



20 July 2022

S22.14

## **Submission to the Department of Internal Affairs on The self-identification regulations and recognising gender for people born overseas**

### **Introduction**

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 200 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. 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.
3. This submission draws on NCWNZ Submission S21.23<sup>1</sup> Inquiry into Supplementary Order Paper 59 on the Births, Death, Marriages and Relationships Bill which was submitted in September 2021 after consultation with NCWNZ individual members, branches and member organisations. There has been insufficient time to consult again before submitting this form. However, the positions adopted in it are informed by the input from members relating to Submission S21.23.

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<sup>1</sup> NCWNZ. 2021. Inquiry into Supplementary Order Paper 59 on the Births, Death, Marriages and Relationships Bill. S21.23.  
[https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1026/attachments/original/1631604758/S21.23\\_Births\\_Deaths\\_Marriages\\_SOP\\_Inquiry.pdf?1631604758](https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1026/attachments/original/1631604758/S21.23_Births_Deaths_Marriages_SOP_Inquiry.pdf?1631604758)

## Issue 1: Including genders outside the binary on birth certificates

### Options for prescribing sex and gender markers available for the self-identification process

#### Q1. Which of these options do you prefer?

4. NCWNZ prefers Option four: Wider range of markers.
5. We consider that it is important that those who seek to change the gender marker on their birth certificates can exercise as much choice as possible in the term used to refer to gender on their birth certificate.

6. In our submission to the Governance and Administration Committee on Supplementary Order Paper 59<sup>2</sup>, NCWNZ welcomed the opportunity for people to specify, not only the categories male and female, but also other sex or gender designations such as intersex or non-binary when changing the gender marker on their birth certificates. We stated that:

*Human bodies are diverse with respect to their reproductive physiology, but traditionally in Western societies, people have been categorised using mutually exclusive binary categories. In the 21st century, many people are questioning those dualistic categories and crafting identities for which the terms male or female are not appropriate. Recognising the human rights of those who do not self-identify as either male or female requires providing the option for them to indicate their nominated identity on core official documents.*

7. We also submitted that:

*Members thought it was important that sex or genders that people could nominate on their birth certificates should include takatāpui, fa'afafine, or fakaleiti, and other terms used by different cultural groups in Aotearoa New Zealand.*

8. For this reason, we favour a wider range of markers that include umbrella markers as well as specific markers that are relevant for the LGBTQIA+ community, those who resist gender binary markers, those who identify as Māori, and those of other ethnicities in Aotearoa New Zealand. We appreciate that these markers need to be finite and for this reason propose inclusion of the following terms (a number of which are considered in the Department of Internal Affairs Discussion Document<sup>3</sup> 2022) and others that may be submitted by those who identify in various ways as gender diverse: male, female, gender diverse, non-binary, agender, queer, indeterminate, intersex, transgender, takatāpui, tahine, fa'afafine, fakafifine, fakaleiti, mahu, vakasalewalewa, palopa, akava'ine.
9. We recognise that Māori use a wider range of gender markers than we identify above but understand that the markers we have chosen might be considered key umbrella markers. Māori and Māori organisations will be more appropriate sources of

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<sup>2</sup> NCWNZ. 2021. Ibid.

<sup>3</sup> New Zealand. Dept of Internal Affairs. 2022. The self-identification regulations and registering gender for people born overseas: a public discussion document. [https://www.dia.govt.nz/diawebsite.nsf/Files/BDMR-Engagement/\\$file/Discussion-document-Self-identification-regulations-and-registering-gender-for-people-born-overseas.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/BDMR-Engagement/$file/Discussion-document-Self-identification-regulations-and-registering-gender-for-people-born-overseas.pdf)

information on what Māori gender markers should be available to those changing the gender markers on their birth certificates.

