

# Interim Regulatory Impact Statement: Regulations to support the self- identification process for recognising gender on birth certificates

## Coversheet

Purpose of Document	
Decision sought:	Release of a public discussion document seeking views on measures to support the self-identification process for amending registered sex. This discussion document also seeks views on introducing a self-identification process for New Zealanders born overseas but is not subject to the RIS requirements at this stage.
Advising agencies:	Department of Internal Affairs
Proposing Ministers:	Minister of Internal Affairs
Date finalised:	6 May 2022
Problem Definition	
<p>The self-identification process was introduced to make it easier for individuals to apply to amend the sex shown on their birth certificate so that it aligns with their gender. People will no longer have to apply through the Family Court or prove that they have undertaken medical treatment to align their registered sex with their gender. Instead, they will assert their gender on a statutory declaration. The new process supports all New Zealanders to assert their identity in order to access services, makes birth certificates more inclusive and will support people’s autonomy over how their gender is recognised.</p> <p>There are further, mainly regulatory, measures needed to ensure the process is widely accessible and inclusive. Without these measures, transgender children and people who are non-binary<sup>1</sup> will not gain the benefits of the self-identification process. There is also some risk that the process could be exploited for identity fraud as birth certificates could be more easily changed. There needs to be consideration of a proportionate response to this risk so that it does not significantly affect the accessibility or inclusivity of the process.</p>	
Executive Summary	
<p>The self-identification provisions established in the Births, Deaths, Marriages and Relationship Registration Act 2021 (BDMRR Act) need to be supported by regulations, so that the benefits of the process can be experienced by children and people who are non-binary. Additional measures may also be warranted to reduce the risk of people exploiting the self-identification process for identity fraud.</p> <p>The preferred options will be determined on each of the three issues following public consultation. We are proposing consultation take place in mid-2022.</p>	

<sup>1</sup> The term ‘non-binary’ is used in this RIS as a way of grouping all genders besides ‘male’ and ‘female’. This is inclusive of western, te reo Māori, and other culturally specific terms. Examples include: ‘gender diverse’ (western), ‘takatāpui’ (te reo Māori), ‘fa’afafine’ (Samoan). This reflects the approach taken in the 2019 Counting Ourselves survey. ‘Non-binary’ is also a specific gender that people identify with.

The three issues are outlined below:

### **Issue 1: Recognising non-binary genders on birth certificates**

The primary legislation allows people to amend their registered sex to 'male' or 'female' through the self-identification process, with any other options for registered sex to be prescribed in regulations. When select committee consulted on the self-identification provisions in 2021, many submitters raised that there needs to be a non-binary option made available as well as of culturally appropriate markers. Some submitters were concerned about additional options for registered sex impacting on statistics and data collection. We expect consultation will help to identify possible options for registered sex outside of the binary.

This Regulatory Impact Statement (RIS) provides four high-level options to recognise non-binary genders on birth certificates. These options balance the interests in ensuring that everyone will have options that appropriately represent their gender with the interest in ensuring birth certificates will be widely useable. The counterfactual is included in the analysis but would undermine the policy intent of the self-identification process.

### **Issue 2: Prescribing suitably qualified third parties to support a child's application**

The BDMRR Act sets out that children and young people aged 15 and under can access the self-identification process if the application is completed by their guardian and has a letter of support from a 'suitably qualified third party'. Young people aged 16 or 17 will be able to amend their registered sex with either guardian consent or a letter of support from a 'suitably qualified third party'. The letter from the third party will provide assurance that the child understands what amending their registered sex means and it is what they want.

Some submissions to the select committee requested that suitably qualified third parties be medical professionals, whereas others questioned the need for suitably qualified third parties altogether. Through consultation, we hope to learn how to appropriately balance ensuring a child or young person understands the decision with ensuring third parties are accessible. Most submitters that supported the concept of introducing a suitably qualified third party also requested that consultation be undertaken with community groups to ensure that those who can act as a third party are accessible.

The RIS sets out four high-level options for prescribing 'suitably qualified third parties' to support a child's application. In broad terms, the options provide different ways to balance the interest in ensuring children can access the process whilst ensuring the third parties will be able to fulfil their function. The counterfactual is included in the analysis but would undermine the policy intent of the self-identification process.

### **Issue 3: Additional requirements for multiple applications**

The BDMRR Act sets no limits on the number of times people can amend their registered sex to recognise that gender changes over time. Because people can change their name at the same time as amending their registered sex, and not have their previous details listed on a new birth certificate, there is some risk that some people may abuse the process to create multiple identities. To mitigate this risk, the BDMRR Act enables regulations that would provide additional requirements for people who wish to amend their registered sex more than once.

Some submissions received by the select committee requested the removal of additional requirements for subsequent applications to amend registered sex as it opens the possibility for discriminatory, or significantly different regulations, to be implemented in the future. Other submissions raised concerns that multiple applications will mean there is a lack of prevention of misuse of the process for fraudulent reasons. Submitters requested that any measures relating to additional requirements must be done in consultation with community groups.

This RIS sets out three high-level options for additional requirements for multiple applications. The options balance the mitigation of the risk of identity fraud with ensuring the requirements do not create unnecessary barriers to applications. The status quo is included in the analysis and may be retained as other options could be a disproportionate response to the risks of identity fraud.

## Limitations and Constraints on Analysis

### Scoping of the problem

We have been asked by the Minister of Internal Affairs to consult on three issues which are delegated to regulations in the BDMRR Act. We need to address these issues to fulfil the policy intent of the self-identification process.

Our problem definition has therefore been limited to addressing these issues to support the self-identification process.

### Range of options considered

The BDMRR Act includes regulation-making powers to address each of the three issues but does not require that those regulations are developed. Two of the issues will need regulatory solutions to achieve the policy intent of the legislation, while the third issue could be addressed through regulatory or operational solutions.

The BDMRR Act sets high-level criteria to ensure that any regulations created remain in line with the policy intent of the self-identification process. The criteria are intended to ensure that regulations do not stop people from accessing the self-identification process and that no parts of the process are medicalised.

The BDMRR Act received Royal assent on 15 December 2021 and the self-identification provisions will come into force 18 months later (June 2023). Under the BDMRR Act, any regulations made relating to the self-identification provisions must be in place when these provisions commence. The 18-month timeframe has limited the period for policy development of feasible options.

### Uncertainties for the impact analysis

Public submissions on the select committee inquiry into the self-identification provisions in September 2021 provided some insights that have supported the analysis and options for the three issues. However, a discussion document and public engagement focussed on these issues is required to get a clear picture of the public's views, particularly the views of people who are takatāpui,<sup>2</sup> transgender,<sup>3</sup> and intersex.<sup>4</sup>

Along with considering the submissions on the select committee inquiry, the analysis and options have been informed by recent consultation and research, particularly:

- settings for self-identification processes introduced overseas;
- Stats NZ's review of its statistical standards for sex and gender;
- *Counting Ourselves*, a 2019 survey of 1,178 transgender and non-binary people in New Zealand; and

<sup>2</sup> A traditional term reclaimed by Māori to encompass both their culture and spirituality, as well as their diverse sexual orientations, gender identities and expressions, and sex characteristics.

<sup>3</sup> This term describes a wide variety of people whose gender is different from the sex they were assigned at birth. Transgender people may be binary or non-binary.

<sup>4</sup> An umbrella term used to describe people born with physical or biological sex characteristics (including sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that are more diverse than stereotypical definitions for male or female bodies. Like all people, intersex people may identify as male, female or non-binary.

- previous consultation with other agencies about identity fraud risks and the ability to integrate different gender terms across government systems.

The impact analysis is constrained by limited information or evidence to support an understanding of:

- the views on the three issues among Māori, Pacific peoples and ethnic communities;
- the practical constraints for service providers recording and sharing sex or gender information and to what degree these will be resolved by adopting the new statistical standard for gender, sex, and variations in sex characteristics; and
- exactly how much risk of identity fraud the self-identification process could create.

Due to the lack of available information or evidence, we have made some assumptions to determine the range of feasible options discussed in this RIS and how they are assessed against the criteria. The assumptions we have made are based largely on feedback select committee received during its consultation on the self-identification provisions, overseas models for self-identification, and the recent research described above. We have made assumptions, for example, about the importance of including culturally specific markers, the use of umbrella terms as a suitable option or the level of fraud risk we anticipate from enabling people to change their gender more than once. We expect that consultation on the draft options will help to fill our knowledge gaps or clarify any assumptions being made. As a result, our assumptions and analysis may be refined following consultation.

We do not think these constraints will impact on Ministers' decision to release the discussion document. The options in the discussion document are set at a high level so that feedback can inform more detailed proposals.

#### Responsible Manager(s) (completed by relevant manager)

Suzanne Doig  
 General Manager, Policy Group  
 Department of Internal Affairs

6 May 2022

#### Quality Assurance (completed by QA panel)

Reviewing Agency:	Department of Internal Affairs
Panel Assessment & Comment:	<p>The panel considers that the information and analysis summarised in the RIA <i>meets</i> the quality assurance criteria.</p> <p>This interim RIA supports the release of a discussion document on regulatory options to give effect to aspects of the Births, Deaths, Marriages and Relationships Registration Act 2021. The RIA clearly links the objectives of the proposals in the discussion document to the overarching purpose of the Act. It clearly explains complex concepts using plain English and is concise relative to the complex nature of the issues being discussed. It convincingly describes the issues to be addressed, the issues impacting on the current situation and sets out the full range of options. Assumptions, constraints and uncertainties are clearly stated and it provides balanced analysis. Complete information is provided by setting out the full range of issues to be consulted on, including risks and mitigation measures.</p>

## Background: Introduction of the self-identification process

**Sex and gender are different – and a process to recognise gender on birth certificates has been in place since 1995**

1. Gender is distinct from sex. Gender refers to a person's social and personal identity as a male, female, or another gender, such as 'non-binary'. Sex refers to a person's physiological features that characterise people as male, female or intersex. A person's gender is not always the same as their sex.
2. A person's sex is registered at birth, with details provided by someone present at the birth. People have been able to amend their registered sex, which is printed on their birth certificate, since the Births, Deaths, Marriages and Relationships Registration Act 1995 (the 1995 Act) was enacted.
3. Under the 1995 Act, applicants have needed to provide evidence of medical treatment, which is then assessed by a Family Court judge who determines if the amendment to the birth record can be made. While this process is about amending sex information, it has been a mechanism for people to have their gender recognised.

