

**From:** [WOOD, Jesse \(WELLHO\)](#)  
**To:** [Frances.Muir@dia.govt.nz](mailto:Frances.Muir@dia.govt.nz)  
**Cc:** [BOOMEN, Marcus \(WELLHO\)](#); [DONALDSON, Bronwyn \(WELLHO\)](#)  
**Subject:** RE: **Out of scope** - BDMRR Bill update URGENT work  
**Date:** 04 February 2021 12:18:00 p.m.  
**Attachments:** [image006.png](#)  
[image001.png](#)  
[image021.png](#)  
[image011.png](#)

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Kia ora,

Thank you for giving us the chance to offer feedback on the draft briefing.

The first paragraph is fine as it is, have made some changes in red to the second paragraph.

2. We previously worked with Corrections to resolve this issue, including looking at **Out of scope**  
S 9(2)(f)(v) **Out of scope**

For future consultation on this bill from Corrections could you please include Marcus and I.

Ngā mihi

**Jesse Wood**

Policy Adviser, Corrections Policy

Ara Poutama Aotearoa, Department of Corrections

**Wāhi mahi:** National Office, Freyburg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** **Out of scope** **Out of scope**



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**From:** [WOOD, Jesse \(WELLHQ\)](#)  
**To:** [Frances Muir](#)  
**Subject:** RE: **Out of scope** For your review - Cabinet paper on BDMRR Bill  
**Date:** 15 April 2021 06:15:00 p.m.  
**Attachments:** [Feedback to DIA.docx](#)  
[image002.png](#)  
[image007.png](#)

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Kia ora Frances,

Please find attached our feedback on the self-identification cabinet paper.

If you wish to discuss this further we would be happy to engage.

Ngā mihi

**Jesse Wood (he/him)**

**Policy Adviser | Corrections Policy**

Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** 



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**From:** WOOD, Jesse (WELLHO)

**Sent:** 03 May 2021 1:28 p.m.

**To:** 'Frances Muir' **Out of scope**

**Cc:** Kate Raggett **Out of scope**; Victoria Buchanan

**Out of scope**; HORAN, Marian (WELLHO)

**Out of scope**; CAMERON, Michael (WELLHO)

**Out of scope**

**Subject:** RE: **Out of scope** For your review - Cabinet paper on BDMRR Bill

Kia ora Frances,

Yes that is correct to my understanding. The below text is suitable – thank you for making those changes.

Ngā mihi

## Jesse Wood (he/him)

Policy Adviser | Corrections Policy

Ara Poutama Aotearoa, Department of Corrections

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** Out of scope



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**From:** Frances Muir <Out of scope>

**Sent:** 29 April 2021 12:54 p.m.

**To:** WOOD, Jesse (WELLHO) <Out of scope>

**Cc:** Kate Raggett <Out of scope>; Victoria Buchanan

<Out of scope>; MALLINSON, Maxine (WELLHO)

<Out of scope>; CAMERON, Michael (WELLHO)

<Out of scope>

**Subject:** RE: <Out of scope> For your review - Cabinet paper on BDMRR Bill

Kia ora Jesse

Thanks for this and sorry for not getting back to you earlier. We made some slight changes to the paragraphs (see below). From a joint briefing we did with Corrections in 2018 I understand the rationale for birth rule linking to Family Court process was to ensure a robust process for Corrections to determine a person's sex for prisoner placement.

I hope the below text works for you. We will be sending the Final Cabinet paper to our Minister for lodgement on Tuesday so please let us know if you have any issues by Monday.

Ngā mihi

Frances

1. Corrections determines placements in men's and women's prisons under the Corrections Regulations 2005. These state that where there is doubt about if a person should be placed in a male or a female prison and a birth certificate is supplied, a person must be placed in accordance with the sex on the birth certificate. If a birth certificate is not provided, a review can be initiated where considerations include a person's gender, safety and wellbeing, and wider considerations. Where people have a history of prior serious sexual offending against their nominated sex, the placement cannot be reviewed.
2. At the time it was developed, the relevant Corrections Regulation was linked to the existing Family Court process as it was considered a robust framework that

Corrections could rely on to assess a person's sex. S 9(2)(f)(iv)

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**From:** WOOD, Jesse (WELLHO) Out of scope  
**Sent:** Friday, 23 April 2021 12:42 PM  
**To:** Frances Muir Out of scope  
**Cc:** Kate Raggett Out of scope; Victoria Buchanan  
Out of scope; MALLINSON, Maxine (WELLHO)  
Out of scope; CAMERON, Michael (WELLHO)  
Out of scope  
**Subject:** RE: Out of scope For your review - Cabinet paper on BDMRR Bill

Kia ora,

Please see below some suggested changes to paras 74-75. These changes are to ensure that the way that placement occurs is correctly discussed.

