

Submission from
Lesbian Action for Visibility in Aotearoa
TO
the United Nations
as part of
New Zealand Human Rights
Universal Periodic Review 2024

NEW ZEALAND HUMAN RIGHTS UNIVERSAL PERIODIC REVIEWS IN RELATION TO THE PROTECTION OF LESBIAN HUMAN RIGHTS

Prior Universal Periodic Reviews (UPR's) have been conducted in 2009, 2014 & 2019. In the reports submitted by Aotearoa New Zealand as part of these reviews, there has been no mention of lesbians or lesbian issues. Neither have lesbian rights been raised by the United Nations in its responses to Aotearoa New Zealand.

In the 2019 Report under the heading Sexual Orientation and Gender Identity there are five headings. Two of these are solely concerned with transgender issues and three with LGBTQI issues. Lesbians and lesbian concerns are only mentioned inasmuch as they are treated as if they are the same as the concerns of all other LGBTQI people.¹

In 2023, motivated by increasing concerns in relation to the erosion of our human rights as lesbians in Aotearoa New Zealand, Lesbian Action for Visibility Aotearoa (LAVA) participated in the UPR stakeholders' meetings held throughout the country. LAVA also made a written submission to the Ministry for Foreign Affairs and Trade for consideration for inclusion in the Aotearoa New Zealand National Report in relation to the 2024 Universal Periodic Review.

None of the concerns we raised had been included in the Aotearoa New Zealand Universal Periodic Review 2024 Draft National Report.

LAVA, representing a group of concerned lesbians, decided to submit our concerns directly to the United Nations.

LESBIAN ACTION FOR VISIBILITY IN AOTEAROA (LAVA) – WHO WE ARE

Lesbian Action for Visibility in Aotearoa (LAVA) is a group of lesbians committed to working for lesbian visibility and women's sex-based rights. After being at the forefront of the successful action for homosexual law reform in 1985/1986, lesbians formed LAVA in 1988 to bring the ongoing discrimination of lesbians to public attention. This discrimination was experienced as invisibility and a denial of basic human rights such as:

- the right to work
- the right to housing
- the right to goods and services
- the right to access public places
- the right to parent children

From 1988 – 1993 LAVA organised a lesbian visibility campaign and support for a proposed bill that would give homosexuals and people with HIV/AIDS protection from discrimination under the Human Rights Act. LAVA was concerned about the proposed wording which used the word 'homosexual',

¹ Human Rights Council Working Group on the Universal Periodic Review
Thirty-second session 21 January–1 February 2019

National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* New Zealand Pg 19, 151-155

the word traditionally used to refer to men, therefore continuing the invisibility of lesbians. As a result of LAVA's work, the law which passed in February 1994 specifically defined the range of sexual orientations "(m) Sexual orientation, which means a heterosexual, lesbian, homosexual or bi-sexual orientation."² Lesbians were now visible in the Human Rights Act, recognised as same sex attracted and as such had legal protection from discrimination.

CURRENT SITUATION

LAVA was re-formed in August 2020 to fight a new form of lesbian invisibility, linked to the fundamental principle of gender ideology. In a gender ideology framework, gender rather than biological sex is the primary determinant of whether a person is a man or a woman. We were becoming aware that as same sex attracted women, we were again invisible, as lesbian were now being defined as same *gender* attracted.

In New Zealand gender ideology has come to dominate our political and social landscape. While the idea of lesbian and gay remains in the acronym (LGBTQI) now used in respect of this change, in practice same **sex** attracted people have been sidelined.

Of particular concern to LAVA is the effect of lesbian invisibility on young lesbians who are now under pressure to affirm that men who call themselves lesbian are indeed lesbians, and to include them in all lesbian activities including dating. There are numerous examples on lesbian dating sites of the pressure these males place on same sex attracted lesbians to date them.

This situation is aggravated by the New Zealand Human Rights Commission redefining sexual orientation as same gender attraction. This was done without consultation with lesbian or gay New Zealanders. Further it is in contradiction to the protection of same sex attracted lesbians which is enshrined in the Human Rights Act (1984) where sexual orientation, not gender orientation is the basis of the protection from discrimination.

