

Regulatory impact statement

Births, Deaths and Marriages Registration Regulation 2017



Regulatory Impact Statement

The Births, Deaths and Marriages Registration Regulation 2011 is being reviewed by the Department of Justice on behalf of the Attorney General, Mark Speakman.

This Regulatory Impact Statement sets out a number of options as to whether it should be repealed or remade and provides a summary of the costs and benefits associated with each.

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1 Why is the Regulation being reviewed?

The Births, Deaths and Marriages Registration Regulation 2011 (**the existing Regulation**) sets out the information required to be given to the Registrar of Births, Deaths and Marriages (**the Registrar**) or noted in the Register when registering births, deaths, marriages, changes of name, and changes of sex. It also sets out the fees that are charged by the Registry of Births, Deaths and Marriages (**the Registry**).

The *Subordinate Legislation Act 1989* provides for regulations to have a limited life. In most cases, regulations are automatically repealed after five years. When a regulation is due for repeal, the responsible agency must review the regulation, its social and economic impacts, and the need for the regulation. The agency must then make a decision about whether the regulation should be remade. The results of this review are required to be published in a Regulatory Impact Statement (**RIS**) and submissions invited from the public.

This RIS proposes that the existing Regulation be remade under the regulation-making power set out in section 62 of the *Births, Deaths and Marriages Registration Act 1995* (**the Act**).

2 Approach taken in this Regulatory Impact Statement

The RIS first considers the objectives of proposed Births, Deaths and Marriages Registration Regulation 2017 (the proposed Regulation). The RIS then considers the basis and rationale for collecting information and charging fees. It also examines the following options:

- Allow the existing Regulation to lapse.
- Remake the existing Regulation without change.
- Remake the existing Regulation and require the collection of some additional new information to be provided for inclusion in the Register.

3 Submissions

Submissions about the proposed Regulation can be made to:

Births, Deaths and Marriages Registration Regulation Review
Director, Civil Law
Justice Strategy and Policy
NSW Department of Justice
GPO Box 31
Sydney NSW 2001

Submissions can also be made via email to jsp.enquiries@justice.nsw.gov.au

The final date for receipt of submissions is **20 June 2017**.

Copies of the draft Births, Deaths and Marriages Registration Regulation 2017 and this RIS are available from the Department of Justice website at www.justice.nsw.gov.au or by emailing jsp.enquiries@justice.nsw.gov.au.

The *Births, Deaths and Marriages Registration Act 1995* and the Births, Deaths and Marriages Registration Regulation 2011 can be accessed at www.legislation.nsw.gov.au

4 Objectives of regulatory proposal

The objective of the proposed Regulation is to repeal and remake the existing Regulation and to make some changes to the information entered on the register.

The proposed Regulation will prescribe:

- Fees for services provided by the Registry – primarily providing certificates containing particulars of registrable events, undertaking searches of the register, registering changes of name, adoptions, and changes of sex.
- The particulars to be provided to enable the compulsory registration and/or notification of events (births, deaths, marriages, adoptions, changes of name and changes of sex) in compliance with the Act.

5 The basis for charging fees and collecting information

The Registry is an off-budget government agency. As a controlled, 'for profit' commercial entity of the NSW Department of Justice, the Registry must cover all its operating and capital costs from revenue generated from statutory and non-statutory services. In setting its fees, the Registry has adopted the following approach:

- Sufficient fees must be charged to meet the cost of providing Registry services and for capital investment to maintain and improve services to the NSW community.
- Fees should be simple to administer.
- The same fee should be charged where a common service is provided (eg. a certificate is provided) despite the fact that it may be more costly to provide the service for some clients.

The Registry complies with the requirements of the Act so as to ensure consistent, reliable data is collected.

6 Rationale for charging fees and collecting information

In accordance with the Act, the Registry maintains records of all births, deaths, marriages, changes of name, adoptions and changes of sex occurring in NSW. It holds approximately 35 million records about 19 million people dating from 1787 to the present day. On average, 215,000 new births, deaths, marriages, adoptions and changes of name, sex and relationships are registered each year. The Registry receives approximately 520,000 applications for certificates each year.

