

Short-Form Supplementary Departmental Disclosure Statement

Births, Deaths, Marriages, and Relationships Registration Bill
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A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to:

- the supplementary disclosure statement for Supplementary Order Paper (SOP) 59 to the Births, Deaths, Marriages, and Relationships Registration Bill (the Bill), dated 30 July 2021, which can be found at this link <http://disclosure.legislation.govt.nz/sop/government/2021/59/>; and
- the original disclosure statement for the Bill, dated 26 July 2017, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2017/296>.

This supplementary disclosure statement supplements the above by reporting relevant additions and changes proposed by an SOP that amends SOP 59. The Governance and Administration Committee (the Committee) conducted an inquiry into SOP 59 and provisions that introduce a self-identification process for amending the sex shown on a person's birth certificate (registered sex). The SOP incorporates the Committee's proposed amendments and other minor changes into SOP 59.

This supplementary 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.

17 November 2021

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

1.1. Was the Ministry of Justice consulted about these provisions?	N/A

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	YES
This SOP makes a minor amendment to clauses 113A and 114 to make it clearer that information about a person's previous sex and name can be shared under approved information sharing agreements and information matching agreements <i>only</i> where an agency has an interest in ensuring a person has one identity or for law enforcement purposes as per clauses 110(4), 111(4) and 116.	

2.1. Was the Privacy Commissioner consulted about these provisions?	YES
The above amendment was made based on feedback from the Office of the Privacy Commissioner (OPC). OPC provided this feedback in their submission to the Governance and Administration Committee as part of the Committee's inquiry into SOP 59.	

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

8. Do the proposed amendments 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

Powers to make delegated legislation

<p>9. Do the proposed amendments 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?</p>	<p>YES</p>
<p>Regulation making power – suitably qualified third parties</p> <p>SOP 59 includes a power to specify in regulations who can act as a ‘suitably qualified third party’ to provide a letter of support for children and young people to amend the sex on their birth certificate. See clause 147(1)(bc) of the SOP. As noted in the June 2021 Supplementary Disclosure Statement, setting the third parties in regulations provides flexibility to find the right balance between prescribing types of people who can assess if a child or young person understands and wants to amend their registered sex and ensure the types of persons are widely accessible.</p> <p>This SOP amends the above power by adding clause 147(2B), which adds criteria to limit decisions on who can be a suitably qualified third party. The Minister of Internal Affairs must be satisfied that the types of person specified in regulations:</p> <ul style="list-style-type: none"> • have an enduring relationship with the child or young person or have sufficient professional or community standing to be able to provide a letter of support; • provide applicants with a reasonable level of choice concerning the type of person who may provide a letter of support; and • include types of persons other than medical practitioners. <p>While who can be a suitably qualified third party will be determined through regulation development, the above criteria provide assurance that there will be an accessible pool of people that is wider than medical practitioners. They also provide more detail about the types of people who might be considered suitable as third parties. These include, for example, members of relevant professions (eg, nurses, teachers, and counsellors), people of community standing (eg, kaumātua) or people who have known the child or young person for a long time.</p> <p>In addition to the above, the definition of suitably qualified third party at clause 4 is amended slightly to require that third parties are 18 years of age or older.</p>	

<p>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</p>	<p>YES</p>
<p>Regulation making power – additional requirements where a person applies more than once</p> <p>SOP 59 includes a regulation making power to specify in regulations the additional requirements where a person applies to amend their registered sex more than once. See clause 147(1)(bb) of SOP 59.</p> <p>This SOP amends the above power by adding clause 147(2A), which adds criteria to limit decisions on the nature of the additional requirements. The Minister must be satisfied that the additional requirements:</p>	

- do not require the provision of medical evidence of a person's transition to their nominated sex;
- are reasonably necessary to reduce the risk of fraudulent applications; and
- do not create an unreasonable obstacle to completion of an application.

The above criteria provide assurance that the additional requirements will not undermine the intent of a self-identification process by medicalising the process and creating an unnecessary access barrier. The criteria reflect the original policy that the nature of the additional requirements is intended as a detail in the self-identification process to mitigate the risk of fraud rather than a substantial extra step.

Requiring relevant regulations to be in place before the commencement of the self-identification provisions

There are three regulation making powers included in SOP 59, which underpin the introduction of a self-identification process to amend registered sex. The two regulation making powers discussed above (third parties and additional requirements), and a power to prescribe sex markers other than male and female in regulations.

This SOP amends SOP 59 by adding clause 147(2C). This requires that the above three sets of regulations must be made before the commencement of the self-identification provisions 18 months after enactment of the Bill. This is to provide assurance that the elements of the self-identification process set in regulations will be in place and that it will operate as intended.

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>Staggered commencements dates</p> <p>SOP 59 delayed the commencement of the Bill to 18 months after Royal Assent or an earlier date set by Order in Council. As noted in the June 2021 Supplementary Disclosure Statement, this delay is necessary to develop the regulations associated with the self-identification process and make changes to the department of Internal Affairs' IT systems.</p> <p>This SOP amends SOP 59 by introducing three staggered commencement dates for the BDMRR Bill:</p> <ul style="list-style-type: none"> • the day after Royal assent – this applies to the regulation making powers and enables the regulations underpinning the self-identification process and other processes to be developed ahead of the remainder of the Bill's commencement; • 18 months after Royal assent – this applies to the self-identification provisions and most other provisions to allow time to develop associated regulations and for IT system changes; and • three years after Royal assent – this applies to certain provisions that require IT system upgrades developed via Te Ara Manaaki, a transformation programme to modernise how the Department of Internal Affairs delivers identity services, which has a three-year implementation timeline. <p>Consistency with the New Zealand Bill of Rights Act</p> <p>In the Supplementary Disclosure Statement for SOP 59, the Department noted that exclusion of overseas-born New Zealand citizens and permanent residents from the self-identification process at clause 22A of SOP 59, may constitute discrimination on the ground of nationality under section 19 of the New Zealand Bill of Rights Act 1990 (NZBORA). However, as this is a process to change a New Zealand-issued birth certificate, and people born overseas cannot be issued such a certificate, it is unlikely that NZBORA is engaged.</p>	