THE REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW (UPR) JULY 2019

This report outlines the progress made by the Aotearoa New Zealand Government regarding the human rights of the Gay, Lesbian, Bisexual, Transgender and Takataapui (GLBTT) community, particularly noting the passing of the Civil Union Act and the Prostitution Law Reform Act as significant steps in this regard, while also stressing that more needs to be done. While the UN document refers to the GLBTT community, we will continue to use the acronym LGBTQI in this submission as it is this which is commonly used in Aotearoa New Zealand.

We note two concerns with this report.

- 1) At no stage in the report, or in the Aotearoa New Zealand Draft National Report for the UPR 2024 Review, **is there any recognition that the LGBTQI community referred to is not a homogenous group.**
- 2) At no stage in the report is there any **recognition that the rights and proposed solutions to issues faced by some sections of this group may be in conflict with the rights and proposed solutions to issues faced by other sections.**

² NZ Human Rights Act 1993, 21, (1) m

NEGATIVE IMPACT

In many cases perceived solutions to the concerns of the trans community have an undoubted negative impact, not just on lesbians but also on women and girls generally. An example illustrating this point is included in the DRAFT REPORT paragraph below.

In summary:

- There is no such thing as the Rainbow or LGBTTTQI community. The LGBTTTQI acronym has many diverse communities with differing life experiences and needs within it.
- For the same reason (as in the point above), there is no such thing as a Rainbow point of view.
- That this rainbow perspective excludes lesbians is evidenced in a basic search of the website of the government Ministry most concerned with the rights of lesbians and addressing lesbian concerns, the Ministry for Women <https://women.govt.nz/>. A search for 'transwomen' on that website brings up 261 results. A search for lesbian brings up 0 results. What clearer indication could there be of where the priority and focus of the Ministry for women lies?
- The website of Human Rights Commission, <https://tikatangata.org.nz/> the organisation with a statutory responsibility for protecting the human rights of lesbians follows a similar pattern. A search for 'lesbian' gives 0 results while a search for transgender gives 17 results.

The perspective that a united Rainbow or LGBTQI community exists has permeated government departments in New Zealand and has spread from the Ministry of Education through New Zealand schools and the school curriculum. Rainbow groups such as InsideOut whose focus is young people, and whose stated purpose is to make Aotearoa safer for all rainbow young people³ are in reality trans support and advocacy groups. The school resources they produce are funded by the Ministry of Health and the Ministry of Education. In theory these resources promote inclusivity and acceptance of rainbow students in schools. In practice they promote the view of a homogenous rainbow community where one size fits all.

Lesbians are concerned that Rainbow or LGBTQI groups are seen by the NZ Government and the Human Rights Commission as having a united view of the world whereas the truth is that they do not speak for, or represent the needs of, lesbians in any way. Rainbow groups are reinforcing lesbian invisibility rather than representing our unique perspective.

AOTEAROA NEW ZEALAND DRAFT UNIVERSAL PERIODIC REVIEW REPORT 2024

We note the draft report from New Zealand for the upcoming UPR (due January 2024) states: "School environments are safer and more welcoming for Rainbow learners, with the introduction of gender neutral bathrooms, school resources on sexuality, mental health and healthy relationships, and updated data management tools to include diverse gender identities."⁴ It was clear from the 2019 summary of Stakeholders' Submissions on New Zealand and the Report of the Human Rights Council Working Group on the Universal Periodic Review, that New Zealand education was considered not "inclusive" or "integrated" enough at the national level, and

³ <https://insideout.org.nz/>

⁴ Aotearoa New Zealand's Universal Periodic Review 2024 Draft National Report Pg 27, #147

that, in the 2024 draft, our Ministry of Education believes they have addressed their priority issues of “the inclusion and wellbeing of LGBTQI students”.

The provision of gender neutral bathrooms as part of the solution to making school environments safer and more welcoming for rainbow students illustrates the two key points LAVA has already raised. These are

1. The assumption that rainbow students all have the same needs and thus all will all feel more included and have their wellbeing enhanced by something like gender neutral bathrooms.
2. The lack of awareness that a solution to one groups perceived problem can and does create problems for another group.

