

Legislative statement for the Second Reading of the Births, Deaths, Marriages and Relationships Registration Bill

Presented to the House of Representatives in accordance with Standing Order 272

Introduction

1. The objective of the Bill is to create a legislative framework that underpins the changing ways New Zealanders expect to create, change, use and access identity information. In doing so, the Bill reflects and supports the ever-changing profiles and needs of our communities and addresses the expectation that all government services are accessible through online and digital channels.
2. The Bill gives effect to this objective by reflecting the recommendations arising from a series of reviews and amendments, specifically the;
 - 2015 Law Commission’s review of burial and cremation law,
 - 2016 Ministerial review into the Births, Deaths, Marriages and Relationships Registration Act 1995 access provisions,
 - 2016/17 Internal Affairs’ departmental review; and
 - 2018 Governance and Administration Committee’s amendments following the Bill’s first reading.

Overview of key provisions

3. The Bill facilitates the development of new access channels for all Births, Deaths and Marriages (BDM) information, allowing greater digital access to information, while also seeking to mitigate the potential misuse of information.
4. The Bill also introduces a new process for people to amend the registered sex on their birth record. The new process will make it easier for members of the transgender, non-binary and intersex communities to get a birth certificate that reflects their gender.
5. In drafting these key provisions, the Bill makes the following key amendments:
 - 5.1. *General amendments*
 - *Drafting style:* Provisions are rewritten and reordered in a modern drafting style to improve accessibility for people reading and interpreting the legislation.
 - *Channel-neutral language:* References to paper-based processes are replaced with terms that are channel-neutral.
 - *Single BDM registry:* The concept of an umbrella BDM registry is introduced to bring together all BDM information held by the Registrar-General, electronically and otherwise.
 - *New definitions of historical information:* New definitions of historical (deceased individuals) information are introduced to allow for greater digital searchability.

5.2. *Greater digital access to information*

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- A new legislative framework facilitates development of an all-of-BDM Internet-based search, records access and ordering facility with fees for accessing material set in regulation.
- A new search function is introduced that will help people identify the correct record they are searching for more easily.
- The ability to search and view for historical information online is provided as an alternative to the current requirement to purchase a paper-based certificate or printout.
- The Registrar-General will be able to provide online access to historical birth register pages that may contain restricted information (e.g. pre-adoption information) or information deemed to be expunged and deleted (e.g. the notation “illegitimate”).
- The Registrar-General is provided with the ability to make non-historical index information, but not full non-historical records, available for search online.
- Intention to Marry records are made available for public access in the same way as historical marriage records.

5.3. Overseas registered or sourced BDM information

- Provisions are clarified to allow the Registrar-General to note on a birth certificate when a death certificate from overseas has been received (thereby mitigating against identity fraud).
- Equivalent provisions are introduced concerning overseas-registered divorces or dissolutions of a marriage or civil union performed in New Zealand.

5.4. Privacy protections

- An exception for public sector agencies is included to the “named person” rule authorising the Registrar-General to conduct one-off searches that do not relate to a named person’s BDM record but only under specific circumstances.
- Additional protections are added for at-risk individuals through the strengthening of non-disclosure directions.

5.5. Registered name-change documents for overseas-born individuals

- Clarification is provided so that name change documents for overseas-born individuals are treated consistently as source documents.

5.6. Law Commission’s 2015 report on burial and cremation law

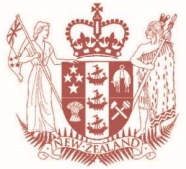
- Preliminary cause of death requirements are aligned with the existing requirements for a preliminary notice of birth through requiring a doctor or health professional to provide a preliminary notice of death to the Registrar-General.

5.7. Select Committee 2018 Amendments

- The term ‘parent’ is added to ‘father’ and ‘mother’ as a status choice on a birth certificate;
- A new definition is added for eligible 16- or 17- year olds allowing them to apply for a name change with consent from their guardian;

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- The Registrar-General can withdraw a non-disclosure direction that has been obtained through fraud or misrepresentation, which is now an offence under the legislation.

5.8. Self-identification

- A self-identification process based on a statutory declaration is introduced where people apply directly to the Registrar-General of Births, Deaths and Marriages to amend their registered sex;
- The self-identification process is made available to children and young people (under 18 years of age);
- Applications for children and young people 15 years of age and under must be made on behalf of the child or young person, by their guardian; and be accompanied by a recommendation by a health professional;
- Applications from young people aged 16 and 17 years of age can be made on their own behalf and must be accompanied by written consent from their guardian, and a recommendation by a health professional;
- Provisions clarify that the Registrar-General can give effect to Family Court decisions under the Care of Children Act 2004 relating to guardians refusing consent to a 16- or 17-year-old amending their registered sex;
- Similarly, the provisions clarify that the Registrar-General can give effect to Family Court decisions under the Care of Children Act 2004 where there are disputes between guardians to a child or young person changing their registered sex;
- Two new sex markers 'intersex' and 'X-unspecified' are introduced as further options to the 'male' and 'female' sex markers.
- A provision requiring a statutory review of the self-identification provisions five years after commencement has been included.

Supplementary Order Paper

6. Cabinet recently agreed to propose an amendment to the self-identification provisions of the Bill through a Supplementary Order Paper (SOP). The SOP makes the following amendments to the Bill;
 - Allowing 16-17 year olds to apply on their own behalf with *either* a letter of consent from a guardian *or* a letter of support from a 'suitably qualified third party';
 - Replacing 'health professional' with 'suitably qualified third party' to ensure both accessibility of service and avoiding a return to the medicalisation of the process (the term 'suitably qualified third party' will be defined in regulation).
 - Requiring guardians applying on behalf of 15 years old and under to have the children or young person's consent and must provide a letter of support from a suitably qualified third party (to be prescribed in regulations);
 - Allowing people to amend registered sex multiple times, but with additional requirements set in regulations to ensure the application is genuine and to mitigate the risk of identity fraud;
 - Allowing individuals to revert to their sex at birth without the need to meet any additional requirements that may usually be needed for subsequent amendments;

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- Removing anyone whose birth cannot be registered in New Zealand from the definition of eligible person;
- Removing 'intersex' as a sex marker, with sex markers other than male and female to be prescribed in regulation following consultation.
- Including an 18-month transition period of the self-identification provisions to ensure the technical infrastructure and regulatory framework are in place to give effect to the changes in a way that works for all involved.