



Joint Internal Affairs and Corrections briefing

Hon Tracey Martin, Minister of Internal Affairs

Hon Kelvin Davis, Minister of Corrections

Title: Policy briefing: Births, Deaths, Marriages, and Relationships Registration Bill and Corrections Regulations 2005—responding to concerns about placement of transgender prisoners

Date: 27 November 2018

Key issues

The Governance and Administration Committee's report on the Births, Deaths, Marriages, and Relationships Registration Bill (the Bill) recommends replacing the current Family Court process to update the nominated sex on a birth certificate with an administrative process based on self-identification. Concerns have been raised about whether the self-identification process is sufficiently robust for Corrections' purposes.

The Committee has requested an update on 19 December 2018 on issues raised by National Party members in the Committee's report, including the transgender prisoner issue.

The Department of Internal Affairs and the Department of Corrections have identified complementary amendments (to the Bill and to the Corrections Regulations 2005) to address the concern raised. These recommendations will be included in the draft advice for the Committee, which Ministers will consider at the meeting requested by the Attorney-General in the week beginning 10 December 2018.

Action sought

(Minister of Corrections): Approve the Department of Corrections' recommendation to revoke regulation 65(3) of the Corrections Regulations 2005 (the "birth certificate rule"); and

(Minister of Internal Affairs): Approve the Department of Internal Affairs' recommendation to amend clause 221 of the Births, Deaths, Marriages, and Relationships Registration Bill to reserve Corrections' right to determine a prisoner's sex for the purposes of determining their placement in a women's or men's prison or quarters.

Timeframe

By 3 December 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Department of Internal Affairs				
Rachel Groves	Director Policy Services	s9(2)(a)		
Cathy Nijman	Senior Policy Analyst			✓
Department of Corrections				
s9(2)(a)	Acting General Manager Policy	s9(2)(a)		
Derek Senior	Principal Policy Adviser			✓

Return to	Cathy Nijman, Level 9, St Paul's Square, 45 Pipitea Street		
Internal Affairs' reference	FYHHWTPX5PK5-1235327737-338	Corrections' reference	B3782
Internal Affairs' Ministerial database reference	IA201801134		

Purpose

1. This briefing sets out the Department of Internal Affairs' (the Department) and the Department of Corrections' (Corrections) recommendations for complementary amendments to the Births, Deaths, Marriages, and Relationships Registration Bill (the Bill) and the Corrections Regulations 2005 (the Regulations) relating to Corrections' placement and management of transgender prisoners.

Executive summary

2. The Governance and Administration Committee (the Committee) has recommended amendments to the Bill to replace the current Family Court process to update the nominated sex on a birth certificate with an administrative process based on self-identification.
3. Concerns have been raised about whether the self-identification process is sufficiently robust for Corrections' purposes. Particular concerns exist around a small cohort of trans-women prisoners whose sexual offending history means they are currently ineligible to apply to be transferred to a women's prison.
4. The Department and Corrections have identified complementary amendments to the Bill and the Regulations to address these concerns. First, Corrections recommends revoking the mandatory requirement for a prisoner to be placed in a women's or men's prison based in the sex on their birth certificate. Second, the Department recommends amending clause 221 of the Bill to confirm it does not limit Corrections' right to determine what prison an offender should be placed in.
5. The Committee has requested a briefing on 19 December 2018 on issues raised by National Party members in the Committee's report on the Bill, including the transgender prisoner issue. The Attorney-General has requested a meeting to discuss amendments to the Bill the Government may wish to promote before the advice to the Committee is finalised.
6. The Department, in consultation with Corrections, will prepare a draft of the advice to the Committee, including but not limited to the recommendations in this briefing, by 5 December 2018.

Background

Births, Deaths, Marriages, and Relationships Registration Act 1995

7. Sections 28 and 29 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (the 1995 Act) enable eligible individuals to obtain a Family Court declaration to update the nominated sex on their birth certificate (see **Appendix A**).

