

Document 1:

From: Withheld under s9(2)(a)
Sent: Tuesday, 13 February 2018 8:57 PM
To: Rt. Hon Jacinda Ardern; Iain Lees-Galloway
Subject: Transgender rights

Dear Jacinda,

"I'm writing to ask you to fix the Births, Deaths, Marriages, and Relationships Registration Bill so that it gives our trans and intersex people the respect they deserve. Please fix the process for changing gender markers on a birth certificate. It's time to make it a one-step, administrative process based on self-identification."

I'm writing in support of making it easier for transgender people to get their gender changed on their passports more easily. I copied the above words from a Green Party page. I agree, wholeheartedly with their campaign about this matter but I'm an active Labour Party member. I would love to see Labour also stepping up to support this change in legislation.

Regards,

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 2:

From: **Withheld under s9(2)(a)**
Sent: Tuesday, 10 April 2018 8:15 PM
To: Hon Peeni Henare <Peeni.Henare@parliament.govt.nz>
Subject: Births, Deaths, Marriages, and Relationships Registration Bill.

Dear Peeni Henare.

I am writing in support of submissions made on the Births, Deaths, Marriages, and Relationships Registration Bill, to streamline the process for changing the sex listed on a person's birth certificate.

In particular, I urge you to consider and act on the recommendations made by:

- the Human Rights Commission
- Community Law Wellington and Hutt Valley
- Intersex Trust Aotearoa New Zealand
- Rainbow Wellington
- Young Labour
- St Andrew's on the Terrace
- Victoria University of Wellington Students Association and UniQ

Withheld under s9(2)(a), it often feels like everything in life is stacked against me living my life authentically. Society does not treat trans folks kindly, as this week's display of hate against Laurel Hubbard demonstrates.

Transition is the recognised medical treatment for the condition of gender dysphoria, it is not something undertaken on a whim or done frivolously, it is one of the most major undertakings any human can make. I urge you to please take one obstacle out of the way of trans folks living their lives and please streamline the process of changing gender markers on birth certificates.

Gender identity can be seen as a complicated issue, but it is also a deeply personal one. The current process for changing the sex on one's birth certificate, requiring court declarations and medical

intervention, creates unnecessary barriers to what is ultimately a personal matter.

In contrast, changing one's passport or driver's licence is a simple matter of making a statutory declaration.

The objective of this Bill is to future-proof the way government registers significant life events, including "sexual assignment and reassignment". Streamlining this process, removing bureaucratic barriers and aligning birth certificates, driver's licences and passports would achieve this objective, as would providing options for people who do not identify as M or F.

Yours sincerely,

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 3:

From: Withheld under s9(2)(a)
Sent: Saturday, May 12, 2018 12:23 PM
To: Rt. Hon Jacinda Ardern
Subject: Proposed changes to Birth Certificate names.....

Dear Jacinda & Labour Party Officials.....

My wife & I have been told that there is a proposal to be able to change gender and names at birth?
We don't agree with these changes. It would be different, however, if later there is a sex change....
But the original gender, we feel, is important to record.

Out of scope

Best Regards from [Withheld under s9(2)(a)] [Withheld under s9(2)(a)]

Sent from [Mail](#) for Windows 10

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 4:

From: [Redacted]
Sent: Wednesday, 13 June 2018 4:08 PM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: Internal Affairs Passport Policy
Importance: High

Hi Tracy,

I hope you are happy to use your first name and that.

This email and contents are quite extensive and definitely not bedtime reading but the subject is seriously important!

The Letter and file attached marked official request is being sent to you in an attempt to make you aware of some of the facts relating to passports, you may not realise and of course your action.

It relates to the ability of a man to call himself female and have his passport show 'F' as his sex simply by making a declaration with no guarantees he will stay that way forever. In effect allowing access to female spaces without having any medical intervention that makes him equal anatomically – overseas that condition is being questioned by women in the light of the #metoo movement.

I believe the information I proved here is self explanatory.

I may be contacted by email or by phone [Redacted]

Pease note: my contact details must remain private as my life could depend on it.

Regards

[Redacted]

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 4B:

Hi Tracy,

I am sending you this as a means to have you understand, that as a woman I am certain you already do, the lengths some men will go to satisfy their inbuilt fascination for women and their spaces especially their private spaces.

Being first to recognise their driving force is one created by natural forces they really do have little control over and I can confirm that as I have lived in a male body for decades even though inside and mentally I was, and now am a woman. That I now understand was always my greatest conflict – a mind thinking as a woman – but having at the same time the body of a man with male sexual urges that simply would not go away.

<https://www.bbc.com/news/uk-england-42578440>

As women in this day and age that kind of behaviour has no place even if it is a biological and natural sexual response.

In this instance not being satisfied with just a few pictures to satisfy his sexual gratification, he took at least 50,000 – that by itself, shows clearly the depths to which some men will go to.

Allowing men to self identify in any way as women – as is the case currently at issue in many countries – and allowing them to call themselves transgender – without confirming their intentions or providing guarantees on their beliefs in any way, is quite simply wrong and does a great disservice to those who are genuine about their gender conflict.

Unfortunately as a society we must realise that even though other men might realise the wrongness of the situation – because they are men – and but by the grace of God, so to speak – it could be their issue. The result all too often, is they side with the male fraternity and refuse to acknowledge the effects placed on women. And I suspect they do this, maybe even subconsciously without realising the consequences – but society will never know for certain, as is shown by the response to this case by another man who objected to the government taking action. See below.

<https://www.theguardian.com/world/2018/jun/15/tory-mp-christopher-chope-blocks-progress-of-upskirting-bill>

Something I have found out in my own assessment of the conflict I held for many years – is that those born female with male minds – transgender men but not all I believe – have the same male reactions.

Hopefully you will understand the reasons for my asking for a review of the way Internal Affairs chose to change the policy on defining the sex definition on passports.

Regards,

Withheld under s9(2)(a)

Document 4C:

Letter to the NZ Minister of Internal Affairs Tracy Martin

I believe the official request is self explanatory on its own merit.

In addition, this letter contains some links to material used overseas that explain the issue in a little more detail although they are of a journalistic nature.

The predominant issue is the concern about men invading female spaces – in actual fact it is more about men identifying as transgender who identify as women – and the way IA changed their policy.

As a result, the public concept of the term Transgender is not completely understood for the simple reason it is now used for every individual who feels to some degree they identify as the opposite sex to that assigned at birth. And does not take into account the anatomical differences, meaning men who refuse to make themselves match the anatomy of a woman by having their male bits removed can call themselves women and enter their spaces legally.

Withheld under s9(2)(a) I know what men per-se are like – I have also spoken to some who feel they are women but when I make the suggestion that will mean surgery to remove the male bits – frequently the answer is now way I like my penis too much – in my mind you cannot have it both ways as it were.

Now after my surgery and identifying as a woman I see clearly the reason females feel the way they do. The issue is mostly a male issue and as we know men have wanted to get into female spaces probably for ever – it seems it is seldom the other way around.

The following article is from NZ

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12060723

This one talks about the issue of gender self identification.

<https://www.theguardian.com/politics/2018/may/23/labour-suspends-activist-challenging-gender-self-identification-policy>

This one shows how complicated things are getting!

<http://www.dailymail.co.uk/news/article-5817699/Baby-person-born-England-Wales-without-legal-mother.html>

This article essentially explains that those with a gender recognition certificate may as appropriate (meaning having surgery) be allowed in to women's spaces as most likely they will have been appropriately deemed female – a required process for obtaining a change of the sex designation as Female. I had to go through this process myself by virtue of my having reassignment surgery making my body conform anatomically to that of a female.

<http://www.dailymail.co.uk/news/article-5825513/Transgender-women-banned-female-areas-theres-justifiable-reason.html>

Unfortunately NZ does not have any recognition of gender hence it is one of the issues – presumably as there are not a significant numbers of people identifying as transsexual in NZ that who required gender recognition – and as many that have paid for the surgery out of their own pocket and not truly understanding the term transgender – I can easily see how IA came up with the policy they did – but never understood the implications.

The following article is interesting for the posts that give a greater insight by the public.

https://www.mumsnet.com/Talk/womens_rights/3273961-Equalities-Office-men-who-identify-as-women-can-be-banned-from-female-only-areas

Also include is my article on the meaning of the word transgender and it implications.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 4D:

Official request To the Honourable Tracy Martin

Minister of Internal Affairs

Dear Minister,

This issue gets more complex every day – I am now very concerned about something that started out as affecting me personally – that has snowballed into affecting so many others. Had I been asked for my thoughts at the time, as Internal Affairs implied in their final decision to my request. I never thought they would go as far as they did, making a decision almost a year later I thought was suspect and had implications they would never understand.

This is the thing about the transgender issue worldwide there are too many experts out there who have never walked in our shoes – who only think they understand the condition and more often than not get it wrong!

Background:

It is a while now (2011) that together with assistance from the Human Rights Commission I challenged Internal Affairs on my right as a fully transitioned Transsexual woman, to have my passport designation as to my sex, recorded as Female. This had been recognised in law as a result of a legal action and a finding by Judge Fitzgerald's finding in the "Michael case" where he stated "a transgender person who had reassignment surgery was entitled to have their legal documents changed to reflect their new gender".

As I now reject the word transgender because of the implications that make any use of the word confusing, unclear and unreliable, covering far too many aspects of gender – I prefer the term transsexual as this is also the medical term.

Medical facts: Terms used.

The APA DSM5¹ manual of gender Identity Disorders (GID) defines Transsexual in this way:–

A person with the external genitalia and secondary sexual characteristics of one gender, but whose personal identification and psychosocial configuration are that of the opposite gender

'The term, transsexual, is used to refer to adults who meet diagnostic criteria for GID and have employed hormonal and/or surgical treatments in the process of transitioning gender or who plan to do so'.

It also defines Transgender in this way:–

¹ https://www.psychiatry.org/File%20Library/Psychiatrists/Directories/Library-and-Archive/resource_documents/rd2012_GID.pdf

'Transgender denotes individuals with cross-gender identification whether or not hormonal or surgical treatments have been, or are planned to be, employed in transitioning gender'.

The implications of these terms are confusing to the general population unfamiliar with the medical terms. As a result they confuse them, and as a result tend to use the word transgender for everything.

