



Report of the Petitions Committee

Petition of Maggie Ross: Provide funding for all schools to have gender-neutral bathrooms

June 2023

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Hon Jacqui Dean
Chairperson

Petition of Maggie Ross

Recommendation

The Petitions Committee has considered the petition of Maggie Ross—Provide funding for all schools to have gender-neutral bathrooms—and recommends that the Government continue to encourage schools to consider providing gender-neutral bathrooms as bathrooms are renovated.

Request for funding to provide all schools with gender-neutral bathrooms

The petition was presented to the House on 30 June 2022. It requests:

That the House of Representatives urge the Government to provide funding for all schools in New Zealand to have gender-neutral bathrooms.

Petitioner's concerns

Maggie Ross is a member of Gender Neutral Bathrooms NZ, a group campaigning for gender-neutral bathrooms in schools. The group successfully campaigned for the provision of gender-neutral bathrooms at its own school. The petitioner requests that the Government fund and support accessible gender-neutral bathrooms in all New Zealand schools. The petitioner believes that having access to gender-neutral bathrooms will improve gender-diverse students' mental and physical health and safety. The petitioner told us that no student should have to make a choice between preserving their physical and mental health, and their education.

The petitioner submitted that schools need additional funding to make their bathrooms gender neutral. Schools that already have gender-neutral bathrooms require ongoing support to ensure that the bathrooms fulfil the needs of gender-diverse students. The petitioner believes the Ministry of Education should require that a proportion of bathrooms in each school be gender neutral and that the proportion should be aligned to the number of students that attend the school. The petitioner submitted that the Government should prioritise investing in basic structures like bathrooms so that students can attend school safely.

The petitioner told us that gender-neutral toilets would help normalise gender diversity in schools. We heard that having accessible gender-neutral bathrooms helps gender-diverse students feel welcome. The petitioner said gender-neutral bathrooms would assist in educating all students about gender and that some people have different genders that are outside the binary.

Harm caused to gender-diverse students

We heard from the petitioner about the negative effect of not having a safe space to deal with basic hygiene. Not having access to a safe place to use the bathroom can damage gender-diverse people's mental and physical wellbeing. The petitioner told us that forcing

people to use a bathroom in a space that invalidates their gender can cause physical dysphoria and mental distress. In some instances, we understand that it can lead to serious mental health problems, such as panic attacks, suicidal thoughts, and self-harm. The petitioner considers that no student should have to put their mental health at risk to use the bathroom.

In addition to the mental distress, many students struggle with the physical repercussions of not having access to a safe bathroom. Many transgender and gender-diverse people avoid going to the bathroom during the day because of the risk that they will be verbally or physically harassed if they do so. Avoiding using the bathroom can cause serious physical harm, including dehydration, kidney infections, urinary tract infections, and more serious long-term health conditions.

The structure of gender-neutral bathrooms

The petitioner submitted that gender-neutral bathrooms offer transgender and gender-diverse students privacy and safety. The petitioner is not campaigning to eliminate gendered bathrooms; they stressed that their petition would not result in young women having to share bathrooms with young men.

The petitioner submitted that people incorrectly think that gender-neutral bathrooms are multi stall, communal bathrooms open to any gender and any sex. This incorrect belief has led to the unfounded fear that gender-neutral bathrooms force women and men to share the same bathroom, making women uncomfortable and vulnerable to assault. The New Zealand Building Code specifies that a gender-neutral bathroom must be a self-contained unit with an individual toilet, basin, and sanitary bin. Gender-neutral bathrooms are designed to be safe places for all students, regardless of their gender identity.

Funding for gender-neutral bathrooms

The petitioner ran a survey and its results revealed that staff and students believe a lack of funding is the main barrier that prevents schools from building accessible bathrooms. The petitioner told us that the Ministry of Education provides capital funding to schools through a five-year agreement (5YA) capital budget. 5YA budgets are calculated by multiplying the provided square metre area of a school by \$30. Schools use this funding in the budget for general maintenance and upgrades of buildings and facilities. Many schools struggle without community donations, and have little to no additional funds left for upgrades after maintenance has been paid for. The petitioner told us that they think it is the Government's responsibility to fund gender-neutral bathrooms in schools.

The petitioner submitted that although many schools may wish to provide accessible gender-neutral bathrooms they likely lack resources to do so. The petitioner believes that students should not be deprived of a safe bathroom as a result of their school's lack of funding.

