

TO	Governance and Administration Committee
FROM	Victoria University of Wellington Students' Association (VUWSA) and UniQ
DATE	2 March 2018
SUBJECT	Submission on the Births, Deaths, Marriages, and Relationships Registration Bill

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## 1. Introduction

### VUWSA

Victoria University of Wellington Students' Association (VUWSA) exists to represent and advocate for the interests of Victoria University of Wellington's 22,000 students. We aim to raise the voices of all of our students. We recognise UniQ as the representative group for LGBTQIA+ students, and we are proud to have a long-term relationship with the rainbow community both on-campus and in Wellington. We welcome the opportunity to submit on the Births, Deaths, Marriages and Relationships Registration Bill ("the Bill") and wish to appear alongside UniQ to make an oral submission.

### UniQ

UniQ Victoria is the LGBTQIA+ representative group at Victoria University of Wellington. We're a social and supportive group for queer students, running regular events and creating safe spaces. We aim to make sure the voices of the LGBTQIA+ community at Victoria are heard and valued. We work with VUWSA to advocate for our queer students.

## 2. General statement

Our submission will address the Bill's effective retention of the sections of the Births, Deaths, Marriages, and Relationships Registration Act 1995 which require people to seek judgment of the Family Court before they can change sex on their birth certificate. These provisions are contained in clauses 66 to 74 of the Bill. We will not address any other substantive components of the Bill, and express no view on any other provisions.

In essence, our view is that these provisions are inequitable. The provisions delegitimize the voice and experiences of our students who are transgender, intersex or gender fluid.

There are many reasons for this, which we will now explain.

### **3. Our students**

VUWSA and UniQ both advocate for queer students; including but not limited to students who are transgender (who live as a different sex to the one assigned at birth), genderqueer (who live outside the gender binary), intersex (who are born with physiological characteristics that do not fit 'typical' male or female categories) and cross-dressers.

Some (but not all) of these students understand that their sex is different to the one assigned to them at birth. We use this phrase 'assigned to them at birth' to capture the fact that each newborn is generally assigned a sex by a doctor who checks external genitalia and then marks down a sex on the baby's birth certificate. Strictly speaking, birth certificates are proof that a birth occurred, but in reality they are frequently used to verify identity. This is an issue for our students who understand their sex to be different than that assigned to them at birth.

### **4. Financial and time barrier**

Requiring students to go to the Family Court in order to change sex on their birth certificate creates an unnecessary financial barrier to setting the record straight. It is much easier to change sex on other official documents. For a driver licence, all that is required is a statutory declaration that your sex is different to the one that was previously recorded. The Family Court process, in comparison, is time-consuming and potentially costly as medical evidence is required (which is not always free) and lawyers may be involved to assist in preparing the application.

Further, any distress and dysphoria caused by being misgendered on legal documents is heightened by the repeated process of disbelief and suspicion that medical intervention and a Family Court process entails. The distress would be much reduced with a simpler, non-judicial/judgmental process. Having different requirements for birth certificates and other official documents also creates the possibility for inconsistent documentation. Identification that has mismatched information can cause suspicion and most obviously in this case, 'out' the person as transgender which could potentially put them in a dangerous position (we are aware that there are higher levels of violence towards transgender people). We do not want any increased risk of violence for the students which this affects.

NZUSA's (New Zealand Union of Students' Associations) Income and Expenditure Report 2017 showed that the 'typical student' is likely to borrow for fees, claim the maximum amount of living costs to meet basic costs, work 13 hours a week on top of full-time study and be experiencing or bordering on 'significant financial distress'. In other words, students tend to be time and resource poor. This Family Court process is an additional hurdle for students in what could be a much simpler and cheaper process. It is also, in our opinion, a poor use of Family Court resources.

**Recommendation:** remove the process to change sex on birth certificates from the Family Court to reduce the cost and time required to make the application. The process should be

taken out of the Family Court and moved to the Department of Internal Affairs. It should be a simple process requiring only a written request.

### **5. The whole rainbow**

We represent students who do not identify in either of the strict categories of 'male' or 'female'. The Bill does not allow for options other than 'male', 'female' or 'indeterminate'.

An article published in *Nature* states that "the idea of two sexes is simplistic. Biologists now think there is a wider spectrum than that". We accept this scientific view on the classification of sex both because it makes sense and because we represent, and study with people who do not identify as strictly 'M' or 'F' at Victoria University of Wellington.

