**Changing the BDMRRA so it is fair for everyone, based on the existing passports policy**

*Introduction*

This statement was drafted by takatāpui, trans and non-binary people and organisations in Aotearoa New Zealand.[[1]](#footnote-1) It explains why it is so important that the Births, Deaths, Marriages and Relationships Registration Act (BDMRRA) 1995 is amended,[[2]](#footnote-2) to bring the process for changing gender markers on birth certificates in line with the existing administrative process used for passports and driver licence records. This proposed change would require takatāpui, trans and non-binary people to sign a legally binding statutory declaration stating their self-defined gender.[[3]](#footnote-3)

*Impacts of current provisions*

The current BDMRRA provisions require medical evidence and a Family Court process. This impacts most heavily on those who:

* do not undertake medical steps as part of their transition (for financial, medical, religious, or other reasons)
* do not know how to make a formal legal application to the Family Court and/or
* cannot afford to pay a lawyer to apply on their behalf.

This means that the current process privileges those who are well-off, and those with sufficient formal education and English language skills to make such a Family Court application. It excludes those who are poor or on low-incomes, including a higher proportion of Māori and Pasifika members of our communities.

The current process to amend a birth certificate can be lengthy, particularly for those takatāpui, trans and non-binary people waiting for medical evidence to be supplied from a GP, hormone specialist or surgeon. For someone using a lawyer to make the application it is expensive, as a lawyer’s fees can be up to $3,000. The costs of obtaining medical evidence fall on takatāpui, trans or non-binary people themselves, or on parents making applications for their children under section 29 of the BDMRRA. The medical evidence requirements under section 29 are particularly onerous, also encompassing medical treatment that a takatāpui, trans or non-binary child has not yet undergone and which the court may determine is necessary for the child to maintain their gender identity.

The Family Court process, and the medical evidence it requires, prevents or deters many takatāpui, trans or non-binary people in New Zealand from amending their birth certificate. This means it is common for a takatāpui, trans or non-binary person to have a birth certificate that does not match the details on their passport, driver licence record, or other official documents, including school enrolment records. It is difficult for people to navigate everyday life with safety, dignity and privacy, when different identity documents do not match. There is extensive empirical research overseas highlighting that trans and non-binary people are denied services, harassed, or attacked,[[4]](#footnote-4) and have worse mental health outcomes,[[5]](#footnote-5) when their identity documents do not match their gender identity.

It is only fair that that every takatāpui, trans or non-binary person born in Aotearoa should be able to change the gender marker on their birth certificate, through an accessible process. A birth certificate is the only document that someone born here can never have taken away from them. In some significant life events, it is the sole document that will be accepted as proof of identity. For example, the gender marker on a takatāpui, trans or non-binary person’s birth certificate is used on their marriage or civil union certificate, on their child’s birth certificate, and on their death certificate.

New Zealand’s policy for amending gender markers on passports, introduced in December 2012, is often cited as one of the best in the world.[[6]](#footnote-6) In contrast, the BDMRRA provisions for amending gender markers on birth certificates, developed 23 years ago, are outdated. They have not kept pace with international human rights standards, that set out each person’s right to a legal recognition, regardless of age.[[7]](#footnote-7) The BDMRRA provisions do not meet the requirements set out in international case law[[8]](#footnote-8) or recommendations by United Nations bodies that monitor treaties that New Zealand has ratified.[[9]](#footnote-9)

*Benefits of amending the BDMRRA*

The current review of the BDMRRA is a timely opportunity to update sections 28 (covering adults) and 29 (covering those under the age of 18) so that there is “a quick, transparent, and accessible mechanism that legally recognises and affirms each person’s self-defined gender identity”, with no further eligibility criteria required.[[10]](#footnote-10) This would ensure trans and non-binary people have the same right to legal recognition, and the legal protection that provides, as all other people in New Zealand.

This is a chance to update the BDMRRA to reflect how the New Zealand government already deals with requests from takatāpui, trans and non-binary people to change gender markers on passports and driver licence records. The necessary amendments would:

* replace a Family Court application with a statutory declaration process that enables takatāpui, trans or non-binary people to affirm their self-defined gender identity
* remove any other eligibility requirements, such as the need for medical evidence and
* enable gender markers to be recognised as male, female, or as a third, non-binary gender.

In addition, those aged 16 and 17 should not require parent consent to amend the gender marker on their birth certificate. This reflects that 16 is the threshold for consent, or refusal to consent, to medical treatment in New Zealand.[[11]](#footnote-11)

Moving from a Family Court process to a statutory declaration will reduce cost barriers for takatāpui, trans and non-binary people, including their whānau; free up the court’s time; and reduce the administrative burden on the health professionals who are asked to supply medical evidence for each application.

These changes will have very little impact on the non-transgender community, as a passport can be used as proof of identity in most circumstances. They will have a very significant impact on the takatāpui, trans and non-binary people in those instances where a birth certificate must be shown.

