

CABINET COMMITTEE ON GOVERNMENT EXPENDITURE AND ADMINISTRATION

BIRTHS, DEATHS, MARRIAGES AND RELATIONSHIPS REGISTRATION AMENDMENT BILL: ADDITIONAL PROVISIONS

Proposal

- 1 Cabinet approval is sought for additional provisions to be included in the Births, Deaths, Marriages and Relationships Registration Amendment Bill (the Bill) to introduce a new regime governing public access to birth, death, marriage, civil union and change of name registers; to address issues that have arisen as a result of the enactment of recent legislation; and to extend protections for witnesses and undercover police officers to officers and employees of the New Zealand Security Intelligence Service (NZSIS).

Executive Summary

- 2 In September 2003 Cabinet agreed that a number of amendments to the Births, Deaths, and Marriages Registration Act 1995 (the Act) be included in the Bill. The introduction of the Bill was delayed pending the outcome of a policy review of public access to the birth, death and marriage registers and indexes. That review is now complete, and has resulted in proposed legislative changes to the public access regime. A number of more minor amendments also need to be included in the Bill to address issues that have arisen with the passage of the Civil Union Act 2004, the Care of Children Act 2004 and the Human Assisted Reproductive Technology Act 2004. In addition, provision needs to be made to protect the identities of officers and employees of the NZSIS.

- 3 It is proposed that the Bill include new provisions to:
 - govern public access to birth, death, marriage, civil union and change of name registers;¹
 - where appropriate, require both parents to sign the birth notification form;
 - enable the Registrar-General of Births, Deaths and Marriages (the Registrar-General), when appointing Registrars under the Act, to limit the powers, duties and functions Registrars can exercise under other Acts (for example, the Civil Union Act 2004);
 - permit the Registrar-General to update information on the Human Assisted Reproductive Technology registers on the basis of information contained in the birth, death and change of name registers;
 - change the title of the Act; and
 - permit the Minister of Internal Affairs to direct the Registrar-General to create new identities for officers and employees of the NZSIS.

Background

- 4 In September 2003 Cabinet agreed to amend the Act in order to:
 - enhance the powers of the Registrar-General to collect and verify information for the purposes of the Act;
 - amend the powers of the Registrar-General to disclose information; and

¹ Note that change of name information relating to persons born in New Zealand is recorded as part of the person's birth information. The change of name register is a new register that will be introduced as a result of the enactment of the Bill to record name changes for overseas born persons.

- modernise the Act to take account of social and technological developments.
[EXG Min (03) 10/2, 10/3, 10/4 and CAB Min (03) 30/2]

- 5 In October 2004 Cabinet agreed to defer the introduction of the Bill pending the outcome of a policy review of public access to the birth, death and marriage registers and indexes [CBC Min (04) 9/11 and CAB Min (04) 32/1]. This review arose as a result of concerns expressed by various agencies (including the New Zealand Police and the Office of the Privacy Commissioner) during consultation on proposals to put birth, death and marriage indexes on the internet for public search. The purpose of the review was to ensure that the regime governing public access to the registers is consistent with the purpose of the registers and justifiable in light of the public register provisions in the Privacy Act and proposed changes to those provisions. The review has resulted in proposals outlined in this paper that make significant changes to the regime governing public access to the registers. The review also considered public access to citizenship registers, and proposals on this issue are contained in a separate paper.
- 6 Since the initial Cabinet decisions on the Bill were made in September 2003, a number of additional issues have arisen as a result of the enactment of legislation in the intervening period, for example, the Civil Union Act 2004. It is proposed that these issues, which are summarised below, be addressed in the Bill.

