliance with clinical guidance, and reduce reliance on conflicting data.

Intersex legal gender recognition

(a) Caution against mandatory "intersex" classification at birth

International consensus does not support the mandatory registration of newborns as "intersex". The Darlington Statement cautions that such classification can reinforce stigma and incentivise unnecessary surgery.[464] The Human Rights Commission has similarly warned that third category registration at birth risks

[464] InterAction *Darlington Statement* (10 March 2017) <interaction.org.au>.

implying that intersex people are not "real" men or women, and may encourage early interventions to avoid the label.[465]

(b) Self-identification and community demand

At the same time, it is clear that some intersex people do identify their sex as intersex, particularly those who conceptualise intersex legal personhood as a political and personal identity.[466] One possible way to reconcile these positions is to make an "intersex" sex marker available only through a self-identification process later in life, rather than at birth.

This would require amendments to the Births, Deaths, Marriages, and Relationships Registration (Registering Nominated Sex) Regulations 2023. Another option may be found in the legal gender recognition regime of Victoria, Australia. There, people are afforded a large degree of autonomy in expressing their gender identity when requesting an alteration of their sex marker. This includes the ability to select options beyond the binary categories of "male" and "female." The only sex markers that are prohibited are those that are "obscene or offensive" or "that could not practicably be established by repute or usage— (i) because it is too long; or (ii) because it consists of or includes symbols without phonetic significance; or (iii) for some other reason".[467]

[465] Human Rights Commission *Prism: Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Aotearoa New Zealand – A report with recommendations* (June 2020) at 33.
[466] See *Registrar-General of Births, Deaths, Marriages and Relationships v Nelson* [2022] NZFC 3065.
[467] Births, Deaths and Marriages Registration Act 1996 (V), s 4(1) definition of "prohibited sex descriptor".

Legal gender recognition

The current legal framework

Legal gender recognition in Aotearoa New Zealand is now governed by the Births, Deaths, Marriages, and Relationships Registration Act 2021. The Act represents a significant shift in approach, replacing a medicalised and judicially mediated model of legal gender recognition with a self-identification regime. People born in New Zealand may amend the sex marker on their birth certificate by making a statutory declaration affirming their gender identity, without the need for Family Court intervention. This reform aligned Aotearoa New Zealand with emerging international best practice and responded directly to long-standing critiques from gender-diverse communities about the harms caused by pathologisation, delay, and gatekeeping. The move to self-identification was both symbolically and practically transformative.

However, the scope of that transformation is uneven. While the Births, Deaths, Marriages, and Relationships Registration Act 2021 significantly improved legal gender recognition for people born in Aotearoa New Zealand, it simultaneously removed an existing pathway that had enabled some people born overseas to obtain legal recognition of their sex in New Zealand.

Removal of the Declaration as to Sex process

Prior to the 2021 reforms, New Zealand permanent residents and citizens who were born overseas could apply to the Family Court for a Declaration as to Sex.[468] This mechanism was extended to permanent residents by the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008.[469] Although imperfect, the process provided an avenue for overseas-born transgender, non-binary and intersex people to obtain a New Zealand court order affirming their sex.

The Births, Deaths, Marriages, and Relationships Registration Act 2021 abolished this pathway without replacing it with a functional alternative for people born overseas. As a result, from mid-2023 onwards, overseas-born transgender, non-binary and intersex people lost their only formal mechanism for obtaining a New Zealand legal determination of sex, unless and until the Government creates a new process. This gap is not merely procedural. Legal gender recognition operates as a gateway to usable identity documents, and the absence of a recognition pathway has cascading effects across immigration status, access to services, employment, housing, healthcare, and personal safety.

Disproportionate impacts on people born overseas

The exclusion of overseas-born people from legal gender recognition has its most acute effects on transgender, non-binary and intersex asylum seekers, refugees,

[468] Births, Deaths, Marriages, and Relationships Registration Act 1995, s 28.
[469] Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008, s 15.

and migrants. As documented extensively by Rainbow Path (a peer support and advocacy network for LGBTQIA+ asylum seekers and refugees living in Aotearoa New Zealand), many such individuals arrive in Aotearoa precisely because they have fled persecution based on gender identity or sex characteristics. In these circumstances, it is often impossible or unsafe to amend identity documents in their country of origin.[470]

Rainbow Path describes how the absence of a recognised New Zealand identity document with a correct name and gender marker exposes people to repeated outing, harassment, and exclusion when they are required to prove their identity or eligibility for services.[471] Government agencies and service providers may refuse documents due to inconsistencies between name, gender marker, photo, and appearance; require multiple documents with identical details; or reject documents such as Certificates of Identity or Refugee Travel Documents altogether.[472] The risks are compounded by the fact that identity verification is ubiquitous in daily life. Access to healthcare, banking, education, employment, housing, and age-restricted consumer goods routinely requires photo ID that is widely recognised and internally consistent. When identity documents do not align with a person's gender expression, the result is not only administrative inconvenience but tangible exposure to discrimination.

Government commitments and retrenchment

During the passage of the Births, Deaths, Marriages, and Relationships Registration Act 2021, the Government acknowledged the exclusion of people born overseas and committed to further work to develop a solution. That commitment was reiterated publicly.[473] However, in April 2023, this work was formally deferred, leaving overseas-born transgender, non-binary and intersex people in a legal vacuum. As Rainbow Path has observed, this deferral entrenches a two-tier system of legal gender recognition: full self-identification for those born in Aotearoa New Zealand, and no functional pathway at all for those born elsewhere.[474]

Reform proposals from the community

Rainbow Path has articulated a set of coherent and pragmatic reform proposals grounded in lived experience. These include: extending the right to amend name and gender marker to asylum seekers once they lodge refugee claims, recognising the acute vulnerability at this stage; extending the same right to all transgender, non-binary and intersex migrants ordinarily resident in Aotearoa, including those on

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[470] *Submission by Rainbow Path to Te Tari Taiwhenua | The Department of Internal Affairs on the public discussion document in relation to the self-identification regulations and registering gender for people born overseas* at 9.
[471] At 2.
[472] At 18–20.
[473] "Government fails to provide gender recognition for trans and intersex people born overseas" (April 2023) Rainbow Path <rainbowpathnz.com>.
[474] "Government fails to provide gender recognition for trans and intersex people born overseas" (April 2023) Rainbow Path <rainbowpathnz.com>.

temporary visas such as student or work visas; and enabling amendments to all official New Zealand-issued primary identity documents and records, including Immigration New Zealand visas, so that recognition is system-wide rather than piecemeal.[475]

These proposals reflect an understanding that legal gender recognition is only meaningful if it produces usable and authoritative identity documents that can be relied upon across government and society.