We do apologise for getting this to you after your Minister had seen the paper, and we do appreciate you working with us on it – due to the sensitive nature of the potential changes and importance to Corrections we want to ensure that the paper is correct.

74. Corrections determines placements in men's and women's prisons under the Corrections Regulations 2005. The Regulations say that where there is any doubt as to whether a prisoner should be regarded as male or female for the purposes of placement and a birth certificate is supplied, placement must be made in accordance with the sex on the birth certificate. This was predicated around the current extended Family Court process on the basis that Corrections's processes should reflect this and not require prisoners to repeat a similar process. If a birth certificate is not provided, a review can be initiated where considerations include a person's gender, safety and wellbeing, and wider considerations. Where people have a history of prior serious sexual offending against their nominated sex, the placement cannot be reviewed.

S 9(2)(f)(iv)

Ngā mihi

**Jesse Wood (he/him)**

**Policy Adviser | Corrections Policy**

Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

Imēra: [Out of scope]



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**From:** Frances Muir [Out of scope]  
**Sent:** 20 April 2021 4:03 p.m.  
**To:** WOOD, Jesse (WELLHO) [Out of scope]; CAMERON, Michael (WELLHO) [Out of scope]  
**Cc:** Kate Raggett [Out of scope]; Victoria Buchanan [Out of scope] MALLINSON, Maxine (WELLHO) [Out of scope]  
**Subject:** RE: [Out of scope] For your review - Cabinet paper on BDMRR Bill

Kia ora Michael and Jesse

Thanks for calling Michael. As discussed, attached is the most recent version of the Cabinet paper. The parts most relevant to you are page 12 and paras 70 to 75.

The paper was sent to our Minister for ministerial consultation today, but we can make small changes next week while this consultation is underway and before we send our Minister the final version for lodgement. Let me know if you have any suggestions by **COP Friday**.

If you want to discuss again, feel free to call my Manager, Kate [S 9(2)(a)] Especially [S 9(2)(a)]

To confirm, while Corrections is not an outlier in that other legislation does refer to sex or gender (eg, male assaults female in the Crimes Act) it is the only legislation that refers to birth certificates being a determining factor.

In case you are interested, the Crown Law advice is publicly available [here](#) - legal privilege was waived back in 2019 to make this possible. Michael, you raised if a court would take into account birth certificates when they are determining sex – Crown Law couldn't find a case where a NZ court had to determine sex but did set out what factors a court may take into account see Crown Law advice page 3, para 20.

Ngā mihi

Frances

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**From:** WOOD, Jesse (WELLHO) [Out of scope]  
**Sent:** Monday, 19 April 2021 3:46 PM  
**To:** Frances Muir [Out of scope]  
**Cc:** MALLINSON, Maxine (WELLHO) [Out of scope] Kate Raggett [Out of scope]; Victoria Buchanan [Out of scope]  
**Subject:** RE: [Out of scope] For your review - Cabinet paper on BDMRR Bill

Thanks for sending that through Frances,

We will discuss this internally and get back to you.

Ngā mihi

**Jesse Wood (he/him)**

**Policy Adviser | Corrections Policy**

Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** Out of scope



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**From:** Frances Muir Out of scope

**Sent:** 19 April 2021 3:06 p.m.

**To:** WOOD, Jesse (WELLHO) Out of scope

**Cc:** MALLINSON, Maxine (WELLHO) Out of scope; Kate Raggett

Out of scope; Victoria Buchanan Out of scope

**Subject:** RE: Out of scope For your review - Cabinet paper on BDMBA Bill

Kia ora Jesse

Thanks for your comments - please see our responses to your feedback below:

S 9(2)(f)(iv)

