



TEU

**TERTIARY EDUCATION UNION
TE HAUTŪ KAHURANGI**

Submission of

**Te Hautū Kahurangi | Tertiary Education
Union**

to

Tatauranga Aotearoa | Stats NZ

on the

***Sex and Gender Identity Statistical
Standards: Consultation***

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CONTACTS

Michael Gilchrist

Te Tumu Whakarae | National President

m: +64 27 899 4256

e: michael.gilchrist@teu.ac.nz

Irena Brorens

National Industrial Officer

m: +64 21 770 843

e: irena.brorens@teu.ac.nz

1. Introduction

- 1.1. Te Hautū Kahurangi | Tertiary Education Union (TEU) welcomes this opportunity to respond to Tatauranga Aotearoa | Stats NZ's *Sex and Gender Identity Statistical Standards: Consultation* document.
- 1.2. The TEU is the largest union and professional association representing nearly 10,000 academic and general/allied staff in the tertiary education sector (in universities, institutes of technology/polytechnics, wānanga, private training establishments, and rural education activities programmes).
- 1.3. The TEU actively acknowledges Te Tiriti o Waitangi as the foundation for the relationship between Māori and the Crown. We recognise the significance of specific reference to Te Tiriti o Waitangi in the Education Act and the emergent discourse resulting from this. We also accept the responsibilities and actions that result from our nation's signing of the UN Declaration on the Rights of Indigenous Peoples.
- 1.4. The TEU expresses its commitment to Te Tiriti o Waitangi by working to apply the four whāinga (values) from our *Te Koeke Tiriti* framework as a means to advance our TEU Tiriti relationship in all our work and decision-making – with members and when engaging on broader issues within the tertiary sector and beyond – such as our response to the *Sex and Gender Identity Statistical Standards: Consultation* document:

Tū kotahi, tū kaha: We are strong and unified; we are committed to actions which will leave no-one behind; we create spaces where all people can fully participate, are fairly represented, and that foster good relationships between people.

Ngā piki, ngā heke: We endure through good times and bad; we work to minimise our impact on the environment; we foster ahikā – the interrelationship of people and the land, including supporting tūrangawaewae – a place where each has the right to stand and belong.

Awhi atu, awhi mai: We take actions that seek to improve the lives of the most vulnerable; we give and receive, acknowledging that reciprocity is

fundamental to strong and equitable relationships; and we work to advance approaches that ensure quality public tertiary education for all.

Tātou, tātou e: We reach our goals through our collective strength and shared sense of purpose, which are supported through participatory democratic decision-making processes and structures.

- 1.5. Our response to the *Sex and Gender Identity Statistical Standards: Consultation* document stems from our commitment to the whāinga expressed above and our wish to see these enacted in the tertiary education sector and in our society and communities.
- 1.6. Following the conventions outlined in the associated submission guide for the *Sex and Gender Identity Statistical Standards: Consultation* document, we address each issue and proposed solution in turn by, firstly, rating the degree to which we agree or disagree with said issues and solutions, and, secondly, by elaborating on our rationale for the given rating and, in some cases, providing specific recommendations.
- 1.7. We would like to acknowledge and thank the members of TEU's Rainbow Te Kahukura Advisory Group who contributed their time and expertise toward informing the views presented throughout this submission.

2. Issue: lack of a relevant and consistent approach | Proposed solution: 'gender by default' principle

- 2.1. Proposed Solution Rating: Strongly Agree
- 2.2. TEU members have noted that, in agreement with the consultation document, there is often confusion regarding questions of sex and gender throughout wider society which can lead to the two concepts being conflated.
- 2.3. Members also agree that in almost all cases data collection relating to a person's gender (as opposed to sex) will be more pertinent to policy development and service provision.
- 2.4. However, for many people – particularly transgender and non-binary people – being faced with questions about their gender – especially outside of a medical context – can be a highly sensitive issue and, at times, transpire as a form of

microaggression. Although isolated experiences of microaggressions can be relatively harmless in and of themselves, it is important to consider that for many people the harm associated with being asked about their gender over the course of a lifetime can be significantly compounded.

