

Births, Deaths and Marriages Registration Amendment Regulation 2021 (No 1)

Subordinate law SL2021–20

made under the

Births, Deaths and Marriages Registration Act 1997

EXPLANATORY STATEMENT

Overview

The *Births, Deaths and Marriages Registration Act 1997* (the BDMR Act) provides the overarching legislative framework for the registration of births, deaths and marriages in the ACT. The *Births, Deaths and Marriages Registration Regulation 1998* (the BDMR Regulation) has been made under section 70 of the BDMR Act and supports the operation of the BDMR Act.

The *Births, Deaths and Marriages Registration Amendment Regulation 2021 (No 1)* (the BDMR Amendment Regulation) amends the BDMR Regulation to prescribe circumstances where stated persons with parental responsibility may provide consent to an application made by transgender, intersex or gender diverse young people under the BDMR Act:

- to change their given names under section 19A(b)(ii)(C); and/or
- to change registered sex under section 24(1)(a)(ii)(C); or
- for a recognised details certificate under section 29A(1)(a)(ii)(C).

Background

The ACT Government's *Capital of Equality Strategy – First Action Plan 2019 & 2020* made a commitment to 'improve processes for changing birth registration and birth certificates for trans and gender diverse people, particularly young people'.

To deliver on this commitment, the ACT Legislative Assembly passed the *Births, Deaths and Marriages Registration Amendment Act 2020* (the BDMR Amendment Act) on 13 August 2020. The BDMR Amendment Act created independent pathways for transgender, intersex and gender diverse young people to change their given names and/or sex recorded in the ACT Register of births.

As part of the reforms, sections 19A(b)(ii)(C), 24(1)(a)(ii)(C) and 29A(1)(a)(ii)(C) of the BDMR Act now provides that, if a circumstance prescribed by regulation applies, a stated person with parental responsibility may consent to the applications made by a young person.

The BDMR Amendment Regulation prescribes these circumstances.

Under the BDMR Amendment Regulation, consent may only be provided to the applications by persons who have responsibility for the long-term welfare of a young person, or who have long-term care responsibility or parental responsibility for major long-term issues for a young person. This approach has been adopted given that the applications involve significant decisions that are not part of the day to day care responsibility for a child or young person. The approach is also consistent with the position on parental responsibility in existing laws, such as the *Testamentary Guardianship Act 1984*, *Children and Young People Act 2008* and *Family Law Act 1975*.

Where more than one person has responsibility for the long term care of the young person, each of those persons are required to consent, unless it is not reasonable or practicable to obtain that consent. This ensures that all persons with long term care responsibility are aware of, and involved in this significant decision and able to support the young person. Where a relevant person does not consent to the application, the Act provides new pathways for the ACT Civil and Administrative Tribunal to determine whether the young person is able to make this decision independently.

Consultation on the Amendment Regulation

The BDMR Amendment Regulation was developed in consultation with:

- Access Canberra;
- ACT Civil and Administrative Tribunal;
- ACT Human Rights Commission;
- A Gender Agenda Inc;
- Community Services Directorate;
- Legal Aid ACT – Youth Law Centre;
- Office of LGBTIQ+ Affairs, Chief Minister, Treasury and Economic Development Directorate; and
- the Public Advocate.

Consistency with human rights

During the development of the BDMR Amendment Regulation, due regard was given to its compatibility with the *Human Rights Act 2004* (HR Act).

Rights Engaged

The BDMR Amendment Regulation will ensure that young people who are in out of home care or other circumstances where parental responsibility has been re-allocated, will be able to access pathways for change of given name and registered sex with the consent of the people with long term parental responsibility in the same way as young people in the care of their birth parents.

The inability for transgender, intersex and gender diverse young people to obtain identification documents that accurately reflect their gender identity can create a range of difficulties and increases the chance of the transgender, intersex and gender diverse young people being subjected to discrimination, prejudice or bullying. Accordingly, the BDMR Amendment Regulation engages and promotes a number of human rights including:

- right to equality and non-discrimination;
- rights of children;
- right to privacy;
- right to life; and
- right to protection of family.

The BDMR Amendment Regulation does not limit any rights under the HR Act.

Clause notes

Clause 1 Births, Deaths and Marriages Registration Amendment Regulation 2021 (No 1)

This clause specifies the name of the BDMR Amendment Regulation. This clause provides that the BDMR Amendment Regulation may be cited as the *Births, Deaths and Marriages Registration Amendment Regulation 2021 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement of the BDMR Amendment Regulation. The BDMR Amendment Regulation will commence on 20 August 2021.

Clause 3 Legislation amended

This clause identifies that the BDMR Amendment Regulation amends the *Births, Deaths and Marriages Registration Regulation 1998*.

Clause 4 New section 8

This clause prescribes the circumstances where a stated person with parental responsibility may consent to an application by a young person under sections 19A(b)(ii)(C), 24(1)(a)(ii)(C) and 29A(1)(a)(ii)(C) of the BDMR Act.

It is intended that only persons who have, in relation to a young person, responsibility for their long-term welfare, long-term care responsibility, or parental responsibility for major long-term issues under the *Testamentary Guardianship Act 1984*, *Children and Young People Act 2008* and *Family Law Act 1975*, respectively, can consent to an application in the circumstances prescribed by section 8.

Table 8 in the Regulation has 3 columns – item (column 1), prescribes circumstance (column 2) and stated person with parental responsibility (column 3). Section 8(2) of the Regulation provides that if a circumstance mentioned in column 2 of an item in Table 8 applies, then the person or people mentioned in column 3 of the item must consent to the application by a young person under sections 19A(b)(ii)(C), 24(1)(a)(ii)(C) and 29A(1)(a)(ii)(C) of the BDMR Act.

In relation to column 3 for items 2, 4 and 6, a young person is not required to obtain the consent of every person stated to have parental responsibility for an application where the consent from every person cannot be practicably and reasonably be obtained. For example, where a person with the parental responsibility is missing or deceased.

Section 8(3) provides a list of definitions for the terms used in section 8(2).