

Takatāpui and rainbow human rights in Aotearoa

This factsheet outlines human rights issues faced by takatāpui and rainbow people in New Zealand – that is, indigenous and non-indigenous people whose sexual orientation, gender identity, gender expression, or variations of sex characteristics differ from majority binary norms, for example, people who are lesbian, gay, bisexual, intersex, transgender, queer, non-binary, and fa’afafine.

It was compiled by Te Ngākau Kahukura, a national initiative working towards rainbow inclusion across health, housing, social services and other systems that support people across Aotearoa.

Key issues from previous UPR cycles

New Zealand’s third UPR cycle was the first to include recommendations related to rainbow rights. States recommended that New Zealand:

- end non-consensual medical procedures affecting intersex people (accepted by NZ)
- amend the Human Rights Act (1993) to include gender identity, gender expression, and sex characteristics as prohibited grounds of discrimination (noted, not accepted, by NZ)

National framework for rainbow rights

New Zealand has few formal mechanisms to recognise rainbow rights. The New Zealand Bill of Rights Act (1990) (BORA) outlines a limited charter of human rights. Anti-discrimination protections in BORA and the Human Rights Act (1993) include sexual orientation but not gender identity, gender expression, or sex characteristics.

Government strategies and programmes addressing human rights – e.g. the Pae Ora Act (2023) which outlines responsibilities of the health system - rarely recognise or provide for rainbow rights.

Te Tiriti o Waitangi, the founding document of New Zealand, commits to actively protect Māori culture and knowledge, however no government mechanisms exist to protect takatāpui, or indigenous rainbow, rights.

Progress has been made towards rainbow rights since the last UPR cycle, including: government investment in a rights-based intersex health pathway, and towards gender-affirming healthcare for trans New Zealanders¹; prohibition of conversion practices targeting sexual orientation or gender identity²; simplifying procedures for updating gender and name on birth certificates³; inclusion of rainbow identity questions in the national Census; community-led work to address family and sexual violence⁴; and work to address the rights of takatāpui and rainbow children and youth in state care⁵.

Since late 2023, threats to rainbow rights have emerged through the new coalition government’s initial work programme, including: creating new barriers for trans people to participate in sport⁶; intentions to remove gender and sexuality education in schools⁷; and the disestablishment of the Māori Health Authority including removing requirements for takatāpui input to the health system⁸.

Contact

Moira Clunie MNZM, Project Lead, Te Ngākau Kahukura

<http://www.tengakaukahukura.nz>

¹ <https://www.beehive.govt.nz/release/rainbow-health-gets-funding-boost>

² <https://www.tengakaukahukura.nz/banning-conversion-practices>

³ <https://www.tengakaukahukura.nz/birth-certificate-law-reform>

⁴ <https://www.beehive.govt.nz/release/empowering-diverse-communities>

⁵ <https://www.orangatamariki.govt.nz/about-us/news/report-on-experiences-of-takatapui-and-rainbow-rangatahi-in-care/>

⁶ <https://www.1news.co.nz/2023/12/21/transgender-athletes-face-exclusion-from-community-sports/>

⁷ <https://thespinoff.co.nz/politics/22-02-2024/heres-exactly-what-students-are-required-to-learn-in-sex-ed>

⁸ <https://www.rainbowsupportcollective.nz/statement-on-the-disestablishment-of-te-aka-whai-ora>

Key issues

Challenge	Impact
Trans and rainbow communities are facing significant increases in targeted harassment and discrimination, including threats of violence	While trans and rainbow communities have seen significant increases in online harassment, violent threats and targeted attacks in the last three years, there has been no specific government response to address this. A review is underway on amending the Human Rights Act 1993 to specifically prohibit discrimination on the grounds of gender identity, expression, and sex characteristics, but the timeline for this is uncertain.
Rainbow people face inequitable health outcomes, and the health system does not provide adequate care	Takatāpui and rainbow people experience significantly poorer health outcomes than other New Zealanders, and have inequitable experiences of the healthcare system. As well as requiring the same range of health services as other New Zealanders, some also have specific healthcare needs including gender affirmation and support for innate variations of sex characteristics. Community advocacy for a rainbow health strategy to be included in the current health system reforms was rejected ⁹ .
New Zealand schools do not consistently provide safe learning environments for rainbow students	Research shows rainbow students are still disproportionately likely to be facing bullying at school, and less likely to feel part of their school community ¹⁰ . Negative school climates contribute to higher rates of depressive symptoms and suicidality. The new coalition government has indicated an intention to remove gender and sexuality education in schools, signalling a reduction in support and recognition for rainbow students.
Rainbow people are more likely to experience homelessness, transient housing and unsafe living situations than their peers	Rainbow homelessness can be driven by a range of factors including family rejection or being kicked out of home, violence, discrimination in accessing public housing or rentals, employment discrimination, inadequate income and poverty ¹¹ . The government's housing responses and national homelessness plan have not included a joined-up response to address rainbow housing, and publicly-funded housing providers are not explicitly required to provide inclusive, safe, gender inclusive and culturally appropriate services.
Trans refugees and asylum seekers are unable to amend their name or gender marker on any identification document until they become citizens or permanent residents	Recent changes to New Zealand's Births, Deaths, Marriages and Relationships Registration Act made it simpler for those born in New Zealand to update the sex recorded on their birth certificate. However, at the same time the government indefinitely deferred any work on creating options for gender-congruent identity documents for people born overseas ¹² . This situation particularly exposes trans refugees and asylum seekers to violence, discrimination, and exclusion from support services.

Recommendations

That the New Zealand Government:

1. Engage with rainbow communities in 2024 to develop a national response to anti-trans and rainbow-targeted harassment and discrimination.
2. Develop and fund a national takatāpui and rainbow health strategy, including provision of gender-affirming healthcare and progress on developing rights-based health services for intersex people of all ages.
3. Ensure that all schools have anti-discrimination policies that specifically protect rainbow students, and include plans for maintaining safe learning environments, protecting student privacy, responding to bullying and affirming gender through clothing options, facilities and teaching practices.
4. Build a national response to rainbow homelessness, including education for housing providers, gender-inclusive housing options, and community-based rainbow housing navigators.
5. Ensure refugees and asylum seekers have access to legal gender recognition as soon as they arrive in New Zealand, through a statutory declaration process that verifies self-determined name and gender identity.

⁹ <https://www.tengakaukahukura.nz/health-system-reforms>

¹⁰ <https://www.youth19.ac.nz/search?q=rainbow>

¹¹ <https://www.making-space.nz/s/Making-Space-briefing-paper-October-2022.pdf>

¹² <https://rainbowpathnz.com/2023/04/06/government-fails-to-provide-gender-recognition-for-trans-and-intersex-people-born-overseas/>