Legal dimensions: identity, discrimination, and non-discrimination

(a) Usable identity as a precondition for rights

Legal gender recognition is not merely about personal status; it is about legal legibility. Without a recognised identity document, individuals are functionally excluded from full participation in social, economic, and civic life. This is particularly acute for people born overseas, for whom New Zealand-issued documents must often substitute for inaccessible or dangerous overseas records.

The Births, Deaths, Marriages, and Relationships Registration Act 2021 already recognises that Aotearoa New Zealand may issue birth certificates in certain circumstances to people born overseas. For example, in cases of overseas adoption.[476] This undermines any claim that the Government is unable to create authoritative identity documents for people not born within its territory.

(b) Discrimination on the basis of national origin

The status quo in relation to the lack of legal gender recognition for people born overseas raises important anti-discrimination concerns. Section 19 of the New Zealand Bill of Rights Act and Part 1A of the Human Rights Act prohibit discrimination by the Government on the ground of national origin.

The removal of the Declaration as to Sex process, combined with the failure to provide an alternative system to overseas-born people, arguably imposes a differential burden on transgender, non-binary and intersex people born overseas based on place of birth. That burden is not incidental; it strikes at dignity.

Comparative jurisprudence supports this analysis. In a recent Canadian case concerning article 71(3) of the Civil Code of Québec, the Superior Court of Québec held that excluding non-citizens from changing their sex designation and name constituted discrimination contrary to the Canadian Charter. The Court emphasised that denying non-citizens access to accurate identity documents perpetuated disadvantage, reinforced stereotypes, and impeded full participation in society. Importantly, the court rejected justifications based on administrative convenience,

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[475] *Submission by Rainbow Path to Te Tari Taiwhenua | The Department of Internal Affairs on the public discussion document in relation to the self-identification regulations and registering gender for people born overseas* at 23.

[476] See Births, Deaths, Marriages, and Relationships Registration Act 2021, s 33 and 78; and Ministry of Justice *Adoption in Aotearoa New Zealand: Discussion document* (June 2021) at 35.

public security, and international law, finding no rational connection between citizenship status and the objectives claimed.[477]

The parallels with the New Zealand context are striking. Like Québec, Aotearoa New Zealand has already demonstrated administrative capacity to recognise legal gender changes. The decision to exclude overseas-born people therefore appears to be a policy choice, not a necessity.

(c) Justification

Because this exclusion arises from government action, it would be subject to the justified limitations test under section five of the New Zealand Bill of Rights Act. Several factors suggest that justification may be difficult to establish:

- A previous legal mechanism (Declaration as to Sex) already existed for overseas-born people.

- Aotearoa New Zealand already issues identity documents to people born overseas in other contexts.

- The argument that people go back to their country of origin to change the sex markers on their original birth certificates (if they have one) has been rejected elsewhere[478] and is not plausible given that many countries do not enable this process, and many refugees and asylum seekers have fled their countries of origin precisely on the basis of them being transgender, non-binary or intersex.

- The common justifications advanced in comparable jurisdictions: administrative stability, public security, and international consistency, have been rejected elsewhere and are weak in the light of modern identity systems.

Taken together, these factors suggest that the current framework is ripe for legal challenge, particularly where claimants can demonstrate concrete harm arising from the inability to obtain usable identity documents.

[477] *Centre for Gender Advocacy v Attorney-General of Québec* 2021 QCCS 191, 481 CRR (2d) 273.
[478] *Rana v Hungary* (2020) ECHR 40888/17.

Healthcare legal issues

This thematic area is an omnibus chapter: it draws together several distinct but connected legal issues affecting LGBTI+ health outcomes and access to care. The unifying theme is that health inequity is often produced indirectly: through insurance design, immigration settings, and institutional gatekeeping.

Access to health insurance for transgender people

(a) The nature of the issue

The Petition of Elizabeth Poucher, considered by the Finance and Expenditure Committee in August 2020, provides an unusually clear evidentiary account of how private health insurance exclusion works in practice for transgender people in Aotearoa New Zealand.[479]

The petition sought a parliamentary inquiry into the availability of health insurance coverage for "transgender-specific care such as gender reassignment surgery or any care related to transitioning", with the aim of improving accessibility and reducing pressure on the public system. The petitioner's framing was explicitly systemic: gender reassignment surgery is funded through the public High Cost Treatment Pool, but waitlists were long and growing; alternative pathways via insurance could relieve pressure.

(b) Exclusion is not confined to surgery

A crucial contribution of the petition is that it documents the practical reality that "transgender exclusions" are often not limited to gender reassignment surgery or gender-affirming services. Poucher told the Committee that her insurer excluded "her transition or any condition related to it" such that "there is little for which she can claim", and that this pattern affects others who transition later in life: people can effectively lose the protection their health insurance previously afforded.

The petition records that uninsured or excluded costs include transition medication; treatment for complications linked to hormone replacement therapy (including breast cancer); treatment likely to be affected by gender reassignment surgery; and routine gendered screening such as pap smears. It also notes that care associated with sex assigned at birth (for example, prostate examinations) may be "not covered or are difficult to obtain" once a person is treated as falling under a broad "transition-related" exclusion category.

That evidentiary detail matters for legal framing. It shifts the issue from 'should insurers fund expensive elective procedures?' to a more fundamental equality question: 'are transgender policyholders being denied coverage for routine healthcare needs that similarly situated non-transgender policyholders receive?'

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[479] *Petition of Elizabeth Poucher: Insurance coverage for transgender people – Report of the Finance and Expenditure Committee* (August 2020).

