Births, Deaths, Marriages, and Relationships Registration Act 1995

Access to the registers:

- births
- deaths
- marriages
- civil unions
- name changes

→ Proposals Paper

23 March 2016
Foreword

In 2009, changes were made to access provisions in the Births, Deaths, Marriages, and Relationships Registration Act 1995. Those provisions regulate access to registered information about births, deaths, marriages, civil unions, and name changes (BDM information) held by the Department of Internal Affairs.

As part of those changes, Parliament asked the Minister of Internal Affairs to review the operation of the access provisions after five years. The Department issued a Discussion Paper in January 2015 in the first phase of a planned multi-stage review.

The Department assumes interested members of the public are familiar with the issues, so this Proposals Paper does not repeat the background material set out in the Discussion Paper. The Discussion Paper and the summary of submissions can be accessed on the [BDM review website](#).

The Department has carefully considered the submissions received, and we are now able to present concrete proposals for changes to the access provisions that will enable more convenient access to BDM information over time (including through digital and Internet-based channels). Some of the proposals will require legislative change, but they will not change the basic principles underpinning the access provisions.

The Department invites public submissions on these proposals as part of the second stage of the review.

Following this second round of public consultation, the Department will prepare final recommendations for the Minister’s consideration, and the report on the review the Minister will present to the House of Representatives.

If the report on the review’s outcomes results in recommendations for changes to the Act, the public will have a further opportunity to make submissions as part of the select committee process.

Disclaimer

The proposals outlined in this Paper reflect the Department’s views; they are not government policy.
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Introduction

The Births, Deaths, Marriages and Relationships Registration Amendment Act 2008 came into force on 25 January 2009. Among other things, the Amendment Act updated the provisions regulating access to registered information about births, deaths, marriages, civil unions, and name changes (BDM information). With some exceptions, BDM information is held in registers, maintained by the Registrar-General, which the public are entitled to access.

The Amendment Act aimed to increase an individual’s awareness and control over how her or his personal information was disclosed while balancing the public’s need to access this important information for a range of legitimate purposes. In addition, the updated rules aimed to improve the Registrar-General’s ability to manage the BDM registers effectively and efficiently, including taking advantage of modern technology.

When the Amendment Act was passed, Parliament asked the Minister of Internal Affairs to review the BDM access provisions after five years. The Department is undertaking the review on the Minister’s behalf.

On 21 January 2015, the Department issued a Discussion Paper seeking the public’s feedback on the operation of the BDM access provisions. For example, did they achieve the right balance between individual rights, such as minimising the risk of misuse personal information and protecting at-risk individuals, and maintaining freedom of information and the right of public access to BDM registers?

The Discussion Paper gave the public the opportunity to raise any issue relevant to the access provisions not specifically identified by the Department, but it did note the review was not a review of the entire Births, Deaths, Marriages and Relationships Registration Act. The Discussion Paper also noted the review would not consider:

- information sharing and/or data matching between government agencies; or
- access to “protected” BDM information (eg, pre-adoption records).

The Department would like to thank the 80 individuals and organisations that took the time the time to make a submission. Those submissions have helped shape the Department’s conclusions and the recommendations we propose to make to the Minister of Internal Affairs, which, if approved, will be included in the Minister’s report to Parliament.

The Department now seeks public comment on the proposals. Submissions must be made in writing or online at [website link], and must be received by 5.00pm on Friday, 29 April 2016.
The context for the review and our proposals

Members of the public had the opportunity to make submissions to the Government Administration Committee, which considered the Bill amending the access provisions. However, the Committee was unable to reach agreement on the proposed changes. The Amendment Act that Parliament passed subsequently differed in some significant ways from the Bill as introduced. This means the review is the first opportunity the public has had to express its views on the access provisions.

In addition, there have been substantial changes to how government interacts with citizens over the intervening years. For example, one of the Government’s Better Public Services targets (Result 10), which the Department is responsible for, is: New Zealanders can complete their transactions with government easily in a digital environment.

