

Departmental Disclosure Statement

| |
|--|
| Births, Deaths, Marriages, and Relationships Registration Bill |
|--|

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 July 2017

Contents

| | |
|--|---|
| Contents | 2 |
| Part One: General Policy Statement | 3 |
| Part Two: Background Material and Policy Information | 5 |
| Part Three: Testing of Legislative Content | 7 |
| Part Four: Significant Legislative Features | 9 |

Part One: General Policy Statement

Introduction

This Bill—

- re-enacts the Births, Deaths, Marriages, and Relationships Registration Act 1995 (BDMRRA 1995) to ensure all provisions are presented in an up-to-date and accessible form;
- gives effect to the recommendations arising from the Minister of Internal Affairs' review of the access provisions in the BDMRRA 1995 (BDM access review), which was presented to the House of Representatives on 20 October 2016;
- updates and amends some operational provisions in the existing law; and
- responds to three discrete issues raised in the Law Commission's review of Burial and Cremation Law.¹

Policy objectives

The policy objectives of this Bill are to:

- future-proof the system of civil registration of life events (births, adoptions, name changes, sexual assignment and reassignment, marriages, civil unions, and deaths) (BDM information) for matters important to government;
- establish a medium-neutral platform that supports the provision of, and access to, all BDM services, which aligns with the Government's Better Public Services objectives, including Result 10 which the Department is responsible for: People have easy access to public services, which are designed around them, when they need them;
- regulate third party access to BDM information for authorised purposes, including the provision of and effect of certificates that provide an official record of registered BDM information;
- balance the public interest in access to BDM information for legitimate purposes with the protection of at-risk individuals and individuals' privacy interests; and
- implement the Law Commission's recommendation for a new statutory system for notifying deaths, which will improve the timeliness and accuracy of death registrations, including the cause of death.

Re-enacting the BDMRRA 1995

The general policy objective is to address the lack of coherence and transparency resulting from multiple amendments to the BDMRRA 1995 since it was enacted. Re-enactment will not change the effect of the law (with the exceptions detailed below), but it will:

- ensure consistent use of medium-neutral language, and language that reflects modern drafting standards;
- align with approved amendments to the BDMRRA 1995 in relation to the completion of statutory declarations, which have been included in the Electronic Interactions Reform Bill 2017 (175-2);
- omit redundant and spent provisions; and
- renumber and re-order provisions as required.

BDM access review

The BDM access review confirmed the basic principles underpinning the BDM access regime were sound, but it revealed a clear preference for digital and online access over paper-based access via certificates and printouts. The Bill makes some changes to the rules that restrict what information can be published online, which will enable the Department to develop an end-to-end service that increases access to BDM information (including historic BDM register images) through digital and online channels. The legislative framework for the new access channels will include a requirement for a verified RealMe ID (or an approved equivalent) that can be asserted online.

¹ Law Commission *Death, Burial and Cremation: A new law for contemporary New Zealand* (NZLC R134, October 2015).

The Bill will also clarify the status of Intention to Marry books (ItMs), which are a valuable resource for genealogical research. Access will be authorised in the same way, and subject to the same rules, as apply to solemnised marriage records. Without this change, access to ItMs, which are currently classified as source documents, could be restricted indefinitely.

Operational review

As well as re-enacting the BDMRRA 1995, the Bill will make a number of small but important changes to improve the integrity of the BDM registers by clarifying the rules concerning overseas-registered or overseas-sourced BDM information (eg, an overseas-registered divorce or dissolution of a marriage solemnised in New Zealand), close a gap in the existing law that could undermine the effectiveness of a non-disclosure direction, and strengthen BDM access register requirements.

In addition, regulations that will replace the Births, Deaths, Marriages, and Relationships Registration (Prescribed information) Regulations 1995,² will provide all children (living or dead) will be recorded on an individual's death record, with a notation "deceased" where applicable.³ Under the BDMRRA 1995, children who die before their parent/s are not recorded on their parent/s death certificate/s. This change will address a known cause of concern for grieving families, and ensure more complete family records, which will benefit individual families, researchers, and family historians.

Law Commission review of burial and cremation law: Statutory system for death notifications

The Bill will introduce a new requirement for a preliminary notice of death (similar to the existing preliminary notice of birth) to be completed by the health professional responsible for the Certificate of Cause of Death (Law Commission recommendation R7). The Bill will also clarify the existing law, which conflates responsibility to notify a death with responsibility to notify disposal of a body. This means some deaths are not notified in a timely way. The person making decisions about disposal of a body will need to notify the death "... as soon as practicable, and no later than 3 working days after the disposal of the body ..." (Law Commission recommendation R8).