We are also aware that it is difficult to impose the M/F classifications onto people. The Family Court has accepted evidence from a doctor who said that the applicant's "appearance, manner and outlook" was "consistent" with his male gender identity ("Michael"). We cannot know for sure what the doctor was assessing when deciding what parts of the applicant's manner and outlook were 'male'. But it seems to us that it can only be a normative judgement about what it means to be a man. We represent many students who might be thought to have a 'masculine' outlook but are not 'male'. For example, does a confident, assertive person with XX chromosomes who likes to wear shorts and t-shirts have a 'male' manner and outlook? We would argue that describing it as such would be arbitrary. This is an example of just one of the problems of trying to create an objective legal test for determining sex based on medical evidence.

Further, the Bill's requirement to have some degree of medical intervention before an applicant will be successful in changing their sex on their birth certificate is unconscionable. Although the Family Court has interpreted the requirement so that full surgery is not necessary in order to be successful, the clause still imposes a view that you cannot be a different sex unless you have changed your body. We are of the opinion that the law should be silent on whether people ought to have medical procedures that are not required in order to be physically healthy. Currently, the Bill effectively says that unless you have changed your own body through medical means then you cannot change your sex on your birth certificate. At the very least, we think it is odd for the law to stand as the arbiter of how much medical intervention you should have on your own body. Especially so as the medical procedures contemplated by the Bill – surgery and hormone treatment – tend to be expensive and are not free from adverse side-effects. Hormone treatment, for example, can cause loss of fertility. Surely, it cannot be for the law to direct people toward making this decision one way or another.

**Recommendation:** remove any requirement for medical evidence or medical procedures.

### **6. Reduction of voice and experience**

It is also dehumanizing to have medical experts and the Court determine if you have a physical conformation that "accords with" one sex or the other. This reduces the voices and experiences of our students who understand that the sex recorded on their birth certificate does not match what they know about themselves. We think it is inequitable for applicants to be subject to a higher standard of proof of sex (the Family Court accepts a definition of 'sex' which includes physical characteristics, psychology and upbringing (see "Michael")) than those who happen to

have an identity which matches the sex assigned to them at birth (doctor examines genitalia of newborn).

If you accept, as we do, that sex is more complex than just M/F then it is not justifiable to have 'indeterminate' as a catch-all for any other sex that is not M/F. 'Indeterminate' implies that there is no language to describe the sex of the individual. We understand that this is not true as there are numerous terms and labels which can describe sex other than 'male' and 'female' e.g. takatāpui genderfluid, agender, non-binary. Indeterminate also implies transience, in that perhaps later the sex can be 'determined'. We represent students who would not view their sex as in limbo simply because they are not simplistically 'M' or 'F'. As one of our students has said, "I know who I am, just like the many other transgender people who undergo the process to change the way their sex is marked on their birth certificates, we shouldn't need anyone else to agree".

**Recommendation:** as before, remove the process from the domain of Courts and medical experts, and also create an option to leave the birth certificate 'sex' section blank i.e. neither 'M' or 'F' is selected. We would much prefer this to the 'indeterminate' option which does not reflect the lived experience of our students.

## 7. Conclusion

In saying all the above, we aim to highlight that the current process to change sex on birth certificates is inequitable for our students. It is complicated, likely to be time-consuming and expensive, offers a non-neutral view on people undergoing medical procedures to alter their bodies to the satisfaction of the Family Court and medical experts, and reduces the voice and lived experience of the students which it affects. We strongly advise that the select committee recommends changing these clauses so that adult applicants, like the students we represent, can change sex on their birth certificate to male, female or simply request the section be left blank, without resort to the Family Court and medical experts.

## 8. References

Ainsworth, C. (2015) "Sex redefined". *Nature*, 518, 288–291. doi:10.1038/518288a.

"Michael" v Registrar- General of Births, Deaths and Marriages (2008) 27 FRNZ 58 (FC).

NZUSA. (2017). "Income and Expenditure Report: the cost of being a student in New Zealand". <http://www.students.org.nz/studentreport>.

## 9. Contact

We would greatly appreciate the opportunity to discuss submission in more detail in person. Please contact us in the event further clarification of this submission is needed, or to arrange for VUWSA and UniQ to make an oral submission.

**Bethany Paterson    Marlon Drake**  
**Welfare Vice President    President**

Victoria University of Wellington Students' Association  
Te Rōpū Tauira o te Kura Wānanga o te Upoko ō te Ika a Māui