It may well be the case that gender neutral toilets make life easier for trans students (if indeed there are any in the school), but there is no doubt that for girls, using the same toilets as boys is resulting in the toilets they have to use being both physically and socially unpleasant as well as unhygienic. Girls and boys (and men and women), have a different relationship with toilets. Females touch the seat with intimate parts of their bodies, while male bodies stand at a distance from it. Males can urinate into (or around or onto) a toilet while females must sit on it.

There is now significant anecdotal evidence of girls as young as five needing to clean urine off school toilet seats before they can use them. Some schoolgirls are restricting their fluid intake during the school day to limit the number of times they use the toilet. This is happening to over 50% of the school population.

In addition to needs of female students and lesbians not being considered in the new initiatives which are supposed to be focused on the Inclusion and wellbeing of LGBTQI students, LAVA believes that the rights of lesbian and gay children and adolescents are actually being breached.

Much of the gender ideology curriculum, introduced as part of the attempt to provide inclusive education for LGBQI students, perpetuates the erroneous belief that more feminine boys are girls in the wrong body, and more masculine girls are boys in the wrong body. LAVA believes it is not possible to be born in the wrong body. We are our bodies. They are not right or wrong and the role of adults is to support children to accept and love their bodies. Gender ideology encourages students to consider that if they are gender non-conforming they could well be born in the wrong body. In fact, studies show that, “homosexual adults tend to be more gender nonconforming than heterosexual adults in some of their behaviours, feelings, and interests.”⁵

Teaching this ideology encourages students who may be lesbian or gay to see themselves as transgender instead. LAVA sees this as the height of homophobia and as destroying lesbian lives.

This is yet another example of presuming all the diverse sections of the LGBTTQI umbrella have the same needs and therefore treating them in the same way will solve their problems.

CURRENT CONCERNS

LAVA’s concerns that the human rights of lesbians are under serious threat is felt by lesbians throughout the world. LGB groups are removing themselves from LGBTQI groups and forming LGB Alliances, and lesbian only groups are on the rise, eg the Lesbian Project (international), Get the

⁵ <https://pubmed.ncbi.nlm.nih.gov/18194004/>

L Out (UK) Lesbians United, (United States), Coalition of Australian Lesbians (COAL) (Australia), Lesbian Action for Visibility in Aotearoa (LAVA), (New Zealand).

**Internationally lesbians, defined as same sex attracted females, are under threat.
Lesbian gatherings are prohibited or at risk of being the target of violent protests.
Lesbian organisations no longer exist, nor do lesbian social gathering places such as bars.**

In New Zealand, the *Conversion Practices Prohibition Legislation Act* which was passed into law in 2022 is claimed to be the ultimate protection of the rights of rainbow people to be their authentic selves. This law does not distinguish between sexual orientation and gender identity and 'Affirm only' is the new mantra in relation to gender identity. As a result of this, the first therapist who has publicly stated she does not see 'affirm only' as an appropriate therapeutic response is being investigated by her professional body.⁶

Many submissions during the Select Committee process of this legislation, related to the completely different issues facing lesbians and gay men than those facing trans identified people. These submissions were completely ignored. Some members of the Select Committee demonstrated ongoing rude and dismissive behaviour towards those submitting about their concerns. Examples of this behaviour included eye-rolling, cutting across presenters while they were speaking, making disparaging comments to presenters, eating while people were presenting and in the case of one member, posting comments on her private Facebook page saying how frustrated she was listening to ignorant terfs anti trans comments all day.

In Aotearoa New Zealand people can now legally change the sex marker on their birth certificates based on nothing other than their declared gender identity. LGB groups first become LGBT groups, then LGBTQI groups and the T is now the dominant faction, to the extent that lesbians who do not believe that people can change sex no longer have a voice or even a place in the movement we were part of building. There is no room for a lesbian perspective when an LGBTQI perspective or feedback is called for.

Nowhere was this more evident than at the Wellington Pride celebration in March 2021 when LAVA members were banned from having a stall at the Out in the City event because of our stated belief in the fact that it is not possible for people to change sex. Identity trumped biology and the organisers of an event priding itself on its inclusivity and commitment to having the 'hard conversations', excluded a group of lesbians without even talking to us, let alone having the 'hard conversation'.

