



Submission to the Governance and Administration Select Committee

Regarding the Births, Deaths, Marriages, and Relationships Registration Bill

This submission is written by Brodie Fraser on behalf of He Kainga Oranga, University of Otago Wellington. He Kainga Oranga, the Housing and Health Research Programme, examines and clarifies the links between Housing and Health. Brodie Fraser is a PhD candidate researching LGBTIQ+ homelessness.

We wish to appear before the committee.

1. Executive Summary

- a. We urge the Committee to recommend that the process for changing gender markers on birth certificates be amended so that those who wish to alter these documents *do not* have to go through Family Court, or provide medical evidence that they have taken steps to change their sex or gender.
- b. We urge the Committee to recommend that an individual be able to change the gender markers on birth certificates based purely on self-identification.
- c. We urge the Committee to recommend that the process of changing gender markers on birth certificates be made free, as to make the process more equitable for people of all backgrounds — particularly those with low incomes.

2. International context

- a. Internationally, there is significant precedence to making it easier for individuals to change their identity documents. A number of countries — including Argentina, Malta, Denmark, Colombia, and Ireland — already have existing legislation that allows for gender diverse individuals to self-identify in official documents. These countries made an effort to address the myriad of inequalities that the gender diverse community so frequently faces.
- b. The current legislation in New Zealand breaches sections 3b—e of the Yogyakarta Principles which state the following:

“Principle 3. b) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity; c) Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person’s

profound self-defined gender identity; d) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned; e) Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy.”(1)

- c. While the Principles have not yet been adopted by the United Nations, they are an incredibly useful set of principles that identify the specific issues of anti-LGBTIQ+ discrimination that need to be addressed internationally.
- d. There is ample international precedence indicating that these changes have significant and lasting positive impacts on the lives of gender diverse individuals.

3. New Zealand context

- a. A recent study of referrals to Wellington Endocrine Services found a significant increase in gender diverse individuals being referred to the service since 1990.(2) In 1990, only two people were referred to the service; by 2016 this increased to 92 people.(2) In total, 438 individuals were referred to the service in the period from 1990—2016.(2) This indicates a significant increase in individuals identifying as transgender within New Zealand.
- b. Furthermore, a 2007 Human Rights Commission report, *To Be Who I Am*, recommended that the Births, Deaths, and Marriages Amendment Act 1995 be amended to substitute the Family Court and medical requirements with the requirement that someone “has taken decisive steps to live fully and permanently in the gender identity of the nominated sex.”(4) This report was released over a decade ago and *still* has not been acted upon. This issue is not a new one, and it is time for it to stop being ignored by our legislature.
- c. While other identification documents (i.e. passports and driver’s licences) allow for both a third gender option, and for individuals to choose their gender marker as suits, it is still imperative that the process for changing gender markers on birth certificates is made accessible. Many individuals do not hold a driver’s licence, or have a need for an expensive passport. Furthermore, a birth certificate is the primary identification document that an individual can hold, so it is important that it is accurate; a birth certificate — unlike passports and drivers licences — does not expire.
- d. The contextual setting in New Zealand shows that this legislative change is long overdue, and needs to be implemented immediately so that transgender and gender diverse individuals face less institutionalised discrimination.

4. Recommendation One

- a. Requiring transgender and gender diverse individuals to go through medical conformity and Family Court proceedings in order to update their birth certificates is a discriminatory practice. These requirements place an unnecessary burden on these communities, and further entrenches the difficulties they face to simply live as themselves. These requirements are extremely hard to meet for several reasons; as well as being simply unobtainable for those from low-income backgrounds.
- b. Firstly, the medical component is particularly alienating. Sex reassignment surgery remains difficult to receive in New Zealand. The surgeries are poorly funded, and there are a very limited number of surgeons in the country who perform them. Additionally, the cost incurred with many, frequent, specialist visits can be a barrier — one of the only options for surgery that does not involve being on a waiting list

for many years is to have surgery performed overseas. This is obviously incredibly costly, particularly for a demographic that faces significant barriers to gaining and maintaining jobs (particularly those that pay well).(5,6) Finally, there are many individuals who do not wish to undergo gender reassignment surgery. The medical requirement of the current policy does not account for these individuals.