- 2.5. The TEU's third whāinga – *awhi atu, awhi mai* – includes the following statement: we take actions that seek to improve the lives of the most vulnerable.
- 2.6. Following this whāinga, we recommend that, in order to reduce the likelihood of harm being experienced by people for whom gender-related issues are a highly sensitive issue, guidance on the collection of data pertaining to gender – as well as social research in general – should include the caveat that there is always a clear and valid reason for collecting such data, and that that reason should be explicitly stated in the background information of the research. In the case of gender data being collected as part of research that doesn't necessarily include a gender focus, the rationale for this could relate to the value of being in a position to analyse data retrospectively if gender-related issues and information needs arise subsequent to the initial research being conducted.

3. Issue: the concept of 'gender identity' is too narrow | Proposed solution: an overarching concept of 'gender'

- 3.1. Proposed Solution Rating: Strongly Agree
- 3.2. TEU members agree strongly that, as noted in the consultation document, there is often ambiguity surrounding distinctions between 'gender' and 'gender identity,' and that there is a tendency for the latter concept to be understood as applying specifically to transgender people.
- 3.3. Our members have also indicated that the phrase 'gender identity' implies that such 'identities' are a matter of choice – a factor which can lead to the experiences, identities, and expressions of transgender people being trivialised. Following this, our members also agree that one of the potential flow-on effects tied to such misunderstandings of these concepts is that transgender people are more likely to be 'othered.'

- 3.4. The TEU's first whāinga – *tū kotahi, tū kaha* – includes the following statement: we create spaces where all people can fully participate, are fairly represented, and that foster good relationships between people.
- 3.5. As such, we strongly support the use of an overarching concept of 'gender,' as well as the use of the 'gender of a person' concept and definition outlined on page 8 of the consultation document. Our members have asserted that such a concept/definition is accurate and inclusive, and therefore largely addresses the ambiguity associated with the notion of 'gender identity.'

4. Issue: the term 'gender diverse' is open to misinterpretation | Proposed solution(s): gender classification / 'another gender' in gender question

- 4.1. Proposed Solution Rating: Agree
- 4.2. Although there are instances where the phrase 'gender diverse' may be suitable for describing the status of a particular community, TEU members agree that, as outlined in the consultation document, it is a phrase that is often problematic when provided as an option for responding to a survey question or administrative form. Drawing on personal experience, one TEU member noted:

The first time I came across 'gender diverse' on a form, I wasn't sure if I should tick it because my sense of gender is quite fixed, even though it's outside the binary, so 'diverse' seemed an odd way to describe it.

- 4.3. Additionally, our members agree that substituting 'gender diverse' for 'another gender' provides clarity and reassurance for binary transgender people in the sense that it is valid for them to select either 'female' or 'male' as they deem appropriate.
- 4.4. However, members also raised issues related to the use of 'another gender':
- 4.4.1. Firstly, using 'another gender' may inadvertently exclude people who identify as agender; and,
- 4.4.2. Secondly, similar to the points noted above in Section 3.3, the words 'another' and 'other' are closely related which means that implementing 'another gender' as a survey response option may increase the likelihood

that people who do not identify as either female or male are further 'othered.'

- 4.5. The TEU's first whāinga – *tū kotahi, tū kaha* – includes the following statement: we are committed to actions which will leave no-one behind.
- 4.6. Following this whāinga, we recommend that:
 - 4.6.1. In order to develop standards which minimise the 'othering' of transgender and non-binary people, 'no gender' be considered as either an alternative to 'another gender,' or as a fourth option where 'another gender' appears as the third option;
 - 4.6.2. Including a write-in option is the default standard;
 - 4.6.3. It should always be possible to select more than one option, and that there are explicit instructions associated with the question illustrating that this is the case – this will allow people whose gender is fluid to fully express their gender when participating in research; and,
 - 4.6.4. There should always be a 'prefer not to say' option when answering questions relating to gender.

