

Applying to change the sex/gender on a birth certificate

Who should use this guide?

If you have changed gender, or the sex on your birth certificate is wrong, you can apply to the Family Court for a declaration that the sex on your birth certificate should be changed.

You can nominate either male or female to be the sex on your birth certificate. There is no non-binary option.

Parents and legal guardians of an eligible child can also apply to the Family Court for a declaration on behalf of their child.

It is free to apply to change the sex recorded on your birth certificate.

Who can apply?

You can apply if:

- You're aged 18 years or older, or;
- You're aged 16-17 and are, or have been in a marriage, civil union, or de facto relationship;

And:

- Your birth is registered, or can be registered, in New Zealand, or;
- You were born overseas but you are a New Zealand citizen or permanent resident.

If you are a parent or legal guardian, you can apply on behalf of your child, if:

- Your child is under 18 years of age and they have never been in a marriage, civil union, or de facto relationship;

And:

- Your child's birth is registered, or can be registered, in New Zealand, or;
- Your child was born overseas but they are a New Zealand citizen or permanent resident.

Who is involved?

The Family Court

You will need to file your application in a Family Court (a division of the District Court).

An assigned Family Court Judge in Auckland, Wellington or Christchurch will consider your application.

Births, Deaths and Marriages (The Department of Internal Affairs)

The Registrar-General of Births, Deaths and Marriages oversees all changes to birth certificates that are registered, or can be registered, in New Zealand. They will be notified of your application and must be named as the 'Respondent' on your application forms. The Registrar-General is also responsible for issuing a new birth certificate for New Zealand registered births should the court make a declaration changing the sex/gender.

Interested or affected persons

If the Family Court Judge identifies any persons who are interested in, or may be affected by your application being granted, the Family Court must inform these persons about your application. Interested or affected persons may include your partner or your children. The Family Court will let you know if any interested or affected persons must be notified.

The Law

Under the Births, Deaths, Marriages, and Relationships Registration Act 1995 (BDMRRA) a Judge may issue a declaration that the sex/gender on a birth certificate should be changed.

If you are an adult, you can make an application under section 28 of the BDMRRA. Section 28(3) sets out the criteria required to be met before the court can make a declaration.

If you are a parent or guardian, and making an application on behalf of your child, you can make an application under section 29 of the BDMRRA. Section 29(3) sets out the criteria required to be met before the court can make a declaration.

If you want to view section 28 or section 29 go to www.legislation.govt.nz and search for 'Births, Deaths, Marriages, and Relationships Registration Act 1995'.

How to complete your application

You can choose to apply yourself, or you may want to get a lawyer to help you complete your application.

Application forms can be found on our website: justice.govt.nz/family/change-sex-on-your-birth-certificate/

Do you need legal advice?

Legal aid: If you can't afford a lawyer you may qualify for legal aid which will pay for a lawyer. You can find out more about applying for legal aid here: www.justice.govt.nz/get-legal-aid

The New Zealand Law Society has a directory of lawyers around New Zealand. Visit: www.lawsociety.org.nz

Community Law Centres have lawyers who can support you, and this service is usually free. To find your closest Community Law Centre look in your phone book or online at www.communitylaw.org.nz

Cover Letter

Your application should begin with a cover letter. In this cover letter you can let us know if you would prefer the Judge to consider your application:

- In-person (you want to attend a court hearing with the Judge at a Family Court location of your choice);
- Remotely (you want to attend a court hearing with the Judge via audio-visual link or 'virtual meeting room'), or;
- On the papers (you want the Judge to decide using the information you have included in your application, without you having to attend a hearing).

While the Judge will consider your preferred option, in some circumstances you may still be required to appear before the Judge, either in-person or via audio-visual link or virtual meeting room.

