

Review of changes to Policy 713

Submission to the New Brunswick Child and Youth Advocate

About the New Brunswick Women's Council

The New Brunswick Women's Council is an independent advisory body for study and consultation on matters of importance, interest, and concern to women and their substantive equality. Its objectives are:

- a) to be an independent body that provides advice to the Minister on matters of importance to women and their substantive equality;
- b) to bring to the attention of government and the public issues of interest and concern to women and their substantive equality;
- c) to include and engage women of diverse identities, experiences and communities, women's groups and society in general;
- d) to be strategic and provide advice on emerging and future issues; and
- e) to represent New Brunswick women.

In delivering on these objectives, the Women's Council may conduct or commission research and publish reports, studies, and recommendations. The Women's Council is directed by an appointed volunteer membership that includes both organizations and individuals. The work is executed by a small staff team.

The changes to Policy 713, the Department of Early Education and Childhood Development's (EECD) policy on sexual orientation and gender identity in schools and school-related activities, are an alarming rollback of protections for trans¹ students.

Under the revised policy, trans students under the age of 16 can no longer expect school staff to consistently use the correct pronouns for them or their chosen first name in everyday interactions based on their request alone. The Minister of Education and Early Childhood Development's vision for the implementation of the changes is more egregious than this: he has said that these students will need parents to sign off on name changes in school records before school staff can use their correct pronouns or chosen first name. If consent cannot be obtained, the revised policy directs these students to in-school professionals—professionals they may well be unable to access due to resourcing issues and age of consent requirements.

Other changes to the policy affect trans students of all ages. The revised policy no longer affirms that students can participate in school-related activities that align with their gender identity. While the policy now addresses changerooms by adding an important requirement for schools to have private universal (i.e., all gender) changing areas, it doesn't provide assurance that students can also use other (i.e., gendered) changing areas that align with their gender identity. It also doesn't stipulate that changing areas will be available in a non-stigmatizing way. These gaps will largely impact trans students, though they also leave cisgender students who may be perceived to be gender non-confirming vulnerable to harm as well.

These changes directly undermine the policy's commitment—which remains intact in the revised version—to the right to self-identification for trans students and to an inclusive, affirming, and welcoming learning environment that is free from discrimination and harassment.

These contradictory and bad faith changes to Policy 713 are directly related to a rising anti-2SLGBTQIA+² backlash in Canada that has a particular focus on invalidating and dehumanizing trans people. Government's public discussion of Policy 713 has echoed many of the claims and arguments of this backlash. As this backlash is essential context for the changes to Policy 713, the Women's Council recommends that the Child and Youth Advocate review [the brief that we have already published on it](#). The brief also provides relevant information on trans youth and the importance of supportive school environments. The Women's Council also recommends that the Advocate review our public statements on how the review of Policy 713 was [initiated](#) and [conducted](#). Finally, the Women's Council recommends that

¹ The Women's Council uses *trans* as a broad term for gender minorities. Gender minorities include individuals who are transgender, non-binary, agender, genderqueer, Two Spirit (an identity specific to Indigenous peoples), and much more.

² Two Spirit, lesbian, gay, bisexual, transgender, queer, intersex, asexual, and other marginalized sexual orientations and gender identities. At times, this brief uses other acronyms to accurately quote Policy 713.

the Advocate review [our commentary](#) on the flaws and contradictions in government’s stated rationale for the changes.

This submission focuses on Policy 713 itself. It primarily reviews the changes, but also identifies three opportunities to strengthen the original policy. The Women’s Council recognizes that the latter may be outside of the scope of the Advocate’s review.

For ease of reference, please note that this submission refers to the policy in terms of sections (e.g., section 1), subsections (e.g., subsection 5.1), and items (e.g., item 6.1.1). Any section, subsection, or item may also be referred to as a provision or directive.

Self-identification in Policy 713

The changes to Policy 713 revolve around the self-identification³ of gender identity for trans students. Self-identification refers to a person determining and asserting their sexual orientation and gender identity, rather than having them assumed and assigned by other people (such as parents or medical professionals) or institutions (such as governments). The New Brunswick Human Rights Commission, borrowing from its Ontario counterpart, [explains](#) gender identity as a “person’s internal and individual experience of gender.”

