

PATHA submission to the Department of Internal Affairs on Recognising gender on birth certificates and exploring a gender registration process for people born overseas

July 2022

About this submission

This is a submission from the Professional Association for Transgender Health Aotearoa (PATHA) to the Department of Internal Affairs (DIA) on their consultation relating to recognising gender on birth certificates and exploring a gender registration process for people born overseas.

PATHA is an interdisciplinary professional organisation working to promote the health, wellbeing and rights of transgender people. We have over 200 members who work professionally for transgender health in clinical, academic, community, legal and other settings.

Our submission focuses on the health impacts of the proposals. We appreciate the Department's commitment to engaging with trans, non-binary and intersex people in the development of these Regulations and options. This community engagement is essential, and was part of our recommendations to the Governance and Administration Committee considering Inquiry into Supplementary Order Paper 59 on the Births, Deaths, Marriages and Relationships Registration Bill last year.¹

Issue 1 – including genders outside the binary on birth certificates

Currently in Aotearoa, most trans and non-binary people have incorrect gender details on their birth certificate. The 2018 Counting Ourselves survey, based on responses from 1,178 trans and non-binary aged 14 or over living in Aotearoa, found that 83% of participants who had a NZ birth certificate had an incorrect gender listed on it.²

¹ Transgender Health Research Lab, Professional Association for Transgender Health Aotearoa, and Counting Ourselves. (2021). *Submission to the Governance and Administration Committee on the Inquiry into Supplementary Order Paper 59 on the Births, Deaths, Marriages and Relationships Registration Bill - 14 September 2021*. Retrieved from PATHA: <https://patha.nz/News/12127666>

² Veale, J., Byrne, J., Tan, K., Guy, S., Yee, A., Nopera, T. & Bentham, R. (2019) *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Transgender Health Research Lab, University of Waikato: Hamilton NZ.

The Transgender Health Research Lab undertook further detailed analysis of the Counting Ourselves data, and found that there was a clear association between barriers to changing identity details and poor mental health.³ Compared with those with correct gender markers listed on their birth certificate and passport, those who had experienced barriers to legal gender recognition had:

- higher reported psychological distress, which includes depression and anxiety
- more than two times the odds of reporting suicidal ideation and
- three times the odds of having attempted suicide.

Even after accounting for age, gender, education qualification, income level, and gender-affirming medical steps someone had taken, these findings persisted.

The most common reason that Counting Ourselves participants provided for having the incorrect gender listed on documents was that the gender options that were available (male or female) did not fit their gender.

It is crucially important that people who are not male or female have the opportunity to have a birth certificate that reflects their gender. On this basis, we do not support Option 1.

We do not take a specific position on which additional gender markers should be available. Community organisations representing trans, non-binary, intersex, takatāpui and MVPFAFF+ populations, and community leaders who have those perspectives, are best placed to facilitate the involvement of others from their communities in these conversations.

We appreciate that the Department of Internal Affairs is prioritising lived experience through this consultation process, in making sure you are hearing from people who are non-binary, trans, intersex, takatāpui & MVPFAFF+ about the aspects of this question that affect them. We encourage you to prioritise input from those most affected by these processes.

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

The process of obtaining a letter of support from a third party needs to be as accessible and inclusive as possible for young people from a range of backgrounds and circumstances, who may or may not have the support of their whole whānau in making this decision.

Of those options provided, Option 4 seems best on this basis, as it recognises that some young people may have talked about their gender identity with a registered professional such as their teacher or doctor, while others may not have a supportive school environment or may not be able to access a GP independently.

³ Transgender Health Research Lab, Professional Association for Transgender Health Aotearoa, and Counting Ourselves. (2021) as above

Having a wide range of registered professionals that a young person could approach recognises the diverse contexts and support that people can access. Registered youth workers⁴ would be a useful addition to the list of professions, since some young people will have worked closely with youth workers.

The parallel approach in Option 4 also gives young people the option of approaching someone who has known them personally for a year. This might include, for example, community peer support workers, kaumātua, sports coaches or kapa haka or other cultural or performance coaches. The suggested timeframe of a 12 month existing relationship seems appropriate as it matches the time period for verifying someone's passport application. It also reduces the barriers for young people who have moved a lot, perhaps due to housing insecurity or alienation from whānau, and therefore have lost touch with some supportive adults.