Public Access to Registers²

- 7 The Registrar-General is responsible for holding and maintaining registers that contain information about births, deaths, marriages and civil unions. The Act currently provides that any person may obtain information from the registers provided the person can name the individual whose record is sought. Information is obtained in the form of a printout (which contains all the information on the register) or a certificate. The Act restricts access to information relating to adoptions, sexual assignment and reassignment, undercover police officers and protected witnesses, and I don't propose any further changes to these restrictions.
- 8 The Act also requires the Registrar-General to maintain indexes to the registers. The original purpose of the indexes was to enable registry staff to locate a reference number for a record in the (then) paper-based register. As the registers are now held in electronic form, indexes are no longer needed for this purpose. A further use has developed of enabling identification by members of the public of a particular record. Over time, Parliament has agreed to increase the amount of information contained in the indexes in response to representations from genealogists. The indexes now contain more information than is necessary to enable people to identify particular records. The Act provides that, on request and payment of the prescribed fee, the Registrar-General must provide any person with all or part of any index. Indexes have been purchased by (among others) public libraries, the New Zealand Society of Genealogists and, in the case of death indexes, the Direct Marketing Association and some financial institutions to enable the removal of deceased persons from mailing lists and to prevent or detect fraud.

Issues with the current access regime – privacy concerns and identity fraud – and proposals for reform

- 9 Under the Act, persons are legally required to provide personal information to the Registrar-General to be included in the registers. This information is then available to members of the public through

² “Public access” encompasses access to information on the registers by members of the public who are not the subjects of the information. I am not intending to restrict an individual's access to their own personal information. The Act makes provision for access to information from the register for statistical, health or demographic purposes. Cabinet decisions in September 2003 will result in amendments to these provisions being included in the Bill [EXG Min (03) 10/3 and CAB Min (03) 30/2 refer]. I don't propose any further changes in this area.

the indexes to the registers and products available from the registers (printouts and certificates). The increase in information contained in the indexes (including, in the case of births, full names, dates and place of birth, and mothers' details), coupled with the wide availability of indexes, means that personal information is now readily available to the public. The fact that anyone can obtain personal information from the indexes and registers about any other person (including another person's birth certificate) can be seen as an intrusion into personal privacy.

- 10 The Privacy Act definition of personal information includes information relating to deaths that is maintained by the Registrar-General pursuant to the Act. Cause of death information can be sensitive for some people, for example if the death was self-inflicted. However, privacy interests do diminish over time after an individual has died.
- 11 Personal information contained in the registers can be used to facilitate identity fraud. While restricting access to the registers will not, in itself, prevent identity fraud (as personal information is available from many other sources, including electoral rolls and the internet), it will make it more difficult for opportunistic fraudsters to obtain information that can be used for illegal purposes.
- 12 To address these privacy and identity fraud concerns, I propose that a new legislative regime be introduced that draws a balance between protecting individuals' personal privacy and providing reasonable public access to the registers for purposes related to the purpose of collecting the information. I propose that access to personal information held on the registers should only be made available to third parties if the subject of the record authorises (in writing) the access, or there is a justifiable reason for the disclosure that is related to the purpose of the registers (see paragraph 15 below for a discussion on the purpose statement for the registers). Immediate family members (mothers, fathers, sons, daughters, spouses, civil union partners, de facto partners, sisters, brothers, grandparents and grandchildren) would be able to access the records of other immediate family members. Guardians of children would continue to have access to the children's birth records. Access would be allowed where agents (for example, a family historian or funeral director) have the written authority of power of attorney from a person entitled to access a record. Access would also be permitted where required for any court proceedings, for the exercise of security-related functions of the NZSIS, for the administration of an estate, to avoid prejudice to the maintenance of the law by a public sector agency, and to enable the Police to notify next of kin of a person's death.
- 13 A new summary offence will be created, punishable by a fine not exceeding \$10,000 and/or a term of imprisonment not exceeding 3 months, to cover persons obtaining or attempting to obtain information from the registers or source documents (see paragraph 16 below) by means of a false statement. It is anticipated that this new offence will have negligible effect on the prison population, given that the maximum term of imprisonment is low and the principles in the Sentencing Act 2002 governing the imposition of the sentence of imprisonment.³
- 14 Because indexes are no longer required to locate records held electronically, I propose that the legislative requirement that the Registrar-General maintain indexes be repealed. Existing indexes in public libraries and other places will not be affected. Over time, the information contained on those indexes will become increasingly out-of-date and will represent a smaller proportion of the total information held on the registers.