The petitioner told us that it is not enough for a school to have a single unisex bathroom, which also serves as an accessible bathroom for students with disabilities and parents with young children. The petitioner said these bathrooms are often a long way from classrooms, and students may feel stigmatised and exposed when they have to go out of their way to use a special bathroom. The petitioner submitted that gender-neutral bathrooms need to be just as accessible and available as any other bathroom.

Support for gender-neutral bathrooms

Although the petitioner believes that funding is the main barrier, we also heard that not all schools are supportive of their transgender and gender-diverse students. One student Gender Neutral Bathrooms NZ surveyed had asked their school to provide gender-neutral bathrooms and had been told that they were “not a priority and not important”. The petitioner said that school leadership and school boards, although largely supportive, were not free of transphobia and basic misunderstandings about transgender and gender-diverse people’s needs. As an example, we heard that it was common for school boards to restrict the use of newly built toilet blocks to a gender, when the new facilities could have been gender-neutral. The petitioner said this demonstrated that guidance and funding were not sufficient to ensure the safety of gender-diverse students, and that specific requirements to provide gender-neutral bathrooms were needed.

Comments from the Ministry of Education—Te Tāhuhu o te Mātauranga

The ministry told us that the health and wellbeing of all students in Aotearoa is its top priority. The ministry is committed to ensuring that all students have the opportunity to learn in a safe environment where they feel comfortable and accepted. The ministry acknowledged that gender-neutral bathrooms can provide a safer and more dignified means of using bathroom facilities for many of New Zealand’s LGBTQIA+ students.

Role of school boards of trustees

The ministry submitted that school boards of trustees are responsible for identifying when capital works are needed to upgrade or renew existing bathrooms. The ministry does not provide specific funding for upgrades to bathrooms because individual school boards decide how to allocate funding. It explained that the de-centralised nature of decision-making in New Zealand schools is a cornerstone of our education system. It allows each school to make informed decisions and plans for its unique school environment. The ministry told us that it provides guidance to schools and that schools must adhere to section 127(1)(c) of the Education and Training Act 2020, which requires boards to be inclusive of, and cater for, students with differing needs. However, it acknowledged that retrofitting bathrooms to be gender neutral is not always a priority for schools with limited finances.

The ministry submitted that the best way for students and parents concerned about a lack of inclusive bathrooms is to raise their concerns with school leaders in the first instance. If this is unsuccessful they can then pass their concerns on to the board of trustees through either a student or parent representative who sits on the board.

The ministry supports schools in the development of their Ten-Year Property Plans (10YPPs). Boards identify property projects that need targeting in these plans, including whether bathrooms need to be upgraded. School bathrooms that are near the end of their life or a safety risk are more likely to be identified as priorities for upgrading. The ministry told us that when existing bathrooms are upgraded, this will usually be done in a way that can support gender-neutral use. The ministry said schools can also use 5YAs to upgrade, modernise, and replace existing school buildings. The ministry told us that the Government

has provided additional funding of \$693 per student for boards to accelerate property upgrade works under the School Investment Package.

Reference guidance for bathroom design

The ministry told us that it provides schools with specific guidance on bathroom design. This is to ensure that bathrooms are designed to enhance inclusivity, student safety, comfort, and privacy. The guidance requires that toilets be self-contained and include hand basins and drying facilities in each cubicle, along with full-height walls and doors.¹ The ministry submitted that since 2016, when this guidance was developed, all new bathrooms in schools have been built to enable inclusive use.

We heard from the ministry that school boards decide what gender to designate bathrooms. It encourages schools not to designate the bathrooms by gender but to leave them gender-neutral. However, the ministry confirmed that, as the petitioner noted, many schools have nevertheless designated most or all of their bathrooms for specific genders. We heard that, even when the physical spaces themselves are gender neutral, people in schools still tend to think of bathrooms as gendered.

The ministry has begun work to develop specific guidance to schools on retrofitting existing bathrooms to improve safety, privacy, and comfort as much as possible within existing constraints.

Encouragement for schools to provide supportive environments for LGBTQIA+ students

The ministry recognises that it is important for schools to develop a culture where all students feel safe and supported. The ministry encourages schools to pay attention to any concerns for the safety and wellbeing of gender-fluid students and support them as much as possible. The ministry encourages schools to improve staff and student education about LGBTQIA+ issues. The ministry told us that it has developed a guide to LGBTQIA+ students in collaboration with InsideOUT Kōaro.² The guide is designed to help schools provide more inclusive spaces for LGBTQIA+ students.

