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Speak Up for Women
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Hon Casey Costello
Minister for Customs
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Tēnā koe Minister Costello

RE: Customs Guidelines for Strip Searches not in line with legislation

1. Speak Up for Women (SUFW) is an advocacy group seeking to ensure sex-based rights for women and girls in New Zealand.
2. We would like to bring to your attention a concerning detail of the [Guidelines for strip searches](#)¹ found on the Customs NZ website. In the section 'Suitability of searcher', it prescribes the following:

*Searches must be conducted in the presence of at least two officers of the same **gender identity** as the person being searched. A strip search may not be carried out in view of any person who is not the same **gender identity** as the person being searched. If a Customs officer of the same **gender identity** is not available, [section 125\(h\)](#) of the Search and Surveillance Act permits another authorised enforcement officer of the same **gender identity** to conduct or assist with the search, for example a constable.*

*A transgender person may specify the **gender** of the searchers. Where no suitable searcher is available, the person may be taken to another place to be searched.*

3. Five times, **gender identity** or **gender** is mentioned, yet not one mention of sex.
4. This appears to be a breach of the relevant legislation, the **Search and Surveillance Act, 2012**. Firstly, the *Guidelines and rules about use of strip searching* contains no reference to either gender identity or gender:

*"A strip search may be carried out only by a person of the same **sex** as the person to be searched, and no strip search may be carried out in view of any person who is not of the same **sex** as the person to be searched."² ([Section 126 \(4\)](#))*

5. Additionally, the *Special rules about searching persons* [Section 125\(h\)](#)³, referred to in the guidelines in question, refer to sex, not gender:

¹ <https://www.customs.govt.nz/globalassets/documents/technical-lists-and-guides/guidelines-for-strip-searches.pdf>

² <https://www.legislation.govt.nz/act/public/2012/0024/latest/DLM2136825.html>

³ <https://www.legislation.govt.nz/act/public/2012/0024/latest/DLM2136824.html>

“if the search is to be a strip search, [the person exercising the power] may request the assistance of another enforcement officer (whether or not employed or engaged in the same or a different law enforcement agency) who is—

(i) authorised under any other enactment to conduct strip searches; and

*(ii) of the same **sex** as the person to be searched;*

6. Gender identity is an ideological concept entirely separate from sex. Men can claim a female ‘gender identity’, as highlighted in the Stats NZ [definition](#)⁴ of gender:

“Gender refers to a person’s social and personal identity as male, female, or another gender, or genders that may be non-binary. Gender may include gender identity and/or gender expression. A person’s current gender may differ from the sex recorded at their birth and may differ from what is indicated on their current legal documents. A person’s gender may change over time. Some people may not identify with any gender.”

7. The fluid and entirely subjective nature of gender identity creates unworkable problems for employers, managers and clients. It is impractical and unsafe in real life scenarios to rely on a person’s selected gender identity to determine which staff can perform which tasks.
8. The use of gender identity as an identifier creates a conflict of interest in law. Namely a conflict with women’s rights. These guidelines could result in a breach of a woman’s legal right to have only persons of the **same sex** perform and/or view a strip search. We seek assurance from you as Minister for Customs that women being strip searched will be able to request **only women be present** during the search; women being **adult human females**, born female, sex: female.
9. We consider these guidelines to be completely at odds with the legislation and we seek an **urgent review**.
10. We call on the minister to correct these guidelines, and any relevant training documentation, to reflect the law as it is written. We are happy to meet with you to discuss.

Ngā mihi

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⁴<https://www.stats.govt.nz/methods/information-about-the-standard-for-gender-sex-and-variations-of-sex-characteristics>