

16 December 2021

C138066

Terry Thomas

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Tēnā koe Terry

Thank you for your request of 30 June 2021, seeking advice Corrections has provided to Ministers and other agencies on the impact of proposed changes to the Births, Deaths, Marriages and Relationships Registration (BDMRR) Bill. Your request has been considered under the Official Information Act 1982 (OIA). I apologise sincerely for the delay in responding to you. This delay was caused by administrative issues and the need to respond to the latest resurgence of COVID-19 in New Zealand, that required Corrections to refocus our resources.

As you are aware, part of your request was transferred to the Office of the Minister of Corrections, Hon Kelvin Davis and I understand you have been provided with a response.

Managing prisoners' safety is one of Corrections' core functions, and a duty we take extremely seriously. We have a range of policies, processes and tools in place to ensure that concerns about the safety of people in prison are identified and mitigated. This includes people at risk of self-harm, at risk of harm to others and at risk of harm from others.

New Zealand law, consistent with international instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, requires male and female prisoners to be detained in separate prisons or in separate quarters within a prison. This is necessary for the safety and welfare of people in prison, and for the security and good order of prisons. While placement in a men's or women's prison is a straightforward matter for most people, for a very small group of prisoners, placement can be more challenging.

At any one time there are around 30 to 40 people in our prisons that are transgender. This accounts for a small percentage of the current total prison population of around 8,000 people. However, we acknowledge that transgender people in prison are a vulnerable group with complex needs.

In 2018, Corrections introduced a strengthened policy for the management of transgender people, with a focus on being more responsive to individuals and their circumstances. If it is established that an individual identifies as transgender during their initial reception process, or at any other point of their management, an alert is placed on their electronic prisoner file.

Every transgender person in prison has an individualised support plan and is able to choose the gender of staff who conduct searches. The provision of an individual support plan does not depend on whether the person has legal recognition of their gender identity, or whether they have undergone medical or surgical steps.

Custodial staff have been provided with training material to develop an understanding of gender diversity, with a focus on the use of correct pronouns and appropriate language.

These guidelines align our approach with comparable jurisdictions internationally, as well as other New Zealand agencies such as New Zealand Police and Customs.

Corrections' policy regarding the management of transgender people is publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Induction/I-10.html.

The placement of transgender people in a men's or women's prison, including the process for a review of initial determination of placement, is managed in accordance with Prison Operations Manual M.03.05 policy. This is also publicly available at: www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03-4.html.

Since the BDMRR Bill was first introduced in 2017, Corrections has continued to consider its potential impacts on our operations under our current policy settings, in particular on the placement of transgender people in prison. Currently, a person's initial determination of placement in prison is based on the sex on their imprisonment warrant and/or their birth certificate, if they present one upon reception. The BDMRR Bill proposes changes to allow people to more easily change the sex on their birth certificate.

I understand that the Minister of Corrections' responded to your request and released a Joint Internal Affairs and Corrections briefing from 2018, which addressed concerns about whether the self-identification process was sufficiently robust for Corrections' purposes. As the BDMRR Bill remains before Parliament, Corrections is not able to comment on its potential impacts, or potential amendments to Corrections policies. However, I can assure you that Corrections will ensure that our processes continue to uphold the safety of all people in prison.

You have requested:

I would like all advice provided to the Ministry of Internal Affairs or any other ministry, agency or minister on the impact proposed changes to the Births Deaths Marriages and Relationships Act regarding birth certificates, and their impact on operations in prisons and the Corrections Regulations 2005.

Emails in scope of your request have been located and they are released to you with some information withheld under the following sections of the OIA:

- 9(2)(a), to protect the privacy of natural persons;

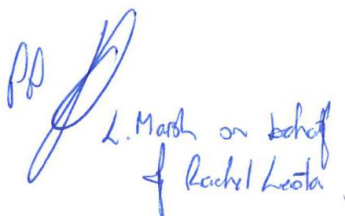
- 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty;
- 9(2)(h) of the OIA, to maintain legal professional privilege; and
- 9(2)(f)(iv), to maintain the constitutional conventions for the time being which protect advice tendered by officials.

As per section 9(1) of the OIA, we have considered whether there are countervailing public interest considerations favouring the release of the requested information. We do not believe such considerations outweigh the withholding grounds in this case. Some information is also excluded from the emails enclosed as it is outside of the scope of your request.

Please note that this response may be published on Corrections' website. Typically, responses are published quarterly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise them with Corrections. Alternatively, you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi



L. Marsh on behalf
of Rachel Leota

Rachel Leota
National Commissioner