Poucher's evidence directly characterised industry practice as a "blanket exclusion of coverage to transgender people" and a form of discrimination, emphasising that transgender people are seeking "only the same standard of care as that enjoyed by everyone else".

(c) Human Rights Commission guidance and exploration

One way that the issue could be resolved is through issuing guidance from the Human Rights Commission clarifying that blanket exclusions of "transition-related care" may amount to unlawful discrimination, particularly where they operate to deny transgender policyholders coverage for routine healthcare that non-transgender policyholders receive.[480]

This would not automatically mandate coverage of all gender-affirming procedures. The point is not to force insurers to offer every benefit; it is to prevent exclusions that function as a de facto denial of standard healthcare coverage to transgender people. Insurers would be required to narrow and justify exclusions. "Transition-related" would no longer operate as a catch-all category that sweeps in unrelated or routine care. It would encourage a more careful product design approach: if an insurer wishes to exclude specific procedures, it must define them precisely and avoid collateral exclusion of routine services.

Blanket exclusions would also seem not to accord to the insurance exception in the Human Rights Act that may apply to transgender people. That exception details that insurers must rely on reasonable actuarial or statistical data, or reputable medical or actuarial advice, and any differential treatment must be reasonable in the circumstances.[481] The Act also empowers the Human Rights Commission to require justification for reliance on such data and to seek independent actuarial views.[482] This oversight mechanism may provide a meaningful pathway for reform. It creates an opportunity to test whether current insurance practices are genuinely grounded in up-to-date medical evidence, or whether they reflect outdated assumptions. Should the data, advice or opinions which ground the different treatment not be reasonable, recourse to human rights adjudication may be available, should be a willing, affected and contextually-suited plaintiff be found.

International students' access to LGBTI+ healthcare

(a) The structural problem: visa-linked insurance and institutional gatekeeping

International students in Aotearoa New Zealand are required to hold private health insurance, and universities and other providers often control which insurer(s) or policy types are "approved". The law requires universities and other providers, "as far as practicable", to ensure international tertiary learners have appropriate

[480] The Human Rights Commission is empowered to make such guidance: Human Rights Act 1993, s 5(2)(e).
[481] Human Rights Act 1993, s 48(1)(a).
[482] s 48(2).

insurance covering travel, medical care (including diagnosis, prescription, surgery, and hospitalisation), repatriation and expatriation, and death-related costs.[483]

This creates a gatekeeping architecture: the state requires insurance, institutions operationalise that requirement, and insurers design products around institutional requirements. Where products exclude or effectively deter access to sexual health services, the burden falls on students, often those least able to navigate complex systems.[484]

(b) LGBTI+-specific inequities: sexual health services, PrEP, and privacy

Some student plans do not cover (or make practically difficult) key sexual and reproductive health services that have disproportionate importance for LGBTI+ students, including PrEP (pre-exposure prophylaxis; medicine taken by HIV-negative individuals to prevent contracting HIV) and related sexual health consultations and testing.

Even where services are technically available, international students can face financial barriers (paying far more than residents for prescriptions and care pathways) and privacy barriers, because relying on family-linked overseas insurance, home-country funding, or non-discreet billing can risk outing a student's sexual orientation or HIV-risk status.

From a human rights perspective, the most important point is that these are not just "consumer choice" problems. They are structurally produced by mandatory insurance, limited product choice and institutional approval which create a foreseeable risk of inequitable coverage.

(c) Reform is necessary

One way to address this issue is by amending student visa instructions so that any health insurance policy accepted for student visa purposes must meet prescribed minimum benefit standards, including coverage of specified sexual and reproductive health services (for example, a defined pathway for PrEP-related consultations and prescriptions, and baseline sexual health services).

This shifts the onus onto insurance providers and universities: students would no longer have to decode policy wording to find out whether PrEP is covered, insurers must design products that satisfy minimum standards if they want their policies to be visa-compliant, and non-compliant products cannot be marketed as "acceptable for student visas". This would be operationalised by amending the Code of Practice. The Code already positions education providers as responsible for ensuring "appropriate" insurance. Reform would simply clarify what "appropriate" means in a modern and equity-focused setting.

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[483] Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021, cl 44.
[484] See "Rainbow Law students fight for health equity" (3 February 2023) University of Auckland <auckland.ac.nz>.

Ban on puberty blockers for new patients

(a) The legal instrument and its scope

In late 2025, regulations were made to restrict prescribing of gonadotropin-releasing hormone (GnRH) analogues (puberty blockers) for the treatment of gender incongruence or gender dysphoria for new patients, while preserving access for other indications (such as precocious puberty, endometriosis, and prostate cancer), and allowing continuation for those already prescribed prior to commencement.[485]

(b) Litigation and the "non-enforcement" declaration

The Professional Association for Transgender Health Aotearoa (PATHA) challenged the validity of the regulations. The High Court declined interim orders suspending the regulations but declared that the Government should take no steps to enforce the regulations pending determination of the substantive judicial review, which is set down for May 2026. This was affirmed by the Court of Appeal. The regulations raise a variety of legal issues. The procedural dimensions are already well covered by the PATHA judgments, so what follows focuses on the anti-discrimination dimension.

(c) The discrimination argument (and why it is unusually strong)

The High Court itself acknowledged the discrimination concern in succinct terms, noting an "argument that it is discriminatory" because puberty blockers are regarded as sufficiently safe for precocious puberty (where patients start earlier and remain longer), and the bone density concerns "do not apparently justify a ban […] generally but only when used for gender dysphoria or gender incongruence."[486]

That observation points to the core non-discrimination logic. The restriction is indication-specific: it targets one clinical purpose (gender dysphoria and gender incongruence) while leaving the same medicines available for other purposes. The affected group is transgender youth. If the asserted safety concerns apply to the medicine, then permitting broader or longer use for other indications weakens the claim that a categorical restriction is necessary only in the gender-related context.

(d) Justifications and rebuttals

Because this is government action that differentially affects a protected group, the state bears the burden of showing that any limit is a reasonable one demonstrably justified in a free and democratic society. Should the state be able to assert a justification, the discrimination is not unlawful. The main justifications which may be advanced and the key rebuttals, include:

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[485] Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations 2025. See also "New safeguards for puberty blocker prescribing" (19 November 2025) Beehive <beehive.govt.nz>.

