

HE TOHUTOHU NĀ TE BSA: NGĀ AMUAMU E PĀ ANA KI NGĀ TAKE TUAKIRI Ā-IRA

Hune 2023

He take hiranga ngā take tuakiri ā-ira ki te porihanga otirā e piki haere ana te kōhuretanga i roto i ngā pāhotanga. Kua puta ngā whakaaro me ngā tohenga rerekē i roto i ngā urupare a te porihanga mō te tuakiri ā-ira, otirā he taurite tērā ki te nui o ngā amuamu e kuhu mai ana, i ngā taha e rua o te tohe nei, ki te Mana Whanonga Kaipāho (me ētahi atu kaiwaeture).

E ai ki tō mātou noho hei Mana Whanonga Kaipāho, me tō mātou haepapa ki te whakaata i ngā paerewa a te hapori, kei te mōhio mātou ko te whakawhitinga o ngā whakaaro herekore tētahi wāhanga hira o te mōtika ki te manawhiri puaki, ā, he āhuatanga taketake ki te whakahaeretanga o te iwi manapori. Engari, kāore he tokatū te mōtika ki te manawhiri puaki: he wā anō ka herea aua herekoretanga takitahi e te whai wāhitanga ki te porihanga, ngā mōtika o ētahi atu me ngā aronga o te hapori.¹ Nō nā tata nei i puta te whakaaro i te Kōti Teitei, he tika kia herea taua mōtika i te wā me 'tautuku taua mōtika ki te mōtika o ngā hapori whakaraerae kia kore ai rātou e whakahāweatia ai', pēnei i ngā ira tokoiti.²

Ka tuku mātou i ēnei tohutohu i runga anō i tēnei horopaki. Ka miramira tēnei i ētahi take matua kua kitea, kua whakatauhia hoki e Te Mana Whanonga Kaipāho i roto i ngā whakataunga o ngā take tuakiri ā-ira. Ka aromatawaitia ngā amuamu whai muri nei, i runga anō i ōna ake āhuatanga i roto i tōna ake horopaki o taua whakapāhotanga.

Ehara ngā take 'tuakiri ā-ira' i te āhuatanga hou

E tohu ana te tuakiri ā-ira i te whakaaro ake o te tangata ki tōna ake ira.³ Pērā i ngā kōrero a te BSA: 'Ko te whakaaro pea o te tangata mōna ake, ākene pea he tāne, he wahine, he hanumitanga o ngā mea e rua, kāore rānei tētahi o ēnei. He ōrite pea te tuakiri ā-ira, he rerekē rānei i te ira i kopoua i te whānautanga mai'.⁴

Ehara ngā take 'tuakiri ā-ira' i te āhuatanga hou: otirā he wāhanga māori te ira kanorau o ētahi ahurea puta noa i Te Moana-nui-a-Kiwa e whakaaetia ana, ā, kāore i whakaaetia i roto i ngā ahurea Tauīwi i mua. Ko tētahi tuakiri ahurea pērā i roto i te horopaki o Aotearoa, ko tērā o te takatāpui (he kupu e kauawhi ana i ngā Māori irakē katoa, tae atu ki ngā ira me ngā hōkakatanga huhua, me ngā rerekētanga āhuatanga ā-ira).⁵

Hei āpitihanga, e whakamanahia ana e te ture o Aotearoa, ehara te ira i te mea ka mau tonu. Kua whakaaetia i raro i tō tātou pūnaha ture ngā whakawhitinga ki te ira i tohua ake i runga i te tiwhikete whakawhānau, mai anō i te whakaurunga mai o te Births, Deaths, and Marriages

¹ Andrew Butler rāua ko Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Te Whanganui-a-Tara, 2015) kei [6.5.1]

² [Auckland Pride v Minister of Immigration](#) [2023] NZHC 758 kei [71]

³ Laurel Wamsley "A Guide to Gender Identity Terms" *NPR* (putanga tuihono, 2 Hune 2021)

⁴ *Oxley and Radio New Zealand Ltd*, Whakatau 2022-105 kei [17] tohutoro i a Jeannie Oliphant, Jaimie Veale, Joe Macdonald, Richard Carroll, Rachel Johnson, Mo Harte, Cathy Stephenson, Jemima Bullock "Guidelines for gender affirming healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa New Zealand" (2018) Transgender Health Research Lab, Te Whare Wānanga o Waikato

