

Government response to the report of the Working Group for reducing barriers to changing registered sex

The Working Group for reducing barriers to changing registered sex (the Working Group) was tasked with finding operational ways to improve the experience of people seeking to change the sex recorded on their birth certificate. In discussion with the previous Minister of Internal Affairs, Tracey Martin, the Working Group agreed to also consider ways of responding to other identity document-related challenges faced by transgender and intersex communities which could be addressed without legislative change.

The Working Group made 38 recommendations:

- Twenty-nine recommendations fall under the remit of five government agencies: Internal Affairs, Justice (Courts), Health, Education, and Business, Innovation and Employment (Immigration).
- Seven recommendations are to the Judiciary and
- Three are directly to the Minister of Internal Affairs.

One recommendation is to both the Ministry of Health and the Judiciary, so is counted twice. Other agencies such as Sport New Zealand and Te Kawa Mataaho Public Service Commission will also be involved in the work to respond to the recommendations.

Recommendations addressed to the Judiciary are noted for completeness in this document. The Judiciary is independent of the Executive (the Ministers and Government departments) so these recommendations cannot be addressed as part of this Government response. The office of the Principal Family Court Judge has been provided a copy of the Report.

The Government will undertake work in response to twenty-three recommendations. In some cases, the solutions recommended by the Working Group would require regulatory change or would create inequities in the way services are funded. In these cases, agencies have tried to find alternative ways to address the intent of the recommendation. Six recommendations cannot be progressed due to fiscal, regulatory or equity concerns, but the barriers that these recommendations were intended to overcome have been noted. Responsible agencies are listed in the table with the lead agency first. Responses listed as 'progress as priorities allow' may be subject to delays as the COVID-19 response continues.

Key to the government response to the report of the Working Group for reducing the barriers to changing registered sex				
Proceed	Progress as priorities allow	Address the intent of the recommendation through existing mechanisms	Do not proceed	Recommendation to the Judiciary

Where the recommendations refer to Sections 28, 29, or 84, these are of the Births, Deaths, Marriages and Relationships Registration Act (which is abbreviated as the BDMRR Act).

C	The requirements for District Health Boards to retain paediatric care records be extended so children’s records are kept indefinitely to enable intersex people to access their full medical history.	The Ministry of Health will work with District Health Boards to understand their record-retention systems and under what circumstances paediatric records information is retained or destroyed. Archives New Zealand (with the Department of Internal Affairs) will support this work through their relationships with Information Managers across District Health Boards. Once the status quo is understood, the next step could be developing guidance regarding retention and access for paediatric records. If guidance proves insufficient to address the issue, Archives New Zealand could consider changes to the way District Health Boards are required to retain information under a Disposal Authority.		Ministry of Health Department of Internal Affairs (Chief Archivist)
D	The Ministry of Justice or the Department of Internal Affairs should provide a free face to face or call centre service to guide people through each step of the process. This is needed in combination with written guidance to make the process accessible to more people including those who don’t have English as a first language or those with disabilities which impair access.	The Department of Internal Affairs has created a direct email channel for people seeking help understanding the information and resources on their website. Contact centre scripts have been updated so that clear, consistent information can be provided on the call, calls can be transferred to someone with expertise, or a call-back can be arranged if necessary. The Ministry of Justice will align its call centre scripts with the Department of Internal Affairs and update their content as priorities allow.		Department of Internal Affairs Ministry of Justice
To ensure all transgender and intersex people seeking advice on how to submit an application to the Family Court are able to access legal advice, the Working Group recommends:				
E	Free legal representation is made available for people seeking to change the sex recorded on their birth certificate.	The mechanism the government has for funding legal representation is legal aid, which is required to be repaid. Some applicants will be eligible for free legal aid if hardship circumstances apply. The government also provides funding to Community Law Centres. These are already available for people seeking support taking an application to the Family Court.		Ministry of Justice