In both the original and revised policy, self-identification is first referred to in the statement of purpose (section 1): “This policy sets minimum requirements for school districts and public schools to create a safe, welcoming, inclusive, and affirming school environment for all students, families, and allies who identify or are perceived as LGBTQI2S+.”

The principles and goals (section 5) of both versions of the policy are more specific, referring to the *right* to self-identify in subsection 5.1. They state: “All members of the school environment have the right to self identify and express themselves without fear of consequences and with an expectation of dignity, privacy, and confidentiality[.]”

The right to self-identify is critical for 2SLGBTQIA+ students. This right is what protects these students from being told they are “too young to know” that they are 2SLGBTQIA+ or from having their sexual orientation or gender identity dismissed as “only a phase.” The right to self-identify helps ensure that when 2SLGBTQIA+ students assert their identities, they are validated and respected.

The policy’s inclusion of a right to self-identify aligns with provincial [human rights legislation](#) that prohibits discrimination on the basis of sexual orientation and gender identity and expression. It also aligns with the

³ Sometimes “identify as” is used instead of self-identification in the policy; these should be taken as synonymous. In addition to identifying with a specific sexual orientation and gender identity, people may say they identify as 2SLGBTQIA+, are 2SLGBTQIA+, or are part of the 2SLGBTQIA+ community; this is also self-identification.

[criminalization of conversion therapy](#), which protects 2SLGBTQIA+ people from practices, treatments, or services that attempt to change their sexual orientation or gender identity.

Subsection 5.1 also makes it clear that all members of the school community, not just those who are 2SLGBTQIA+, have a right to self-identify in relation to sexual orientation and gender identity. This is ideal because all sexual orientations and gender identities are self-identified. The orientations and identities of non-2SLGBTQIA+ people tend to be treated as the default and thus their self-identification often goes unnoticed. They are still, however, self-identified and it is important for the policy to reflect that so as not to stigmatize or undermine the validity of 2SLGBTQIA+ self-identification.

It is also important to include everyone in the right to self-identification of sexual orientation and gender identity because people can face challenges to these aspects of their identity for reasons other than being 2SLGBTQIA+. These challenges are often based on beliefs and perceptions driven by systemic discrimination, including: racism, ableism, classism, etc. For example, [disabled women are often desexualized](#), meaning their sexuality or sexual orientation is erased and denied. Individuals who are straight and cisgender but express themselves in a way that is [perceived as gender non-conforming](#) may have their sexual orientation and gender identity undermined or questioned. Racialized people, and [Black women in particular](#), are more likely than white people to be challenged on their sexual orientation and gender identity. Racialized youth, particularly [Indigenous](#) and [Black girls](#), are also hypersexualized, assumed to be sexually active, etc. whether they are 2SLGBTQIA+ (or perceived to be) or not. Groups who face discriminatory assumptions about their sexual activities, sexual orientations, and gender identities receive inadequate and inappropriate [sexual health education and care](#), [face increased vulnerability to violence](#), and [experience poor health outcomes](#).

While it is ideal that Policy 713 is clear that self-identification is a right for all members of the school community, it is also appropriate that some of the more detailed directives on self-identification apply to all students while others apply to trans students specifically.

Directives on self-identification that apply to all students address privacy (item 6.1.2: “School personnel will ensure that the school environment respects student’s right to self-identify, and appropriate measures are in place to protect personal information and privacy”); washroom facilities (item 6.4.1: “All students will have access to washroom facilities that align with their gender identity”); accommodations off of school property (subsection 7.3: “Where possible, student should have access to accommodations that align with their gender identity when travelling off school property”); and, in the original policy, participation in school-related activities (item 6.1.5: “All students will be able to participate in curricular, co-curricular, and extracurricular activities that are safe, welcoming, and consistent with their gender identity”). As the latter three directives are based on gender identity, they relate to self-identification even though it is not explicitly stated.

The self-identification directives that apply specifically to trans students appear in subsection 6.3. This subsection, titled “Self-identification,” addresses how trans students can seek to have their pronouns and chosen first names used in the learning environment. Given that social transition for many trans people includes changing what pronouns and name they use, it is reasonable for these directives to only address trans students. A provision such as this is an equity measure.

