



Births, Deaths, Marriages, and Relationships Registration Amendment Bill

98—1

Report of the Government Administration Committee

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Births, Deaths, Marriages, and Relationships Registration Amendment Bill

Recommendation

The Government Administration Committee has examined the Births, Deaths, Marriages, and Relationships Registration Amendment Bill. We have been unable to reach agreement and therefore cannot recommend that the bill be passed.

Introduction

This bill amends the Births, Deaths, and Marriages Registration Act 1995. Its main objectives are to regulate access to and the use of registered information, to improve the collection and management of registered information, and to modernise the functions of the Births, Deaths and Marriages registry.

Structure of report

As the committee was unable to reach agreement that the bill be passed, the remainder of this report outlines the views of the Labour members and the non-voting Green Member in support of the bill, followed by the views of the National members.

View of Labour and Green Party members

Commencement date delayed

To ensure that there was adequate time to notify the public about the effect of the bill, and that the administering department's systems were ready, we would have recommended that the bill's commencement date be delayed until six months after the day on which it received Royal assent.

Interpretation

We would have recommended that the definitions of adoption information, birth information, civil union information, death information, and marriage information not be repealed, as their repeal might have led to an adverse inference as to their meanings. Instead we would have recommended that an equivalent definition of name change information be inserted in the bill.

Parent responsible for notifying birth

We would have recommended an amendment to clause 10 to change the word "person" to "donor" in section 9(4) to prevent any confusion where there was only one parent at law, as occurs in certain cases where a child is born as a result of an assisted reproductive procedure.

Application for registration of name change

Clause 13 repeals section 21 and substitutes new sections 21 and 21A. As subsection (6) of new section 21 provides definitions of “entitled person” and “guardian”, we believe it would have been more logical to position the content of this subsection before the substantive provisions in which they are used.

Access to registered information

Many submitters opposed the bill’s intention to restrict registered information to only the individual concerned, their immediate family, and other people who could show they had a legitimate purpose connected with the purposes for which the information was recorded, in the first instance.

In light of these concerns, we felt it was important to retain general public access to the registered information, but to change the balance between protecting personal details from abuse and allowing appropriate access to registry information for legitimate purposes. It would also have had to be administratively efficient, because of the large number of requests the registry processes each year. The amendments we would have recommended to achieve this are outlined below.

Applicants to present identification

We would have recommended an amendment that would have required applicants wishing to access registered information about themselves or another person to present proof of their identity.

Under our amendments, the applicant’s identity would have been recorded on an access register and he or she would have been warned that the subject of the record was able to establish who had accessed their personal information. We believe that this approach would have deterred the accessing of other people’s records for inappropriate reasons, and should have encouraged applicants to obtain the permission of the subject of the record.

Access register

We would have recommended several new sections, establishing an access register allowing the subject of a record to ascertain who had accessed their personal information. Information on the access register would have been accessible only to the subject of the record, the subject’s personal representative, or another person authorised by the subject. The access register would also have been accessible to public-sector agencies for law enforcement purposes.

Non-disclosure of records

We would have recommended amendments to allow the subject of a record to request that the Registrar-General suppress public disclosure of their record by a non-disclosure direction. This non-disclosure would have applied for a defined period, on specified grounds. This would have allowed any person concerned about his or her personal information being used inappropriately to deny general public access to their record.

A request for a non-disclosure direction would have been permissible only by the subject of the record or his or her personal representative. The subject of the record or the

personal representative would have had to specify the ground on which the request was being made; and if it were one of the grounds prescribed under the regulations, the request would have been approved. The request could have been made at any point during the subject's life, and once a non-disclosure direction was in place, the subject could have requested of the Registrar-General that it be lifted and re-imposed at any time.

The effect of a non-disclosure direction would have ceased when the prescribed period ended or when the Registrar-General directed that it be withdrawn at the request of the subject of the record or the subject's personal representative.

We would have recommended a new clause which would have inserted new regulation-making powers. Those powers would have allowed regulations to be made prescribing the grounds on which a request for a non-disclosure direction, or the reinstatement of a direction that had previously been withdrawn, might be made to the Registrar-General, as well as regulations prescribing the period for which a non-disclosure direction remained in force.

