

12 September 2024

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Law Commission

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### **ICNZ SUBMISSION ON THE IA TANGATA ISSUES PAPER**

1. Thank you for the opportunity to provide a submission on the Issues Paper for the Ia Tangata Review - A review of the protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics.
2. Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (**ICNZ**) is the representative organisation for general insurance companies in New Zealand. ICNZ members provide insurance products, including products usually purchased by individuals such as home and contents insurance, travel insurance, and motor vehicle insurance. We do not represent life and health insurers.
3. ICNZ's comments on the Review are limited to issues relating to the insurance exception in section 48 of the Human Rights Act 1993, which allows insurers to offer or provide insurance policies to individuals on different terms or conditions for each sex. We have provided answers to questions 40 and 41 from the Issues Paper below.
4. ICNZ agrees that, as identified in paragraph 10.39 of the Issues Paper, a person's sex, age or disability may affect the likelihood that they will make an insurance claim and the nature of that claim. For example, insurers generally consider that young male drivers are more likely to make a car insurance claim than young female drivers. We also agree that the rationale for the section 48 insurance exception is to facilitate fair pricing by limiting the extent to which those who pose a lower risk of claims cross-subsidise those who pose a higher risk.
5. For motor insurance young male drivers are commonly charged higher premiums. This is generally regarded as reflecting a behavioural issue rather than one relating to physical characteristics. Preventing this distinction may reintroduce a cross-subsidy and mean other cohorts pay relatively higher premiums. When the European Court of Justice ruled in 2012 that insurers could no longer use gender as a factor in pricing insurance policies, motor insurers adapted in various ways including calculating premiums based on a weighted average of male and female risk profiles, which often led to higher premiums for women, particularly young female drivers.
6. We are concerned that changing the drafting to section 48 could risk current industry practices with regards to motor insurance even though this may not be the intent of the change.

**Question 40: If new grounds of discrimination are added to the Human Rights Act 1993 to protect people who are transgender or non-binary or who have an innate variation of sex characteristics, should the insurance exception in section 48 be amended to clarify that it entitles insurers to differentiate based on a customer's sex assigned at birth or sex characteristics?**

7. The Issues Paper asks whether section 48 should be amended to clarify that it entitles insurers to differentiate based on a customer's sex assigned at birth or sex characteristics. Although it does not appear to be the intent of the suggestion, we would wish to avoid a

situation where an insurer's ability to charge higher premiums to young male drivers was dependent on the insurer ascertaining the customer's sex assigned at birth.

8. Car insurers commonly ask a question to get the customer to identify the gender of the relevant drivers to inform motor insurance pricing. Depending on the insurer, this may include two or a small number of other options and can be managed in a way that is sensitive to various customers. In contrast a specific question to ascertain "the customer's sex assigned at birth" could be insensitive for customers, as noted at paragraph 10.48. If obtaining this information were required in order to rely on the insurance exception, it might be impracticable to continue to do so. Consequences of this could include insurers ceasing to use gender as a pricing factor and thereby potentially leading to cross-subsidies being introduced.
9. If the suggestion is instead aimed at enabling insurers to treat customers as if they are the sex they were assigned at birth (rather than the gender they identify as) in order to offer the customer insurance on different terms and conditions, we have not identified a need for such an exception in the general insurance context.
10. As far as general insurance is concerned, the answer to Question 40 is No.

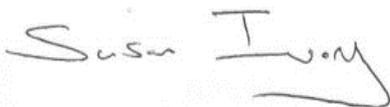
**Question 41: If new grounds of discrimination are added to the Human Rights Act 1993, should there be a new exception to allow insurers to offer different terms and conditions based on whether someone is transgender or non-binary or has an innate variation of sex characteristics**

11. As far as general insurance is concerned, we have not identified a need for a new exception to allow insurers to offer different terms and conditions based on whether someone is transgender or non-binary or has an innate variation of sex characteristics. However, depending on how any new grounds of discrimination are framed, there may be a need to specify that offering transgender or non-binary etc people different terms and conditions does not call into question the premiums charged to cisgendered drivers.

**Conclusion**

12. We wish to preserve insurers' current practices with regards to motor insurance. We are aware that New Zealand is not the only jurisdiction dealing with these issues and we are trying to gather further information about the approach taken in other jurisdictions. We would be keen to work with the Law Commissions to explore whether any proposed changes to the legislation would fully cover any potential future approaches for insurance.
13. Thank you for the opportunity to make this submission. Please contact me ([susan@icnz.org.nz](mailto:susan@icnz.org.nz)), if you have any questions about our submission or require further information.

Yours sincerely



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