

Impact Analysis Statement

Summary IAS

Details

Lead department	Department of Justice and Attorney General
Name of the proposal	Remake of the Births, Deaths and Marriages Registration Regulation 2015
Submission type <i>Summary IAS</i>	Summary IAS
Title of related legislative or regulatory instrument	Births, Deaths and Marriages Registration Regulation 2024
Date of issue	June 2024

What is the nature, size and scope of the problem? What are the objectives of government action?

Background to registration

Civil registration is the universal, continuous, permanent and compulsory recording of events in a person's life such as birth, marriage, adoption, change of name, and death. It benefits the government, the community, and individuals. Civil registration in Queensland is administered by the Registry of Births, Deaths and Marriages (RBDM).

Compulsory registration of births, deaths and marriages began in 1856 when Queensland was still part of New South Wales. RBDM holds some records from before this time, including church baptism, burial and marriage records.

In the early years of registration, details were entered into physical books called 'registers'. Registration occurred by notifying the District Registrar of an event. Parents had to register their child's birth, ministers registered marriages they conducted, and the main occupant of a house registered deaths that occurred there.

In Queensland, the following life events are registered:

- the birth of a child;
- an adoption (including overseas adoptions);
- a parentage order made under the *Surrogacy Act 2010* or corresponding orders made in Australia;
- a cultural recognition order under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*;
- official changes to a person's name;
- a marriage solemnised in Queensland;
- a civil partnership under the *Civil Partnerships Act 2011*; and
- a death occurring in Queensland.

Registration services include the issuing of life-event certificates, which help establish and protect a person's legal identity and minimise the risk of identity fraud. For example, a birth certificate allows people to enrol in school, obtain a passport and driver licence, to vote and to access government benefits and services. Without a birth certificate people can be left outside of formal systems and without legal identity,

making it hard to be employed or included in health, education, housing, or social services. Accordingly, birth registration provides a basis for social inclusion and individual legal identity, which is a human right under the *Human Rights Act 1999*.

Life event registrations are also essential to compiling accurate statistics, allowing RBDM to perform a key function of providing statistical information to various organisations, including the Australian Bureau of Statistics (ABS), Queensland Health and the Australian Electoral Commission. Without the information collected through RBDM's registrations, it would be difficult for government to manage a range of functions.

RBDM's records are also valuable to genealogists and historians. RBDM facilitates public access to historic records online through its Family History Service.

The Legislative Framework

The *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) establishes Queensland's life event registration system and commenced on 1 February 2004 based on a Model Law designed to provide nationally consistent legislation across Australian States and Territories.

Registration services in Queensland are delivered by RBDM under the legislative framework of the BDMR Act and the Births, Deaths and Marriages Registration Regulation 2015 (current Regulation).

The current Regulation supports the operation of the BDMR Act by prescribing:

- information and documents the Registrar must receive to register life events, and to support applications;
- information that must be shown on life event certificates issued by the Registrar;
- how corrections to registered information are to be completed;
- fees for services;
- relevant considerations for a court deciding an application to change a child's name; and
- other matters specified in the current Act as being 'prescribed by a Regulation'.

As such, the legislative framework provided by the BDMR Act and the current Regulation, regulates the life events that can, or must, be registered, the information that must be provided for registration purposes, the requirements to access information and the types of life event certificates that can be issued.

Since 2004 there have been changes to the social, policy and operational environment that have affected RBDM's service delivery, including:

- social changes leading to the need for the life event system to better accommodate the diversity of Queensland society (e.g. increased use of fertilisation procedures and greater awareness of the trans and gender diverse community);
- significant operational changes at the registry, including online applications processes and the development of several new data products and services to support the registry as a self-funded entity; and
- an increased government focus on proper data use and protections, preventing identity theft and fraud, and ensuring life event registration systems are not misused for fraudulent purposes.

To address these changes and to ensure registration services remain relevant, responsive and contemporary, on 14 June 2023 the Legislative Assembly passed the *Births, Deaths and Marriages Registration Act 2023* (the new Act). On commencement, the new Act will repeal and replace the current Act. The new Act's objectives are to:

- strengthen the legal recognition of trans and gender diverse people;
- better recognise contemporary family and parenting structures;
- facilitate improvements in the operations of the registry;
- support fraud prevention and minimise misuse of the life event system; and
- clarify the information collection, use and sharing powers of the registrar.