Once suppressed, the record would generally only be accessible by the subject or his or her personal representative. The non-disclosure direction would apply to the whole record, as partial suppression would not be practicable. Any other member of the public who requested information from the record would have been told that the record existed, but they would not have received any information from it.

Disclosure of suppressed information

Despite a non-disclosure direction being in force, should the subject of a record have chosen to disclose personal information about him- or herself, we believe he or she would have effectively waived his or her right to privacy in respect of that piece of information.

To provide a means of verifying information a person had voluntarily disclosed, we would have recommended an amendment that would have allowed any person to request that the Registrar-General verify such information.

A non-disclosure order would not have prevented disclosure of the subject's record for certain authorised purposes which we would have specified, or for purposes of gathering statistics, or for health, historical, or demographic research.

Crown immunity for good faith release of information

We would have recommended the inclusion of a new section in the bill to protect the Crown, a Registrar, or any other person from liability where information was released to a person in good faith, but the person requesting the information was not who they claimed to be, or was not entitled to receive the information.

Sharing information with foreign registration authorities—consultation with Privacy Commissioner

Clause 30 inserts new section 78D, which allows the Registrar-General to share name change and death information about foreign-born people in New Zealand with foreign registration authorities, and vice versa.

We would have recommended inserting a new section to ensure that the Privacy Commissioner was consulted before information sharing agreements were made with other countries. This would have ensured a transparent process, and allowed the Registrar-General to call upon the Commissioner's expertise regarding the sharing of information across borders.

Disclosure of death information to non-Government organisations

We would have recommended minor amendments to clause 78E to facilitate the retention and transfer of registered death information to people or organisations for the purpose of removing deceased persons from their databases.

Amendments to Schedule 1A

We would have recommended amendments to Schedule 1A to enable the Government Superannuation Fund Authority and the Board of Trustees of the National Provident Fund to access any registered information where it was required for the administration of a statutory superannuation scheme for the purposes of locating scheme members and establishing which members were deceased. This would have been necessary because of the bill's repeal of the requirement to make indexes of registered information available for sale.

We would have also recommended an amendment to update the Ministry of Social Development's requirements under the Social Security (Entitlement Cards) Amendment Act 2007, to ensure that the Registrar-General could continue to provide registered information to the Ministry for the purpose of verifying a person's eligibility for a SuperGold card.

Provisions relating to new public access rules to be reviewed after five years

We would have recommended a new section requiring that the bill's provisions introducing new rules for public access to registered information be reviewed five years from the date the bill received the Royal assent.

Language on death records

We note the use of the word "disposal" on death certificates and computer printouts from death registration entries, which refers to what ultimately happens to a body, such as burial or cremation. We were concerned that this term might be insensitive to surviving family members and would have recommended an amendment to ensure that alternative language is used on those documents.

View of National members

The National members are opposed to the proposal to restrict people's access to the register of births, deaths and marriage information.

National members are concerned at the lack of clear problem definition. There was no evidence produced to substantiate that there was a direct causal link between identity fraud and access to information from the register, or that there was a sizeable or growing problem with the status quo. In fact quite the opposite is happening.

The Government failed to consult widely on the bill prior to the bill being introduced to Parliament and consequently struggled to get widespread community support. A significant number of submitters to the bill raised this particular issue.

Given the strong community opposition to this bill a number of changes were proposed by Government members but these have not satisfied National members that they would significantly change the access restrictions that the majority of submitters are opposed to. It is the view of National member's that these restrictions will continue to hamper academic and genuine genealogical research, and other legitimate purposes needing access to births, deaths and marriage information.

National members support openness and transparency, and believe more can be gained from the tradition of public access to the registers with the government continuing to act in a custodial role.

As a consequence, National members oppose the bill.

Appendix

Committee process

The Births, Deaths, Marriages, and Relationships Registration Amendment Bill was referred to the committee on 1 March 2007. The closing date for submissions was 4 May 2007. We received and considered 151 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Department of Internal Affairs.

Committee membership

Shane Ardern (Chairperson)
Darien Fenton (Deputy Chairperson)
Sandra Goudie
Brian Connell
Hon Harry Duynhoven
Hon Dover Samuels

Hon Harry Duynhoven replaced Hon George Hawkins as a permanent member of this committee during consideration of the bill.

Peter Brown and Keith Locke were non-voting members for the duration of this item of business.