

From: [ARMSTRONG, Juliet](#)
To: [HOLDAWAY, Heather](#)
Subject: FW: Police response on Cabinet paper on BDMRR Bill
Date: Thursday, 29 April 2021 9:35:56 PM
Attachments: [image001.png](#)
[image002.png](#)
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[image006.png](#)

Hi Heather,

Response from DIA below on the BDMRR Bill Cabinet paper. Looks like there are a couple of things worth following up on at Police's end, happy to chat next week if you like

Juliet

From: Frances Muir
Sent: Thursday, April 29, 2021 8:22 AM
To: ARMSTRONG, Juliet
Cc: Kate Raggett ; Michael Kane
Subject: RE: Police response on Cabinet paper on BDMRR Bill

Kia ora Juliet

Thanks for your feedback and sorry for this late response. Our Cabinet paper is now with our Minister for ministerial consultation.

I have responded to your comments below in blue but more than happy to talk these through if needed.

Ngā mihi

Frances

From: ARMSTRONG, Juliet <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>
Sent: Thursday, 15 April 2021 1:30 PM
To: Frances Muir <xxxxxx.xxxx@xxx.xxxx.xx>
Cc: CROSS, Jennifer (Jenny) <xxxxxx.xxxx@xxxxxx.xxxx.xx>; FERGUSON, Gillian <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; HANDCOCK, Alice <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; Scott Spackman <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; Christine MacKenzie <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; JOHNSON, Mark <xxxx.xxxxxxxxx@xxxxxx.xxxx.xx>; FITZGERALD, Thomas <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; DEWHURST, Rachel <xxxxxx.xxxxxxxxxx@xxxxxx.xxxx.xx>; FLAHIVE, Michael (Mike) <xxxxxx.xxxxxxxxx@xxxxxx.xxxx.xx>; HOLDAWAY, Heather <xxxxxx.xxxxxxxxx@xxxxxx.xxxx.xx>
Subject: Police response on Cabinet paper on BDMRR Bill

Kia ora Frances,

Thank you for the opportunity to comment on the attached draft Cabinet paper relating to a proposed self-identification process to recognise gender on birth certificates.

The Cabinet paper refers to the current process whereby a person can change their registered sex on their birth certificate, by means of provision of evidence to the Family Court that the person has undergone medical treatment to conform with their desired sex. We note that the proposed change introduces a less medicalising process whereby a person can simply self-declare their registered sex to reflect their gender and have that sex recorded on their birth certificate.

In general, Police supports the proposed changes. However, we have some specific comments regarding the impacts from a Police operational perspective:

[Accuracy of identity information](#)

1. s.9(2)(g) OIA [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Noted:

- s.9(2)(f)(iv) OIA [redacted]
[redacted]
[redacted] We now 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. s.9(2)(f)(ii) OIA [redacted]
[redacted]
[redacted]
- The Bill has two provisions that I think also mitigate your concern, which we intend to retain:
 - [clause 110](#) – 110(4) would allow us to share with police information on a change of registered sex where Police need to confirm people do not have more than one identity (this clause is now referenced in the Cab paper); and
 - [clause 116](#) – allows us to disclose restricted information for law enforcement purposes with Police.

2. At present, Police receives name change information from the BDM Registry under our existing ASIA with the Registrar-General. This includes information relating to the individual's name change, **their current birth information** and all previous name changes (if any) that is maintained by the Registrar-General under the BDMRRA for a New Zealand-born individual who is the subject of a registered name change or a non-disclosure direction - with identifying information including, but not limited to names at birth, former names, new names, date and place of birth, and sex. s.9(2)(g) OIA [redacted]
[redacted]
[redacted]

[redacted] Having access to this information will enable Police to keep more accurate records about people from an identity and operational aspect. Our current ASIA with you does not allow us to share information where a person has changed their registered sex under the existing Family Court. s.9(2)(f)(iv) OIA [redacted]
[redacted]
[redacted]

3. We also note that, at paras 37 to 42 – there are likely to be implications for police records (e.g. NIA – Police's system for recording information on individuals who come into contact with Police) if a range of sex markers are adopted, as Police will need to change our systems to reflect the range of sex markers permitted. It is likely that there will be a significant cost involved in updating our systems, which may be a continuing cost if sex markers continue to evolve through regulation setting. Our policy intent is that birth

certificates should not be conclusive evidence of a person's sex or gender so query if you need to update your systems to align with options available for birth certificates? Especially as you note that birth certificates are not how you determine a person's sex or gender for offences? Happy to discuss this matter further.

s.9(2)(g) OIA

[Redacted]

See our response to 1 above.