Births, Death, Marriages and Relationships Registration Bill

8. The Bill re-enacts the 1995 Act in an up-to-date and accessible form. The Bill was introduced on 10 August 2017. It included some policy changes, but not to the Family Court process to update the nominated sex on a birth record. The Bill was referred to the Committee on 5 December 2017.

Petition 2014/86 of Allyson Hamblett

9. On 11 August 2017, the day after the Bill was introduced, the previous Committee tabled its unanimous report in support of Petition 2014/86 of Allyson Hamblett (the Petition). The Petition called for the Family Court process set out in the 1995 Act to be replaced by an administrative process based on self-identification.
10. The Government response to the Petition was tabled on 15 February 2018; it confirmed the Committee would consider the issues raised by the Petition. The Minister of Internal Affairs had earlier noted in her first reading speech the Committee would review current legislative and policy settings in relation to the trans and gender diverse community's call for a change to the law.

Governance and Administration Committee report and recommendations

11. Submissions on the Bill closed on 2 March 2018. Publicity surrounding the Petition, the Government response, and a Green Party campaign in favour of self-identification meant 51 of the 64 direct submissions focused on the self-identification issue.
12. The Committee presented its report on the Bill on 10 August 2018. It supported replacing the Family Court process with a statutory declaration to the Registrar-General, with no requirement for supporting medical evidence. However, the Committee's recommendation has caused some to question whether a legal change of nominated sex based on self-identification will constrain Corrections' ability to manage and house prisoners to ensure all prisoners' safety.

The Corrections Regulations 2005 have detailed rules concerning the placement of prisoners in a women's or men's prison

13. Sections 65A–65E of the Regulations (**Appendix B**) determine how Corrections manages prisoners of different sexes. In September 2013, Cabinet approved changes to the Regulations that included a requirement for a prisoner to be placed in a prison that accords with the sex on their birth certificate "including those who have obtained a Family Court declaration ... under the [1995 Act]" [SOC Min (13) 21/5].
14. The rules concerning the placement of transgender prisoners apply equally to trans-women (born male but who identify as female) and trans-men (born female but who identify as male).

Female and male prisoners must be housed in separate prisons, or in separate secured quarters ...

15. Questions over whether a prisoner is female or male, and what prison they should be housed in, are rare. As at 7 November 2018, 36 prisoners out of a total of approximately 10,000 identified as transgender. All are male to female trans-women.

... but a prisoner can apply to have their sex determined in accordance with their preferred gender identity ...

16. A prisoner who disagrees with Corrections' determination of their sex for the purposes of placement in a women's or men's prison can apply for a review. The factors Corrections must take into account as part of the review include:¹
 - the prisoner's preferences;

¹ Corrections Regulations 2005, r 65C(3). The language mirrors the language in sections 28 and 29 of the Births, Deaths, Marriages, and Relationships Registration Act 1995.

- whether, and for how long, the prisoner has lived in their nominated sex;
 - any evidence the prisoner is able to provide concerning their intention to live permanently in their nominated sex; and
 - whether the prisoner has undergone, or is undergoing, medical treatment to acquire a physical conformation that accords with the gender identity of their nominated sex.
17. Seven trans-women are currently being held in a women's prison, and one has expressed an interest in moving to a women's prison. However, it is not unusual for male-to-female transgender prisoners to indicate they wish to remain in a men's prison. Currently, 17 trans-women have chosen not to apply to be transferred to a women's prison.

... unless the prisoner has been convicted of, or is on remand for, a serious sexual offence against a person of their nominated sex ...

18. A prisoner is ineligible to challenge Corrections' determination if they have a conviction for or have been charged with a serious sexual offence against a person of their nominated sex. The Corrections Regulations define a serious sexual offence as an offence under Part 7 of the Crimes Act 1961 that is punishable by a period of imprisonment of seven years or more.²
19. As at 7 November 2018, 10 of the 36 prisoners who identify as trans-women are ineligible to apply for a change in determination due to previous sexual offending against female victims. All are being held in men's prisons.

...however, the sex on a prisoner's birth certificate overrides all other considerations ...

20. If a prisoner provides a copy of their birth certificate, the Regulations require Corrections to place the prisoner in a prison that accords with the sex on the birth certificate. Corrections do not have any discretion.³ The birth certificate overrides all other considerations, including a prisoner's offending history.