**We will no longer require medical evidence of a person's gender**

4. The BDMRR Act introduces a self-identification process to replace the process established in the 1995 Act. The process will allow people to amend their registered sex by applying to the Registrar-General of Births, Deaths, and Marriages with a statutory declaration. The introduction of the self-identification process means there is no longer a requirement to present medical evidence to a Family Court.
5. The self-identification process will make amending registered sex accessible to people who do not want or are unable to access medical treatment, people whose gender has changed, and (if regulations are set) people who are a non-binary gender.

**The BDMRR Act includes regulation-making powers to help operationalise the self-identification provisions**

6. The BDMRR Act includes regulation-making powers to prescribe:
  - any sex and gender terms other than male and female that people can select from to amend their registered sex;
  - the types of persons who can be 'suitably qualified third parties' to provide a letter of support for applications for children and young people; and
  - any additional requirements for a person to amend their registered sex if they have previously amended their registered sex.
7. The self-identification process will come into force in June 2023. Regulations need to be in place by this point to ensure key aspects of the process can be operationalised.

**The transgender population makes up close to one per cent of the general population**

8. We do not have any comprehensive measurement of the New Zealand transgender population as it has not been measured in a nationwide census. There have been surveys that provide approximate measurements of the transgender population. The surveys indicate that there is a small but significant transgender population, and a large proportion of this population is non-binary:
  - StatsNZ Household Economic Survey 2020 surveyed 31,000 adults and measured 0.8 per cent of the general population as transgender. Of those who were identified as transgender, 38.5 per cent identified as a gender outside of the male and female binary;

- the 2019 'Counting Ourselves' survey surveyed 1,178 transgender people – 45 per cent of participants identified within a non-binary grouping of genders; and
- in the Youth '19 survey of 7,724 adolescent students, 1 per cent identified as transgender (this was inclusive of non-binary people), while 0.6 per cent indicated they were not sure of their gender.

## This document considers the three issues separately

### The three issues contribute to the self-identification objectives in different ways

9. The objectives for introducing a self-identification process were to:
  - provide a process that better reflects society's changing views on gender diversity and gender fluidity;
  - improve people's control over how their gender is recognised, a deeply personal part of how a person understands and perceives themselves;
  - improve people's sense of social belonging and their general wellbeing, including through ensuring everyone is able to assert their identity in order to access services; and
  - uphold public trust and confidence in how birth register information is used and maintained.
10. The three issues are specific and distinct problems. Addressing these will contribute to the overarching objectives of the self-identification process in different ways. For example, providing additional requirements for multiple applications would primarily contribute to upholding public trust and confidence in the birth register by mitigating risks of identity fraud. Whereas, providing non-binary sex marker options will better reflect society's views on gender diversity, improve people's control over how their gender is recognised, and improve people's sense of social belonging.
11. Each of the three issues require different criteria which means they cannot be easily considered together. This document will consider the issues individually in 'diagnosing the policy problem' and 'deciding upon an option to address the problem'. The document will consider the three issues together for the section on 'Delivering an option'.
12. The objectives and criteria of the three issues should align with the overarching objectives and criteria of the self-identification process. This way, we can have greater assurance that the preferred options will support the overarching policy of the self-identification process. Where possible, the objectives and criteria of the three issues mirror those that were used in the RIS for introducing a self-identification process to ensure this alignment.

# Issue 1: Recognising non-binary genders on birth certificates

## Section 1: Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

**Gender diversity is increasingly recognised in New Zealand**

13. People relate to gender in diverse ways and there are a range of gender terms that are outside of the binary of 'male' or 'female'. This terminology continues to evolve quickly; certain terms that are in favour now may not necessarily be in favour in the future.
14. Gender diversity has distinct characteristics and terminology for different cultural or ethnic groups. Participants in the 2019 'Counting Ourselves' survey identified with a wide range of genders, including western, te reo Māori and other culturally specific gender terms.<sup>5</sup>
15. Gender diversity is increasingly being recognised through official processes. For example, in 2015 StatsNZ introduced the 'gender diverse' category in its statistical standard for gender. In 2021, the standard was further developed to enable better recognition of the range of terms people use to describe their gender.<sup>6</sup> Additionally, New Zealanders can select a non-binary gender for their passport and citizenship record.<sup>7</sup>

**The Births, Deaths, Marriages, and Relationships Registration Act 2021 enables easier recognition of gender on birth certificates**

16. Birth certificates are required to include a person's sex. A person may want to change this information if their gender does not align with the sex recorded. The self-identification process introduced with the BDMRR Act will make it possible to recognise non-binary terms on birth certificates. The BDMRR Act provides that sex or gender terms other than 'male' or 'female' will be specified by regulations.<sup>8</sup>
17. A person's gender is a personal expression of self, forming a central part of how a person identifies and perceives themselves. Ensuring all people could have their gender recognised was a key objective of the BDMRR Act. The RIS for introducing the self-identification process identified two ways in which the policy was intended to improve inclusivity:
  - enabling transgender men or women who do not want to or are unable to undertake medical treatment to have access to a birth certificate that reflects their gender; and
  - enabling people whose gender is outside the binary of 'male' and 'female' to have access to a birth certificate that reflects their gender.

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<sup>5</sup> There were between 15 and 18 terms (besides male or female) that at least 1 per cent of participants indicated was their gender. There were also a range of less common genders.

<sup>6</sup> The 2021 standard uses the term 'another gender' and recommends that if people select 'another gender' that they can write in their gender in an open text field. The standard was mandated for use across the public service in 2022.

<sup>7</sup> People can select 'non-binary' for their New Zealand citizenship record and 'X (gender diverse)' for their passport.

<sup>8</sup> These sex marker options are only available under the process to amend registered sex. The sex marker options for registering a child at birth will remain the same.

## Counterfactual: birth certificates will be inclusive of people who identify as male or female but not of people who are non-binary

18. Without setting non-binary terms as sex marker options in regulations, the BDMRR Act will enable all transgender men and transgender women to have access to a birth certificate that reflects their gender but will exclude people who do not identify as 'male' or 'female'.

## What is the policy problem or opportunity?

### Additional sex markers are needed to recognise people who are non-binary

19. Some people cannot get birth certificates that represent their gender because non-binary or culturally specific terms are not permitted. While the self-identification process would make birth certificates more inclusive for transgender men and transgender women, it would exclude non-binary people unless additional sex markers are added.

*Stakeholders clearly want options outside of the binary, but we have limited evidence on the desired number of options or the preferred terminology*

20. The issue of sex marker options was submitted on as part of the select committee process for the self-identification legislation (approximately 398 submissions were made on this issue). Submitters had diverging views, but a significant number supported the inclusion of a non-binary option, and some people suggested including culturally specific options. Some people who submitted on the legislation indicated they were non-binary and said they felt excluded from the Family Court process because there were no non-binary options.
21. Most submissions did not support the inclusion of 'intersex' as a marker. Many submitters noted that intersex is neither a sex or a gender, with intersex people identifying themselves across the whole spectrum as male, female, or as non-binary. However, this view was not universal. Intersex Trust Aotearoa New Zealand<sup>9</sup>, supported the inclusion of 'indeterminate'<sup>10</sup> for people aged 16 and over. We will seek views on the inclusion of 'intersex' or a related term in our consultation.
22. Submissions provide a limited gauge on what number of genders or terminology would be favoured (some suggestions for sex marker options were made). Public submissions were generally not focussed on deciding between options for the number of non-binary terms.
23. StatsNZ sought feedback on its proposal to replace 'gender diverse' with 'another gender' as part of its review of the statistical standard on gender, sex and variations of sex characteristics in 2020-21.<sup>11</sup> While there was significant support for the approach, public feedback suggested that more specific recognition of different non-binary and culturally specific genders is also important.

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<sup>9</sup> Intersex Trust Aotearoa New Zealand is a charitable trust that provides information, education and training about intersex people in New Zealand.

<sup>10</sup> The term 'indeterminate' is not prescribed in the BDMRR Act or regulations but can be used for registering the birth of a child where the child has a variation of sex characteristics. People who are intersex can also apply to amend their birth certificate to say 'indeterminate' under a separate process to self-identification. However, the Department's records indicate this marker has mostly been used as a marker for sex at birth for babies who are stillborn or die soon after birth where their sex could not be determined.

<sup>11</sup> Findings from consultation are available on the StatsNZ website: [www.stats.govt.nz/reports/sex-and-gender-identity-statistical-standards-findings-from-public-consultation-julyaugust-2020](https://www.stats.govt.nz/reports/sex-and-gender-identity-statistical-standards-findings-from-public-consultation-julyaugust-2020)

*Gender recognition on birth certificates would positively affect social participation and wellbeing*

24. Birth certificates are not intended to provide conclusive evidence of someone's identity. However, they are often used by people to prove they are New Zealand citizens with the right to work and study in New Zealand or used in conjunction with other identity documents to prove their identity. While other documents can be used in many of the same processes (such as a passport or driver licence), birth certificates are often more practical as they are low cost and do not expire. Everyone born in New Zealand can access their birth certificate, including children who have limited options for documentation that enable them to prove their identity.
25. Non-binary people experience a range of issues when presenting identity documents, including:
  - inconsistency between documents, because there are not many widely used documents offering non-binary options;<sup>12</sup>
  - experiences of verbal harassment and being denied services if the gender in their identity document does not match their appearance;<sup>13</sup> and
  - experiences of being misgendered.
26. Enabling non-binary options on birth certificates would mean people who are non-binary would have an accessible official document they can use to assert their gender with service providers. We consider this will increase confidence for non-binary people to access services. The discussion document will seek feedback to verify this view.

**We need a better understanding of how gender is recognised across different cultures**

27. Gender diversity is known and accepted across many cultures. The terms used have meanings specific to these cultures. This means that, while these terms can have loose translations to English, they represent distinct identities that can only really be understood within their cultural context.
28. We have some understanding of the views of gender diversity among Māori and Pacific communities as well as the terminology that is used. However, this assumption is based on relevant research as submissions to select committee on the self-identification provisions did not indicate preferred or commonly used gender terms in Māori or Pacific communities. Feedback from these communities will be important in deciding which culturally specific gender terms should be included, if any.