It is relevant to note that the new Act was developed together with a draft regulation because of the interconnectedness of the Act and regulation. An indicative 'draft regulation'¹ was tabled together with the Bill for the new Act when it was introduced by the former Attorney-General in December 2022.

The current Regulation commenced upon its notification on 7 August 2015. It will be repealed and replaced by the new Regulation ahead of its 1 September 2025 expiry date, in accordance with section 54(1)(a) of the *Statutory Instruments Act 1992* (SI Act). Section 54(1)(a) of the SI Act provides for the expiry of subordinate legislation either on 1 September first occurring after the 10th anniversary of the day of its making *unless it is sooner repealed or expires*.

The repeal of the current Regulation requires the Department of Justice and Attorney General (DJAG) to undertake an early sunset review to evaluate:

- the continuing need, effectiveness and efficiency of the current regulation;
- whether new or altered regulatory provisions are required to support the effective operation and administration of the new Act; and
- any associated regulatory impacts.

What options were considered?

A sunset review requires consideration of the option of 'allowing the regulation to expire' against alternatives. Accordingly, three options were considered:

- **Option 1:** Allowing the current Regulation to expire without introducing a new regulation;
- **Option 2:** Remaking the regulation without changes; and
- **Option 3:** Remaking the regulation with changes.

What are the impacts?

Option 1: Allowing the current Regulation to expire without introducing a new regulation

As noted earlier, the draft regulation was developed during development of the new Act because of the interconnectedness of the elements in the draft regulation (now being progressed as the 2024 Regulation) and the new Act.

The new Act, contains a range of provisions explicitly reliant on matters being prescribed by regulation, including:

- fees required for applications;
- particulars required for registration applications and court orders;
- periods of time before records become historic;
- names that are prohibited;
- professionals considered 'developmentally informed practitioners';
- information to be included the written assessment of a developmentally informed practitioner; and
- persons who may access certain records.

Government has previously approved the inclusion of particular matters in a new regulation, including: the waiver of fees, the prescribed list of developmentally informed practitioners and other matters that will, upon commencement, support the changes in the new Act.

¹ **Note:** the reference to the 'draft regulation' describes the regulation tabled with the *Births, Deaths and Marriages Registration Bill 2022*. The 2024 Regulation refers to the updated version of the draft regulation that will replace the current regulation.

Allowing the current Regulation to expire without replacement would undermine previous considerations and determinations by Government in relation to both the new Act and the 2024 Regulation and render these provisions, and many of their associated legislative functions, inoperable.

Further, several matters are designated in section 131 of the new Act as being set by regulation, including information to be stored in each life event register, information a court may consider when changing a child's name, fees, fee waiver, and refunds. These matters are critical to the effective functioning of RBDM. Moreover, RBDM is self-funded by fees charged at a cost-recovery rate for services it provides and would be unable to sustainably operate without charging application fees prescribed by regulation.

Accordingly, Option 1 (allowing the regulation to expire without replacement) is not feasible as it would interfere with the intended operation of the new Act and not support its objects. While RBDM would, where discretion allows, attempt to replicate regulatory provisions through equivalent policies to ensure some continuity of service and function, many functions explicitly deferred to a regulation would be unable to be reconstituted by policy. Additionally, RBDM would be unable to charge prescribed fees for its services and would require an alternative source of funding.

Option 2 - Remaking the regulation without changes

Option 2 is also not feasible due to the substantive differences between the current Act and new Act. The layout and numbering in the new Act have entirely changed and, at a minimum, legislative references in a remade regulation would need to be remapped to retain their utility.

Even if the existing regulatory provisions were remapped to correspond with provisions in the new Act, Option 2 would remain inadequate. The new Act introduces new provisions that are designed to be supported by details prescribed in a regulation and would not function correctly without them. Additionally, many provisions in the current Regulation are unnecessary as they no longer correspond with any requirement set by the new Act – it is appropriate to remove these superfluous elements.

Option 3 - Remaking the regulation with changes

Option 3 is the remaking of the current Regulation with the provisions set out in the 2024 Regulation. Due to the inherent deficiencies in Options 1 and 2, this is the only option to support the effective operation of the new Act and its objectives and is accordingly the focus of the impact analysis.

