



# Speak Up for Women

## Submission on the Human Rights Commission's PRISM Report

This document is a response to the PRISM report ('the report') produced and disseminated by the New Zealand Human Rights Commission.<sup>1</sup> According to The Human Rights Commission's website, statutory duties related to its role includes the responsibility to:

*Advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society;*

*Encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society;*<sup>2</sup>

However, the content of the PRISM report misrepresents human rights law and contributes to rhetoric which is already contentious and pits groups and individuals against each other. It is the view of Speak Up For Women that the report has not addressed issues central to the subject matter and lacks the public consultation necessary for it to guide policy. The report is ultimately incomplete, serves to obfuscate the law, and recommends wide-sweeping social changes without proper consideration of existing legislation and the values of New Zealanders.

### The problem of definition

That there has been insufficient public consultation is evident in the definitions outlined in the report. The definitions of words are important as they are how we orientate ourselves in our societies and communicate. One of the most important functions of words are to outline the boundaries we place around our society in order to understand ourselves, keep ourselves safe, and punish those who commit crimes. Understanding the definitions of key terms and maintaining their consistency is paramount to ensuring our legal system functions fairly and effectively. The current trend to overreach and redefine words based on the experiences of a small minority of people in activist communities - as this report has done - is a threat to our ability to use laws to protect populations, prevent crime, and uphold human rights.

The glossary of terms at the end of the PRISM Report is at odds with the glossary of terms set up by the *United Nations Equality Glossary*. The report avoids definitions of both gender and sex in favour of obscure definitions under three separate headings.

The definition of sex is most problematic where it states:

*"All babies are assigned a sex at birth, usually by a visual observation of external genitalia".*

The term 'assigned' is inaccurate and confusing. Referring to public scientific knowledge used to underpin global understanding of human biology and medicine would have assisted the committee in writing the report in more accurate and less politicised language. It is a distortion of the English language to say sex can be 'assigned at birth' and it is at odds with the *United Nations Equality Glossary* (2017) that defines sex as follows:

*"The physical and biological characteristics that distinguish males and females."*

Wider consultation on the matter of post-natal observation of babies would have elucidated that sex is usually detected *in utero* with no need to rely on a visual inspection. It is commonplace for pregnant women to have their foetus' chromosomes tested only a matter of weeks after conception. Alternatively, they can ascertain the sex via an ultrasound. For this reason, the report appears wilfully misleading, and puts forward a definition of sex that is out-of-step with common societal understanding.

The expression “assigned at birth” also lacks scientific basis. The term ‘assign’ is commonly understood to mean allocate. However, sex is ultimately determined by biology. The mechanisms for which are well-known and have been taught at schools and universities worldwide. It is necessary to reflect on why “assigned” was considered appropriate language here. The proliferation of its use in relation to sex has emerged from activist circles whose expressed purpose is to erase the boundaries – and therefore the unique rights and protections – between the sexes. In light of this, it is highly inappropriate that a human rights commission would chose to adopt the language of a small, but noisy lobby rather than that which governs our material reality in existing laws and scientific understanding.

The glossary of terms in the report, if adopted, could shift New Zealand law outside of the comity of the United Nations. Instead, it is our recommendation that New Zealand policy makers adopt definitions set up by *United Nations Equality Glossary* (2017). In particular, we suggest the following:

#### *Sex (biological sex)*

The physical and biological characteristics that distinguish males and females.

#### *Gender*

Gender refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialisation processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group, sexual orientation, age, etc.

Additionally, the PRISM Report makes no acknowledgement that a belief in an innate gender identity existing within each person is both a relatively new concept to common discourse and one that very few people subscribe to. Most people do not make a connection between their personality and interests and their sex; they are simply the sex they are and have their own unique personality. The imposition of terms like ‘cisgender’ are at best foreign and at worst offensive and confusing to the general population.

By coming down so definitively on one side of a highly contested belief system the Human Rights Commission is preferencing it which brings up potential breaches of both the HRA 93 and the New Zealand Bill of Rights Act. Speak Up For Women advocates for the protection of the human rights of everyone and that includes belief systems. People have the right to believe they have a gender identity, but it is not their right – nor the right of the Human Rights Commission – to impose that belief system on others.

