

Recognising gender on birth certificates

2022



New Zealand Council Of
Christian Social Services

Contact Name:	Nikki Hurst Melanie Wilson
Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation description:	<p>The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on Recognising gender on birth certificates and exploring a gender recognition process for people born overseas.</p> <p>NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.</p> <p>Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website www.nzccss.org.nz.</p>

Tirohanga Whānui | Overview

We support the kaupapa to uphold the rights and dignity of transgender, intersex and takatāpui people by enabling them legal recognition and proof of their identified gender through a process of amending birth certificates. We strongly advocate for an accessible and coordinated process which contributes to an improved sense of identity and safety for trans people. We are especially interested in ensuring the rights and safety of tamariki and taiohi are paramount in this process.

Taunakitanga | Recommendations

Our main points are:

- 1. Simplification and consistency of process**
- 2. Concern for the rights of tamariki and taiohi**
- 3. Increased support for transgender, intersex and takatāpui people**

Item One – Simplification and consistency of process

A consistent and coordinated approach to the amendment of gender on identity documents is needed to improve accessibility for transgender, intersex and takatāpui people.

Possessing identification documentation that accurately reflects one's sense of identity is a given for most individuals in our community. For a transgender or gender diverse person, this is frequently not the case, contributing to discrimination and impacting on their sense of dignity, privacy, and safety (Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R, 2019, p. 81). We support efforts to uphold the rights of all people to be free from discrimination and view equality of access to accurate identification documentation as an important aspect of this objective.

Proof of identity is typically achieved through one of three forms of photo identification: birth certificates, passports and driver licenses. Two distinct processes currently exist to amend gender on a passport or in the driver license register. The process being consulted on for birth certificates will establish a third and different-again process for those seeking to amend their gender. The amendment of gender on a birth certificate will not trigger notification of a change to gender in other identification systems or relevant systems such as the National Health Index or education system. A recent survey, *Counting Ourselves*, indicated that most participants did not have their correct gender represented in their identification documents or relevant health or education records: over 80% had an incorrect birth certificate, 60% had an incorrect passport, 60% had incorrect education records, 55% had an incorrect driver license record and 44% incorrect records in the National Health Index. Lack of relevant gender markers available in these systems (38%) and cost (31%) were the primary barriers noted (Veale et al, p. 81).

In addition, a process exists to change an individual's name on their birth certificate, something that might typically occur alongside the amendment of gender on an identity document. The consultation material related to multiple applications states that:

People can also change their name when they amend their sex or gender marker.

It is unclear from this statement whether changing both gender and name on a birth certificate could occur under one request at one cost, or whether these processes would be distinct and have separate fees. The existing Family Court process enables this to occur concurrently but it is unclear whether this would apply where the process sits outside the Family Court. For a child, the cost to change their name on their birth certificate is \$170, renewing a passport is at a cost of \$115. For an adult, the cost to change one's name is also \$170 and renewing a passport costs \$199. Gender is not displayed on a driver license, but is captured in the driver license register, and this change can be achieved at no cost. To change the name on a driver license there is a cost of \$38.20 (replacement license fee).

The requirement to amend gender in separate systems with separate cost structures impacts the accessibility of this process, particularly for younger transgender, intersex or takatāpui people. The *Counting Ourselves* survey found that only 37% of youth participants had their correct name on more than half of their identification or records. This figure increased for adults (57%) and older people (73%), with cost (46%) being the primary barrier (p. 82).

In addition to cost, the need to complete this process in multiple systems can be challenging to navigate and emotionally taxing for people who face discrimination in doing so. The *Counting Ourselves* survey found that fear of discrimination and lack of understanding of the process were barriers for around a quarter of participants amending their name or gender in IDs or records.

Making an amendment does not always alleviate confusion or discrimination, with some systems retaining and displaying former, or legal, identity markers alongside the preferred name or gender (p. 82-83).

Similarly, this consultation proposes a wider array of gender markers than that available within the passport system. We query why there could not be a consistent process across these systems to minimise complexity.

We suggest that there is room to streamline the processes outlined above to better serve this audience and effect change consistently across relevant systems. We query to what extent efforts have been made to align the proposed process with that of existing systems.

Recommendation One: That government seek to align gender amendment and name change processes for all systems of relevance as much as possible, to improve accessibility and affordability for transgender, intersex and takatāpui people.

Item Two – Concern for the rights of tamariki and taiohi

The rights of children and young people to protection and identity under the Convention on the Rights of the Child (Articles 3 & 8) must be paramount in this process. Equally the Crown's responsibility to tamariki and taiohi under Te Tiriti must be honoured.