... although this provision (the "birth certificate rule") has never been used

21. The fact the "birth certificate rule" has never been used is not surprising. The Department is aware the trans and gender diverse community view the Family Court process as bureaucratic, expensive, and intrusive. On average, fewer than 20 applications are received annually.⁴
22. Corrections notes the process outlined in the Regulations provides an alternative, simpler way for a transgender prisoner to seek a change in their determined sex to enable them to be placed in a prison that reflects their preferred gender identity.

² (Dis)qualifying offences include sexual violation (eg, rape; unlawful sexual connection), assault with intention to commit sexual violation, coerced sexual conduct, sexual conduct with a child under 12 or young person under 16 (including offences committed outside New Zealand), sexual exploitation of a person with significant impairment, and organising or promoting child sex tours.

³ Corrections Regulations 2005, r 65(3). This mandatory requirement (the "birth certificate rule") applies to both the initial determination of a prisoner's sex and any subsequent review. It applies whether the sex on the birth certificate is the sex recorded at birth or if reflects a later change of nominated sex (via a Family Court declaration).

⁴ Department of Internal Affairs' records identify 177 applications in total since June 2008. One hundred and thirty five Family Court orders have been received, and 122 applications for new birth certificates.

Implications of the proposed statutory declaration process for Corrections' placement and management of transgender prisoners, and options for mitigating any perceived increase in risk

23. The amendments to the Regulations relating to the housing of transgender prisoners, including the "birth certificate rule", reflect the statutory criteria in sections 28 and 29 of the 1995 Act. It was considered these criteria, including the requirement for medical evidence, provided a robust and tested framework against which Corrections could assess the bona fides, or genuineness, of prisoner applying for a determination of their sex based on their preferred gender identity.
24. Although the proposed statutory declaration process will make it easier for someone to change the nominated sex on their birth certificate, it does not change the basic principles underlying the current law (see **Appendix C**). However, the Department and Corrections acknowledge concerns have been raised about whether the self-identification process is sufficiently robust for Corrections' purposes.

Corrections has identified two issues they believe need to be addressed

25. First, Corrections notes transgender prisoners whose sexual offending history makes them ineligible to apply for a review of their determined sex for placement in a women's or men's prison could complete a statutory declaration to change the nominated sex on their birth certificate.
26. The "birth certificate rule" means Corrections would be required to transfer the prisoner to a prison that accords with the sex on the birth certificate. This presents an issue where a transgender prisoner poses a significant risk to persons of their nominated sex.
27. Corrections has robust procedures in place to ensure all prisoners' safety. However, the fact most transgender prisoners identify as trans-women coupled with the small size of the women's prison estate, and the even more limited space for managing high risk prisoners in women's prisons, gives rise to particular concerns.
28. Corrections notes options for managing high risk prisoners in the absence of alternatives—for example, directed (compulsory) segregation—give rise to other concerns and may not be practicable as a long-term management tool.⁵
29. The second issue concerns transgender prisoners who do not want to be transferred to prison that reflects their preferred gender identity. As noted in paragraph 17 above, 17 of the 36 prisoners who currently identify as trans-women have not applied for a determination of their sex that would enable them to be transferred to a women's prison.
30. However, if a transgender prisoner in this situation took advantage of the simplified self-identification process to update the nominated sex on their birth certificate, Corrections would be obliged to transfer the prisoner to a prison that accords with the sex on their birth certificate. The "birth certificate rule" would override a prisoner's personal preference about being housed in a women's or men's prison.

⁵ Some transgender prisoners with sexual offending histories are serving lengthy sentences meaning they could be segregated for several years. This raises significant prisoner welfare and human rights concerns; and the practicalities of managing prisoners under segregation could limit their access to rehabilitation programmes.

