ASMS
ASSOCIATION OF SALARIED MEDICAL SPECIALISTS
TOI MATA HAUORA

02/07/2026
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Chairperson
Social Services and Community Committee
Parliament Buildings
Wellington

Legislation (Definitions of Woman and Man) Amendment Bill Submission

Tēnā koe
Toi Mata Hauora | the Association of Salaried Medical Specialists (ASMS) is the union and professional association of salaried senior doctors and dentists. We were formed in April 1989 to advocate and promote the industrial and professional interests of our members. We have over 6,000 members across Manatū Hauora | Ministry of Health, Te Whatu Ora | Health New Zealand, the Accident Compensation Corporation, and many other smaller healthcare providers.

ASMS believes the Legislation (Definitions of Woman and Man) Amendment Bill will further marginalise transgender and non-binary people, create unnecessary barriers to health access (including for cisgender women), and introduce legislative inconsistencies. ASMS recommends that the Bill be rejected in its entirety.

The Bill risks increased marginalisation and health harms

Sex and gender are distinct. Sex denotes a set of physical characteristics, whereas gender refers to a person's internally experienced identity. Biological sex is not a single attribute but the emergent outcome of several partly independent developmental processes, including chromosomes, genes, epigenetics, hormones, and enzymes. As these components are established at different developmental stages and can vary independently of one another, sex is better understood as multi-component rather than as a single male/female binary. For many individuals, the relevant characteristics align, but for others, they may combine in a range of configurations, known as intersex or innate variation of sex characteristics that the strict binary does not capture.[1] Additionally, a person's gender identity may or may not correspond to their sex characteristics.

By failing to recognise intersex, transgender, and gender-diverse people in accordance with their sex characteristics and identities, the Bill entrenches inequities in their access to healthcare. For example, long-term oestrogen therapy induces breast tissue development in transgender women with an associated breast cancer risk, while transgender men who retain a cervix, uterus, or ovaries remain at risk of cervical, uterine and ovarian cancer.[2] Where the Bill decouples a person's 'legal sex'

[1] Arthur P. Arnold, 'A General Theory of Sexual Differentiation', *Journal of Neuroscience Research* 95, nos 1–2 (2017): 291–300, https://doi.org/10.1002/jnr.23884.

[2] Rona Carroll et al., 'Uptake, Experiences and Barriers to Cervical Screening for Trans and Non-Binary People in Aotearoa New Zealand', *Australian and New Zealand Journal of Obstetrics and Gynaecology* 63, no. 3 (2023): 448–53, https://doi.org/10.1111/ajo.13674.

from the anatomical reality requiring care, it introduces obstacles to screening, referral and treatment. The same misalignment may also give insurers grounds to decline cover for screening or other medically necessary care. Insurance barriers and denials are already a reality for transgender, intersex, and gender diverse people living in the United States.[3]

In 2022, the Transgender Health Research Lab at the University of Waikato surveyed 2,631 transgender and non-binary people living in Aotearoa. The *Counting Ourselves* research project provides an overview of the community's health and well-being. The project found that, of participants wanting a given type of gender affirming healthcare, between 34% and 99% could not access it; 61% of participants reported good, very good, or excellent health, far lower than the general population (86%); 77% of participants reported high or very high psychological distress, far higher than the general population (12%); and 44% of participants had experienced discrimination within the preceding 12 months, twice the rate of the general population (21%).[4]

Despite this, Russell et al. show that the use of a chosen name by the friends and family of transgender people resulted in "a 5.37-unit decrease in depressive symptoms, a 29% decrease in suicidal ideation, and a 56% decrease in suicidal behavior."[5] Similarly, Tordoff et al. note that gender-affirming interventions, including puberty blockers and gender-affirming hormones, are associated with "60% lower odds of moderate to severe depressive symptoms and 73% lower odds of self-harm or suicidal thoughts."[6] Likewise, research by Olson et al. indicates that transgender children who are supported in their gender identity "have developmentally normative levels of depression and only minimal elevations in anxiety, suggesting that psychopathology is not inevitable."[7] These and many other studies provide a strong evidentiary basis for social acceptance and support, which this Bill neglects.