The review provides a timely opportunity to address changing public expectations about how they want to access BDM information. At the same time, as the Discussion Paper noted, the Department is conscious of the need to achieve an appropriate balance between individual rights and protecting at-risk individuals, and the public’s right to access BDM information for legitimate purposes.

The Department believes its proposals get the balance right, but we encourage members of the public to make a submission, and have their say.

Next steps: Implementation and timing

Next steps, including possible amendments to the Births, Deaths, Marriages, and Relationships Registration Act 1995, are dependent on the final outcome of the review. The Minister must table a report in Parliament. If the proposals outlined in this Paper form part of the final recommendations, the Minister will need to seek approval to include a Bill amending the Act in the Government’s legislation programme. However, the timing of amending legislation, if approved, would be dependent on Government priorities.
How to make a submission

The Department welcomes and invites any person or group within New Zealand or overseas to make a submission on the proposals set out in this Paper.

No particular form is needed to make a submission but we suggest you use the form at the end of this Paper. You do not have to respond to all the proposals.

Submissions can be made on-line or by uploading your own document at—
www.bdmreview.dia.govt.nz

Alternatively, submissions can be emailed to bdmreview@dia.govt.nz

Postal address—
Births, Deaths, Marriages, and Relationships Registration Act 1995 Review
Department of Internal Affairs
PO Box 805
Wellington 6140

Submissions must be lodged by 5.00 pm, Friday 29 April 2016.
What will happen to your submission?

**25 February 2016**
Proposals Paper released and call for submissions

**30 March 2016**
Deadline for submissions

**Q2 2016**
Review submissions and finalise recommendations to the Minister of Internal Affairs

**Q3 2016**
Final recommendations to Minister of Internal Affairs; and Report on the review presented to the House of Representatives

**Q4 2016**
Next steps, including possible amendments to the Births, Deaths, Marriages, and Relationships Registration Act 1995, are dependent on the final outcome of the review.

The Department will publish all the submissions it receives and provide a summary of submissions on its website www.dia.govt.nz. The details published will include your name and/or the name of your group but not your contact details.

Submissions may be subject to a request to the Department under the Official Information Act 1982. Personal details can be withheld under this Act, including names and addresses. If you and/or your group do not want any information contained in the submission to be released, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. The Department will take this into account when responding to such requests.

The Privacy Act 1993 governs how the Department collects, holds, uses and discloses personal information about submitters and their applications. Submitters have the right to access and correct personal information.

When the review is completed, all documents (including submissions) will be kept by the Department. An electronic archive of this material will be available on the Department’s main website (www.dia.govt.nz) for a period after the end of the review.

You can find out more about the work of the Department and the process to access BDM information on the Department’s website.
General access rules

Purpose

1. The general access rules cover what BDM information can be requested, how, and by whom. The rules:
   - facilitate public access to BDM information for legitimate purposes, while balancing individual rights, and protecting at-risk individuals;
   - enable the Registrar-General to recover the costs of providing BDM services;
   - provide transparency around who is accessing BDM information; and
   - allow public sector agencies to check, for law enforcement purposes, who has accessed BDM information.

Current situation

2. The current rules do not restrict who can access BDM information, but an access request must be in respect of a specific individual rather than, for example, a class of person, or information categorised by date or place. The “named person” rule applies to historical and non-historical BDM information. BDM staff can search historical and non-historical records (charges apply) to help identify a record for a “named person”.

3. The Act does not allow any non-historical information to be made available on the Internet. A request for access to non-historical information must be accompanied by suitable evidence of identity. However, someone with a verified RealMe account can order and pay for a certificate or printout online.

4. Historical BDM information (but not index information) can be searched online. Currently, searches are free but the Act does allow a fee to be charged. Printouts and certificates for historical records can be ordered and paid for online (and printouts can be delivered by email).

5. All certificates and printouts can be ordered by telephone or by completing a form.

What submitters said

6. Eighty per cent of submitters were genealogists or family historians. A majority were dissatisfied with the “named person” rule because it made it difficult to search historical records online. The current search function only returns exact matches, including spelling. This can cause problems for genealogical researchers who may have limited information to start with. The majority of submitters thought the historical records search function was inflexible, and too restrictive in relation to the details on which a search could be based.

