



14 October 2022

[Redacted]
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Ref: OIA-2022/23-0152

Dear [Redacted]

Official Information Act request for documents related to harassment towards the rainbow community

Thank you for your Official Information Act 1982 (the Act) request received on 16 September 2022. You requested:

- All briefings and aide memoirs to ministers, and internal reports regarding abuse and harassment towards rainbow/queer/takatāpui communities in the last seven months
- What kind of abuse and harassment experienced by the rainbow community is the DPMC aware of?
- What reports has the DPMC received about harassment towards the rainbow community?

The Department of the Prime Minister and Cabinet (DPMC) is committed to providing a safe respectful working environment for all of its employees. Harassment, workplace bullying and discrimination in the workplace are not tolerated. DPMC is proud to support its staff-led Rainbow Network.

We have interpreted your request to be for material relating to abuse and harassment experienced by members of rainbow/queer/takatāpu communities within New Zealand. Some information provided by members of the public through public engagement was identified as in scope. I am responding on DPMC's behalf as this information was provided to officials from DPMC's National Security Group. We are mindful of the harassment and abuse these communities can face, and we are grateful for the information entrusted to us. Information relevant to your request has been summarised as per section 16(1)(e) of the Act, by giving an excerpt or summary of the contents.

Information in scope of request

	Document Description/Subject	Decision
1.	<i>Summary of what we heard from RCOI Outcomes Framework Development</i>	Withheld under section 18(d) as is publicly available, and can be accessed here: https://dpmc.govt.nz/our-programmes/national-security/royal-commission-inquiry-terrorist-attack-christchurch-masjidain/measuring-success

2.	<i>Summary of DPMC public engagements (summary from notes and other material)</i>	Summary provided under s16(1)(e)
3.	<i>Submission by Rainbow Path to the public engagement on the RCOI Outcomes Framework Development</i>	Extract provided under s16(1)(e)

In addition to this material, DPMC received a small amount of further reporting from a government agency partly in scope of your request. It is necessary to withhold this additional information under section 6(a) of the Act, to avoid prejudicing the security or defence of New Zealand.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on DPMC's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Tony Lynch
Deputy Chief Executive
National Security Group

Summary of DPMC public engagements (from notes taken)

In 2022, the Department of the Prime Minister and Cabinet (DPMC) held a series of in-person and virtual public engagements on the following workstreams:

- Development of Preventing and Countering Violent Extremism Strategic Framework; and
- Development of a monitoring framework for the Royal Commission of Inquiry.¹

The information requested has been made available in a summary (the Summary) under section 16(1)(e) of the Act. Information contained in the Summary are reflections from the public and may not reflect the views of DPMC, or of government more widely.

Harm in digital spaces

As people increasingly live their lives in online spaces, relying on the internet for work, education, and socialisation, participants were keen to stress that hate in digital spaces has real world ramifications, and deeply impacts victims. We heard that TERFS (trans exclusionary radical feminists) in particular, use the internet to overwhelm digital spaces with violent rhetoric, and block organisations from delivering vital services to the communities they serve.

Harm in schools, educational institutions, and other spaces

We heard that some schools have faced violence from anti-rainbow organisations, including some instances where TERF organisations have tried to gain information about students who are gender diverse by lodging OIA applications to school boards, requesting information about students who choose to be called names other than their birth name. We heard that school staff do not have the knowledge or expertise to cope with these situations and can be genuinely worried that they will face legal ramifications if they do not comply with these requests (despite this information not being subject to the OIA process).

Some participants shared their experience of hiding their identities in schools due to fear of reprisal in the form of physical and verbal harm from their peers. The lack of transparency regarding any disciplinary action faced by the perpetrators was also raised as a concern. We also heard rainbow community spaces being targeted by acts of violence and the fear felt members in rainbow communities to meet in such places.

Transmisogyny

We heard that transwomen experience increasingly high levels of misogynistic extremist violence, from both men and women. Transmisogyny describes the intersection of transphobia and misogyny. We heard how TERFS and 'gender critical feminists' act in very organised ways to prohibit transwomen from participating in everyday life. We also heard that transmisogyny is often mainstreamed, presented in ways that give apparent legitimacy to this form of violent extremism.