- We will certainly consult with you on the SOP and LEG paper. We can test with you how we intend clarify the drafting of this provision if you would like to test it with your legal team?
- As mentioned in our meeting, the placement of prisoners is the only instance where self-ID would have a direct implication on other legislation. We are not aware of any other agencies that rely on birth certificates to determine a person's sex or gender under legislation or operational policy. It is up to individual agencies and organisations to determine their policies for determining sex, if this information is necessary. We have checked with Police and birth certificates are not how they determine a person's sex or gender for offences under the Crimes Act. When the Bill was deferred in 2019 we reached out to a number of other agencies to see if they relied on birth certificates to determine a person sex and they did not.
- We are not sure what you mean by the comment below. Please clarify or let us know if the text below satisfies your concern?  
"As set out before, there is a human rights dimension that might not have been



fully touched on in the paper – we refer to the Crown Law advice. That analysis needs to be drawn out more including understanding the potential implications when this is operationalised.”

- We have touched based with our colleagues working on the Justice Sector Identity Management Strategy and we will note in the paper that changing registered sex raises risks similar to where a person changes their name and this information is not carried across agencies working in the justice sector. The paper will go on to note that the development of the justice sector identity strategy will consider issues associated with changing registered sex on the accuracy of identity information across justice sector agencies.
- We have made your changes to the Corrections Regulations text with some minor changes (see below) – let me know if you have any issues with it by tomorrow morning if possible – this will go over to our Minister in the afternoon.

Give me a call if you would like to discuss.

Ngā mihi

Frances

**The executive summary now states that:**

1. *My proposals relate to amending how gender is recognised on birth certificates only. I am not proposing changes to how other agencies and organisations determine a person’s sex or gender, if that is necessary. I intend to maintain the policy position that birth certificates do not provide conclusive evidence of a person’s sex or gender.*

**And the body of paper goes into more detail on the crown Law advice and to clarify that birth certificates should not be taken as the conclusive evidence of sex:**

2. *The previous Minister of Internal Affairs also cited advice from Crown Law. Crown Law raised that section 33 in the BDMRR Act, which states that a person’s sex should be determined by the “general law of New Zealand” is unclear. This provision means that birth certificates should not be the determining factor in decisions about a person’s sex and that consideration should be given to other legislation and the common law. I intend for this provision to be re-drafted, so its meaning is clarified.*
3. *I believe that birth certificates should not be how a person’s sex is determined. In practice birth certificates are not relied on to determine access to women-only spaces (eg, changing rooms or schools) or entitlements (eg, sports teams or scholarships) and this should continue.*
4. *Related to this, Crown Law advised that clearer statutory guidance on how sex is determined could be beneficial (for example, what factors should be considered to determine a person’s sex). While I agree this could be useful, the matter is broader in scope than the BDMRR Act and the Internal Affairs portfolio. Work on this matter would require a cross-agency initiative as processes for determining sex are in place*

across numerous institutions. Any further consideration of this matter should not delay the progress of introducing a self-identification process.

**Concerns about the impact of self-identification on the placement of people in prisons**

5. Birth certificates are rarely required in legislation to determine someone's sex or gender. There is only one instance where sex on a birth certificate would have direct implications on other legislation. This is the how the Department of Corrections (Corrections) determines the accommodation of people in male or female prisons.
6. Corrections determines placements in men's and women's prisons under the Corrections Regulations 2005. Where a birth certificate is supplied, the placement must be made in accordance with the sex on the birth certificate. If a birth certificate is not provided, a review can be initiated where considerations include a person's gender, safety and wellbeing, and wider considerations. Where people have a history of prior serious sexual offending against their nominated sex, the placement cannot be reviewed.
7. As set out above, birth certificates should not be considered as conclusive evidence of a person's sex or gender. S 9(2)(iv)

Frances Muir (she/her) | Senior Policy Analyst | Kaitātari Kaupapahere Matua  
Policy Group | Rōpū Kaupapahere  
The Department of Internal Affairs | Te Tari Taiwhenua  
Mobile: S 9(2)(a)



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**From:** WOOD, Jesse (WELLHO) <Out of scope>  
**Sent:** Monday, 19 April 2021 2:31 PM  
**To:** Frances Muir <Out of scope>  
**Cc:** MALLINSON, Maxine (WELLHO) <Out of scope>  
**Subject:** RE: Out of scope For your review - Cabinet paper on BDMRR Bill

Kia ora Frances,

Hope you are well.