New South Wales residents benefit from compulsory registration as they can obtain documentary evidence of identity or an event from the Registry that can assist them to obtain a range of legal, social and financial entitlements. For example, a birth certificate must be produced in order to obtain an Australian passport, a NSW driver's licence, an aged pension, or to enter school. A death certificate must be produced in order to deal with a deceased person's estate.

The growth in identity fraud and theft has emphasised the importance of identity security. It has also resulted in increased demand for certificates. The Registry works closely with national and state law enforcement authorities to improve identity security for the NSW community.

Compulsory registration also benefits the community generally, as it enables statistical information to be collected on an ongoing basis, rather than once every five years when the national population census is conducted. Accurate and standardised State population information assists in determining the allocation of government services and federal funding through the Commonwealth Grants Commission. Accurate mortality data assists with medical research.

The Registry is an off-budget commercial entity of the Department of Justice. The Registry must cover all its operating and capital costs from revenue from sales of goods and services. The Registry is also required to make tax-equivalent payments, and pay a dividend to the Department, in order to reduce the Department's call on the Consolidated Fund.

In setting its fees, the Registry ensures that it will meet its obligations to provide a dividend to the community, fund its operational expenditure, and maintain its capital investment program.

7 Options

7.1 Allow the Regulation to lapse

If the existing Regulation is permitted to lapse without replacement, there will be no legislative basis for requiring people to provide information to the Registry in order to satisfy their obligations under the Act. There will also be no legislative basis for prescribing the level or structure of fees that are levied by the Registry.

For the 2016-17 financial year, the forecast cost of running the Registry is \$31.5 million. During the same year, the Registry will receive \$33.8 million in revenue and pay a dividend of \$2.3 million to the Government.

During the 2017-18 financial year, the cost of running the Registry is expected to be \$31.8 million, and is targeting revenue of \$34.5 million, with a dividend to government of \$2.7 million.

If no fees are prescribed under the Act, most of this revenue will be lost. Government would no longer receive a dividend, and would have to divert resources from other services and make up the shortfall through a direct budget allocation. Alternatively, services to the NSW community would need to be cut. Neither alternative is desirable.

With no regulated basis for requiring people to provide information to the Registry, people may refuse to provide information. This would detrimentally affect the quality and consistency of the information held by the Registry, compromise the integrity of vital identity information, and undermine identity security in Australia.

The timely registration of births is an important factor in the protection of children. In February 2006, in his findings following an inquest into the disappearance of baby Tegan Lane, the NSW Coroner noted the need for ongoing improvement in the reporting of births, and greater cooperation between state registries of births, deaths and marriages. The importance of birth registration was also emphasised by UNICEF in its report *Excluded and Invisible: The State of the World's Children 2006*.

According to the World Health Organisation (WHO), in its 2010 publication *Rapid assessment of national civil registration and vital statistics systems*, civil registration records are the best source of vital statistics.¹

WHO states that records derived from civil registration systems have two main uses. First, as personal legal identity documents that are required as proof of facts, including identity and family relationships, and enable a person to access services and enforce their rights. Second, the data derived from these records form the basis of a country's vital statistics system used for planning and demographic analysis².

Costs

The costs of not remaking the existing Regulation include:

- The Registry will not be able to fulfil its legislative requirements.
- NSW residents, and state and Commonwealth agencies, will be unable to rely on Registry documents to establish identity or obtain entitlements to benefits.
- The Registry will not be able to fund its ongoing operations or capital program.

¹ Rapid assessment of national civil registration and vital statistics systems (2010) WHO http://apps.who.int/iris/bitstream/10665/70470/1/WHO_IER_HSI_STM_2010.1_eng.pdf, p1

² Ibid, p1

- Existing services will have to be abandoned or reduced (or Treasury would have to allocate taxpayer funds) to make up the shortfall in revenue.
- There is no guarantee fees will be levied on an equitable and predictable basis.
- The integrity of the Register will be compromised.