Even transsexuals, who have transitioned both hormonally and surgically to the sex opposite to that they were born, find the word transsexual an unfortunate word, as is all too often seen as referring to the physical act of sexual intercourse – rather than that used at birth to describe a biological status.

In layman's terms I suggest we think about this confusion in this way:–

A transsexual person will make every effort to become the opposite sex to that they were born – to the point where frequently, suicide is preferable if they cannot.

True transsexuals,² living under the transgender umbrella because they prefer the name, will always want to transition to the opposite sex completely.

On the other hand, Transgender people usually male will seldom if ever make the decision to transition surgically believing they can identify as women without going that far. This means effectively they retain their original biological maleness, which may or may not mean they can achieve physical intercourse. Transgender men may identify as female in varying degrees and at various times as they choose to identify their gender. This option is far more complicated or in most cases applicable, for women identifying as men!

Internal Affairs:

In reality it is only those identifying as transsexual where the desire to live in the opposite sex to that they were born – that should be classified as "M" or "F" as that denotes what is essentially a binary state – binary in terms of two sexes male and female.

Having already considered as was done in 2005³ when the concepts of the provision to use X was decided on with the presumption of "X" being known universally as the unknown.

The original intention to use "X" for every state of gender identification that is not fixed by hormonal and surgical intervention be reserved for all those identifying as transgender who decide they cannot make the decision to commit to a full transition that will make their anatomy equal to that of the opposite sex. This is the concern of all Women – the not being able to be certain and feel they are safe in spaces designated female.

Questionable facts: For consideration.

² http://www.genderpsychology.org/transsexual/benjamin_gd.html

³ https://www.hrc.co.nz/files/8214/2378/7655/24-Nov-2008_11-36-6_To_Be_Who_I_Am_HTML_Aug_08.html
Passport Section6.11

There would appear to be legal and moral implications Internal Affairs failed to recognise at the time they made the decision to allow choice by the individual as there remain many countries in the world where being transgender is unacceptable.

Allowing an individual to be described as female – on their passport – a travel document – while still retaining their maleness may be seen as deception. As such the implications for the passport holder could be very serious, particularly that due to increased identity checks where full body scanners are becoming normal. The traveller can no longer rely on how they look and a bit of paper – security can easily tell just by looking at an image on a scanner – the reality.

Need for Review:

The decision may be seen as a deliberate intention to deceive another countries security and the implications for the traveller, places them at an unnecessary disadvantage, if for no other reason they may be held to question and depending on the country they visit it may mean an arrest – or worse.

I do not believe Internal Affairs have thought these implications out – there is a definite need for a review, the entire world has changed a lot since 2012.

It is also more aware of the rights of women thankfully – legal implications that must also be considered – together with the rights held by all women to have their personal spaces protected.

One suggestion:

The classification “F” in addition to natural born females might also apply only to transsexuals and have that right accorded automatically following completion of the transition, which could be confirmed medically – prior to that they would use “X”.

It is a fact I never understood until I went through the process myself – one that the general public may not realise is that a Passport is not a legal document it is a travel document and although it may be used for identification of name – the same is not true for Gender – that is a birth certificate.

Internal affairs has made a decision that there is only a need to self identify gender with the use of a declaration as to the way the individual sees themselves at the time, and although the individual may mean it at that time, there is no process to ensure they will remain in that gender permanently.

If there can be no guarantee the individual will stay permanently in their new gender surely there must be legal consequences – even using the X as the indicator used when a person who cannot commit to their new gender – is no guarantee.

Until the request for gender change can confirm that the individual’s anatomical status is the same as their biological status – a legal conflict must exist. That must be the conclusion and the only one that can legally be considered in allowing any change alternate to that used at birth.

Naturally there may be considerable resistance to this especially from the male point of view as men have the most to gain. It should be noted here that the potential for allowing male intrusion into the female domain has always been strongly denied by all women for obvious reasons.

Conclusion: Understanding the issue.

What is becoming loudly clear from a women's point of view is that as transgender people become more acceptable in society, there is a greater need to understand what it means to be transgender. Unfortunately as a profession the medical profession has not been particularly helpful. This is not surprising as it has taken decades for them to understand that transsexual people were not sick and were born that way.

However including all gender identities under an umbrella term like transgender, that also includes men who think they are women but will never commit to a surgical intervention that will make them equal anatomically with women, there is a very understandably, an issue for women. This is now becoming a more of a real issue today since the #metoo movement, as it sees the objections involving the relationship between men and women and become far less tolerant.

Gender aside society must realise even after all understands biologically –as a species we have maintained a binary status that is male and female – each has its own issue as they relate to the other and there is no reason for that to change.

For too long society has found difficulty in accepting those who are seen as different – now that we are, we have a chance to look at the next step making certain, we do not make the same mistakes.

Transgender people collectively, no matter how they identify must realise that acceptability can only ever be tolerated if they conform to the majority – and for that majority, a binary system exists when we consider gender – Males and Females.

No amount of societal waffle can or should change that.

It is completely wrong for one of the binaries to say one thing when it wrongfully affects the other and vice versa. Society mostly understands the differences between men and women and the conflicts of that association.

Now it must understand the challenges faced by those who are unable to exist within that binary state and realise they were born that way, society has a duty to allow co-existence with the consequences of difference. And Governments have a duty to be certain it understands society's needs.

As the minister of Internal Affairs I ask for a review of the present passport policy on sex markers in light of the issues I mention in this email. And I am reminded of the statements made by the minister at the time who considered my initial request, as needing a legislative change when in fact did not – as it was only a policy.

Regards

Withheld under s9(2)(a)

Note: reference to my original complaint can be found by contacting the Withheld under s9(2)(a)

Document 4E:

Know the Meaning of Transgender? – It is Probably Wrong!

There is a general consensus that transgender people by being more visible than ever, they are becoming more acceptable.

The truth is the word transgender was intended to be an umbrella term that covered every gender situation where the individual had issues with how they identify their own gender. It was never about feelings or fluidity and anything else. The original medical definition for a person who knew their body was the wrong one they should have been born with, is – [transsexual](#).

Transsexual is an unfortunate word for by including the word sex, it gives the impression the condition is more about sex as an activity, in the same way that homosexuality is about sexual attraction. Nothing could be further from the truth – as in reality it is about the sex they are assigned at birth.

It is important to remember much of what was understood decades ago, took place before the concept of gender was ever spoken about – it was not until the early 70's a now largely discredited sexologist John [Money](#) made that distinction.

Transsexuals should be considered as a subset of the transgender community – many disliked the name preferring transgender instead. However they are the only ones who understand the need to live in a body that is not the one they were born in. And the only way they can do that is to ask for what is now recognised as – medically necessary surgery by the medical profession.

Except that most likely as medical specialists, they were more concerned they might be sued for giving the wrong diagnosis. With that in mind – together with some of the ideas held by Money and others like him. A decision was made medically, should a patient decide about transitioning surgically – that effectively transsexuals should jump through as many hoops as possible – they should have their mental capability scrutinised by Psychiatrists – and initially live as a woman for two years – before they could be considered for surgery.

This is the reason transsexuals asked for the right to decide their own identity – after all, who best knows about their need to identify as their authentic self – certainly no doctor, who are frequently men who cannot understand why any man would want to be a woman!

The problem today is that by using an umbrella term Transgender that covers all gender issues society has come up with the wrong concept about something only [true transsexuals](#) wanted. Also due to the fact that included in the term Transgender – there are many who are unable to or don't want to give up their maleness to become a woman and will never need surgery as a result.

What this proves very simply is that self identification of gender should only be applicable to those who actually are women in their mind and who are in need of the medically necessary surgery – so they can bypass the control the medical profession holds.

As for those unable to meet the commitment required physically, morally and legally necessary to become a woman – self identification should be denied.

Women have a right to decide their own protection needs, as they have forever suffered the consequences of male domination – their demands on this question must be seen as vital.

Ask any counsellor about the response from men who think they might be more female than male – when they are reminded that in order to be a real female the male bits had to go – their usual response, shock horror – no way!

From the standpoint of a female view that Society must not simply let this happen – for just as Theresa May recently speaking about homosexuality, as being “wrong then and it is wrong today” sadly a wrongful medical diagnosis at the time – she also spoke about transgender people as not being sick – another mistake. They are like it or not a marginalised part of humanity with specific needs — the medical profession must finally get it right this time and take on the responsibility of finding a solution to this dilemma – one that if nothing is done puts both genders at risk.

Understand this and what doing nothing will mean – somewhere – sometime – someplace – some women or woman will suffer the consequences.

Withheld under s9(2)(g)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 4F:

From: Withheld under s9(2)(a)

Sent: Saturday, 23 June 2018 12:26 PM

To: T Martin (MIN) <t.martin@ministers.govt.nz>

Cc: Hon Nikki Kaye <Nikki.Kaye@parliament.govt.nz>; Louisa Wall <Louisa.Wall@parliament.govt.nz>

Subject: Passport Issues

Importance: High

Hi Tracy,

I realise you are busy and I understand your office has received my emails and request for a review of the IA policy– but it would be nice to believe my correspondence to you is being taken seriously.

Below is another example of the issues I mention. In NZ we do have the option of using an 'X' in reference to sex – the comments by the Judge in this case suggesting the importance of materially making a false declaration on a passport. NZ is currently doing just that with its acceptance of simply making a declaration that provides no guarantee or medical confirmation that the individual has refused to make any anatomical changes to their body – that would remove any sexual advantage held by a male over other females.

<http://www.dailymail.co.uk/news/article-5873985/Gender-neutral-campaigner-Christie-Elan-Cane-loses-High-Court-bid-X-option-passports.html>

Please add this the previous emails sent to you.
A simple call would do for a start!

Regards

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 4G:

From: Withheld under s9(2)(a)

Sent: Monday, 25 June 2018 12:15 PM

To: T Martin (MIN) <t.martin@ministers.govt.nz>

Cc: Hon Nikki Kaye <Nikki.Kaye@parliament.govt.nz>; Louisa Wall <Louisa.Wall@parliament.govt.nz>

Subject: Transgender in Womens Spaces

Importance: High

Hi Tracy, Nikki and Louisa,

I just read this.

<http://www.dailymail.co.uk/news/article-5880533/Women-allowed-bar-transgender-people-female-changing-rooms-toilets-ministers.html>

The NZ government needs to comment on this publically.