Recommendations to address the issues Corrections has identified

Minister of Corrections: Revoke the "birth certificate rule" in the Corrections Regulations 2005

31. Corrections recommends revoking the "birth certificate rule" (r 65(3)). Corrections would include the amendment alongside other changes to better align the Regulations relating to the placement of transgender prisoners with good operational practice. Corrections will brief the Minister of Corrections separately on its proposals for amending the Corrections Regulations, and the process involved.
32. A transgender prisoner would still be able to include a new birth certificate with their nominated sex in support of an application to be transferred to a prison that matches their self-identified gender identity. However, the birth certificate would no longer be determinative.
33. On an application for review, Corrections would determine a prisoner's sex for the purposes of placement in a women's or men's prison in accordance with the existing criteria in the Regulations. This means all serious sexual offenders would be ineligible to apply for a review of their determined sex, irrespective of whether they had changed the nominated sex on their birth certificate. It also means Corrections could give due weight to a transgender prisoner's personal preference not to be transferred to a prison that reflects the nominated sex on their birth certificate.
34. Revoking the "birth certificate rule" will have no impact on existing transgender prisoners as none has presented a birth certificate in support of a review of their determined sex. If one of the 10 serving prisoners whose sexual offending history makes them ineligible to apply for a review did change their nominated sex on their birth certificate they would remain ineligible (and would remain in a men's prison).

Minister of Internal Affairs: Amend clause 22I of the Bill to confirm it does not limit Corrections' right to determine what prison an offender should be placed in

35. The Department recommends amending clause 22I as follows:

22I New information not to affect general law

- (1) Despite sections 22B to 22G and section 23, the sex of every person must continue to be determined by reference to the general law of New Zealand
 - (2) *Nothing in sections 22B to 22G and section 23 affects the ability of the chief executive of the department responsible for the administration of the Corrections Act 2004 to determine a prisoner's sex for the purposes of their placement in a men's or women's prisons or quarters.*
36. The amendment could be made by supplementary order paper at the Committee of the Whole House. It addresses Corrections' concern there could a legal challenge if it made a determination of a prisoner's sex that did not accord with the prisoner's self-identified gender identity and/or their registered birth record.

37. s9(2)(g)(i)

38. The Department confirms its previous advice that this theoretical risk is not supported by the evidence. Several countries have adopted similar self-identification laws over the last 10 years without problems. Neither the Department nor Corrections has been able to identify a single instance of a non-bona fide application by a male offender changing the nominated sex on their birth certificate to try and get access to a women's prison.
39. For completeness, the Department also confirms its previous advice that the checks and balances within the system as a whole (including the requirements for witnessing statutory declarations, the restriction on multiple changes of nominated sex, and the offence provisions in the Bill) are sufficient to militate against any perceived increase in risk of non-bona fide applications.

Timeline and next steps

40. The Committee has requested a briefing on 19 December 2018 on issues raised by National Party members in the Committee's report on the Bill, including the transgender prisoner issue.
41. s9(2)(h)
[REDACTED]
[REDACTED]
[REDACTED]
42. The Department, in consultation with Corrections, will prepare a draft of the advice to the Committee, as a starting point for discussion on amendments to the Bill the Government may wish to promote (including but not limited to the recommendations in this briefing). The Department forward the draft advice to Minister of Internal Affairs by 5 December 2018.
43. Corrections will separately brief the Minister of Corrections on the process for amending the Corrections Regulations 2005.
44. We can provide you with further information on the issues raised in this briefing if required.

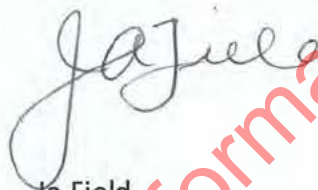
Recommendations

45. We recommend that you:

- a) Minister of Corrections: **approve** the Department of Corrections' recommendation to revoke regulation 65(3) of the Corrections Regulations 2005 (the "birth certificate rule"); and **Yes/No**
- b) Minister of Internal Affairs: **approve** the Department of Internal Affairs' recommendation to amend clause 221 of the Births, Deaths, Marriages, and Relationships Registration Bill to reserve Corrections' right to determine a prisoner's sex for the purposes of their placement in a women's or men's prison or quarters. **Yes/No**