#### **Positive sex discrimination**

The PRISM Report fails to adequately consider Part 2 of the *Human Rights Act 1993* which concerns unlawful discrimination. It is in this area that the report exhibits the most fundamental failings as the New

Zealand Human Rights Commission quite extraordinarily elects to ignore the New Zealand human rights legislation.

This section of law can be referred to as ‘positive discrimination’ and it is a concession that society does accept discrimination in some forms when it is considered appropriate. Public consultation beyond specific interest groups would have aided the report writers in understanding the purpose and benefits of acceptable practices of discrimination. Some examples of positive discrimination would be a male-only mental health group or a women-only gym. This kind of necessary discrimination is not addressed in the report which frames any delineation of boundaries based on sex as immoral, mean, and even unlawful discrimination.

An example of positive discrimination that plays a core role in New Zealanders’ lives is outlined in s 49 of the Human Rights Act 1993; it permits:

“the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant”.<sup>3</sup>

At complete odds with this section, the PRISM Report states “This is related to the highly gendered and binary organisation of some sports, and the overt homophobia, biphobia, and transphobia pervasive in these spaces”. While unfortunately bigotry and discrimination still exist in New Zealand, they are not responsible for the lawful positive discrimination used in sport to ensure women and girls can take part safely and fairly. It is a ‘strawman’ argument to point to bigotry - to say nothing of the abandonment of the Commission’s role of maintaining and developing harmonious relations - when if positive discrimination is removed in this situation it will be women who will be adversely affected.

The issue of ‘trans exclusion’ is a hot topic in the world of sport. Both World Rugby and the International Olympic Committee are in the process of reviewing their policies in regards to trans participation. Following a conference of diverse experts earlier this year, World Rugby has found that it is simply too dangerous to allow transwomen to play in women’s rugby. Their investigative approach included scientists, sports experts, transgender people, women’s rights groups, lawyers, doctors, and insurance experts. Their report is being consulted on currently.

What the PRISM Report and the existing trans sports policies fail to acknowledge is that policies that protect fairness and safety for women in sport are not “excluding trans people”. Sporting bodies appear to be investing resource and effort into finding ways to include trans people in their sports. It is a simple fact of life that male and female bodies are different and because of these differences we separate sporting teams and competitions by biological sex.

In its widest sense, the PRISM Report’s recommendation to “implement anti-discrimination policies” fails to take into account the positive aspects of legal discrimination that exist to support the rights of other groups of people, e.g. women and girls. It is because of these stances, that this report pits the rights of women and girls against the demands of activists claiming to speak for trans people.

When sufficient light is shone on these matters, there is public unease and even outrage at approaches like those adopted in the report. This is currently being explored more fully in the United Kingdom where lawsuits are beginning across the whole spectrum of issues relevant to gender ideology. The British government has halted legislation which would have enabled sex self-identification (as we did here in New Zealand), the NHS is being taken to court, and the extraordinary overreach of public government agencies is being condemned as the media finally reports on it.

The PRISM Report is far from the only place we are seeing pushes for the desegregation of toilets and changing spaces. There is a concerted drive through various public service agencies to force this dangerous and unwanted policy on New Zealanders; the Commission’s stance and publications are encouraging this. This report ignores entirely the material risk they place women and girls under if they remove our ability to safely access spaces that are free of all males. When women’s rights advocates resist such changes this is not

because of the belief that transwomen are inherently more dangerous. Rather it is the acknowledgement that as biological males the danger they present to us does not disappear when they declare their identity. This is more relevant than ever given the drastic broadening of the term ‘transgender’ which now includes anyone who declares themselves transgender, from a casual crossdresser to a fully medically transitioned transsexual. As more safeguards have been taken away allowing men who make no effort to transition whatsoever entitled to call themselves women, it is more crucial than ever that women and girls’ rights in our law are protected. There is a real and significant risk of harm if we are forced to ignore exceptions to the prohibited grounds of discrimination on the grounds “the maintenance or provision of separate facilities or services for each sex on the ground of public decency or public safety” (Human Rights Act 1993, s46).