While we have focused on accessibility and inclusion, we also consider that encouraging young people to talk about their gender identity with trusted professionals or other important people in their lives will provide a high level of assurance. It gives young people the opportunity to share an important part of their identity and to demonstrate that they understand and want to apply to amend those details on their birth certificate.

Issue 3 – Additional requirements for multiple applications

In order for this process to affirm people's self-identified gender, people need to have the option of accessing this process more than once. It is not uncommon for people's gender identity to change over their lifetime. Further, there may be people who have already changed their gender marker through the existing Family Court process, who may wish to change their birth certificate again when more relevant gender marker options are available.

This process should be designed to uphold the right to legal recognition.⁵ Trans, non-binary and intersex people should not be required to meet unnecessary additional requirements when making subsequent changes to their sex marker. Very little detail is provided in the consultation document about what kinds of additional checks would be proposed under Option 3, or what criteria would be used to decide whether they should be applied. This makes it difficult to comment on whether a process like this would be invasive and unsafe for trans, non-binary or intersex individuals, or would have the potential to be applied in a discriminatory manner. On this basis, Option 1 seems best to ensure there are no additional barriers.

⁴ Registered with Korowai Tupu, the Professional Association for Youth Work in Aotearoa: <https://arataiohi.org.nz/korowai-tupu/>

⁵ Yogyakarta Principles (2017). *Yogyakarta Principles Plus 10, principle 31*. Retrieved from: <https://yogyakartaprinciples.org/principle-31-yp10/>

Part 2: A process to register gender for people born overseas

Improving processes for people born overseas will benefit a large number of trans, non-binary and intersex people living in New Zealand. More than a quarter (26%) of the Counting Ourselves survey participants were born overseas, including a small number (1%) who came here as an asylum seeker or refugee.⁶

PATHA members work closely with trans, non-binary and intersex asylum seekers, refugees and migrants including in clinical contexts. When people born overseas have no official documentation from their country of origin or from New Zealand with their correct name and gender, it places significant barriers when they attempt to access services, including health services.

Being able to have the correct gender on health records is important for trans and non-binary people's interactions with the health system and is recommended in the Aotearoa New Zealand Guidelines for Gender Affirming Healthcare.⁷ While it is possible for anyone to select their self-defined name and gender in the National Health Index, there are significant practical difficulties for people wishing to do so or to have that information consistently applied across patient management systems. These difficulties are compounded for anyone who has no other form of documentation with their correct name or gender.

Currently, people born overseas who are "entitled, under the Immigration Act 2009, to be in New Zealand indefinitely"⁸ can apply to the Family Court for a Declaration as to Sex. In practice, this means that trans, non-binary and intersex permanent residents can change their sex details from male to female or vice versa and obtain an official document with the correct sex listed. This document can, in some cases, be used to update identity documents from the person's country of origin. The Births, Deaths, Marriages, and Relationships Registration Bill passed in 2021 took a backwards step in removing this option by limiting the definition of an 'eligible child' and 'eligible person', for legal gender recognition purposes, to someone who is able to have their birth registered in New Zealand.

At the moment, asylum seekers, refugees and migrants who are here on temporary visas cannot legally change their name or access the Family Court process to obtain a Declaration as to Sex. Therefore, alternative options are required for them to obtain an official identity document with the correct name and gender marker. We support Rainbow Path's recommendations and leadership in this area.

We appreciate that this consultation process is prioritising lived expertise. We encourage DIA to keep engaging and working with those born overseas, especially people from refugee and migrant backgrounds, to address these critical issues that affect the wellbeing and everyday safety of trans, non-binary and intersex migrants.

⁶ Veale, J., Byrne, J., Tan, K., Guy, S., Yee, A., Nopera, T. & Bentham, R. (2019) as above

⁷ Oliphant, J., Veale, J., Macdonald, J., Carroll, R., Johnson, R., Harte, M., Stephenson, C., Bullock, J., Cole, D. & Manning, P. (2018). "Guidelines for Gender Affirming Healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa, New Zealand." *New Zealand Medical Journal* 131(1487).

⁸ Section 27A of the Births, Deaths, Marriages and Relationships Registration Act 1995.