

# Proactive Release: Government response to the Petition of Rainbow Labour Christchurch Branch: Protect trans athletes' right to compete in publicly funded sports

<b>Minister</b>	Hon. Mark Mitchell	<b>Portfolio</b>	Sport and Recreation
<b>Title of Cabinet Paper</b>	Government response to the Petition of Rainbow Labour Christchurch Branch: Protect trans athletes' right to compete in publicly funded sports	<b>Date of Issue</b>	9 April 2025

These documents have been proactively released:

<i>Date</i>	<i>Title</i>	<i>Author</i>
February 2025	Government response to the Petition of Rainbow Labour Christchurch Branch: Protect trans athletes' right to compete in publicly funded sports	Hon. Mark Mitchell, Minister for Sport and Recreation
21 February 2025	Minute of Decision: Government Response to the Petition of Rainbow Labour Christchurch Branch  CAB-25-MIN-0040	Cabinet

## *Information redacted*

Information has been withheld from this release under the following grounds of the Official Information Act 1982:

- Out of Scope

No public interest has been identified that would outweigh the reasons for withholding this information.

## **In Confidence**

Office of the Minister for Sport and Recreation

Cabinet Legislation Committee

### **Government response to the Petition of Rainbow Labour Christchurch Branch: Protect trans athletes' right to compete in publicly funded sports**

- 1 This paper seeks approval of the proposed Government response to the petition of the Rainbow Labour Christchurch Branch to 'Protect trans athletes' right to compete in publicly funded sports' (the Petition).

#### **The Petition**

- 2 The Petition was presented to the Petitions Select Committee on 2 September 2024.
- 3 The Petition requests that the House of Representatives either: 'Amends the Sport and Recreation New Zealand Act (2002) to explicitly protect the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.' **or** 'Passes an Act that protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.'.
- 4 The Petition also requests that the House of Representatives: 'Expands the Prohibited Grounds for Discrimination under s21(1)(m) of the Human Rights Act (1993) to include people who are Transgender and Gender non-conforming on the basis that it is generally accepted that they are human, rather than alien, and therefore subject to protection under the Act.'
- 5 The Petition was signed by 789 people and has been submitted in response to the commitment made by the Government to 'Ensure publicly funded sporting bodies support fair competition that is not compromised by rules relating to gender.'.
- 6 On 15 November 2024, the Petition was referred to the Minister for Sport and Recreation for response.

#### **Proposed Government Response**

- 7 The proposed Government response acknowledges that transgender people and members of the rainbow community face barriers to participating in sports in New Zealand and that they are generally less likely to participate than cisgender people (i.e., people whose gender identity matches their sex assigned at birth).
- 8 The response states that the Government is focussed on increasing participation in sport at all levels and that Sport New Zealand has been working on improving the physical activity levels of everyone in New Zealand.
- 9 The response notes that while the list of prohibited grounds in the Human Rights Act 1993 does not expressly refer to people who are transgender,

non-binary and/or have variations of sex characteristics, since 2006, the Crown Law Office has held the position that the grounds for 'sex' in the Act incorporates gender. This interpretation was clarified in a Crown Law opinion, which stated that "there is currently no reason to suppose that 'sex discrimination' would be construed narrowly to deprive transgender people of protection under the Human Rights Act."

- 10 The Government agrees that all New Zealanders should feel safe and supported to participate in sport. However, the question of how transgender people are included is for individual sports organisations to consider alongside other priorities such as safety and fairness. What this looks like will be different depending on the characteristics of the sport.
- 11 The response, therefore, outlines that the Government is not seeking to amend existing legislation or establish new legislation as requested in the Petition.
- 12 The response also notes the review currently being conducted by the Law Commission, examining the protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary, and people who have an innate variation of sex characteristics. This review includes consideration of *section 49: Exception in relation to sport*.
- 13 Section 49 permits the exclusion of individuals of one sex from competitive sports where factors such as strength, stamina, or physique are relevant. This exception does not extend to non-playing roles, such as coaching, refereeing, or administration, nor does it apply to sports activities for children under the age of 12. The Act does not define "competitive sports."
- 14 The Law Commission anticipates publishing a final report with its recommendations in mid-2025.
- 15 Once the final report is received, the government will consider any recommendations the Commission may make, including those related to sport.

