

Ref: 127598



1 April 2019

C Montague

By email: fyi-request-9720-41c0e308@requests.fyi.org.nz

Tēnā koe C Montague,

On 28 February 2019 you requested the following information from the Human Rights Commission (the Commission):

1. A copy of all analysis the Commission has done on how changes to the Births, Deaths, Marriages, and Relationship Registration (BDMRR) Bill or Act, in favour of one step sex self-identification, impact women and girls' sex-based human rights;
2. A copy of all emails the Commission has sent or received which mention the BDMRR Bill or Act or sex self-declaration, particularly emails which mention women and girl's rights in the Human Rights Act, from 1 January 2018 to 28 February 2019;
3. All emails between the Commission and the Office of the Privacy Commissioner and/or Crown Law regarding the BDMRR Bill or Act or sex self-declaration from 1 January 2018 through to 28 February 2019;
4. A copy of the Commission's social media policy; and
 - a. How many people manage the Commission's social media accounts; and
 - b. The sex of those who manage the Commission's social media accounts.
5. Since 1 January 2018, how many incidents of sexual harassment or abuse have occurred between the Commission's staff?
 - a. How many of the staff who sexually harassed or abused women are still employed by the Commission?
6. In a previous response to the requestor, the Commission stated: "*The Commission acknowledges sex and gender are different*". Is this still the Commission's position?

Responses from the Commission

The Commission has provided responses to all but one of your requests. The responses provided are below.

1. Analysis on the Births, Deaths and Marriages Relationships Registration Bill or Act

It is the Commission's usual practice to consider proposed changes to legislation against applicable human rights standards. The Commission's submission on the BDMRR Bill accordingly refers to human rights treaties, the United Nations Yogyakarta principles, reports by the United Nations Office of the High Commissioner for Human Rights and international case law. The Commission's submission was also informed by its previous submissions, the Commission's policy on transgender people,¹ the Commission's 2008 Transgender Inquiry² and public consultations.

In the process of creating the submission, the Commission did not create a separate working document setting out an analysis of the Bill.

The Commission consulted with many trans women and cis women in a range of consultations in late 2017 and early 2018. These consultations were in preparation for the Commission's submission to the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and New Zealand's Universal Periodic Review (UPR) In-Country Pre-sessions. These were general consultations about a broad range of human rights issues.

The notes of the CEDAW and UPR consultations show no concerns raised about any negative impacts arising from the progress of trans people's rights to have documentation which aligns with their gender. The notes of the public CEDAW consultations are publicly available [here](#) on our website. The notes of the public UPR consultations are publicly available [here](#) on our website.

2. Emails on the Births, Deaths and Marriages Bill and Act, sex self-declaration and Human Rights Act

Unfortunately, it has not been possible for the Commission to meet the statutory time limit in responding to this specific request. Therefore, we are notifying you an extension of time is required to make our decision.

This extension is necessary because consultations with those who have corresponded both internally and externally with the Commission about this Bill, are necessary to make a decision on your request and as such a proper response cannot be reasonably made within the original time limit.

We will endeavour to respond to you by 5 April 2019.

¹ Attached.

² Publicly available on [our website](#).

3. Emails between the Commission and the Office of the Privacy Commissioner and Crown Law

The Commission has not had any correspondence with the Crown Law Office regarding the BDMRR Bill or Act, or sex-declaration.

We have identified one email between the Commission and the Office of the Privacy Commissioner, which mentions the BDMRR Bill. We have **attached** this email for you.

Sections of this email have been redacted or withheld under s9(2)(b) to protect the privacy of natural persons. Other information in the emails has also redacted or withheld because it was not relevant to the request.

4. Social media

We **attach** the Commission's policy on Media Liaison, Social Media and Digital Security. Sections before and after this specific policy have been redacted or withheld as it is not relevant to the request.

Currently, there are three staff (one female, two males) who manage our social media profiles. A range of other staff contribute to the content either directly or indirectly.

5. Incidents of sexual harassment within the Commission

Since 1 January 2018, the Commission has not received any complaints from staff of incidences of sexual harassment or sexual abuse.

The Commission does not currently employ any staff members who have been the subject of a complaint of sexual harassment or sexual abuse, whilst working at the Commission.

6. The Commission's position on sex and gender

The Commission affirms the terminology defined in the [Yogyakarta Principles](#) and the [Additional Yogyakarta Principles \(YP+10\)](#). The following definition may assist;

- Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
- Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
- Gender expression is understood as each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns,

names and personal references, and noting further that gender expression may or may not conform to a person's gender identity.

- Sex characteristics is understood to mean each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

To this end, the Commission maintains the position that sexual orientation, gender identity and expression, and sex characteristics are distinct from one another.

Since 2005, the Commission has interpreted sex under s21(1)(a) of the Human Rights Act 1993 to include an individual's *gender identity, gender expression and sex characteristics*.³ While this matter is yet to be determined by the New Zealand Courts, this interpretation was supported by a 2006 Crown Law opinion by the Acting Solicitor General. This opinion is publicly available [here](#) on the beehive website.

Alternative avenues

If you are unhappy with this response, under the Official Information Act you are entitled to complain to the Ombudsman's Office. Information about how to make a complaint is available at www.ombudsman.parliament.nz or on freephone 0800 802 602.

Ngā mihi,



Jaimee Paenga

Legal Officer | Kaitiaki Ture

New Zealand Human Rights Commission | Te Kāhui Tika Tangata

³ Attached at footnote 1.