Participants told us that transwomen are not adequately protected in anti-discrimination legislation, and that legislation designed to protect women is often weaponised by extremists and TERFs to exclude transwomen from women-only spaces.

Sexuality and gender-based hate

Participants told us that people who do not fit within 'mainstream' ideas about gender and sexuality are particularly vulnerable to hate. We heard that rainbow communities have experienced violent extremism, including state sanctioned violent extremism, and that this continues to impact both affected communities and social perceptions of rainbow communities. We heard that rainbow communities are more at risk of violence and have experienced repeated mistreatment from government and institutions because of their identity.

¹ Most of the comments made by members of the rainbow communities at this workshop related to their aspirations for the future – rather than examples of harassment and abuse they currently face.

Extract from:
Submission by Rainbow Path

to

Te Tari Taiwhenua | The Department of Internal
Affairs

on

the public discussion document in relation to

**The self-identification regulations and
registering gender for people born overseas**

1. Introduction

1.1 Rainbow Path

This submission is from Rainbow Path, the peer support and advocacy network for LGBTQIA+ asylum seekers and refugees living in Aotearoa New Zealand. One of the main barriers our transgender, nonbinary and intersex members face since the very beginning of our journey to safety is not being able to have an identity document recognised in Aotearoa New Zealand with our correct name and gender marker. This makes every aspect of our life in Aotearoa extremely difficult and dangerous, and significantly prolongs our resettlement in Aotearoa where we have sought safety.

We risk being outed as transgender and/or people finding out we are a refugee or asylum seeker. Unfortunately, when others have this information about us it increases the likelihood that we will face

discrimination or harassment when we are required to prove our identity and eligibility to access services. Being identified as an asylum seeker also frequently means people think we are ineligible for public services, because too often people assume they are only available for refugees. We are often unable to access essential services because government agencies and service providers:

- do not recognise or accept our identity documents due to the inconsistency between our name, gender marker, photo and/or our appearance
- ask to see multiple documents or administrative records and require all to consistently use the same name and gender marker across all of them or
- the identity documents themselves are not well recognised (especially the Certificate of Identity and Refugee Travel Document) and are not accepted at all or are not deemed sufficient without showing additional documents that must have the same name and gender marker.

Rainbow Path members have been advocating since 2018 for transgender, nonbinary and intersex asylum seekers and refugees to be able to access official NZ identity documents and records with our correct name and gender marker. This was even before we formed as a group in January 2019. Further details of that advocacy are provided in section 2.1 below.

This submission is based on:

- our long term work with trans, non-binary and intersex refugees and asylum seekers
- information from the people who participated in our two community consultations on 16 June (14 people) and 21 June (13 people) and
- our notes from the Department of Internal Affairs' two engagement sessions for people born overseas, where we participated and helped to facilitate one of the breakout group discussions.

All of the italicised quotes in this submission came from either the community consultations hosted by Rainbow Path, the sessions run by the Department of Internal Affairs or (in a few cases) from other submissions or presentations given by Rainbow Path members.

We are aware that some groups were very hesitant to participate in the DIA community consultations, particularly migrants on temporary visas who were scared that if government officials knew they were trans this might affect any future residency application.

Our consultation sessions were held in Aotearoa, and we did not have any takatāpui participants who were born overseas but live in New Zealand or maintain citizenship ties with New Zealand. Rainbow Path supports DIA's intention to understand what this group of takatāpui need from a gender registration process and how obligations under Te Tiriti o Waitangi will be met as this work processes. Whilst not directly related, we note some parallels in recognising the citizenship rights of indigenous people born overseas in a recent Australian High Court ruling that found Aboriginal people were not "aliens" under the constitution and, therefore, could not be deported.¹

1.2 Glossary

¹ Reported by RNZ on 29 July 2022: https://www.rnz.co.nz/news/world/471807/australian-govt-abandons-battle-over-ruling-that-aboriginal-people-cannot-be-deported?fbclid=IwAR0Nv_qckO54IFLU5FxZXF84VYM6el07njfTbQV9iieuGLfrjeFTcuCtiQs

We had created this glossary for frequently used abbreviations:

Col	Certificate of Identity
DIA	Department of Internal Affairs
ID/s	Identity document/s
INZ	Immigration NZ
RTD	Refugee Travel Document

1.3 Confidentiality and personal information

Rainbow Path is aware that any information provided to the Department will be subject to the Official Information Act 1982 and that submissions from organisations may be published individually. For safety reasons, we removed some details to protect anonymity.