### **Timing of the government response**

- 16 The Government response must be presented to the House by 4 March 2025.

### **Consultation**

- 17 Sport New Zealand has prepared this Cabinet paper and the proposed Government response.
- 18 The Ministries of Justice, Women and Youth Development, the Law Commission, and the Human Rights Commission, were consulted on this response.

### **Financial implications**

- 19 There are no financial implications associated with the proposed response.

## Publicity

- 20 The Minister for Sport and Recreation will present the Government response to the Petition of Rainbow Labour Christchurch Branch to the House of Representatives and will provide a response directly to the Petitioner. No publicity is required.

## Proactive Release

- 21 This paper will be proactively released in accordance with Cabinet guidelines. Any redactions made will be consistent with the Official Information Act 1982.

## Recommendations

The Minister for Sport and Recreation recommends that the committee:

- 1 note that on 2 September 2024 the Petition of the Rainbow Labour Christchurch Branch entitled “Protect trans athletes’ right to compete in publicly funded sports”, was referred to the Petitions Select Committee
- 2 note that on 15 November 2024 the Petitions Committee referred the Petition to the Minister for Sport and Recreation for a response
- 3 note that the proposed Government response acknowledges that transgender and gender nonconforming people face barriers to participating in sport and that sports organisations in New Zealand have been working to address these issues
- 4 note that the Government considers that the existing ground of “sex” in the Human Rights Act (1993) s21(1)(a) covers discrimination against people who are transgender, non-binary and/or have innate variations of sex characteristics
- 5 note that the Government views matters concerning how transgender people participate in sport, at any level, as best left to sports organisations to address
- 6 note that the proposed Government response states that the Government is not seeking to amend existing legislation or establish new legislation concerning this topic
- 7 approve the Government response, attached to this submission, entitled *Government Response to Petition of Rainbow Labour Christchurch Branch*
- 8 note that the Government response must be presented to the House by Tuesday, 4 March 2025
- 9 invite the Minister for Sport and Recreation to present the Government Response to the House in accordance with Standing Order 252
- 10 invite the Minister for Sport and Recreation to write to the petitioner(s) enclosing a copy of the Government’s response to the Petition after the response has been presented to the House.

Authorised for lodgement

Hon Mark Mitchell

Minister for Sport and Recreation

# **Government Response to Petition of Rainbow Labour Christchurch Branch**

“Protect trans athletes’ right to compete in  
publicly funded sports”

Presented to the House of Representatives

In accordance with Standing Order 380

## Introduction

- 1 On 15 November 2024, your petition titled “protect trans athletes’ right to compete in publicly funded sports” (the Petition) was presented to the Petitions Committee, and on 15 November 2024 the Petition was referred to the Minister for Sport and Recreation, for a response.
- 2 The Government has carefully considered the petition. It is responding in accordance with Standing Order 380 (referral of petition to Minister for response), 381 (presentation of paper to the House) and 382 (designation of parliamentary papers).

## Background

- 3 The Petition was signed by 789 people and submitted in response to the commitment made by the Government to ‘Ensure publicly funded sporting bodies support fair competition that is not compromised by rules relating to gender.’
- 4 The Petition intends to seek better protection of the rights of transgender and gender nonconforming people to participate in sport.
- 5 The mechanism proposed for achieving better protection is through changes to existing legislation or developing new legislation.
- 6 Specifically, the Petition requests that the House of Representatives either: ‘Amends the Sport and Recreation New Zealand Act (2002) to explicitly protect the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.’ **or** ‘Passes an Act that protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports.’
- 7 The Petition also requests that the House of Representatives ‘expands the Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993) to include people who are Transgender and Gender non-conforming on the basis that it is generally accepted that they are Human, rather than alien, and therefore subject to protection under the Act.’

## Government Response

- 8 We are responding to the Petition in two parts. Part 1 is in response to your request that changes be made to the Sport and Recreation Act (2002) or that new legislation be developed that better ‘protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports’. Part 2 relates to the Petition’s secondary request to expand the Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993).

