



**Submission to the Government Administration Committee
on the Inquiry into Supplementary Order Paper 59 on the Births, Deaths,
Marriages, and Relationships Registration Bill**

14 September 2021

Te Ngākau Kahukura is a national initiative that works to improve the environments around rainbow¹ young people to make sure they are affirming, welcoming and non-discriminatory. We work with professionals, organisations and wider systems that provide health, social and education support to young people in Aotearoa. We provide advice, best practice guidance and training to support systems change.

Our vision is an Aotearoa where rainbow young people are safe, valued and feel like they belong in the places where they live, learn and access healthcare and social support.

For any of us, being recognised and understood for who we are is fundamental to our wellbeing. Having official documents that accurately reflect our identity is a key to feeling like a valued part of society. Te Ngākau Kahukura strongly supports the intent of the SOP and Bill in reducing the barriers that trans, non-binary, takatāpui and intersex people face in accessing official documents that accurately reflect their identity.

Thank you for the opportunity to comment on this SOP and Bill. Our submission offers recommendations to strengthen the Bill.

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¹ We use *rainbow* as an umbrella term to describe people whose sexual orientation, gender identity, gender expression or sex characteristics differ from majority, binary norms. This include people who identify with terms like takatāpui, lesbian, gay, bisexual, intersex, transgender, queer, non-binary or fa'afafine, as well as people who don't use specific words for their identity, people whose identity changes over time, and people who are in the process of understanding their own identity and may not have 'come out' to themselves or others. It's estimated that people under the rainbow umbrella make up between 6 and 15% of New Zealand's population.

We support moving to a statutory declaration process for changing sex marker

We strongly support the Bill's move to enabling people to change the sex or gender noted on their birth certificate through a statutory declaration process.

It has long been recognised that the process through the Family Court is inappropriate, costly, inaccessible and harmful. The Human Rights Commission's 2008 report on the Transgender Inquiry² described how the court process and its focus on medical treatment resulted in significant barriers to trans people being able to access an accurate birth certificate. There has been little progress towards reducing these barriers since 2008. This Bill represents a significant opportunity to uphold the human rights of trans, non-binary, takatāpui and intersex people to have their identity recognised, and to protect their privacy and dignity, in line with New Zealand's international human rights commitments.

We support further consultation on the list of nominated sex markers

The Bill's proposal to set additional sex markers through regulations is a pragmatic move that will allow for more in-depth consultation with affected communities and people. We recommend that trans, non-binary, takatāpui and intersex organisations, groups and people are resourced to engage meaningfully in this consultation.

We support submissions from the Intersex Trust of Aotearoa New Zealand that 'intersex' must be removed from the proposed list of nominated sex markers in 22 B, (a) and (b), and the categories which can initially be listed on birth certificates. As they have noted, treating intersex as a default 'third sex' category is inconsistent with respecting self-determination. We support the SOP's proposal to remove the suggested addition of 'intersex' in the earlier version of the Bill.

We recommend reducing barriers for young people to change their sex marker

The SOP attempts to balance young people's right to self-determination with the interests of their guardian or whānau, by requiring those under 18 to have third-party consent to change their sex marker. The current proposals may create barriers for young people who are estranged from their whānau, or where the adults in their lives do not support their gender identity.

We recommend that young people aged 16 or 17 should be able to amend the sex marker on their birth certificate without the need for any additional consent or support from a qualified third person, or a guardian. This would bring the Bill in line with the age for consent, or refusal to consent, to medical treatment which is 16.

We recommend that young people aged under 16 should be able to change their sex marker on identifying documents with support of *either* their parent or legal guardian *or* a qualified third person's support, rather than requiring support from multiple people.

² Human Rights Commission (2008) *To Be Who I Am: Kia noho au ki tōku anō ao, Report of the Inquiry into discrimination experienced by transgender people*. Retrieved from HRC: https://www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf

We recommend creating options for people born outside of Aotearoa

The Bill does not currently enable legal gender recognition for most trans, non-binary, takatāpui and intersex asylum seekers, refugees and migrants to have their gender legally recognised. For people who are new to Aotearoa, having accurate identification documents can be even more critical than it is for citizens, since birth certificates and other documents are often required to access public services for the first time, or apply for visas.

As currently worded, the Bill removes an avenue for legal gender recognition that has been available to permanent residents: the 'declaration as to sex' available through the Family Court process.

We consider it essential that the Bill provide avenues for all people in Aotearoa to have legal documentation that reflects their gender. The Bill should include options for asylum seekers, refugees and migrants to obtain accurate documents through a simple administrative process, similar to that being introduced for people born in Aotearoa. We support Rainbow Path's submission on these matters which has more detailed recommendations.

We recommend updating the Bill to use gender-neutral language

Sections 11 of the Bill makes reference to the 'birth mother'. We recommend these references are changed to 'birthing parent', to reflect that some people who give birth are neither women nor mothers.

We encourage you to implement the Bill more quickly

The changes signalled in this Bill and SOP were recommended in 2008 with the Human Rights Commission's *To Be Who I Am* report, and have been repeated for more than a decade by community advocates. This Bill itself has been delayed significantly.

We therefore recommend that the proposed 18-month delay before the commencement of the Bill should be shortened, and sufficient resourcing should be provided so that the associated Regulations can be developed in a timely way, with meaningful input from trans, non-binary, takatāpui and intersex people and organisations.

We recommend that resourcing is provided for education and support

We recommend that implementation of the Bill should include provision of information and resources for people going through the process of changing the sex marker on their birth certificate, with a particular focus on young people and their whānau. For example, clear and accessible information should be made available about the process for changing birth certificates and other official records.

We also recommend that when a young person applies to change sex marker without their guardian's support, rainbow-affirming psychosocial support should be available to the young person and their whānau or guardian. This would provide opportunities to build mutual understanding and strengthen relationships, which in turn would support whānau wellbeing.

Finally, we recommend that as part of implementing the Bill, trans, non-binary, takatāpui and intersex organisations that have expertise in supporting their communities should be adequately resourced to participate in consultation on the development of additional sex marker options for birth certificates, any associated Regulations, and design of the 5-year statutory review of the Bill.