The people must be made to understand all the reasons behind this decision and the fact that the issues relating to Transgender are almost completely misunderstood. Driven in many cases by some men who have their own issues!

Regards

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 5:

From: **Withheld under s9(2)(a)**
Sent: Sunday, 12 August 2018 7:26 PM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: Gender self-identification on Kiwi birth certificates

Hi Tracey,

As a Kiwi, I am disappointed to see your ideological move to allow Kiwis to self-identify their own gender for their NZ birth certificates. This is activism, not politics or science. There are only two genders: male and female. One cannot self-identify one's own gender. This should be self evident. One either has a Y chromosome or not.

There is nothing wrong with the current system: Allowing people to change their gender without medical evidence makes a birth certificate meaningless. Likewise, this will put people at risk when they need to be treated by a doctor in an emergency. If a doctor is not able to correctly identify a person's gender, the wrong medical procedure could be followed. You're putting people's lives in danger for ideology.

Gender is based on biology. This social constructionist idea put forth by humanities departments across the world is not based on logic, reason, or the scientific method. It's utter nonsense.

Your Bill is pure political correctness, an unfortunate aspect of modern-day life against which Kiwis have been speaking out over the last few weeks. You should watch the recent debate featuring Don Brash at Auckland University. The vast majority of Kiwis are against political correctness.

Why are you wasting our tax money on this postmodernist rubbish?

Please look into this. There are only two genders.

Best regards,

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 6:

From: **Withheld under s9(2)(a)**
Sent: Sunday, 12 August 2018 6:33 PM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: "Identity certificates"

Are you utterly insane?

When I read the NZ Herald article, I had to check the date, I thought it must be 1st April again in winter.

A birth certificate records FACTS, immutable facts, for very good reasons. It is not a way of boosting credibility someone's personal sexual preferences, their wish list for biological bits, or a marketing programme for "diversity"

If this act goes through, so much value of birth certificates will be lost forever.

However, if it does go through, personally, I would like to be a Puma, if you must put this insanity through, can you please add Puma to the list because X just doesn't do it for me. I have always identified with big cats, I wish I had been born one, and would like to scare the cr** out of a few left wing liberal politicians by roaring at them. Please, please, please can I be a Puma, I shan't feel fulfilled until I am a Puma.

Thanking you in anticipation of growing fur and getting longer claws

Sincerely,

Withheld under s9(2)(a)

Document 7:

From: Withheld under s9(2)(a)
Sent: Monday, 13 August 2018 5:44 AM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: Destroying the integrity of birth records

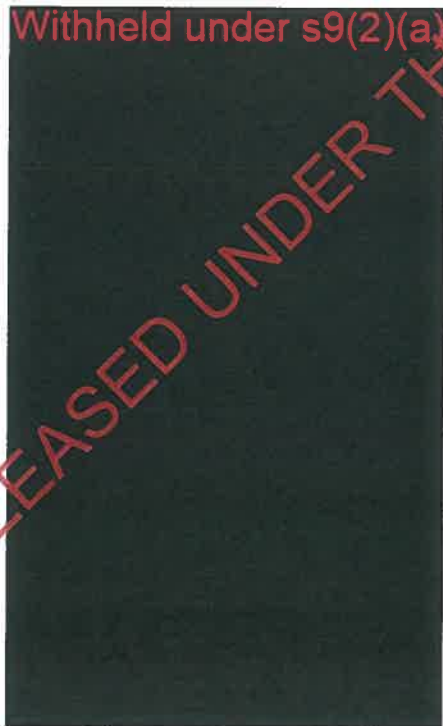
Dear Tracey

I write to you in the no doubt vain hope that you will resile from your support of the bill to destroy the integrity of New Zealand's birth records.

The problems that will arise from this move are obvious, avoidable, and will be viewed by history as another component of a particularly misinformed fashion trend that metastasised into changes to key elements off our legal and regulatory system

Sincerely

--
Withheld under s9(2)(a)



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 8:

From: Greta Parker (<mailto:greta.parker@ncwnz.org.nz>)

Sent: Tuesday, 14 August 2018 2:38 PM

Subject: Birth certificate changes welcomed by takatāpui, trans and non-binary people

Good afternoon members,

The National Council of Women supports the coalition of takatāpui, trans and non-binary people and groups who have just released the attached media release welcoming the proposed changes to the process for amending gender markers on birth certificates.

Also attached is a joint statement, supported by parents of transgender and gender diverse children; some health, women's and Rainbow organisations; legal and health academics, and former Human Rights Commissioners. The statement outlines the benefits of updating the outdated Births, Deaths, Marriages, and Relationships Registration Act 1995 to reflect the current passports policy.

In our recent Submission to the Governance and Administration Committee on the Births, Deaths, Marriages, and Relationships Bill (also attached) we highlighted the international precedent for gender to be recognised in legal documents based on self-determination alone. For example, in order to change gender on a New Zealand passport, an applicant simply provides a statutory declaration indicating the identity they want displayed on their passport. This approach does not require medical information or assessment, nor costly and lengthy legal proceedings. We noted that it would be worth considering whether this approach might be applied to birth certificates as well.

"This small but significant change will make it fairer for those in our communities, who do not have the resources to use the existing Family Court process," said Sally Dellow speaking on behalf of a coalition of takatāpui, trans and non-binary people and groups - and the National Council of Women agrees.

We encourage members to speak with their local MPs to support this bill progressing through to the next stage. Moving to a simple, administrative process will reduce high costs and lengthy procedures for takatāpui, trans and non-binary people.

For more information on how you can support this change, please contact the coalition of trans and non-binary people who put out the attached media release. You can reach the two spokespeople, Sally Dellow and Phylesha Brown-Acton, by emailing Jack Byrne on jackbyrne@trans-action.nz

"All that separates, whether of race, class, creed or sex is inhuman and must be overcome" –
Kate Sheppard

Kind regards,

Greta

--

Greta Parker

Marketing and Communications Manager

04 473 7623 | 027 3091877

PO Box 25 498, Wellington 6146

[Website](#) | [Facebook](#) | [Twitter](#)

**GENDER
EQUAL** NZ
MAKING EQUALITY REALITY



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 8B:

Birth Certificate changes welcomed by takatāpui, trans and non-binary people FOR IMMEDIATE RELEASE Today's announced changes to the process for amending gender markers on birth certificates are welcomed by takatāpui, trans and non-binary people.

"This small but significant change will make it fairer for those in our communities, who do not have the resources to use the existing Family Court process," said Sally Dellow.

Ms Dellow was speaking on behalf of people and organisations who released a joint statement today outlining the benefits of updating the Births, Deaths, Marriages, and Relationships Registration Act (BDMRRA) 1995.

New Zealand's passports and driver licence processes are recognised as international good practice for trans and non-binary people. Proposals announced today would introduce similar processes for updating gender markers on a New Zealand birth certificate. New Zealand will join a dozen other countries that already follow such a self-declaration approach.

"Most people in our communities can change their New Zealand passport or driver licence, but it does not match their birth certificate. That can cause significant problems when a birth certificate needs to be shown as proof of identity," said Ms Dellow.

Today's joint statement is supported by takatāpui, trans and non-binary people and organisations, parents of transgender and gender diverse children; national health, women's and Rainbow organisations; legal and health academics, and former Human Rights Commissioners. It calls for the 23-year-old BDMRRA to be amended to reflect the current passports policy, by: - replacing a Family Court application with a statutory declaration process that enables a person to affirm their self-defined gender identity - removing any other eligibility requirements, such as the need for medical evidence and - enabling gender markers to be recognised as male, female, or as a third, non-binary gender.

"We are delighted that the Select Committee's recommendations reflect this approach," said Ms Dellow. "This makes a huge difference to takatāpui, trans and non-binary people when they get married, have children, sign their parent's death certificate, or have to show their birth certificate. It has no impact on the equivalent rights for other people."

Moving to a simple, administrative process will reduce cost for takatāpui, trans and non-binary people, and free up the time of Family Court staff, judges, and of health professionals who have supplied the required medical evidence.

Ms Dellow said, "We hope to continue dialogue with the government on how to provide some form of identity verification document that recognises and protects refugees, asylum seekers, and new migrants who cannot amend documents in their home country and are not permanent residents here."

"In addition, there is a need for ongoing consultation with our communities in case there are ways the Bill can be improved through its second reading."

The Select Committee has recommended that any enacted changes are reviewed after five years. "International human rights standards and good practice are evolving fast in this area," said Ms Dellow. "A two-year review would help New Zealand keep pace with change, so we can continue to demonstrate what it means to fully respect the dignity, equality, and security of all who live here. Our communities expect to be consulted as part of such a review."

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 8C:

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



**National Council of
Women of New Zealand**
Te Kaunihera Wahine o Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04)473 76 23
office@ncwnz.org.nz
www.ncwnz.org.nz

2 March 2018

S18 05

Submission to the Governance and Administration Committee on the Births, Deaths, Marriages, and Relationships Bill

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 245 organisations affiliated at either national level or to one of our 19 branches. In addition, about 350 people are individual members. Collectively our reach is over 350,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
- 0.2. This submission has been prepared by the NCWNZ Public Issues Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ. It draws the responses of NCWNZ branches throughout Aotearoa New Zealand, as well as comments from local and national member organisations as well as individual members.
- 0.3. NCWNZ is making this submission to the Select Committee regarding The Births, Deaths, Marriages and Relationships Registration Act (1995 and Amended 2008) which has been reviewed, and a revised Births, Deaths, Marriages and Relationships Registration Bill which passed its First Reading on 5 December 2017 (sponsored by Minister Tracey Martin).
- 0.4. This Bill updates and amends earlier legislation relating to access to information about births, deaths, marriages, relationships, adoptions, and gender reassignments, and responds to issues raised by the Law Commission relating to burial and cremation law.
- 0.5. The Births, Deaths, Marriages and Relationships Registration Bill includes many of the provisions of earlier legislation on which NCWNZ has made submissions. NCWNZ members were asked a specific set of questions relating to changes to this legislation, and some background to the specific questions is provided here. This submission draws on 14 responses from individual members, NCWNZ branches and membership organisations throughout New Zealand.