Some of the material in this document is very sensitive information, especially for asylum seekers and refugees. We have included more details than we would usually provide in a public forum, such as a person's country of origin and experiences that could be potentially identifiable, in the hope that it helps to inform the policy option developed by officials and considered by the Minister.

Released under the Official Information Act 1982

3. Legal or Policy barriers at different stages of someone's immigration status in NZ

3.1 If you're on a temporary visa

Escaping from persecution and arriving in a foreign country to seek safety is one of the most vulnerable and difficult times of an asylum seeker or refugee's life. Asylum seekers and those who are granted refugee status and become convention refugees already face huge challenges in terms of language, culture, navigating a new system, and starting a new life. Not having identity documents you can use means you are often turned down, discriminated against and harassed when you try to access essential services, at a time when you desperately need support and protection the most.

3.2 If you're a migrant and a NZ resident

Having an identity document with a gender marker can be particularly important for non-binary people (because otherwise they are assumed to be either male or female) or trans women who are not recognised as female or trans men who are not recognised as male. Having the correct gender marker on one's official identity document can also reduce discrimination and harassment, as it serves as a strong statement that the government protects trans people's right and respects our identity, which encourages people to follow suit as well.

"I've been on estrogen for over 20 years and nothing has changed. People still assume I'm a dude and call me mate. Without the gender marker my name is just a joke!"

3.3 If you're a refugee and a NZ resident

RTD and Col can also be dangerous to use as they out the holder as a refugee or asylum seeker, which often attracts further discrimination and harassment. We will elaborate more about this in section 4.2.

4. Examples of difficulties obtaining or using NZ issued ID/s

4.1. Difficulties obtaining NZ issued ID/s to verify identity

Another Rainbow Path member described how little acceptance and recognition a Col has, that it is almost only accepted by the government agencies that issued them, and cannot be used for most daily life situations, such as buying alcohol or 16+ energy drinks.

"The problem is my safety is compromised, at school or in social situations . . . it poses a threat for me and prohibits my ability to work. All of the documents that I have to show have to be legal, with my passport and birth certificate details. . . . I didn't realise how much I need to [prove my identity]. Even things like buying some beverages, 16+ energy drinks, not just alcohol . . . it needs to be a photo ID. A passport or driver licence are the ones that people at Countdown know

are legal. They don't know about a Certificate of Identity or other jargon. . . . The acceptance of documents needs to be clear, so that the common person on the street can recognise, not just government agencies."

A RTD is also not well recognised internationally. Using and traveling on a RTD can be very problematic and dangerous. One Rainbow Path member was refused to board a plane when leaving NZ, and was detained while landing overseas because the RTD is not recognised by the destination country.

"My RTD causes never-ending problems. No-one recognises it inside NZ or overseas. I was refused to board a plane travelling overseas. Trying to open a Western Union account here [to send and receive money from overseas], they don't accept a RTD".

A RTD can also be dangerous to use as it outs you as a refugee, which can cause further discrimination and harassment. One Rainbow Path member described not feeling safe to use his RTD to rent a flat or go to the bank.

"The RTD also has your nationality which makes it a dangerous document to use for some of us here in NZ (especially if you're a political refugee). My nationality is [country of origin], and there are lots of [people from my country of origin] in NZ. There is a lot of stigma against claiming refugee status if you were born in [my country of origin] because it is seen as betraying your government and homeland. I couldn't rent a flat because I do not feel safe to show my RTD to my landlord who's [from my country of origin]. I couldn't use my RTD to change my name at the bank because the staff at the bank is [from my country of origin]. I still couldn't do many things even if I now have an ID that has my correct name and gender."