Changes between the current Regulation and the 2024 Regulation

The 2024 Regulation was designed with the new Act to ensure that registration services remain relevant, modern, and contemporary to support the effective operation of the new Act by RBDM. As a summary of its core features, the 2024 Regulation:

- removes duplicative, unnecessary and overly prescriptive provisions in relation to the registration of key life events;
- ensures registrable information reflects a contemporary understanding of family and relationship structures;
- supports the new framework for children under 16 to alter their record of sex on the relevant child register or obtain a recognised details certificate established under the new Act;
- provides guidance to the Magistrates Court or Childrens Court about the factors to be considered in determining whether a change of name is in a child's best interests;
- establishes persons who may access information from a closed entry;
- sets the periods at which point information about certain life events becomes historical information;
- supports improved birth registration rates, particularly for Aboriginal and Torres Strait Islander people; and
- prescribes fees payable under the new Act.

Each significant change and feature of the 2024 Regulation is discussed in further detail below.

Prescribed identity documents

The current Regulation prescribes categories and combinations of identification documents that an applicant must present to the Registrar to prove their identity. Under the new Act, the requirement to provide prescribed identity documents is replaced by a requirement that applicants satisfy the Registrar of their identity (with the details of how a person establishes their identity to be set at an operational level). As 'prescribed identity documents' are no longer required, these provisions have not been carried over to the 2024 Regulation. There are no identified impacts.

Record correction

The current Regulation contains prescriptive requirements for correcting life event registers. Some of these requirements are obsolete, relating to the correction of paper-based registers that are no longer used. The essential requirements of these provisions have been transitioned to the new Act. There are no identified impacts.

Certificate contents

The current Regulation prescribes information to be included on each type of life event certificate, including on life event certificate extracts that are no longer issued. The new Act specifies that the Registrar is responsible for determining the contents of a life event certificate. As such, the prescribed details for life event certificates in the current Regulation have not been carried over to the 2024 Regulation. There are no identified impacts.

Supporting documents required for applications

The current Regulation prescribes documents that must be included with certain applications. Required supporting documents and information for each application is now specified in the new Act, and not carried over to the 2024 Regulation. There are no identified impacts.

Court applications to change a child's name

The current Regulation prescribes matters a court may consider when deciding if a proposed name change for a child is in that child's best interest. These provisions provide guidance to applicants preparing their application to the court and assist Magistrates in identifying relevant considerations for their decision.

A key objective of the new Act is strengthening legal recognition of trans and gender diverse people. Supporting this objective, the 2024 Regulation expands the list of potentially relevant considerations to include 'the child's preferred name', and 'whether the proposed change of name is an affirmation or expression of the child's sex'. The 2024 Regulation also specifies that these matters are relevant to the Childrens Court if reviewing a proposed name change for a child.

As the matters noted are discretionary, there are no regulatory impacts arising from retaining and updating these provisions in the 2024 Regulation.

Acknowledgement of sex framework in the new Act that applies to persons under 16

The new Act allows a child's parents or one parent or person, in particular circumstances, to apply to the RBDM to alter the child's record of sex on the relevant child register or obtain a recognised details certificate that acknowledges a child's sex as altered.

An alternative application pathway through the Childrens Court is also available if any person(s) required to apply on the child's behalf does not consent. If the application for a child under 16 years is made to the Registrar or the Court, the new Act requires it be accompanied by an assessment undertaken by a developmentally informed practitioner who has a professional relationship with the child.

Two aspects relating to developmentally informed practitioners are prescribed by Regulation:

1. The types of persons who are considered developmentally informed practitioners; and
2. The required contents of a developmentally informed practitioner's assessment.

A *developmentally informed practitioner* (DIP) means a person who holds appropriate qualifications and experience to carry out an assessment of a child. The term was developed specifically for the new Act and is intended to capture a type of person whose practice focuses on or involves children and young people; and the practice is tailored to suit the development stage and age of a child. It acknowledges the wide-ranging ecologies of support available to a child on their gender questioning or transition journey. At one end of a child's journey a child may receive support of an adolescent psychiatrist, in the middle of the spectrum that may be nursing mental health practitioners from the social work, psychology, nursing and speech pathology fields and at the other end of the spectrum, it may be a school guidance officer or a kids counselling service giving a child support.

Focusing on the wide-ranging supports that may be given by the different types of qualifications a DIP holds, recognises where a child is in their journey and shapes the support that is required and given to a child at that time.

To achieve this the 2024 Regulation prescribes a broad list of professionals to encompass the most diverse range of supports possible for a child and also to ensure that children in regional and remote areas are not excluded because of an inability to access a professional that may only be available or accessed in an urban centre.