7. Improved online search functionality for historical records was a common theme. Suggestions included adding wildcards (to cater for alternative spelling), Soundex searches,¹ more search fields, and “mix and match” searches.

¹ Soundex (and similar programs) allows people to conduct a search based on the phonetic spelling of a family name.
8. The charges for certificates and printouts attracted some comment. Some of that focused on an inability to confirm the BDM record for which the certificate or printout was sought was the “right” record before it was requested (and paid for). There is no provision for a refund if the certificate or printout is found to be the “wrong” record. This concern was closely linked to concerns about search functionality.

9. A small number of submitters thought BDM information should be available without charge, as BDM registers are public registers, and much of the information has been published previously (eg, newspaper birth and death notices, or in pre-2000 microfiche indexes held in public libraries).

10. The majority of submitters thought the current access rules struck the wrong balance between the public interest, and individuals’ right to privacy. However, most of this concern focused on the age limits used to define what records were historical, which determines when the records are made available to search online.

11. In general, submitters accepted the need for some restrictions on access to non-historical BDM information; very few thought full records for non-historical BDM information (essentially information about living individuals) should be available online. Only two submitters thought the public should have unrestricted access to BDM information.

12. Most submitters supported the evidence of identity check for access to non-historical BDM information as a deterrent to access for criminal or inappropriate purposes. A small number of submitters thought current checks, while necessary, would not stop determined criminals.

Department’s proposals

13. Department proposes to develop an access regime that addresses submitters’ calls for greater online access to BDM information. The overall objective is to establish a legislative framework that would facilitate development of new access channels for all BDM information, including an all-of-BDM Internet-based search, pay-for-view, and records access and ordering facility.

14. The Department is conscious of how rapidly technology is evolving. We want to legislate for better outcomes, not a process that is likely to be out of date before the law is passed. Rather than developing detailed design criteria and operational requirements for new access channels, our primary objective will be to future-proof the Act to support future service enhancements (eg, by making language and delivery channels medium-neutral).

15. Within this broad legislative framework, the Department proposes some specific changes to the access provisions to support digital and online access to BDM information:

- historical and non-historical BDM indexes would be searchable online (some information may behind a paywall);
- the prohibition on publication online of full non-historical records would continue, but basic index information could be searched to help identify the “named person” for whom a printout or certificate could be ordered;
- unedited historical images (ie, scanned copies of historical register entries) would be available online (behind a paywall); and
- online access to BDM information (beyond an initial high level search) would be subject to evidence of identity established via a RealMe ID, or through another future solution that would enable a verified identity to be asserted online.
16. The Department does not propose any change to the “named person” rule, which is a practical way to balance individual interests (and privacy and security concerns in particular) and the public interest. While the proposals will make it easier to access BDM information, those seeking access would still need to identify the particular record(s) they want to view, or obtain a certificate or printout for. The “named person” rule (and appropriate system security and design) will prevent new access channels, including the proposed all-of-BDM Internet-based search facility, being used for “fishing expedition” searches, or large-scale profiling and data-mining, and will minimise the risk of misuse.

17. Evidence of identity requirements would continue to apply for access requests for non-historical records, although how and when identity is established could change depending on the future mode(s) of access, and the design of new access channels.

18. The Department is conscious that amending the legislative framework to facilitate new access channels is only one part of the solution. The necessary technological platforms must be in place, too. We anticipate new access channels (including digital and Internet-based channels) would be developed progressively as part of the Department’s internal work programme: Transforming the System of Service Delivery.\(^2\) Further, we anticipate some enhancements to the access regime (eg, improved search functionality), which are not dependent on legislative change, could be made in the short to medium term.

19. The Department’s thinking has been informed by a close examination of the ScotlandsPeople website, which a number of submitters on the Discussion Paper cited as an exemplar of best practice. Scotland has similar access rules to New Zealand, including the use of age limits to differentiate historical and current, non-historical, records. There is open access to historical records, but unlike New Zealand, historical statutory images can be viewed online (for a fee).