[486] *Professional Association for Transgender Health Aotearoa Incorporated v Minister of Health* [2025] NZHC 4105 at [178].

- Justification one: protecting children and young people from uncertain evidence. The evidence base for benefits and risks in gender dysphoria is uncertain; restricting new prescribing is a precautionary measure.

  Rebuttal: precaution must still be proportionate and consistent. If the medicine is accepted as sufficiently safe for other uses, where treatment may start earlier and last longer, the claim that risk compels a categorical restriction only for gender dysphoria is harder to sustain. That is precisely the discrimination concern the High Court flagged.

- Justification two: maintaining public confidence and preventing clinical drift. Restricting new prescriptions preserves confidence and ensures consistent practice while awaiting further overseas research.

  Rebuttal: "public confidence" is not a strong rights-limiting objective unless tied to concrete evidence of harm; and "clinical drift" can be addressed through clinical guidelines, specialist pathways, audit, and minimum standards rather than a categorical prohibition affecting one group.

- Justification three: international alignment. The restriction aligns with international developments and prudently waits for stronger evidence.

  Rebuttal: international alignment is not, by itself, a sufficiently pressing reason to impose unequal burdens domestically, especially when domestic non-discrimination principles require justification tailored to local context and when other indications continue to allow access.

- Justification four: availability of alternatives (psychological support, for example). Young people can receive other supports; the restriction does not eliminate care.

  Rebuttal: this risks minimising the role puberty blockers play for some patients, and it does not answer the non-discrimination point: the Government is still allowing the medicine for other groups while denying it to this group, producing predictable negative consequences.

The ban on puberty blockers for new patients warrants urgent reconsideration by the Government in the light of its anti-discrimination implications and the absence of a clearly articulated and compelling justification for treating gender dysphoria differently from other medical indications.

HIV non-disclosure

The nature of the issue

HIV non-disclosure refers to situations where a person living with HIV does not disclose their HIV-positive status to a sexual partner prior to engaging in sexual activity. In Aotearoa New Zealand, non-disclosure is not regulated through HIV-specific legislation, but through the application of general criminal law. As such, HIV non-disclosure operates as a form of HIV criminalisation: the use of criminal law to regulate the conduct of people living with HIV.

HIV criminalisation is broader than non-disclosure alone. It encompasses overlapping categories of conduct: actual transmission of HIV, perceived or potential exposure to HIV (even where transmission does not occur), and non-disclosure of HIV status regardless of actual risk. HIV criminalisation has disproportionate impacts; HIV transmission is the most prevalent among gay, bisexual and other men who have sex with men.[487]

The current legal framework in Aotearoa New Zealand

There is no single offence of HIV non-disclosure in New Zealand law. Instead, liability arises through a combination of general offences and duties under the Crimes Act 1961.

The principal charge historically used is criminal nuisance under section 145. This offence captures unlawful acts or omissions where the person knew the conduct would endanger the life, safety, or health of another. In the HIV context, criminal nuisance has been applied where a person living with HIV engages in sexual activity without disclosure and where reasonable precaution or care has not been taken, regardless of whether transmission occurs.

The legal duty underpinning this offence is found in section 156 of the Crimes Act, which imposes a duty on persons in charge of "dangerous things" to take reasonable precautions and reasonable care to avoid danger to human life. Case law has established that HIV can constitute a "dangerous thing" for the purposes of section 156, and that failure to take reasonable precaution or care may ground criminal liability through section 145. Importantly, section 156 does not itself create an offence; rather, it supplies the duty element for offences such as criminal nuisance. Knowledge that the omission would endanger health is an essential ingredient.[488]

More serious charges have also been pursued. Where transmission occurs, prosecutors have laid charges of causing grievous bodily harm with reckless disregard under section 188(2), and in rare cases of intentional infection, charges

[487] "HIV Epidemiology Group Dashboard" <aidsepidashboard.otago.ac.nz>.
[488] See generally *R v Mwai* [1995] 3 NZLR 149 (CA).

under section 201 (infecting with disease) have been used. These provisions significantly escalate sentencing exposure.

Case law

Early case law reflects a period in which HIV was widely understood as inevitably fatal, and risk assessments were shaped accordingly. In *R v Mwai* (1995), the Court of Appeal upheld convictions for grievous bodily harm and criminal nuisance where the accused neither disclosed his HIV status nor used a condom, and transmission occurred. HIV was treated as serious bodily harm.[489]

Subsequent decisions reinforced a 'deterrence-focused' approach even where transmission did not occur. In *Police v Purvis* (1999) and *Kilpatrick v Police* (1999), imprisonment was imposed for non-disclosure in the absence of transmission, with courts emphasising denunciation, breach of trust, and the anxiety experienced by complainants.[490]

A partial recalibration occurred in *Police v Dalley* (2005), where the District Court rejected the proposition that disclosure was the only way to discharge the section 156 duty. The Court held that reasonable precautions could include condom use, and that where such precautions were taken and transmission risk was low, non-disclosure alone did not amount to criminal nuisance.[491] This decision is significant because it recognised that the duty is about preventing danger from materialising, not enforcing disclosure as an end in itself.

However, clarity was complicated by *KSB v Accident Compensation Corporation* (2012), in which the Court of Appeal held that apparent consent to unprotected sex is vitiated by non-disclosure of HIV status. Although a civil case concerning ACC entitlements, the decision necessarily engaged criminal concepts and suggested that unprotected sex with non-disclosure could amount to sexual violation.[492] While the principle was expressly limited to unprotected sex, it introduced uncertainty by reframing non-disclosure as a consent vitiating deception.

