



## ACCESS TO INFORMATION

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### PART 1: SCOPE

- 1.1 This policy clarifies the discretion and powers of the Registrar of Births, Deaths and Marriages with regard to information under Part 8 of the Births, Deaths & Marriages Registration Act 1995 (NSW).

It relates to accessing information relating to births (including stillbirths and adoptions), deaths, marriages and change of name.

- 1.2 The sections in the Act to which the policy relates are:

- Section 46 which allows the Registrar to decide on access based on the **reason** for wanting access;
- Section 47 which allows for applications to be accepted on the basis of an **adequate reason** and related matters;
- Section 48 which protects privacy as a duty on the Registrar "as far as practicable" when providing information extracted from the register; and
- Section 49, which allows the Registrar to issue certificates.
- Section 50, which relates to the issue of certificates to children of a deceased person and enables disposal of human remains.

- 1.3 This policy ensures that staff make consistent and accountable decisions when applications for access to information are being assessed.

The Registrar's discretionary powers are not exhausted by this policy. Decisions on individual cases may be made, taking into account the merits of each case.

The discretionary power of the Registrar is delegated to certain managers and their staff who process applications for certificates or information. These managers may also make decisions on individual cases taking into account the merits of each case, or make recommendations and advise the Registrar on individual cases.

## **PART 2: ACCESS TO THE REGISTER**

2.1 The NSW Registry of Births, Deaths & Marriages is essentially a closed register, however, section 46(1) of the Act gives discretion to the Registrar to allow a person or organisation access to the Register providing that adequate reason is given.

The following people are entitled to have access:

- A person applying for their own certificate
- A person who has a letter of authority to apply for another person's certificate. Appropriate identification must be supplied for both parties.
- Parents who appear on the birth registration of a child can apply for that child's birth certificate
- A person with Power of Attorney over another person can apply for that person's certificate

Adequate reason for allowing access to information includes:

- To purchase a certificate
- Research purposes for organisations with ethical approval for
- To extract statistical information (eg ABS, AIHW)
- To extract information for research purposes (eg Cancer Council, Australian Institute of Health and Welfare)
- To determine whether a person is deceased (eg banks, credit agencies and similar types of organisations)
- To enable solicitors to act in a matter on behalf of their client

Section 46(2) of the Act provides that in deciding whether an applicant has an adequate reason for wanting access to information in the Register, or information extracted in the Register, the Registrar must have regard to:

- (a) the nature of the applicant's interest, and
- (b) the sensitivity of the information, and
- (c) the use to be made of the information, and
- (d) other relevant factors.

2.2 Section 47 of the Act provides for access to information contained in the Register subject to an adequate reason being provided, and requires the following factors to be taken into account when determining applications for access to information:

- the applicant's relationship to the subject, and
- the age of the records, and
- the content of the records, and
- any other relevant factors.

### **2.3 Applicant's Relationship to the Subject**

In deciding whether an applicant has an adequate reason for wanting information on the Register, the Registrar will have regard to all relevant factors including:

- (a) the relationship (if any) between the applicant and the person to whom the information relates, and
- (b) the age of the entry, and
- (c) the contents of the entry, and
- (d) other relevant factors (eg Patriality applications)

“Relationship” here includes the family relationships of mother, father, and child, but can include principal/agent relationships (eg solicitor, person having Power of Attorney or a court order).

Also, when deciding what will be a relevant relationship to the subject, the Registrar should have regard to the relevant provisions of the Act, including the relevant objects of the Act:

- Access to the information in the registers in appropriate cases by government or private agencies, law enforcement agencies and members of the public, from within and outside the State, and
- The issue of certificated information from the registers, and
- The collection and dissemination of statistical information.

#### **2.4 Parents and grandparents applying for child’s birth certificate**

Either parent may apply for their adult child’s birth certificate provided they provide adequate identification and appear on the child’s birth record as a parent.

Grandparents cannot access their grandchild’s birth certificate without a letter of authority from either parent if the child is under 18, a letter of authority from the subject if over the age of 18, unless they have a court order.

#### **2.5 Age of the Records**

The Registry recognises that the sensitivity of personal information and the chances of its fraudulent use diminishes with time. For this reason, the following records are available to the public:

births which occurred over 100 years prior to the date of application;  
deaths which occurred over 30 years prior to date of application; and  
marriages which occurred over 50 years prior to date of application.

#### **2.6 Protection of Privacy**

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

Pursuant to the Privacy and Personal Information Protection Act 1998 (PIPPA), the Registrar is required to comply with the Information Protection Principles (IPPS) found in Part 2 of the Act which governs such privacy issues as collection, retention, storage and disclosure of personal information.

## 2.7 Other Relevant Factors

In deciding whether an applicant has an adequate reason for wanting information on the Register, the Registrar will have regard to all relevant factors, including those specified in s47(4) (a) – (c) of the Act.

A relevant factor for such an application could be the public interest, because it relates to criminal law enforcement, eg the Australian Federal Police Service, or the State Police Service or any other public policy consideration that outweighs, or does not conflict with, the privacy interests of the subject of the certificate.

Such public interest decisions can only be made by one or more of the following:

- Registrar
- Assistant Registrar, Client Services
- Assistant Registrar, Registration Services
- Assistant Registrar, Identity Security

### Document information

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### Document history

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