**LAVA believes in the objective reality of biology, that women are adult human females,
that men can never become women and therefore can never be lesbians.
Lesbians are same sex attracted women.**

The New Zealand Human Rights Commission now states that lesbians and gay men are same gender attracted rather than same sex attracted, despite the wording of the Human Rights Act which clearly acknowledges us as same sex attracted and gives us sex-based rights. This interpretation is being used across government and is being used to dilute the proper interpretation of the law. For example, the recent census provides for multiple made-up sexual orientations such as asexual and pansexual but these groups of people have never faced stigma or discrimination. This change was made without any consultation with lesbians or gay groups, but instead consultation was with LGBTQI groups where the views of transgender 'allies' predominate.

⁶ From confidential discussion with therapist concerned who wishes to remain anonymous at this stage

We note that the Ministry of Women has changed the definition of women with no notification, policy work or risk analysis – a change that was only notified after it was revealed through Official Information Act requests.

In summary, LAVA is concerned that the definition of lesbian is no longer legally recognised as a same sex attracted adult human female and as a result lesbians are becoming invisible. We have five main concerns in relation to this:

1. That our right as lesbians to have public lesbian only gatherings and to offer lesbian only services and spaces is under threat
2. That lesbians are coerced into accepting men who identify as women into our dating pool. We are pressured to be same gender attracted not same sex attracted and vilified if we only want to date women. Young women are particularly vulnerable to this pressure
3. That young lesbians and young women who think they might be lesbians are pressured to 'trans' because of their gender non conformity and their desire to only have women as sexual partners
4. That lesbians who assert their sex-based rights are being excluded from and vilified by the "Rainbow" Communities they helped build
5. That Government funded special interest LGBTQI groups such as InsideOut and Rainbow Youth have become the arbiters of Government policies and practices promoting gender ideology in schools and workplaces under the umbrella of 'inclusiveness'.

The Human Rights Commission has completely failed to speak up for lesbian rights

and to acknowledge that legislative protection (in the Human Rights Act 1984) of our rights as same sex attracted women means that lesbians are recognised in law as such.

RECOMMENDATIONS TO GOVERNMENT

1. That the Government and the Human Rights Commission acknowledge that while the belief that one has a gender identity is strongly held by some people, it is not an objectively verifiable fact and as such has no place in school curricula or in Government supported staff training and development programmes. While being sensitive and inclusive is laudable, it applies to all people and is a two-way process.
2. That the Government and the Human Rights Commission commit to fostering open communication and public conversations about gender ideology – what it means and how it affects people.
3. That in every school and public venue there are men's toilets and women's toilets. Unisex toilets can be added if feasible but female toilets must never be sacrificed for the convenience of the tiny minority of people who are uncomfortable using the toilet of their biological sex.
4. That the Human Rights Commission reverse its statement that lesbians and gay men are same gender attracted and recognise that we are same sex attracted. Sexual orientation is

based on biology.

5. That the Government and the Human Rights Commission take steps to promote awareness of the diverse communities represented by the LGBTTTQI (Rainbow) umbrella and acknowledge that there are legitimate and competing rights and needs between these diverse communities.
6. That the Government and the Human Rights Commission commit to recognising and consulting with representatives from all these diverse communities so that they are fully informed of their needs and the realities of their lives, particularly in areas of discrimination where their human rights are not being acknowledged or protected. In particular we recommend that the Government and the Human Rights Commission engage with the lesbian and gay communities as well as with the trans communities.
7. That the Human Rights Commission acknowledge there is a climate of fear in New Zealand in relation to speaking out about gender identity ideology and there is actual and on-line violence directed at those who do. The most recent public example of this was the Posie Parker rally at Albert Park in Auckland on 25 March 2023, however rape and death threats are an everyday experience for those who speak and write in defence of women's and lesbian's sex-based rights.
8. That the Human Rights Commission work with the mandate they have to reduce the division in New Zealand society in relation to this issue.
9. That a commission of enquiry be formed to investigate the extent to which gender ideology has permeated Government Departments and changed policies and practices with limited and mostly with no consultation with lesbians or women generally.
10. That all Government policies be based on evidence and the latest research and allow for a diversity of viewpoints.
11. That strategies and safeguards are put in place to ensure all future government and Ministry policy changes are preceded by notification and a full risk analysis.

Contact LAVA at lava.aotearoa@gmail.com