More recently, *Filitonga v R* (2017) highlighted both doctrinal and evidential problems. The Court of Appeal raised suspicion on the assumption that HIV transmission automatically constitutes grievous bodily harm, emphasising that this is a factual question that must be assessed in the light of modern treatment.[493] The subsequent resentencing reflected a shift away from treating HIV as a "death sentence", but imprisonment was still imposed for non-disclosure and transmission.[494]

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[489] *R v Mwai* [1995] 3 NZLR 149 (CA).
[490] *Police v Purvis* DC Auckland 9004045291, 2 August 1999; and *Kilpatrick v Police* HC Christchurch A174/99, 17 September 1999.
[491] *Police v Dalley* (2005) 22 CRNZ 495.
[492] *KSB v Accident Compensation Commission* [2012] NZCA 82.
[493] *Filitonga v R* [2017] NZCA 492.
[494] Edward Gay and Tom Furley "Sentence reduced for man who gave partner HIV" (9 February 2018) RNZ <rnz.co.nz>.

The core problems: misalignment with contemporary science, legal uncertainty, access to justice and human rights

The issue with New Zealand's approach to HIV non-disclosure is its misalignment with contemporary medical science. It is now globally accepted that people living with HIV who are on effective treatment and have an undetectable viral load do not transmit HIV sexually. This principle, often summarised as "U=U" (undetectable equals untransmittable) underpins modern HIV prevention strategies.[495]

Despite this, New Zealand criminal law continues to conceptualise risk primarily through condom use, reflecting older understandings of transmission. A central legal problem is the lack of clarity as to whether having an undetectable viral load, a sexual partner being on PrEP (pre-exposure prophylaxis; medicine taken by HIV-negative individuals to prevent contracting HIV), or adherence to treatment constitutes "reasonable precaution or care" for the purposes of section 156. This question has never been tested in New Zealand courts.

This uncertainty has several consequences. First, it undermines legal certainty for people living with HIV, who cannot reliably know whether their conduct is lawful. Secondly, it may create uneven prosecutorial outcomes, as decisions may depend on inconsistent understandings of risk. Thirdly, it chills public health objectives: fear of criminal liability may discourage testing or disclosure to clinicians.

HIV criminalisation reinforces stigma by framing people living with HIV as inherently dangerous. Criminal sanctions operate symbolically as well as practically, perpetuating narratives of blame, moral failure, and deviance. These effects are magnified for LGBTI+ migrants and people of colour, who already experience layered forms of marginalisation. International human rights bodies have repeatedly criticised HIV criminalisation for undermining the right to health.[496]

Reform pathways

I do not consider there to be a particularly strong argument for removing criminal liability in cases of intentional transmission causing actual harm. Existing offences, such as section 201 of the Crimes Act, appropriately capture such conduct and serve important functions. For example, in *R v AC* (2010), the defendant deliberately infected his wife by pricking her with a needle containing blood containing HIV, while she slept, conduct the High Court described as highly premeditated, cruel, and a grave betrayal with lifelong consequences. Although the Court recognised that HIV is now medically manageable, it emphasised its incurable nature, adopting a

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[495] See generally "Undetectable Viral Load [U=U]" Burnett Foundation <burnettfoundation.org.nz>.
[496] See *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover* UN Doc A/HRC/14/20 (27 April 2010) at [51]–[75]; and *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C.12/GC/22 (2 May 2016) at [40].

starting point of 12 years' imprisonment to reflect denunciation and deterrence and imposing a final sentence of eight years and four months after mitigation.[497]

The reform challenge lies in limiting criminal law to these rare cases and excluding prosecution for non-disclosure where there is no realistic possibility of transmission.

I have heard suggestions that Parliament enact specific statutory amendments to address HIV non-disclosure. Caution is warranted. Much of the present uncertainty stems from the way the common law has interpreted general criminal provisions, rather than from any express statutory command. As such, clarification may be better achieved through prosecutorial guidance or judicial development, rather than legislation. There is also a risk that creating HIV-specific exemptions within the criminal law could carry an abrasive signalling effect, inadvertently reinforcing the perception that people living with HIV are uniquely associated with criminality.

Existing legal frameworks already contain internal limits: under section 145 of the Crimes Act, liability turns on the absence of "reasonable precaution or care," for example. The central issue is therefore not the absence of defences, but uncertainty as to how these standards apply in the light of contemporary medical science. Clarification, rather than wholesale statutory reform, may be the more proportionate and principled response.

Comparative models exist. In Canada, federal prosecutorial directives now advise against prosecution where there is no realistic possibility of transmission.[498] Similar guidance in Aotearoa New Zealand could significantly improve consistency and align practice with science. It would also give affected communities greater predictability and confidence. At the same time, advocacy should focus on seeking a formal legal opinion from the Crown Law Office on the criminal liability of HIV non-disclosure in the light of modern HIV prevention. This could also serve an important clarificatory function, informing prosecutorial discretion.

To date, the Government has indicated that there are no current plans to review HIV criminalisation settings, despite growing concern from experts that outdated legal approaches entrench stigma and undermine public health goals.[499] In the absence of government-led reform, work is being undertaken by community organisations Burnett Foundation, Positive Women, Toitū te Ao, and Body Positive.[500] The outcomes of this work will be critical in shaping future reform pathways and ensuring that legal responses align with evidence-based public health principles and human rights standards.

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[497] *R v AC* HC Auckland CRI-2008-092-016723, 3 February 2010.
[498] "Attorney General of Canada to issue Directive Regarding Prosecutions of HIV Non-Disclosure Cases" Department of Justice Canada <canada.ca>.
[499] James Fleury "Experts warn stigma, outdated laws obstacles to ending HIV transmission" (2 December 2025) 1news <1news.co.nz>.
[500] "Have Your Say: How Does HIV Criminalisation Affect Our Communities?" Burnett Foundation <www.burnettfoundation.org.nz>.

Other issues

This thematic area brings together a number of issues that fall outside the core categories addressed elsewhere in this report, but which nonetheless reveal gaps in New Zealand's legal framework as it affects LGBTI+ people. Unlike areas such as anti-discrimination law or legal gender recognition, these issues are often overlooked precisely because they are indirect. Yet it is in these indirect spaces, that legal systems often fail to consider the lived realities of marginalised groups.

Issues with medicine approval and access

(a) The statutory framework

The Medicines Act 1981 establishes a regime governing the approval, sale, supply, and advertisement of medicines in Aotearoa New Zealand. The Act provides that a new medicine must not be sold, distributed, or advertised unless the Minister has granted consent.[501] It does permit the Minister to grant provisional consent to the sale, supply, or use of a medicine, but notably does not permit advertising of a provisionally approved medicine.[502] The legislative intent is clear and well-meaning: to prevent promotion of medicines that have not completed full evaluation.