1. Ancillary information

- 1.1. The Bill limits the definitions of information about births, deaths, marriages, relationships, sexual reassignment and name changes to what is required for the relevant certificates (e.g. death

certificate). No ‘ancillary information’ (such as the contact details of those supplying information) can be shared under the information-sharing rules associated with birth, death, relationship or name change information [Clause 4]. This is directed at ensuring the privacy of individuals.

The members were asked if they considered that “ancillary information” should be private and not publicly available.

- 1.2. A considerable number of respondents indicated that ancillary information should not be publicly available, and more particularly, if it potentially allowed a person making an inquiry for ancillary information to make contact with the individual who had provided such information for official purposes. A comment was made that “there is very limited privacy in this day and age” and it should only be shared with people who can prove they have a right to know. Another member wrote of her knowledge of “violent ex-partners who will do anything to track their ex-partner”. In this case they could use the ex-partner’s current address from a marriage certificate if contact details were available. Who supplied the information should be irrelevant.
- 1.3. One member considered that if the information was about someone a person was intending to marry then that person would want to know who supplied the information. Others thought that the person providing information associated with births, deaths, marriages and relationships should be available for contact through correct processes with respect to birth history for genealogy purposes. They proposed a time limitation – 75 years from date of marriage, for example. They argued that there should be a process in place if the information needs to be corrected, particularly with respect to death certificates.
- 1.4. A health professional wrote that DNA advances are becoming more affordable and will lead to persons seeking and gaining family ancestry information. Adoption processes and birth certificates will need to keep up-to-date with requests for health information and to prevent people marrying close relatives when they were unaware of biological connections. This health professional stated also, that in the future, a person may have to show they do not have certain genetic risks, or otherwise be obliged to pay higher health insurance premiums. For these reasons people in the future may want to access more information about biological family members.

2. Access to information

- 2.1. The Bill responds to increased demand for digital and online access to information about births, deaths, marriages and relationships and provides for a Registry that includes both electronic and documentary (hardcopy) information [Clause 126]. This legislation enables improved digital access to this information (including historic images of BDM information) [Clause 91]. However, access to this information online will require a verified RealMe ID¹ (or an approved alternative ID) [Clause 90].

¹ RealMe ID is an initiative of the NZ Government and NZ Post that enables individuals to create an online account with a user name and password which facilitates their access to a range of online sites in New Zealand. They include Passport applications, Work and Income information, Student Loans applications and birth, death and marriage certificates. This involves providing documents relating to your identity. A verified online identity can be used for 5 years to access information online.

Members were asked if they thought there was a need for improved access to digital and online information about births, deaths, marriages and relationships. They were also asked whether they thought this information should only be available to those who provide verifiable information about their identity.

- 2.2. The majority of NCWNZ members who responded to questions on this legislation thought there should be protections in place to prevent access to information that might reveal data which could be used against the person about whom data is being sought. There should also be protections in place against identity theft. A smaller number of members thought that it should be easier to obtain an electronic copy of such information and that RealMe did offer good protection. They welcomed the digitalisation of this information as long as a range of government agencies accepted digital certificates and did not require presentation of copies of original certificates.
- 2.3. A number of genealogists liked the ease of access to information through this process. A question was posed about people without a computer being able to obtain this digital ID and one member cited an example of the difficulties with someone overseas trying to obtain a NZ Passport through RealMe.

3. Historical information

- 3.1. The Bill changes the definition of 'historical information' (which is more accessible than contemporary information) [Clause 89]. This definition now includes:
- A marriage or civil union that occurred 75 years ago (instead of 80 years ago)
 - An intended marriage or civil union for which a notice to marry was registered more than 75 years ago
 - A birth of a deceased person who died 50 years ago, or was born 80 years ago, or a living person who was born more 100 years ago or more. A request was made of the members to consider if they agreed with the above definitions of "historical information".
- 3.2. Members had a range of responses to these proposed changes. Some members commented that more people are living to over 100 and that this information should only be available if a death certificate matches a birth certificate, in other words only if it can be proved the person has died. The year limits protect those recently deceased or still living, and strong arguments were made that the year limits relating to marriage or civil union or intended marriage or civil union should not be reduced to 75 years. However, some members argued that there needs to be a process for exceptions. They cited a case of the challenges of tracing a missing sibling who had been adopted when family members wanted to contact her after the death of both parents. Some genealogists who responded were supportive of the overall time limits being even less than above, as it hampered their research.

4. Overseas certificates of divorce or dissolution

- 4.1. The Bill provides for the registration of certificates of divorce or dissolution of marriage issued outside New Zealand when they relate to people who are New Zealand citizens or those resident in New Zealand [Clause 55]. But the Registrar-General can note that they are “not responsible for the authenticity of this information” [Clause 56].

The members were asked whether these overseas certificates of divorce or dissolution be registered subject to these provisions?

- 4.2. In general there was agreement to these provisions as it was considered the registration of these documents would be important to people who had married and divorced overseas. This would allow traceable changes for descendants, could be relevant if issues arose relating to property or superannuation, and could also avoid bigamy. A comment was made that all information kept on a person must have the ability to be challenged by the person, at no cost to that person. An argument was made that the overseas certificates of marriage, divorce or dissolution should be authenticated by the issuing country. New Zealand registrars should not have to verify the authenticity of these documents.

5. Information about gender assignment and reassignment

- 5.1. The Bill removes the ability for the Registrar General to provide access to restricted birth information relating to sexual (sic) assignment or reassignment to a celebrant or Registrar for the purposes of finding out whether or not those who are entering into a marriage or civil union are a man or a woman [Clause 110]. Since gender is irrelevant in the registration of marriages and civil partnerships, there is no reason for this information to be available.

NCWZN members were asked if they thought that this information about gender assigned at birth should be private to the people concerned. They were also asked to comment on whether the language used in this legislation should refer to ‘gender’ assignment or reassignment rather than ‘sexual’ assignment?

- 5.2. Most members considered that the information about whether a child had been identified as male or female at birth should be private to the people concerned. A number of members commented that since gender was irrelevant in the registration of marriages and civil partnerships, there is no reason for this information to be available. They also questioned the language used to refer to what in the legislation is called ‘sexual assignment’. Some members preferred the term ‘gender assignment’.

- 5.3. One large member organisation, closely engaged with family health, suggested two approaches regarding the language in the legislation:

- 5.3.1. The best language for the current legal framework is the term sex assignment. Gender is not appropriate in this context as the legislation relates to sex assigned at birth and the court processes and medical treatment required to change sex assignment on a birth certificate. The medical and biological characteristics of a person’s sex may be different

to how someone chooses to express their gender. Sex assignment is more appropriate than “sexual assignment” as sexual is a word that describes something related to sex – not sex itself.

- 5.3.2. It might be worthwhile for the Select Committee to consider whether these court processes are necessary. There is precedent in New Zealand and overseas for gender to be recognised in legal documents based on self-determination alone. For example, in order to change gender on a New Zealand passport, an applicant simply provides a statutory declaration indicating the identity they want displayed on their passport. This approach does not require medical information or assessment, nor costly and lengthy legal proceedings. It would be worth considering whether this approach might be applied to birth certificates as well. Should birth certificates record sex or gender? What are the legal or other risks to the different approaches and if so, how could they be mitigated outside of court proceedings? What is the primary purpose of recording sex and/or gender on legal documents and what are the reasons for medical assessments of sex?

6. Notices of death and decisions about disposal of a body

- 6.1. On the advice of the Law Commission, the Bill includes new requirements for a preliminary notice of death to the Registrar General which must be completed by the health professional who is responsible for the death certificate (which includes identifying the cause of death) within 3 working days of writing the certificate [Clause 33]. The Bill also specifies that the person who makes decisions about the manner of disposal of a body after death (usually a funeral director on behalf of the family) needs to notify the Registrar General of the death (including cause of death) “as soon as practicable, and no later than 3 working days after the disposal of the [deceased] person’s body” [Clause 34]. (Changes to the Burial and Cremation Act 1964 are planned independently of these the changes to the Births, Deaths, Marriages and Relationships Act).

Members provided their comments on these provisions relating to preliminary notification of death and disposal of the bodies of those who are deceased.

- 6.2. A number of respondents indicated that it was critical to put some parameters around this information since it impacts on a wide range of people and institutions, both public and private. The majority felt that people should not be kept waiting too long before they can proceed with their obligations, for example having to wait for a death notice before being able to put a notice in the newspaper. Three working days was seen as appropriate.
- 6.3. A response from someone working as a funeral director indicated that there are families who register the death of their relative and do not use a funeral director. In this situation these people should be required to verify their identity. (The information recorded on a death certificate is public information so any person is able currently to obtain a certificate.)
- 6.4. Because death certificates now record the deceased’s actual recorded birth name (this is taken from the birth record and put on the death certificate) it means anyone who orders a death certificate will

see the actual name at birth and any other information recorded including, perhaps, gender reassignment.

7. General Comments

- 7.1. In addition to providing responses to specific questions relating to this Bill, some members made more general comments relating to the registration of births, deaths, marriages and relationships

Access to digital resources

- 7.2. One NCWNZ member questioned the assumption that everyone now has access to computers and digital communication technology

“What is/are the contingency plans if you are working along with or on behalf of another person with no “ability” to access records digitally?”

Cultural issues

- 7.3. Another NCWNZ member highlighted the need for attention to a range of cultural issues when recording and accessing information that related to whakapapa and genealogy. This is a summary of their comments.

“Cultural differences need to be respected. Cultural systems ensure knowledge of attitudes, customs, beliefs and social behaviour of individuals or societies are held through organisations. Are the proposed changes only from a western perspective? Are these changes consistent with Māori culture where family are expected to attend the funeral and want to spend time with the deceased talking to them and spirits of their ancestors often over three days on a marae. Women in traditional times managed these processes until these important life transitions were taken over by funeral directors, doctors and priests. Women are now re-entering these fields. Professional bodies managing births, deaths, marriages and relationships need to take into consideration the empowerment of families and take a respectful approach to recording major life events. It is very important to record these events accurately because these records are used to plan for the future generations.”

- 7.4. This NCWNZ member questioned whether the need for privacy was exclusively a feature of western culture. She asked: “Would a more open approach be so bad, so people can acknowledge their heritage, or is the protection of individuals more important?” She argued that cultural systems need to be acknowledged by the organizations that are involved in recording births, deaths, marriages and relationships.