20. Scotland does not edit historical statutory images, which can contain multiple entries per page. If a statutory birth entry contains a notation indicating a child was illegitimate (use of this term was discontinued in 1919), an extract, which is the equivalent of a certificate in New Zealand, will be typed omitting the word “illegitimate”. However, the unedited historical image can still be viewed online.

21. Scotland restricts online access to current records (ie, statutory registers cannot be viewed online) but current registers are searchable (although the search results do not display the full register details). An extract of an individual current record can be ordered online, but delivery is by post. For all records, only the first, very high level, search function is free. A user needs to register and pre-pay for access to proceed beyond an initial name and range-of-years search.

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\(^2\) TSSD is a multi-year work programme, which began in 2014. It recognises the Department has a key role in changing how services are delivered across government through Better Public Services Result 10, delivery of RealMe, and the delivery of the Government ICT Strategy and Action Plan. As an exemplar agency, the Department is looking at how to strengthen its own ability to deliver its service delivery goals. Underpinning TSSD is an operating model that puts the customer, rather than products, at the centre of service delivery, and improves efficiency and effectiveness through fit for purpose technology.
Department’s reasons for proposing changes to the general access rules

22. Briefly, it would not be possible to offer an end-to-end service that includes the opportunity to access to BDM information through digital and online channels without some changes to the rules that restrict what information can be published online. For historical records, the proposals could see a minor conflict between rules that restrict access to some BDM information (eg, information relating to adoptions) as well as the “named person” rule. The issues are discussed below. The Department believes its proposals strike the right balance between individual rights and the public interest at a time people expect to be able to interact with government in a digital environment. We welcome submissions on the issues the proposals raise.

Searchable access to index information, including non-historical records

23. Indexes to BDM registers were produced from 1848 to 1998 to help BDM staff identify individual entries in the (then) paper-based registers held in BDM offices and courts throughout the country. Members of the public also used the indexes to identify the records they wanted to access. After 1998, computerised and centralised registration of BDM life events made indexes largely redundant. Between 1998 and 2009 indexes were only produced on request, primarily for libraries and some genealogists. Production ceased entirely in 2009 after the 2008 Amendment Act came into force.

24. The 2008 Amendment Act also introduced new rules aimed at members of the public, and public and private sector agencies who obtained indexes for their own legitimate purposes before 2009. Section 78I of the Act prohibits publication of index information on the Internet (with some limited exceptions), and section 89(3) makes it an offence to do so. The prohibition reflected concern Internet publication of indexes would enable computer-based manipulation and cross-matching of core identity information. This could facilitate identity fraud, as well as publicising personal information (some of which could be sensitive) about a large number of living individuals.

25. The Department does not propose any change to the rules prohibiting members of the public publishing indexes on the Internet. In our view, the concerns raised previously remain valid. However, we propose amending the Act to make it clear the Registrar-General can include index information as a search option for online channels.

26. Section 78H(3), which details what historical information the Registrar-General may make available on the Internet, already covers most, if not all, historical index information. Section 78H(1) already authorises a fee for access. The Department’s proposal would allow the Registrar-General to make index information for non-historical BDM records searchable online.

27. The proposal does not mean a complete non-historical record (or complete indexes) could be viewed online. Rather, like the current BDM Online historical records search facility, it would help individuals identify the specific “named person” record they were interested in. It would still be necessary to order a certificate or printout to view the full record. The Department anticipates new digital and online services would incorporate the ability to order a certificate or printout for a non-historical record.
Online access to historical images

28. The registration of new BDM life events has been computerised since 1 January 1998. Between January 1999 and June 2002, the Department scanned approximately 10 million historical records, page by page, from registers dating back to 1848. BDM staff access the images for the data needed to produce a certificate or printout.

29. The main reason the Department does not make scanned images of historical registers available to view online relates to birth and death registers, which have multiple images per page. Providing access to a page image would breach the “named person” rule because the image would contain information about individuals and events other than the specific record for which access was sought.

