



New South Wales

Births, Deaths and Marriages Registration Regulation 2017

under the

Births, Deaths and Marriages Registration Act 1995

[*The following enacting formula will be included if this Regulation is made:*]

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Births, Deaths and Marriages Registration Act 1995*.

Attorney General

Explanatory note

The object of this Regulation is to remake (with some changes in substance relating to additional particulars required to be notified or registered under the Act) the provisions of the *Births, Deaths and Marriages Registration Regulation 2011*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters:

- (a) the information required to be notified to the Registrar of Births, Deaths and Marriages (the **Registrar**) in relation to births, deaths, changes of name, adoptions, state and interstate parentage orders and registered relationships,
- (b) the documents that must accompany an application to alter the record of a person's sex in the Register of Births, Deaths and Marriages,
- (c) the persons who may apply to the Registrar for the birth certificate of a person showing the sex of the person before the certificate was altered because of the person's change of sex,
- (d) the laws of other Australian jurisdictions relating to the registration of a person's change of sex that are recognised for the purposes of the law of New South Wales,
- (e) the prescription of a government agency as a law enforcement agency who may in certain circumstances access certain information held by the Registrar relating to change of name,
- (f) exemptions from provisions of the Act that impose change of name restrictions on certain persons,
- (g) the fees payable for services provided by the Registrar.

This Regulation is made under the *Births, Deaths and Marriages Registration Act 1995*, including sections 4A, 12 (1), 14, 17 (1), 18 (g), 24 (2), 24A (2), 25B (5), 31 (1), 31B (3), 31H, 32C (b), 32DB (b), 32F (1), 32I (3), 32J (3), 41 (1) (d), (2) (b) and (3) (c), 42 (1), 46A (5) (d), 54 and 62 (the general regulation-making power).

public consultation draft

Births, Deaths and Marriages Registration Regulation 2017 [NSW]
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Births, Deaths and Marriages Registration Regulation 2017

under the

Births, Deaths and Marriages Registration Act 1995

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Births, Deaths and Marriages Registration Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Births, Deaths and Marriages Registration Regulation 2011*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

registered relationship and *interstate registered relationship* have the same meanings as in the *Relationships Register Act 2010*.

the Act means the *Births, Deaths and Marriages Registration Act 1995*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Information required to be given to Registrar or noted in Register

4 Notification of birth

For the purposes of section 12 (1) of the Act, the following particulars are required:

- (a) the sex and date, time and place of birth of the child,
- (b) whether the child was born alive or stillborn,
- (c) the weight of the child at birth and, if the child was stillborn, the period of gestation of the child,
- (d) whether or not the birth was a multiple birth,
- (e) the full name (including, if applicable, the original surname), date of birth and usual place of residence (at the time of delivery) of the birth mother of the child,
- (f) the full name, occupation, contact phone number, and email address (if any), of the person giving the notice.

5 Registration of birth

- (1) For the purposes of sections 14 and 17 (1) of the Act, the following particulars are required:

- (a) the sex and date, time and place of birth of the child,
- (b) the weight of the child at birth,
- (c) whether or not the birth was a multiple birth,
- (d) the full name (including, if applicable, the original surname), date of birth (or age), place of birth, occupation and usual place of residence (at the time of delivery) of each parent of the child,
- (e) the date and place of marriage of the parents of the child (if applicable),
- (f) the full name, sex and date of birth of any other children (including any deceased children) of either of the parents of the child,
- (g) whether or not either of the parents of the child is of Aboriginal or Torres Strait Islander origin,
- (h) if either parent of the child was born outside Australia, the period of residence in Australia of that parent.

Note. A birth registration statement given to the Registrar under section 14 of the Act must also state the name of the child (see section 21 of the Act).

- (2) For avoidance of doubt, the Registrar is authorised to include in the Register the registrable information about the identity of the child's parents that is required to be provided under this clause.
- (3) If the particulars supplied to the Registrar under section 14 of the Act specify that:
- (a) a parent who is the father of the child wishes to be identified in the Register as the father, or
 - (b) a parent who is the birth mother of the child wishes to be identified in the Register as the mother,

or both, the particulars entered in the Register under section 17 of the Act must identify the parent as the father or mother, as the case requires. This subclause does not limit the particulars which may be included in the Register.

6 Registration of adoption

For the purposes of section 24 (2) of the Act, the following particulars are required:

- (a) the full name, sex and date and place of birth of the child to whom the record of adoption or discharge relates,
- (b) the full name (including, if applicable, the original surname), date of birth (or age), place of birth, occupation and usual place of residence of the child's adoptive parent or parents,
- (c) the date and place of marriage of the adoptive parents of the child (if applicable),
- (d) the full name and date of birth of any other children (whether adopted children or not and including any deceased children) of either of the adoptive parents of the child.