Gill Greer
Chief Executive

Withheld under s9(2)(a)

Convenors, Public Issues Standing Committee

Document 8D:

Changing the BDMRRA so it is fair for everyone, based on the existing passports policy

Introduction

This statement was drafted by takatāpui, trans and non-binary people and organisations in Aotearoa New Zealand.¹ It explains why it is so important that the Births, Deaths, Marriages and Relationships Registration Act (BDMRRA) 1995 is amended,² to bring the process for changing gender markers on birth certificates in line with the existing administrative process used for passports and driver licence records. This proposed change would require takatāpui, trans and non-binary people to sign a legally binding statutory declaration stating their self-defined gender.³

Impacts of current provisions

The current BDMRRA provisions require medical evidence and a Family Court process. This impacts most heavily on those who:

- do not undertake medical steps as part of their transition (for financial, medical, religious, or other reasons)
- do not know how to make a formal legal application to the Family Court and/or
- cannot afford to pay a lawyer to apply on their behalf.

This means that the current process privileges those who are well-off, and those with sufficient formal education and English language skills to make such a Family Court application. It excludes those who are poor or on low-incomes, including a higher proportion of Māori and Pasifika members of our communities.

The current process to amend a birth certificate can be lengthy, particularly for those takatāpui, trans and non-binary people waiting for medical evidence to be supplied from a GP, hormone specialist or surgeon. For someone using a lawyer to make the application it is expensive, as a lawyer's fees can be up to \$3,000. The costs of obtaining medical evidence fall on takatāpui, trans or non-binary people themselves, or on parents making applications for their children under section 29 of the BDMRRA. The medical evidence requirements under section 29 are particularly onerous, also encompassing medical treatment that a takatāpui, trans or non-binary child has not yet undergone and which the court may determine is necessary for the child to maintain their gender identity.

The Family Court process, and the medical evidence it requires, prevents or deters many takatāpui, trans or non-binary people in New Zealand from amending their birth certificate. This means it is common for a takatāpui, trans or non-binary person to have a birth certificate that

¹There are many different terms used by takatāpui, trans and non-binary people in Aotearoa whose gender differs from their sex assigned at birth. These include tāhine, whakawahine, tangatairatāne, transgender, transsexual, trans feminine, trans masculine, fa'afafine, fa'afatama, fakaleiti, leiti, akava'ine, aikāne, fakafifine, vakasalewa, mahu, palopa, genderqueer, gender diverse, and many more terms.

²Current provisions are in Part 5, sections 27-33 of the BDMRRA 1995, and were proposed to be re-enacted as clauses 66-72 of the Births, Deaths, Marriages, and Relationships Registration Bill.

³<https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/information/>, and <https://nzta.govt.nz/driver-licences/renewing-replacing-and-updating/updating-your-licence/> Some people with variations of sex characteristics, sometimes referred to as intersex people, also use these provisions to amend their gender marker.

does not match the details on their passport, driver licence record, or other official documents, including school enrolment records. It is difficult for people to navigate everyday life with safety, dignity and privacy, when different identity documents do not match. There is extensive empirical research overseas highlighting that trans and non-binary people are denied services, harassed, or attacked,⁴ and have worse mental health outcomes,⁵ when their identity documents do not match their gender identity.

It is only fair that that every takatāpui, trans or non-binary person born in Aotearoa should be able to change the gender marker on their birth certificate, through an accessible process. A birth certificate is the only document that someone born here can never have taken away from them. In some significant life events, it is the sole document that will be accepted as proof of identity. For example, the gender marker on a takatāpui, trans or non-binary person's birth certificate is used on their marriage or civil union certificate, on their child's birth certificate, and on their death certificate.

New Zealand's policy for amending gender markers on passports, introduced in December 2012, is often cited as one of the best in the world.⁶ In contrast, the BDMRRA provisions for amending gender markers on birth certificates, developed 23 years ago, are outdated. They have not kept pace with international human rights standards, that set out each person's right to a legal recognition, regardless of age.⁷ The BDMRRA provisions do not meet the requirements set out in international case law⁸ or recommendations by United Nations bodies that monitor treaties that New Zealand has ratified.⁹

⁴ For example, B. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey (USTS)*. Washington, DC: National Center for Transgender Equality; A. Grant, J, Mottet, L, Tanis, J, Harrison, J, Herman, J, & Keisling, M. (2011). *Injustice at every turn: a report of the National Transgender Discrimination Survey*. Washington DC; European Union Agency for Fundamental Rights (FRA) (2014). *Being Trans in the EU Comparative analysis of the EU LGBT survey data*

⁵ For example, Hyde Z, Doherty M, Tilley PJM, McCaul KA, Rooney R, & J, Jancey. (2014). *The First Australian National Trans Mental Health Study: Summary of Results*. Perth, Australia: School of Public Health, Curtin University; Bauer, G, Schem, A, Pyne, J, Travers, R, & Hammond, R. (2015). 'Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada' *BMC Public Health*, 15, 525

⁶ It requires someone to complete a statutory declaration indicating the gender they wish to have recorded on the passport, and the period of time they have maintained that gender. Those under the age of 18 also require the 2 supporting statutory declarations, one from a parent / legal guardian and the other from a counselor or medical professional. (<https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/information/>).

⁷ Most recently summarised in Principle 31 of *The Yogyakarta Principles plus 10*. These were published in November 2017 as: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles. <https://yogyakartaprinciples.org/principle-31-yp10/>

⁸ For example, In [January 2018, the Inter-American Court of Human Rights issued an advisory opinion](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf) asserting that countries should ensure legal gender recognition for both adults and children, based solely on the self-perceived identity of a person. http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf. In June 2018, the Austrian Constitutional Court ordered, with immediate effect, that sex entries in the civil registries and in identity documents must reflect an individual's self-determined gender identity. Austrian Constitutional Court decision, G 77/2018, 29 June 2018: https://www.vfgh.gv.at/medien/Civil_register_-_Intersex_persons.en.php.

⁹ UNDP and APTN (2017). *Legal Gender Recognition: A Multi-Country Legal and policy Review in Asia*. http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html

Benefits of amending the BDMRRA

The current review of the BDMRRA is a timely opportunity to update sections 28 (covering adults) and 29 (covering those under the age of 18) so that there is “a quick, transparent, and accessible mechanism that legally recognises and affirms each person’s self-defined gender identity”, with no further eligibility criteria required.¹⁰ This would ensure trans and non-binary people have the same right to legal recognition, and the legal protection that provides, as all other people in New Zealand.

This is a chance to update the BDMRRA to reflect how the New Zealand government already deals with requests from takatāpui, trans and non-binary people to change gender markers on passports and driver licence records. The necessary amendments would:

- replace a Family Court application with a statutory declaration process that enables takatāpui, trans or non-binary people to affirm their self-defined gender identity
- remove any other eligibility requirements, such as the need for medical evidence and
- enable gender markers to be recognised as male, female, or as a third, non-binary gender.

In addition, those aged 16 and 17 should not require parent consent to amend the gender marker on their birth certificate. This reflects that 16 is the threshold for consent, or refusal to consent, to medical treatment in New Zealand.¹¹

Moving from a Family Court process to a statutory declaration will reduce cost barriers for takatāpui, trans and non-binary people, including their whānau; free up the court’s time; and reduce the administrative burden on the health professionals who are asked to supply medical evidence for each application.

These changes will have very little impact on the non-transgender community, as a passport can be used as proof of identity in most circumstances. They will have a very significant impact on the takatāpui, trans and non-binary people in those instances where a birth certificate must be shown.

By updating the BDMRRA in this way, New Zealand can make it possible for all takatāpui, trans and non-binary people to be able to afford to amend their birth certificate. This would demonstrate New Zealand’s commitment to international human rights standards and would make an important practical difference for takatāpui, trans and non-binary people’s daily lives.

A statutory declaration model could also be used to enable trans and non-binary people who are seeking asylum, or in New Zealand on temporary visas, to verify their self-defined gender identity and name, when it is impossible for those details to be amended on their original birth certificate or passport.¹²

¹⁰ Principle 31 of *The Yogyakarta Principles plus 10*.

¹¹ Section 36 Care of Children Act 2004. In addition, while the passports policy requires the lodged statutory declaration to specify the period of time a person has maintained their gender, there is no minimum time period required. Therefore, this information is arguably unnecessary for amending a passport, or a birth certificate.

¹² This is the approach that would be most consistent with requirements in Yogyakarta Principal 31 that a person’s “immigration status or other status is not used to prevent a change of name, legal sex, or gender”. Other countries such as Malta and Canada provide such options for refugees and asylum seekers.

This statement is endorsed by the following groups and individuals:

Ahi Wi-Hongi, national coordinator, Gender Minorities Aotearoa

Abbi Pritchard Jones, group administrator and facilitator, Genderbridge NZ

Tracee Nelley, President, Agender NZ

Phylesha Brown-Acton, Managing Director, F'INE

Soul Mehlhopt, Co-ordinator, Transcend, Manawatū

Michelle Smeaton, Secretary, Tranzaction, Christchurch

Dr Jaimie Veale, Senior Lecturer, School of Psychology, University of Waikato / Te Whare Wānanga o Waikato

Tom Hamilton, Counsellor, OUTLine NZ and project collaborator, re.frame

Jack Byrne, Research Officer, Aotearoa New Zealand Trans and Non-binary Health Survey

Sharyn Forsyth, Co-ordinator, NZ Parents and Caregivers of Transgender and Gender Diverse Children

Nick Winchester, Mentor / Founder, Kindred, Christchurch

Elizabeth Kerekere and Kevin Haunui, Chair and Deputy Chair, Tiwhanawhana Trust

Duncan Matthews, Manager, OutLine NZ Inc.

