

# DRAFT FOR CONSULTATION

## **Human Rights (Gender Identity Protection and Recognition) Bill**

Member's Bill

**Explanatory note**

### **General Policy Statement**

*This Bill amends section 21 of the Human Rights Act 1993 to provide for “gender identity” to be included as one of the prohibited grounds of discrimination. The Bill also amends the Births, Deaths, Marriages, and Relationships Registration Act 1995 to allow sex information on birth certificates to be changed by statutory declaration.*

### ***Human Rights Act 1993***

*The prohibited grounds in the Human Rights Act include discrimination on grounds of sex, sexual orientation and disability. In 2006, the Solicitor-General was of the opinion that it is unnecessary to amend the Human Rights Act to include “gender identity” as a prohibited ground for discrimination. His rationale is that overseas jurisprudence signals protection of some types of transgender people in cases of sex discrimination, and that the New Zealand courts are unlikely to take a narrow interpretation of sex discrimination in New Zealand [Cheryl Gwyn, Acting Solicitor-General, 2 August 2006; Ref ATT/395/9]. The problem with this interpretation is that while, arguably, transgender people may be afforded protection in cases of discrimination based on sex, they are not afforded protection in cases where they are discriminated against because they are transgender (and not cis-gender, a term commonly used to denote all people who are not transgender). This Bill therefore corrects the omission.*

## ***Births, Deaths, Marriages and Relationships Registration Act 1995***

*At present, people may alter the sex specified on their birth certificates under certain medical conditions by court declaration. There are two key problems with current law. Firstly, empowering the courts to make decisions on individual's sex removes the right of transgender people to self-identify and this is arguably discriminatory under the Human Rights Act 1993. Secondly, many transgender people do not meet the high thresholds for medical interventions under existing law; using medical thresholds to define a person's gender is an outdated practice in terms of modern transgender care.*

*The current law exists to prevent same sex couples from using a gender identity change as a loophole for marriage and with changes to allow same sex marriage; the policy is no longer relevant.*

*Without the correct sex information on their birth certificates, many transgender people are not recognised as their preferred gender in New Zealand law and they are not able to enjoy the same rights and freedoms as others in New Zealand society, including access to education, employment and health.*

*The amendment enables the Registrar-General to accept changes to sex information, in the same manner as for name changes. This is consistent with current policy on changes to sex information on peoples' passports and drivers' licences. A birth certificate being a person's core identity document, this change will allow transgender people to have their chosen gender identity recognised in New Zealand law.*

### **Clause by clause analysis**

*Clause 1* is the title provision.

*Clause 2* provides for the Bill to come into force on the day after the date on which it receives Royal Assent.

*Clause 3* sets out the purpose of the Bill.

*Clause 4* provides that gender identity is a prohibited ground for discrimination in the Human Rights Act 1993.

*Clauses 5 and 6* provide for changes to the Births, Deaths, Marriages, and Relationships Registration Act 1995 to allow people to more easily change the sex marker on their birth certificates.

*Louisa Wall, Member of Parliament*

*Louisa Wall*

# **Human Rights (Gender Identity Protection and Recognition) Bill 2015**

Member's Bill

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

This Act is the Human Rights (Gender Identity Protection and Recognition) Act which amends the Human Rights Act 1993 and the Births, Deaths, Marriages and Relationships Registration Act 1995.

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **3 Purpose**

The purpose of this Bill is to include “gender identity” as a prohibited ground for discrimination in the Human Rights Act 1993 and to allow people to apply to the Registrar-General to register a sex change on their birth certificate.

## **Part 1**

### **Protection of gender identity rights**

#### **4 New section inserted**

##### **“21 Prohibited grounds for discrimination**

“1 (n) gender identity, which means the identification by a person with a gender that is different from the birth gender of that person, or the gender assigned to that person at birth, and may include persons who call themselves transgender, transsexual, transvestite, cross-dresser, or other description.”

## **Part 2**

### **Recognition of gender identity**

#### **5 Sections 27A, 28, 29, 30, 31 are repealed**

#### **6 New sections 27A to 31 inserted**

##### **“28 Definitions for sections 28 to 32**

“In sections 28 to 31—

“**eligible person** means a person—

“(a) whose sex is registered; or

“(b) a person whose birth is registrable under this Act but whose sex is not yet registered:

“(c) who is a New Zealand citizen or is entitled, under the Immigration Act 2009, to be in New Zealand indefinitely.

