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Submission to the Governance and Administration Committee on the Births, Deaths, Marriages, and Relationships Bill

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 245 organisations affiliated at either national level or to one of our 19 branches. In addition, about 350 people are individual members. Collectively our reach is over 350,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
- 0.2. This submission has been prepared by the NCWNZ Public Issues Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ. It draws the responses of NCWNZ branches throughout Aotearoa New Zealand, as well as comments from local and national member organisations as well as individual members.
- 0.3. NCWNZ is making this submission to the Select Committee regarding The Births, Deaths, Marriages and Relationships Registration Act (1995 and Amended 2008) which has been reviewed, and a revised Births, Deaths, Marriages and Relationships Registration Bill which passed its First Reading on 5 December 2017 (sponsored by Minister Tracey Martin).
- 0.4. This Bill updates and amends earlier legislation relating to access to information about births, deaths, marriages, relationships, adoptions, and gender reassignments, and responds to issues raised by the Law Commission relating to burial and cremation law.
- 0.5. The Births, Deaths, Marriages and Relationships Registration Bill includes many of the provisions of earlier legislation on which NCWNZ has made submissions. NCWNZ members were asked a specific set of questions relating to changes to this legislation, and some background to the specific questions is provided here. This submission draws on 14 responses from individual members, NCWNZ branches and membership organisations throughout New Zealand.

1. Ancillary information

- 1.1. The Bill limits the definitions of information about births, deaths, marriages, relationships, sexual reassignment and name changes to what is required for the relevant certificates (e.g. death

certificate). No ‘ancillary information’ (such as the contact details of those supplying information) can be shared under the information-sharing rules associated with birth, death, relationship or name change information [Clause 4]. This is directed at ensuring the privacy of individuals.

The members were asked if they considered that “ancillary information” should be private and not publicly available.

- 1.2. A considerable number of respondents indicated that ancillary information should not be publicly available, and more particularly, if it potentially allowed a person making an inquiry for ancillary information to make contact with the individual who had provided such information for official purposes. A comment was made that “there is very limited privacy in this day and age” and it should only be shared with people who can prove they have a right to know. Another member wrote of her knowledge of “violent ex-partners who will do anything to track their ex-partner”. In this case they could use the ex-partner’s current address from a marriage certificate if contact details were available. Who supplied the information should be irrelevant.
- 1.3. One member considered that if the information was about someone a person was intending to marry then that person would want to know who supplied the information. Others thought that the person providing information associated with births, deaths, marriages and relationships should be available for contact through correct processes with respect to birth history for genealogy purposes. They proposed a time limitation – 75 years from date of marriage, for example. They argued that there should be a process in place if the information needs to be corrected, particularly with respect to death certificates.
- 1.4. A health professional wrote that DNA advances are becoming more affordable and will lead to persons seeking and gaining family ancestry information. Adoption processes and birth certificates will need to keep up-to-date with requests for health information and to prevent people marrying close relatives when they were unaware of biological connections This health professional stated also, that in the future, a person may have to show they do not have certain genetic risks, or otherwise be obliged to pay higher health insurance premiums. For these reasons people in the future may want to access more information about biological family members.

2. Access to information

- 2.1. The Bill responds to increased demand for digital and online access to information about births, deaths, marriages and relationships and provides for a Registry that includes both electronic and documentary (hardcopy) information [Clause 126]. This legislation enables improved digital access to this information (including historic images of BDM information) [Clause 91]. However, access to this information online will require a verified RealMe ID1 (or an approved alternative ID) [Clause 90].

¹ RealMe ID is an initiative of the NZ Government and NZ Post that enables individuals to create an online account with a user name and password which facilitates their access to a range of online sites in New Zealand. They include Passport applications, Work and Income information, Student Loans applications and birth, death and marriage certificates. This involves providing documents relating to your identity. A verified online identity can be used for 5 years to access information online.

Members were asked if they thought there was a need for improved access to digital and online information about births, deaths, marriages and relationships. They were also asked whether they thought this information should only be available to those who provide verifiable information about their identity.