When you and your team have had a chance to review our feedback, and other further, we would be keen to engage further on this matter, particularly around the wording used on the section for Corrections, and the clarification around birth certificates not being conclusive evidence of someone's sex.

Ngā mihi

**Jesse Wood (he/him)**

**Policy Adviser | Corrections Policy**

Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** Out of scope [redacted]



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**From:** WOOD, Jesse (WELLHO)

**Sent:** 15 April 2021 6:15 p.m.

**To:** 'Frances Muir' Out of scope [redacted]

**Subject:** RE: Out of scope [redacted] For your review - Cabinet paper on BDMRR Bill

Kia ora Frances,

Please find attached our feedback on the self-identification cabinet paper.

If you wish to discuss this further we would be happy to engage.

Ngā mihi

**Jesse Wood (he/him)**

**Policy Adviser | Corrections Policy**

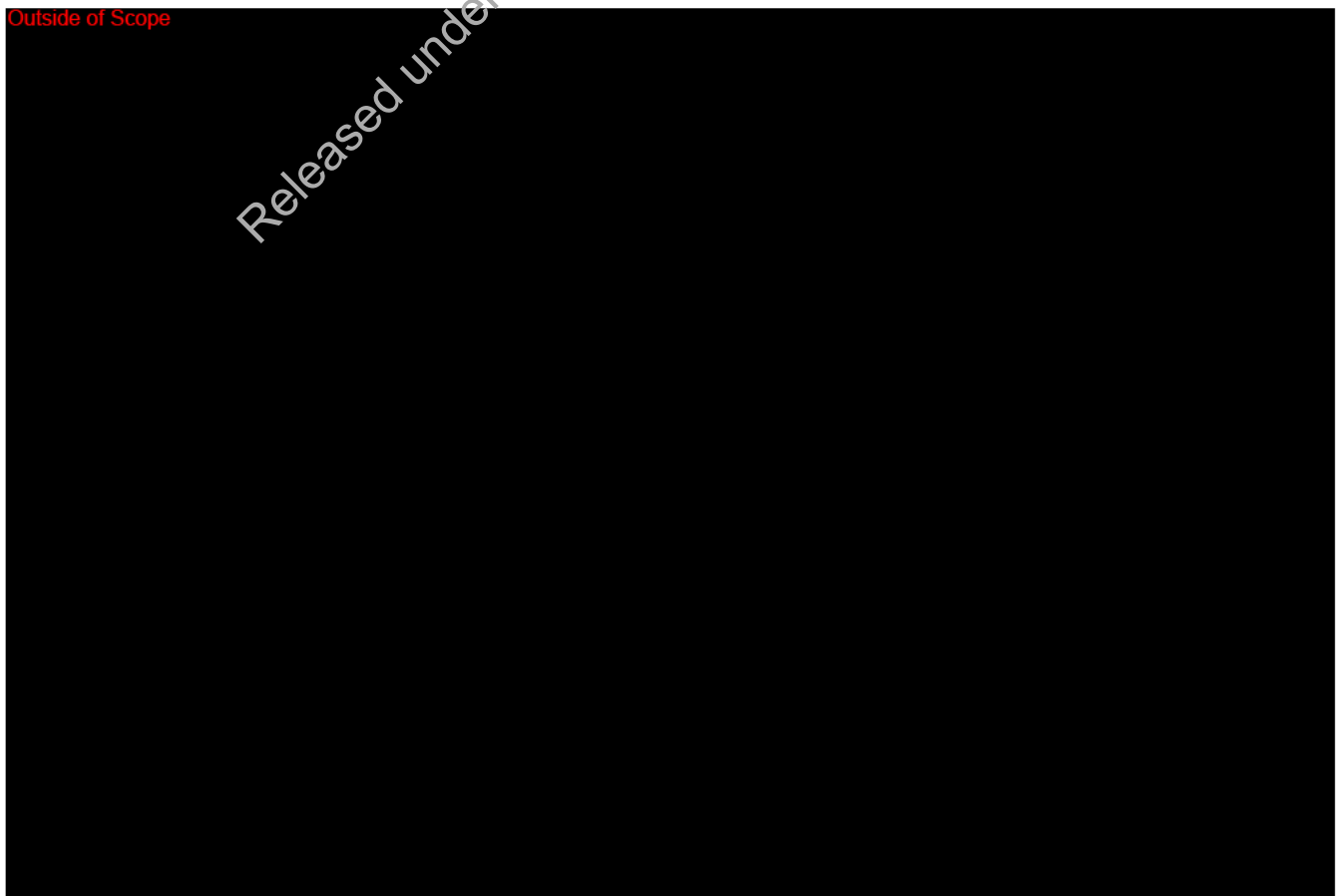
Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** [redacted]



