

# Submission to Social Services and Community Committee on Legislation (Definitions of Woman and Man) Amendment Bill

“ I wish I could have been safe in my transness as a child. Imagine the joy of a new generation of people who were safe and supported from day one regardless of their identity.”

- Pākehā/NZ European, 19 years old<sup>1</sup>

## This Bill should not proceed

1. Mana Mokopuna – Children's Commissioner<sup>2</sup> opposes the Legislation (Definitions of Woman and Man) Amendment Bill (the Bill) in its entirety and we strongly recommend it does not proceed.
2. We make this submission under the Children's Commissioner's statutory mandate as the independent advocate for all mokopuna in New Zealand and informed by the principles of the Children's Commissioner Act 2022.<sup>3</sup>
3. The Bill is inconsistent with science. It would change the law to define a man and a woman, male and female, based on 'biology'. It is, however, widely accepted that biology is not binary or clear-cut, including for humans, but instead is creative and filled with chaos.<sup>4</sup> The Bill assumes sex and gender are binary, which they are not, and, because of this, it excludes intersex, transgender, non-binary, and gender questioning young people.
4. If enacted into law, the Bill could force young people to conform to long out-of-date binary sex and gender categories that do not match who they are. This will increase social exclusion, discrimination, mental distress and suicide risk for no gain.
5. We submit that the Bill:
  - a) is inherently discriminatory, rendering approximately 30,000 mokopuna<sup>5</sup> invisible in the eyes of the law<sup>6</sup>
  - b) undermines the rights of intersex, transgender, non-binary, and gender questioning young people, and risks making existing violations worse, contrary to Aotearoa New Zealand's international human rights commitments
  - c) increases risks of mental distress and harm to intersex, transgender, non-binary and gender-questioning young people, and



**For more information please contact:**  
Matt Langworthy  
Manager Rights, Insights & Advice  
Matt.Langworthy@manamokopuna.org.nz

<sup>1</sup> Fenaughty, J., Ker, A., Alansari, M., Besley, T., Kerekere, E., Pasley, A., Saxton, P., Subramanian, P., Thomsen, P. & Veale, J. (2022). [Identify survey: Community and advocacy report. Identify Survey Team.](#)

<sup>2</sup> To learn more about [Mana Mokopuna – Children's Commissioner](#), see Appendix 1.

<sup>3</sup> Section 5, Children's Commissioner Act 2022, including, e.g., the Children's Convention; the diversity of children and young people in all its forms; the need to give priority to children and young people who are disadvantaged and the issues affecting them.

<sup>4</sup> [Marcroft's sex definition bill fails basic science - Newsroom](#); and [Opinion: When Parliament defines a woman, whose woman are they defining? - Massey University.](#)

<sup>5</sup> We use the term mokopuna to describe all children and young people in Aotearoa New Zealand, see Appendix 1.

<sup>6</sup> It is estimated that 2.3% of the population have variations in sex characteristics. That is an estimated 30,000 mokopuna out of the approximately 1.25 million people aged under 18. [HOME | Intersex Aotearoa.](#)

d) conflicts with te ao Māori and Pacific understandings of identity, and is inconsistent with Te Tiriti o Waitangi.

6. We deal with each of these points below.

## The rights and wellbeing of mokopuna must be upheld



*Our communities deserve dignity, safety, love, and the freedom to exist as who they are. Pacific rainbow+ people have always existed across our cultures, histories, and families. Attempts to deny that reality through law cause real harm.<sup>7</sup>*

- Moana Vā

## The Bill discriminates against some mokopuna

7. New Zealand has an obligation under the United Nations Convention on the Rights of the Child (the Children's Convention) to protect mokopuna from discrimination.<sup>8</sup> It is also required to take special measures to diminish or eliminate discrimination for certain groups of mokopuna.<sup>9</sup> If the Government continues to support the passage of this Bill, it will be in breach of these obligations.