- 2.2. The majority of NCWNZ members who responded to questions on this legislation thought there should be protections in place to prevent access to information that might reveal data which could be used against the person about whom data is being sought. There should also be protections in place against identity theft. A smaller number of members thought that it should be easier to obtain an electronic copy of such information and that RealMe did offer good protection. They welcomed the digitalisation of this information as long as a range of government agencies accepted digital certificates and did not require presentation of copies of original certificates.
- 2.3. A number of genealogists liked the ease of access to information through this process. A question was posed about people without a computer being able to obtain this digital ID and one member cited an example of the difficulties with someone overseas trying to obtain a NZ Passport through RealMe.

3. Historical information

- 3.1. The Bill changes the definition of ‘historical information’ (which is more accessible than contemporary information) [Clause 89]. This definition now includes:
- A marriage or civil union that occurred 75 years ago (instead of 80 years ago)
 - An intended marriage or civil union for which a notice to marry was registered more than 75 years ago
 - A birth of a deceased person who died 50 years ago, or was born 80 years ago, or a living person who was born more 100 years ago or more. A request was made of the members to consider if they agreed with the above definitions of “historical information”.
- 3.2. Members had a range of responses to these proposed changes. Some members commented that more people are living to over 100 and that this information should only be available if a death certificate matches a birth certificate, in other words only if it can be proved the person has died. The year limits protect those recently deceased or still living, and strong arguments were made that the year limits relating to marriage or civil union or intended marriage or civil union should not be reduced to 75 years. However, some members argued that there needs to be a process for exceptions. They cited a case of the challenges of tracing a missing sibling who had been adopted when family members wanted to contact her after the death of both parents. Some genealogists who responded were supportive of the overall time limits being even less than above, as it hampered their research.

4. Overseas certificates of divorce or dissolution

- 4.1. The Bill provides for the registration of certificates of divorce or dissolution of marriage issued outside New Zealand when they relate to people who are New Zealand citizens or those resident in New Zealand [Clause 55]. But the Registrar-General can note that they are “not responsible for the authenticity of this information” [Clause 56].

The members were asked whether these overseas certificates of divorce or dissolution be registered subject to these provisions?

- 4.2. In general there was agreement to these provisions as it was considered the registration of these documents would be important to people who had married and divorced overseas. This would allow traceable changes for descendants, could be relevant if issues arose relating to property or superannuation, and could also avoid bigamy. A comment was made that all information kept on a person must have the ability to be challenged by the person, at no cost to that person. An argument was made that the overseas certificates of marriage, divorce or dissolution should be authenticated by the issuing country. New Zealand registrars should not have to verify the authenticity of these documents.

5. Information about gender assignment and reassignment

- 5.1. The Bill removes the ability for the Registrar General to provide access to restricted birth information relating to sexual (sic) assignment or reassignment to a celebrant or Registrar for the purposes of finding out whether or not those who are entering into a marriage or civil union are a man or a woman [Clause 110]. Since gender is irrelevant in the registration of marriages and civil partnerships, there is no reason for this information to be available.

NCWNZ members were asked if they thought that this information about gender assigned at birth should be private to the people concerned. They were also asked to comment on whether the language used in this legislation should refer to ‘gender’ assignment or reassignment rather than ‘sexual’ assignment?

- 5.2. Most members considered that the information about whether a child had been identified as male or female at birth should be private to the people concerned. A number of members commented that since gender was irrelevant in the registration of marriages and civil partnerships, there is no reason for this information to be available. They also questioned the language used to refer to what in the legislation is called ‘sexual assignment’. Some members preferred the term ‘gender assignment’.
- 5.3. One large member organisation, closely engaged with family health, suggested two approaches regarding the language in the legislation:

- 5.3.1. The best language for the current legal framework is the term sex assignment. Gender is not appropriate in this context as the legislation relates to sex assigned at birth and the court processes and medical treatment required to change sex assignment on a birth certificate. The medical and biological characteristics of a person’s sex may be different

to how someone chooses to express their gender. Sex assignment is more appropriate than “sexual assignment” as sexual is a word that describes something related to sex – not sex itself.