*Part 1: Request that changes are made to Sport and Recreation Act (2002), or that new legislation is developed, which better ‘protects the rights of transgender and gender nonconforming athletes to participate in publicly funded sports’*

- 9 The Government’s view is that matters concerning how transgender people

participate in sport, at any level, are best left to sports organisations to address and not through changes to legislation as requested in the Petition.

- 10 The Government acknowledges that transgender people face barriers to participating in sport and that fewer transgender and gender non-conforming people are involved in sport at the community level on average. The Government also acknowledges that members of the rainbow community more broadly may also encounter barriers to participating in sport in some contexts.
- 11 Sports organisations in New Zealand have been working to address these issues. For instance, Sport New Zealand has partnered with InsideOUT Kōaro—a leading expert in New Zealand on matters related to the inclusion of rainbow communities—to develop a suite of educational resources that have been shared with the community sport sector.
- 12 All people of every gender have the right to participate in community sport. The Government's priority is to ensure that all New Zealanders can participate fairly and safely. Sport New Zealand has recently been directed to review its Guiding Principles for the Inclusion of Transgender People in Community Sport.

*Part 2: Request to expand the 'Prohibited Grounds for Discrimination under S21, (1)(m) of the Human Rights Act (1993) to include people who are Transgender and Gender non-conforming on the basis that it is generally accepted that they are Human, rather than alien, and therefore subject to protection under the Act.'*

- 13 We note that section 21 of the Human Rights Act that covers sex (and gender) is 21(1)(a), not 21(1)(m), which the Petition refers to. Section 21(1)(m) covers sexual orientation.
- 14 Section 21(1)(a) of the Human Rights Act is currently read as prohibiting discrimination against people who are transgender, non-binary and/or have innate variations of sex characteristics. Sources for this point include the Law Commission's 'Beginners' Guide to the Human Rights Act'.
- 15 Since 2006, the Crown Law Office has held the position that the grounds for 'sex' in the Human Rights Act includes gender. This interpretation was clarified in a Crown Law opinion, which stated that "there is currently no reason to suppose that 'sex discrimination' would be construed narrowly to deprive transgender people of protection under the Human Rights Act." The Human Rights Commission is happy to accept complaints of discrimination on this basis.
- 16 The Government is not planning to undertake any work to amend the Human Rights Act. The Government needs to prioritise various legislative changes, and altering the Human Rights Act, as requested in the Petition, is not currently one of those priorities.
- 17 However, the Law Commission is currently examining the protections in the Human Rights Act for people who are transgender, people who are non-binary, and people who have an innate variation of sex characteristics. This project

includes consideration of section 49: *Exception in relation to sport*.

- 18 Section 49 permits excluding individuals of one sex from competitive sports where factors such as strength, stamina, or physique are relevant. This exception does not extend to non-playing roles, such as coaching, refereeing, or administration, nor does it apply to sports activities for children under 12.
- 19 The Law Commission published an Issues Paper on 27 June 2024, inviting submissions until 5 September 2024. It anticipates publishing a final report with its recommendations in mid-2025.
- 20 Once the final report is received, the Government will consider any recommendations the Commission may make, including those related to sport, and respond accordingly.

### **Conclusion**

- 21 The Government would like to thank the petitioner(s) for raising this issue and reiterate that we are committed to protecting the rights of all New Zealanders to participate in sport.
- 22 We believe that sports organisations are best placed to make decisions on how to include all participants, including those who are transgender or gender nonconforming.
- 23 The Government is **not** seeking to amend or establish new legislation as requested by the Petitioner(s).
- 24 The Government considers that the existing ground of “sex” in the Human Rights Act (1993) s21(1)(a) covers discrimination against people who are transgender, non-binary and/or have innate variations of sex characteristics.
- 25 We look forward to receiving the report of the Law Commission examining the protections in the Human Rights Act (1993) for people who are transgender, people who are non-binary, and people who have an innate variation of sex characteristics.



# Cabinet

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### **Report of the Cabinet Legislation Committee: Period Ended 21 February 2025**

On 24 February 2025, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 21 February 2025:

outside of scope



outside of scope



LEG-25-MIN-0013

**Government Response to the Petition of Rainbow  
Labour Christchurch Branch**  
Portfolio: Sport and Recreation

CONFIRMED

Rachel Hayward  
Secretary of the Cabinet