*Reclaimed or modern terminology is used to recognise gender diversity among Māori*

29. For Māori, the term 'takatāpui' (originally meaning intimate companion of the same sex) has been reclaimed in the modern context as an umbrella term<sup>14</sup> for diverse gender identities, sex characteristics, and sexualities.<sup>15</sup> Other terminology has also been introduced in recent years by the takatāpui community including 'whakawahine' (like a woman), 'tangata ira tāne' (spirit of a man), and 'tāhine' (non-binary/transgender).<sup>16</sup> We do not know the degree to which these terms have had broader acknowledgement within te ao Māori.

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<sup>12</sup> The Government's evidence of identity standard recommends service providers ask for more than one document to verify a person's identity.

<sup>13</sup> Nine per cent of non-binary people reported they had been verbally harassed, and 11 per cent had reported they were denied services.

<sup>14</sup> An umbrella term is used to describe genders that do not fit within the binary of male and female. An umbrella term normally covers a group of gender terms that have something in common.

<sup>15</sup> Four per cent of respondents to the Counting Ourselves Survey identified their gender as takatāpui.

<sup>16</sup> One per cent of respondents to the Counting Ourselves Survey indicated they identified with each of these terms.

30. Some researchers suggest that using these terms is a way of reclaiming customary views of gender diversity that had been marginalised because of colonisation. We do not know how broadly that view is held.

*Some Pacific cultures have terminology for gender diversity*

31. From initial research we have found that some Pacific cultures have gender terms that can be loosely understood as transfeminine and transmasculine.<sup>17</sup>
32. While it seems that gender diversity is broadly acknowledged in some Pacific countries, we do not understand the degree to which transfeminine and transmasculine gender supersedes biological sex as an identifier, or if there are specific contexts where biological sex is considered the more appropriate identifier.

*We do not have a good understanding of gender diversity in ethnic communities*

33. We do have not a good understanding of the views about gender diversity among ethnic communities<sup>18</sup>. We understand there are gender diverse terms among ethnic communities that may be present in New Zealand, for example, there is a large population of people who are 'hijra' (a transfeminine gender) in India, Pakistan and Bangladesh.
34. Along with feedback from Māori and Pacific communities, feedback from ethnic communities will be important in deciding which culturally specific gender terms should be included, if any.

*We note some risk of the misuse of terms*

35. Self-identification is based on a person's own views of their gender. There would be no requirements for an application to prove a person's gender or their cultural or ethnic background. We note that this means a person could apply for a culturally specific term even if they do not have a background in that culture. We do not see this as likely occurring at scale or being a substantial enough reason to not include culturally specific terms. We will look to explore this issue through consultation to determine if it is perceived as an issue by the affected communities.

**Te Tiriti o Waitangi considerations**

36. The existence of gender identities that are specific to te ao Māori means there is a specific interest for Māori in the sex marker terms available for birth certificates.
37. Tino Rangatiratanga is protected by Article Two of Te Tiriti o Waitangi and provides for the right to self-determination. Tino Rangatiratanga might be an appropriate Treaty principle to consider in the context of sex markers, as it mirrors a key element of the self-identification process, which is to provide people the autonomy to determine how they want their gender to be recognised. Given that some Māori choose to identify with te reo Māori gender terms, it could be argued there should be an equal right to have their self-determined gender recognised in official documentation.
38. The potential addition of te reo Māori gender terms as sex markers for birth certificates has not been widely canvassed with Māori. Engagement will help us to understand further the views of Māori within the takatāpui and rainbow community along with the broader views of Māori. Te reo Māori is protected as a taonga, so establishing te reo Māori terms in legislation requires careful consideration.

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<sup>17</sup> The Counting Ourselves survey report indicated that some New Zealand-based respondents identified with Pacific gender terms.

<sup>18</sup> 'Ethnic communities' here means communities that fall within the remit of the Ministry of Ethnic Communities (Asian, Middle Eastern, Latin American, African and Continental European).

## What objectives are sought in relation to the policy problem?

39. The objectives for improving recognition of gender diversity on birth certificates are to:
  - provide sex marker options that better reflect society's changing views on gender diversity;
  - improve people's autonomy over how their gender is recognised, a deeply personal part of how a person understands and perceives themselves;
  - improve people's sense of social belonging and their general wellbeing including through ensuring everyone can assert their identity to access services; and
  - ensure birth certificates are fit for purpose for people who are non-binary, takatāpui, or have another culturally specific gender.
40. Three of these objectives mirror three of the objectives for introducing a self-identification process. This approach is intended to ensure any regulations are aligned with the policy intent of the self-identification process. The objective to ensure birth certificates are fit for purpose is added to recognise the additional challenges that people may encounter when presenting a birth certificate to service providers who may be unfamiliar with identity documents that do not list 'male' or 'female'.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

41. The criteria used to assess the options for prescribing what sex or gender terms will be included in regulations are:
  - **Inclusivity** – as many people as possible can access a birth certificate that adequately represents their gender;
  - **Future-proof** – the list of sex markers is future proof;
  - **Practicality** – the information can be shared across systems and birth certificates can be easily used by people as necessary.
42. The criteria have been loosely developed off the original criteria used to assess options for improving the process to amend sex on birth certificates because it is important that the regulatory options are consistent with the original policy intent of self-identification. The criteria are described further below:
  - Inclusivity is about whether people who are non-binary or have a culturally specific gender will have a sex marker option that they consider represents their gender. The inclusivity criterion also aims to uphold Te Tiriti o Waitangi by contributing to better outcomes for Māori to exercise tino rangatiratanga;
  - Future-proof is about ensuring that people will have appropriate sex marker options even as New Zealanders' views on gender terminology evolve over time. Regulations can be updated more readily than primary legislation, but significant time and resource is still needed to do so;
  - Practicality is about ensuring that the list of sex markers can be shared across systems and that people will not encounter difficulties when presenting a birth certificate with this sex marker on it. This criterion was not used for the policy to introduce a self-identification process but is appropriate here as the policy's effectiveness depends on birth certificates being able to be used.
43. Practicality to a certain extent will compete with inclusivity as it may constrain the number of sex markers that would be desirable.
44. We note that the StatsNZ statistical standard for sex, gender, and variations in sex characteristics has been mandated for public sector agencies. Agencies should have at least three fields to represent sex or gender to comply with the standard. Any agency compliant with this standard would be able to use the "another gender" field for markers besides male and female.
45. We note there may be concerns that a long list of terms would not be readily accepted by the wider public at this point in time. While gender diversity is increasingly being accepted, it is not accepted by everyone. If the change is so great that negative attention is given to the issue of recognising gender generally, this may have a detrimental effect on people who are takatāpui, transgender and intersex. If this is a significant concern raised in consultation, the final set of criteria could be updated.

### What scope will options be considered within?

46. The direction set by the BDMRR Act means that we can only consider options for how we could approach specifying sex marker options in regulations.

47. We did consider an exceptions process that would allow people to ‘write in’ their nominated sex. This would be like processes developed in Victoria and Tasmania, where the Registrar-General has the discretion to determine whether the written-in sex marker could be registered on the individual’s birth record, regardless of its inclusion in regulations. The drafting of the legislation precludes this option, as the legislation only allows people to apply to amend their registered sex to terms “specified in regulations”.
48. At least 15 other jurisdictions have introduced a self-identification process for amending registered sex. Most of these jurisdictions have either only ‘male’ or ‘female’ as options or have a third ‘non-binary’ option.<sup>19</sup> Similar to the approach of having only one ‘non-binary’ term, one of the options includes only umbrella terms. This option may include more than one term to be inclusive of non-western cultures and because people may not agree on the most appropriate umbrella term.
49. We have confirmed with StatsNZ that the mandated data standard for gender, sex, and variations of sex characteristics should not preclude any of our options for sex markers.
50. We note that the range of sex markers available on birth certificates may not be reflected in how other agencies and organisations collect and record sex or gender information. Government agencies, for instance, may simply record any sex markers outside of the binary as ‘another gender’, in line with the StatsNZ data standard. Decisions across government or the private sector to invest in systems to be able to record a greater range of sex or gender terms would be determined by individual agencies or organisations.

### What options are being considered?

51. The options are set at a high level and are progressively more inclusive. This potentially is counterbalanced by the list of sex markers becoming less practical the more markers are included.
52. The options include:
  - Option one - Counterfactual: do not create additional sex markers;
  - Option two - Add only umbrella non-binary sex markers (one - five markers);
  - Option three – Include umbrella non-binary sex markers along with some other non-binary sex markers and culturally specific options arising out of consultation (six - twelve western and te reo Māori markers);
  - Option four – Include a more extensive list of non-binary sex markers along with culturally specific terms arising out of consultation (more than 12 western and te reo Māori markers).
53. These options are not mutually exclusive. For instance, it might be appropriate to have an extensive list of western terms along with te reo Māori terms as in option four, but not have other culturally specific terms as in options one and two.

#### Option One – Counterfactual: do not add sex markers to regulations

##### *Key features*

54. Under the counterfactual, regulations to provide for additional sex markers would not be developed. People would only have the option to register their nominated sex as ‘male’ or ‘female’. The introduction of the self-identification process means birth certificates will become more inclusive of transgender men and transgender women even if no sex markers are added to regulations.

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<sup>19</sup> We have identified Belgium, Iceland, Argentina, and Malta as countries that enable a third ‘non-binary’ gender on birth certificates or civil registration documents. Each of these countries uses ‘X’ as a catch-all marker for non-binary genders. This aligns with the ‘X’ that can be used to indicate a non-binary gender on a passport under the international civil aviation organisation standards.

### *Analysis*

55. Retaining only male and female fails to recognise people whose gender is outside of the binary. This would diverge significantly from the policy intention of the self-identification process, which is to make birth certificates inclusive of all transgender people.
56. Not including te reo Māori terminology could also mean falling short of our obligations under Te Tiriti o Waitangi. As partners to Te Tiriti we have an obligation to support positive outcomes for Māori, including supporting tino rangatiratanga. Engagement with takatāpui and other non-binary Māori will help to identify how important it is to officially recognise te reo Māori gender terms in government documents.
57. This option would not be future-proof as non-binary sex marker options would not be available even if there is increasing demand for non-binary sex markers. Also, by excluding non-binary sex markers, birth records would be a step behind the StatsNZ data standard and the way other agencies will be collecting, sharing, and publishing gender information.
58. The status quo is somewhat unpractical. Data systems have been designed to include the male and female options, so the status quo would mean information could be recorded and shared easily. However, the status quo will not support people who are non-binary to have their gender recognised by service providers.
59. Public submissions on the self-identification provisions were split on whether to include gender terms other than male or female. Views on this issue generally aligned with views on introducing a self-identification process. People who supported the self-identification process also supported including terms other than male or female.