Impact on offences

5. We note that the offence of male assaults female under s 194(b) of the Crimes Act 1961 has a gender/sex as an element (e.g. the prosecutor is required to prove that the offender, who is male, assaulted a female). Although the use of this offence has largely been superseded by that under s 194B of the Crimes Act 1961 (e.g. assault on a family member) and its availability may already be affected in cases where the offender or victim has changed their registered sex through the Family Court process, further consideration of this charge might be appropriate in light of the proposed changes (we understand that the rationale behind this charge was to recognise the strength differential when males offend (through assault) against victims – s.9(2)(g) OIA

[Redacted]

. See our response to point 3 above s.9(2)(g) OIA

[Redacted]

6. Further to your question about how Police determines a person's sex or gender for offences under s 194(b) of the Crimes Act 1961, we note that the Crimes Act 1961 does not define "male" or "female" as referring to gender or sex (s 194(b) came into force in 1962 as a part of the original Act), and we are not aware of any case law on this point. The case of *Chandler v R HC Napier AP4/93* requires the prosecutor to prove that the offender knew that the victim was female (although it can usually be assumed that this is the case). In short, s 194(b) raises difficult questions for Police re victims with gender diversity.

Thanks!

7. s.9(2)(g) OIA

[Redacted]

s.9(2)(g) OIA

You may be aware that StatsNZ will soon release revised statistical standards for sex and gender, which may be a helpful guide in the first instance.

8. We have not identified any other offences at this time that might be affected by the proposed changes (our initial thought is that offences relating to female genital mutilation (e.g. ss 204A and 204B of the Crimes Act 1961) are unlikely to be affected as these offences rely on the victim (who is referred to by the legislation as “a person” – not a female) having female genitalia – this issue may require further consideration, however). We do not think our changes will have implications for other offences or that we need to give further consideration to this issue – as above, birth certificates should not be considered as conclusive evidence of a person’s sex. We consider that it is up to individual agencies and organisations to determine their policies for determining sex, if this information is necessary.

Finally, we note that Para 26 refers to (and briefly details) advice received from Crown Law, which would ordinarily be privileged. I assume that privilege has been waived in respect of this advice (and note that Daniel Perkins from Crown Law is included in the email correspondence below). Yes, legal privilege was waived so the advice could be publicly released back in 2019 it is available here: https://www.beehive.govt.nz/sites/default/files/2019-02/Crown%20Law%20advice%20BDMRR%20Bill%20_0.pdf

It would be good if you can also please confirm the date for SWC considering this paper? 12 May 2021, sorry I didn’t provide this earlier

I hope this feedback is helpful. Please feel free to come back to me if you have any further questions.

Ngā mihi

Juliet

Juliet Armstrong

Senior Policy Advisor II

Criminal Justice Policy Team

Policy & Partnerships

s.9(2)(a) OIA

E .@..

s.9(2)(a) OIA



From: Frances Muir <xxxxxxxx.xxxx@xxx.xxxx.xx >

Sent: Friday, 9 April 2021 2:31 PM

To

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s.9(2)(a) OIA

[REDACTED]

Subject: [EXTERNAL] For your review - Cabinet paper on BDMRR Bill CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kia ora koutou

Please find attached for your agency's review a Cabinet paper introducing a self-identification process to have gender recognised on birth certificates. We will need your agency's comments by **COP Thursday 15 April**. Sorry for the short timeframe, which is to allow us to get a draft of the paper to our Minister for ministerial consultation before 20th April.

Thank you to those of you who provided feedback on an earlier version of the Cabinet paper. Note we are unfortunately not able to include our Regulatory Impact Statement in this round of feedback as it is still being revised to reflect our policy proposals.

Sorry, we also realise the paper is too long and we are working on shortening it. Feel free to provide suggestions on reducing its length if you have time.

Please get in touch if you have any questions.

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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