

Government Response to Petition of Rainbow Labour Christchurch Branch

“Protect trans athletes’ right to compete in
publicly funded sports”

Presented to the House of Representatives

In accordance with Standing Order 380

Introduction

- 1 On 15 November 2024, your petition titled “protect trans athletes’ right to compete in publicly funded sports” (the Petition) was presented to the Petitions Committee, and on 15 November 2024 the Petition was referred to the Minister for Sport and Recreation, for a response.
- 2 The Government has carefully considered the petition. It is responding in accordance with Standing Order 380 (referral of petition to Minister for response), 381 (presentation of paper to the House) and 382 (designation of parliamentary papers).

Background

- 3 The Petition was signed by 789 people and submitted in response to the commitment made by the Government to ‘Ensure publicly funded sporting bodies support fair competition that is not compromised by rules relating to gender.’
- 4 The Petition intends to seek better protection of the rights of transgender and gender nonconforming people to participate in sport.
- 5 The mechanism proposed for achieving better protection is through changes to existing legislation or developing new legislation.
- 6 Specifically, the Petition requests that the House of Representatives either: ‘Amends the Sport and Recreation New Zealand Act (2002) to explicitly protect the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.’ **or** ‘Passes an Act that protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.’.
- 7 The Petition also requests that the House of Representatives ‘expands the Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993) to include people who are Transgender and Gender non-conforming on the basis that it is generally accepted that they are Human, rather than alien, and therefore subject to protection under the Act.’

Government Response

- 8 We are responding to the Petition in two parts. Part 1 is in response to your request that changes be made to the Sport and Recreation Act (2002) or that new legislation be developed that better ‘protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports’. Part 2 relates to the Petition’s secondary request to expand the Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993).

Part 1: Request that changes are made to Sport and Recreation Act (2002), or that new legislation is developed, which better ‘protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports’

- 9 The Government’s view is that matters concerning how transgender people

participate in sport, at any level, are best left to sports organisations to address and not through changes to legislation as requested in the Petition.

- 10 The Government acknowledges that transgender people face barriers to participating in sport and that fewer transgender and gender non-conforming people are involved in sport at the community level on average. The Government also acknowledges that members of the rainbow community more broadly may also encounter barriers to participating in sport in some contexts.
- 11 Sports organisations in New Zealand have been working to address these issues. For instance, Sport New Zealand has partnered with InsideOUT Kōaro—a leading expert in New Zealand on matters related to the inclusion of rainbow communities—to develop a suite of educational resources that have been shared with the community sport sector.
- 12 All people of every gender have the right to participate in community sport. The Government's priority is to ensure that all New Zealanders can participate fairly and safely. Sport New Zealand has recently been directed to review its Guiding Principles for the Inclusion of Transgender People in Community Sport.

Part 2: Request to expand the 'Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993) to include people who are Transgender and Gender non-conforming on the basis that it is generally accepted that they are Human, rather than alien, and therefore subject to protection under the Act.'

- 13 We note that section 21 of the Human Rights Act that covers sex (and gender) is 21(1)(a), not 21(1)(m), which the Petition refers to. Section 21(1)(m) covers sexual orientation.
- 14 Section 21(1)(a) of the Human Rights Act is currently read as prohibiting discrimination against people who are transgender, non-binary and/or have innate variations of sex characteristics. Sources for this point include the Law Commission's 'Beginners' Guide to the Human Rights Act'.
- 15 Since 2006, the Crown Law Office has held the position that the grounds for 'sex' in the Human Rights Act includes gender. This interpretation was clarified in a Crown Law opinion, which stated that "there is currently no reason to suppose that 'sex discrimination' would be construed narrowly to deprive transgender people of protection under the Human Rights Act." The Human Rights Commission is happy to accept complaints of discrimination on this basis.
- 16 The Government is not planning to undertake any work to amend the Human Rights Act. The Government needs to prioritise various legislative changes, and altering the Human Rights Act, as requested in the Petition, is not currently one of those priorities.
- 17 However, the Law Commission is currently examining the protections in the Human Rights Act for people who are transgender, people who are non-binary, and people who have an innate variation of sex characteristics. This project

includes consideration of section 49: *Exception in relation to sport*.

- 18 Section 49 permits excluding individuals of one sex from competitive sports where factors such as strength, stamina, or physique are relevant. This exception does not extend to non-playing roles, such as coaching, refereeing, or administration, nor does it apply to sports activities for children under 12.
- 19 The Law Commission published an Issues Paper on 27 June 2024, inviting submissions until 5 September 2024. It anticipates publishing a final report with its recommendations in mid-2025.
- 20 Once the final report is received, the Government will consider any recommendations the Commission may make, including those related to sport, and respond accordingly.

Conclusion

- 21 The Government would like to thank the petitioner(s) for raising this issue and reiterate that we are committed to protecting the rights of all New Zealanders to participate in sport.
- 22 We believe that sports organisations are best placed to make decisions on how to include all participants, including those who are transgender or gender nonconforming.
- 23 The Government is **not** seeking to amend or establish new legislation as requested by the Petitioner(s).
- 24 The Government considers that the existing ground of “sex” in the Human Rights Act (1993) s21(1)(a) covers discrimination against people who are transgender, non-binary and/or have innate variations of sex characteristics.
- 25 We look forward to receiving the report of the Law Commission examining the protections in the Human Rights Act (1993) for people who are transgender, people who are non-binary, and people who have an innate variation of sex characteristics.