Wider harms and legislative uncertainty

The Bill also disadvantages cisgender women by reducing their gender to their biological and reproductive functions. Such a definition cannot accommodate the many women who have undergone hysterectomies, who are post-menopausal, who are infertile, or who have an innate variation of sex characteristics. The Bill's inability to consistently classify these people is an unsound foundation. The reductive framing instrumentalises women. Defining womanhood by reproductive function revives precisely the essentialism (woman as child bearer) that feminist and legal thought has long worked to dislodge, and that the law has moved away from.

The interaction with existing statutes compounds issues. For example, abortion is governed by the Contraception, Sterilisation, and Abortion Act 1977[8] (as amended by the Abortion Legislation Act

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[3] 'Help Transgender Patients Understand Their Coverage and Rights', *AAPC Knowledge Center*, 1 February 2020, https://www.aapc.com/blog/51371-help-transgender-patients-understand-their-coverage-and-rights/.

[4] A. Yee et al., *Counting Ourselves: Findings from the 2022 Aotearoa New Zealand Trans & Non-Binary Health Survey* (Transgender Health Research Lab, University of Waikato, n.d.).

[5] Stephen T. Russell et al., 'Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth', *Journal of Adolescent Health* 63, no. 4 (2018): 503–5, https://doi.org/10.1016/j.jadohealth.2018.02.003.

[6] Diana M. Tordoff et al., 'Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care', *JAMA Network Open* 5, no. 2 (2022): e220978, https://doi.org/10.1001/jamanetworkopen.2022.0978.

[7] Kristina R. Olson et al., 'Mental Health of Transgender Children Who Are Supported in Their Identities', *Pediatrics* 137, no. 3 (2016): e20153223, https://doi.org/10.1542/peds.2015-3223.

[8] Contraception, Sterilisation, and Abortion Act 1977, 112 (1977), https://www.legislation.govt.nz.

2020),[9] and refers throughout to a "woman" without defining the term. If passed, the Legislation (Definitions of Woman and Man) Amendment Bill will define "woman" as "an adult human biological female." In conjunction with the Age of Majority Act 1970, which fixes adulthood at 20 years old where no other age is specified,[10] the Bill's definition could potentially narrow abortion eligibility, raising the prospect that people under 20, alongside transgender and intersex people, could be excluded from services. The *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Legislation (Definitions of Woman and Man) Amendment Bill* identified this risk, finding that the Bill's use of "adult" would result in age-based discrimination.[11]

The Bill risks undermining statute by imposing rigid, biologically deterministic, and scientifically reductive definitions. It remains unclear whether a person's recognised sex in official records would be uniformly upheld across all areas of law. The foreseeable result is that an individual might be recognised in one way under one statute and differently under another, resulting in fragmentation, legal uncertainty, and barriers to accessing services.

Conclusion

The Bill is presented as a means to deliver clarity and certainty, yet its effect would be the opposite. By codifying a binary definition of sex that biological evidence does not support, it marginalises intersex, transgender, and gender-diverse people, while disregarding the many cisgender women whose bodies do not conform to a reproductive criterion. These consequences are not merely symbolic. They may have a detrimental effect on health screening, referral, and treatment, while creating a legislative incoherence where Parliament has deliberately framed Acts in more inclusive terms.

ASMS therefore recommends that the Legislation (Definitions of Woman and Man) Amendment Bill be rejected in its entirety. ASMS wishes to appear before the Select Committee to speak to this submission.

To discuss this submission further, please get in touch with James Roberts, Policy and Research Advisor, via james@asms.org.nz

Nāku noa, nā

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[9] Abortion Legislation Act 2020, 6 (2020), https://www.legislation.govt.nz.

[10] Age of Majority Act 1970, 137 (1970), https://www.legislation.govt.nz.

[11] Chris Bishop, *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Legislation (Definitions of Woman and Man) Amendment Bill* (Order of the House of Representatives, 2026).