³ For example, the Sentencing Act provides that a court, when considering the imposition of a sentence of imprisonment, must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community.

Purpose statement for the registers

- 15 The registers are classified as public registers under the Privacy Act 1993 and are therefore subject to the public register privacy principles in Part 7 of that Act. The Office of the Privacy Commissioner recommends that public registers have purpose statements to provide a clear, shared understanding about why the registers are created and the purpose for which personal information is collected. It is possible that, as a result of the current review of the Privacy Act being conducted by the Ministry of Justice, purpose statements for public registers will be required. I therefore propose that the Act be amended to include a purpose statement for the registers covering the following purposes:
- maintaining a record of demographic information, and information about health, mortality and other matters important for government; and
 - an official record of births, marriages, civil unions, deaths and name changes that can be used as evidence of the event, age, identity, descent and whakapapa, and New Zealand citizenship status.

Access to source documents

- 16 Source documents are the documents that collect the information for the registers, and include notifications of births and deaths, and notices of intended marriage and intended civil unions. If anyone can access the source documents in respect of a named individual (as is currently the case), the restrictions on access to the registers outlined above could be circumvented. There are, however, specific circumstances where access to a source document may be required, for example, where there is doubt as to whether the information on the register has been accurately transcribed from the source document or where there is a dispute about whether a person signed the document. I therefore propose that the Registrar-General can authorise access in circumstances where access is required for the maintenance of the accuracy of the registered information, or for a purpose that is consistent with the purpose of the registers that cannot be met by obtaining a certificate or printout.

Historical information and internet access

- 17 As noted in paragraph 10 above, privacy concerns are generally limited to information about living or recently deceased individuals. I therefore consider it appropriate to distinguish between historical information and more recent information, and provide for an open access regime in respect of historical records. I propose that the restrictions on accessing information from the registers outlined in paragraph 12 above should not apply to historical information. This is consistent with the approach taken in some overseas jurisdictions, for example, in many Australian states.
- 18 In defining historical records I have attempted to set limits that provide reasonable assurance that living individuals are not included while providing reasonable access to information that is a valuable resource for people interested in family history, whakapapa, and genealogy. I have also taken into account advice that death information should be sufficiently old to prevent fraudsters using it to create 'tombstone identities'. I therefore propose that historical records include records about births that occurred at least 100 years ago; marriages (and, in the future, civil unions) that occurred at least 80 years ago; stillbirths that occurred at least 50 years ago; and deaths that occurred at least 50 years ago or at least 80 years after the birth of the (subsequently deceased) person, whichever is sooner. This will allow a graduated approach to accessing death records, so that where a person has died later in their life, their death record will be available to members of the public at an earlier stage than a death record that relates to a person who died at a younger age.⁴

⁴ For example, under the proposal, if a child died aged 10 years, the public would be able to access the death information 50 years later, whereas if a person died aged 50 years, public access to the death information would be available 30 years later

- 19 I propose that certain information (similar to that currently contained in the indexes) from historical records be made available on the internet so that people can research events and accurately identify particular records from which they wish to purchase a certificate or printout.

Disclosure agreements with non-government organisations

- 20 Without indexes there is no mechanism to allow non-government organisations to obtain bulk information from the registers for purposes such as removing the names of dead people from mailing lists. The Office of the Privacy Commissioner is of the view that the use of death information for “cleansing” purposes is appropriate. I propose that the Registrar-General may enter into agreements with non-government organisations to disclose information from the registers for specific purposes (for example, to remove the names of deceased persons from mailing lists, or to enable the prevention or detection of fraud).⁵ Such agreements will be subject to consultation with the Privacy Commissioner and will have to comply with specified requirements (for example, agencies will only be permitted to use the information for the purpose(s) for which it was obtained, and they will not be able to place the information on the internet). Failure to comply with the requirements will be an offence, punishable by a fine not exceeding \$50,000 on summary conviction.⁶ Government agencies that require bulk information from the registers will continue to use legislated information matching arrangements.