It is clear that under this policy, the right to self-identification for trans students is not just about these students being able to assert their gender identity to themselves. Rather, it is also about the school environment respecting their gender identity in a comprehensive way. This includes personnel using the first name and pronouns that the students request and ensuring access to spaces that align with the students’ gender identity. Because the policy accounts for privacy and confidentiality concerns in relation to self-identification (subsection 5.1 and items 6.1.2 and 6.2.3), it is also clear that trans students wanting or needing privacy and confidentiality does not invalidate their self-identification.

Finally, given the importance that self-identification is afforded in both versions of the policy, the Women’s Council understands that trans students’ right to self-identification is essential to the kind of environment that the policy aims to provide for 2SLGBTQIA+ community members. This includes (in both versions of the policy): “a safe, welcoming, inclusive, and affirming school environment” (section 1); “an atmosphere that is respectful and free from harassment and discrimination” (subsection 5.2); “a culture whereby LGBTQI2S+ students see themselves and their lives positively reflected in the school environment” (subsection 5.4); and safe and welcoming curricular, co-curricular, and extracurricular activities (item 6.1.5). Trans students’ right to self-identification is also critical to experiences that the policy envisions (in both versions) for 2SLGBTQIA+ students, including: “a sense of belonging and connection to their school environment” and feeling “that they are supported by school personnel” (subsection 5.3). It is also part of living up to the requirement and standard that states (in both versions) that “Homophobic/transphobic language, behaviour, or discrimination towards a member of the school environment will not be tolerated and will be immediately reported to the principal or designate” (item 6.1.4).

Revisions to directives related to self-identification

Government has not changed the purpose, goals, or principles of the policy (sections 1 and 5) or its requirement and standard stating there will be no tolerance of homophobic or transphobic language, behaviour, or discrimination (item 6.1.4). It has, however, significantly changed the requirements and standards in relation to self-identification for trans students (items 6.1.5, 6.3.1, 6.3.2, and 6.4.3).

Additionally, the Minister has publicly articulated a vision for implementation that is more prohibitive than what is laid out in the text of the revised policy. While the policy itself should be authoritative, the Minister has spoken publicly as if school personnel will be required to follow his vision for implementation and thus this submission addresses both.

Directive for school personnel to consistently use the pronouns and first name that a trans student requests without records being updated (item 6.3.1)

Original policy: "School personnel will consult with a transgender or non-binary student to determine their preferred first name and pronoun(s). The preferred first name and pronoun(s) will be used consistently in ways that the student has requested."	Revised policy (additions are italicized): "School personnel will consult with a transgender or non-binary student <i>who is 16 and over</i> to determine their preferred first name and pronoun(s). The preferred first name and pronoun(s) will be used consistently in ways that the student has requested."
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In the original version of the policy, this item provided all trans students with a mechanism to have their correct pronouns and chosen first name used in daily interactions with school personnel without having their school records changed. It is important to note that students who are 16 and older can update their school records themselves; students who are under 16 need parental consent. Thus, this item not only provided a simple way for any trans students to have their pronouns and chosen name respected, it also ensured that trans students under 16 had a path to having their pronouns and chosen first name used without parental consent being sought or obtained.⁴

In [comments to the media](#), the Minister has said that the intent of the change to this item is that school personnel cannot honour requests by a trans student under 16 to have their chosen first name and correct pronouns used unless their parents consent to their school record being updated.⁵ Refusing to use the correct pronouns or chosen names of trans people is commonly called deadnaming and misgendering.

The Minister's vision for the implementation of this directive runs counter to the fact that the revised policy still includes the right to self-identification in its principles and goals (subsection 5.1) and its requirements and standards (6.1.2). It also ignores that, under the revised policy, students are still able to use washroom

⁴ It is noteworthy that in both the original and revised version of the policy, item 6.3.1 is the only provision that addresses pronouns outside of the definitions section (2). In the original version of the policy, it was clear that pronoun usage for trans students of any age by school personnel wasn't based on records; school personnel simply respected trans students' requests. In the revised policy, this is still true for trans students who are 16 and older but how trans students under 16 ensure that their pronouns are used is not addressed.