To ensure access to services, the way a child receives support and ultimately obtains a written assessment from a DIP, is not limited to 'face to face' engagement between a child and their chosen DIP. It includes telehealth, tele counselling services, remote consultations via video conferencing, and remote fly in fly out health clinics staffed by doctors, nurses and other health professionals.

The required contents of a developmentally informed practitioner's assessment in the 2024 Regulation are designed to ensure that assessment includes sufficient details to allow the Registrar, or the Court, to confirm the practitioner has requisite credentials, and a professional relationship with the child.

The 2024 Regulation only prescribes the types of persons that may complete the assessment and provides certainty as to what details the report must include. Accordingly, the cost applicants may incur obtaining an assessment (arising from a legislative requirement) has not been assessed as a compliance cost of this regulatory proposal.

Particulars for the registration of births, deaths, marriages, civil partnerships, and change of name

The current Regulation prescribes information required for certain life event registrations. Prescribing this information gives certainty as to what personal information an applicant must provide when under a mandatory obligation to register a life event. Other stakeholders supporting persons responsible for registration (such as funeral directors and marriage celebrants) also benefit from this certainty, as well as courts making determinations regarding the registration of such life events.

A key objective of the new Act is to better recognise contemporary family and parenting structures. Relevant to this objective, the 2024 Regulation includes changes to information required for life event registration:

- acknowledging the increasing prevalence of couples in de facto relationships, and their equivalent legal status to couples who are married or in a civil partnership, details of de facto relationships are to be collected on birth and death registrations (instead of only marriage and civil partnership details);
- acknowledging the increased prevalence of blended families and children conceived by sole parents through assisted reproductive technologies, details of previous children of either and both registered parents – the registered child's full and half siblings – are to be collected for birth registrations (instead of only previous children of both registered parents); and
- acknowledging that the prevalence of gender-based societal expectations have changed (such as a wife adopting a husband's family name), the collection of previously gendered information (such as collecting a mother's maiden surname on birth registration) will instead be gender neutral.

RBDM supplies forms and online portals for the registration of life events, which will facilitate the collection of these additional details. The time-cost incurred by (some) applicants when providing these extra details is negligible and is not included in the calculation of direct compliance costs.

It is noted that some businesses operating in the funeral industry use software that assists with submitting death registrations, which would require updating to conform with the new requirements. However, the use of such software is voluntary and so these updates are not considered a compliance cost associated with the Regulation.

Persons who may receive information from a birth record closed after an update to the record of sex

The new Act restricts access to a person's closed record after the Registrar alters a person's sex on the relevant child register, and reregisters the person's relevant event (i.e., the person's birth or adoption record).

Specific restrictions apply in relation to who can access information from a person's closed record. The Registrar may only give information recorded in an entry that is closed to the persons mentioned in section 111(2) of the new Act, which includes a 'person prescribed by regulation'.

As this regulatory provision only clarifies which additional persons, other than those noted in the new Act, may apply to access certain restricted life event records, it introduces no additional regulatory impacts or compliance costs.

Historic information

The current Regulation prescribes the duration after the registration of a birth, death, or marriage for the associated record to become historic information. When information becomes historic, any interested person may apply to access it for any reason.

The 2024 Regulation introduces a duration of 75 years for civil partnership records to become historic (the same duration as marriage records). There are no associated regulatory impacts or costs to government with the inclusion of these records, noting that it will not be until 2086 when the first registered civil partnership record becomes historic.

Fees, fee waiver, and refunds

As noted above, RBDM is self-funded by fees charged at a cost-recovery rate for its services. Accordingly, it is necessary for RBDM's sustainable operation that fees are prescribed at an appropriate level.

Prescribed fees relating to late birth registrations were identified as a potential barrier to birth registration, which is a human right in Queensland. These fees were also identified as a possible contributing factor in lower birth registration rates for Aboriginal and Torres Strait Islander people. As, in practice, they were rarely charged, they have been removed from the 2024 Regulation without impact.