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**From:** WOOD, Jesse (WELLHO) Out of scope  
**Sent:** Thursday, 8 July 2021 9:51 am  
**To:** Frost, Kerry Out of scope; HOLDAWAY, Heather Out of scope  
**Cc:** HORAN, Marian (WELLHO) Out of scope  
**Subject:** RE: Heads-up: LEG paper and SOP for your review tomorrow

Kia ora both

I was wondering if you had some initial thoughts on this below question.

Is it known if the self-identification proposals impact how police/justice determine sex/gender for people being taken into custody / facing court cases? This is because any impacts here may subsequently impact Corrections as we often rely on their determinations of gender/sex to inform our initial prison placement.

Ngā mihi

**Jesse Wood (he/him)**

Policy Adviser | Corrections Policy

Ara Poutama Aotearoa, *Department of Corrections*

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra** Out of scope



**From:** Frances Muir Out of scope  
**Sent:** 08 July 2021 9:27 a.m.  
**To:** WOOD, Jesse (WELLHO) Out of scope  
**Cc:** Kate Raggett Out of scope; Michael Kane Out of scope; Frost, Kerry Out of scope; HOLDAWAY, Heather Out of scope  
**Subject:** RE: Heads-up: LEG paper and SOP for your review tomorrow

Kia ora Jesse

Thanks for your feedback. The LEG paper and SOP will be going up to our Minister today for ministerial consultation next week.

I have responded to some of your comments below – happy to discuss any more fully if you need.

Ngā mihi

Frances

**Frances Muir** (she/her) | Senior Policy Analyst | Kaitātari Kaupapahere Matua  
Policy Group | Rōpū Kaupapahere  
**The Department of Internal Affairs | Te Tari Taiwhenua**  
Mobile: S 9(2)(a)



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**From:** WOOD, Jesse (WELLHO) Out of scope  
**Sent:** Friday, 2 July 2021 11:03 AM  
**To:** Michael Kane Out of scope  
**Cc:** Frances Muir <[Francex.xxxx@xxx.xxx.xx](mailto:Francex.xxxx@xxx.xxx.xx)>; Kate Raggett <Out of scope>; Susan Arcus  
Out of scope Anne O'Driscoll Out of scope HORAN, Marian (WELLHO)  
Out of scope  
**Subject:** RE: Heads-up: LEG paper and SOP for your review tomorrow

Kia ora

Thank you for giving us an opportunity to feedback on this SOP.

We have several comments below.

- One point of interest, and this may be a question for police / justice. Will the self-identification proposals impact how they determine sex/gender for people being taken into custody / facing court cases? This is because any impacts here may subsequently impact Corrections as we often rely on their determinations of gender/sex to inform our initial prison placement. If you could put us directly in contact with the policy people from police/justice we are happy to discuss this with them.

Self-identification for birth certificates should not impact how other agencies, including police and justice determine the sex and gender of people. The policy intent is to amend sex on the birth register/birth certificates not how other agencies determine and record sex or gender. We understand from Police that birth certificates are not how they determine gender for offences. I have copied in Heather and Kerryn our Police and Justice contacts in case you would like more information.

- In paragraph 10 you could potentially add a sentence acknowledging the confusion with the word sex on birth certificates now that it sometimes means gender as well as sex. **Thanks.**
- This might be in the RIS. But if sex markers on birth certificates are expanded has it been explored how this will interact with databases and info collection from agencies, businesses etc.

We do not believe other agencies and organisations systems need to be updated to reflect the range of markers available on birth certificates. As above, the policy intent is not to change how other agencies or organisations determine a person's sex or gender. As set out in new section 80(2) individuals and agencies can take into account

other matters. We will work with other agencies that may rely more on birth certificates as part of implementation eg, education and NZTA.

- Is it known what the impacts are of differing sex markers when doing international paperwork, e.g. citizenships, visas, etc?