## The Bill undermines children's rights

8. All mokopuna have the right to life, survival and development. This is a substantive right and one of the guiding principles of the Children's Convention through which all other rights must be interpreted and implemented.
9. Rather than advancing and promoting mokopuna rights – as the Government should be doing as a State Party to the Children's Convention – this Bill takes us backwards in children's rights practice, and in delivering on the commitments New Zealand has made under the Children's Convention, which it is duty-bound to implement for all children in New Zealand.
10. The Bill has widespread rights implications for mokopuna who are intersex, transgender, non-binary and those who are still growing, learning and questioning who they are. The Bill will impact the rights of these mokopuna to identity,<sup>10</sup> to expression,<sup>11</sup> to safety,<sup>12</sup> to health and health care<sup>13</sup> – including mental health – to education,<sup>14</sup> play and recreation, and to culture and the arts.<sup>15</sup>

---

<sup>7</sup> [Community Advocacy Report.pdf](#)

<sup>8</sup> United Nations Convention on the Rights of the Child, Article 2.

<sup>9</sup> [General comment no. 5 \(2003\): General measures of implementation of the Convention on the Rights of the Child | Refworld](#) at para 12.

<sup>10</sup> UNCROC, Article 8.

<sup>11</sup> UNCROC, Article 13.

<sup>12</sup> UNCROC, Articles 19 and 34.

<sup>13</sup> UNCROC, Article 24.

<sup>14</sup> UNCROC, Article 28.

<sup>15</sup> UNCROC, Article 31.

11. If enacted, the Bill will significantly impact the rights of young people to be and express themselves as their transgender, non-binary and intersex selves, to feel safe and recognised in their communities.<sup>16</sup>
12. Intersex, transgender, non-binary and questioning mokopuna already experience discrimination in their access to health, education, housing and participation.<sup>17</sup> Rainbow communities also experience significantly higher rates of sexual and family violence<sup>18</sup> and rainbow mokopuna experience more school bullying than their peers.<sup>19</sup> These forms of bullying, violence and harm are likely to worsen if this Bill proceeds because the Bill will effectively legitimise discrimination, further marginalising rainbow mokopuna.

“ *Hard to get decent accommodation. The majority don't want to live with a trans person.* ”  
- Young transgender woman<sup>20</sup>

## The Bill increases risk of mental distress and harm for mokopuna

“ *...only in the last year of being on hormones can I confidently say I want to live out the rest of my life. I can now see a future for myself, as a man, that I could never see before.* ”  
- Young transgender man<sup>21</sup>

13. Experiences of social exclusion and discrimination can have a significant impact on right to life, survival and development of rainbow mokopuna, including intersex, transgender and non-binary mokopuna, who are at significantly higher risk of mental distress<sup>22</sup> and rainbow communities are disproportionately affected by suicide.<sup>23</sup> Access to mental health support is also a key challenge.<sup>24</sup>

“ *Mental health care needs more funding, and it's kind of stupid we haven't already done that since we have the highest teen suicide rate in the world.* ”  
- Young rainbow with a disability or chronic condition<sup>25</sup>

14. The Bill, by proposing an outdated binary definition of sex and gender, and the public debate it has triggered, has caused increased distress and anxiety for intersex, transgender, gender diverse and questioning people, including mokopuna, their whānau and wider communities. This distress, like the Bill itself, is unnecessary and unwarranted.

---

<sup>16</sup> For an explanation of how the Bill produces material harm and normalises hate see [Opinion: When Parliament defines a woman, whose woman are they defining? - Massey University](#).

<sup>17</sup> [Counting-Ourselves Report-Dec-19-Online.pdf](#); [Identify Survey: Community and Advocacy Report](#).

<sup>18</sup> [Family and sexual violence — Te Ngākau Kahukura](#).

<sup>19</sup> [Ending-rainbow-focused-bullying-and-discrimination-resource.pdf](#).

<sup>20</sup> [Counting-Ourselves Report-Dec-19-Online.pdf](#).