5. Issue: culturally specific identities are not adequately reflected in concepts | Proposed solution: changing how identities are classified

- 5.1. Proposed Solution Rating: Strongly Agree
- 5.2. Although the TEU members that contributed to the views outlined in this submission strongly agreed that further work needs to be done regarding the development of concepts that sufficiently account for culturally specific identities, they themselves did not feel they were in a position to make definitive recommendations on the best way to approach these issues.
- 5.3. However, in general, members noted that where the intention is to utilise a codefile, research participants should be made aware that even though they may be provided with a write-in option, their response may be re-defined based on the codefile – essentially, aggregation of research responses means that the chance for participants to genuinely self-identify is obscured.

- 5.4. Following this, we recommend that further work is done to develop appropriate concepts and codefiles relating to culturally specific identities by consulting with appropriate communities, stakeholders, and topic experts. This work should recognise both the bi-cultural obligations of Te Tiriti o Waitangi and the multi-cultural realities of Aotearoa including, for example, the cultural gender identities specific to peoples of the Pacific, Asia, the Indian subcontinent, and the Americas.

6. Issue: lack of guidance on collection of transgender population data | Proposed solution: two-step method for identifying transgender and cisgender populations

- 6.1. Proposed Solution Rating: Disagree
- 6.2. TEU members agree that, as outlined in the consultation document, variance between a person's 'sex at birth' and their current gender does not necessarily mean that their self-identified gender should be assumed to be transgender.
- 6.3. Our members also agree that data collection pertaining to 'sex at birth' can be a sensitive issue for many people and that, unless the specificities of the information needs at hand mean that it is necessary for the transgender population to be identified, then a single 'gender' question is likely to be adequate.
- 6.4. Our members are open to the implementation of the proposed two-step method in instances where information pertaining to both 'sex at birth' and 'gender' are required.
- 6.5. However, in instances where information regarding only transgender status is required, members disagreed that the proposed two-step method should be considered and implemented as best practice.
- 6.6. The reason for this is that, for non-binary people, it is not possible to infer their sex at birth in relation to their current gender (as it is with binary transgender people). As such, the two-step method requires non-binary transgender people to reveal sensitive information relative to their sex at birth unnecessarily (see below).

- 6.7. The TEU's first whāinga – *tū kotahi, tū kaha* – includes the statement: we are committed to actions which will leave no-one behind; we create spaces where all people can fully participate [and] are fairly represented [...].
- 6.8. Following this whāinga, we make the following recommendations:
- 6.8.1. Where information needs require discernment between cis- and transgender populations – and where sex at birth information is *not* specifically required – we recommend a single question which would identify the non-/variance between a person's sex at birth and current gender. For example: Is your gender the same as the sex recorded for you at birth? Yes/No. This way, unnecessarily revealing sensitive information pertaining to a person's sex at birth is avoided.
- 6.8.2. In instances where the two-step method is required, the question on gender should precede the question on sex at birth. This way, gender is prioritised over sex at birth which is a factor that can reassure transgender participants that their gender will be recognised – and is a practice which more closely aligns with the 'gender by default' principle outlined in Section 2 above. If the question of sex at birth precedes the question of gender (particularly if the research is being conducted via an online form where later questions are not visible until earlier questions have been completed) there is a chance that unnecessary concern will be caused due to a transgender person's uncertainty that more than their sex at birth will be recorded.

7. Issue: ambiguity in the current sex standard | Proposed solution: improve clarity and specificity in question and concept

- 7.1. Proposed Solution Rating: Agree
- 7.2. TEU members agree that greater clarity is needed regarding current definitions and wording relevant to the collection of sex data.
- 7.3. However, in contrast to the stakeholder feedback noted on page 14 of the consultation document, our members assert that the wording used by Statistics Canada – 'assigned at birth' instead of 'recorded at birth' – is, in fact, more appropriate. The phrase 'assigned at birth' illustrates that the sex determined at

birth does not necessarily reflect an objective truth; current practices mean that sex is almost always determined based purely on genital appearance which means that other elements that factor into a person's sex – e.g. chromosomes and hormonal balance – are disregarded. As such, using 'assigned at birth' is preferable to 'recorded at birth' as it accounts for the notion that there is a degree of interpretation and choice involved on the part of the medical professional in charge of recording sex at birth information.