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Hon Tracey Martin
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Hon Kelvin Davis
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Appendix A: Births, Deaths, Marriages, and Relationships Registration Act 1995, ss 28, 29

Appendix B: Corrections Regulations 2005, rr 65–65E

Appendix C: Change of nominated sex: Statutory declaration and Family Court process compared

Appendix A: Births, Deaths, Marriages, and Relationships Registration Act 1995, ss 28, 29

Part 5
Declarations of Family Court as to sex

- 28 Declarations of Family Court as to sex to be shown on birth certificates issued for adults**
- (1) Subject to subsection (3), the Family Court may, on the application of an eligible adult (the **applicant**), declare that it is appropriate that birth certificates issued in respect of the applicant should contain the information that the applicant is a person of a sex specified in the application (in subsection (3) referred to as the **nominated sex**).
 - (2) The court must cause a copy of the application to be served on—
 - (a) the Registrar-General, if the applicant's birth is registered or is registrable under this Act but is not yet registered; and
 - (b) any other person who, in the court's opinion, is interested in it or might be affected by the granting of the declaration.
 - (3) The court shall issue the declaration if, and only if—
 - (a) it is satisfied either that the applicant's birth is registrable under this Act but is not yet registered, or that there is included in the record of the applicant's birth—
 - (i) information that the applicant is a person of the sex opposite to the nominated sex; or
 - (ii) information that the applicant is a person of indeterminate sex; or
 - (iii) no information at all as to the applicant's sex; and
 - (b) it is satisfied that the applicant is not a person of the nominated sex, but—
 - (i) has assumed and intends to maintain, or has always had and intends to maintain, the gender identity of a person of the nominated sex; and
 - (ii) wishes the nominated sex to appear on birth certificates issued in respect of the applicant; and
 - (c) either—
 - (i) it is satisfied, on the basis of expert medical evidence, that the applicant—
 - (A) has assumed (or has always had) the gender identity of a person of the nominated sex; and
 - (B) has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and
 - (C) will, as a result of the medical treatment undertaken, maintain a gender identity of a person of the nominated sex; or

- (ii) it is satisfied that the applicant's sexual assignment or reassignment as a person of the nominated sex has been recorded or recognised in accordance with the laws of a State for the time being recognised for the purposes of this section by the Minister by notice in the *Gazette*.

Section 28(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 28(1): amended, on 24 January 2009, by section 16(1) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 28(2): substituted, on 24 January 2009, by section 16(2) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 28(3)(a): amended, on 24 January 2009, by section 16(3) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

29 Declarations of Family Court as to appropriate gender identity for children

- (1) Subject to subsections (3) and (4), the Family Court may, on the application of the guardian of an eligible child (the **child**), declare—
 - (a) that it is in the child's best interests to be brought up as a person of a sex specified in the application (in subsection (3) referred to as the **nominated sex**); and
 - (b) that any birth certificate issued in respect of the child should contain the information that the child is a person of the sex specified in the application.
- (2) The court must cause a copy of the application to be served on—
 - (a) the Registrar-General, if the child's birth is registered or is registrable under this Act but is not yet registered; and
 - (b) any other person who, in the court's opinion, is interested in it or might be affected by the granting of the declaration.
- (3) The court shall issue the declaration if, and only if,—
 - (a) it is satisfied either that the child's birth is registrable under this Act but is not yet registered, or that there is included in the record of the child's birth—
 - (i) information that the child is a person of the sex opposite to the nominated sex; or
 - (ii) information that the child is a person of indeterminate sex; or
 - (iii) no information at all as to the child's sex; and
 - (b) it is satisfied that the child is not a person of the nominated sex, but—
 - (i) the guardian intends to bring the child up as a person of the nominated sex; and
 - (ii) wishes the nominated sex to appear on birth certificates issued in respect of the applicant; and

- (c) it is satisfied, on the basis of expert medical evidence, that the child—
 - (i) has already undergone; or
 - (ii) if the court grants the declaration will undergo,—
medical treatment reasonably necessary to enable the child to assume and maintain the gender identity of a person of the nominated sex; and
 - (d) it is satisfied, on the basis of expert medical evidence, that the child's physical conformation and gonadal and genital development are such that it is more likely that the child will be able (after undergoing any of the medical treatment not yet undergone) to assume the gender identity of a person of the nominated sex than it is that the child will be able to assume the gender identity of a person of the opposite sex (with or without medical intervention).
- (4) The declaration shall specify (with as much particularity as is possible in all the circumstances) all medical treatment (if any) that the child has not yet undergone that in the court's opinion (reached in the light of the expert medical evidence) is reasonably necessary to enable the child's successful assumption and maintenance of the gender identity of a person of the nominated sex.