⁵ Under the Minister's vision for implementation of this change, even if a trans student under 16 has parental consent to change what first name they use in school, there is no mechanism to make this change other than having their records updated. Presumably, cisgender students of all ages can expect that their middle names or abbreviations of their first names will be used by school personnel upon request and without their records being updated (and possibly even without parental consent). Even if the requirement for parental consent was not of concern, this insistence on record updates would be worrying as it likely creates a different standard for trans students than cis students that further entrenches, rather than mitigates, inequity and is therefore discriminatory.

facilities that align with their gender identity (item 6.4.1). Under the Minister's vision for implementation, if a trans student under 16 doesn't have parental consent for their correct pronouns and chosen first name to be used, school personnel are to ignore that student's self-identification when it comes to addressing them but affirm their self-identification in regard to washroom access. It is also unclear how school personnel would, under the Minister's vision, address a situation in which the same trans student is being bullied by their peers through deadnaming and misgendering. How will school personnel intervene in this behaviour that violates numerous unchanged directives in the policy (5.1, 5.2, 5.3, 6.1.2, and 6.1.4) when they themselves are also engaging in it? The Minister's vision for the policy's implementation places school personnel in a contradictory and untenable position.

Fortunately, despite the Minister's statements, the text of the revised policy doesn't actually prohibit personnel from consulting with trans students who are under 16 about their pronouns and chosen first name and then using them as requested regardless of parental consent. Rather, the revised policy is silent on this.

While it is positive that the policy is less prohibitive than the Minister's vision for implementation, the change to item 6.3.1 is still an alarming rollback of protections for trans students who are under 16. The requirement and standard for school personnel to respect the self-identification of these students by using their pronouns and chosen name upon request, regardless of parental consent, is now open to interpretation.

The policy's silence on pronouns and chosen first names for trans students under 16 in daily interactions with school personnel could be interpreted as leaving the decision of whether to honour this aspect of self-identification up to the discretion of a district, school, or school personnel. Alternatively, the policy's references to the right to self-identification in other areas—as well as the right to an atmosphere free of harassment and discrimination, etc.—could lead to an interpretation that these requests must still be honoured regardless of parental consent.

Interpretations will also be shaped by professional standards or codes of ethics that school personnel who belong to regulated professions are bound by. Personnel may also be rightfully concerned that consistently and intentionally misgendering and deadnaming trans students is harassing, discriminatory, and grounds for a human rights complaint and thus opt to respect these requests regardless of parental consent. The union that represents school psychologists and social workers has already [filed a grievance over the revised policy](#), arguing that it "requires school social workers and school psychologists to act in a manner that is contrary to their respective legal and ethical responsibilities" and that "[m]isgendering a person is clearly prohibited by the New Brunswick Human Rights Act[.]"⁶

⁶The New Brunswick Human Rights Commission's [Guide to Gender Identity and Expression](#) states that providers of services and facilities available to the public, including schools, cannot "[r]efuse to refer to a trans customer or client by their preferred name or pronoun."

Even though an interpretation of the policy that is supportive to trans students under 16 is possible, the fact that it is an interpretation rather than a clear-cut directive means that treatment of these students could differ from district to district, school to school, or even staff member to staff member. Self-identification is a right under the policy—and one that is tied to provincial human rights legislation—and thus should not be vulnerable to inconsistent implementation.

If any districts, schools, or personnel do opt (or believe they are obligated) to deadname and misgender trans students under 16, they would not only violate the right to self-identification that remains enshrined throughout the policy, they would also violate the policy’s commitment to: “a safe, welcoming, inclusive, and affirming school environment” (section 1); “an atmosphere that is respectful and free from harassment and discrimination” (subsection 5.2); “a culture whereby LGBTQI2S+ students see themselves and their lives positively reflected in the school environment” (subsection 5.4); “safe and welcoming” curricular, co-curricular, and extracurricular activities for students (item 6.1.5); students having “a sense of belonging and connection to their school environment” and feeling “that they are supported by school personnel” (subsection 5.3); and a supportive school environment in which “Homophobic/transphobic language, behaviour, or discrimination towards a member of the school environment will not be tolerated” (item 6.1.4). These violations would not only impact trans students and 2SLGBTQIA+ students, staff, and volunteers more broadly, but the entire school community. A tolerance for such violations in a public institution like the school system will also create harm at a societal level.

The Women’s Council recommends reverting to the original text of this item.

