

# Births, Deaths and Marriages Registration Regulation 2024

Explanatory notes for SL 2024 No. 77

made under the

*Births, Deaths and Marriages Registration Act 2023*  
*Acts Interpretation Act 1954*

## General Outline

### Short title

*Births, Deaths and Marriages Registration Regulation 2024*

### Authorising law

Section 131 of the *Births, Deaths and Marriages Registration Act 2023*  
*Section 17 Acts Interpretation Act 1954*

### Policy objectives and the reasons for them

The administration and effective operation of the *Births, Deaths and Marriages Registration Act 2003* (the current Act) is supported by the *Births, Deaths and Marriages Registration Regulation 2015* (the current Regulation) which prescribes:

- 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'.

On 14 June 2023, the Legislative Assembly passed the *Births, Deaths and Marriages Registration Act 2023* (the new BDMR Act). On 23 June 2023, the BDMR Act received Royal Assent. The BDMR Act commences on 24 June 2024 and repeals and replaces the current Act.

The purposes of the new BDMR Act are to provide for:

- strengthened legal recognition of trans and gender diverse people;
- better recognition of contemporary family and parenting structures;
- improvements in the operations of the Registry;
- fraud prevention and minimisation of misuse of the life event system; and
- the clarification of the information collection, use and sharing powers of the Registrar.

The current Regulation will be repealed and replaced by the *Births, Deaths and Marriages Registration Regulation 2024* (the 2024 Regulation). The 2024 Regulation will commence concurrently with the BDMR Act on 24 June 2024.

The 2024 Regulation is made pursuant to section 131 of the BDMR Act (regulation-making power) and section 17 of the *Acts Interpretation Act 1954* (AIA). Section 17 of the AIA provides that a provision of an Act that confers a power to make a statutory instrument, may be exercised between the enactment and the commencement of the provision.

The current Regulation was notified, and commenced upon notification, on 7 August 2015. Section 54(1)(a) of the *Statutory Instruments Act 1992* (SI Act) provides for the expiry of subordinate legislation on 1 September first occurring after the 10th anniversary of the day of its making *unless it is sooner repealed*. In accordance with section 54(1)(a) of the SI Act, the current Regulation is due to expire on 1 September 2025.

The Department of Justice and Attorney General (DJAG) has undertaken a sunset review of the current Regulation ahead of its 1 September 2025 expiry. The outcome of the sunset review identified a need for the current Regulation to be remade to ensure ongoing support for existing operational processes and functions, and for new operational processes and functions arising from the BDMR Act.

## **Achievement of policy objectives**

The 2024 Regulation achieves the policy objectives by ensuring continued support for existing, as well as new, operational processes and functions, to improve the overall effective and efficient administration of RBDM brought about by changes in the new BDMR Act.

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 contemporary 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 BDMR 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 BDMR Act.

The 2024 Regulation is leaner and less prescriptive than the current Regulation, including only provisions essential to supporting the effective operation of the new BDMR Act.

#### Registration of key life events

The 2024 Regulation removes overly prescriptive application and certificate requirements and, in its place, prescribes particulars to be entered or noted on the register in relation to life events.

Schedule 1 of the 2024 Regulation establishes the prescribed particulars for: births (Part 1), changes of name (Part 2), marriages (Part 3), civil partnerships (Part 4) and deaths (Part 5).

The 2024 Regulation also omits the list of prescribed identity documents that need to be produced when a person makes certain applications to the Registrar. In its place, applicants will be required to satisfy the Registrar of the person's identity (and the details of how a person establishes their identity will be set at an operational level).

#### Reflecting contemporary family and relationship structures

A key objective of the new BDMR Act is to better recognise contemporary family and parenting structures. Relevant to this objective, Schedule 1 of 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);
- 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

- that the prevalence of gender-based societal expectations (such as a wife adopting a husband's family name) have reduced and the collection of previously gendered information (such as collecting a mother's maiden surname on birth registration) will instead be gender neutral.