Section 29(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 29(1): amended, on 24 January 2009, by section 17(1) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 29(2): substituted, on 24 January 2009, by section 17(2) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 29(3)(a): amended, on 24 January 2009, by section 17(3) of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Released under the Official Information Act 1982

Appendix B: Corrections Regulations 2005, rr 65–65E

Part 7
Prisoner treatment and welfare

Accommodation

65 Accommodation of male and female prisoners

- (1) Male and female prisoners must be detained—
 - (a) in separate prisons; or
 - (b) within the same prison in separate quarters that are secured by different locking systems.
- (2) Where there is doubt about whether a prisoner is male or female, the chief executive must determine whether the prisoner is a male or female prisoner for the purpose of subclause (1).
- (3) If a prisoner supplies a copy of the prisoner's birth certificate that records the prisoner's sex as female or male, the determination under subclause (2) must be made in accordance with that sex.
- (4) If a prisoner supplies a copy of the prisoner's birth certificate that records the prisoner's sex as indeterminate, or records no sex, the chief executive must—
 - (a) undertake a review of the determination made under subclause (2); and
 - (b) inform the prisoner that a review is being undertaken.
- (5) If a prisoner is not satisfied with the determination made under subclause (2), the prisoner may make an application for review under regulation 65B.

Regulation 65: replaced, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489).

65A Interpretation

In regulations 65B to 65D,—

nominated sex means the sex, whether male or female, nominated by a prisoner

sentence expiry date has the same meaning as in section 4(1) of the Parole Act 2002.

serious sexual offence means a sexual offence under Part 7 of the Crimes Act 1961 that is punishable by a period of imprisonment of 7 years or more.

Regulation 65A: inserted, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489).

65B Prisoner may apply for review of determination as to sex

- (1) A prisoner may apply to the chief executive for a review of the determination made under regulation 65(2).
- (2) However, a prisoner may not make an application under subclause (1) if the prisoner—
 - (a) is serving a sentence of imprisonment for a serious sexual offence against a person of the prisoner's nominated sex; or
 - (b) is remanded in custody charged with, or awaiting sentence for, a serious sexual offence against a person of the prisoner's nominated sex; or
 - (c) has served a sentence of imprisonment for a serious sexual offence against a person of the prisoner's nominated sex, and the sentence expiry date is 7 years or less before the date on which the application is made.

- (3) An application must state the prisoner's nominated sex for the purpose of regulation 65(1).

Regulation 65B: inserted, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489)

65C Review of determination as to sex

- (1) This regulation applies if—
- (a) a prisoner applies under regulation 65B for a review of a determination made under regulation 65(2); or
 - (b) the chief executive is required by regulation 65(4) to undertake a review of the determination made under regulation 65(2).
- (2) The chief executive must review the determination as soon as is reasonably practicable and—
- (a) confirm the original determination that the prisoner is a male or female prisoner; or
 - (b) determine that the prisoner should be recognised as being of the opposite sex to that originally determined.
- (3) In reviewing a determination, the chief executive must consider the following matters:
- (a) the prisoner's nominated sex; and
 - (b) any evidence provided by the prisoner about whether, and, if so, for how long, the prisoner has lived as a person of the nominated sex; and
 - (c) any evidence provided by the prisoner about whether the prisoner intends to live permanently as a person of the nominated sex; and
 - (d) the advice of—
 - (i) a senior employee of the department who has responsibility for custodial services; and
 - (ii) a senior employee of the department who has responsibility for health services for prisoners; and
 - (iii) any other person that the chief executive considers has relevant expertise; and
 - (e) any advice from a medical practitioner who has seen the prisoner; and
 - (f) any evidence provided by the prisoner about whether the prisoner has undergone, or is undergoing, medical treatment to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and
 - (g) the safety and well-being of the prisoner; and
 - (h) the safety and well-being of other prisoners (of either sex) with whom the prisoner may be accommodated; and
 - (i) the security of the prison; and
 - (j) whether any determination could make it more likely that the prisoner will be segregated from other prisoners in accordance with section 57 to 60 of the Act; and