Process for updating the first name to be used for a trans student under the age of 16 in school recordkeeping and daily management (item 6.3.2)

<p>Original policy (parts that have been removed in the revised policy are italicized): “Transgender or non-binary students under the age of 16 will require parental consent in order for their preferred first name to be officially used for record-keeping purposes and daily management (EECD, school district, and school software applications, report cards, class lists, etc.). <i>Before contacting a parent, the principal must have the informed consent from the student to discuss their preferred name with the parent. If it is not possible to obtain parental consent for the use of the preferred first name, a plan will be put in place to support the student in</i></p>	<p>Revised policy (parts that have been added are italicized): “Transgender or non-binary students under the age of 16 will require parental consent in order for their preferred first name to be officially used for recordkeeping purposes and daily management (EECD, school district, and school software applications, report cards, class lists, etc.). <i>If it is not possible to obtain consent to talk to the parent, the student will be directed to the appropriate professional (i.e. school social worker, school psychologist) to work with them in the development of a plan to speak with their parents if and when they are ready to do so. If it is not in the best interest of the</i></p>
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<i>managing the use of the preferred name in the learning environment."</i>	<i>child or could cause harm to the student (physical or mental threat), the student will be directed to the appropriate school professional for support."</i>
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This item deals with having a trans student’s chosen name “officially used for recordkeeping purposes and daily management.” As students who are 16 and older can update their records without parental consent, this item focuses on trans students who are under 16.

While the language of “daily management” is vague, the examples provided make it clear that this item is speaking to written records and online platforms: “EECD, school district, and school software applications, report cards, class lists, etc.” Based on this (as well as the existence of item 6.3.1), daily management does not refer to the names and pronouns that school personnel use to refer to trans students in everyday interactions.

In both the original and revised versions of the policy, the requirement for parental consent to change the name “officially used for recordkeeping purposes and daily management” remains the same. What has changed is the description of seeking parental consent and what happens when that consent is not obtained.

In the original version of the policy, it was explicitly stated that principals need to have consent from trans students who are under 16 before contacting their parents about updating the first name on their school records. The revised policy now merely implies that a student’s consent is required (i.e., it notes what to do “[i]f it is not possible to obtain consent to talk to the parent” without having previously established that consent must be obtained). The revised policy also does not specify who would obtain the student’s consent or contact their parents.

The original version of this item also re-affirmed the original version of item 6.3.1 by making it clear that that even without parental consent for school record changes (presumably either because parents did not consent or because a student did not consent to the school contacting their parents), trans students’ pronouns and chosen name would be used in the learning environment. In the revised policy, that assurance has been removed.

The revised policy does not identify new next steps should parents refuse consent, only the next steps if a student does not consent to their parents being contacted. The revised policy states that in these cases:

the student will be directed to the appropriate professional (i.e. school social worker, school psychologist) to work with them in the development of a plan to speak with their parents if and when they are ready to do so. If it is not in the best interest of the child or could cause harm to the

student (physical or mental threat), the student will be directed to the appropriate school professional for support.

It is important to recall that under the Minister's vision for the implementation of the policy, this item lays out the only path for trans students under age 16 to have their pronouns and chosen first name used by school personnel. While it is positive for resources to be made available to all students who may need them, it is stigmatizing for trans students to be directed to social workers and psychologists en masse, especially as school personnel deadname and misgender them. This approach risks pathologizing trans identities by addressing them as a clinical issue to be treated or a risk to be mitigated rather than as identities to be respected. This borderline coerced engagement with social workers and psychologists may result in trans students refusing to seek professional mental health support in the future should they need it.

Even if referrals to school social workers and psychologists were an appropriate course of action, this path forward is not being offered in good faith as these resources will largely be inaccessible. There is a [social worker shortage](#) in New Brunswick and school [psychologist](#) positions are significantly understaffed. Those students who do have access to these in-school professionals may not be able to see them without parental consent, however. As per the [Code of Conduct of the College of Psychologists in New Brunswick](#), parental consent is required for the provision of psychological services to individuals under the age of 16. School social workers follow the New Brunswick Association of Social Worker's [Standards Regarding the Capacity of Minors to Consent to Social Work Services](#) to determine whether they can provide services to those under age 19 without parental consent. Given this, trans students under 16 who are not ready to come out to their parents will be in a position where either parental consent is still an issue or they will, frustratingly, be deemed mature enough to consent to social work services but not to determine their pronouns and chosen first names.