These amendments can be progressed independently of the Ministry of Health-led consideration of a replacement for the Burial and Cremation Act 1964.

² The Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995) detail the information that must be provided when a life event (including a death) is notified, as well as the information that will be included in a certificate (including a death certificate), which is the official record of that event. All regulations made under the BDMRRA 1995 will need to be remade to come into effect when the Bill becomes law.

³ This mirrors the existing requirement for a birth certificate for an individual who was still-born, or who dies before the certificate is issued: BDMRRA 1995, s 67(3).

Part Two: Background Material and Policy Information

Published reviews or evaluations

| | |
|--|------------|
| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | YES |
| <p>Section 78J of the BDMRRA 1995 required the Minister of Internal Affairs to review the operation of the BDM access provisions five years after they came into force in January 2009.</p> <p>The Department of Internal Affairs issued a Discussion Paper: <i>Access to the registers: births, deaths, marriages, civil unions and name changes</i> in January 2015. Eighty submissions were received. The Department issued a Proposals Paper responding to those submissions on 23 March 2016. The Minister of Internal Affairs' report on the outcome of the review was presented to the House of Representatives on 20 October 2016.</p> <p>All papers related to the BDM access review (including the submissions received on the Discussion Paper and the Proposals Paper, summaries of those submissions, and the Cabinet paper notifying the outcome of the review prior to the presentation of the Minister's report to Parliament can be accessed on the Department's website: https://www.dia.govt.nz/bdmreview.</p> <p>All papers related to the Law Commission's review of burial and cremation law, including the Government response, which was presented to the House of Representatives on 21 April 2016, can be accessed on the Commission's website: http://www.lawcom.govt.nz/our-projects/burial-and-cremation-law.</p> | |

Relevant international treaties

| | |
|--|-----------|
| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
| N/A | |

Regulatory impact analysis

| | |
|--|------------|
| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| <p>A Regulatory Impact Statement: <i>Births, Deaths, Marriages, and Relationships Registration Amendment Bill</i> (15 February 2017) can be accessed at: https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument.</p> <p>The RIS covers two of the three workstreams, which inform the Bill's content:</p> <ul style="list-style-type: none">• Workstream 1: BDM access review; and• Workstream 3: Law Commission review of burial and cremation law (R7 and R8). <p>A RIS was not required for Workstream 2 (the Department's operational review) as the amendments have no or minor impacts on businesses, individuals, or not-for-profit entities.</p> | |

| | |
|---|-----------|
| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
| <p>The bill substantively re-enacts the existing law in the BDMRRA 1995. A RIS was only required for three aspects of the bill: (1) authorise the Registrar-General to use (and publish) pre-2009 index information (but not full non-historical records) as part of a limited Internet-based search function for non-historical information; (2) permit historical register images to be viewed online, as an alternative to the purchase of a certificate or printout; and (3) introduce a new section (equivalent to s 5A—Preliminary notice of birth, with appropriate modifications) for a preliminary notice of death to be completed by the health professional responsible for the Certificate of Cause of Death. The RIS did not meet the threshold for RIA Team assessment.</p> | |

| | |
|--|-----------|
| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
| N/A | |

Extent of impact analysis available

| | |
|---|-----------|
| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
| N/A | |

| | |
|---|-----------|
| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | NO |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
| N/A | |

| | |
|---|-----------|
| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | NO |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |
| N/A | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Bill re-enacts the existing law in the BDMRRA 1995, which gives effect to art 24(2) of the International Covenant on Civil and Political Rights 1966 (ICCPR) ("Every child shall be registered immediately after birth and shall have a name"). The Bill reflects the non-discrimination provisions in the Universal Declaration of Human Rights and the ICCPR, including sexual orientation and gender identity. Overseas-born individuals who are citizens or permanent residents retain the ability to obtain a Family Court declaration that enables them to change the gender identity ("nominated sex") on their birth certificate and/or to register a name change. The Bill carries over the application of the law to adoptions registered pursuant to s 11 of the Adoption (Intercountry) Act 1997, which implements the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill does not make substantial changes to the existing law. None of the agencies consulted or the Department's internal legal team has identified any inconsistency with the principles of the Treaty of Waitangi. The duty to consult was reflected in the public consultation undertaken; public submissions did not raise any concerns.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report by the Attorney-General, is generally expected to be available on the Ministry of Justice website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/humanrights/bill-of-rights>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

The Bill does not create new penalties, or amend existing penalties; the penalty provisions in the BDMRRA 1995 will be re-enacted. The Bill will also re-enact existing rights of appeal to the Family Court against certain registration decisions by the Registrar-General.