10. We are uncomfortable with the use of the term MVPFAFF+ as an umbrella term for diverse gender terms specific to Pacific cultures. Aotearoa New Zealand has many Pasifika with strong connections to Pacific cultures and such an umbrella term could be interpreted as neglecting diversity among those who value these cultural traditions. We recognise that this list may not encompass all the terms that those changing the gender marker on their birth certificates may choose to use on their new birth certificates. We recognise that legally those changing their gender markers cannot choose any term they like and the practicality of the use of a narrower range of umbrella markers. However, consultation with those who identify as non-binary, gender diverse, agender and takatāpui has indicated that a range of terms are of significance for people who might want to change their birth certificates.

**Q2. Do you see a better alternative to the options proposed?**

11. An alternative to the option we have chosen (Option 4) would be to opt for a narrower range of options (umbrella options and a limited number of other gender markers – Option 3) and assess during a 5 year review the appropriateness of this option. Our understanding is that, for the individuals likely to change their gender on their birth certificates, the term to be used is of considerable significance. For this reason, we favour Option 4, particularly because it can include Māori specific gender markers and also those that represent the terms used by people of the Pacific.

**Q3. If you identify with a sex or gender outside the binary, what term would you want to have on your birth certificate?**

12. Not applicable – this response is from an organisation and not an individual.

**Q4. Would an umbrella term, such as 'gender diverse', also work for you? Please explain why or why not.**

13. Not applicable

## **Criteria for considering options**

**Q5. Do you agree with the criteria we have used to assess the options?**

14. Of the three criteria presented, we agree with Inclusivity and Practicality, but not Future-proofing.
15. We consider that inclusivity is the most important criterion as the opportunity for people to change the gender marker on their birth certificates is closely related to our support for inclusivity and diversity in Aotearoa New Zealand. We do recognise the need to attend to the practical aspects of the implementation of a wide range of gender markers. However, we consider that those choosing gender markers will be very aware of issues raised in the discussion document relating to service providers not being familiar with particular gender markers. Most of those choosing to change their birth certificates will have a strong incentive to ensure that the change enhances acceptance

of them and the gender markers relevant to them. It is most likely that those using the range of gender markers available will take this into account when choosing terms to use.

16. It is hard to make choices that ensure future-proofing. It may be more appropriate to review the available gender markers every 5 years and consult about changes during that time on gender markers important in the communities that include those who may want to change the gender on their birth certificates.

**Q6. Are there any other considerations you think need to be factored in when assessing these options?**

17. No – see above for considerations relevant to these options.

**Q7. How should the Government determine what sex markers to make available?**

18. This process of consultation with relevant communities should be the basis for decision-making about what sex markers to make available. It could be followed by more detailed face-to-face discussion with relevant communities before final decisions on sex markers are made.

### **Considering terms for people who are intersex, and for Māori, Pacific, and Ethnic Communities**

19. Questions 8 and 9 are not applicable as this is a community group submission.

**Q10. Do you agree that providing te reo Māori markers would be supporting tino rangatiratanga? Is there a better way to describe what providing te reo Māori markers would mean for Māori who are transgender, intersex, or takatāpui?**

20. NCWNZ considers that providing te reo gender markers would be consistent with Te Tiriti of Waitangi and tino rangatiratanga. There should be high quality consultation with Māori on what markers are appropriate.

**Q11. Should the fact that some te reo Māori markers have only been recently defined be a barrier to including them in the self-identification process initially?**

21. NCWNZ does not believe that being recently defined should be a barrier to including these te reo Māori markers.
22. Newly developed markers may be indicative of the ways in which Māori who are gender diverse or changing their gender identification are articulating in te reo their identities.