Amendments required due to the enactment of the Civil Union Act 2004, the Care of Children Act 2004 and the Human Assisted Reproductive Technology Act 2004

- 21 A number of minor amendments to the Act are required as a result of the enactment of the Civil Union Act 2004, the Care of Children Act 2004 and the Human Assisted Reproductive Technology Act 2004.

Both parents to sign the birth notification form

- 22 Guardians of children born in New Zealand are required to notify the Registrar-General of the birth by completing a birth notification form. As a result of the enactment of the Care of Children Act 2004 and the Civil Union Act 2004, where the parents are married, in a civil union or in a de facto relationship with each other at any time between conception and birth of the child, both parents are guardians but only one parent needs to sign the birth notification form in their capacity as a guardian. Where the parents are not in any of these forms of relationship at the relevant time, the father’s details will generally only be recorded in the child’s birth registration where both the mother and father consent (which usually means both parents must sign the birth notification form).

- 23 To ensure that accurate information is recorded on a child’s birth registration, I propose that both parents should sign the birth notification form, irrespective of their relationship status at the time of the child’s conception through to birth or their guardianship status.⁷ This approach will have the advantage, in the case of parents who are in a de facto relationship, of both parents confirming their

(when the person would have been aged 80 years). If a person dies aged 81 years, any member of the public would be able to access the death information immediately.

⁵ The Office of the Privacy Commissioner (OPC) notes that allowing non-government organisations access to information from the registers may (depending on the circumstances) be problematic in privacy terms. The Department of Internal Affairs and OPC will continue to discuss the privacy issues arising from the proposals.

⁶ This level of penalty is consistent with similar offences relating to the electoral roll in the Electoral Act 1993.

⁷ This proposal will not apply where a child has only one parent at law (for example, where a single woman conceives as a result of an assisted human reproductive procedure using donated semen, the Status of Children Act 1969 provides that, in general, the donor is not a parent of the child, and only the mother’s details will be recorded on the child’s birth registration. The donor’s details will be recorded on a separate register established under the Human Assisted Reproductive Technology Act 2004).

relationship status at the time of the birth registration and agreeing to the inclusion of the father's details on the birth registration. Not taking this approach runs the risk of situations arising where the father or mother fills out the birth notification form claiming to be in a de facto relationship but the other parent disagrees that their relationship has reached that status.

- 24 The Registrar-General will be able to accept a birth notification form signed by only one parent where satisfied that the other parent is unavailable (defined in the Act as meaning dead, missing, unknown, of unsound mind, or unable to act by virtue of a medical condition) or where the requirement to obtain both signatures would cause unwarranted distress. A similar approach is taken in Australian states. "Unwarranted distress" could cover situations where the putative father refuses to sign the birth notification or where the mother has been unable to locate the father after taking reasonable steps. In these situations the birth registration will be accepted without the father's signature. His details can be included in the child's birth registration where the Registrar-General is satisfied that he is the father (for example, where a statutory presumption of paternity applies, or a paternity order has been obtained), or he later requests that his details be included and the mother does not dispute that he is the child's father.

Limiting powers, duties and functions of Registrars at time of appointment

- 25 The Registrar-General can appoint Registrars to carry out duties, powers and functions under the Act. Registrars appointed pursuant to the Act also carry out functions under other Acts, including the Marriage Act 1955 and the Civil Union Act 2004 (for example receiving notices of intended marriage or civil union, taking statutory declarations, issuing licences and solemnising civil unions and marriages). While the Births, Deaths, and Marriages Registration Act specifically allows the Registrar-General, when appointing a Registrar, to limit the Registrars' powers, duties and functions under that Act, the Registrar-General has no express power to limit Registrars' duties under other Acts. For consistency, I propose that the Registrar-General's power to limit a Registrar's duties at the time of appointment be extended to duties under other Acts, including the Marriage Act and the Civil Union Act.