### **Option Two – Include a few umbrella non-binary terms, including takatāpui**

#### *Key features*

60. Under this option there would be approximately one to five non-binary terms. These would be umbrella terms such as ‘non-binary’, ‘another gender’, ‘gender diverse’, ‘takatāpui’, and MVPFAFF+.<sup>20</sup>
61. This option entails attempting to determine the most acceptable umbrella term(s), which may need to be updated over time. This option would prioritise alignment with other official documents (e.g. passports) that also only have a third umbrella term.

#### *Analysis*

62. This option provides some recognition of people who do not identify as ‘male’ or ‘female’. The available umbrella terms may not adequately describe some people’s gender and would therefore exclude those people from the self-identification process. The umbrella terms would not represent people who identify with genders that are distinct to other cultures.
63. This option supports our obligations under Te Tiriti by allowing for the inclusion of te reo Māori terminology. Engagement with takatāpui, and other non-binary Māori, will help to identify how important it is to officially recognise te reo Māori gender terms in government documents.

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<sup>20</sup> MVPFAFF+ is an umbrella acronym for diverse gender terms from Pacific cultures. The letters stand for: Mahu (Tahitian/Hawaiian), Palopa (Papua New Guinea), Fa’afafine (Samoa), Akava’ine (Cook Islands Māori), Fakaleiti (Tongan), and Fiafifine (Niuean). We understand the acronym was first coined by Phylesha Brown-Acton in 2011.

64. It is assumed that ‘another gender’ could provide a catch-all term for people who do not have a suitable option listed in regulations (somewhat aligning with its use in the StatsNZ data standard). It would provide an alternative option so that people are not forced to select inappropriate terminology. In effect, ‘another gender’ would mean – “I identify with a gender that is not included in the options available”.
65. This option would be future proof. If the umbrella terms become outdated there would be alternatives to select from. It is assumed that the umbrella terms will likely have longevity as they are well established and broadly recognised; however, this is something we expect to test during consultation.
66. This option would be highly practical as it aligns with passports and citizenship certificates by providing recognised umbrella terms. This alignment would be further strengthened if only ‘gender diverse’ and ‘non-binary’ were used, which would match the terms used in those documents. There would likely be broad recognition of umbrella terms by service providers – which would grow over time as service providers would more regularly encounter birth certificates that include these umbrella terms.
67. Some public submissions on the self-identification provisions suggested additional sex and gender terms that could be included. Umbrella terms were the most commonly raised, e.g. ‘non-binary’, ‘gender diverse’ and ‘takatāpui’. However, some people also advocated for including other culturally specific terms which would not be covered by this option.

### **Option Three - Include a short list of non-binary terms along with te reo Māori and other culturally specific terms arising from consultation**

#### *Key features*

68. Under this option there would be umbrella terms, as in option two, and further western and te reo Māori terms. This could include, but is not limited to: ‘genderqueer’, gender fluid’, ‘agender’, ‘transsexual’, ‘bigender’, ‘demiboy/girl’, ‘Tangata ira tāne’, and ‘whakawahine’.<sup>21</sup> This option would also include other culturally specific terms arising from consultation (e.g. fa’afafine).
69. We consider there could be six -12 western, te reo Māori and other culturally specific gender terms under this option.
70. Determining a short list of non-binary terms may be difficult as there might not be agreement on which terms should be prioritised. Options for prioritising gender terms could be based on available data on their use, references in academic literature, or reference to experts such as transgender support organisations. The discussion document would seek views on how a short list option could be implemented.

#### *Analysis*

71. This option would be more inclusive of non-binary people than option two as it would include the most common non-binary gender terms and other culturally inclusive terms. It could also support our obligations under Te Tiriti o Waitangi by recognising gender terms that are distinct to te ao Māori.
72. Although, it is likely that some culturally specific gender terms used in New Zealand would not be identified and included in the list of sex markers. This presents a risk of privileging some ethnic groups over others. The inclusion of the term ‘another gender’ and the ability to add new terms over time through regulations might mitigate this problem.

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<sup>21</sup> Participants in the Counting Ourselves survey indicated their gender – a high number of participants indicated that they identify with these terms.

73. This option would be reasonably future proof. The terms included would likely be well established and recognised within the takatāpui and transgender community so will likely have longevity.
74. This option would be reasonably practical. Some of the gender or sex terms may not be broadly recognised by service providers and their data systems at least initially, as they are not included as options in other government documentation. This option would not necessarily align with the approach to passports and citizenship certificates, which only include umbrella terms.
75. Some public submissions on the self-identification provisions suggested including culturally specific terms, which would be included in this option. It was not clear from submissions whether people would support including other specific gender terms, such as 'agender'.

#### **Option Four – Include a more extensive list of western gender terms along with te reo Māori and other culturally specific terms**

##### *Key features*

76. Under this option there would be a longer list (more than 12 terms with no definitive maximum limit) of western and te reo Māori terms, as well as other culturally specific terms arising from consultation.
77. Under this approach, there would be a lower threshold for terms to meet criteria for inclusion in the regulations. Assessments of new terms would likely rely more heavily on a mixture of anecdotal evidence and the views of experts and key organisations. Long term, quantitative data on the use of less commonly used or established gender terms may not be so readily available. The discussion document will seek views on how a longer list option could be implemented.

##### *Analysis*

78. This option is likely highly inclusive with a minimal number of people who would not have an appropriate option. At this stage, the increase in coverage compared with option three is unclear, as a shorter list may already provide suitable options for most people. This option could also support our obligations under Te Tiriti by providing te reo Māori terms.
79. This option may not be very future proof. Some terms that would be eligible to be included in this option would likely have less longevity, as they would be less commonly used or established. On the other hand, the list of sex markers could change more frequently as emerging terms could be added more readily than options with a shorter list of terms.
80. This option could be less practical than the other options, as the less common sex markers might not be recognised by service providers and data systems. This effect would be ongoing as terms would be added more often over time. This approach would rely on individuals making decision about whether they want to use a relatively specific term that accurately describes their gender, or an umbrella term that is more broadly recognised.
81. We note that practicality should be less of an issue with public sector agencies who must comply with the StatsNZ data standard on gender, sex, and variations of sex characteristics. All terms besides male and female could be collected and shared as 'Another gender / He ira kē anō'.
82. Some public submissions on the self-identification provisions suggested including culturally specific terms, which would be included in this option. It was not clear from submissions whether people would support including a wide range of specific gender terms.

## How do the options compare to the status quo/counterfactual?

	Option One – Counterfactual: do not establish any additional sex markers in regulations	Option Two – umbrella sex marker terms (1-5 terms)	Option Three – Include umbrella non-binary sex markers along with some other non-binary sex markers (6-12 terms) along with culturally specific options arising out of consultation	Option Four – Include a more extensive list of non-binary sex markers (13+ terms) along with culturally specific terms arising out of consultation
<b>Inclusivity</b> <i>People have access to birth certificates that represent their gender or sex</i>	0 Self-identification process will be inclusive of transgender men or women who do not wish to or cannot undertake medical treatment, but not of non-binary people. This option would not support Tino Rangatiratanga for takatāpui and would not be inclusive of people who identify with other culturally specific genders.	++ Umbrella gender terms would provide some recognition of genders outside of the binary. This option could support Tino Rangatiratanga for takatāpui and be somewhat culturally inclusive if MVPFAFF+ is considered an appropriate umbrella term for Pacific genders. Although this option would still exclude people who identify with other culturally specific genders.	++ This could provide more coverage compared to only having umbrella terms. This option could support Tino Rangatiratanga for takatāpui. This could be inclusive of people who identify with other culturally specific genders.	++ This would provide comprehensive coverage of western gender terms, likely ensuring almost all people who identify with a western gender term would be included in the self-identification process. This option could support Tino Rangatiratanga for takatāpui and other non-binary Māori. This option could also be more inclusive of people who identify with other culturally specific genders.
<b>Future-proof</b> <i>Can adjust with New Zealanders evolving views on gender</i>	0 This option would provide no suitable terms for non-binary people even if there was increasing demand for non-binary or culturally specific options.	++ Umbrella terms are well established and commonly used so will likely have longevity. It is assumed that 'another gender' could be available as a backstop option if the other umbrella terms become outdated.	++ More commonly used or well-established gender terms will likely have longevity. It is assumed that 'another gender' could be available as a backstop option if terms become outdated.	0 This option would be inclusive of a range of gender terms. However, less commonly used, or well-established gender terms may not have longevity, and the community may expect new terms to be updated frequently. Meeting community expectations by assessing a larger range of terms, more often, and creating new regulations to make those updates may not be sustainable in the long term.
<b>Practicality</b> <i>Birth certificates can be effectively used to assert gender with service providers and across data systems</i>	0 Current data systems would not be affected, and information could be shared across systems easily. People would not be supported to assert their gender with service providers and would likely be misgendered in those data.	++ Using umbrella term would align with the approach to sex/gender markers on passports and citizenship certificates. It also would align with the most common approach overseas, so should be familiar to service providers and be able to be used in and across data systems. Alignment with passports and citizenship certificates would be further strengthened if the terms 'gender diverse' and/or 'non-binary' were the only terms included. Takatāpui and MVPFAFF+ might not yet be recognised by service providers and across data systems, potentially making some birth certificates more difficult to use in the short-to-medium term.	++ Some terms would not be familiar to service providers or data systems. This may make some birth certificates more difficult to use in the short-to-medium term.	0 Some sex markers may not be recognised by service providers or data systems, which might make birth certificates more difficult to use. This could be exacerbated by more extensive updates to the list of terms over time. StatsNZ's data standard could mitigate this – i.e. if people put anything other than male or female it can be categorised as another gender. But this would be limited to public sector agencies.
<b>Overall assessment</b>	0	++	++	++

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

83. At this stage we do not have a preferred option. The ratings are only an indication from our initial assessment of the options. We seek to further inform this analysis through consultation.