⁵ *Adam & Crawford and Radio New Zealand Ltd*, Whakatau 2022-067 kei [27]

Registration Act 1995 mā tētahi whakapuakitanga a te Kōti Whānau,⁶ ā, mai i te 15 o Hune 2023, mā tētahi tono ki te Kairēhita Matua.⁷

Ngā tāngata irawhiti e tiakina ana i raro i te paerewa whakahāwea me te hahani

Kua whakatauria e Te Mana Whanonga Kaipāho ko ngā tāngata irawhiti 'he iwi tonu o te hāpori' e tiakina ana e te paerewa whakahāwea me te hahani.⁸ I te putanga o tēnei whakataua, i tohu atu ki tētahi tātaritanga a te Tari Ture o te Karauna (e whakamārama ana i tētahi ritenga ōrite ki te Human Rights Act).⁹ He pai tonu kia whai whakaarotia tēnei huarahi me ngā tuhinga a te Tari Ture o te Karauna i te wā e aromatawai ana i te pānga o te paerewa ki ētahi rōpū whaipānga, hei tauira, te hunga ira tāhūrua-kore.

Te whakataua hē i te ira me te whakahua i te ingoa o mua

I te wā e kōrero ana mō ngā take o te tuakiri ā-ira i tētahi pāhotanga, he mea nui tonu kia whai whakaaro ki te tangata e pāngia ana e taua pāhotanga: ka hua ake pea te kino ahakoa he aha ngā takunetanga a te kaikōrero.¹⁰

E whakaae ana te BSA e tino whakaraerae ana te hāpori irawhiti. I kīia hoki, he wā anō ka hē te whakataua i te hunga irawhiti, ira tāhūrua-kore rānei (otirā ka whakahuatia tētahi ingoa, tētahi tūkapi rānei kāore e whakaata tika i tana ira), otirā kāore tēnei e hāngai ki:¹¹

- a. te whakaaetanga a Te Kāhui Tika Tangata ki te hira o te mōtika whakamana, inakoa i te horopaki o te ira o te tangata kua whakamanatia
- b. he pūrongo nā Te Kotahitanga o ngā Iwi o te Ao e whakaae ana ki te pūtake ake o ngā mōtika o te tangata ko te mōtika kia whakamanatia te mana motuhake o te tangata me tōna āhua ake i ētahi atu.

Tērā pea ka hāngai te horopaki whānui o te pāhotanga (tae atu ki tērā i runga) i te wā ka aromatawaitia mēnā ka takahia e te pāhotanga ngā paerewa: e kore e hua takitahi ake.

Heoi anō, e kukune tonu ana te reo i te hekenga o te wā, ā, kua whakaae te BSA kia noho mataara ki ngā huringa o ngā kawataua a te iwi ki te reo e whakamahia ana.¹² Kua whakahauhautia ngā kaipāho kia noho mataara ki aua momo whanaketanga, pēnei i te whakamahi rangahau ki te take a te kaiwaeture UK a Ofcom, i te wā i whai whakaaro ngā kaiuru nō ngā kaiwhakataki me ngā kaikawe pūrongo te haepapa ki te mōhio ko wai te hunga e uitia ana e rātou, ā, me te whakamahi i ngā ingoa/tūkapi tika.¹³

Engari, kua mōhio hoki te BSA ki te hira o te manawhiri kōrero i tēnei horopaki. Ka aromatawatia ngā pāhotanga i runga i tōna ake motuhaketanga ki te whakataua mēnā i hua ake te kino i te taumata e tika ana hei here i te mōtika ki te manawhiri whakapuaki.

I roto i tētahi pāhotanga, i te wā i taea e te tangata uitia te whakamārama ake i te pānga, hei tauira, o te whakahua i te ingoa o mua, ki tētahi kaiuiui, otirā kāore taua kaiuiui i hiahia ki te takahi i te mana o te tangata, kāore te Mana Whanonga i whakamana i te amuamu. I tēnei

⁶ Births, Deaths, and Marriages Registration Act 1955, w 28

⁷ Births, Deaths, Marriages, and Relationships Registration Act 2010, w 24

⁸ *Adam & Crawford and Radio New Zealand Ltd*, Whakataua 2022-067kei [35]

⁹ Cheryl Gwyn "Solicitor-General's Opinion on the Human Rights (Gender Identity) Bill" (2 o Ākuhata 2006) Te Tari Ture o te Karauna kei [25] me [30]