F	A lawyer for the child is funded for applications under Section 29, independent of the legal advice to a guardian or any counsel to assist the court.	<p>Automatically appointing a lawyer for the child would require changes to legislation. For example, under the Oranga Tamariki - Children's and Young People's Well-being Act 1989 a lawyer for the child must be appointed for care and protection cases. There is no equivalent requirement in the BDMRR Act 1995.</p> <p>A judge can choose to appoint a counsel to assist the court. A counsel to assist can aid the judge in determining whether the application is in the best interests of the child.</p>		Ministry of Justice
G	Peer-led community organisations that are providing paralegal or rights-based support, including helping transgender and intersex people fill out affidavits to change or correct their registered sex, are resourced to do this work.	Peer-led community organisations which offer support and non-legal guidance to transgender and intersex people can apply for funding through the Lotteries Grants. For example, Lottery Community grants are available for not-for-profit organisations with a community or social service focus for ongoing operating costs or projects which help improve the quality of people's lives in their communities.		Department of Internal Affairs
<p>To guide applicants, medical professionals and members of the judiciary towards a consistent understanding of the evidentiary requirements which recognises the expertise of those delivering gender-affirming care in New Zealand, the Working Group recommends:</p>				
H	The Ministry of Justice creates a simple template for health professionals to provide expert medical evidence that reflects the evidential requirements in recent successful applications, acknowledging that judges may request additional evidence as they consider necessary.	<p>It is up to the Judiciary to determine the form and content of evidence required for any particular case or proceeding.</p> <p>The FAQs on the Ministry of Justice website, described in the response to recommendation A, can include a plain-English explanation of the medical evidence requirements of Sections 28 and 29 of the BDMRR Act.</p> <p>If medical practitioners require guidance about how to present evidence requested by patients applying under Sections 28 or 29, such guidance would be best provided by their colleagues or an organisation such as the Professional Association for Transgender Health New Zealand (PATHA).</p> <p>If an organisation such as PATHA were to provide a template on their website, the Department of Internal Affairs could include a link to this alongside the other information and guidance about the process.</p>		<p>Ministry of Justice</p> <p>(Department of Internal Affairs)</p>

I	When a GP has oversight of the medical steps an applicant has undertaken, judges consider recognising that GP's evidence as sufficient expert medical evidence, and funding is available so an applicant can obtain this evidence at no cost.	The first part of this recommendation falls under the remit of the Judiciary. Recommendations to the Judiciary are noted for completeness but cannot be responded to by the Government.		Family Court
		A policy designed around funded visits for a particular group alone would create inequities. The Community Services Card is an existing mechanism available to enable lower cost access to GP visits for some people.		Ministry of Health
To ensure lack of access to gender-affirming health care does not prevent transgender people from meeting the medical requirements of the law, the Working Group recommends:				
J	Gender-affirming healthcare required to meet the medical treatment requirements of the BDMRR Act is provided free	Gender affirming health care services are available through the public health system, including hormone treatment and surgical interventions. These are provided through DHBs, where treatment must be prioritised alongside other needs in the local population. The challenge inherent in this recommendation is that there is no prescribed set of treatments to meet the requirements of the BDMRR Act, so it would not be possible for DHBs to cost this recommendation.		Ministry of Health
K	The Minister of Health requires District Health Boards to provide a minimum set of gender-affirming healthcare services based on the New Zealand Guidelines for gender-affirming healthcare.	Across New Zealand, DHBs differ greatly in size, capacity, and the communities they serve. As the health system is devolved, DHBs have a significant level of autonomy. The Ministry of Health gives them a set of objectives and expectations and determines the amount of funding they get, but they have to determine how best to meet the needs of their populations. Some DHBs and primary health organisations are working together to provide regional 'pathways' which can improve the planning, delivery, and coordination of gender affirming care through primary, community and secondary services.		Ministry of Health