# Issue 2: Prescribing suitably qualified third parties

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

84. The self-identification process is available to children, as gender is not age-restricted, and children can, and do, have a strong sense of their gender.<sup>22</sup>
85. Applications for children and young people aged 15 years and younger must be made on their behalf by their guardian<sup>23</sup> and must be accompanied by a letter of support from a suitably qualified third party that confirms that they believe –
  - the child understands the consequences of the proposed registration of the nominated sex; and
  - the child’s preference is for the nominated sex to appear as their registered sex on their birth certificate.
86. A separate and less stringent process for older adolescents (aged 16 – 17 years old) exists where an application can either be accompanied by consent from a guardian, or with a letter of support from a suitably qualified third party. This approach reflects society’s views that 16- and 17-year olds are more able to make decisions on their own.

### The role of a suitably qualified third party

87. The role of the suitably qualified third party is to provide independent assurance that the child or young person understands the change being made and the decision is based on their own perceptions of their gender. In part, the process for children and young people upholds the integrity of birth register information, as the letter of support mitigates the risk of guardians improperly influencing their child to amend their registered sex.
88. The third party is not assessing what is in the child’s best interests or any other factors, such as the child or young person’s gender or that the child or young person physically conforms to their gender. A person that is eligible to act as a suitably qualified third party is not obliged to provide a letter of support if requested and can refuse.

### Suitably qualified third parties are to be prescribed in regulations

89. A suitably qualified third party is defined in the BDMRR Act as a person who is 18 years old or older, and of a type specified in regulations. Because the BDMRR Act states that suitably qualified third parties are to be specified in regulations, regulations are needed to ensure the self-identification process for children and young people can be operationalised.
90. The BDMRR Act states that regulations that specify suitably qualified third parties must be made before the commencement of the self-identification provisions in the primary legislation, which is by June 2023. Regulations must be in place by this date for children to have access to the self-identification process.

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<sup>22</sup> A recent survey of New Zealand youth found that three quarters of those who identified as transgender and non-binary said they had started to do so before the age of 14.

<sup>23</sup> The guardian must have the child’s consent to make the application and must verify in their statutory declaration that they believe the child identifies as a person of the nominated sex.

91. The types of persons who could fulfil the role as third party are in regulations to allow flexibility to achieve the right balance between prescribing third parties that can ensure a child and young person understands the decision and ensuring these third parties are accessible. Achieving this balance is essential to meeting the objectives of realising an accessible self-identification model.

### **What is the policy problem or opportunity?**

92. While self-identification is available to children and young people, they may need support to make the decision due to their level of competency, and to manage the risk of them being pressured by others.
93. Children mature gradually, so their competence to consent comes incrementally with growing maturity and experience. A child may be competent to make autonomous decisions in some areas but not others.
94. The BDMRR Act sets some criteria for the types of persons that can be specified in regulations. Specified persons will need to have an ability to assess the competency of a child or young person to make sure the application is what the child or young person wants, and that they are not subject to undue influence or pressure by another person.
95. Without a range of suitably qualified third parties specified in regulations that can provide a letter of support, access to self-identification may be limited for children and young people. There is an opportunity to prescribe a broad range of persons that could act as a suitably qualified third party to make the self-identification process accessible as possible to children and young people.

### **Te Tiriti o Waitangi considerations**

96. As Treaty partners, we need to consider how our proposals impact Māori and wherever possible, seek outcomes that improve outcomes for Māori. The Department has a core responsibility to provide services for all New Zealanders. To effectively deliver services to Māori, we need to understand the needs and expectations of Māori in relation to the services, in this case providing for suitably qualified third parties in regulations that Māori consider appropriate and can comfortably access.
97. Through agency consultation we have learned that some whānau and/or communities may have a lack of trust towards mainstream social service practitioners. We have heard that it is more common for Māori to rely on people who are within their own circles, for example, their whānau, hapū, iwi or friends. Each whānau determines their own support system and it will differ between whānau.
98. Given some Māori are more likely to rely on their own circle of support, we should be mindful of ensuring that suitably qualified third parties prescribed in regulations meet Māori needs and expectations around who should provide a letter of support for their tamariki and rangatahi. Engagement will help us to understand the views of tamariki, rangatahi and enable us to ensure this is reflected in our options and analysis.

### **Supporting Pacific and ethnic communities to access third parties**

99. It will also be important to understand the needs and expectations of Pacific and ethnic communities in relation to accessing third parties. For instance, there may be greater reliance on people within their own cultural communities to support important decisions for a child or young person. Engagement will help us to understand the views of these communities and enable us to ensure this is reflected in our options and analysis.

## What objectives are sought in relation to the policy problem?

100. The objectives of specifying suitably qualified third parties in regulations are to:

- ensure children and young people can access the self-identification process; and
- have confidence that children and young people's applications are genuinely based on their own decision and that they understand the consequences.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

101. The criteria used to assess the options for prescribing who can act as a suitably qualified third party to provide a letter of support are:
- **Inclusivity:** children and young people can access a suitably qualified third party they trust and feel comfortable with.
  - **Accessibility:** children can easily access a third party without any unnecessary barriers or complexity.
  - **Assurance:** the potential for undue influence over a child or young person's decision making is limited.
102. The criteria have been loosely developed off the original criteria used to assess options for improving the process to amend sex on birth certificates because it is important that the regulatory options are consistent with the original policy intent of self-identification.
103. The inclusivity and accessibility criteria are different.
- Inclusivity is about ensuring children and young people from all socio-economic and cultural backgrounds can access a suitably qualified third party that they trust and feel comfortable approaching. The inclusivity criterion also aims to honour te Tiriti o Waitangi obligations and contribute to better outcomes for Māori by recognising their needs and expectations around ensuring tamariki and rangatahi can access a suitably qualified third party;
  - Accessibility is about reducing barriers to access a suitably qualified third party (e.g. cost, time and physical location), and that our Māori, Pacific, and ethnic communities are not disadvantaged.
104. Assurance is about ensuring children and young people are not subject to pressure by others, and that the application is something they understand, and want to do. To some extent the assurance criterion competes with the other criteria. This is because limiting the types of persons who can be specified as a suitably qualified third party could negatively impact its inclusivity and accessibility. In assessing the options against the criteria, the assurance criterion has been considered on balance. This is in recognition that limitations on the types of persons specified are needed to have confidence that children are not subject to undue influence, and that they are making their own decisions about their gender.

### What scope will options be considered within?

105. The BDMRR Act sets some limits for the scope of feasible options. Under section 144(4) the Minister must be satisfied that each type of suitably qualified third party specified in regulations –
- has sufficient professional or community standing to provide letters of support generally; or
  - is required to have known an eligible child or 16- or 17- year-old for a period that indicates they have a sufficiently enduring relationship with them to provide a letter of support; and
  - the regulations provide applicants with a reasonable level of choice regarding the type of person who may provide a letter of support; and
  - the regulations include persons other than medical practitioners.

106. Under sub-section 144(1)(e) of the BDMRR Act, the regulation-making power stipulates that the types of persons who can act as a suitably qualified third party can be specified by reference to the person's profession or qualifications.
107. The options are not mutually exclusive. The options have been designed to provide general categories of types of persons that could act as a suitably qualified third party. As part of consultation on these options it is possible that additional options or a different categorisation of persons will be suggested. Feedback we receive from consultation will be considered and may input into our second round of policy development on the self-identification regulations.
108. The legislation provides that the third party could be a person of community standing. We consider people of community standing would fit within options that include people who have known the child for a long period. We seek to understand the extent to which this option would be valued by those accessing the self-identification provisions. The options could change in response to this feedback.
109. Other countries' models for third parties have informed our analysis. Several other countries require a third party to support a child or young person's application, including Australia (Victoria), Canada (Quebec, Alberta), and Ireland. In these jurisdictions medical practitioners or psychologists/psychiatrists are included as third parties. Some also allow a registered social worker or a person that has known a child or young person for more than a year who is not their parent or guardian to act as a third party.
110. Most submissions to the select committee considering the self-identification provisions in the BDMRR Act that supported the introduction of a suitably qualified third party were supportive of the concept but requested that consultation be undertaken with community groups to ensure that those who can act as a third party are accessible.

### What options are being considered?

111. The options considered include:
  - **Option One** – counterfactual: do not specify suitably qualified third parties in regulations
  - **Option Two** – a range of registered professionals that are specified in regulations
  - **Option Three** – a person that has known the child or young person for more than 12 months
  - **Option Four** – a combination of option two and three: a range of registered professionals specified in regulations OR a person that has known the child or young person for more than 12 months.
112. There are potential overlaps in these options. Persons who have known a child for more than 12 months in option three, for example, may also include the types of registered professionals described in option two (a teacher or a family doctor).

## **Option One – counterfactual: do not specify suitably qualified third parties**

### Key features

113. Under this option, suitably qualified third parties would not be specified in regulations.

### Analysis

114. This option is unfeasible as it is stipulated in the BDMRR Act that suitably qualified third parties be specified in regulations. Without a third party prescribed in regulations, the self-identification process would be inaccessible and not inclusive for children and young people aged 15 and under. Children and young people in this age group would have no way to register a nominated sex, as the Family Court process would no longer be available. For 16- and 17-year-olds, accessing the self-identification process would become more restrictive as they would need guardian consent. If they did not have supportive guardians, the self-identification would become inaccessible.
115. Not prescribing suitably qualified third parties in regulations would provide no assurance that children understand, or want to amend, their nominated sex. A suitably qualified third party is needed to provide confidence that the child or young person is making their own decision and is not subject to undue influence or pressure by another person.
116. Some of the feedback select committee received during their consultation on the self-identification provisions in 2021 was to remove the requirement for a letter of support from a third party altogether and require only that the child or young person identifies as their nominated sex.

## **Option Two – a range of registered professionals that are specified in regulations**

### Key features

117. Under option two, a selected range of registered professionals are specified as suitably qualified third parties. A registered professional is a person who is, or deemed to be, registered with an authority as a practitioner of a certain profession.
118. The selected range of registered professionals could include doctors, nurses, psychologists, teachers, social workers, counsellors, or other professions arising from consultation. The types of professions are included because of the nature of their duties where they are often involved or in contact with children and young people regularly. These people are also likely to have the qualifications or experience to take account of children and young people's developmental level and interpret if a child understands and wants the decision they are making. These types of persons are normally regarded as those with a reputation or character to uphold as they are officially recognised for their competence and integrity. Some are also subject to ethical obligations to recognise that the interests of children and young people are paramount and to not exploit them in any way.