Updating information on the Human Assisted Reproductive Technology (HART) registers

- 26 The Human Assisted Reproductive Technology Act 2004 (HART Act) introduced, from 22 August 2005, a registration scheme for the collection, retention, and access to information about people who have donated embryos or cells for assisted reproductive procedures (donors) and people born as a result of those donations (donor offspring). Fertility service providers are responsible for collecting information about donors who donate a cell or embryo from 22 August 2005 and donor offspring born as a result of those donations, and passing it to the Registrar-General. In addition, for donor offspring born as a result of donations made before 22 August 2005, a voluntary registration scheme is established whereby donor and donor offspring can provide information to the Registrar-General.
- 27 The HART Act contains provisions for the donor and donor offspring to update their personal information held by fertility service providers and in some situations requires that information to be forwarded to the Registrar-General. However, no express provision is made for the Registrar-General to update the HART registers on the basis of information contained in the birth, death and change of name registers. Where, for example, a donor changes his or her name or dies, there is no express legislative authority to note this information on the HART registers, thereby enabling the information to be passed on to a donor offspring who makes a request for information about the donor. I propose that the Act provides that the Registrar-General can update information on the HART registers on the basis of information contained in the birth, death and change of name registers where satisfied that the information relates to the person concerned.

New name for the Act

- 28 I propose that the Act be renamed to reflect new requirements to register civil union and donor/donor offspring information. I propose that the Act be renamed Births, Deaths, Marriages and Relationships Registration Act, with a corresponding administrative change to the title of the Registrar-General, Registrars and the Office. The proposed title has the advantage of retaining a similar format to Births, Deaths and Marriages which members of the public will be familiar with and is consistent with the terminology used in the Relationships (Statutory References) Act.

Identity protection for officers and employees of the NZSIS

- 29 The Act currently contains provisions that protect information relating to secret witnesses and undercover police officers. In September 2003 Cabinet agreed to amend these provisions to allow for the creation of new (false) identities where this is necessary for protection of witnesses and undercover police officers [EXG Min (03) 10/3 and CAB Min (03) 30/2]. I propose to extend these new arrangements to cover employees and officers of the NZSIS. Under the new provisions, the Minister of Internal Affairs may direct the Registrar-General to create a new identity by entering or amending information on the registers. Before making such a direction, the Minister of Internal Affairs must be satisfied that it is in the interests of security that a new identity be created. When creating a false identity, the Registrar-General may ensure operational details such as date stamps support the new identity, and may 'flag' a record of a false identity in order to disclose to the NZSIS and the individual concerned (if his or her whereabouts is known) information about any request relating to the record. The Registrar-General may delete any record of a false identity if NZSIS notify that the identity has been compromised or is no longer needed.

Consultation

- 30 The proposals to introduce a new regime governing public access to the registers were developed in consultation with a working group consisting of representatives from the Ministry of Justice, the Office of the Privacy Commissioner and the Department of the Prime Minister and Cabinet.
- 31 The following agencies have been consulted on this paper and their views are reflected in it: the Ministries of Health, Justice, Social Development, Economic Development, Pacific Island Affairs and Women's Affairs; the Department of Labour; Child, Youth and Family; Inland Revenue Department; Office of the Privacy Commissioner; Statistics New Zealand; Police; Customs; the Treasury, Te Puni Kokiri, New Zealand Security Intelligence Service and State Services Commission. Parliamentary Counsel Office was consulted over the proposed name change to the Act. The Department of the Prime Minister and Cabinet has been informed of the proposals in the paper.

Fiscal Implications

- 32 With the exception of birth and death registration (which are Crown funded), all activities undertaken in the Office of Births, Deaths, and Marriages are funded from fees charged to customers on a cost recovery basis. Initial analysis indicates that some additional resource may be required to verify that people seeking access to information are entitled to receive the information. The level of any extra resource depends on the number of applications requiring checking and follow-up activity. In addition, restricting public access to the registers is likely to result in fewer products (specifically, printouts) being issued. The fees are subject to regular review. Any changes to fee levels would need to be made by amending regulations, subject to the usual regulation-making process.