Some Rainbow Path members have also had their RTDs rejected when applying for a degree course at a NZ tertiary institution. One member was requested by staff to show her passport from her country of origin, even when it had long since expired and has the wrong name and gender and a photo that looks nothing like her. The staff member then insisted on using the person's old name and gender to register her in the university system to be consistent with the expired passport because they do not see RTD as a valid document. This significantly contributed negatively to her mental health, and resulted in her dropping out her study at the institution.

Another Rainbow Path member was questioned by staff about why she and her family are refugees. The staff then gossiped among themselves, commenting loudly on their country of origin and refugee status, which made her feel very uncomfortable and unsafe.

Having an inadequate, not well recognised and not widely accepted identity document as your only document prolongs asylum seekers and refugees' displacement. It makes people feel they don't belong, causes lots of unnecessary stress on their mental health, and it can be deeply humiliating.

One Rainbow Path member tried to use his RTD to sit the test for his learner licence, but The AA staff refused to accept his RTD because she did not recognise it and suspected fraud. Our member described feeling deeply humiliated as the staff member threw his RTD onto the floor like a piece of trash.

“When the only form of identification you have is inadequate and not accepted, it’s not just a document being turned down but your personhood being rejected, like you’re not recognised as the human you are. It’s deeply humiliating and damaging.”

“When we have documents different from NZ born people and NZ citizens, especially having to use a plastic piece of paper to prove our identity, it’s humiliating and pretty much saying you’re less than others and less of a human. Government agencies always call us ‘former refugees’ and say it’s because we are kiwis now and no longer refugees. But every time I show a Col or RTD, it’s clearly saying I’m still a refugee and I’m never a part of NZ.”

Problems with the Name Change Certificate

There is a clear process for people born overseas who want to obtain a name change certificate. However, the name change certificate contains all previous names. This means its usefulness is reliant on having another NZ issued document that reflects the correct gender.

A name change certificate on its own is problematic because it includes both current and past names. Its benefit is in being able to change the name details on other documents. However, often people born overseas do not have access to other documents which can be amended. We are not only trying to “amend” details on official records, but also to obtain documents as well.

“I had a name change certificate and was stopped by the police. They used my old name. She said ‘Your name was female before and you look like a man’. I was with people who didn’t know I was trans... They only know me as who I am. It was really embarrassing... If our past is going to keep coming back to us, how will we be able to grow?”

Problems with the status given to a birth certificate

New Zealand does not have a single or core identity document. This has resulted in a situation where one government agency won’t accept documents from another agency, and that there are different processes for obtaining and amending documents with every single government agency. For people born in New Zealand, there are discrepancies and inconsistencies between documents too. One of the main reasons why the BDMRR Act changes have passed have been to enable people to amend their birth certificate. It is the only document that no-one can take away from you. In addition, as many people born overseas have found, it is a default document that people routinely treat as though it is an official identity document.

Participants described still being asked to show their original birth certificate even after having other documents such as a RTD or a NZ passport. This included being asked to show a birth certificate from their COO to prove why they were traveling with a NZ passport. Being questioned in airports and in contexts where your body can be scanned or searched is very triggering for trans and intersex people, and even more so for those who have experienced trauma or abuse as a refugee.

Problems with the Statutory Declaration as to Birth Certificate

One Rainbow Path member was told by IRD that they have to provide their original Birth Certificate from their country of origin to change their details recorded by IRD. That person does not have a birth certificate and is unable to obtain one.

During the course of Rainbow Path's consultations, we talked with lawyers who emphasised that government agencies asking for a Statutory Declaration as to Birth Certificate should not be requesting detailed information about why someone does not have a birth certificate. Asylum seekers and refugees who have been repeatedly asked to provide information to verify their refugee claim, prove their identity or establish their credibility, can be vulnerable to requests to provide additional details. Any process for amending your name or gender marker or providing documents to support that process should clearly specify the information required so that people are not pressured to provide additional, unnecessary details that impinge on their privacy rights.

There needs to be an adequate solution for asylum seekers, refugees or migrants who do not have or cannot obtain a birth certificate.

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