### Analysis

119. Providing for a range of registered professionals that can act as a suitably qualified third party will offer children and young people with a reasonable choice of different types of persons they feel comfortable to approach for a letter of support. Extending the selection of registered professionals to occupations that are not exclusively health practitioners reinforces the policy intent of self-identification - that it is an administrative process and one not based on medical evidence.

120. Specifying only registered professionals as a suitably qualified third party is likely to benefit those who feel comfortable with them and trust them. Some applicants may not feel safe or comfortable approaching some registered professionals for a letter of support due to fear of being discriminated against or 'outed'. In Australia, a survey found that young people identified doctors, psychologists and psychiatrists as people they would feel least comfortable asking for a letter of support from.<sup>24</sup> We are seeking to understand children and young people's views on this through consultation.
121. A restricted list of registered professionals may impact the ability for tamariki, rangatahi and their support network, through their whānau, hapū, and iwi, to comfortably access a suitably qualified third party they feel appropriate. This is something we seek to understand more from consultation.
122. Some children, young people and their whānau may find it difficult to access a majority of the potential specified registered professionals as most require a cost to access or may not be available in rural or isolated areas. Guardians of children under the age of 15, and young people aged 16- and 17-years old who seek a letter of support from a health practitioner could be required to pay for the consultation session and letter itself. Some practitioners may provide this service at no cost but for others who do not, the cost may make these persons inaccessible. However, this option provides for a reasonable level of accessibility, as there are broad range of registered professionals that can act as a suitably qualified third party, including some that do not require a service fee (e.g. teachers).
123. It is assumed that due to the qualifications and experience of registered professionals, there will be a higher level of assurance that the potential for undue influence over a child or young person's decision making is limited.
124. Some submissions to the select committee requested that suitably qualified third parties be only medical professionals. Because of the non-medicalised nature of the third party's assessment, the Government agreed that suitably qualified third parties should not be limited to medical professionals. By broadening the pool of suitable people to a wider range of registered professionals, it ensures the process is accessible.

### **Option Three – a person that has known the child or young person for more than 12 months**

#### Key features

125. Under option three, a person who has known a child for 12 months or more who is not a parent or guardian is specified in regulations as a suitably qualified third party.
126. The period of 12 months or more is consistent with the length of time requirement for an identity referee to support a child's application for a passport. The referee does not need to have a direct relationship with the child; however, a similar time requirement to prove a relationship with a child is also seen in the Care of Children Act 2004 where a spouse or partner of a guardian of a child must have shared responsibility for the child's day-to-day care for not less than 1 year before they can be appointed as an additional guardian.
127. This option would enable a person of community standing, who knows the child, to be a suitably qualified third party.

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<sup>24</sup> Findings were passed on by counterparts in Victoria, Australia who conducted a survey of transgender youth when designing their self-identification model.

### Analysis

128. Allowing a person who has known a child or young person to act as their suitably qualified third party enables children, young people and their whānau to seek a letter of support from someone they personally trust and feel confident approaching. Children generally have a limited social circle of trusted adults, and for 16- or 17-year-olds with a guardian not willing to support their application, it is likely they would seek the support of someone they know or have an enduring relationship with.
129. This option does not restrict the ability for tamariki, rangatahi and their support network through their whānau, hapū, and iwi to be able to seek support from a person that they feel is most appropriate (e.g. a kaumātua). Children and their families from other communities may also be more comfortable seeking support from people who have authority within their own community, rather than registered professionals. One reason could be that a person from their community would have a greater understanding of gender diversity within their cultural context than a registered professional.
130. This option provides applicants with a wide range of choice, making the process to find a suitably qualified third party accessible. Compared to option two, it does not necessarily present physical or cost barriers to access. It also provides some mitigation against people encountering registered professionals who may be unwilling to support their decision for reasons unrelated to their cognitive ability. However, this assumes that children and young people know someone that would be willing to support their application.
131. Persons who have known a child or young person for more than 12 months are likely to have a sufficiently enduring relationship with them and have an ability to understand their past and present wishes and feelings, and any beliefs and values likely to have a bearing on their decision. However, it may not guarantee the same level of assurance as option two as they may not have the same levels of professional experience working with children to consider the child's interests as paramount.

### **Option Four – (a combination of option one and two) a range of registered professionals or someone who has known the child for more than 12 months**

#### Key features

132. This option is a combination of options two and three, where a range of registered professionals and a person who has known the child for 12 months or more are specified as suitably qualified third parties in regulations.
133. Under this option, children, young people and their whānau would have the choice to seek a letter of support from either a registered professional or someone that has known the child or young person for 12 months or more.

### Analysis

134. This option is inclusive because it provides for a broad range of persons that guardians, children and young people from all socio-economic and cultural backgrounds could access and feel comfortable approaching. Some applicants may seek support from a registered professional they trust, whereas others may feel more comfortable seeking a letter of support from someone known to them, or a cultural leader due the access barriers associated with some registered professionals. Option four provides applicants the choice.

135. This option would also provide applicants with a reasonable level of choice, and to ensure that the process is accessible. If a child or young person did not have a person known to them for 12 months or more that would support their application, they would be able to access a registered professional instead. This is because a registered professional does not need to know the child for 12 months or more due to their professional qualifications in being able to assess a child or young person's wants and needs. This option provides a greater range of persons that could act as suitably qualified third party than options two and three.
136. Both registered professionals and persons known to the child will have some level of separation from the guardian and the child or young person. This will make it more likely they can provide an independent assessment that the child or young person wants to amend their registered sex and understands what it means to do so. However, this option provides the same level of assurance as option three because the level of assurance may not be as guaranteed with someone who has known a child for 12 months or more, compared to a registered professional. This is something we anticipate testing through consultation.

## How do the options compare to the status quo/counterfactual?

	Option One – do not specify suitably qualified third parties	Option Two – registered professionals	Option Three – person known to the child or young person for 12 months or more	Option Four – choice between registered professional or a person known to the child or young person for 12 months or more
<b>Inclusive</b>	0 Without a range of suitably qualified third parties specified in regulations, the self-identification process would not be inclusive, and less inclusive to 16- and 17- year olds without supportive guardians.	+	+	++
<b>Accessible</b>	0 Without a range of suitably qualified third parties specified in regulations, children aged 15 and under will not be able to access the self-identification process. For those aged 16- and 17-year-olds, they will only be able to access the self-identification process with guardian consent.	+	+	++
<b>Assurance</b>	0 Without a range of suitably qualified third parties specified in regulations, it would not be possible to have confidence that children and young people understand and want to amend their registered sex. This is mostly relevant to children aged 15- and under.	++	+	+
<b>Overall assessment</b>	0	+	+	++

Key for judgements:	
++	much better than the counterfactual
+	better than the counterfactual
0	about the same as the counterfactual
-	worse than the counterfactual
--	much worse than the counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

At this stage we do not have a preferred option. The ratings are only an indication from our initial assessment of the options. We seek to further inform this analysis through consultation.

# Issue 3: Additional requirements for multiple applications

## Section 1: Diagnosing the policy problem

**What is the context behind the policy problem and how is the status quo expected to develop?**

**Applicants can apply multiple times to change their registered sex**

137. Under the self-identification process, a person can amend their registered sex more than once. This approach recognises that gender can be fluid and how a person identifies, or the term they use to reflect their gender, may change over time.
138. The ability to make multiple applications ensures the legislation embraces people of all genders at any stage of their lives. Limiting the number of applications for registered sex would also undermine the intent of self-identification.

**The self-identification process could be used to obtain multiple identities**

139. Changing information on a birth certificate results in a person holding multiple different birth certificates that relate to themselves. Birth certificates differ to “transactional” documents, such as a passport or driver licences, which can be revoked, and must be renewed periodically. Unlike passports and driver licences, there is no legislation to compel the return of a birth certificate when a new one is issued.
140. Under the self-identification process, a person who amends their registered sex will not have their previous name and sex displayed on their birth certificate.<sup>25</sup> This is to accurately reflect their identity, and to stop a person being ‘outed’ as transgender.
141. Multiple amendments to someone’s registered sex on their own do not pose a significant risk of identity fraud because the person can be linked to their previously issued birth certificates by their name. It is only multiple amendments to both their registered sex and name that could increase the potential risk of identity fraud. The removal of previous names and previously registered sex means that service providers would be less able to link different birth certificates to the same person.
142. People could use the process to obtain multiple different birth certificates to create new identities to avoid detection or access services they are not entitled to. While most services require photo-identification for identity verification there are a few known instances where a birth certificate is deemed to be an acceptable form of documentation. These include:
  - *Receiving income support from the Ministry of Social Development:* A birth certificate can be used with a utility account letter with the applicant’s address. There is no requirement to provide photo identification.
  - *Obtaining an 18+ card (Kiwi Access Card):* A birth certificate can be used with an identity referee to verify their identity if an applicant does not have any photo identification.
  - *Obtaining a firearms licence:* A firearms licence can be obtained using a birth certificate and an 18+ card.

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<sup>25</sup> It is common for applications to amend registered sex to be accompanied by a name change request. In 2021, all applications to amend registered sex under the Family Court process also requested to change their name.

143. While a person could use a birth certificate with a false name and registered sex to access these services, we understand that the agencies responsible for these services have existing additional checks in place. We are working with agencies to understand more about what these additional checks are and how effective they are. We intend to discuss this further during engagement and will factor this into our further analysis of the options.
144. Persons can also already attempt to commit fraud under these services with another person's birth certificate as the birth register is an open-access register where anyone can request a birth certificate of another person and use their details. To do this, a person must know some information about another person to request their birth certificate.<sup>26</sup> The self-identification process creates another avenue to obtain multiple birth identities where they could change their own details instead of using someone else's.
145. Fraudulent use of multiple birth certificates to receive income support, or to obtain an 18+ card as photo-identification to use for other services, has the potential to cause reputational and fiscal damage. Discovery of fraud could undermine the integrity and legitimacy of the self-identification process, and it could potentially unfairly reflect on the transgender community.