(b) Public health consequences for LGBTI+ communities

While the prohibition on advertising serves legitimate objectives, its rigid application can produce unintended consequences in urgent public health contexts. The recent Mpox outbreak among men who have sex with men provides a clear illustration. As reported, "the mpox vaccine is not approved in New Zealand so cannot be promoted publicly…"[503] This limited the ability of public health agencies and community organisations to conduct visible and population-level outreach.

For men who have sex with men, this had tangible effects on uptake. As the Burnett Foundation has observed, "[a]t the moment, around 15% of the eligible population have had both doses of the mpox vaccine, and that puts us ALL at risk."[504] In this context, the inability to publicly explain eligibility, access points, and benefits did not operate neutrally.

(c) Reform option: limited public health advertising under provisional consent

A future-focused reform would amend the Medicines Act to permit restricted, non-commercial public health advertising where a medicine has received provisional consent and where there is a demonstrable public health need. Section 23 could be amended to allow advertising where:

- the advertising is approved by the Director-General of Health or the Minister;

[501] Medicines Act 1981, s 20(2).
[502] s 23.
[503] Rachel Thomas "Long wait times for vaccine 'frightening' as new NZ mpox case confirmed" (9 September 2024) The Post <thepost.co.nz>.
[504] Burnett Foundation <burnettfoundation.org.nz>.

- the content is factual, risk-balanced, and non-promotional; and
- the advertising is limited to public health campaigns delivered by public agencies or community organisations, rather than manufacturers.

Such a reform would preserve the core purpose of the Medicines Act while recognising that, in some contexts, access to information is itself a determinant of health equity.

Education zoning issues

(a) Structural barriers for transgender and non-binary students

Transgender and non-binary students may experience significant difficulty attending single-sex schools, particularly where the school's designation aligns with the student's sex assigned at birth rather than their gender identity. This difficulty is exacerbated in regions where enrolment schemes and zoning arrangements mean that a single-sex school is the only readily accessible public option. A 2021 briefing to the Minister of Education identified some areas where access to co-educational schooling was limited.[505] In these locations, the practical effect is that gender-diverse students face a constrained choice.

(b) Directed enrolment as an inadequate solution

The Education and Training Act 2020 provides for directed enrolment, allowing the Secretary of Education to direct a school to enrol an out-of-zone student.[506] While this mechanism offers a potential pathway, it is discretionary and administratively burdensome. It requires families to seek exceptional relief. Reliance on directed enrolment is unsatisfactory. It treats gender diversity as an exceptional circumstance requiring discretionary accommodation, rather than recognising that zoning architecture itself can produce foreseeable disadvantage.

(c) Reform position

This report endorses the Member's Bill introduced by Rachel Boyack MP, which would allow transgender or gender-diverse students to automatically enrol at their nearest co-educational school. This reform would not abolish single-sex schooling. Rather, it would ensure that zoning arrangements do not compel gender-diverse students to attend schools that undermine their dignity, safety, or wellbeing.[507]

Extraterritorial conversion practices

(a) The risk of offshore circumvention

The Conversion Practices Prohibition Legislation Act 2022 prohibits conversion practices within Aotearoa New Zealand. However, Adhikaar Aotearoa, through

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[505] Ministry of Education *Briefing note: access to co-education for gender-diverse students* (22 December 2021) at 1.
[506] Education and Training Act 2020, s 74(2).
[507] Katy Jones "Transgender students should automatically get into nearest co-ed school, MP says" (2 January 2023) Stuff <stuff.co.nz>.

experiential knowledge, knows that some families arrange conversion practices to occur offshore, using transnational familial or religious connections. This risk is particularly acute in migrant and diasporic communities who may have deep religious convictions that motivate them to commission such practices.

(b) Existing legal coverage and its limits

In response to concerns about extraterritorial conversion practices, the Ministry of Justice stated: "[w]e note that some coverage for this situation may exist under the Crimes Act, particularly under the provisions relating to parties to offences (section 66) and kidnapping (section 209(c)). As such, we do not recommend including a specific offence for removing someone from New Zealand for the purposes of conversion practices being performed."[508]

While the general criminal law may, in theory, be capable of capturing such conduct, it does so only indirectly and through liability that is not obvious to those most affected. Reliance on general provisions places a heavy interpretive burden on victims and community advocates who must infer applicability rather than being able to point to a clear and purpose-built prohibition. Explicitly enumerated offences serve an important educative and deterrent function: they communicate unequivocally that the conduct is unlawful, reduce uncertainty about the scope of criminal liability, and signal the seriousness with which the state regards the harm.

(c) Comparative precedent: female genital mutilation

New Zealand criminal law already provides a strong precedent for explicit extraterritorial prohibition. Section 204B of the Crimes Act 1961 creates offences relating to female genital mutilation where acts are arranged, facilitated, or induced to occur outside Aotearoa New Zealand in relation to citizens or persons ordinarily resident in Aotearoa New Zealand, regardless of consent. The same structural logic applies to conversion practices.

(d) Reform option

The Conversion Practices Prohibition Legislation Act should be amended to expressly extend its reach to conversion practices carried out extraterritorially where they are arranged, facilitated, induced, or otherwise enabled from within Aotearoa New Zealand, and where the person subjected to the practices is a New Zealand citizen or is ordinarily resident in Aotearoa New Zealand. An explicit extraterritorial offence would remove any doubt about the scope of the Act and avoid reliance on indirect criminal law to capture conduct that is deliberately organised to occur offshore. Clear statutory enumeration would strengthen deterrence by making it unmistakable that outsourcing conversion practices does not place them beyond the reach of New Zealand law. It would also perform an important educative function, particularly for families, religious leaders, and

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[508] Ministry of Justice *Departmental Report: Conversion Practices Prohibition Legislation Bill* (January 2022) at [83].

community networks, by clearly articulating the state's position that conversion practices are unlawful regardless of where they are carried out.