<sup>21</sup> [Counting-Ourselves Report-Dec-19-Online.pdf](#).

<sup>22</sup> [Meeting the mental health needs of young New Zealanders — The Audit Office](#) at paragraph 1.3; [Distinct profiles of mental health need and high need overall among New Zealand adolescents](#) .

<sup>23</sup> [Suicide prevention — Te Ngākau Kahukura](#).

<sup>24</sup> [The-wellbeing-and-health-needs-of-a-cohort-of-transgender-young-people-accessing-specialist-medical-gender-affirming-healthcare.pdf](#).

<sup>25</sup> [Youth19+Intersectionality+Report FINAL 2021 print.pdf](#).

“ There is a lot of homophobia from the students around. Being openly rainbow in the school leads to rumours and bullying, so most students have to be closeted for their safety.”

- Asian mokopuna, 15 years old, public mixed-gender school<sup>26</sup>

## The Bill conflicts with te ao Māori and Pacific understandings of identity

“ I actually kind of love it. For instance, being Māori and queer, my queerness for me is a form of my Māori-ness...that is like decolonisation for me; that is the way for me to tap back into my tīpuna. Because it was super accepted and normalised in pre-colonisation to the extent that we did not have a word for it.”

- Youth advisor, Māori, rainbow with a disability or chronic condition<sup>27</sup>

15. The Bill is at odds with te ao Māori approaches to identity. As found by the Law Commission through its consultations for the Ia Tangata review,<sup>28</sup> many Māori who are intersex, transgender or non-binary do not see these features as centrally defining of their identity. Instead, for many Māori, their identity as Māori is far more important, which is based on whakapapa and not individual characteristics, such as gender.<sup>29</sup> This is encapsulated in the term takatāpui, which as an identity is a response to Western and colonial ideas of sex, sexuality and gender, and emphasises one's identity as Māori as inextricably linked to their gender identity, sexuality or variation of sex characteristics.<sup>30</sup>

“ I was raised with the understanding that our wairua comes to us through our tipuna, and that it's our wairua and not our tinana [body] that our tipuna know us by. It's our wairua and not our tinana that leaves a path for our mokopuna. For me, limiting ourselves to the form we're born in is a Western idea.”

- Adult, Māori<sup>31</sup>

16. Māori rainbow mokopuna face significant inequities compared to other groups. Food insecurity, housing instability and health discrimination were higher for rainbow rangatahi Māori than for Pākehā rainbow young people. Compared to non-rainbow rangatahi Māori, this group reported poorer school environments, less positive hope for the future and poorer mental health.<sup>32</sup>

17. By proposing an outdated and unscientific binary definition of sex and gender, the Bill is inconsistent with the Government's Te Tiriti o Waitangi obligations, particularly under:

- Article 2, to respect Māori, iwi, hapū, whānau authority and autonomy and self-determination, and

---

<sup>26</sup> [Community Advocacy Report.pdf](#).

<sup>27</sup> [Youth19+Intersectionality+Report FINAL 2021 print.pdf](#).

<sup>28</sup> [A 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.](#)

<sup>29</sup> [Issues Paper 53](#) at Chapter 5 and Ia Tangata at pp. 60-63.

<sup>30</sup> [Definition of Takatāpui — Takatāpui | A Resource Hub.](#)

<sup>31</sup> [NZLC- Ia Tangata - R150.](#)

<sup>32</sup> [Youth19+Intersectionality+Report FINAL 2021 print.pdf](#).

- Article 3, to actively protect Māori, including mokopuna Māori who are intersex, transgender, non-binary or questioning, and ensure they enjoy the same rights as non-Māori without disparity or discrimination.

18. The Bill also fails to recognise the acceptance of gender diversity in the Pacific community. As stated by Moana Vā, an organisation providing support, advocacy, and mentorship for Pacific rainbow+ people.<sup>33</sup>

## Kia kuru pounamu te rongo – all mokopuna live their best lives

“ I want being queer to be normalised so people don't think we're abnormal and they're just like ok cool ur queer. I want every queer person to feel and be safe and loved.”