The Women's Council recommends reverting to the original text of this item.

Provision that all students be able to participate in curricular, co-curricular, and extracurricular activities that align with their gender identity (item 6.1.5)

Original policy (parts that have been removed in the revised policy are italicized): "All students will be able to participate in curricular, co-curricular, and extracurricular activities that are safe, welcoming, <i>and consistent with their gender identity.</i> "	Revised policy: "All students will be able to participate in curricular, co-curricular, and extracurricular activities that are safe and welcoming."
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In media, [the Minister has stated](#) that the reason for the removal of "and consistent with their gender identity" is that the New Brunswick Interscholastic Athletic Association (NBIAA) already addresses this issue.

There are multiple problems with this. To begin, EECDC should not be delegating its policy-making responsibilities on matters related to the rights of students. While the NBIAA does have [operating guidelines that are trans inclusive](#), this standard should be set by provincial policy and then reaffirmed by the NBIAA. Further, the NBIAA only oversees high school athletics. It does not address school athletics at other levels, nor any curricular, co-curricular, or extracurricular activities that aren't athletics.

With the removal of the guarantee that students can participate in activities that align with their gender identity, trans students could now be required to either participate in categories or with teams and groups that do not align with their gender identities or be excluded entirely. Cisgender students who are perceived as gender non-conforming—again, this is more likely to be racialized students—could also face increased risk of scrutiny or exclusion. It will depend on the interpretation of the policy, as described in the section of this submission that reviews the changes to item 6.3.1.

The Women's Council recommends reverting to the original text of this item.

Addition of a requirement for schools to have private universal changing areas (item 6.4.3).

The original subsection on universal spaces (6.4) did not address changing rooms, only washrooms.	Revised policy: "Private universal changing areas will be available in all schools."
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The addition of a requirement for all schools to ensure that private universal changing areas are available is a welcome one. However, the provision for changing areas is not as fulsome as the one for washrooms. There is no assurance that students will also have access to gendered changing areas that align with their gender identity or that changing areas will be available to all students in a non-stigmatizing manner.

The Women's Council recommends that the items under subsection 6.4 be revised to:

6.4.1 All students will have access to washroom facilities and changing areas that align with their gender identity. The washroom facilities and changing areas will be available to all students in a non-stigmatizing manner.

6.4.2. All schools will have at least one, universal washroom facility (private) and one universal changing area (private) that are accessible at all times.

Strengthening the original policy

The Women's Council recommends that an item be added to subsection 6.3 specifying that consent must be obtained from students under the age of 16 before any school personnel discusses their sexual orientation or gender identity self-identification, matters related to their sexual orientation or gender identity self-identification, or perceptions of their sexual orientation and gender identity with their parents.

The Women's Council recommends that "preferred first name" be replaced with "chosen first name" throughout the policy and that "preferred pronouns" be replaced simply by "pronouns" or if necessary for clarity "correct pronouns." For example, "School personnel will consult with a transgender or non-binary student to determine their preferred first name and pronoun(s)" would be revised to read "School personnel will consult with a transgender or non-binary student to determine their pronoun(s) and chosen first name." While "preferred" is typically used in good faith to demonstrate deference to students' self-identification, it can imply that their pronouns and chosen first name are mere preferences rather than important reflections of who they are.

Finally, the Women's Council recommends that the acronym LGBTQI2S+ be replaced with 2SLGBTQIA+. The A represents asexual members of the community. 2S, representing Two Spirit people, is moved to the front to reflect that they, as Indigenous persons, have been here since time immemorial—before LGBTQIA+ settlers and arrivants.⁷ Both this recommendation and the preceding one are based on evolutions in best practices in language describing the 2SLGBTQIA+ community; the latter is also tied to the work of reconciliation. Governments can be hesitant to make changes to policy documents based on these kinds of ongoing changes in language, but as this policy will hopefully be revised in the coming weeks or months, there may be an opportunity to seamlessly implement them alongside others.

⁷ More information on the terms settlers and arrivants is available in the Women's Council's [Submission to the Commissioner on systemic racism](#).