



Ref: 227432

13 February 2024

Jan Rivers  
Via FYI.org.nz

Tēnā koe Jan

## Response to your request for Official Information

On 22 December 2023, you requested information from the Human Rights Commission (“the Commission”) under the Official Information Act 1982 (“OIA”), regarding the definition of sexual orientation as referred to in the Commission’s “Prism” report, and our “Conversion Practices Guidance”.<sup>1</sup>

You stated that the definition of sexual orientation used in these resources differs from that set out at section 21(1)(m) of the Human Rights Act 1993 (“HRA”), as meaning “a heterosexual, homosexual, lesbian, or bisexual orientation,” which you say “refer[s] to the sex of the person”.

You made two requests of the Commission:

- 1. Please provide the background papers that paved the way for this change away from the legal definition including meeting minutes, reports and legal advice to this decision to create a definition of sexual orientation for use in the HRC’s policy work that does not comply with either the definition or the spirit of the law.*
- 2. Please explain the decision not to explain that the effect of this change is to render sex attraction and therefore lesbian and gay meaningless.*

### Request 1

The definition set out in these Commission documents does not represent a specific decision taken by the Commission as described on the request, but rather represents the application of international and domestic human rights standards in the ordinary course of the Commission’s work. Accordingly, we decline your request under s 18(g) of the OIA, as there was no such decision or background documentation to support that decision.

For context, the definition of sexual orientation in the Commission’s resources set out above is based on the definition contained within the Yogyakarta Principles, which affirm binding international legal standards with which all States must comply, with respect to sexual orientation and gender identity.<sup>2</sup> In all areas of work, the Commission is informed by domestic and international human rights standards. This includes

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<sup>1</sup> This stated, in each of the Glossaries, “Sexual orientation – refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender.” See [Prism](#), at 62; [Conversion Practices Guidance for mental health professionals](#) at 11; [Conversion Practices Guidance for those working with rangatahi and their whānau](#) at 10; [Conversion Practices Guidance for people working in religious communities](#) at 8; and [Conversion Practices Guidance for medical healthcare professionals](#) at 10.

<sup>2</sup> [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#) (Geneva, 2007).

documents that set out how those standards are applied to a particular issue. For example, the Yogyakarta Principles were cited in the Commission's report of the Transgender Inquiry, *To Be Who I Am*, in 2008<sup>3</sup>; and in our Human Rights Review report in 2010.<sup>4</sup> The jurisprudence to the Yogyakarta Principles can be viewed [here](#), included in footnote 20 of the Prism report.

In terms of the HRA definition, the meaning of legislation must be ascertained from its text and in the light of its purpose.<sup>5</sup> The long title to the HRA describes it as seeking to “consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights”.

The prohibited grounds of discrimination set out under s 21 of the HRA, and its predecessor the Human Rights Commission Act 1977, are based on those set out under Art 2(1) of the International Covenant on Civil and Political Rights (“ICCPR”). These grounds are replicated under s 19 of the New Zealand Bill of Rights Act 1990 (“NZBORA”), which, as set out in the long title, also affirms New Zealand's commitment to the ICCPR.

Jurisprudence of the Human Rights Committee increasingly includes discrimination based on sexual orientation under the reference to “other status” in Art 26 ICCPR, which prohibits “any discrimination” in relation to equal protection by the law based on “any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The Yogyakarta Principles – specifically Principle 2 – reinforce States' obligations under the ICCPR to ensure that everyone enjoys human rights without discrimination on the basis of the definition of sexual orientation referred to above.<sup>6</sup>

The definition of “sexual orientation” set out in s 21(1)(m) of the HRA has not been tested in the Courts. Accordingly, the Commission adopts the definition of sexual orientation (as contained in Commission resources) that applies the HRA in accordance with the purpose of the Act and with international law obligations. All people have a sexual orientation and this interpretation ensures that all people can make complaints of discrimination on this basis using our service.<sup>7</sup> The Commission accepts complaints from lesbians, gay people, and bisexual people (as well as heterosexual people and people of any other sexual orientation) who allege that they have been discriminated against on the basis of their actual or perceived sexual orientation.

## **Request 2**

This request is declined under section 18(g) of the OIA. No decision of this nature has been taken. As stated above, the Commission continues to accept complaints from lesbians and gay people who allege that they have been discriminated against on the basis of their actual or perceived sexual orientation.

## **Alternative avenues**

If you are not satisfied with this response, under the Official Information Act you are

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<sup>3</sup> New Zealand Human Rights Commission [To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People](#) (Wellington, 2008).

<sup>4</sup> New Zealand Human Rights Commission [Human Rights in New Zealand 2010 | Ngā Tika Tangata o Aotearoa](#) (Wellington, 2010).

<sup>5</sup> See s 10 of the Legislation Act, 2019.

<sup>6</sup> See footnote 1.

<sup>7</sup> The definition in s 21(1)(m) does not explicitly include, for example, asexual. If the Commission were to receive a complaint under the ground of sexual orientation from someone who believed they had been discriminated against for being asexual, it would be assessed and progressed even though that identity term is absent from s 21(1)(m), as this would align with the spirit of the HRA and the Commission's obligations under it.

entitled to complain to the Ombudsman's Office. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or on freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Frances Everard', written in a cursive style.

**Frances Everard**

Kaitohu Matua Ture | Senior Legal Advisor

New Zealand Human Rights Commission | Te Kāhui Tika Tangata