7 Registration of deceased person's former intention to adopt

For the purposes of section 24A (2) of the Act, the following information is required:

- (a) the full name and last residential address of the deceased person,
- (b) the date and place of death of the deceased person.

8 Registration of parentage orders

For the purposes of section 25B (5) of the Act, the following particulars are required:

- (a) the full name, sex and date and place of birth of the child to whom the State parentage order or Interstate parentage order or discharge of the order relates,
- (b) the full name (including, if applicable, the original surname), date of birth (or age), place of birth, occupation and usual place of residence of the child's intended parent or parents,
- (c) the date and place of marriage of the intended parents of the child (if applicable),
- (d) the full name and date of birth of any other children (including any adopted children or children born as a result of a surrogacy arrangement and any deceased children) of the intended parent, or either of the intended parents, of the child.

9 Registration of change of name

- (1) For the purposes of section 31 (1) of the Act, the following particulars are required:
 - (a) the sex and date and place of birth of the person whose change of name is being registered,
 - (b) the full name of the person immediately before the change of name,
 - (c) the full name first given to the person after birth and any other name shown on the person's birth registration,
 - (d) any other former names of the person,
 - (e) the new full name of the person,
 - (f) the full names of the parents of the person (as at the date of the person's birth or registration of the person's birth).
- (2) In this clause, **former name** of a person includes:
 - (a) a name acquired by the person informally by repute or usage, or
 - (b) any other name used by the person.

10 Application to alter Register to record change of sex

For the purposes of section 32C (b) of the Act, the following documents are prescribed as documents that must accompany an application under section 32B of the Act:

- (a) a signed statement by each of the 2 doctors (or 2 medical practitioners) referred to in section 32C (a) of the Act declaring that the doctor or practitioner concerned sighted proof of the identity of the person the subject of the application when making the statutory declaration referred to in that paragraph,
- (b) documentary proof, to the Registrar's satisfaction, of the identity of the person the subject of the application.

11 Application to register change of sex

For the purposes of section 32DB (b) of the Act, the following documents are prescribed as documents that must accompany an application under section 32DA of the Act:

- (a) a signed statement by each of the 2 doctors (or 2 medical practitioners) referred to in section 32DB (a) of the Act declaring that the doctor or practitioner concerned sighted proof of the identity of the person the subject of the application when making the statutory declaration referred to in that paragraph,
- (b) documentary proof, to the Registrar's satisfaction:
 - (i) that the person is an Australian citizen or permanent resident of Australia, and
 - (ii) that the person lives, and has lived for at least 1 year, in New South Wales.

12 Registration of relationship

The following particulars of the registration of a relationship under the *Relationships Register Act 2010* are required to be registered in the Register:

- (a) the sex, full name, occupation and usual place of residence of each party to the relationship,
- (b) the date and place of birth of each party to the relationship,
- (c) the full names (including, if applicable, the original surname) of the parents of each party to the relationship.

13 Information concerning human remains

For the purposes of section 41 (1) (d) of the Act, the following information is required from a funeral director or other person who arranges for the disposal of human remains:

- (a) the date and place of death of the deceased,
- (b) the sex, date of birth (or age at death) and place of birth of the deceased,
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (d) the date of disposal of the remains of the deceased,
- (e) the full name and business address of the funeral director or other person who arranged for the disposal of the remains,
- (f) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,

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- (g) whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- (h) whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,
- (i) if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same information in relation to each marriage of the deceased if the deceased had married more than once),
- (j) if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- (k) the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
- (l) the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- (m) the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

14 Information concerning human remains removed from the State

For the purposes of section 41 (2) (b) of the Act, the following information is required from a funeral director or other person who arranges for the removal of human remains (other than cremated remains) from the State:

- (a) the full name and last residential address of the deceased,
- (b) the date and place of death of the deceased,
- (c) whether or not the death was reported to a coroner,
- (d) the sex, date of birth (or age at death) and place of birth of the deceased,
- (e) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (f) the date of disposal of the remains of the deceased,
- (g) the full name and business address of the funeral director or other person who arranged for removal of the remains,
- (h) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,
- (i) whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- (j) whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,
- (k) if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same information in relation to each marriage of the deceased if the deceased had married more than once),
- (l) if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased

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- at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- (m) the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
 - (n) the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
 - (o) the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