Comments from InsideOUT Kōaro

InsideOUT Kōaro (InsideOUT) told us that every school across New Zealand has rainbow students enrolled, whether they are openly out or not. It told us all students deserve the right to feel safe at school and this includes being able to use the bathroom without anxiety, distress, or the risk of harm.

InsideOUT believe that the Government has an obligation to provide funding to schools that enables them to build or convert gender-neutral bathrooms. It told us that existing as a transgender young person in environments that are not built for them can be a great source of anxiety. Many students are forced into situations where they must decide between invalidating their identity and keeping themselves safe when using a bathroom.

¹ Ministry of Education, "Toilet Reference Design Guide" version 2.0, 2017

² Ministry guidance for supporting LGBTQIA+ students.

InsideOUT told us that we live in a world that treats all people as if they are heterosexual and cisgender and that this can pose challenges to transgender and rainbow young people. In a school environment this can have adverse effects on the quality of education a student receives. InsideOUT told us that evidence shows when young people experience discrimination and exclusion in schools, their overall achievement suffers.³ It submitted that transgender young people may experience high levels of anxiety when living in an environment that is not equipped for their gender identity. We heard that transgender young people are constantly worried about potential transphobia, harassment, and physical abuse. There is evidence of a correlation between rainbow students' positive wellbeing outcomes and their attendance at inclusive schools.

InsideOUT expressed concern that many schools want to build and update gender-neutral bathroom facilities yet lack the resources to do so. InsideOUT urged the Government to provide funding to build these bathrooms in schools throughout Aotearoa. It submitted that if schools are expected to provide a supportive environment for all students, the Government must then support them to do this. InsideOUT submitted that gender-neutral bathrooms are just one of the elements needed to ensure that all schools are safe and supportive environments for LGBTQIA+ students. It told us there also needs to be a culture shift in all schools. However, providing gender-neutral bathrooms is a meaningful and proactive step that can normalise gender diversity and meet the needs of gender-diverse students. It told us that it is important that the Government continue to invest in students.

Comments from Human Rights Commission—Te Kāhui Tika Tangata

The commission supports the petition and agreed that all students deserve to have access to a safe and comfortable bathroom. It submitted that all students, regardless of their sexuality, gender identity or expression, or sex characteristics, are entitled to enjoy their human rights fully. Respecting these students' rights is also consistent with the Crown's obligations under Te Tiriti o Waitangi.

The commission told us that ensuring access to gender-neutral bathrooms is a key step schools should take to protect students' right to education. We also heard that gender-neutral bathrooms would foster a sense of belonging and improve the wellbeing of gender-diverse students.

Human rights breaches

The commission submitted that providing funding for gender-neutral bathrooms and a more robust legislative and regulatory framework would better enable schools to uphold the human rights of transgender and non-binary students.

The commission set out the international human rights frameworks which New Zealand is party to and the domestic implementation of these rights. All students have the right to the full enjoyment of their human rights and there is an obligation on schools under international and domestic law to uphold these rights by providing a safe learning environment. Schools must also proactively promote students' health and wellbeing under the Health and Safety at

³ National education and learning priorities. Safe, present and included brief.

Work Act 2015. It is the responsibility of school boards to ensure that schools are free from violence, bullying, and harassment and create an environment where individuality and diversity are respected.

The commission told us that transgender and non-binary students are not safe in their schools at all times. The commission identified gendered bathrooms as a limitation on the full realisation of their human rights. The Special Rapporteur's 2016 report on the human right to safe drinking water and sanitation highlighted the issue of gender-segregated bathrooms. The report said that gendered bathrooms discriminate against transgender people and violate their right to basic services.⁴

The commission submitted that providing gender neutral bathrooms in schools also aligns with Te Tiriti obligations. It shows respect to customary beliefs about gender and upholds the "rangatiratanga of rangatahi to access facilities that align with their identities".

The commission is concerned that transgender and non-binary students throughout Aotearoa do not have adequate access to appropriately gendered bathroom facilities, which could breach their right to equality and non-discrimination, education, privacy, health, and sanitation. The commission believes that funding is needed to provide accessible gender-neutral bathrooms that will assist in the full realisation of human rights for gender-diverse students.

Legal framework for bathrooms in schools

The commission noted that, as the ministry had already told us, it is the role of each board to identify the need to upgrade or renew bathroom facilities within their school. The commission submitted that this creates barriers to transgender and non-binary students' access to human rights. The commission identified the following problems with the ministry's guidance:

- The guidelines that are designed to increase inclusivity are not legally binding.
- The guidelines are based on physical practicalities of use by all people, not just gender-diverse students.
- Bathrooms designed to comply with the guidance are not required to have non-gendered signage.
- There is no accountability or awareness of the number of gender-neutral bathrooms in schools within the ministry, as there is no requirement to report to the ministry about these decisions.
- Funding for bathrooms is based on a system that does not necessarily factor in gender-diverse students' needs.

