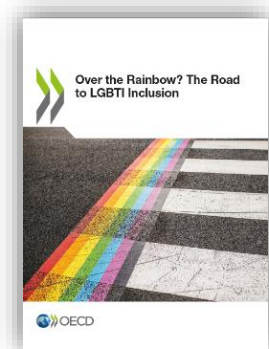


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



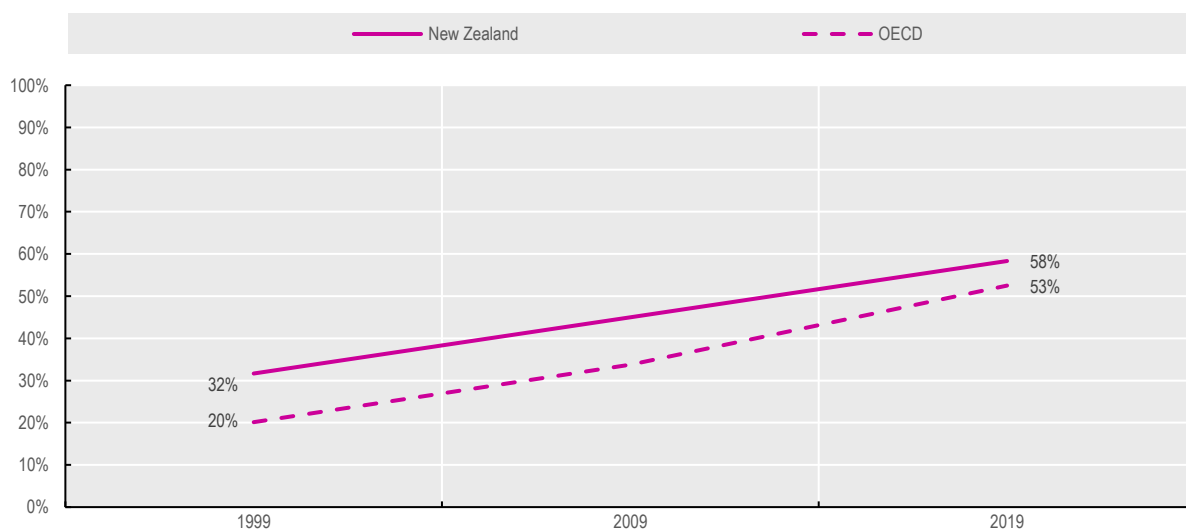
Legal LGBTI inclusivity in New Zealand

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. New Zealand is one of three OECD countries that provide significant legal protections to sexual and gender minorities, but where LGBTI-inclusive laws have been passed since 1999 at a slower pace relative to the OECD average. These countries are characterised by an above-average performance regarding their level of legal LGBTI-inclusivity as of 2019, but a below-average performance regarding their progress in legal LGBTI inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in New Zealand has consistently been above the OECD average but this relative advantage has been shrinking over the past two decades

Evolution of legal LGBTI inclusivity between 1999 and 2019 in New Zealand and OECD-wide



Note: Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]



As of 2019, New Zealand performs better than the OECD average concerning laws addressing the unique challenges faced by same-sex couples (Figure 2). As early as 2005, same-sex couples were allowed to enter a civil union entitling them to many of the pecuniary rights granted to different-sex married couples. In 2013, the *Marriage Act* was amended to clarify that “a marriage is between two persons regardless of their sex, sexual orientation, or gender identity”. On top of being granted full legal recognition of their partnerships, New Zealand same-sex couples are also treated on an equal footing relative to different-sex couples concerning access to adoption and assisted reproductive technology.

Moreover, significant strides have been made towards protecting intersex individuals more specifically (Figure 2). Since 1995, a “sex cannot be determined” option is available in the civil registry for intersex babies, which alleviates the pressure to categorise them as either female or male and, hence, contributes to reduce the perceived need for unconsented medically unnecessary sex-normalising interventions on them. Additionally, in response to a 2016 United Nations Committee on the Rights of the Child review, New Zealand is developing the National Child Clinical Intersex Network to improve health practices for intersex children and youth.

How could New Zealand further improve legal LGBTI inclusivity?

Since 2014, discrimination explicitly based on sexual orientation is outlawed in a broad range of fields (employment, education, the provision of and access to goods and services including housing, etc.). However, contrary to the situation in a majority of OECD countries, this is not the case of discrimination based on gender identity. The regulatory framework does not explicitly protect LGBT asylum seekers either. Moreover, although New Zealand transgender individuals are allowed to change their gender marker in the civil registry, this legal gender recognition is still conditioned on sex-reassignment surgery and/or treatment that can lead to sterilisation. Yet, the trend OECD-wide is to de-pathologise this process: in the past ten years, 15 OECD countries have abolished medical requirements initially attached to legal gender recognition (Figure 2). Therefore, further improving legal LGBTI inclusivity in New Zealand could entail: (i) explicitly prohibiting discrimination based on gender identity and recognising persecution based on sexual orientation and gender identity as a valid reason for granting asylum; and (ii) basing the change of gender marker for transgender people on self-determination.