Human Rights

- 33 The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final view as to whether the proposals are consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

Legislative Implications

- 34 The proposals in this paper require amendments to the Act, which will be incorporated in the Bill. The Bill is included in the 2005 Legislation Programme as category 3 (to be passed if possible in 2005) [CAB Min (05) 5/1A]. I have made a bid for the Bill to be included on the 2006 Legislation Programme.

Regulatory Impact and Business Compliance Cost Statement

- 35 A Regulatory Impact and Business Compliance Cost Statement covering the proposals to introduce a new regime governing public access to the registers is attached to this paper. The Regulatory Impact Statement does not cover the proposed amendments to the Act that address issues that have arisen as a result of the enactment of recent legislation and that extend protections for witnesses and undercover police officers to NZSIS employees and officers, as these amendments are of a minor nature and do not substantially alter existing arrangements, or deal with administrative procedures within or between departments. There are no compliance costs for business arising from these amendments.

Publicity

- 36 Proposals to restrict public access to the registers are likely to attract media interest. I will issue a media release outlining the proposed changes immediately prior to the Bill being introduced.

Recommendations

- 37 I recommend that Cabinet Committee on Government Expenditure and Administration:
- 1 **note** that in September 2003 Cabinet agreed to a number of amendments to the Births, Deaths, and Marriages Registration Act 1995 (the Act) being included in the Births, Deaths, and Marriages Registration Amendment Bill (the Bill);
 - 2 **note** that in October 2004 the introduction of the Bill was delayed pending the outcome of a policy review of public access to the birth, death and marriage registers and indexes. The review is now complete and, as a result, additional amendments to the Act need to be included in the Bill;
 - 3 **note** that, since the initial Cabinet decisions on the Bill were made, a number of additional issues have arisen as a result of the enactment of legislation in the intervening period, and these issues need to be addressed in the Bill;

Public Access to Birth, Death, Marriage, Civil Union and Name Change Registers

- 4 **agree** that the Act be amended to provide that the purpose of the birth, death, marriage, civil union and name change registers is to provide:
- demographic information, and information about health, mortality and other matters important for government; and
 - an official record of births, deaths, marriages, civil unions and name changes that can be used as evidence of the event, age, identity, descent and whakapapa, and New Zealand citizenship status;

- 5 **agree** that the Act be amended to provide that the Registrar-General can issue a certificate or printout from the birth, death, marriage, civil union and name change registers to a person if satisfied that the person:
- 5.1 is the person (or one of the people in the case of a marriage or civil union) whose birth, marriage, civil union or name change is recorded in the certificate or printout; or
 - 5.2 has the written authorisation of the person whose birth, marriage, civil union or name change is recorded in the certificate or printout; or
 - 5.3 is an immediate family member (mother, father, son, daughter, spouse, civil union partner, de facto partner, sister, brother, grandparent or grandchild) of the person whose birth, marriage, civil union or name change is recorded in the certificate or printout; or
 - 5.4 in respect of a birth, is a legal guardian of the child; or
 - 5.5 requires the certificate for use in the administration of an estate; or
 - 5.6 requires the certificate for use in proceedings in any court or tribunal; or
 - 5.7 requires the certificate or printout to enable the Police to notify next of kin of a person's death;
 - 5.8 requires the certificate or printout to avoid prejudice to the maintenance of the law by a public sector agency, including the prevention, detection, investigation and punishment of offences; or
 - 5.9 requires the certificate or printout for the exercise of security-related functions of the New Zealand Security Intelligence Service; or
 - 5.10 is an agent with the written authority or power of attorney from a person entitled to access the record; or
 - 5.11 requires the certificate or printout for some other purpose that the Registrar-General is satisfied is a proper purpose and is related to the purpose of the registers;
- 6 **agree** that the Act provide that the restrictions in recommendation 5 above do not apply in respect of 'historical records', which are defined as records of:
- births that occurred at least 100 years ago;
 - marriages and civil unions that occurred at least 80 years ago;
 - stillbirths that occurred at least 50 years ago; and
 - deaths that occurred either at least 50 years ago, or at least 80 years after the birth of the (subsequently deceased) person, whichever is sooner;
- 7 **agree** that the Act be amended to:
- 7.1 provide that the Registrar-General can authorise public access to source documents where satisfied that access is required for the maintenance of the accuracy of the registered information, or for a purpose that is consistent with the purpose of the registers that cannot be met by obtaining a certificate or printout;
 - 7.2 remove the requirement for the Registrar-General to maintain indexes to the registers;
 - 7.3 permit the Registrar-General to make information relating to historical records available for public search over the internet; and
 - 7.4 make it an offence to obtain or attempt to obtain information from the registers or source documents by means of a false statement, punishable on summary conviction to a term of imprisonment not exceeding 3 months and/or a fine not exceeding \$10,000;
- 8 **agree** that the Act be amended to:
- 8.1 enable the Registrar-General to enter into written agreements (subject to consultation with the Privacy Commissioner) with non-government organisations permitting disclosure of information from the registers for specified purposes (for example, to remove the names of deceased persons from mailing lists, or to enable the prevention or detection of fraud);

