

# Births, Deaths and Marriages Registration Regulation 2022

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Shannon Fentiman, Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Births, Deaths and Marriages Regulation 2022* made under the *Births, Deaths and Marriages Registration Act 2022*.

In my opinion, the *Births, Deaths and Marriages Regulation 2022*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The *Births, Deaths and Marriages Registration Regulation 2022* (2022 Regulation) repeals and replaces the *Births, Deaths and Marriages Registration Regulation 2015* (2015 Regulation) in line with changes brought about by the *Births, Deaths and Marriages Registration Act 2022* (2022 Act). The 2022 Regulation ensures that registration services remain relevant, responsive, and contemporary to support the effective operation of the 2022 Act by the Registry of Births, Deaths and Marriages (the Registry).

In particular, the 2022 Regulation:

- removes duplicative, unnecessary and overly prescriptive provisions in relation to the registration of key life events;
- ensures registrable information reflects a contemporary understanding of family and relationship structures;
- supports the new framework for children under 16 to alter their record of sex on the relevant child register or obtain a recognised details certificate established under the 2022 Act;
- provides guidance to the Magistrates Court or Childrens Court about the factors to be considered in determining whether a change of name is in a child's best interests;
- establishes persons who may access information from a closed entry;
- sets the periods at which point information about certain life events becomes historical information;
- supports improved birth registration rates, particularly for Aboriginal and Torres Strait Islander people; and
- prescribes fees payable under the 2022 Act.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the HR Act that are relevant to the 2022 Regulation are:

- Property rights (section 24 of the HR Act); and
- Privacy and reputation (section 25 of the HR Act).

### Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

#### Property rights

##### (a) the nature of the right

Property rights protect the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property.

The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes protection from the deprivation of property. The term 'deprived' is not defined by the HR Act, however deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). Property is likely to include all real and personal property interests, including money.

The right to property is limited by Schedule 2 of the 2022 Regulation, as it prescribes the fees payable under the 2022 Act. This will have the effect of depriving individuals of money. This increase in fees may particularly impact Aboriginal and Torres Strait Islander people, as well as people from lower socio-economic backgrounds.

##### (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation on the right to property through the fee schedule is for the purposes of facilitating the ongoing operation of the Registry. The services provided by the Registry, such as the recording and certifying of significant life events, are essential for individuals to demonstrate their legal status when engaging with government and private organisations. For example, birth certificates provided by the Registry are the foundational personal document that most people will use to access services and prove their identity throughout their lifetime. Consequently, the services provided by the Registry are critical in enabling individuals to participate and engage with society at the most foundational level as well as in a much broader sense.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The fee structure will ensure that the provision of the services provided by the Registry are appropriately resourced and budgeted to reflect the cost of their delivery. Consequently, the limitation on property rights ensures that the critical services provided by the Registry can continue to be delivered to individuals throughout Queensland.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

No less restrictive and reasonably available ways to achieve the purpose of the limit on property rights have been identified.

As mentioned, the impacts of the fee structure may disproportionately impact Aboriginal people and Torres Strait Islander people, as well as people from lower socio-economic backgrounds. However, these impacts are mitigated by a range of factors.

The fee structure within the 2022 Regulation is supported by some key safeguards. Section 16 of the 2022 Regulation provides the registrar with an express power to waive (wholly or partly) payment of a fee, as well as the power to refund all or part of a fee paid. In determining whether to waive a fee, the registrar may have regard to whether: the applicant is experiencing financial hardship; the provision of the service would improve the applicant's circumstances; or whether the waiver is otherwise desirable in the circumstances.

Further, the 2022 Regulation also removes the late birth registration fee (which is unique to Queensland) as it is a potential barrier for birth registration and, historically, has only been charged on very rare occasions. This omission supports improved birth registration rates, particularly for Aboriginal and Torres Strait Islander people, by removing any barriers which may discourage registration.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the importance of ensuring the fees facilitate the provision of important government services in a fiscally responsible way, outweighs the limitation on the right to property.

(f) any other relevant factors

Nil.

### **Privacy and reputation**

(a) the nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Living a life of dignity is essential for a human being to fulfil the liberties and freedoms. Privacy is a form of dignity.

Privacy is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law, while the concept of arbitrariness extends to interferences that may be lawful but that are capricious, unpredictable, unreasonable, and disproportionate.

Privacy is connected to personal autonomy and human dignity and includes the way in which individuals see themselves and how they decide to project themselves towards others. In this regard, the United Nations Human Rights Committee<sup>1</sup> has stated that the notion of privacy refers to the sphere of a person's life in which the person can freely express the person's identity, with others or by themselves.

The right to privacy is limited by section 9 of the 2022 Regulation. Section 9 outlines the prescribed information required as part of a written assessment by a developmentally informed practitioner, in support of an application under the new acknowledgement of sex framework for children under 16.

This prescribed information includes: the dates the developmentally informed practitioner has seen the child; information about the developmentally informed practitioner's relationship with the child; and a statement that the information provided in the assessment is complete and correct. This will have the effect of limiting the privacy of children under 16 seeking to alter their record of sex on the relevant child register or obtain a recognised details certificate (if born outside Queensland). This is because such information may be viewed as confidential medical history.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

This limitation on the right to privacy, due to the prescribed disclosure of information which may constitute confidential medical history, is for the purposes of supporting the effective operation of the alteration of sex and recognised details certificate framework for children under 16. Although such evidence of an assessment makes the process more restrictive, this must be considered in the broader context of how it provides an important safeguard for the child's health and wellbeing, given the vulnerability of children.

Section 26 of the HR Act protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child's best interests. This protection of children recognises the special vulnerability of children, and the additional protections that children are owed by the State. The right requires the State to ensure the survival and development of every child to the maximum extent possible, and to take into account the best interests of the child as an important consideration in all actions affecting a child.

Prescribing such information as part of the assessment process is for the purpose of safeguarding the enshrined rights of children, and ensures the legislative framework is sufficiently robust in proportion to the recognised vulnerability of children.

---

<sup>1</sup> United Nations, Human Rights Committee, Case of Coeriel et al. v. The Netherlands, 9 December 1994, CCPR/C/52/D/453/1991, para. 10.2.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Including what may constitute confidential medical history as prescribed information as part of the assessment, ensures that the vulnerability of children is appropriately factored into the new legislative framework.

Consequently, the limitation on the privacy of children under 16 seeking to alter their record of sex on the relevant child register or obtain a recognised details certificate is justified through implementing appropriate protective functions that safeguard the best interests of the child.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

No less restrictive and reasonably available ways to achieve the purpose of the limit on privacy rights have been identified. The degree of consultation that has occurred between the developmentally informed practitioner and the child provides necessary context and weighting to the subsequent assessment, which is for the express purpose of supporting an application to alter a record of sex. Similarly, information about the developmentally informed practitioner's relationship with the child provides further necessary context and weighting to the assessment.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the importance of ensuring the robustness of the assessment process for the purposes of supporting the effective operation of the alteration of sex and recognised details certificate framework for children aged under 16 years, outweighs the limitation on the right to privacy.

The assessment process and resulting disclosure of private information of the child safeguards the best interests of the child.

(f) any other relevant factors

Nil.

## Conclusion

I consider that the *Births, Deaths and Marriages Regulation 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**THE HONOURABLE SHANNON FENTIMAN MP**  
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE,  
MINISTER FOR WOMEN AND MINISTER FOR THE PREVENTION OF DOMESTIC  
AND FAMILY VIOLENCE