There are also three forms to complete:

1. **Application for declaration, and;**
2. **Information sheet to accompany certain applications**

These forms request key information needed by the court to consider your application, including:

- The location of the court that will process and consider your application. For applications filed in the:
 - Northern or Central North Island, the location of the court will be Auckland;
 - Lower North Island, the location of the court will be Wellington;
 - South Island, the location of the court will be Christchurch.
 - The type of declaration you are asking for
- State either:
- Application for declaration to change sex/gender under Section 28 Births, Deaths, Marriages, and

Relationships Registration Act 1995,
or;

- Application for declaration to change sex/gender of child under Section 29 Births, Deaths, Marriages, and Relationships Registration Act 1995.
- Your name, address, and your address for service (the address you would like any documents about your application to be sent to)
- The name of the Respondent

State: *'Registrar-General of Births, Deaths and Marriage.'*

Tips for completing your application

- All information should be relevant (related) to your application
- It may be helpful to set out your information using bullet points
- Use plain language
- If you are completing your application by hand:
 - Write clearly using blue or black ink
 - Mistakes should be crossed out with a single line
 - Please do not use correction tape or fluid

3. General affidavit

The general affidavit is where you write in detail about why you are seeking a declaration that the sex/gender on your birth certificate should be changed.

As part of your general affidavit, you must attach:

- A certified copy of your original birth certificate, and;
- A medical report that shows you have undergone some form of medical treatment (not necessarily surgery) as part of your transition to your identified sex/gender as required by Section 28(c)(i) of the BDMRRA. Alternatively, information can be provided by a medical practitioner in their own separate

affidavit if you or your medical provider prefer this option.

All documents attached to your general affidavit are called exhibits. Each exhibit must be marked at the top, starting with the letter "A" and continuing alphabetically. For example, "Exhibit A," "Exhibit B," "Exhibit C."

When you are writing your general affidavit, refer to each exhibit by the letter you have assigned to it.

If you are comfortable doing so, you may want to include supporting letters from your friends, family or employer which shows they know you as your identified sex/gender. These documents would be attached as "exhibits" to your general affidavit.

Witnessing your general affidavit

When you have completed your general affidavit, you will need to swear or affirm before an 'authorised person' that all the information you've provided in your general affidavit is true and correct to the best of your knowledge and belief.

An authorised person will sign your general affidavit and any exhibits.

An authorised person can be a Justice of the Peace, a lawyer, or a Registrar or Deputy Registrar of the District or High Court. Justices of the Peace are often located at your nearest court, or other locations in your community, and they can witness your documents for you.

You must present your completed application for filing with the Family Court. This may be done via post, or in person at a District Court or Family Court.

A list of court locations and postal addresses can be found on-line at www.justice.govt.nz/contact-us/find-us/

After you apply

Once the Family Court receives your completed application, they will notify the Registrar-General of Birth, Deaths and Marriages, and any identified interested or affected persons, to let them know about your application.

An assigned Family Court Judge in Auckland, Wellington or Christchurch will look at your application and decide how it should proceed. The Judge may ask for you to:

- take part in short hearing in a confidential, closed court;
- take part in a judicial conference (a meeting before the Judge to discuss any issues with your application), or;
- provide more information or evidence to support your application.

The Judge may also ask for the appointment of:

- a lawyer to assist the court to be appointed (an independent lawyer appointed to help with a complex legal matter), or;
- a lawyer for the child to be appointed (an independent lawyer to represent a child during the court process), if the application was made under Section 29 of the BDMRRA.

Alternatively, the Judge may be able to progress your application based only on the information you have included in your application, without you having to attend any hearing.

If the Judge is satisfied that your application meets the criteria set out in the BDMRRA, they will make a declaration (court order) on what the sex/gender on your birth certificate should be.

The Family Court will send a copy of the Judge's declaration to you, and to the Registrar-General of Births, Deaths and Marriages.

How to request a new birth certificate once a declaration has been made

Once the Registrar-General of Births, Deaths and Marriages receives a copy of the Judge's declaration they will send you an "Application to Deposit a Family Court Declaration as to Sex" form by post.

A copy of this form can be downloaded at:
www.govt.nz/assets/Documents/Passports-citizenship-and-identity/Application-to-deposit-a-family-court-declaration-as-to-sex.pdf

On this form you can:

- Order a new birth certificate with your identified sex;
- Confirm the name you would like on your new birth certificate (your previous name will be removed), and;
- Request an official letter linking your previous identity to your new identity.

You must submit your completed form to Births, Deaths and Marriages (The Department of Internal Affairs). Their postal address is on the form.

When your completed form has been received, Births, Deaths and Marriages will create a new birth certificate with your new identifying details and send you a copy via mail. Your previous birth certificate will then be archived.