Frances Arns, Chief Executive, RainbowYOUTH

Tabby Besley, National Co-ordinator, InsideOUT

Jem Traylen, Trans Secretariat/Board Member, Rainbow Wellington

Jevon Wright, Treasurer, OuterSpaces Charitable Trust, Wellington

Amanda Ashley, Founder, Rodney Area Rainbow LGBTQ+

Warren Lindberg, Chief Executive Officer, Public Health Association of New Zealand

George Parker, Strategic Advisor, Women's Health Action

Conor Twyford, Chief Executive / Kaiwhakahaere, Wellington Sexual Abuse HELP

Richard Tankersley, the Uprising Trust, Christchurch and former Human Rights Commissioner

Rosslyn Noonan, former Chief Human Rights Commissioner

Dame Margaret Sparrow

Dame Catherine Healy, National Coordinator, New Zealand Prostitutes' Collective

Professor Elizabeth McDonald MNZM, School of Law, University of Canterbury

Sally Dellow

Allyson Hamblett

Claudia McKay

Cathy Parker

Lynda Whitehead

Ally Wilson

Aych McArdle

Joey Macdonald

Griffin Nichol Madill

Laura O'Connell Rapira

Document 9:

From: **Withheld under s9(2)(a)**
Sent: Friday, 17 August 2018 12:41 PM
To: D Clark (MIN) <D.Clark@ministers.govt.nz>; A Little Office (MIN) <a.little@ministers.govt.nz>
Cc: Louisa Wall <Louisa.Wall@parliament.govt.nz>; Darroch Ball <Darroch.Ball@parliament.govt.nz>; Hon Shane Jones <Shane.Jones@parliament.govt.nz>; Jenny Marcroft <Jennifer.Marcroft@parliament.govt.nz>; Hon Ron Mark <Ron.Mark@parliament.govt.nz>; Hon Tracey Martin <Tracey.Martin@parliament.govt.nz>; Clayton Mitchell <Clayton.Mitchell@parliament.govt.nz>; Mark Patterson <Mark.Patterson@parliament.govt.nz>; Rt. Hon. Winston Peters <Winston.Peters@parliament.govt.nz>; Fletcher Tabuteau <Fletcher.Tabuteau@parliament.govt.nz>
Subject: Support of Amendments to BDMRR Bill

Freepost Parliament

Private Bag 18 888

Parliament Buildings

Wellington 6160

17 August 2018

To whom it may concern:

Tena koe,

Greetings,

I am writing in support of amendments to the Births, Deaths, Marriages, and Relationships Registration Bill, as suggested by the Governance and Administration select committee in the report published on the 10/8/2018.

This is a personal health and safety issue for all persons with a gender identity different from their assigned / interpreted gender at birth.

Specifically the amendments contained within clause 22 which deal with streamlining the process for changing the sex listed on a person's birth certificate. In particular, I urge you to consider and act on the recommendations made to move to a self identification process and remove the existing requirement for an individual to obtain a Family Court declaration to change the sex recorded on their birth certificate. By replacing the existing requirements with clause 22B an eligible adult or eligible 16 or 17 year-old will be able to make a statutory declaration directly to the Registrar-General. Also clause 22C which allows for a child's gender to be changed with parental consent along with is accompanying clause 22E allowing the child to confirm the change on their 18th birthday. I urge you to create more inclusive legislation by providing alternative gender markers for Non Binary and persons born with variations of sex characteristics (Intersex). And finally I ask that you support the recommendation to move to a self identification process by removing all references to "medical treatment", "medical evidence", "physical conformation", "sexual assignment", and "sexual reassignment" from the bill.

I am a late-onset, post-operative, Male to Female transgender person that had to go through the existing clause 22 procedures to change the gender marker on my birth certificate. This involved my supply of comprehensive medical reports to the Family Court, including:

- a psychologist referral to an endocrinologist,
- a psychologist referral letter to my surgeon for my Gender Reassignment Surgery,
- my doctor's report of hormone treatments,
- a post-operative certificate from my surgical clinic and
- a post-operative review from my endocrinologist.

All of the documents had to be witnessed and stamped by a Justice of the Peace before presentation to the court. The Family Court judge required me to also be interviewed by a court appointed lawyer who asked for further medical details that should have been considered personal and private. The lawyer presented a summary report to the court judge who then ruled on the application. I was not asked to attend the hearing but received the court ruling that my new birth certificate should show my gender marker as 'female'. I wrote the attached paper to support the clause 22 changes. It was published in the **Withheld under s9(2)(a)** **Withheld under s9(2)(a)** magazine, April 2018. It describes in more detail my personal journey in changing my gender marker.

Withheld under s9(2)(a) We have both youth and adults who are transitioning and who will wish to change the gender marker on their birth certificate. The proposed changes to clause 22 will make the process much less complicated.

Gender identity can be seen as a complicated issue, but it is also a deeply personal one. The current process for changing the sex on one's birth certificate, requiring court declarations and medical intervention, creates unnecessary barriers to what is ultimately a personal matter.

In contrast, changing one's passport or driver's licence is a simple matter of making a statutory declaration.

The objective of this Bill is to future-proof the way government registers significant life events, including "sexual assignment and reassignment". Streamlining this process, removing bureaucratic barriers and aligning birth certificates, driver's licences and passports would achieve this objective, as would providing options for people who do not identify as M or F.

Ngā mihi nui,

Best regards,

Withheld under s9(2)(a)



RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 10:

From: Withheld under s9(2)(a)
Sent: Friday, 17 August 2018 1:52 PM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: Bill about gender identification

Dear Ms Martin,

I am interested in making a submission regarding the bill about changes to gender identification on birth certificates. I only heard about this recently and wonder if it's too late to make a submission. I checked the website about making submissions and this bill wasn't listed there.

I have a concern about possible impacts of this bill and hope that I can articulate this to you and others in Parliament.

Kind regards,

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 11:

From: Withheld under s9(2)(a)
Sent: Sunday, 19 August 2018 5:10 PM
To: Hon Tracey Martin <Tracey.Martin@parliament.govt.nz>
Cc: Ilagi Hyndman <Ilagi.Hyndman@parliament.govt.nz>
Subject: Support for the amendments to the Births, Deaths, Marriages, and Relationships Registration Bill

Hon Tracey Martin,

Private Bag 18888
Parliament Buildings
Wellington 6160.
tracey.martin@parliament.govt.nz
19 August 2018

Tēnā koe Tracey,

I am writing in support of amendments to the Births, Deaths, Marriages, and Relationships Registration Bill, as suggested by the Governance and Administration select committee in the report published on the 10/8/2018.

Specifically the amendments contained within clause 22 which deal with streamlining the process for changing the sex listed on a person's birth certificate. In particular, I urge you to consider and act on the recommendations made to move to a self identification process and remove the existing requirement for an individual to obtain a Family Court declaration to change the sex recorded on their birth certificate. By replacing the existing requirements with clause 22B an eligible adult or eligible 16- or 17- year-old will be able to make a statutory declaration directly to the Registrar-General. Also clause 22c which allows for a child's gender to be changed with parental consent along with is accompanying clause 22E allowing the child to confirm the change on their 18th birthday. I urge you to create more inclusive legislation by providing alternative gender markers for Non Binary and persons born with variations of sex characteristics (Intersex). And finally I ask that you support the recommendation to move to a self identification process by removing all references to "medical treatment", "medical evidence", "physical conformation", "sexual assignment", and "sexual reassignment" from the bill.

While this issue does not affect me directly, I feel very strongly about this as it better reflects the world I want to live in, and the society I believe New Zealand can be. This small legislative act has the ability to save lives, to improve the wellbeing of marginalised parts of our community, and recognise the diversity of New Zealanders. People I trust, people who are affected by this legislation, want these changes, need these changes, and say these changes will help and support them. As a woman in New Zealand I want to be able to support them to lead lives which are as fulfilling and supported as possible. These changes will only contribute positively to my life, to society, and to New Zealand. These are administrative changes to legislation, but quite genuinely the difference between life and death; between a positive living experience and a life of constant bombardment and stress.

Gender identity can be seen as a complicated issue, but it is also a deeply personal one. The current process for changing the sex on one's birth certificate, requiring court declarations and medical intervention, creates unnecessary barriers to what is ultimately a personal matter. In contrast, changing one's passport or driver's licence is a simple matter of making a statutory declaration.

The objective of this Bill is to future-proof the way government registers significant life events, including "sexual assignment and reassignment". Streamlining this process, removing bureaucratic barriers and aligning birth certificates, driver's licences and passports would achieve this objective, as would providing options for people who do not identify as M or F.

Ngā mihi nui,

Withheld under s9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Document 12:

From: Jack Byrne [mailto:jbyrne@waikato.ac.nz]
Sent: Thursday, 30 August 2018 4:58 PM
To: T Martin (MIN) <t.martin@ministers.govt.nz>
Subject: Proposed clarifications to the Births, Deaths, Marriages, and Relationships Registration Bill

Dear Minister Martin

The attached letter comes from a coalition of trans and non-binary people who coordinated a Joint Statement on 10 August, welcoming your proposed changes to the Births, Deaths, Marriages and Relationships Registration Act 1995. Our group includes people with extensive experience supporting people to obtain a Declaration as to Sex through the current Family Court process, and some of us are academics who have researched and published on legal gender recognition.

Our coalition has analysed the Government's Bill carefully and we have some suggestions about ways the Bill could be strengthened. These suggestions would clarify the Bill's intentions and reduce the risk of unintended consequences. They fall into three categories:

1. Simple wording changes to improve clarity
2. Improving consistency with the current passports policy, and
3. Extending the issues to be considered in the proposed statutory review.

If you have any questions about the issues we have raised, our coalition can be contacted through either Jack Byrne (jbyrne@waikato.ac.nz / [redacted]) or Dr Jaimie Veale (jveale@waikato.ac.nz / [redacted]).

Thank you for your leadership in introducing these legislative reforms. We look forward to ongoing opportunities to ensure that New Zealand continues to model a human rights-based approach to legal gender recognition.

Ngā mihi mahana

Jack Byrne

Jack Byrne (he / him)

Research Officer

Aotearoa NZ Trans and Non-Binary Health Survey

Mobile: [redacted]

[redacted]

Document 12B:

30 August 2018

Hon Tracey Martin
Minister of Internal Affairs
Parliament Buildings
Wellington 6160

By email: t.martin@ministers.govt.nz

Dear Minister Martin,

Proposed clarifications to the Births, Deaths, Marriages, and Relationships Registration Bill

1. This letter comes from a coalition of trans and non-binary people who coordinated a Joint Statement on 10 August, welcoming your proposed changes to the Births, Deaths, Marriages and Relationships Registration Act 1995. Our group includes people with extensive experience supporting people to obtain a Declaration as to Sex through the current Family Court process, and some of us are academics who have researched and published on legal gender recognition.
2. Our coalition has analysed the Government's Bill carefully and we have some suggestions about ways the Bill could be strengthened through small amendments. These suggestions would clarify the Bill's intentions and reduce the risk of unintended consequences. They fall into three categories:
 - A. Simple wording changes to improve clarity
 - B. Improving consistency with the current passports policy, and
 - C. Extending the issues to be considered in the proposed statutory review.