Supporting the effective operation of alteration of sex and recognised details certificate framework for children under 16

Part 5 of the new BDMR Act establishes a framework for a child under 16 to alter their record of sex on the relevant child register or obtain a recognised details certificate (if born outside Queensland).

To support the effective operation of this framework, the 2024 Regulation:

- prescribes the information required for an assessment performed by a developmentally informed practitioner, and
- prescribes the types of persons that are considered developmentally informed practitioners for the purposes of an assessment.

The following types of persons are prescribed as a developmentally informed practitioner for the purposes of Part 5 of the new BDMR Act:

- medical practitioners;
- persons registered under the Health Practitioner Regulation National Law to practise in the psychology, occupational therapy and nursing (within the registered nurse division) professions;
- persons registered under the Health Practitioner Regulation National Law to practise in the midwifery profession as a midwife, other than as a student;
- speech pathologists who are eligible for practising membership of the Speech Pathology Association of Australia;
- social workers who are members of the Australian Association of Social Workers Ltd;
- persons who are registered on the Australian Register of Counsellors and Psychotherapists; and
- school guidance officers with certain qualifications.

Change of name framework

The 2024 Regulation prescribes matters the Magistrates Court or Childrens Court may consider when approving the change of a child's name (for example, the child's views on the change of name or whether the proposed change is an affirmation or expression of the child's sex).

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

The new BDMR 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) and section 113(3) of the new BDMR Act, which includes a 'person prescribed by regulation'.

The 2024 regulation sets out additional persons who may apply to access information about certain restricted life event records.

Historic information

The 2024 Regulation introduces a duration of 75 years for civil partnership records to become historic (the same duration as marriage records). It will not be until 2086 when the first registered civil partnership record becomes historic.

Supporting improved birth registration rates

The 2024 Regulation removes the late birth registration fee (which is unique to Queensland). The fee is a potential barrier for birth registration and, historically, has only been charged on very rare occasions.

Birth registration is a human right of all Queenslanders which must be encouraged and promoted as it is vital for the creation of identity, entry to the workforce, access to education and health care, as well as for population data.

Fees

The 2024 Regulation retains existing fees for applications and services.

In particular, Schedule 2 of the 2024 Regulation sets out the fees payable under the new BDMR Act.

The 2024 Regulation provides an express power for the Registrar to waive, wholly or partly, payment of a fee, as well as to refund all or part of a fee paid.

In determining whether to waive a fee, the Registrar may have regard to whether:

- the applicant is experiencing financial hardship;
- the provision of the service would improve the applicant's circumstances; or
- the waiver is otherwise desirable in the circumstances.

## **Consistency with policy objectives of authorising law**

The 2024 Regulation is consistent with the policy objectives of the authorising law.

## **Inconsistency with policy objectives of other legislation**

The 2024 Regulation is not inconsistent with policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The sunset review considered several alternative ways of achieving the policy objectives. This included:

- allowing the current Regulation to expire without replacement;
- remaking the regulation without changes; and
- remaking the regulation with changes.

DJAG determined that there were no other alternative and reasonable ways to achieve the policy objectives other than by repealing and replacing the current Regulation with the 2024 Regulation.

## **Benefits and costs of implementation**

Costs associated with operational changes to support the implementation of the 2024 Regulation will be met from within existing resources.

## **Consistency with fundamental legislative principles**

The 2024 Regulation is consistent with fundamental legislative principles.

## **Consultation**

DJAG undertook extensive targeted consultation with key LGBTIQ+, advocacy, legal and health stakeholders during development of the new BDMR Act and 2024 Regulation.

In accordance with *The Queensland Government Better Regulation Policy*, the Office of Best Practice Regulation (OBPR) was notified of the regulatory proposal and an Impact Analysis Statement (IAS) prepared.

The IAS included a sunset review that identified a need for the current Regulation to be replaced to ensure ongoing support for existing, as well as support for new operational processes, and functions and to improve the overall effective and efficient administration of the new BDMR Act.

A copy of the approved IAS will be published on the DJAG publications portal.