- 5.3.2. It might be worthwhile for the Select Committee to consider whether these court processes are necessary. There is precedent in New Zealand and overseas for gender to be recognised in legal documents based on self-determination alone. For example, in order to change gender on a New Zealand passport, an applicant simply provides a statutory declaration indicating the identity they want displayed on their passport. This approach does not require medical information or assessment, nor costly and lengthy legal proceedings. It would be worth considering whether this approach might be applied to birth certificates as well. Should birth certificates record sex or gender? What are the legal or other risks to the different approaches and if so, how could they be mitigated outside of court proceedings? What is the primary purpose of recording sex and/or gender on legal documents and what are the reasons for medical assessments of sex?

6. Notices of death and decisions about disposal of a body

- 6.1. On the advice of the Law Commission, the Bill includes new requirements for a preliminary notice of death to the Registrar General which must be completed by the health professional who is responsible for the death certificate (which includes identifying the cause of death) within 3 working days of writing the certificate [Clause 33]. The Bill also specifies that the person who makes decisions about the manner of disposal of a body after death (usually a funeral director on behalf of the family) needs to notify the Registrar General of the death (including cause of death) “as soon as practicable, and no later than 3 working days after the disposal of the [deceased] person’s body” [Clause 34]. (Changes to the Burial and Cremation Act 1964 are planned independently of these the changes to the Births, Deaths, Marriages and Relationships Act).

Members provided their comments on these provisions relating to preliminary notification of death and disposal of the bodies of those who are deceased.

- 6.2. A number of respondents indicated that it was critical to put some parameters around this information since it impacts on a wide range of people and institutions, both public and private. The majority felt that people should not be kept waiting too long before they can proceed with their obligations, for example having to wait for a death notice before being able to put a notice in the newspaper. Three working days was seen as appropriate.
- 6.3. A response from someone working as a funeral director indicated that there are families who register the death of their relative and do not use a funeral director. In this situation these people should be required to verify their identity. (The information recorded on a death certificate is public information so any person is able currently to obtain a certificate.)
- 6.4. Because death certificates now record the deceased’s actual recorded birth name (this is taken from the birth record and put on the death certificate) it means anyone who orders a death certificate will

see the actual name at birth and any other information recorded including, perhaps, gender reassignment.

7. General Comments

- 7.1. In addition to providing responses to specific questions relating to this Bill, some members made more general comments relating to the registration of births, deaths, marriages and relationships

Access to digital resources

- 7.2. One NCWNZ member questioned the assumption that everyone now has access to computers and digital communication technology

“What is/are the contingency plans if you are working along with or on behalf of another person with no “ability” to access records digitally?”

Cultural issues

- 7.3. Another NCWNZ member highlighted the need for attention to a range of cultural issues when recording and accessing information that related to whakapapa and genealogy. This is a summary of their comments.

“Cultural differences need to be respected. Cultural systems ensure knowledge of attitudes, customs, beliefs and social behaviour of individuals or societies are held through organisations. Are the proposed changes only from a western perspective? Are these changes consistent with Māori culture where family are expected to attend the funeral and want to spend time with the deceased talking to them and spirits of their ancestors often over three days on a marae. Women in traditional times managed these processes until these important life transitions were taken over by funeral directors, doctors and priests. Women are now re-entering these fields. Professional bodies managing births, deaths, marriages and relationships need to take into consideration the empowerment of families and take a respectful approach to recording major life events. It is very important to record these events accurately because these records are used to plan for the future generations.”

- 7.4. This NCWNZ member questioned whether the need for privacy was exclusively a feature of western culture. She asked: “Would a more open approach be so bad, so people can acknowledge their heritage, or is the protection of individuals more important?” She argued that cultural systems need to be acknowledged by the organizations that are involved in recording births, deaths, marriages and relationships.



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