A. Wording changes to improve clarity

3. Clause 22B(2)(a) in the Bill refers to 4 options for registering nominated sex; "female", "male", "intersex", or "X (unspecified)". The first three terms are also listed as options in clause 22C(2)(a). Three separate aspects of these proposals are discussed in turn below.

Delete the new proposed category 'intersex'

4. We would like to reiterate the views of health professionals and intersex community advocates in New Zealand and overseas that intersex infants should be registered as either female or male at birth with the awareness that, like all other children, they may grow up to identify with a different sex or gender.¹ This means they would have the same access as trans people to a simple, administrative process, based on self-

¹ See for example the 2013 international *Malta Declaration* (<https://ihra.org.au/24241/public-statement-by-the-third-international-intersex-forum/>), the 2017 Australasia *Darlington Statement* (<https://darlington.org.au/statement/>), and Waterworth, C. (2017) 'Natural Diversity and Supporting Intersex People', *Nursing Review*, 10 May 2017 (<http://archive.nursingreview.co.nz/issue/april-2017-vol-15-2/natural-diversity-understanding-and-supporting-intersex-people/>)

determination, to subsequently amend the sex details on their birth certificate to female, male, or a third X option.

5. The Australasian *Darlington Statement* explicitly cautions that “given existing social conditions, we do not support the imposition of a third sex classification when births are initially registered”.² A separate ‘intersex’ category is a highly stigmatised category with uncertain social and legal outcomes for those assigned this sex. The Bill’s proposed ‘intersex’ classification could imply that parents of infants born with intersex variations do not have the option of classifying their child’s sex as male or female.
6. The introductory commentary on page 2 of the Government Bill states, “as part of the change to a self-identification process, we also recommend removing all references to ‘medical histories’, ‘medical evidence’, ‘physical conformation’, ‘sexual assignment’ and ‘sexual reassignment’ from the bill”. We support strongly this movement away from pathologisation. However, there is the risk that introducing an ‘intersex’ category may have the opposite effect, if an infant’s intersex variation or medical diagnosis is used as the basis for legally classifying their sex as ‘intersex’.
7. **Therefore, we recommend** that the option ‘intersex’ is deleted from clause 22B(2)(a) and clause 22C(2)(a).

Consider the merits of retaining indeterminate as a separate option in limited situations

8. To date, the category ‘indeterminate’, marked by an (I), has been used on some birth certificates when a child is born with a noticeable intersex variation.³ This option has been used predominantly when a stillborn baby’s sex cannot be easily identified.⁴
9. **We recommend** that further consultation is undertaken with the Intersex Trust Aotearoa New Zealand (ITANZ), either before or during the Bill’s proposed statutory review, about whether the term ‘indeterminate’ is retained for these limited situations.
10. We understand that this indeterminate option has also been requested by a few intersex adults, to reflect that they do not identify their sex as either male or female.⁵ The Bill proposes introducing a new third X option on birth certificates. As both intersex and trans people will have the option of choosing this category, or male or female, this may influence whether an additional indeterminate category is still required for intersex people.

² 2017 Australasia *Darlington Statement* (<https://darlington.org.au/statement/>)

³ Intersex people are defined as those born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

⁴ Data provided by the Department of Internal Affairs to the Human Rights Commission’s Transgender Inquiry. Human Rights Commission (2008) *To Be Who I Am: Kia Noho Au ki Tōku Anō Ao, Report of the Inquiry into Discrimination Experienced by Transgender People*, p. 84.

⁵ Some intersex adults have also applied to correct information on their original birth certificate under section 84 of the current Act. Those provisions are carried over into clause 134 of the Bill.

Rename the proposed X option as 'non-binary' rather than 'unspecified'

11. We welcome the introduction of a third X category on birth certificates. While the Bill is silent on this, we assume that the proposed term 'unspecified' has been adopted from the current passports policy which uses 'indeterminate / unspecified' to describe its X option. The Law Reform Commission of Western Australia has recently proposed that the equivalent 'unspecified/intersex/indeterminate' wording used in Commonwealth guidelines and some Australian laws is amended to 'non-binary'. That recommendation is based on Australian research about the terms most commonly used by transgender people there.⁶
12. Similarly, preliminary unpublished survey data from over 850 trans and non-binary people who have completed New Zealand's *Counting Ourselves* survey, show that when people are asked "what gender or genders do you currently identify with", non-binary is the most frequently chosen term.⁷ Ireland's statutorily appointed Gender Recognition Act Review Group recently recommended introducing non-binary as a third gender marker there.⁸ Non-binary is also the preferred third option recommended by intersex advocates in this region and internationally, for the minority of intersex people who do not want to be recognised as either male or female.⁹
13. In addition, the term 'unspecified' does not align fully with the statutory declaration process outlined in clause 22B(2)(b) of the Bill which requires a person to verify their sex, and that they intend to continue to identify as that sex. That requirement is more clearly met if a person is able to specify their sex or gender marker, rather than to say it is 'unspecified'.
14. This Bill is an opportunity to introduce an appropriate, evidence-based term for this third, X category. We propose that the term 'unspecified' is replaced by the commonly used term 'non-binary'. Non-binary is a more accurate description of a self-declared sex that is outside the two, binary options of male or female. This is an important but simple change. We note that the Bill's commentary already describes the introduction of an 'unspecified' option as a way to recognise non-binary identities.
15. **We recommend** that clause 22B(2)(a) is amended to read:
 - (2) This application must–
 - (a) specify "female", "male" or "X (non-binary)" as the eligible person's nominated sex.

⁶ Law Reform Commission of Western Australia (2018): *Discussion Paper, Review of Western Australian legislation in relation to the recognition of a person's sex, change of sex or intersex status*, chapter 5. <https://www.lrc.justice.wa.gov.au/files/LRC-Project-108-Discussion-Paper.pdf>

⁷ <http://countingourselves.nz/>

⁸ Gender Recognition Review Group (June 2018) *Review of the Gender Recognition Act 2015*. Report to the Minister for Employment Affairs and Social Protection. <http://www.welfare.ie/en/downloads/GRA%20Review%20Report.pdf>

⁹ The 2017 Australasia *Darlington Statement* (<https://darlington.org.au/statement/>)

Clarify the privacy protections in clause 84 around name details on a birth certificate

16. Clause 84 includes important privacy protections when a person's nominated sex is amended on their birth certificate. However, the wording in subclauses 84(3) is very confusing. It may be interpreted as requiring that a person's original birth name is listed on the amended birth certificate, particularly because the phrase "name first registered for the person" appears in subclause 84(3)(a).
17. **We recommend** that subclauses 84(3)(a) and 84(3)(b) are reworded to reflect the provisions under the Act and the intentions of this Bill, which are to ensure that an amended birth certificate does not include information that would disclose a person's previous name or gender marker. For example, In the current 1995 Act, this includes subsection 64(1)(c) stating that a birth certificate "shall contain no other information".

B. Improving consistency with the current passports policy

Extend the fourth, non-binary option so it is available to those under the age of 16

18. Non-binary options, including genderqueer or gender diverse, are frequently chosen by young people. For example, New Zealand's *Counting Ourselves* survey is open to trans and non-binary people aged 14 or older. Preliminary data show that, when asked to list their gender, a majority of those aged 14 or 15 year selected one of the non-binary gender identity options.
19. The current passports policy enables children and youth to choose an M, F or X on their passport. Yet, the Bill's proposals only include an X option for those aged 16 or older. This means there is no option available that enables a non-binary person under the age of 16 to have both a passport and birth certificate that reflect their gender identity.
20. **We recommend** that clause 22C(2)(a) is amended to:
 - (2) This application must–
 - (a) specify "female", "male" or "X (non-binary)" as the eligible child's nominated sex."

Remove the requirement that people can only use this administrative process once

21. As the Bill's commentary notes; "New clause 22B would also specify that an eligible person can only change their nominated sex once, except where the Registrar-General is satisfied that special reasons exist. However, we recommend that all applicants should be able to apply to revert to the sex recorded at birth."
22. The Bill provides no guidance about what might amount to "special reasons making it appropriate to accept the application". This does not provide enough certainty to applicants and leaves too much discretion with administrative officials.
23. In contrast, the process for amending sex details on a passport does not include a limit on the number of applications that can be made. Instead, it includes an alert that "we would like applicants to note that multiple changes in gender identity are likely to have implications for a person at overseas border controls or may affect a person's ability to confirm their identity in the wider community. The Department recommends that prior

to applying for a change in sex / gender details in your passport, that applicants carefully consider these implications.”¹⁰ We consider that a similar alert is better suited to a statutory declaration process, rather than leaving discretionary powers with administrative officials.

24. Limits on the number of administrative applications have additional consequences in New Zealand because a third gender marker option has been available on passports for at least 16 years.¹¹ The Department of Internal Affairs has released data from 2012 – 2017 on requests to change gender markers on passports over that period.¹² This information shows that since a self-declaration model was introduced in December 2012, more people have been moving between the X category and the male and female options, *or vice versa*. The Bill’s proposal to limit the number of administrative applications to one retains an unnecessary barrier and misses the opportunity to create a simple process for people to have congruent passports and birth certificates. It is also out of step with recent changes in two Australian territories and proposals in an August 2018 discussion paper by the Law Reform Commission of Western Australia.¹³
25. Clause 22F allows anyone to use the simple administrative process a second time to revert to their sex recorded at birth. If the Bill’s provisions are predicated on self-identification, this ability to make further amendments should be available to anyone, no matter which of the nominated sex options a person is requesting.
26. Therefore, **we recommend** that clause 22B(4) is deleted, and further research is undertaken to consider, at the time of the proposed review, what, if any, limitations are placed on the number of applications.