“**guardian** means—

“(a) the guardians of a person; or

“(b) if any guardians are unavailable, the other guardian or guardians; or

“(c) if, on the application of 1 guardian, the Family Court has consented to a change in the person’s sex, that guardian; or

“(d) if all guardians are unavailable, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

“**nominated sex** means a sex of the following types —

“(a) male; or

“(b) female; or

“(c) intersex

##### **“28 Application for registration of sex change**

“(1) The following persons may apply for registration of a sex change:

“(a) an eligible person who is 18 years of age or older:

“(b) an eligible person who is younger than 18 years of age but who is or has been in a marriage, in a civil union, or in a de facto relationship:

“(c) the guardian of an eligible person to whom neither of paragraph (a) or (b) applies.

“(2) An application for registration of a sex change is made by paying the prescribed fee (if any) and depositing with the Registrar-General a statutory declaration made, in accordance with subsection (3), by an eligible person or the guardian of an eligible person on a form provided by the Registrar-General for the purpose (accompanied by the eligible person’s written consent if the eligible person is 16 years of age or older and the application was made by the eligible person’s guardian)

“(3) The eligible person or the guardian of the eligible person must declare, in the statutory declaration provided under subsection (2),—

“(a) an intention to abandon (and to adopt the **nominated sex** instead of) the sex most recently included in—

“(i) the eligible person’s birth information; or

“(ii) the registration of the eligible person’s birth information in another State; or

“(iii) a record of sex deposited with a foreign registration authority; or

“(b) that the eligible person has previously abandoned (and adopted the nominated sex instead of) the sex most recently included in—

“(i) the eligible person’s birth information; or

“(ii) the registration of the eligible person’s birth in another State; or

“(iii) a record of sex information deposited with a foreign registration authority.

“(4) A birth certificate, or some other certificate or evidence, that satisfies the Registrar-General of the date and place of the eligible person’s birth and the status of any other person making the application as the eligible person’s guardian must also be deposited with the Registrar-General if the eligible person’s birth is not registered.

“(5) The Registrar-General must, at the option of the eligible person or the guardian of the eligible person, return or destroy the certificate or evidence deposited under subsection (4).

### “**29 Guardians may change child’s nominated sex within 2 years of birth**

“(1) Subject to subsection (2), within 2 years of a child’s birth—

“(a) the child’s guardians jointly; or

“(b) if any guardians are unavailable, the other or others of them; or

“(c) if, on the application of one guardian, the Family Court has consented to a change in the child’s sex, that guardian, may, by notice in writing to a Registrar, request the Registrar to specify for the child a nominated sex; and in that case, subject to subsection (2) of this section and section 31, the Registrar shall, on payment of the prescribed fee, include the child’s nominated sex in the information relating to the birth recorded under the Act concerned.

“(2) A Registrar shall not, under subsection (1), include any nominated sex in the registration of a child’s birth—

“(a) if the request concerned was made pursuant to an order of the Family Court, and is not in accordance with any conditions subject to which the order was made; or

“(b) more than once in respect of the same child, unless satisfied that there are special reasons making it appropriate to do so.

### **“30 Registration of change to nominated sex**

“(1) The Registrar-General must, subject to section 31, register a change to nominated sex as soon as practicable if the documents and fee (if any) required by section 28 are deposited with the Registrar-General.

“(2) The Registrar-General must register a change to nominated sex as follows:

“(a) for an eligible person whose birth has been registered or is required to be registered, record the nominated sex in the person’s birth information; or

“(b) for an eligible person whose birth cannot be registered because of section 6, include the change to nominated sex in the person’s information.

### **“31 Acceptance of nominated sex**

“(1) The Registrar-General shall include a nominated sex in the information recorded under this Act or a former Act relating to a person’s birth (or direct a Registrar to do so) unless, in the Registrar-General’s opinion, it is undesirable in the public interest for the person to change it.

“(2) Any person affected by a decision of the Registrar-General to decline to include any nominated sex in the information recorded under this Act or a former Act relating to a birth, or to decline to direct a Registrar to do so, may, within 28 days of receiving written notice that the Registrar-General has so declined, appeal against the decision to the Family Court nearest the Registrar-General’s office.

“(3) On an appeal under subsection (2), the Family Court shall, unless satisfied that it is undesirable in the public interest for the person concerned to bear the nominated sex concerned, direct the Registrar concerned to include the nominated sex in the information recorded under this Act or a former Act in respect of the person’s birth.

“(4) In determining an appeal under subsection (2), the Family Court—

“(a) shall give every person the court thinks has an interest in the matter an opportunity to be heard; and

“(b) may receive any evidence the court thinks fit.

“(5) For the purposes of this section, the Registrar may, in the public interest, decline to register the eligible person’s nominated sex if—

“(a) the eligible person has been convicted of an offence punishable by imprisonment for a term of 5 years or more; and includes any act, wherever

committed, that, if committed in New Zealand, would constitute an offence punishable by imprisonment for a term of 5 years or more; or  
“(b) the Registrar-General has reasonable cause to doubt the veracity of the statutory declaration made under section 31(3) by the eligible person in respect of the nominated sex.”