30. Further, because changes to paper-based register entries were recorded manually, some images contain information identifying “closed records” (eg, pre-adoption birth records), or historic notations such as illegitimate, which the Act requires to be kept confidential. Even if each individual BDM record had been correctly classified as “open” or “closed” during the digitisation process, the issue arising from the presence of information about a “closed” record appearing elsewhere on a multi-entry page would remain. The confidential information on individual historical BDM records could not be removed from register page images without costly, risk-prone manual intervention.

31. The Department would like to be able to offer a true end-to-end online service for access to historical information in future. This would include the ability to access historical register images online for a fee (as an alternative to obtaining a certificate or printout). However, for the reasons outlined, current legislative settings do not support this objective.

32. The Department considered two alternatives to making historical, multi-entry register page images accessible online. First, all historic registers could be re-scanned, and the images cropped using modern technology to obtain “clean” single record images. At the same time, images could be checked to re-confirm their “open” or “closed” status. Second, dedicated staff could be employed to progressively key data from pre-1998 BDM registers into the Department’s BDM database. This would, over time, reduce manual processing, and facilitate end-to-end online services. However, in both cases the expense involved would be prohibitive, and could not be justified by the number of requests for access to historical BDM records.

33. The Department considers the risk of misuse of historical information (eg, for identity fraud) is very low. The proposal, which would mean information about individuals other than the “named person” could be viewed on the same register page, is highly unlikely to increase that risk.

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3 Before 1998, life events were recorded manually in register books. Pre-1876 registers could have 20 to 30 entries per page. Between 1876 and 1971, births and deaths registers had five entries per page. From 1972 on, birth and death registers comprised single entry loose leaf pages. Marriage registers were always a single page per entry, but it would be impracticable to provide online access to marriage register images while excluding other BDM records.

4 The classification of individual records as “open” or “closed” undertaken as part of the 1999-2002 digitisation process was generally completed to a very high standard. However, subsequent sampling indicated some records were likely to have been misclassified.
34. The Department acknowledges the proposal could have a minor impact on individual privacy interests in respect of those whose records (and possibly their living relatives) are able to be viewed alongside that of the named person. However, the limits used to define historical records (see para 41 below) were set to provide reasonable assurance living individuals were not included. Further, privacy interests diminish progressively after an individual’s death, which, over time, shifts the balance between protecting privacy and allowing reasonable access to BDM records for legitimate purposes.

35. On balance, the Department considers the public benefit from easy access to historical BDM records through online access to images of unedited historical register pages outweighs the potential impact on privacy interests. In all cases, however, certificates or printouts (for historical and non-historical records) would continue to reflect the rules restricting access to closed and confidential information (as is the case in Scotland – see para 20 above).

Cost recovery

36. The Act already allows fees to be charged for access to BDM information, including online searches of historical information. The proposed amendments to enable non-historical indexes to be searched online would be accompanied by provisions that clarify the Registrar-General may also charge a fee for this new service.

37. While BDM registers are public registers, the Department is obliged to charge fees that maximise cost recovery outcomes in line with Treasury’s *Guidelines for Setting Charges in the Public Sector* 2002. The fees payable for access to BDM information (including certificates and printouts) enable the Registrar-General to:

- collect, verify, and maintain BDM information, and the BDM registers;
- ensure the official records are accurate;
- make BDM information to members of the public, and to authorised users; and
- maintain and update essential systems and technology on an ongoing basis.

38. The Department acknowledges some BDM information is available for free from public sources (eg, newspaper archives and public libraries). However, the BDM service adds considerable value by facilitating access to a national database of all BDM information, including records that date back to 1848. The proposal to establish new access channels, including expanded Internet-based search facilities, and online records access and ordering, will add further value.

39. As noted above, one of the primary outcomes the Department seeks to achieve is to future-proof the Act to make it medium-neutral. The existing fees regime for access to BDM information is already medium-neutral, although fees for access to BDM information through new digital and online channels would need to be set by regulation. It is beyond the scope of this Proposals Paper to speculate what fees may be payable in future, but there would be public consultation as part of the regulation-making process. It is likely the development of new online access channels will also involve new payment channels similar to the pre-paid account facility which the *ScotlandsPeople* website operates.
Historical and non-historical information

Purpose

40. The distinction between historical and non-historical BDM records was introduced as part of the current access provisions so the Registrar-General could make some BDM information available on the Internet to make it easier to search for a “named person’s” record. At the same time there was a recognition making information about living individuals available online would give rise to significant privacy and security concerns, including the risk of identity theft. The access provisions protected the public’s right to access to non-historical information, while retaining the privacy-enhancing aspects of the existing regime that discouraged “fishing expeditions” and data aggregation.