C. Timeframe and scope of the proposed statutory review

27. Clause 147A lists what elements in clauses 22 and 23 must be reviewed 5 years after the enactment of the relevant provisions. Given the speed at which international good practice and human rights law is evolving in this area, we welcome such a review, including the required consultation with the Human Rights Commissioner. We note that other countries, including Ireland, have conducted similar reviews within a two-year period,¹⁴ involving extensive consultation with trans and non-binary people.¹⁵

¹⁰ <https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/information/>

¹¹ This was previously marked by a (-) before changing to (X)

¹² Data provided by the Department of Internal Affairs to the authors and available on request.

¹³ ACT has no limit on the number of times a person can apply to amend their sex details, while South Australia has a limit of one change in the first year or three times within a lifetime, though exceptions may apply. Law Reform Commission of Western Australia (2018) *Discussion Paper, Review of Western Australian legislation in relation to the recognition of a person’s sex, change of sex or intersex status*, chapter 5.

<https://www.lrc.justice.wa.gov.au/files/LRC-Project-108-Discussion-Paper.pdf>

¹⁴ Section 7, Gender Recognition Act 2015

(<https://data.oireachtas.ie/ie/oireachtas/act/2015/25/eng/enacted/a2515.pdf>)

¹⁵ Gender Recognition Review Group (June 2018) *Review of the Gender Recognition Act 2015*. Report to the Minister for Employment Affairs and Social Protection.

<http://www.welfare.ie/en/downloads/GRA%20Review%20Report.pdf>

28. **We recommend** that explicit reference should be made in clause 147A(2) to consultation with transgender, non-binary, and intersex people.
29. **We also recommend** that the review would be more appropriate three, rather than five, years after the commencement of the proposed new process for amending gender markers on birth certificates.
30. As the Bill's provisions were not drafted until after the Select Committee process, there are some outstanding issues that would benefit from more detailed analysis, and that **we recommend** are added to the scope of the review. These are listed below.

Consider whether it is necessary to collect sex details on a birth certificate

31. The *Yogyakarta Principles+ 10*, published in 2017, update how international human rights law applies to sexual orientation, gender identity, gender expression and sex characteristics. Principle 31, the Right to Legal Recognition, calls on States to:
“Ensure that official identity documents only include personal information that is relevant, reasonable, and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports, and driver licences, and as part of their legal personality”.¹⁶
32. Principle 31 also sets out human rights requirements in instances where sex or gender continues to be registered. The provisions of this Government Bill largely follow this second approach. However, even within this region, the recent Law Reform Commission of Western Australia's discussion paper recommends removing sex details from birth certificates. In British Columbia, Canada, there are ongoing human rights complaints on this issue.¹⁷ It would be timely for the proposed review to consider whether it is still necessary to record sex details on a birth certificate.

Review whether there is any justifiable rationale for retaining clause 221 in the Bill

33. Clause 221 in the Bill reflects section 33 in the current Act. It states, “Despite sections 22B to 22G and section 23, the sex of every person must continue to be determined by reference to the general law of New Zealand”. There is no rationale provided in the Bill for why this provision should be retained. A generic exemption such as this undermines the effectiveness of trans and non-binary people's right to recognition before the law. The proposed review offers an opportunity for evidence-based discussion, including an in-depth assessment of what, if any, limitations on trans and non-binary people's right to equal protection and recognition before the law can be justified.

¹⁶ *The Yogyakarta Principles plus 10*, Principle 31, p. 9. Retrieved from: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

¹⁷ For example, the British Columbia cases: *Doty v Vital Statistics*, *Trans Alliance Society et al v Vital Statistics* (<http://gender-freeidcoalition.ca/happeningnow.html>)

Review whether there is sufficient explicit focus on the rights on the child

34. Both the Malta and Argentina gender recognition laws explicitly reference the United Nations Convention on the Rights of the Child.¹⁸ Several Australian territories are reviewing gender recognition provisions for children.¹⁹
35. **We recommend** that the review considers whether the Bill provides sufficient attention to a child or adolescent’s explicit request, and the principles of progressive autonomy and evolving capacities of the child.

Review identity verification options for refugees, asylum seekers and temporary residents

36. Principle 31 of the *Yogyakarta Principles plus 10* notes that international human rights law requires that States ensure that a person’s “immigration status or other status is not used to prevent a change of name, legal sex or gender”. The Government Bill contains no provisions that provide such legal recognition or protection to people living in New Zealand who are not permanent residents or citizens. This is a significant issue for those trans and non-binary refugees, asylum seekers or new migrants who cannot amend their name or gender marker on documents issued in their home country.
37. **We recommend** that the government investigates and implements some form of identification verification process for trans and non-binary refugees, asylum seekers and migrants in New Zealand on temporary visas; and reviews the effectiveness of those provisions as part of the scheduled statutory review.

38. In summary, we recommend:

1. rewording clauses 22(B)(2)(a) and 22(C)(2)(a) to specify “female”, “male”, or “X (non-binary)”
2. consulting further with ITANZ about retaining the option of ‘indeterminate (I)’ in limited situations
3. clarifying the privacy protections in clause 84 around changes to sex and name details on a birth certificate
4. deleting clause 22B(4) that limits the number of times a person can use this administrative process
5. bringing forward the statutory review to three years after these changes are enacted, explicitly mentioning consultation with trans, non-binary and intersex communities, and expanding the scope of the review to consider:
 - a. if it is necessary to collect sex details on birth certificates
 - b. if there is any justifiable rationale for retaining clause 22I in the Bill
 - c. whether there is sufficient explicit focus on the rights on the child and
 - d. options for providing some form of identity verification document that enables refugees, asylum seekers, and other trans and non-binary people in New Zealand on temporary visas, to amend their name and gender marker

¹⁸ Article 5 of the Argentinean Gender Identity Act No. 26.743, adopted 30 November 2011 with the English translation approved by the Senate on 8 May 2012; Article 7 of Malta’s Gender Identity, Gender Expression and Sex Characteristics Act 2015, Act No XI of 2015 as amended by Act No LVI of 2016.

¹⁹ ACT and Western Australia, as at August 2018

Thank you for your leadership in introducing these legislative reforms. We look forward to ongoing opportunities to ensure that New Zealand continues to model a human rights-based approach to legal gender recognition.

If you have any questions about the issues raised in this letter, our coalition can be contacted through either Jack Byrne (jbyrne@waikato.ac.nz / [0732212121](tel:0732212121)) or Dr Jaimie Veale (jveale@waikato.ac.nz / [0732212121](tel:0732212121)).

Yours sincerely,

Signed by:

Abbi Pritchard Jones, Group Administrator and Facilitator, Genderbridge NZ

Ahi Wi-Hongi (National Coordinator), Ada Greig (Resource Development) and Kī Foster (Community Liaison), Gender Minorities Aotearoa

Ally Wilson

Aych McArdle, Human Rights Researcher, Intersex Trust Aotearoa New Zealand (ITANZ)

Jack Byrne, Research Officer, Aotearoa New Zealand Trans and Non-binary Health Survey, *Counting Ourselves*; human rights consultant, TransAction

Dr Jaimie Veale, Senior Lecturer, School of Psychology, University of Waikato / Te Whare Wānanga o Waikato; Principal Investigator, *Counting Ourselves*; Executive Board Member, Australia New Zealand Professional Association for Transgender Health (ANZPATH)

Joey MacDonald, Rainbow Liaison, Kāhui Tū Kaha

Kelly O'Shea

Mani Bruce Mitchell and Georgia Andrews, Co-Chairs Intersex Trust Aotearoa New Zealand (ITANZ)

Phylesha Brown Acton, Managing Director, F'INE

Sally Dellow

Stace Robertson, project collaborator, re.frame

Tom Hamilton, Counsellor, OUTLine NZ; Board member, ITANZ; and project collaborator, re.frame

Tracee Nelley, President, Agender NZ Inc

Document 13:

From: Withheld under s9(2)(a)
Sent: Friday, 31 August 2018 1:47 PM
To: Hon. Dr David Clark <David.Clark@parliament.govt.nz>
Subject: BDMRRA

Dear Dr Clark

I am concerned about the proposed one step self declared sex change in the amendment to the BDMRRA currently in the House.

How would self-declaration into the other sex enable women/girls to retain sex protection as a distinct ontological class, and protected under the Human Rights Act, if males can self ID into the category 'female'?

What are the implications for safety and dignity of women/girls if there is no longer sex segregated spaces such as changing rooms, toilets, or when biological males are able to enter womens refuges, rape crisis centres, the prison estate, drug/alcohol rehab facilities, homeless shelters, Girl Guides etc or if a self-ID male identifying as female is employed to conduct smear tests or mammographies?

What is the implication for women and girls sport?

How will self-ID impact on crime statistics and data collection such as sex difference in pay rates?

Has the NZ Parliament conducted a risk assessment if this change is adopted?

Finally, I'd like to bring your attention, as Minister of Health, to the following recent research paper regarding Rapid-Onset Gender Dysphoria - and ask what is your position regarding the current approach in the health sector to 'affirm' gender identity' as opposed to a 'watchful waiting' approach with appropriate medical gatekeeping before children and young people are put on a path involving off-label puberty blockers, cross sex hormones and elective surgery including double mastectomies in girls and castration of boys?

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330>

Thank you for your time.

Sincerely

Withheld under s9(2)(a)

Document 14:

From: Withheld under s9(2)(a)
Sent: Sunday, 2 September 2018 2:22 PM
To: Hon Ron Mark <Ron.Mark@parliament.govt.nz>
Subject: BDMRR Bill: self-ID proposals

Withheld under s9(2)(a)

Dear Minister,

I am a Withheld under s9(2)(a) although I write in my personal capacity.

I have recently learned of the Government's proposals to introduce "self-identification" in relation to the "sex" specified on birth certificates. I have real concerns about how this proposal will impact female-only spaces and the protections for women under the Human Rights Act.

I also have concerns about the lack of public/stakeholder consultation surrounding these significant proposals, which were not included in the Births, Deaths, Marriages and Relationships Registration Bill when it was introduced. As you may know, these issues are currently being debated in the UK, and the government there has facilitated a 12 week public consultation process (still ongoing) and has publicly confirmed its commitment to existing protections for women under the UK equivalent to the Human Rights Act.

I would really appreciate an opportunity to speak with you to discuss my concerns.

I look forward to hearing from you.

Yours sincerely

Withheld under s9(2)(a)