To improve the privacy and safety of transgender people and families with transgender children submitting an application to a Family Court, the Working Group recommends:				
L	The Ministry of Justice develop a template cover letter for people to submit with their application if they are not submitting to their closest Family Court because they are concerned about privacy or safety.	<p>A letter would contravene the Family Court Rules 2002 which state that (unless specified elsewhere in the Rules) an application must be made at the court:</p> <ul style="list-style-type: none"> • nearest to where the applicant lives; or • nearest to an interested party. <p>However, there are ways someone can apply to a different Family Court. The Rules above allow an application to be made to the court nearest the applicant or the applicant’s lawyer, or to the Family Court in Wellington as the closest court to the Registrar-General.</p>		Ministry of Justice
To make the Family Court a less intimidating place and to help applicants understand correspondence from the court, the Working Group recommends:				
M	The Ministry of Justice draft guidance about trans-inclusive and affirming language and behaviour for the court’s internal resources for staff.	The Ministry of Justice will give effect to this recommendation by incorporating the relevant resources that have been produced by Te Kawa Mataaho in support of the broader diversity and inclusion work programme. This will include a rainbow inclusive language guide that is planned for publication in 2021.		Te Kawa Mataaho Public Service Commission Ministry of Justice
N	The Ministry of Justice should provide a plain-English guide alongside a form or a letter that explains what it means for the applicant.	The Ministry of Justice will add this to their work programme. It will be subject to the usual prioritisation and funding considerations. Common questions could be addressed through the FAQs on the Ministry of Justice and Department of Internal Affairs websites described in the response to recommendation A.		Ministry of Justice

To ensure that the Registrar-General’s office provides only the information the Family Court requires, and the process is nationally consistent, the Working Group recommends:				
O	A process is put in place to make sure the Registrar-General’s office only provides information the court needs to assess the application, no information about marriages or civil unions is sent.	<p>The Registrar-General’s office will review its internal processes to ensure that only information relevant to the application is accessed by staff. They check that a person applying to change the sex recorded on their birth certificate:</p> <ul style="list-style-type: none"> • is included on the register of births and all the details they have provided to the court match those on the register; and • has made their application using their legal name. <p>No information regarding their partnership or family status will be accessed or provided to the court (unless specifically requested by a Judge).</p>		Department of Internal Affairs (Registrar-General)
P	A fixed time frame in which the Registrar-General’s office respond that is nationally consistent.	The Registrar-General’s office is working to respond to the Family Court within one week and has published this timeframe on their website as part of their updated information.		Department of Internal Affairs (Registrar-General)
Q	The Family Court provides guidance about how an “interested” or “affected” person is defined and tells the applicant if anyone other than the Registrar-General has been sent their application	Recommendations to the Judiciary are noted for completeness but cannot be responded to by the Government.		Family Court
To improve the judiciary’s understanding of access to justice issues for transgender and intersex people and the delivery of gender-affirming care in New Zealand and to encourage consistency, the Working Group recommends:				
R	<p>The development of a judicial education and training programme, with input from transgender and intersex groups and the Professional Association for Transgender Health Aotearoa (PATHA) covering:</p> <ul style="list-style-type: none"> • international standards of care and human rights standards • recent New Zealand case law • the 2018 New Zealand Guidelines for gender-affirming healthcare and • the reasons an applicant may not be comfortable appearing in court. 	Recommendations to the Judiciary are noted for completeness but cannot be responded to by the Government.		Family Court

S	Information on interacting with transgender and intersex communities be included in the relevant general judicial education and training development programme when judges are first appointed.			
T	Judges do not require any more evidence than the minimum required to determine if a person meets the current, and evolving, interpretation of the medical requirements of Sections 28 and 29 of the BDMRR Act.			
U	Whenever a judge makes a decision based on a lower level of medical treatment or there is another new development in relevant case law, the judge considers dictating a judgment for publication to enhance both judges and lawyers understanding of modern social thought.			
V	Judges consider deciding applications under Sections 28 and 29 on the papers, unless there are special circumstances that require an appearance.			
To reduce barriers for transgender and intersex people when applying for a new birth certificate to be issued, the Working Group recommends:				
W	The Department of Internal Affairs work to simplify the process of applying for a new birth certificate after a Family Court declaration has been granted.	The Registrar-General has identified a number of operational changes through the research they undertook on the request of the Working Group. The BDM65 form has been simplified and is now available online. Work on streamlining the flow of information between the Court, the Department and the applicant continues.		Department of Internal Affairs (Registrar-General)
To ensure there are no further financial or administrative barriers to applying for a new birth certificate after a declaration is granted, the Working Group recommends:				
X	Permanently removing the fees for the first birth certificate issued after a declaration is granted by the Family Court under Sections 28 or 29 of the BDMRR Act or an error regarding the recording of sex is corrected by the Registrar-General under Section 84.	No fees are charged for the first birth certificate issued after the correction of an error under Section 84. Permanently removing a fee that is in regulations would require legislative change. The Registrar-General is waiving the fee for a first birth certificate issued after the declaration under Sections 28 or 29. He intends to continue waiving the fee until the self-identification provisions come into force, although this may be subject to future review.		Department of Internal Affairs (Registrar-General)