- 7.4. Additionally, the wording of the sex at birth question should reflect this.
- 7.5. As such, we recommend that:
- 7.5.1. Stats NZ follows the convention adopted by Statistics Canada: "assigned at birth" (also see Section 9.3 below regarding the general use of terminology derived from Canadian practices and standards).
- 7.5.2. The sex at birth question reflects the above convention by being worded in the following way: What sex was assigned for you at birth?
Female/Male.

8. Issue: collection of intersex population data is complex | Proposed solution: intersex variation question

- 8.1. Proposed Solution Rating: Strongly Agree
- 8.2. Although the TEU members that contributed to the views outlined in this submission felt that they themselves were not in a position to provide definitive feedback on whether or not the proposed solution of a separate 'intersex variation' question would be adequate or appropriate, the TEU supports E Tū's recommendations on this point:

E Tū strongly agrees with the ability to include an intersex variation question where it is important to collect data on the intersex population in the same way it is important to obtain information on the trans community [...]. This has to include ensuring the confidentiality and protection of data of anyone completing the form. It is completely the right of the individual to choose how to disclose this information and any decision to collect this data must have sensitivity and privacy at the basis of any decision to do so.

- 8.3. Additionally, as an affiliate of The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU), we support their recommendation that further consultation is conducted in conjunction with Intersex Awareness New Zealand (ITANZ) in order to commence trials on collecting data involving people with variations of sex characteristics.

9. Further information you would like to share

- 9.1. Regarding the issue of ‘age suitability for a question on gender’ raised on page 10 of the consultation document, TEU members agreed that there should be no age limit relative to the collection of data pertaining to a person’s data. However, the following caveat needs to be considered:
- 9.1.1. Data collected from younger transgender people may be inaccurate even if a research question pertaining to gender has been completed by the young person themselves. This could be because the young person is either unsure about, or wholly rejects, their transgender status, or because they are yet to ‘come out’ and therefore would rather not inadvertently do so by responding to a gender-related question, particularly if a parent or guardian happens to be present.
- 9.2. Consideration needs to be given to the order in which genders appear within the context of response options to research questions. More specifically, where common practice is to place ‘male’ as the first option in a list, this is a factor which can subtly reinforce and perpetuate the privileging of masculinity throughout society.
- 9.3. Where factors pertaining to terminology in relation to current Canadian standards have informed the practices of Stats NZ – e.g. the distinction between ‘assigned at birth’ and ‘recorded at birth’ (p.14) – consideration needs to be given to the fact that Canadian standards of language are often implemented in a way which accommodates appropriate translations between both English and French as the Official Languages of the country. Such accommodations may not be directly suitable within the context of Aotearoa.

10. Conclusion

- 10.1. The TEU greatly appreciates the opportunity to provide feedback on Stats NZ's *Statistics and Gender Identity Statistical Standards: Consultation* document.
- 10.2. As noted in *Counting Ourselves* (2019)¹ – the first comprehensive national survey of the health and wellbeing of trans and non-binary people living in Aotearoa – (mis-)understanding issues of sex and gender can have significant implications for the quality of life of Aotearoa's diverse population, particularly those that identify as, for example, non-binary, trans, or as having no gender. With this in mind, TEU considers it vital that data collection in these areas is standardised and commends the work and direction that Tatauranga Aotearoa | Stats NZ are taking on these issues.
- 10.3. Yet, while there are many positive elements to the proposed changes to sex and gender identity statistical standards, further work is required in some areas – namely, the development of concepts and practices relating to culturally specific identities and the collection of intersex data.
- 10.4. The TEU is happy to be contacted with queries, requests for further information, and clarifications relevant to the perspectives outlined in this submission.

¹ See <https://countingourselves.nz/>, accessed 13 August 2020.