Due to the negligence of positive and lawful forms of discrimination and the obfuscation of New Zealand human rights law in general, the PRISM Report is not fit for purpose. In recommending many of the actions it does, it effectively contradicts NZ’s legislation. Consequently, its recommendations should not guide policy. Moreover, the report recommends sweeping changes that would be difficult to implement, require significant changes to well understood social norms – such as the common definition of sex and gender, and would lead to confusion, and create social uncertainties.

### **Sex self-identification**

The issue of sex self-identification is fraught with problems as already acknowledged by Crown Law and our government when they halted the Births, Deaths, Marriages, Relationships, Registration Bill. Speak Up For Women drove the discussion of the bill in regards to women’s rights, the integrity of public data, and the antidemocratic social engineering of it all. This report adds little to that discussion.

The most controversial recommendation is relaxing the ability for people to amend the sex on their birth certificate. This recommendation reflects the problematic definitions set up in its glossary of terms. It is astonishing that the Commission is proposing self-identification without addressing the issues raised either by Crown Law, The Department of Internal Affairs or Speak up For Women. We would direct you to these sources and to our website to read our extensive documentation on the key issues that legal sex self-identification would cause.

In a further obfuscation the PRISM Report cites Article 16 of the *International Covenant on Civil and Political Rights* (1966) for the basis of sex self-identification with respect to a greater freedom to amend birth certificates.<sup>4</sup> This seems to interpret Article 16 in a fashion that could not have been predicted by its drafters. It is also a wilful misreading of a simple statement. Article 16 itself reads:

*“Everyone shall have the right to recognition everywhere as a person before the law”.*

A natural reading of this right does not permit a right to self-identify in the manner being proposed by the report. There is no legal basis for the interpretation adopted by the report nor would such an interpretation be a welcome addition to New Zealand law. It is but another example of the writers of the PRISM Report setting their agenda and then searching for any piece of legislation or international law to attempt to legitimise it. Changes to human rights law should not come via activist demands compelling human rights groups to fit square policies into round holes.

### **Sexual Orientation**

The PRISM Report states in its definition of ‘homosexuality’ on page 61 that it is an attraction (romantic or sexual) towards the “same gender”. Given the misleading definition of gender provided by the report and the deliberate change from “same sex” this is an explicit move to include people of the opposite sex (who have declared a gender identity change) in this attraction. If sex is swapped for gender in regards to homosexuality (and associated terms) in legal and policy contexts, the rights of homosexual people cannot be adequately protected.

Speak Up For Women are very concerned with the abuse lesbians in particular face online and in person if they decline to accept that transwomen (even those who have made no steps towards medical transition) are lesbians and that they should have sex with them. It has become a potent issue in the conflict over the encroachment of gender identity on women’s rights. Young lesbians in particular are being coerced to deny their sexual orientation and declare that they will have heterosexual sex if the person simply identifies as a woman. That the Commission is unaware of the pressure of this new form of rape culture and one that lesbians are fight alone when the behaviour is effectively

sanctioned by organisations like the HRC and documents like the PRISM Report.

As feminist and renowned academic Sheila Jeffreys says on the topic of the imposition of gender identity on lesbianism:

*“To give but one example, lesbians in South Africa are relentlessly raped and murdered in a state that ignores any responsibility. Right now, we cannot campaign to support them without also promoting the rights of heterosexual crossdressers to take over women’s spaces and opportunities, and to pretend to be ‘lesbians’ and pressure lesbians to allow penile access.” (Jeffreys, 2018)*

The definitions in the PRISM Report Glossary also misrepresent the wording in the Human Rights Act 1993 which says:

*sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation*

The conflation of the terms in the HRA 93 with new niche cultural concepts like gender diverse, non-binary, pangender etc, dangerously misrepresents our human rights law and appears intended to dilute the protections for the correct terms. It is back-to-front for our human rights organisation to be pushing one-sided cultural concepts that pit groups against each other. New Zealanders should be able to trust that the rights they have in law are being protected by the Human Rights Commission and not being obscured and tossed aside for concepts that have not been the subject of wide-ranging community consultation nor gone through judicial or parliamentary legal scrutiny.