15 Information concerning human remains not disposed of within 30 days after death

For the purposes of section 41 (3) (c) of the Act, the following information is required from a funeral director or other person who has custody of human remains that have not been disposed of within 30 days after the date of death:

- (a) the date and place of death of the deceased,
- (b) the sex, date of birth (or age at death) and place of birth of the deceased,
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (d) the full name and business address of the funeral director or other person who has custody of the remains of the deceased,
- (e) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,
- (f) whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- (g) whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,
- (h) if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same information in relation to each marriage of the deceased if the deceased had married more than once),
- (i) if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- (j) the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
- (k) the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- (l) the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

16 Registration of death

For the purposes of section 42 (1) of the Act, the following particulars are required:

- (a) the date and place of death of the deceased,

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- (b) the sex, date of birth (or age at death) and place of birth of the deceased,
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (d) the date of disposal of the remains of the deceased,
- (e) the full name and business address of the funeral director or other person who arranged for the disposal of the remains,
- (f) if the deceased was born outside Australia, the period of residence in Australia of the deceased before death,
- (g) whether or not the deceased was of Aboriginal or Torres Strait Islander origin,
- (h) whether, immediately before death, the deceased was married, divorced, widowed, in a registered relationship or an interstate registered relationship or in a de facto relationship or had never married,
- (i) if the deceased had married, the date of marriage (or age of the deceased at the date of marriage), the place of marriage and the full name (including, if applicable, the original surname) of his or her spouse (and the same particulars in relation to each marriage of the deceased if the deceased had married more than once),
- (j) if the deceased had been in a registered relationship or an interstate registered relationship, the date of registration of the relationship (or age of the deceased at the date of registration), the place of registration and the full name (including, if applicable, the original surname) of his or her partner in the relationship (and the same information in relation to each registered relationship or interstate registered relationship of the deceased if the deceased had been in more than one such relationship),
- (k) the full name (including, if applicable, the original surname) of any de facto partner of the deceased,
- (l) the full names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- (m) the full name (including, if applicable, the original surname) and occupation of each parent of the deceased.

Part 3 Miscellaneous

17 Persons who may apply for old birth certificate

- (1) For the purposes of section 32F (1) of the Act, the following persons are prescribed as persons who may apply to the Registrar for a birth certificate that shows the sex of a transgender person before the record of the transgender person's sex was altered under Part 5A of the Act:
- (a) the executor or administrator of the transgender person's estate,
 - (b) a parent of the transgender person,
 - (c) a spouse or de facto partner (or former spouse or de facto partner) of the transgender person,
 - (d) an officer or person acting on behalf of any of the following law enforcement agencies:
 - (i) the NSW Police Force, or the police force of another State or a Territory,
 - (ii) the Australian Federal Police,
 - (iii) the New South Wales Crime Commission,
 - (iv) the Australian Crime Commission,
 - (v) the Office of the Director of Public Prosecutions of this State, of another State or a Territory, or of the Commonwealth,
 - (vi) the Independent Commission Against Corruption.
- (2) In this clause, **transgender person** means a person:
- (a) who has undergone a sex affirmation procedure, and
 - (b) the record of whose sex has been altered under Part 5A of the Act.

18 Exemptions from certain provisions of Division 3 of Part 5 of the Act

- (1) For the purposes of section 31B (3) of the Act, persons who are inmates, parolees, periodic detainees, forensic patients or correctional patients, or are subject to a supervision order, solely because of one or more of the following reasons are prescribed as not being a class of restricted person:
- (a) because of the commission or alleged commission of an offence under a law of the Commonwealth,
 - (b) because the person is the subject of a warrant under section 170 (1) (a) of the *Defence Force Discipline Act 1982* of the Commonwealth by which an authorised officer under that Act has committed the person to a correctional centre pursuant to a punishment of imprisonment imposed under that Act,
 - (c) because the person is a detainee within the meaning of the *Migration Act 1958* of the Commonwealth and is being held in a correctional centre as referred to in paragraph (b) (ii) of the definition of **immigration detention** in section 5 (1) of that Act,
 - (d) because the person is in the keeping of a correctional officer under section 250 of the *Crimes (Administration of Sentences) Act 1999*.
- (2) A person is exempt from section 31F of the Act if the person is a former serious offender only because of the commission or alleged commission of an offence under a law of the Commonwealth.

Note. Terms used in this clause that are defined in Part 5 of the Act have the same meanings as they have in that Part.