The Birth, Deaths, Marriages, and Relationship Registration Act outlines that an application to amend a child's gender must be accompanied by a supporting letter from a '*suitably qualified third party*'. The consultation discussion document states:

The third party will need to be able to provide independent assurance that the child or young person understands the change being made and that the decision is based on the child or young person's own perceptions of their gender. Without a wide range of third parties that can provide a letter of support, access to self-identification may be limited for children and young people.

The proposed approach for amending a child's gender on a birth certificate varies from the equivalent process for a passport. For a passport, a supporting letter from a registered counsellor or medical professional must be supplied. In contrast, this consultation proposes a wider array of professionals who would be eligible to provide a supporting letter for birth certificate changes.

Efforts to ensure that access to self-identification is accessible for children and young people should not compromise the rights and safety of the child. We recognise the desire to expand the gender amendment process beyond one that requires medical evidence and to ensure that tamariki and taiohi have access to a *suitably qualified individual* who can act as a third party supporting their application, regardless of their geographical, socioeconomic, or social context. We agree that limiting eligible third parties to medical professionals or counsellors may make this process inaccessible for some children and young people, but equally query the extent to which any individual who has known a child or young person for 12 months or more is suitably qualified to assess the child's understanding of the change being made. We recommend that additional criteria be developed to expand Category 2, or restrict Category 3. We also query whether the process for amending a passport will be simplified once the child's birth certificate has been amended.

We note that the process for changing a child's legal name requires consent from both parents and is more involved in terms of verifying the parent's identity than the proposed process for amending

a child's gender, which can be achieved with the consent of one parent only. If both gender marker and name could be amended for a child concurrently through the proposed process, as is currently the case in the Family Court process, we assume then that in effect the child's name could be changed with the consent of only one parent. A consistent approach is needed to protect the safety of the child and the integrity of the system.

We query to what extent the child will have access to former identification records, and if the process of removing references to former gender or names will apply to a child's birth certificate, as is noted in the consultation material relating to multiple applications. We note the risk that children and young people may experience discrimination where these changes remain evident in identification documentation or records.

Children and young people have a right to access any information relating to their sex and name at birth as a record of their former identity. Access to information relating to birth gender may also be important later in life, in some health situations, for example cervical screening (McKee, 2022). Research indicates that a small percentage of children who transition may later detransition to their birth gender (Keppler, 2022). In these cases, access to former identification documentation may be desired. We query the process for children seeking access to this information once their gender (and potentially name) has been amended.

We seek clarity as to if and how the additional requirements for multiple applications would apply to applications for children and young people, noting the small risk of identity fraud outlined in the consultation material. How will children be protected through this process?

Recommendation Two: That greater clarity and consistency be brought to the process for tamariki and taiohi to ensure their rights to protection and identity are upheld.

Item Three – Increased support for transgender, intersex and takatāpui people

Greater holistic support for transgender, intersex and takatāpui people is needed to address key concerns underlying this legislative process more adequately.

In many cases throughout New Zealand there is insufficient or fragmented support (medical, therapeutic, social, financial) for transgender young people or those transitioning. Similarly for transgender or gender diverse adults there are significant barriers to accessing gender-affirming care (Veale et al, 2019, p. 12-44).

We are especially saddened by the alarming rates of mental distress and suicide within the transgender community, particularly among transgender and gender diverse youth, and see this as an area of urgent need (Veale et al, 2019) (Hutt, 2021). We advocate for increased specialised support for this community, where a range of professionals with expertise in gender diversity are available and accessible to provide integrated and holistic services and support both during the process of transitioning and ongoing. This must be coupled with education within our communities to raise awareness, enhance understanding and reduce discrimination faced by the transgender community.

Recommendation Three – That this process be complemented with increased resources and expertise targeted at:

- a. Delivering integrated and holistic support to transgender and gender diverse people within Aotearoa.**

b. Increasing education and reduce discrimination faced by transgender, intersex and takatāpui people.

Tohutoro | References

Hutt, K (2021) *More than 50% of transgender youth report struggling with mental health*. Stuff NZ. Retrieved from [More than 50% of transgender youth report struggling with mental health | Stuff.co.nz](https://www.stuff.co.nz/health/mental-health/123456789)

Keppler, N (2022) *First-of-its-kind study reveals transgender children are extremely unlikely to retransition*. Inverse, BDG Media. Retrieved from <https://www.inverse.com/mind-body/study-trans-kids-retransition-unlikely>

McKee, J (2022) *Gender diverse people missing cervical screenings due to health software setup*. Radio NZ. Retrieved from <https://www.rnz.co.nz/news/national/471419/gender-diverse-people-missing-cervical-screenings-due-to-health-software-setup>

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. Retrieved from https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves_Report-Dec-19-Online.pdf