By updating the BDMRRA in this way, New Zealand can make it possible for all takatāpui, trans and non-binary people to be able to afford to amend their birth certificate. This would demonstrate New Zealand’s commitment to international human rights standards and would make an important practical difference for takatāpui, trans and non-binary people’s daily lives.

A statutory declaration model could also be used to enable trans and non-binary people who are seeking asylum, or in New Zealand on temporary visas, to verify their self-defined gender identity and name, when it is impossible for those details to be amended on their original birth certificate or passport. [[12]](#footnote-12)

**This statement is endorsed by the following groups and individuals:**

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Tracee Nelley, President, Agender NZ

Phylesha Brown-Acton, Managing Director, F’INE

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Michelle Smeaton, Secretary, Tranzaction, Christchurch

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Jack Byrne, Research Officer, Aotearoa New Zealand Trans and Non-binary Health Survey

Sharyn Forsyth, Co-ordinator, NZ Parents and Caregivers of Transgender and Gender Diverse Children

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Richard Tankersley, the Uprising Trust, Christchurch and former Human Rights Commissioner

Rosslyn Noonan, former Chief Human Rights Commissioner

Dame Margaret Sparrow

Dame Catherine Healy, National Coordinator, New Zealand Prostitutes' Collective

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1. There are many different terms used by takatāpui, trans and non-binary people in Aotearoa whose gender differs from their sex assigned at birth. These include tāhine, whakawahine, tangata ira tāne, transgender, transsexual, trans feminine, trans masculine, fa'afafine, fa’afatama, fakaleiti, leiti, akava'ine, aikāne, fakafifine, vakasalewa, mahu, palopa, genderqueer, gender diverse, and many more terms. [↑](#footnote-ref-1)
2. Current provisions are in Part 5, sections 27-33 of the BDMRRA 1995, and were proposed to be re-enacted as clauses 66-72 of the Births, Deaths, Marriages, and Relationships Registration Bill. [↑](#footnote-ref-2)
3. <https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/information/>, and <https://nzta.govt.nz/driver-licences/renewing-replacing-and-updating/updating-your-licence/> Some people with variations of sex characteristics, sometimes referred to as intersex people, also use these provisions to amend their gender marker. [↑](#footnote-ref-3)
4. For example, B. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey (USTS).* Washington, DC: National Center for Transgender Equality; A. Grant, J, Mottet, L, Tanis, J, Harrison, J, Herman, J, & Keisling, M. (2011). *Injustice at every turn: a report of the National Transgender Discrimination Survey*. Washington DC; European Union Agency for Fundamental Rights (FRA) (2014). *Being Trans in the EU Comparative analysis of the EU LGBT survey data* [↑](#footnote-ref-4)
5. For example, Hyde Z, Doherty M, Tilley PJM, McCaul KA, Rooney R, & J, Jancey. (2014). *The First Australian National Trans Mental Health Study: Summary of Results*. Perth, Australia: School of Public Health, Curtin University; Bauer, G, Scheim, A, Pyne, J, Travers, R, & Hammond, R. (2015). ‘Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada’ *BMC Public Health, 15*, 525 [↑](#footnote-ref-5)
6. It requires someone to complete a statutory declaration indicating the gender they wish to have recorded on the passport, and the period of time they have maintained that gender. Those under the age of 18 also require the 2 supporting statutory declarations, one from a parent / legal guardian and the other from a counselor or medical professional. (<https://www.passports.govt.nz/what-you-need-to-renew-or-apply-for-a-passport/information/>). [↑](#footnote-ref-6)
7. Most recently summarised in Principle 31 of *The Yogyakarta Principles plus 10.* These were published in November 2017 as: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complelement the Yogyakarta Principles. <https://yogyakartaprinciples.org/principle-31-yp10/> [↑](#footnote-ref-7)
8. For example, In January 2018, the Inter-American Court of Human Rights issued an advisory opinion asserting that countries should ensure legal gender recognition for both adults and children, based solely on the self-perceived identity of a person <http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf>. in June 2018, the Austrian Constitutional Court ordered, with immediate effect, that sex entries in the civil registries and in identity documents must reflect an individual’s self-determined gender identity. Austrian Constitutional Court decision, G 77/2018, 29 June 2018: <https://www.vfgh.gv.at/medien/Civil_register_-_Intersex_persons.en.php>. [↑](#footnote-ref-8)
9. UNDP and APTN (2017). *Legal Gender Recognition: A Multi-Country Legal and policy Review in Asia.* <http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html> [↑](#footnote-ref-9)
10. Principle 31 of *The Yogyakarta Principles plus 10.* [↑](#footnote-ref-10)
11. Section 36 Care of Children Act 2004. In addition, while the passports policy requires the lodged statutory declaration to specify the period of time a person has maintained their gender, there is no minimum time period required. Therefore, this information is arguably unnecessary for amending a passport, or a birth certificate. [↑](#footnote-ref-11)
12. This is the approach that would be most consistent with requirements in Yogyakarta Principal 31 that a person’s “immigration status or other status is not used to prevent a change of name, legal sex, or gender”. Other countries such as Malta and Canada provide such options for refugees and asylum seekers. [↑](#footnote-ref-12)