**Despite the potential for identity fraud, the probability of it occurring with birth certificates is low**

146. It is not common for fraud to occur with birth certificates. Of the total applications for Births, Deaths, and Marriages products since July 2021, 0.04 per cent (or 37 applications) were investigated for reasons of potential wrong-doing (including reasons not exclusive to identity fraud). Of these, 35 were related to birth records and 27 of those involved a certificate containing or potentially containing fraudulent information. Due to the low risk of birth certificates being used for the purposes of identity fraud, we assume the introduction of the self-identification process will not significantly increase this risk.

**There are some mitigations already in place to manage the risk of identity fraud**

147. The self-identification process requires applicants (for both first-time and multiple applications) who wish to amend their registered sex to fill out a statutory declaration to indicate that they:
  - want the sex marker on their birth certificate to match their gender; and
  - understand the consequences of the application.
148. For a person who wishes to also change their name, applicants must declare in a statement that, if the application is approved, they intend to adopt the proposed name and to abandon their currently registered name.
149. Under the BDMRR Act, the Registrar-General can require a person before whom a statutory declaration is made to verify the identity of the eligible person, and to state whether the person is satisfied of the identity of the eligible person. False declarations are also an offence under both the Crimes Act 1961 and the BDMRR Act, and a person is liable on conviction to imprisonment. The repercussions for falsifying a statutory declaration act as a deterrent to those wishing to use the process for unlawful reasons.

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<sup>26</sup> To request a birth certificate, a person's name and date of birth must be provided.

150. The Department of Internal Affairs (the Department) also has its own mechanisms to manage the risk of identity fraud for Births, Deaths and Marriages products. For name changes, the Registrar-General has the ability under the BDMRR Act to require the eligible person to provide any means of identification to confirm the identity of the eligible person. Internal policies are also in place to identify potential situations of identity fraud. These processes are undertaken to confirm the validity of information supplied in an application, ensure a person can only be issued with one verified identity, and keep core identity information in the verified identity accurate and up to date.
151. Changing registered sex multiple times relates to an existing issue with inaccuracy of information across justice sector agencies (such as the New Zealand Customs Service, New Zealand Police and the Department of Corrections). There is already a risk of inaccurate information across this sector when name change information is not shared. This could result in a person having multiple identities and their offences not being linked. The BDMRR Act includes a provision that enables previous registered sex and name change information to be provided to another agency where they have an interest in ensuring a person has one identity. This will enable some justice sector agencies to access a person's previous name and sex where this is necessary.

#### **Additional requirements for multiple applicants can be prescribed in regulations**

152. The BDMRR Act prescribes one regulatory option for addressing the risk of identity fraud. Section 144(d) of the BDMRR Act enables regulation-making powers to prescribe any additional requirements that an application must meet if the applicant has previously amended their registered sex.

#### **What is the policy problem or opportunity?**

153. Despite the mitigations in place to manage the potential risk of identity fraud under the self-identification process, a low risk remains with people being able to change their name at the same time as their registered sex. This creates an opportunity for someone to obtain multiple identities that cannot be easily linked to their original identity for the purposes of committing identity fraud.

#### **What objectives are sought in relation to the policy problem?**

154. The objectives of finding a solution to mitigate against the low risk of identity fraud are to:
- uphold public trust and confidence in how birth register information is used and maintained; and
  - continue to ensure people can access the self-identification process.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

155. The criteria used to assess the options for mitigating the risk of identity fraud are:

- **Accessibility:** applicants can easily apply to amend their registered sex without any unnecessary barriers or complexity.
- **Integrity:** have confidence applications are genuine and the opportunity to commit fraudulent or illegal intent under the self-identification process is limited.
- **Proportionality:** any additional requirements are balanced against the likely probability of misuse of the self-identification process.

156. The criteria have been loosely developed off the original criteria used to assess options for improving the process to amend sex on birth certificates because it is important that the regulatory options are consistent with the original policy intent of self-identification. The criteria are explained further below:

- Accessibility is about reducing barriers (e.g. cost, time and potential administrative burdens) to access the self-identification process for multiple applications; however, creating requirements to maintain the integrity of the birth register could negatively impact its accessibility, including potentially undermining the policy intent of self-identification which is improving a person's control over how their gender is recognised.
- Integrity is about mitigating the risk of applications being made for fraudulent or illegal intent and that the information in the birth register is accurate.
- Proportionality is about considering the likelihood and consequences of identity fraud against how much of a barrier additional requirements could impose. As identified, there is a perceived low risk of the self-identification process being exploited for fraudulent reasons. Any possible solution must be appropriately balanced with the level of risk to not undermine the accessibility or integrity criteria.

### What scope will options be considered within?

157. Both regulatory and non-regulatory options have been considered as potential solutions for mitigating the potential risk of identity fraud. The scope of any regulatory option is limited by the direction of the BDMRR Act. Under subsection 144(3) of the BDMRR Act, the Minister must be satisfied that the additional requirements for multiple applications prescribed under subsection 144(d) –

- do not require the provision of medical evidence;
- are reasonably necessary to reduce the risk of fraudulent applications; and
- do not create an unreasonable obstacle to the completion of an application.

158. Considering the requirements imposed on regulatory options, we have ruled out any non-regulatory option that includes the provision of medical evidence, and it would also go against the policy intent of self-identification. We have also ruled out an option that prescribes in regulations an identity witness to confirm the identity of an applicant. While an identity witness would be able to help prove that an applicant is who they say they are, it would not provide assurance that the applicant is making a genuine application to amend their registered sex and change their name.

159. We seek to refine the feasible options through stakeholder engagement. Some feedback received during select committee consultation on the self-identification provisions argued for removing the need for any additional requirements for second or subsequent changes to registered sex. Consultation on our draft policy options for the self-identification regulations will provide an opportunity for submitters to comment in more detail. Any feedback we receive will be considered in the second round of policy development on the self-identification regulations.
160. Other countries' models for additional requirements have informed our analysis. Australia (Victoria) has additional requirements for multiple applications to change registered sex on a birth certificate. There, a person's application must be accompanied by a supporting statement from another person affirming that the application is made in 'good faith' and that they support the application. The state's Registrar has the power to require further information to establish that the alteration of the record is not being sought for a fraudulent or other improper purpose.

### What options are being considered?

161. The options considered include:
- Option One – counterfactual: no additional requirements;
  - Option Two – prescribe in regulations the requirement of a referee to provide statutory declaration that application is being made in 'good faith' (regulatory option); and
  - Option Three – additional checks by the Department (non-regulatory solution).
162. Options two and three are not mutually exclusive. Depending on the level of perceived risk of identity fraud under the self-identification process, it may be that both options are used together as a way of mitigating any potential misuse of the process. Feedback we receive from consultation will be considered and will input into our second round of policy development on the self-identification regulations.

#### Option One – no additional requirements

##### Key features

163. Under option one (counterfactual), no additional requirements will be required for multiple applications under the self-identification process.

##### Analysis

164. This option ensures the self-identification process is accessible to applicants as it does not impose any additional requirements for subsequent applications, creating no extra barriers to access. As with a first-time application to amend registered sex, an applicant<sup>27</sup> will only have to fill out a statutory declaration to accompany any additional applications.
165. The statutory declaration provides a level of integrity as applicants must state that they understand the consequences of their decision. Criminal offences for false declarations can help to deter applications by people who are not genuine in their application. Existing operational policies administered by the Department in place for identifying fraudulent or forged applications for BDM products would also apply to both first-time and subsequent applications to amend registered sex.
166. The risks of identity fraud are not fully known. We have heard from some agencies that there are additional checks in place to mitigate against the potential for identity fraud. If these checks are effective against mitigating the risks of identity fraud, then this option would likely be proportionate. We continue to work with agencies to fully understand

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<sup>27</sup> This refers to an adult applicant. A child or young person aged 15 and under will still need guardian consent and a letter of support from a suitably qualified third party, and a young person aged 16-17 will need either guardian consent or a letter from a suitably qualified third party.

the extent of these checks and how effective they are. We intend to discuss this further during engagement.

**Option Two – prescribe in regulations the requirement of a referee to provide a statutory declaration that an application is being made in ‘good faith’ (regulatory option)**

Key features

167. Under option two, an applicant would have to provide a statutory declaration made by a referee known to the applicant for one year or more. The referee would confirm the applicant’s subsequent application is being made in ‘good faith’. This requirement would be prescribed in regulations. We are not aware of any other processes that require ‘good faith’ attestations in New Zealand. This option has been modelled from Victoria’s (Australia) requirement for a supporting statement from an authorised person that the applicant’s amendment to their registered sex is being made in ‘good faith’.
168. The referee is only confirming that the applicant’s application is being made in ‘good faith’ which means the applicant is acting in an honest and proper way, without hidden motives. The referee’s statement is not confirming if the applicant conforms to their gender.
169. The statutory declaration from a referee would be in addition to the applicant’s own statutory declaration confirming they want the sex marker on their birth certificate to match their gender, and they understand the consequences of the application.

Analysis

170. This option may affect the accessibility of the self-identification process as it increases the administrative burden on applicants with the requirement of two statutory declarations, one from the applicant and one from a referee. There is a possibility that some applicants may not know someone who is willing to act as a referee, making the process inaccessible.
171. This option could be perceived as too prescriptive for children or young people applying for a subsequent amendment to registered sex. Guardians applying on behalf of their child aged 15 and under would have to include in their application a statutory declaration, a statutory declaration from a referee, and a letter of support from a suitably qualified third party. Young people aged 16- and 17- years old would have to include a statutory declaration, a statutory declaration from a referee and either written consent from their guardian or a letter of support from a third party. However, a suitably qualified third party may be able to also provide the referee statutory declaration. If applicants choose to ask a suitably qualified third party for a letter of support and the ‘good faith’ attestation, this would not necessarily impact the accessibility of the process as they would be able to provide two of the three documents required for their application.
172. This option provides more assurance that an application is genuine than the status quo option and option three. As with the other options, existing operational policies administered by the Department for identifying fraudulent or forged applications for BDM products would exist under this option. The requirement of a referee known to the applicant to attest that they are making a subsequent application in ‘good faith’ further reduces the potential risk of misuse of self-identification process. The referee providing the statutory declaration would be subject to the consequences of falsified statements.