- Pākehā/NZ European, 17 years old<sup>34</sup>

19. At Mana Mokopuna – Children's Commissioner our moemoea is *Kia kuru pounamu te rongo – all mokopuna live their best lives*. This Bill undermines the opportunity for many mokopuna in Aotearoa New Zealand to live their best lives. This is because it will affect mokopuna being able to be themselves, undermining their inherent dignity and rights as mokopuna.
20. How the law talks about people matters. The Bill is an unwarranted and unscientific backwards step, undermining the rights, interests, wellbeing and participation of intersex mokopuna, of transgender and gender diverse mokopuna, and of those mokopuna who are exploring who they are and their place in the world.
21. As adults we have the simple task of supporting, rather than obstructing, the path of all mokopuna as they learn and grow in this world. We should be doing all we can – and the law should do all it can – to systemically support mokopuna to grow up safe, loved and well, and experiencing their full rights in every area of their lives.
22. In strongly opposing this Bill, we acknowledge the mana and dignity of intersex mokopuna, of transgender and gender diverse mokopuna, and of mokopuna who are still growing and learning about who they are. We stand beside them and their families and whānau, hapū, iwi and communities and the many organisations that support them in opposing this Bill.
23. Our message to all mokopuna – no matter your identity – is that you matter, you are important, and you should experience your full range of rights in all circumstances, at all times, including your right to be who you are.

<sup>33</sup> [Instagram](#).

<sup>34</sup> [Community Advocacy Report.pdf](#).

## About Mana Mokopuna – Children’s Commissioner

### The Children’s Commissioner is the independent advocate for all children in Aotearoa New Zealand.

Mana Mokopuna – Children’s Commissioner is the independent Crown entity that advocates for the rights, interests, wellbeing and participation of all mokopuna (children and young people) in Aotearoa New Zealand. The Children’s Commissioner is Dr Claire Achmad.

We exist for all mokopuna in New Zealand. We advocate for and with mokopuna, within their whānau and community contexts. We base our work on evidence and research, including the perspectives of mokopuna.

We particularly advocate for mokopuna Māori, and for mokopuna who are experiencing disadvantage. Our work includes monitoring places mokopuna can’t leave, such as care and protection, youth justice, youth mental health, and intellectual disability facilities. We do this as a National Preventative Mechanism under the Optional Protocol to the Convention Against Torture, and other cruel, inhuman or degrading treatment and punishment.

### Our vision is for all mokopuna to live their best lives

Our moemoeā (vision) is ‘Kia kuru pounamu te rongō – All mokopuna live their best lives’. This is a collective vision and challenge for Aotearoa New Zealand.

We focus our advocacy in four areas for all mokopuna:

- 1) a strong start in life
- 2) growing up safe and well
- 3) thriving families and whānau, and
- 4) participating in what matters to me.

### We have a mandate grounded in domestic and international law

Our purpose and functions are set out in the Children’s Commissioner Act 2022. We anchor our work in Te Tiriti o Waitangi, the UN Convention on the Rights of the Child (the Children’s Convention) and other international human rights instruments.

We’re responsible for:

- advocating for the rights of all mokopuna
- putting a strong focus on the rights of mokopuna Māori to support them to thrive within their whānau, hapū, iwi
- amplifying the voices of mokopuna
- promoting the Children’s Convention
- monitoring how the government gives effect to the Children’s Convention, and
- monitoring the rights of mokopuna when they live in places where they can’t leave.

### The term mokopuna recalls their connection to places and people

We use the term mokopuna to describe all children and young people in Aotearoa New Zealand.

Mokopuna combines moko (imprint or tattoo) and puna (spring of water), describing how young people are valued descendants and members of families. Referring to the people we advocate for as mokopuna draws them closer to us. It reminds us that who they are – and where they come from – matters for their sense of identity, belonging and wellbeing.