- (k) the likely effect of any determination on the prisoner's rehabilitation, including the prisoner's access to special treatment programmes; and
- (l) any other matters raised by the prisoner.

Regulation 65C: inserted, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489).

65D Further review where birth certificate inconclusive

- (1) Where the chief executive has made a determination under regulation 65C(2) in any case to which regulation 65C(1)(b) applies, a prisoner may apply to the chief executive for a further review of the determination.
- (2) Regulation 65C applies with any necessary modifications to the further review.

Regulation 65D: inserted, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489).

65E Expiry of determination

- (1) A determination made under regulation 65(2) or 65C(2) in respect of a prisoner applies until the date on which the prisoner is first released from prison following the determination (excluding any temporary release from custody or temporary removal from prison under section 62 of the Act).
- (2) However, if the determination was made under regulation 65C(2) following an application for a review under regulation 65B, the chief executive must revoke the determination if—
 - (a) the prisoner supplies a copy of the prisoner's birth certificate and requests to be recognised in accordance with the sex (if male or female) recorded on the birth certificate; or
 - (b) the prisoner is charged with a serious sexual offence against a person of the same sex as the prisoner's nominated sex; or
 - (c) the chief executive determines, on reasonable grounds, that 1 or more of the factors on which the determination was based have changed to such an extent that the determination is no longer appropriate.
- (3) If the chief executive revokes a determination under subclause (2), the original determination that applied to the prisoner before the prisoner applied for a review under regulation 65B is reinstated.

Regulation 65E: inserted, on 10 February 2014, by regulation 4 of the Corrections Amendment Regulations (No 2) 2013 (SR 2013/489).

Appendix C: Change of nominated sex: Statutory declaration and Family Court process compared

BDMRRA 1995 – Family Court declaration	BDMRR Bill – Statutory declaration
<ul style="list-style-type: none"> Lives and will continue to live as someone of the nominated sex (intended permanent change) 	<ul style="list-style-type: none"> Only one application permitted unless special reasons exist (intended permanent change)
<ul style="list-style-type: none"> Available to eligible adults and children 	<ul style="list-style-type: none"> Available to eligible adults and children
<ul style="list-style-type: none"> BDMRRA refers to “medical treatment” but Family Court does not apply a minimum threshold, and there is no requirement for some (or any) surgery 	<ul style="list-style-type: none"> Medical evidence not required, but an application by or on behalf of someone under age 18 will require a supporting recommendation from a health professional
<ul style="list-style-type: none"> Court can attach conditions to an application on behalf of someone under age 18 (and if the conditions aren’t met, the Registrar-General can delete the change from the birth record) 	<ul style="list-style-type: none"> If an application is made on behalf of a child (under age 16) by their legal guardian, the child must confirm the change at age 18; Registrar-General could delete the change if not confirmed
<ul style="list-style-type: none"> Female to male, or male to female 	<ul style="list-style-type: none"> Addition of X (unspecified) to recognise non-binary gender identities, and I (intersex)
<ul style="list-style-type: none"> Registrar-General must give effect to Court declaration 	<ul style="list-style-type: none"> Registrar-General must accept a statutory declaration that meets the statutory criteria
<ul style="list-style-type: none"> Right of appeal to the Family Court 	<ul style="list-style-type: none"> Right of appeal to the Family Court
<ul style="list-style-type: none"> Section 33: New [nominated sex] information not to affect general law of New Zealand 	<ul style="list-style-type: none"> Clause 22I: New [nominated sex] information not to affect general law of New Zealand

Released under the Official Information Act 1982