173. The likely probability of the self-identification process being used for purposes of obtaining multiple identities is assumed to be low, based on the current likelihood of birth certificates being used to perform identity fraud. The requirement of a statutory declaration from a referee may be perceived as disproportionate to the level of perceived risk and could be considered as potentially unfair to those (including children and young people) who are genuinely accessing the process to reflect their gender. We are not aware of many services that deem a birth certificate as acceptable form of identification that apply to children and young people as most require the applicant to be over the age of 18. However, young people aged 16 and over can apply for youth income support. The requirement of a statutory declaration for children under the age of 15 may be perceived as disproportionate to the level of perceived risk of person's committing identity fraud with a child's birth certificate.

### **Option Three – additional checks by the Department**

#### Key features

174. Under option three, an operational process managed by the Department would be established to manage any potential risk of identity fraud. This process could include, for example, conducting additional checks on applicant that has applied to change their name and amend their registered sex a set number of times within a certain time that could be considered be suspicious.

#### Analysis

175. Like option one, this option would not impose any additional requirements on applicants making a subsequent application to amend their registered sex, therefore not creating any additional barriers to access the process.
176. An operational process managed by the Department could help identify potential situations of identity fraud. Under this option operational policy would determine how many applications within a period would initiate additional checks. This would enable the Department to investigate applicants they identify as potentially suspicious but uphold the concept of gender fluidity and exclude most of applications that are likely genuine.
177. While this option could help identify possible misuse, it does not provide confidence the applications are genuine and thereby uphold the integrity of the process. This is because it does not necessarily prevent identity fraud as it is likely the Department would conduct additional checks on an applicant after they had made the various applications (and obtained new birth certificates). However, as with the other options, under this option a statutory declaration by an applicant may partly mitigate the potential for identity fraud due to the consequences of falsified statements.
178. Additional checks conducted by the Department of persons who may be exploiting the self-identification process to get multiple identities would be in line with other internal processes undertaken by the Department with similar risk profiles. Because the self-identification process creates a unique avenue for someone to obtain multiple identities, it is not guaranteed that existing policies could help detect identity fraud. This is because the Department only has policies for name changes and other internal processes that rely on the discretion of an officer processing an application. Additional checks could be considered proportionate to the assumed risk of identity fraud occurring as the risk here is greater than the risk of possible fraud with only a name change or only an amendment to registered sex. Some may perceive this process as unwarranted as there may be concern that the Department's power to conduct additional checks does not align with the level of risk.

## How do the options compare to the status quo/counterfactual?

	Option One – status quo: no additional requirements	Option Two – requirement of a referee to provide statutory declaration that application is being made in 'good faith'	Option Three – Department managed process of additional checks
<b>Accessible</b> <i>applicants can easily apply to amend their registered sex without any unnecessary barriers or complexity</i>	<b>0</b> Because there are no additional requirements, there are no barriers created for applicants accessing the self-identification process more than once.	<b>-</b> The requirement of a referee for any subsequent application may create a barrier or perceived barrier to access the self-identification process as some applicants may not know someone who is willing to act as referee.  For adults, the requirement to submit two statutory declarations, and for children and young people to provide two statutory declarations and a letter of support from a suitably qualified third party could impose an unreasonable administrative burden.	<b>0</b> Because there are no additional requirements specifically on an applicant to adhere by, there are no barriers created for applicants accessing the self-identification process multiple times.
<b>Integrity</b> <i>have confidence applications are genuine and the opportunity to commit fraudulent or illegal intent under the self-identification process is limited</i>	<b>0</b> Under the status quo, the statutory declaration by an applicant may partly mitigate the potential for identity fraud due to the consequences of falsified statements.  Existing operational policies for BDM products (e.g. name changes) would be relied upon as a mechanism to pick up any potential cases of fraud or forgery. Current policy does not allow investigations into the amount of times someone has applied for a product, only about the perceived genuineness of the application itself.	<b>+</b> A statutory declaration from a referee that confirms an applicant is making a subsequent application in 'good faith' may mitigate the potential for identity fraud due to the consequences of falsified statements. Combined with the statutory declaration from the applicant, this option provides more assurance that an application is genuine than the status quo and option three.	<b>+</b> Under this option, a process managed by the Department that investigates an applicant who has, for example, amended their registered sex and changed their name multiple times within a certain time could help to identify potential situations of identity fraud. This option would not necessarily prevent identity fraud as an applicant would only be investigated after they had made the various applications (and obtained new birth certificates).  As with the other options, under this option a statutory declaration by an applicant may partly mitigate the potential for identity fraud due to the consequences of falsified statements.
<b>Proportionate</b> <i>the probability of misuse of the self-identification process is proportionately balanced</i>	<b>0</b> Birth certificates are not commonly used for fraud. It is assumed that the likelihood of the self-identification process being exploited for purposes of obtaining multiple identities to perform identity fraud will also be low. Therefore, not prescribing additional requirements and relying on existing processes may be considered proportionate to the level of perceived risk. We will seek information from other agencies about the measures they already have in place to mitigate the risk of identity fraud. If they do have effective measures, then this option would more likely be proportionate.	<b>-</b> Due to the assumed low likelihood of the self-identification process being exploited for purposes of obtaining multiple identities to perform identity fraud, the requirement of a statutory declaration from a referee may be perceived as disproportionate to the level of perceived risk, and potentially unfair to those who are genuinely accessing the process to reflect their gender.	<b>+</b> Creating a unique operational process to account for the possibility of someone obtaining multiple identities under the self-identification process could be considered proportionate with the assumed level of risk of possible identity fraud and is in line with other investigative processes of Department administered products with similar risk profiles.
<b>Overall assessment</b>	<b>0</b>	<b>0</b>	<b>+</b>

### Example key for qualitative judgements:

<b>++</b>	much better than doing nothing/the status quo/counterfactual
<b>+</b>	better than doing nothing/the status quo/counterfactual
<b>0</b>	about the same as doing nothing/the status quo/counterfactual
<b>-</b>	worse than doing nothing/the status quo/counterfactual
<b>--</b>	much worse than doing nothing/the status quo/counterfactual

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

179. At this stage we do not have a preferred option. The ratings are only an indication from our initial assessment of the options. We seek to further inform this analysis through consultation.

## Section 3: What are the marginal costs and benefits of the self-identification regulations?

180. The tables below provide a preliminary indication of the types of costs and benefits of the options for each of the three issues.

<b>Issue 1 – Recognising non-binary genders on birth certificates</b>			
<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	N/A		
Regulators (DIA)	Implementation cost of adding sex marker options into data management systems and sharing data with other agencies	TBD	N/A
Wider Government and other service providers that record gender	Implementation cost of adding gender terms into data management systems	TBD	N/A
People who are non-binary	Cost of amending birth certificate	TBD	N/A
<b>Total monetised costs</b>	N/A	Unknown	N/A
<b>Non-monetised costs</b>			
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	N/A		
Regulators	-	-	-
Wider Government and other service providers that record gender	Will receive more consistent documentation from people who are non-binary	TBD	Medium
People who are non-binary	Birth certificates are a cheaper alternative to getting a passport	TBD	Medium
<b>Total monetised benefits</b>	N/A	Unknown at present	N/A
<b>Non-monetised benefits</b>	Greater recognition of gender	TBD	N/A
	easier to approach service providers	TBD	N/A

	less effort needed to correct records	TBD	N/A
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## Issue 2 – Prescribing suitably qualified third parties

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (Third parties)	Time and effort required for third parties to make an assessment and write letter of support.	TBD	N/A
Regulators (DIA)	Implementation cost of developing guidance for third parties.	TBD	N/A
Wider Government and other service providers that record gender	-	-	N/A
People who are non-binary	Cost of accessing a third party (e.g. if it requires a paid appointment)	TBD	N/A
<b>Total monetised costs</b>	Unknown	N/A	N/A
<b>Non-monetised costs</b>	Unknown	N/A	N/A
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	-	-	-
Regulators	-	-	-
Wider Government and other service providers that record gender	-	-	-
People who are non-binary	-	-	-
<b>Total monetised benefits</b>	N/A	Unknown at present	N/A
<b>Non-monetised benefits</b>	Children will have access to birth certificates that reflect their gender	TBD	N/A
	Will be easier for children and their	TBD	N/A

	whānau to approach service providers		
	Less effort needed to correct records for children	TBD	N/A

### Issue 3 – Additional requirements for multiple applications

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	-	-	-
Regulators (DIA)	Ongoing cost of implementing the additional requirements (could be costs of additional checks or processing extra forms)	TBD	Medium
Wider Government and other service providers that record gender	-	-	N/A
People who are transgender and making multiple amendments	Cost and effort involved in adhering to additional requirements.	TBD	N/A
<b>Total monetised costs</b>	Unknown	N/A	N/A
<b>Non-monetised costs</b>	Unknown	N/A	N/A
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	-	-	-
Regulators (DIA)	-	-	-
Wider Government and other service providers that record gender	May be less vulnerable to identity fraud.	TBD	N/A
People who are transgender and making multiple amendments	-	-	-
<b>Total monetised benefits</b>	Unknown	N/A	N/A
<b>Non-monetised benefits</b>	-	-	-

## Section 4: Delivering an option

### How will the new arrangements be implemented?

181. We are not proposing a final set of options yet, as this is an interim RIS to support the decision to release the discussion document. As such, it is not practicable to develop a detailed plan for implementation and any transitional arrangements.
182. However, we can say that:
  - the latest that any regulatory changes can be in place is June 2023, otherwise no regulations can be put in place; and
  - the Department will be responsible for the introduction, ongoing operation and enforcement of the regulatory changes.

### How will the new arrangements be monitored, evaluated, and reviewed?

183. Efforts to monitor, evaluate, and review the self-identification process will be inclusive of the issues of this RIS.
184. To ensure the objectives of changing to a self-identification process are being met, the process will be reviewed five years from commencement of the self-identification provisions. As part of this the Minister must consult the Human Rights Commissioner, the transgender and intersex communities and any other persons and organisations considered appropriate.
185. Ahead of this formal review, the Department will survey applicants in the first few years after implementation to understand if the new process is meeting their needs. It is open to other stakeholders to contact the Department directly to raise any concerns they have with the options taken to address the issues in this RIS. Depending on this feedback and these surveys, the formal review could be brought forward.
186. Further measures may be considered that are specific to these issues.