19 Recognition of change of sex—interstate laws

- (1) For the purposes of section 32I (3) of the Act, the following laws are prescribed:
 - (a) *Births, Deaths and Marriages Registration Act 1997* of the Australian Capital Territory,
 - (b) *Births, Deaths and Marriages Registration Act* of the Northern Territory,
 - (c) *Births, Deaths and Marriages Registration Act 2003* of Queensland,
 - (d) *Sexual Reassignment Act 1988* of South Australia,
 - (e) *Births, Deaths and Marriages Registration Act 1999* of Tasmania,
 - (f) *Gender Reassignment Act 2000* of Western Australia,
 - (g) *Births, Deaths and Marriages Registration Act 1996* of Victoria.
- (2) For the purposes of section 32J (3) of the Act, the *Gender Reassignment Act 2000* of Western Australia is prescribed.

20 Law enforcement agencies

For the purposes of section 46A (5) (d) of the Act, Corrective Services NSW within the meaning of the *Crimes (Administration of Sentences) Act 1999* is prescribed as a law enforcement agency.

21 Fees

For the purposes of section 54 of the Act, the fee for a service provided by the Registrar is the fee set out for the service concerned in Schedule 1.

22 Savings

Any act, matter or thing that, immediately before the repeal of the *Births, Deaths and Marriages Registration Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Fees

(Clause 21)

1 Standard certificate

- (1) This clause prescribes the fee for the issue of:
 - (a) a certificate certifying particulars contained in an entry in the Register following a search under any one name of the Register (other than a certificate referred to in clause 2 or 3), or
 - (b) a No Trace certificate certifying that no entry was found in the Register about a relevant registrable event following a search under any one name.
- (2) The fee where the search is in respect of a period not exceeding 10 years is:
 - (a) \$45 for the ordinary issue of a certificate, or
 - (b) \$70 for the priority processing of the certificate ahead of that of other applicants.
- (3) The fee in respect of each further period of 10 years or part of 10 years is \$42.

2 Family history certificate

- (1) This clause prescribes the fee for the issue of a certificate in relation to a search of the Register:
 - (a) for births over 100 years ago, or
 - (b) for deaths over 30 years ago, or
 - (c) for marriages over 50 years ago.
- (2) The fee where an index or registration number is supplied is:
 - (a) \$32 for the ordinary issue of a certificate, or
 - (b) \$57 for the priority processing of the certificates ahead of that of other applicants.
- (3) The fee where an index or registration number is not supplied is:
 - (a) \$45 for the ordinary issue of a certificate, or
 - (b) \$70 for the priority processing of the certificate ahead of that of other applicants.

3 Issue of certificate relating to children of deceased person

- (1) This clause prescribes the fee for both:
 - (a) the search of the Register on an application under section 50 (1) of the Act by the executor, trustee or administrator of the estate of a deceased person, and
 - (b) the issue of a certificate under section 50 (2) of the Act to the executor, trustee or administrator of the estate of a deceased person indicating whether the deceased is a parent of any children.
- (2) The fee where the search is in respect of a period not exceeding 10 years is (in relation to each deceased person):
 - (a) \$45 for the ordinary issue of a certificate, or
 - (b) \$70 for the priority processing of the certificate ahead of that of other applicants.
- (3) The fee in respect of each further period of 10 years or part of 10 years is \$42.

4 Registering a change of name

The fee for registering a change of name is:

- (a) \$126 for an ordinary registration, or
- (b) \$151 for the priority processing of the registration ahead of that of other applicants.

5 Altering the record of a person's sex in birth registration

The fee for altering the record of a person's sex in the birth registration of the person is:

- (a) \$69 for an ordinary alteration of the registration, or
- (b) \$94 for the priority processing of the alteration ahead of that of other applicants.

6 Addition of parentage details in birth registration

The fee for recording in the Register, after the registration of the birth of a child, the name of (or other particulars relating to) a person as a parent of the child is:

- (a) \$67 for an ordinary recording in the Register, or
- (b) \$92 for the priority processing of the recording ahead of that of other applicants.

7 Verification of authenticity of a document by means of CertValid

The fee for the verification of the authenticity of a document by means of the CertValid online certification validation system is \$1.10.

8 Manual verification of authenticity of documents

The fee for the manual verification of the authenticity of a document following the unsuccessful use of the CertValid online certification validation system is \$11.

9 Supplying certified copy of any other record

The fee for supplying a certified copy of any record or document kept by the Registry of Births, Deaths and Marriages, for which no fee is otherwise provided by this Schedule, is \$38 per sheet.

10 Providing other service

The fee for providing any service not specified in this Schedule is the fee that is fixed by negotiation between the Registrar and the person who asks for the relevant service.