Y	Once a person's name or registered sex are changed the Department of Internal Affairs immediately update those details within their administrative systems so that all future correspondence uses the correct details.	The Registrar-General has put in place a manual override which prevents a person's previous details being used in any correspondence after they have amended their birth certificate.		Department of Internal Affairs (Registrar-General)
Z	The Department of Internal Affairs include an opportunity to apply for a letter from the Registrar-General which links a person's previous name and recorded sex to the name and sex recorded on their new birth certificate.	The Registrar-General proactively made this change in late 2019 in response to feedback received during the research they undertook at the request of the Working Group.		Department of Internal Affairs (Registrar-General)
To provide ways of sharing information which do not disclose someone's transgender status in situations where the sex recorded on their birth certificate is irrelevant, the Working Group recommends that:				
AA	The Registrar-General reverts to allowing people to have a short-form birth certificate issued which does not have details about their sex.	<p>There would be significant costs to introducing a new certificate. Such a certificate would not be useful in all the circumstances a full birth certificate can be used, such as establishing the relationship between parents and a child.</p> <p>The Department of Internal Affairs is working to develop ways a person can digitally share their (or their dependant's) identity information without giving the organisation they are sharing it with access to details they do not need. There are very few circumstances which legitimately require information from the 'sex' field of a birth certificate to be shared.</p> <p>Ensuring equitable access for those unable to engage with digital information sharing methods might require the development of physical identity products which also share only the required variables.</p>		Department of Internal Affairs

BB	<p>The Registrar provides people with access to information from the Register of Births in a way that meets the requirements of the Privacy Act. This means only the information needed for a certain purpose will be displayed on the extract from the Register.</p>	<p>The only way that information from the Births Register can be provided to the public is in the form of birth certificates. The content of these certificates is prescribed in regulations. It would require significant work and changes to regulations to develop a new way of providing information from the Births Register in a physical format.</p> <p>As stated in response to AA, the Department of Internal Affairs has a work programme to develop ways of sharing information in a way that address privacy concerns.</p>		<p>Department of Internal Affairs</p>
CC	<p>A birth certificate should never be stipulated as a compulsory document required for showing proof of identity in New Zealand and, where such policies or administrative practices currently exist, an alternative statutory declaration option should be available.</p>	<p>The Department of Internal Affairs already advises that a birth certificate is not an identity document. However, identity verification processes such as Anti-Money Laundering, recommend a birth certificate be used as a part of verifying a person's identity if certain other documents are not available.</p> <p>The Department of Internal Affairs will provide further guidance which advises people of their right to withhold any of the details on their birth certificate if a requesting agency has not explained why they need this information. For example, if someone is providing a birth certificate in conjunction with a driver license to verify their name and date of birth, they could choose to provide a certified copy of their birth certificate with all irrelevant details redacted (such as their parent's names, their place of birth, any previous names and the sex assigned at birth).</p>		<p>Department of Internal Affairs</p>
DD	<p>The Registrar-General explores the option of people choosing to not have any details recorded in the field for 'sex' on their birth certificate, leaving this field blank. This would also enable non-binary people to obtain a birth certificate that does not contain inaccurate data.</p>	<p>This would require a change to regulations as the information which must be included on a birth certificate is prescribed in the Births, Deaths, Marriages and Relationships Registration (Prescribed Information) Regulations. However, we consider the privacy protection initiatives discussed at AA and BB should achieve the same goal.</p>		<p>Department of Internal Affairs</p>

