

September 2025

FSC Debrief – Review of the 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

Background:

In June 2024, the Law Commission publicly consulted on an extensive review of the Human Rights Act Review of the 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.

The FSC was specifically contacted to provide feedback in two areas. Firstly, whether the insurance exception in section 48 of the Human Rights Act should be amended to reflect new grounds of discrimination.

Secondly, in relation to Workplace Savings and superannuation, where the exception in section 70(2) of the Act is discussed that allows superannuation schemes to treat people differently in certain circumstances by reason of their sex. The Law Commission is seeking feedback on whether this exception should be amended to reflect any new grounds of discrimination.

On 4 September 2025, the Law Commission published their final report, [la 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 \(NZLC R150, 2025\)](#). A summary is available [here](#) and executive summary of the report [here](#).

Next steps: Government will now review the recommendations and determine whether or not to implement them.

| Proposal | FSC Submission Recommendation | Final amendments | Outcome indicator |
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| | | | <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; background-color: red; margin-right: 5px;"></div> Poor </div> <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; background-color: orange; margin-right: 5px;"></div> Medium </div> <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; background-color: green; margin-right: 5px;"></div> Good </div> |
| Whether the <u>insurance exception</u> in section 48 of the Human Rights Act should be amended to reflect new grounds of discrimination. | We did not consider there to be any need at this time for a new specific exemption under section 48 for insurers to be able to differentiate based on a customer's sex assigned at birth or sex characteristics. | <p>The law currently allows insurers to make distinctions on the basis of sex in certain circumstances.</p> <p>The Commission recommended that this section be amended so the exception also applies (or extended) to the new grounds</p> | |

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| | <p>We also did not consider there to be a need to allow different terms and conditions solely based on whether someone is transgender or non-binary or has an innate variation of sex characteristics, provided insurers retain the ability to assess and offer different terms for medical reasons.</p> | <p>of gender identity and innate variation of sex characteristics. It did not recommend any additional exception for sex assigned at birth or for treating transgender/non-binary status as a basis for differentiation.</p> <p>In summary, the FSC submission was largely accepted as the Commission did not introduce new exceptions of the kind we opposed and instead simply recommended a technical update so section 48 covers the new grounds.</p> | |
| <p><u>Workplace Savings/Superannuation:</u> Where the exception in section 70(2) of the Act is discussed that allows superannuation schemes to treat people differently in certain circumstances by reason of their sex. The Law Commission sought feedback on whether this exception should be amended to reflect any new grounds of discrimination.</p> <p>We consider that it would be helpfully protective for scheme managers though if the Act could be amended to make it reliably clear that for the purposes of invoking section 70(2), a scheme manager has the discretion to treat a member's sex as that</p> | <p>We noted that most defined benefit schemes are closed, but some still use sex-based actuarial assumptions.</p> <p>We highlighted the ambiguity over whether managers can treat members according to their self-identified sex for s70(2) purposes.</p> | <p>The Act currently permits schemes to provide different treatment for men and women where statistically or actuarially justified.</p> <p>The Commission recommended that this section also be amended to reflect the new grounds of gender identity and innate variation of sex characteristics.</p> <p>The Report does not explicitly address or recommend explicit wording that would give scheme managers discretion to treat "sex" as "self-identified sex" for the purposes of applying the exception.</p> <p>In summary, the Commission addressed the broad question of amending section 70(2) but did not take up the suggestion of clarification. Our</p> | |

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| with which the member identifies to ensure flexibility for particular member circumstances as they arise. | | submission influenced the recognition that section 70(2) remains relevant to some defined benefit schemes. | |
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