**Q12. If you have a culturally specific gender, would you want your gender recognised on your birth certificate?**

23. Not applicable – this response is from a community organisation including people of diverse cultural backgrounds.

## Issue 2: Who can be a suitably qualified third party to support applications for children and youth

### Options for who can be a 'suitably qualified third party'

#### Q13. Which of these options do you prefer?

24. Of the four options presented, NCWNZ prefers Option four: Registered professionals AND people who have known the child for at least 12 months.
25. NCWNZ considers that it is important that those defined as suitably qualified third parties should include both registered professionals and those who have known the child/young person for at least 12 months. There are people who are not professionals who may have a close relationship with a child who is working through issues relating to their gender identity and ways in which they are negotiating dominant binary understandings of gender. They could include leaders in their cultural communities who have understanding of relevant issues that the child is addressing, as well as leaders in youth organisations with experience relevant to decisions about changes in the gender marker to be recorded on a changed birth certificate. Opting for a wider categorisation of who can be suitably qualified can avoid issues later as children and parents/guardians consider who can be approached as a third party to support applications for children and youth. Registered professionals bring their professional expertise but those who know the child/youth for some time also bring relevant understandings to the support of applications for young people.

#### Q14. Do you see a better alternative to the options proposed?

26. No.

#### Q15. Under option two, if registered professionals can act as a suitably qualified third party, do you think that the professions listed are the most suitable? The list includes doctors, nurses, psychologists, teachers, social workers, counsellors.

27. This is a suitable list. NCWNZ also considers that youth workers are a significant professional group.

#### Q16. Do you think any other people in the community could fulfil the role of a suitably qualified third party?

28. NCWNZ considers that there are a range of other people in the community who could fulfil the role of a suitably qualified third party. Youth workers and youth leaders and adults who hold positions of responsibility in youth organisations could fulfil this role, even if they were not registered professionals. They may have completed years of training and been supervised in their positions (paid or voluntary) as those providing a range of services for young people. There are also a range of adults engage in cultural activities who interact regularly with children and youth who could fulfil this role, for example, kapa haka leaders and others involved in transmission of diverse cultural knowledge to young people should be considered as suitably qualified third parties.

**Q17. Under option three, do you think there should be any additional restrictions on who can provide a letter of support?**

29. No. What is important is that any professional or member of the community who has known the child/youth for at least 12 months should clearly state in their letter of support the experience they bring to making an assessment of the young person's understanding of the implications of their decision to change the gender marker on their birth certificate. This should include information about their interactions with the young person when discussing this move.

**Q18. Under option three, do you agree that they need to have known the child or young person for at least 12 months?**

30. NCWNZ agrees that a 'suitably qualified third party' needs to have known the child or young person for at least 12 months.

31. A year is sufficient time and less than a year is not enough time.

**Q19. If you are a child or young person OR a guardian of a child or young person, who would you feel comfortable approaching for a letter of support?**

32. It would need to be someone who they could trust, communicate with in a comfortable way, who was open to the possibility for gender fluidity and could communicate via a letter of support why it was important that this change should occur.

### **Criteria for considering options**

**Q20. Do you agree with the criteria we have used to assess the options?**

33. NCWNZ agrees with all three criteria: assurance, inclusivity, and accessibility.

34. Assurance is important as there should be evidence that the child/young person is strongly of the view that they want this change and aware of the implications of their decision.

35. Inclusivity is relevant with respect to consideration of a wider range of people to be included in this position of 'third party' than registered professionals.

36. Accessibility is important as some whanau and some young people may not have any registered professional that they would trust as someone they would talk to about making this decision. Parents/guardians and young people need to have access to someone who can be approached to give this support. For those in particular communities, someone who is a member of their refugee community or their cultural group may be easier to approach than someone who is a professional in the fields identified.

**Q21. Are there any other considerations you think need to be factored in when assessing these options?**

37. Not that we are aware of at the moment.

### Issue 3: Additional requirements for multiple applications

#### The self-identification process raises some risk of identity fraud

##### Q22. Do you agree with our assessment of the level of risk?

38. NCWNZ agrees with the assessment of the level of risk.
39. Most of those who are making these challenging decisions to change the gender marker on their birth certificates are unlikely to have any reason other than personal identity concerns. This is a significant decision that often involves negotiating prejudice and discrimination in the wider community and struggles for acceptance. There are less challenging ways of manipulating identity to pursue illegal activity. However, some NCWNZ members were concerned that a person who changed the gender marker on their birth certificate could have access at any one time to two birth certificates with different names and genders.