The commission also raised an issue with the constraints that boards operate under. Boards can only operate within the limited resourcing constraints set by the ministry. This means that even if a school wishes to upgrade its bathroom facilities to ensure better access to gender-neutral facilities, the request would need to be worked through with the ministry and prioritised according to the level of need of other open projects. There is no specific

⁴ [Report of the Special Rapporteur on the human right to safe drinking water and sanitation 2016.](#)

requirement to take into account the needs of transgender and non-binary students in this process.

The commission told us of instances where students have been told by schools that they must rely on existing accessible bathrooms. This can require transgender and non-binary students to seek permission to use staff bathrooms, use facilities on the other side of the school campus, and use bathrooms where they felt “outed” for being seen entering the facility.

The commission submitted that a legislative and regulatory framework needs to be developed that is grounded in human rights and requires all schools to provide adequate access to gender-neutral bathrooms. It told us that to provide oversight and accountability schools should be made to report to the ministry on the location, accessibility, number, and features of gender-neutral bathrooms.

Our response to the petition

We thank Gender Neutral Bathrooms NZ for all of its work and advocacy in this area. We congratulate the group on its successful work in its own school and we commend its school leadership and board for its support. We believe that all students should feel safe and secure in their school environment. We wish to emphasise our support for non-binary and transgender students who have experienced hardship and anxiety as a result of not being able to access a bathroom. All students should be able to access a bathroom without fear or stress.

We believe that providing safe gender-neutral bathrooms is a key component of targeting and addressing the discrimination faced by transgender students. We think that ensuring there are accessible gender-neutral bathrooms is a proactive step schools can take to promote and protect non-binary and transgender students’ rights. We consider that this is a positive step towards a more inclusive Aotearoa New Zealand and will assist in ensuring that all New Zealanders are accepting of gender diverse populations.

We wish to acknowledge the work done by the ministry in its development of guidance for gender-neutral bathrooms. We are satisfied that all bathrooms being developed since these reference guides were introduced in 2016 are being developed in line with the gender-neutral standards. We encourage schools’ boards of trustees that have developed bathrooms in line with the gender-neutral standards to ensure they are enabling inclusive use, without gendering the bathrooms.

We recognise the complexity of this issue. Some schools and boards are supportive, but lack the funds to renovate their bathroom facilities. Other schools consider that the needs of different groups of students require different approaches to bathrooms. We acknowledge the difficulty schools’ boards of trustees operating on a tight budget face, in attempting to allocate funds to renovate their bathroom facilities. However, we want to highlight the harm a lack of gender-neutral bathrooms can cause and again emphasise the need for accessible bathroom facilities for all. Modern bathroom design means that gender-neutral, accessible bathrooms can be safe for all students.

We encourage the ministry to work closely with schools and to continue to advocate for our transgender and non-binary rangatahi and ensure that they are happy and safe in their school environments.

We recommend that the Government continue to encourage schools to consider providing gender-neutral bathrooms as bathrooms are renovated.

Appendix

Committee procedure

The petition was referred to us on 30 June 2022. We met between 25 August 2022 and 8 June 2023 to consider it. We received written and oral evidence from Gender Neutral Bathrooms New Zealand, the Ministry of Education—Te Tāhuhu o te Mātauranga, InsideOUT Kōaro, and the Human Rights Commission—Te Kāhui Tika Tangata.

Committee members

Hon Jacqui Dean (Chairperson)
Rachel Boyack (until 8 February 2023)
Dr Liz Craig (from 8 February 2023 until 3 May 2023)
Steph Lewis (until 8 February 2023)
Nicole McKee
Todd Muller (until 19 October 2022)
Sarah Pallett
Jamie Strange (from 8 February 2023)
Teanau Tuiono
Hon Poto Williams (from 3 May 2023)

Ingrid Leary and Dr Anae Neru Leavasa also participated in some of the proceedings for this petition.

Evidence received

The documents we received as evidence in relation to this petition are [available on the Parliament website](#).

Recordings of our hearings can also be accessed online:

- [Hearing of evidence with the petitioner, the Ministry of Education, and InsideOUT Kōaro \(23 February 2023\)](#)
- [Hearing of evidence with the Human Rights Commission \(4 May 2023\)](#)