The PRISM Report also makes the inference that gay and lesbian rights have been won and attention should now be on transgender rights. Elsewhere in the report, it quotes figures that show both groups are equally vulnerable to both poor mental health and violence. Additionally, despite referring to the Youth 12 Survey in the document, the report’s dismissal of homosexual and bisexual people is a disturbing miscalculation. Youth 12 shows that same-sex attracted young people are more likely to be depressed, self-harm, and fear school violence than transgender young people. It is unfathomable that reading statistics like this could cause one to deduce that same-sex attracted people have had their day and the focus should now be on transgender people.

| Type of harm                                      | Same sex attracted people | Transgender youth |
|---|---------------------------|-------------------|
| Depression  | 41.3%                     | 40%               |
| Suicide attempt                                   | 18.3%                     | 20%               |
| Self harm   | 59.4%                     | <50%              |
| Been hit or physically harmed by another person   | 43%                       | 50%               |
| Bullied   | 17%                       | 18%               |
| Afraid someone in school will hurt or bother them | 58%                       | 54%               |

The Commission appears unaware of an even more malignant concern. This is that young lesbian and gay people are turning to transgender identities in order to escape homophobia. A recent press story outlines the pressure applied to young lesbians to transition.<sup>5</sup> Other research<sup>6</sup> and testimony shows that social contagion is a growing theme in young people’s decision to transition.<sup>7,8</sup> It is unconscionable that the Commission fails to address this as a concern especially when there is a growing community of detransitioners in New Zealand and worldwide.<sup>9</sup>

### **The Yogyakarta Principles**

The PRISM Report says, “The Yogyakarta Principles, adopted in 2007, apply existing international human rights law to sexual orientation, gender identity and expression, and sex characteristics”. This is a mischaracterisation of the significance of the principles and the standing they have in international human rights law. The Yogyakarta Principles have never been ratified by the United Nations and came out of what was effectively a self-selecting conference facilitated by a Canadian NGO.<sup>10</sup> While we acknowledge that the current Human Rights Commissioner Paul Hunt was present at the conference, this does not make the principles any less irrelevant to New Zealand law. When the PRISM Report has been so reckless with the meaning and intent of actual human rights law – both domestic and international – it is doubly as worrying to see the report promote an unratified conference document as if it were binding on the NZ government.

## Conclusion

There are significant issues with the PRISM Report. It offers further obfuscation to policy and law rather than bringing any clarity. There are also a number of legal interpretations offered that are problematic and even wrong. The tenor of the report reflects the tone of modern societal trends in New Zealand to create a more inclusive society. However, the tone and the language of “kindness” must not be used to mask the forcing of mass illiberal societal changes on an unsuspecting public. ,

The glossary of terms is so far outside of those established by the United Nations that they bear no resemblance. It is another aspect of the decision making of the writers of the report that should be examined.

Moreover, the anti-discrimination approach adopted in the report has severe shortcomings. It makes no effort to address the exceptions to the prohibited grounds of discrimination. This raises numerous health and safety concerns and significant impingements on the rights of women, girls, and same-sex attracted people.

Additionally, the report makes recommendations with significantly uncertain legal implications. Cherry picking legislation and then dressing it up as something else is only going to result in laws being misapplied and misrepresented.

Ultimately, this report puts forward far-reaching social and policy recommendations that would be difficult to implement and require further public consultation. It is our opinion, – that this report has misrepresented New Zealand and international law so thoroughly that the only responsible course of action is to recall it and restart the work with a range of stakeholders who can do justice to the issues involved. As it is now it will cause further confusion and drive more tensions between people who believe in gender ideology and people who want to see women’s rights protected. We strongly insist that any future report should aim to be a better reflection on society while incorporating the inclusiveness that New Zealanders value.

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