- 8.2 make it an offence, punishable on summary conviction to a fine not exceeding \$50,000, to:
- 8.2.1 change or manipulate the information obtained pursuant to such an agreement to a different form from which it was provided;
 - 8.2.2 place information obtained pursuant to an agreement on the internet or otherwise make it available electronically for public search; and
 - 8.2.3 use information obtained pursuant to an agreement for a purpose other than a purpose permitted by the agreement;

Birth notifications

- 9 **agree** to amend the Act to provide that both parents must sign the birth notification form, except where the Registrar-General is satisfied that one parent is unavailable or where the requirement to obtain both signatures would cause unwarranted distress;

Limiting Powers and Duties of Registrars at Time of Appointment

- 10 **agree** to amend the Act to enable the Registrar-General, when appointing Registrars, to limit the powers, functions and duties they can exercise under other Acts, including the Marriage Act 1955 and the Civil Union Act 2004;

Updating Information on the Human Assisted Reproductive Technology Registers

- 11 **agree** to amend the Act to permit the Registrar-General to update information on the Human Assisted Reproductive Technology registers on the basis of information contained in the birth, death and name change registers;

Title of the Act

- 12 **agree** to amend the title of the Act to the Births, Deaths, Marriages and Relationships Registration Act, with a corresponding change to the title of the Bill;

Identity protection for officers and employees of the New Zealand Security Intelligence Service

- 13 **agree** to amend the Act to provide that the Minister of Internal Affairs, if satisfied that it is in the interests of security that a new identity be created, may direct the Registrar-General to create a new identity for an officer or employee of the NZSIS by entering or amending information on the registers;

Drafting Instructions

- 14 **invite** the Minister of Internal Affairs to issue drafting instructions in respect of the decisions above.

Hon Rick Barker
MINISTER OF INTERNAL AFFAIRS

REGULATORY IMPACT STATEMENT

Statement of the nature and magnitude of the problem and the need for government action

- 1 The Registrar-General is responsible for holding and maintaining registers that contain information about births, deaths, marriages, civil unions and name changes. The Births, Deaths, and Marriages Registration Act 1995 governs access to information held on the registers. Under the Act, any person may obtain information from the registers (with limited exceptions) provided the person can name the individual whose record is sought. In addition, the Registrar-General must maintain, and make available to the public, indexes to the registers. The amount of information contained in the indexes has increased over time, and the indexes are now widely available (for example, through public libraries). A policy review of public access to the registers concluded that the public access provided by the Act is inappropriate in light of current attitudes towards privacy and protection of personal information.

Statement of the public policy objectives

- 2 The public policy objective is to provide a legislative regime governing access to the registers that draws an appropriate balance between protecting the privacy interests of individuals who are required to provide personal information to be held on the registers, and providing appropriate public access to the information on the registers for legitimate purposes.