If I understand correctly, your question is about New Zealanders applying for visas and citizenship applications overseas? We haven't looked into this specifically due to our time constraints, but do not foresee it as being a problem. In some case people may need to provide birth certificates when applying but we are not aware of any requirements for the gender/sex information on the birth certificate to align with marker options in other countries paperwork. If this became an issue, we look at issuing guidance as we currently do for traveling on passports with a "X" marker.

- We note some concern about the lack of consultation being undergone on changes, but acknowledge that consultation will be undergone further at select committee. [Thanks](#).
- In paragraph 28, you might want to make it clearer that people born overseas cannot obtain a family court declaration. It is not clear currently. [Thanks](#).

Happy to discuss any of these points through this further.

Ngā mihi

### Jesse Wood (he/him)

Policy Adviser | Corrections Policy

Ara Poutama Aotearoa, Department of Corrections

**Wāhi mahi:** National Office, Freyberg Building, 20 Aitken Street, Wellington 6011

**Īmēra:** [Out of scope](#)



**From:** Michael Kane [Out of scope](#)

**Sent:** 18 June 2021 3:07 p.m.

**To:** MALLINSON, Maxine (WELLHO) [Out of scope](#) WOOD, Jesse (WELLHO)

[Out of scope](#) Daniel Perkins [Out of scope](#)

[Out of scope](#)

[Large redacted area containing the main body of the email]

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Kia ora,

Thank you for sending this through for our feedback and for meeting with us to discuss the ongoing work on self-identification. Please find attached our feedback on the self-identification cabinet paper. We have given specific feedback on some points that were also discussed in the meeting, and provided suggested changes to the wording of sections 67-70.

Our most substantive feedback is that the conclusive evidence point *should be* an explicit agree recommendation, while retaining the need for your Minister to potentially make further monitor policy decisions in this area. The conclusive evidence point is not in itself a minor decision. If you think that a clarification is all that's needed can you point us to the exact provision that you think sets this out. The paper doesn't cover this off sufficiently currently. It will be important for you to continue checking in with us at PCO stage around this aspect during drafting, so we can know how it fits with our regs.

In general, we think the language in the paper could be nuanced to refrain from using 'disaster' language that is often associated with minority rights discussions – problem, issue, concern etc – unless this language is warranted. This is because it could feed into bias, particularly when this language is used around minority groups.

As we mentioned in the meeting, we recommend the paper gives further consideration to other impacts of the bill, such as what it will mean for the criminal charge of male assaults female, single sex schools etc. You outlined these were being addressed by agencies operationally in our meeting, however it could be useful to explicitly call out some of these impacts out in the Cabinet paper. It seemed like this analysis was not fully fleshed, which is a concern at policy approval stage.

Para 46 should go into more depth around the risks related to identity fraud – particularly to the justice sector, as mentioned in our meeting you could potentially consult further with the JSIMP team at DIA.

s 9(2) (h)

As set out before, there is a human rights dimension that might not have been fully touched on in the paper – we refer to the Crown Law advice. That analysis needs to be drawn out more including understanding the potential implications when this is operationalised.

We have also have some suggested changes to the Corrections section below. Please let us know if you want to propose alternative text, but note that changes are needed to the framing and we're happy to engage further via email and over the phone.

## The impact of self-identification on the placement of people in prisons

67. Birth certificates are rarely required in legislation to determine someone's sex or gender. There is only one instance where the sex on a birth certificate would have direct implications for other legislation and regulatory frameworks.
68. The Department of Corrections (Corrections) makes decisions about placements in men's or women's prisons under the Corrections Regulations 2005. Currently where a birth certificate is supplied, the placement must be made in accordance with the recorded sex on the birth certificate. If a birth certificate is not provided, a review can be initiated, where considerations include a person's gender identity, safety and wellbeing, and wider safety considerations. Where people have a history of prior serious sexual offending against their nominated sex, the placement cannot be reviewed. This regulatory framework was designed around the current Family Court process.
69. S 9(2)(f)(iv) [REDACTED]
70. I also note that when the Select Committee considered the Bill, a point was raised about the implications of a self-identification process on accommodating people in prison. This issue was also raised in advice from Crown Law. There was a concern that removing the Family Court from the process could enable people to falsely change their registered sex to determine their prison placement. While there are different perspectives on the extent of this risk, this approach would mitigate this concern.

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