The 2024 Regulation otherwise retains existing fees for applications and services. The new Act will change numerous core registry processes, and the impact of those changes on the cost of service-delivery cannot be accurately calculated in advance. For example, the new ability for the registrar to make an exception and allow an otherwise ineligible applicant to change their name in 'exceptional circumstances' is expected to increase the cost of service-delivery due to the requirement for the registrar to review additional evidence about such applicants' circumstances and make a potentially complex discretionary decision, but the volume of these requests and labour requirements cannot be predicted. Given the lack of sufficient data necessary to calculate these and other variables in advance, a full review of the continuing adequacy of prescribed fees is not feasible and has been deferred. RBDM will monitor the costs of ongoing service provision and conduct a review of its fees in the future once operations under the new Act have stabilised and accurate service-cost data is available.

It is noted that the core requirement to collect a fee for each type of application is established under the new Act, and the regulation prescribes only the amount of each fee. Accordingly, the 'direct costs to government' do not include the cost of administering the collection of the fees prescribed in the 2024 Regulation.

Prescribed fees must be met by person(s) applying to access the associated service. These direct compliance costs are reflected below, calculated based on current application volumes and fees (and assuming 2.5% growth annually for the 10-year prediction). An anticipated rise in the volume of applications seeking to amend the sex recorded on the person's birth registration has been factored into this calculation using data provided by other Australian jurisdictions. It is noted that these compliance costs are calculated comparative to the option of 'allowing the regulation to expire' (in which case fees would be unable to be collected).

Requiring individuals to pay a fee carries the regulatory impact that some persons will be unable to afford the associated service. This may have significant flow on impacts for that person (for instance, an unemployed person may need their birth certificate to obtain employment but cannot afford to apply for the certificate and lose the employment opportunity). This impact is mitigated by the Registrar's fee waiver policy. This policy is formalised in the 2024 Regulation through the introduction provisions specifying the Registrar may waive or refund fees (partly or wholly).

In addition, government has already considered and determined the parameters under which particular fees may be waived. For example, RBDM currently waives fees for life event certificates for persons who can demonstrate an immediate need and financial hardship, as well as those impacted by natural disasters such as floods, cyclones and bushfires both in Queensland and across Australia. RBDM has been waiving fees for some time and reports on this fiscal impact as part of the Budget process, and the Attorney-General confirmed support for the current practice in the debate on the 2022 Bill.

As this new regulatory power only formalises a power already exercised by the Registrar under an established policy that would continue to apply in the regulation's absence, no additional costs are incurred by government in complying with the fee waiver provisions in the 2024 Regulation.

Who was consulted?

The Department of Justice and Attorney General undertook extensive targeted consultation with key LGBTIQ+, advocacy, legal and health stakeholders during development of the new Act and 2024 Regulation.

What is the recommended option and why?

Option 3 is recommended.

The 2024 Regulation is critical to RBDM's functions and is necessary for the administration of Queensland's civil registration system. Were the existing Regulation to expire, or be remade without changes, RBDM would lose its functional capacity to register life events for Queenslanders and become unable to discharge its other functions or deliver essential services relied upon by the public and government stakeholders. One of many significant consequences would be an inability to effectively register children's births, in violation of that child's human rights. Additionally, RBDM would be unable to support the legal recognition of trans and gender diverse persons, which is a core objective of the new Act.

RBDM's registration systems provide an indispensable public function, and the greatest net benefit to Queensland is achieved by allowing those systems to continue operating. The 2024 Regulation would achieve this by ensuring continuing support for existing and new operational processes and functions under the new Act. It also improves the overall effective and efficient administration of the new Act. As noted in the above analysis, provisions in the existing Regulation that are no longer necessary have been excised to reduce the overall regulatory burden. New and changed provisions are aligned with the objectives of the new Act and have been assessed as having no significant regulatory impact.

In summary, the 2024 Regulation permits RBDM to continue fulfilling its legislative functions, while making amendments to the existing Regulation accommodate changes introduced in the new Act. The alternative

options considered would prevent RBDM from fulfilling its legislative functions, with significant adverse consequences. Accordingly, it is recommended that the current Regulation be remade with the changes proposed in the 2024 Regulation.

The Executive Council Minute (ECM) titled *Births, Deaths and Marriages Registration Regulation 2024 (BDM Regulation)* is listed on the Executive Council Forward Plan for Governor in Council consideration on 13 June 2024 to ensure the Regulation is in place before auto commencement of the new Act on 24 June 2024.

Impact assessment

All proposals – complete:

	First full year	First 10 years**
Direct costs – Compliance costs*	\$15,298,000	\$152,282,000
Direct costs – Government costs	Nil	Nil

Signed



Director-General, Department of Justice and Attorney General

Date: 31.05.2024



Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

Date: 4/6/24