Statement of feasible options

Status quo

- 3 The current legislative public access regime allows largely open access to the registers. With limited exceptions, any person can obtain information and products (such as birth certificates) from the registers about any other person. In addition, indexes to the registers contain significant amounts of personal information, and the indexes are widely available to members of the public. Retaining the status quo will not address the privacy issues raised by the review of public access to the registers.

Legislative amendment

- 4 As the Births, Deaths, and Marriages Registration Act 1995 governs access to information held on the registers, changes to the access regime require legislative amendment. Introducing a new legislative regime to allow public access to the information where authorised by the subject of the record or where there is a justifiable reason for accessing the information that is related to the purpose of the registers is considered the best option for meeting the public policy objective.

Statement of the net benefit of the proposal, including the total regulatory costs and benefits of the proposal

- 5 The key benefit of the proposals to restrict public access to the registers is that personal information held on the registers will, as a general rule, only be available to people who have a genuine reason for requiring the information. This will provide enhanced privacy protection for people whose personal information is held in the registers. In addition, restricting public access to the registers is likely to make it more difficult for certain types of identity fraud to be committed.
- 6 The costs of the proposals to restrict public access to the registers include the extra steps people will be required to go through to obtain information from the registers and potentially increased fees for products from the registers. It is likely that, under the proposals, people requesting a certificate or printout of information from the registers will have to sign a declaration as to their identity and/or their purpose for seeking access to the information and they may require the written consent of the person whose information they wish to obtain. The need for a declaration would mean that customers could no longer order certificates or printouts over the telephone (currently approximately 20% of certificates and printouts are the result of phone orders). This may be less convenient for some people and/or could result in short delays in obtaining the information required (which would be a problem for persons needing certificates urgently, for example, to prove entitlement to a benefit). In addition, the cost of certificates and printouts may need to be increased to offset the reduction in volumes of certificates and printouts ordered and the additional resource that may be required to verify that people seeking access to information are entitled to receive the information.
- 7 The proposals to restrict public access to information from the registers will impact on family historians and genealogists, and are likely to be contentious. These groups currently purchase the majority of the printouts obtained from the registers. Under the proposals, genealogists will require the consent of persons who are entitled to obtain information from the registers before access will be permitted. However, historical information will be more readily available, especially to those genealogists who have access to the internet.

Business compliance costs

- 8 The proposals to permit the Registrar-General to enter into written agreements with private sector organisations to disclose information from registers for specified purposes will involve business compliance costs. Businesses will need to invest resources (both financial and people resources) when negotiating the agreements (although it is likely that standard form agreements will develop over time which will reduce these compliance costs). In addition, new offence provisions restricting what businesses can do with the information disclosed pursuant to an agreement may expose some businesses to the risk of prosecution if they fail to comply with the requirements.
- 9 Currently, direct marketing firms and financial institutions purchase indexes to the death registers in order to update their mailing lists or to prevent or detect fraud (for instance, to prevent credit cards being obtained using the identity of a recently deceased person). It is likely that these types of businesses will be interested in entering into disclosure agreements with the Registrar-General. Entering into such agreements will, of course,

be voluntary, and businesses will be able to weigh up any costs against the perceived benefits of accessing the relevant information.

Statement of consultation undertaken

- 10 The proposals to introduce a new regime governing public access to the registers were developed in consultation with a working group consisting of representatives from the Ministry of Justice, the Office of the Privacy Commissioner and the Department of the Prime Minister and Cabinet. In addition to these agencies, the following government agencies were consulted on the proposals: Ministries of Health, Social Development, Economic Development, Pacific Island Affairs and Women's Affairs; the Department of Labour; Child, Youth and Family; Inland Revenue Department; Statistics New Zealand; Police; Customs; the Treasury; Te Puni Kokiri; New Zealand Security Intelligence Service and State Services Commission. Public consultation has not been undertaken.

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