Respect after death

(a) Legal framework for death registration

Under the Births, Deaths, Marriages, and Relationships Registration Act 2021, a death certificate must contain the information recorded in the registry in relation to the person and any information required by regulations.[509] Regulations provide that the deceased's name and sex are among the details required on death certificates (along with the person's name at birth, if it is not the same as their name at death).[510] As a result, a death certificate reflects the legal name and sex recorded at the time of death, and the person's name at birth.

If a person has updated their name and sex marker on birth certificates via statutory declaration, their death certificate will reflect their affirmed name and gender marker. If not, the death certificate may misgender and deadname them, and may deadname them in any event, through the requirement of having person's name at birth, if it is not the same as their name at death, on the certificate.

(b) Limitations of correction mechanisms

The Act requires the Registrar-General to correct clerical errors and delete incorrect information.[511] However, this mechanism is poorly suited to cases where misgendering reflects the legal status quo or is contested by next of kin. In such cases, the issue is not clerical error but the absence of a rule prioritising the deceased's gender identity.

(c) Comparative reform: respect after death

California's Respect After Death Act provides a model that centres the deceased's gender identity, allowing it to be reported by the person notifying the death or evidenced by documentation, with court processes available where disputes arise.[512] A similar approach in Aotearoa New Zealand would ensure that respect for gender identity does not end at death and would prevent posthumous erasure.

A right to privacy: a LGBTI+ perspective

(a) Privacy as a distinct and under-developed rights framework in New Zealand

Unlike many comparable jurisdictions, Aotearoa New Zealand does not recognise a freestanding and general right to privacy in its domestic human rights framework. The Privacy Act 2020 is not a rights-protecting instrument. It regulates how

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[509] s 84.
[510] Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995, reg 7 which are still in effect by virtue of Births, Deaths, Marriages, and Relationships Registration Act 2021, sch 1 cl 17.
[511] s 131.
[512] AB 1577 – Respect After Death Act (2014).

personal information is collected, used, disclosed, stored, and accessed, but it does not articulate privacy as a substantive right. Nor does the New Zealand Bill of Rights Act contain an explicit privacy guarantee.

This absence matters for LGBTI+ people because many of the harms they experience are not always best characterised as discrimination. Instead, they involve compelled disclosure of intimate aspects of identity, exposure to scrutiny, and loss of control over deeply personal information: breaches of privacy.

(b) The limits of information-privacy and the case for a general privacy right

The Privacy Act 2020 provides important protections, but it operates in a narrow and technical way. It focuses on procedural compliance rather than substantive harm. It does not easily accommodate claims that a law or policy is problematic because it forces people to reveal information they should not have to disclose.

A general right to privacy would expand the toolkit available to plaintiffs. It would allow privacy-based arguments that also address discrimination concerns. For LGBTI+ people, privacy can offer a more direct and conceptually accurate means of protection. It shifts the legal question from 'is this differential treatment justified?' to 'should the state be entitled to intrude into this aspect of a person's private life?'

(c) Legal gender recognition, privacy, and compelled disclosure

The consequences of the absence of a privacy right are particularly evident in the context of legal gender recognition. A discussed above, recent reforms removed the Family Court's jurisdiction to issue Declarations as to Sex leaving transgender, non-binary and intersex people born overseas without any pathway to obtain identification documents reflecting their gender. For these individuals, each time mismatched identification is presented, they are forced to disclose deeply personal information about their history. The primary injury lies in forced disclosure of intimate identity information and the loss of control over how one's gender is known. A freestanding privacy right would provide a natural vehicle for redress better aligned with how affected individuals experience the harm.

International human rights law underscores this point. The European Court of Human Rights has grounded legal gender recognition within Article 8 of the European Convention on Human Rights which protects private life.[513] New Zealand's lack of an equivalent domestic privacy right represents a gap in protection.

(d) Privacy as a future-proofing rights strategy

The importance of privacy is not limited to current legal gaps; it also has forward-looking significance. Anti-discrimination law is increasingly contested terrain for transgender rights. Internationally, there is growing evidence that non-discrimination frameworks can be narrowed to exclude transgender people from protection. Recent developments in the United Kingdom, including the *For Women*

[513] *Rana v Hungary* (2020) 40888/17 (ECHR).

Scotland Ltd decision and legislative efforts to narrowly define "sex" illustrate how anti-discrimination law can be reshaped in ways that restrict access to rights.[514]

In such contexts, privacy claims may offer a more resilient pathway. By focusing on autonomy, bodily integrity, and control over personal information, privacy arguments can sidestep highly politicised debates about the scope of "sex" or "gender" categories.

(e) Comparative insights: privacy, youth, and education

Contemporary Canadian litigation provides a useful illustration of how privacy arguments intersect with LGBTI+ rights, particularly for young people. In *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, the Saskatchewan Court of Appeal considered whether the Saskatchewan Government's invocation of the notwithstanding clause in the Canadian Charter (a clause used to affirm the legal effect of potentially rights-inconsistent legislation) removed the courts' jurisdiction to assess Charter compliance.[515] The legislation in question requires parental consent before school staff may use a student's preferred name or gender identity and operate notwithstanding section two (fundamental rights), section seven (right to life, liberty and security of the person, which in Canada is read to imply a right to privacy),[516] and section 15 (right to equality) of the Canadian Charter.[517]

Although the case has thus far focused on jurisdictional questions, what is striking is the legislature's own acknowledgement that the law may infringe rights including section seven of the Canadian Charter. A parallel challenge in Alberta similarly argues that mandatory parental notification and consent requirements force schools to "out" gender-diverse students, subject them to misgendering and deadnaming, and expose them to serious psychological harm. These cases frame the harm not only as discrimination, but as an unjustified intrusion into students' private lives and personal autonomy.[518]

The broader point is that the law is not static. Political actors, often motivated by ideological commitments and influenced by developments overseas, continually develop new legal mechanisms that can be used to restrict or undermine LGBTI+ rights. If comparable measures were introduced in Aotearoa New Zealand, the absence of a recognised right to privacy reduces the toolkit upon which plaintiffs can rely upon to challenge such laws.

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[514] See, for example *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16, [2025] 2 WLR 879; and New Zealand First "New Zealand First Introduces Bill Defining 'Woman' and 'Man' in Law" (22 April 2025) <nzfirst.nz>.