##### Q23. Are there any other considerations you think need to be factored in when assessing the risk of identity fraud?

40. NCWNZ stated in its submission<sup>4</sup> to the Governance and Administration Committee in September 2021 that:

*It is important that individuals who change the sex recorded on their original birth certificate can apply in the future to change the nominated sex on their birth certificate (referred to in the Supplementary Order Paper as 'multiple changes of a sex marker over time'). If the provision identified in the regulations discussed above is to apply, then it is important that there is a private record of these changes which is only accessible to the individual concerned and the Registrar General, or those to whom they delegate the right to review this information.*

41. If this is the case, it will be possible for there to be some oversight of multiple decisions to change sex markers on birth certificates in response to the remote risk of this being done to engage in identity fraud.

#### Options for additional requirements for subsequent applications

##### Q24. Which of these options do you prefer?

42. NCWNZ prefers that an additional checking process is developed.
43. If this is judged to be a significant risk, it is appropriate that an additional checking process is activated if there is any indication that an application of a change in gender marker on a birth certificate is associated with identity fraud. NCWNZ favours this option rather than imposing a demand on the person who is making the application to provide a referee.
44. NCWNZ stated in its submission to the Governance and Administration Committee in September 2021<sup>5</sup> that no additional requirements should be set if a person applies for a

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<sup>4</sup> NCWNZ. 2021. Ibid.

<sup>5</sup> NCWNZ. 2021. Ibid.



change to the nominated gender or gender marker on their birth certificate after an earlier application for change to the gender marker. We stated that:

*Regulations need to allow for the possibility that people can rethink the changes they have made to the nominated sex on their birth certificate, especially if it is possible for them to make decisions about changes when they are under 18 years old, as proposed in SOP 59.*

**Q25. Do you see a better alternative to these options?**

45. No. NCWNZ submitted that

*If the provision identified in the regulations discussed above is to apply (that people can apply several times to change their birth certificates in this way), then it is important that there is a private record of these changes which is only accessible to the individual concerned and the Registrar General, or those to whom they delegate the right to review this information.*

46. This would facilitate the process of checking if there is any concern about the illegal use of changed gender markers and relevant documents.

**Criteria for considering options**

**Q26. Do you agree with the criteria we have used to assess the options?**

47. Of the three criteria, NCWNZ agrees with Integrity and Proportionality, but not with Accessibility.

48. Proportionality is important and NCWNZ agrees with the view of the Dept of Internal Affairs that there is a small risk of these changes being used to engage in identity fraud.

49. The integrity of the process of changes in gender markers on birth certificates can be sustained if there are records kept of such changes that are only accessible to the person concerned and to the Registrar General or their nominee.

**Q27. Are there any other considerations you think need to be factored in when assessing these options?**

50. No.

**Are there further comments you would like to make?**

51. NCWNZ appreciates this opportunity to comment on the issues raised by the Department of Internal Affairs. The time frame available for comment has precluded obtaining comments on the questions posed from all our members. However, the responses offered in this document are informed by previous widespread consultation with our members on issues relating to applications to change the gender markers on the birth certificates of those born in Aotearoa New Zealand.


52. NCWNZ has chosen to only comment on details of the self-identification process and not issues relating to recognising gender for people born overseas. This is because our earlier submission did not address this in sufficient detail to ensure that responses to the questions would represent members' views. NCWNZ considers that it is appropriate for the Department of Internal Affairs to request input on issues relating to the choice of gender markers from those who were born outside New Zealand and seek to use a



gender marker that is different from the gender on their birth certificate. We anticipate that their response to questions in Part 2 will lead to further consultation about options to which NCWNZ will be keen to respond at a later date.

A handwritten signature in black ink, appearing to read 'Suzanne Manning' in a cursive style.

Suzanne Manning  
NCWNZ Board

A handwritten signature in black ink, appearing to read 'Rosemary Du Plessis' in a cursive style.

Rosemary Du Plessis  
President NCWNZ Ōtautahi Christchurch Branch