To better support the wellbeing, inclusion, safety and social transition of young transgender and gender diverse people the Working Group recommends:				
EE	The Ministry of Education continues to provide guidance to schools and other education providers which confirms that that records can be changed to reflect a student's gender without a change to the child's birth certificate.	The Ministry of Education already supports schools to amend education records on a case-by-case basis and can continue to do so. The Ministry could also make this information more publicly available.		Ministry of Education
FF	Schools recognise a student's gender for all purposes and ensure that this data is only collected in administrative records when it is needed for a specific purpose.	The Ministry of Education does not control schools' collection and use of data but can influence data collection through the information it asks schools and kura to collect. As with recommendation EE, the Ministry of Education will continue to support schools to recognise a student's gender through helping schools amend students' recorded information.		Ministry of Education
GG	Schools are supported to be inclusive of transgender and gender diverse students, including through the development of further guidance by the Ministry of Education working with community organisations, and financial support for the rollout of this guidance.	The Ministry of Education is funding InsideOUT to develop resources for schools seeking guidance on creating inclusive environments, policies, and practices. This includes detailed guidance around supporting transgender, non-binary, and intersex students, including the creation of inclusive schools' policies to ensure the support and safety of these students. Resources for setting up and maintaining student-led LGBTQIA+ support groups are also being developed. These resources will be available to the sector in 2021. Regionally-based Curriculum Leads will be in place in the sector from early 2021 to support schools to implement Wellbeing across the curriculum. They will facilitate connections between schools, local resources and services, and the National Ministry of Education office. They will support schools to adopt whole-school approaches to Wellbeing, including creating school environments that are inclusive of all learners.		Ministry of Education

HH	Government agencies work with sporting and peer led organisations to develop guidance for schools, community groups and sporting bodies about how to ensure transgender, gender diverse and intersex students are included in sports.	The Ministry of Education and Sport NZ support the development of guidelines. This issue sits between schools, sporting bodies, community organisations and other non-government organisations so will need cross-organisation and community involvement. The development of guidance will likely require resources and funding and will take time to co-develop.		Ministry of Education Sport NZ
To protect the dignity, equality and security of transgender and intersex refugees and asylum seekers the Working Group recommends:				
II	Government agencies explore options for enabling transgender and intersex refugees and asylum seekers to obtain official documentation reflecting their self-defined gender and name, until they are able to change these details using processes available to permanent residents.	Issuing a document under the Passports Act 1982 to any person who has a valid travel document would require legislative change and is outside the scope of this response. The Department of Internal Affairs can only issue certificates of identity and refugee travel documents according to the requirements of the Passports Act. This stipulates that these documents can only be issued to a person who does not have, and cannot get, a travel document from their country of nationality. Identity requirements for the Certificates of Identity issued by Immigration New Zealand are not prescribed in legislation. As work programme priorities allow, the Ministry of Business, Innovation and Employment will consider international examples which allow for the issuing of identity evidence in a self-defined gender and name and whether this would be possible within the constraints of the identity systems Immigration New Zealand operates.		Department of Internal Affairs Ministry of Business, Innovation and Employment
To ensure this work is carried out in a timely manner, the Working Group recommends:				
JJ	The Minister of Internal Affairs and her ministerial colleagues direct their respective departments to develop a cross-departmental work programme to address the issues raised in this report and seek advice from the Human Rights Commission about that work programme to ensure compliance with human rights standards.	The Minister of Internal Affairs has discussed the report and the Government response with her Ministerial colleagues. The issues raised in this report will be addressed, as indicated, as work programmes and priorities allow. Agencies which jointly have responsibility for addressing issues will work together to make improvements.		The Minister of Internal Affairs

KK	The Minister of Internal Affairs takes a leadership role working with other Ministers (including Justice, Health, Education, and Sport and Recreation) on implementing the Working Group's recommendations.	The Minister of Internal Affairs has discussed the report and the Government response with her Ministerial colleagues. The Minister of Internal Affairs will support other Ministers to implement the Working Group's recommendations and work with them to develop a more inclusive system where people are empowered to be themselves.		The Minister of Internal Affairs
LL	The Minister of Internal Affairs reports on progress implementing these recommendations at the cross-party Rainbow Parliamentary network's next six-monthly community consultation scheduled for May 2020 and that the Working Group is invited to attend.	The date suggested by the Working Group passed as work on the COVID-19 response was prioritised delaying the consideration of this document. Progress has been made to address a number of the Working Group's recommendations, where they aligned with existing work programmes. This progress will continue as priorities allow. Agencies will endeavour to update the transgender and intersex communities on further progress as they work through the recommendations that fall within their remit.		The Minister of Internal Affairs