Policies to foster LGBTI inclusion in New Zealand, beyond LGBTI-inclusive laws

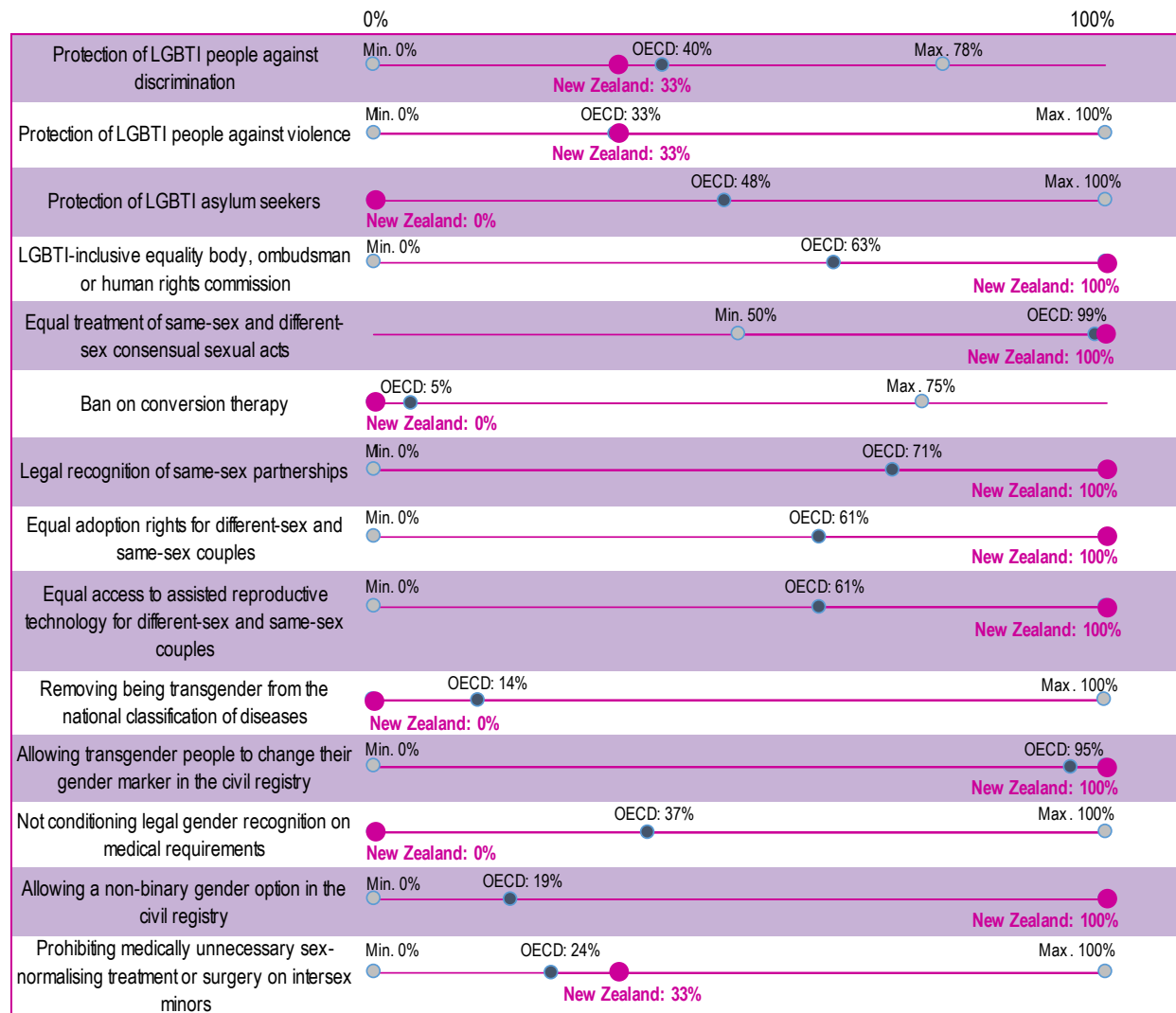
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, New Zealand is one of 15 OECD countries that include or have included a question on self-identification as heterosexual, homosexual, or bisexual in at least one nationally representative survey. But it does not yet collect information on the share of transgender and intersex people among the adult population.

It would also be important that New Zealand be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How New Zealand compares

Legal LGBTI inclusivity as of 30 June 2019 in New Zealand and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component “Protection of LGBTI people’s civil liberties” is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in New Zealand equal to 33% regarding the protection of LGBTI people against discrimination means that one third (three) of the nine antidiscrimination provisions critical to protect LGBTI people are in force in New Zealand as of 2019. “Min.” refers to the score of the bottom-performing OECD country(ies) while “Max.” refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of New Zealand.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Contact:

Marie-Anne Valfort, +33 (0)1 45 24 98 65, Marie-Anne.VALFORT@oecd.org

Directorate for Employment, Labour and Social Affairs/Social Policy Division ([@OECD_Social](#))