[515] *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity* 2025 SKCA 74.

[516] See generally *R v Mills* [1999] 3 SCR 668.

[517] On 6 November 2025, the Supreme Court of Canada granted leave to appeal the ruling of the Saskatchewan Court of Appeal.

[518] *Egale Canada v Alberta* "Originating Application" (3 September 2025) Court of King's Bench of Alberta.

Recommendations

Part four

When developing a programme of reform, questions of sequencing and priority are as important as the substance of the proposals themselves. Legal change does not occur in a vacuum. Even well-designed reforms can fail to achieve their intended impact if they are pursued in an order that fragments political attention. A sequenced approach allows reform efforts to build on one another, embedding foundational changes first and creating the conditions in which more ambitious or contested reforms can succeed. In this sense, I make no observation on which recommendation should be engaged with first, though it is clear that some are more sensitive than others.

Relatedly, the environment in which reform occurs is often determinative of its success. A conducive reform environment includes public understanding, political leadership, administrative readiness, and meaningful engagement with impacted communities. Where these conditions are absent, legislative or policy change risks being symbolic, poorly implemented, or vulnerable to backlash.

In some circumstances, it may therefore be prudent to delay particular reforms until conditions are more favourable. At the same time, I recognise the tension in any suggestion that reform should "wait". Equality, dignity, and legal recognition are not contingent rights, and delay can perpetuate real and ongoing harm. Decisions about sequencing must therefore be accompanied by interim measures, such as guidance, pilot programmes, funding commitments, or administrative practice changes, that signal intent and provide tangible improvements while more comprehensive reform is prepared.

The challenge for government departments (as identified in brackets throughout the recommendations) is to balance urgency with durability: advancing reform in a way that is responsive to present challenges, while also ensuring that change is resilient, effective, and capable of delivering lasting outcomes.

The recommendations of this report are as follows:

Anti-discrimination law

1. The Government (Ministry of Justice) systematically review the Human Rights Act 1993, including the definition of "sexual orientation".

2. The Government (Ministry of Justice) endorse and implement the recommendations in the Law Commission's review of protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics.

3. The Human Rights Commission utilise its powers under the Human Rights Act 1993 to require justification from insurance companies for reliance on the

data used to discriminate against people living with HIV, and seek independent actuarial views in relation to this.

Hate speech

4. The Government (Ministry of Justice) commissions an independent review of hate speech laws in New Zealand, perhaps from the Law Commission.

5. Subject to the independent review, the Government (Ministry of Justice) extend hate speech protections in section 61 and 131 to sexual orientation, gender identity and having an innate variation of sex characteristics.

Family formation and recognition

6. The Government (Ministry of Justice) endorse and implement the recommendations in the Law Commission's review of surrogacy.

7. The Government (Ministry of Health) redefine eligibility in the Clinical Priority Assessment Criteria to include social infertility.

8. The Government (Department of Internal Affairs) explore the desirability of removing the two-parent limitation as a matter of birth registration design, and to do so in a way that is coherent with wider parentage law.

9. The Government (Department of Internal Affairs) explore recognition for chosen families, including a civil status pathway decoupled from romance, and system-wide adjustments to family entitlements.

10. The Government (Department of Internal Affairs) explore the need, if any, of community demand for recognition of polyamorous relationships.

Intersex legal issues

11. The Government (Ministry of Health), subject to and contingent on existing work on clinical guidance, enact legislation to prohibit medically unnecessary surgical interventions on intersex minors.

12. The Government (Ministry of Health) implement reform to address issues associated with intersex access to medical data. Possible reforms include extended retention of records relating to intersex variations; mandatory

central indexing or flagging of intersex-related records within public health; and proactive disclosure obligations.

13. The Government (Ministry of Health) implement reform to collect transparent, anonymised, and disaggregated reporting on intersex-related interventions, subject to strict privacy protections.

14. The Government (Department of Internal Affairs) make an "intersex" sex marker available only through a self-identification process later in life, rather than at birth.

Legal gender recognition

15. The Government (Department of Internal Affairs) implement reforms to provide transgender, non-binary and intersex people born overseas usable identification documents. Possible reforms include extending the right to amend name and gender marker to asylum seekers once they lodge refugee claims; extending the same right to all transgender, non-binary and intersex migrants ordinarily resident in Aotearoa; enabling amendments to all official New Zealand-issued primary identity documents and records, including Immigration New Zealand visas.

Healthcare legal issues

16. The Human Rights Commission utilise its powers under the Human Rights Act 1993 to require justification from insurance companies for reliance on the data used to discriminate against transgender people, and seek independent actuarial views in relation to this.

17. The Government (Ministry of Education and Immigration New Zealand) amend student visa instructions and the Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2022, so that any health insurance policy accepted for student visa purposes must meet prescribed minimum benefit standards.

18. The Government (Ministry of Health) reconsider and remove its ban on puberty blockers for new patients.

HIV non-disclosure

19. The Police and the Government (Crown Law Office) reform prosecutorial instructions to direct against prosecution where there is no realistic possibility of transmission.

20. Community organisations advocate for a legal opinion by the Crown Law Office on the criminal liability of HIV non-disclosure in the light of modern HIV prevention.

Other issues

21. The Government (Ministry of Health) consider reform to the Medicines Act to permit restricted and non-commercial public health advertising where a medicine has received provisional consent and where there is a demonstrable public health need.

22. The Government (Ministry of Education) adopt the Member's Bill which would allow transgender or gender-diverse students to automatically enrol at their nearest co-educational school.

23. The Government (Ministry of Justice) amend the Conversion Practices Prohibition Legislation Act to expressly extend its reach to conversion practices carried out extraterritorially where they are arranged, facilitated, induced, or otherwise enabled from within New Zealand, and where the person subjected to the practices is a New Zealand citizen or is ordinarily resident in New Zealand.

24. The Government (Department of Internal Affairs) consider and implement reform similar to California's Respect After Death Act.

25. The Government (Ministry of Justice) consider amending the New Zealand Bill of Rights Act 1990 to enumerate a general right to privacy.