3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

The Ministry of Justice was among the agencies consulted throughout the policy development process, but no specific consultation was undertaken on the re-enacted offence provisions. The Ministry was consulted on New Zealand Bill of Rights Act 1990 implications.

Privacy issues

| | |
|---|------------|
| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | YES |
| <p>The BDM registers are public registers. The Bill will re-enact the “named person” rule, which requires someone requesting access to someone else’s BDM information to identify the specific record/s they want to access. The Bill (and associated regulations) will provide that online access to BDM information (principally historical information), and the ability to order certificates and printouts will require evidence of identity established by a verified RealMe ID (or approved equivalent) that can be asserted online.</p> <p>The Bill will authorise the Registrar-General to make unedited historical register page images available online as an alternative to the requirement to purchase a certificate or printout to access registered information. This could have minor privacy implications as historical births and deaths registers (but not marriage registers) typically have multiple entries per page. It could also see a minor conflict between rules that restrict access to some BDM information (eg, a notation indicating a child has been adopted) as amendments to the paper registers were noted manually, and would be able to be viewed on a scanned register image. However, the risk to privacy interests is mitigated by the fact very few living individuals are likely to be impacted, and then only indirectly.</p> <p>The Bill will authorise the Registrar-General to establish a limited search function for non-historical information (but the prohibition on publication online of full non-historical records will not change). This has the potential to be privacy-enhancing as the ability to conduct an “elimination search” based on a limited subset of index information would reduce the need to access multiple “named person” records to identify the “right” record.</p> <p>The Bill will strengthen privacy protections by ensuring Individual A who legitimately accesses their own BDM information does not receive information about Individual B (eg, a bride or groom whose details would normally appear on a marriage certificate) if Individual B has obtained a non-disclosure direction.</p> <p>The Bill will strengthen the operation of the BDM access register by extending it to cover (a) requests for access to non-historical death information, and (b) the identity of an individual on whose behalf access a BDM record has been sought. The BDMRRA 1995 already requires a person making an access request (the “requestor”) to provide details of a person they are acting on behalf of, but only the requestor’s details are recorded in the access register.</p> | |

| | |
|---|------------|
| 3.5.1. Was the Privacy Commissioner consulted about these provisions? | YES |
| The Privacy Commissioner has been consulted at each stage; the Commissioner provided a comment for inclusion in the February 2017 policy approvals Cabinet paper supporting these provisions. | |

External consultation

| | |
|--|------------|
| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | YES |
| <p>The BDM access review included the release a Discussion Paper (January 2015; 80 submissions) and a Proposals Paper (March 2016; 32 submissions). The review confirmed the basic principles underpinning the BDM access regime remain sound, but submissions reflected a clear preference for digital and online access to BDM information over paper-based access via certificates and printouts.</p> <p>The Law Commission’s review of burial and cremation law included two issues papers (May 2011 and October 2013), which attracted a wide range of public and agency submissions. The Commission also held consultation meetings throughout the country to discuss the issues involved with the general public.</p> | |

Other testing of proposals

| | |
|---|-----------|
| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete? | NO |
| N/A | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

| | |
|--|-----------|
| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
| N/A | |

Charges in the nature of a tax

| | |
|---|------------|
| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | YES |
| The Bill will re-enact the regulation-making power in the BDMRRA 1995 (s 88(1)(a)), which enables the Governor-General, by Order in Council, to make regulations prescribing fees to be paid. The Bill (and new regulations to be made) will ensure the Registrar-General can continue to charge fees to cover the costs of providing BDM services. Fees for access to BDM information through new digital and online channels would also need to be set by regulation. There will be public consultation on any new fees as part of the regulation-making process. | |

Retrospective effect

| | |
|---|-----------|
| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
| N/A | |

Strict liability or reversal of the usual burden of proof for offences

| | |
|--|-----------|
| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | NO |
| N/A | |

Civil or criminal immunity

| | |
|---|-----------|
| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
| N/A | |

Significant decision-making powers

| | |
|--|-----------|
| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | NO |
| N/A | |

Powers to make delegated legislation

| | |
|---|-----------|
| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
| N/A | |

| | |
|--|-----------|
| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | NO |
| N/A | |

Any other unusual provisions or features

| | |
|--|-----------|
| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
| N/A | |