- c. Secondly, the Family Court requirement also serves as a barrier. The court process can be a confusing one, particularly to those who might not have high levels of education, or any experience with the terminology and practices of the legal system. Organisations such as Naming New Zealand suggest that hiring a lawyer can make the process more successful, as well as easier and less stressful, but again, this is a significant financial barrier.(7)

5. Recommendation Two

- a. The process of changing an individual's gender markers on a birth certificate need to be based entirely on self-identification. This will remove the lengthy processes that individuals have to undergo; instead making the process to change gender markers a simple administrative process.
- b. Self-determination gives the individual agency and power; their identity is not arbitrarily dictated by the medical and legal professions. Instead, their identity is legitimised *only* by themselves.
- c. In having corrected birth certificates, gender diverse individuals are able to change their gender markers on other institutional records such as universities, hospitals, and banks.(8) This reduces the levels of discrimination that they face.

6. Recommendation Three

- a. Financial costs can be a significant barrier for many gender diverse individuals in updating their identity documents. This poses issues for those needing to seek welfare and other social services i.e. homeless shelters and housing services
- b. In the example of housing services, this can be a dangerous barrier. Many homeless shelters are gendered spaces, and will frequently assign placement based on the sex markers on an individual's identification documents. If the individual has been unable to go through the process of updating their birth certificate, they will thus be put into placements that align with the sex they were assigned at birth; not with the gender they identify with. This can be very dangerous; there is significant evidence suggesting that gender diverse service users face disproportionately high levels of assault and abuse in shelters where clients are separated by sex assigned at birth. (9–11)
- c. Thus, in addition to making the process of changing birth certificates easier, the Committee would do well to consider how they can remove the financial barriers to changing documents so that *all* members of the gender diverse community are able to have accurate birth certificates.

Bibliography

1. Onufer Correa S, Muntarhorn V. The Yogyakarta Principles [Internet]. Yogyakarta; 2007 [cited 2018 Feb 22]. Available from: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf
2. Delahunt JW, Denison HJ, Sim DA, Bullock JJ, Krebs JD. Increasing rates of people identifying as transgender presenting to Endocrine Services in the Wellington region. NZMJ [Internet]. 2018 [cited 2018 Jan 19];19(131). Available from: www.nzma.org.nz/journal
3. Clark TC, Lucassen MFG, Bullen P, Denny SJ, Fleming TM, Robinson EM, et al. The Health and Well-Being of Transgender High School Students: Results From the New Zealand Adolescent Health Survey (Youth'12). J Adolesc Heal [Internet]. 2014 [cited 2017 Nov 2];55:93–9. Available from: https://ac.els-cdn.com/S1054139X13007532/1-s2.0-S1054139X13007532-main.pdf?_tid=be32061c-bf4e-11e7-bafd-00000aacb35d&acdnat=1509573238_e08f8fef44c3991ed30466760cc5adcf
4. Human Rights Commission. To be who I am: Report of the Inquiry into Discrimination Experienced by Transgender People. 2007;
5. Sears B, Mallory C. Documented Evidence of Employment Discrimination & Its Effects on LGBT People Discrimination Based on Sexual Orientation during the Five Years Prior to the Survey, General Social Survey, 2008 [Internet]. Los Angeles; 2011 [cited 2018 Feb 26]. Available from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>
6. Badgett MVL, Lau H, Sears B, Ho D. Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination [Internet]. 2007 [cited 2017 Oct 5]. Available from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>
7. Birth certificates - Naming New Zealand [Internet]. [cited 2018 Feb 26]. Available from: <http://www.naming.nz/do-it-yourself/birth-certificates>
8. Blincoe E. SEX MARKERS ON BIRTH CERTIFICATES: REPLACING THE MEDICAL MODEL WITH SELF- IDENTIFICATION. Victoria Univ Wellingt Law Rev [Internet]. 2015 [cited 2018 Feb 26];46:57–84. Available from: <http://www.nzlii.org/nz/journals/VUWLawRw/2015/5.pdf>
9. Abramovich A. Understanding How Policy and Culture Create Oppressive Conditions for LGBTQ2S Youth in the Shelter System. J Homosex [Internet]. 2016;64(11):1–18. Available from: <https://doi.org/10.1080/00918369.2016.1244449>
10. Shelton J. Transgender youth homelessness: Understanding programmatic barriers through the lens of cisgenderism. 2015 [cited 2017 Oct 6]; Available from: https://ac.els-cdn.com/S0190740915300761/1-s2.0-S0190740915300761-main.pdf?_tid=6a853824-aa20-11e7-b4c5-00000aab0f02&acdnat=1507244366_43bb687e6bcec3e8fe5783899dd6e017
11. Spicer SS. Healthcare needs of the transgender homeless population. J Gay Lesbian Ment Health. 2010;14(4):320–39.