



22 September 2021

S21.23 oral

Oral submission to the Governance and Administration Committee on the Inquiry into Supplementary Order Paper 59 on the Births, Death, Marriages and Relationships Bill

Presenters:

Rosemary Du Plessis, Judith Sutherland and Rae Duff via zoom

Governance and Administration Committee

Ian McKelvey, Chairperson (National); Rachel Boyack, Deputy Chair (Labour); Naisi Chen (Labour); Deborah Russell (Labour).

Members not present: Nicola Grigg (National).

Additional attendees: Dr Elizabeth Kerekere (Green); Rachel Brooking (Labour); Louisa Wall (Labour)

Introduction

1. Presenting this submission are Rosemary Du Plessis and Judith Sutherland. Rae Duff, NCWNZ Parliamentary Watch Committee, is in attendance. We welcome your questions on this submission.

Summary of submission

2. NCWNZ considers that it is important to simplify the processes involved in changing the sex recorded on people's birth certificates. It is broadly in support of the amendments to the Births, Deaths, Marriages and Relationships Bill included in Supplementary Order Paper 59. It supports changes to nominated sex on birth certificates via statutory declaration rather than the current Family Court processes.

Registration of a nominated sex

Clause 22A (1)(2) – Eligibility to apply for registration of nominated sex

3. NCWNZ considers that the eligibility criteria identified - that the person's birth is registered under the Act and that they are 16 years or older - are appropriate criteria. It also considers it

fundamental that any guardian applying for a change to a child's nominated sex should have the consent of the child. However, we expect that there will be careful examination of any application for registration of nominated sex when people are under 16 years of age.

4. NCWNZ considers that changes to any existing law in Aotearoa New Zealand should not undermine people's existing rights. Permanent residents born outside Aotearoa New Zealand can currently use the Family Court to obtain legal documents that record their self-identified sex. The changes included in SOP 59 could remove the sole legal option they can use to get a Declaration as to Sex. Administrative processes are necessary to ensure that permanent residents born outside New Zealand can retain their right to legal recognition of their self-identified sex.

Clause 22B(1a)(1b) – Application by eligible person for registration of their nominated sex

5. NCWNZ considers that it is appropriate that the application for registration of a nominated sex should specify male, female or any other sex or gender. Members thought it was important that the sex or gender that people could nominate on their birth certificates should include takatāpui, fa'afafine and other terms used by different cultural groups in Aotearoa New Zealand. Members thought it was very important that possible sex or genders should be culturally inclusive.

Clauses 22B(2) and 22C(2)

6. NCWNZ considers that individuals who change the sex recorded on their original birth certificate should be able to apply in the future to change the nominated sex on their birth certificate. It is important that any record of these changes is only accessible to the individual concerned and the Registrar General, or those to whom they delegate the right to review this information.

Processes to apply for applications for children and young people

7. Clause 22B(1)(c) requires that applications by 16- and 17-year-olds who have never been married, in a civil union or de facto relationship, be accompanied by written consent from their guardian or a letter of support from another person of a type specified in the regulations. NCWNZ favours having the same processes for applications by 16 and 17-year-olds, regardless of their relationship with an intimate partner.
8. Clause 22C(1)(c) requires that applications by guardians of children under 16 be accompanied by a letter of support by a person of a type specified in regulations. NCWNZ considers that there is some value in requiring a letter of support from a third party when guardians are making an application for registering the nominated sex of a child under 16 years. Some members were concerned about the requirement that only guardians can make an application for under 16 year olds. They argued that the requirement that guardians make the application discriminates against young people with unsupportive or transphobic parents. They proposed that applicants under 16 be required to demonstrate their awareness and ability to make an informed decision, with support from EITHER a qualified third person, OR a guardian.

Clause 22D Registrar-General must register nominated sex if requirements met

9. NCWNZ considers that the right to appeal against the decision of the Registrar General is absolutely necessary.

Clause 22E Effect of registration of nominated sex

10. The majority of NCWNZ members who had input into this submission thought that changes to the nominated sex on a birth certificate should not be recorded on the certificate. However, members of one NCWNZ branch considered that birth certificates are historic documents that record the sex assigned to a person at birth, and that it continue to be recorded on the birth certificate. While they supported people's rights to legally change their nominated sex, they thought that any changes should be added as amendments to the original document.

Conclusion

11. NCWNZ appreciates this opportunity to comment on Supplementary Order Paper 59. It regrets the time available for consultation with its members was very limited, given the short period between the availability of the Order Paper and the deadline for submissions. Important issues relating to sex and gender and their relationship are raised by this legislation, and there was insufficient time for community consultation.

Questions

Thank you from Deputy Chair Rachel Boyack.

Q: Rachel Boyack. An earlier submitter asked whether there would be a need to amend other documents by someone who is associated with a person who changes their gender on their birth certificate – for example *if a parent changes their gender should there be changes made to their children's birth certificates?*

A: Rosemary responded saying documents relating to an individual should not require any changes to those of another related person. People make choices for themselves exercising their individual human rights. This should not entail changing legal documents relating to related persons.

Q: Louisa Wall: Māori Women's Welfare League have always had an open door for members and never considered membership based on gender. NCWNZ has existed for over 100 years and what is its position on gender and membership?

A: Rosemary replied that in making the submission they had drawn as always on NCWNZ policy and that a remit discussed and approved at its 2019 conference introduced new policy 18.10.4 in 2019:

That NCWNZ acknowledges the rights of people of all genders, including those who identify as female, male or non-binary and further, NCWNZ recognises women as women, and trans men as men.

Rosemary reiterated that there was insufficient time to fully consult with its members and that she hoped that there would be more time available in the 18 months before the proposed processes were implemented for further community consultation on issues raised in the submission.

Chairperson Ian McKelvey closed off the session thanking NCWNZ for its concise submission.