¹⁰ *Bell and RNZ* kei 19

¹¹ *Adam & Crawford and Radio New Zealand Ltd*, Whakataua 2022-067 kei [26]

¹² *Bell and Radio New Zealand Ltd*, Whakataua 2023-016 kei [19]

¹³ Ipsos MORI "Public attitudes toward offensive language on TV and radio: summary report" (Hepetema 2021) Ofcom <Ofcom.org.uk> kei 49-59

horopaki, kāore rātou i whakaaro ake i eke te kino ki te pae e tika ana hei here i te manawhiri whakapuaki, ahakoa i whakaae rātou 'i tūpono takahia te mana, i hua ake te kino' i ngā pātai a te kaiuiui ki te tangata rā.

Reo Kauawhi

Ko te whakatau a te BSA, e kore pea e takahi te reo kauawhi i ngā paerewa whakapāho, inakoa i te horopaki o te pūrongo mō te kino i pā ki ngā hapori tokoiti, ngā rōpū rānei ka nui kē atu te pānga o te kino i tētahi tikanga. Hei tauira, i roto i tētahi pūrongo mō ngā tāne irawhiti me ngā tāngata ira tāhūrua-kore e kore nei e whiwhi mātai waha kōpū, i kī te Mana Whanonga, he tika te kōrero mō te 'hunga whai waha kōpū' otirā kāore tēnei i takahi i te mana o te wahine.¹⁴

E kore pea e whai kiko ngā amuamu e whirinaki ana ki ngā kōrero mae irawhiti

Ko ētahi o ngā amuamu i whakatauhia e te BSA, i kōrero, i whirinaki rānei ki ngā arotoka mae irawhiti. I te nuinga o te wā, i pā ki ngā kōrero e kī ana ko te tuakiri ā-ira he tikanga kaiapo i te wahine. Kua whakaae te Mana Whanonga ko te pūtaketanga ā-taunaki o aua whakaaro e 'tino whakahētia' ana, ā, nā te whirinaki ki aua kōrero rā 'tērā pea ka whakaūtia te whakatoihara mauroa'. Māna te kore ka whakahoetia e te BSA ēnei momo amuamu, ā, tērā pea ka whakakorehia e Te Mana Whanonga te mana whakatau i te amuamu.¹⁵

Ngā Whakataunga Hāngai

He mea tiki mai ēnei tohutohu i ēnei whakataunga, ko te katoa hoki e hāngai ana ki ngā amuamu kāore i whakaaetia e te BSA:

[Adam & Crawford and Radio New Zealand Ltd](#), Whakatau 2022-067 (Uiui ki tētahi ihumanea tautake whakahāwea ira i ōna whakaaro mō te tuakiri ā-ira)

[Bell and Radio New Zealand Ltd](#), Whakatau 2023-016 (I hē te whakahua a te kaiuiui i te ira me te ingoa o te tangata ira tāhūrua-kore)

[Oxley and Radio New Zealand Ltd](#), Whakatau 2022-105 (he pūrongo mō ngā tāne irawhiti me ngā tāngata ira tāhūrua-kore e kore nei e whiwhi whakamōhiotanga mātai waha kōpū, otirā i kīia rātou he 'tangata whai waha kōpū')

[Drinnan and Radio New Zealand Ltd](#), Whakatau 2021-083 (He uiui ki tētahi pūkenga e aro ana ki ngā take irawhiti i muri i te whiriwhiritanga o Laurel Hubbard hei kaipara irawhiti tuatahi kia whai wāhi atu ki ngā Taumāhekeheke Raumati)

[Johnson & MacKinnon and Radio New Zealand Ltd](#), Whakatau 2020-176 (te whakamahi i te kupu TERF hei whakaahua i te hunga whai i tētahi momo whakaaro otirā kāore tēnei i tohu ake ki tētahi hunga o te hapori e tiakina ana e te paerewa whakahāwea me te hahani)

[Cross and Television New Zealand Ltd](#), Whakatau 2023-035 (he kawepūrongo o te urunga o tētahi tangata rongonui ki roto o Aotearoa me te tohu ake i a ia hei 'kiritohē whakahē irawhiti')

¹⁴ [Oxley and Radio New Zealand Ltd](#), Whakatau 2022-105 kei [13]

¹⁵ [Cross and Television New Zealand Ltd](#), Whakatau 2023-035