Benefits

The benefits of not remaking the existing Regulation include:

- Users may be able to obtain (albeit reduced) services for free.
- NSW residents and citizens may no longer be required to provide information to the Registry.
- The Registry may save some administrative costs in relation to collecting the fees.

Discussion

Unless consistent data is gathered, the integrity, value and reliability of the civil registration system in NSW will be severely compromised. This would greatly increase the likelihood of identity fraud and theft, which would have Australia-wide consequences.

If users fail to meet the cost of running the Registry, government will be deprived of resources it currently uses to provide other services. Resources would have to be diverted from current uses to fund the Registry, or services would have to be curtailed or abandoned.

The costs of option 1 (allowing the existing Regulation to lapse) outweigh the benefits.

This option is not recommended.

7.2 Remake the existing Regulation without change

Costs

The costs of remaking the existing Regulation without change include:

- There will be no improvement in the quality of the information provided to the Registry.

Benefits

The benefits of remaking the existing Regulation without change include:

- The current fee structure will be maintained.
- People will continue to be required to provide information to the Registry.

Discussion

Under this option the information required to be collected will be unchanged, so that information which is now relevant will not be collected.

This option is not recommended.

7.3 Remake the Regulation and require the collection of some new information

Collection of new information

The proposed Regulation will include new requirements to provide additional specific information about births, deaths, marriages and other events, as follows:

- Time of birth will now be required to be included in both the notification and registration of births.
- The person notifying the birth will be required to include their contact details.
- The required information for registration of parentage orders in surrogacy arrangements will include the name, sex and date and place of birth of the child, the name, date of birth or age, place of birth, occupation and usual place of residence of the child's intended parent or parents, the date and place of marriage of the intended parents, if applicable, and the name and date of birth of any other children of the intended parent or parents.
- Information concerning human remains should indicate, where appropriate, whether immediately before death, the deceased had a relationship registered on the Relationships Register and, if so, the date and place of registration of the relationship and the full name of his or her partner.

Costs

The costs of remaking the Regulation with the proposed changes are:

- The reporting burden on the community and external agencies will be marginally increased, by requiring additional information to be provided to the Registry.

Benefits

The benefits of remaking the Regulation with the proposed amendments are:

- The integrity of the Register will be preserved and enhanced, by ensuring that the legislative requirement to provide information about vital life events to the Registry is maintained and improved;
- The Registry can continue to fund its activities prescribed under legislation and provide an economic dividend to the community, without recourse to taxpayer funds; and
- The Registry can continue the practice of not charging fees to register new births, deaths and marriages.

Discussion

The proposed Regulation will ensure the customers of the Registry can continue to receive services for a fair price, and enable the Registry to invest in the future development and security of the Register without diverting public resources from other uses.

The proposed Regulation will also ensure that people and agencies are not unreasonably burdened by requirements to report information that is not required for the purposes of the Act, and that the information that is collected is relevant to the contemporary demands placed on the Registry.

This is the preferred option.

Consultation

The NSW Registry of Births, Deaths and Marriages was consulted during the drafting of this RIS and the proposed Regulation.

Copies of this RIS and proposed Regulation will be forwarded to:

- Commonwealth Attorney General's Department;
- Australian Bankers Association;
- Australian Bureau of Statistics;
- Australian Finance Conference;
- Australian Funeral Directors Association, NSW/ACT Division;
- Australian Institute of Health and Welfare;
- Australasian Federation of Family History Organisations Inc;
- Cancer Council NSW;
- Commonwealth Department of Health and Ageing;
- Funeral Directors' Association of NSW Ltd;
- Law Society of NSW;
- NSW Department of Education and Communities;
- NSW Department of Family and Community Services;
- NSW Department of Health;
- NSW Privacy Commissioner;
- NSW Ombudsman;
- NSW Trustee & Guardian;
- NSW Roads and Transport Authority
- Department of Foreign Affairs and Trade, Passport Office;
- Registries of Births, Deaths & Marriages in other states and territories;
- National Civil Registration and Statistical Improvement Committee (NCRSIC);
- SIDS and Kids NSW; and
- Society of Australian Genealogists.

Attachment: the proposed Regulation