Current situation

41. Historical records are defined as:
   - births that occurred at least 100 years ago;
   - stillbirths that occurred at least 50 years ago;
   - a marriage or a civil union that occurred at least 80 years ago (in practice civil unions are excluded because the first civil union took place in April 2005);
   - a name change for someone whose birth is registered overseas, and who was born at least 100 years ago (but name change certificates have only been available since 2009; name changes for someone born in New Zealand are noted on the registered birth record); and
   - deaths that occurred at least 50 years ago, or where the deceased’s date of birth was at least 80 years ago (whichever is sooner, meaning many death records are available immediately or within a short time after death).

42. The time limits used to define historical records are in line with other jurisdictions, which restrict access to non-historical information and/or limit how this information can be accessed. The limits provide a reasonable assurance living individuals are excluded, while ensuring reasonable access to historical BDM information for legitimate research purposes.

What submitters said

43. In line with the submissions on the general access rules, most comments focused on where the time limit boundary between historical and non-historical records should be drawn. While most submitters accepted the need for some limit on what information should be made available on the Internet, many favoured a reduction in the time limits so more “historical” records could be searched online. Some suggested allowing access to all BDM information for an individual after that person’s death because a dead person does not have privacy interests.

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5 For example, in Australia, the date ranges (which are set at state level) vary from 75 to 100 years for births, and 50 to 80 years for marriages. In Scotland, the limit for online access to historical images (ie, full records) is 100 years for births, 75 years for marriage, and 50 years for deaths.
Department’s proposals

44. The Department proposes a slight reduction (from 80 years to 75 years) in the age limit for access to historical marriage and civil union information. In addition, the Department proposes to align rules for access to birth information (including information that could be made available through digital and online channels in future) based on when a death record becomes available.

45. Under the current rules, an individual’s birth information is unlikely to be classed as historical until some time after the embargo on their death record is lifted. For example, the death record of someone who died in 1960, aged 20 years, would have been classed as historical and made available to be searched through BDM Online in 2010, 50 years after the individual’s death. However, the individual’s birth record would not be classed as historical until 2040, 100 years after their birth. The issue becomes less acute the older the age at death as the period between death and 100 years from the date of birth reduces progressively.

46. The proposal will see the classification of the death record as historical (ie, after 50 years, or 80 years after the person’s birth (whichever is sooner), trigger the classification of the individual’s birth record as historical.

Department’s reasons for maintaining the distinction between historical and non-historical information (with some realignment of access rules)

47. The Department does not believe the evidence supports a fundamental change in the current rules, such as a substantial reduction in the time limits used to define historical and non-historical information. Lowering the time limits would have an adverse impact on the privacy of an exponentially increased number of living individuals. For example, death records contain information about many other people, including surviving children, as well as the deceased’s parents, and spouse(s)/partner(s) all of whom may still be living. Lowering the time limits would also be out of step with other countries with similar access regimes (eg, Australia, Canada, United Kingdom).

48. However, the Department considers there is merit in aligning access to birth and death records to facilitate future end-to-end services. Where an individual’s birth is registered in New Zealand, the information on a death record mirrors most of the information on the birth record. In practice, making the right to access a historical death record the trigger for the right to access the corresponding birth record is unlikely to change significantly what BDM information is released and when, including information about living individuals.

49. The current rules do not prevent access to non-historical birth records, but they cannot be searched online. The Department’s proposal to allow non-historical indexes (but not full non-historical BDM records) to be searched online would change that aspect of general access rules. However, there will still be times where a death record is classified as historical but the corresponding birth record is not. That in turn would limit what BDM information could be provided through digital and online channels in future. The proposal to align the classification of death and birth records as historical, based on the date of death and age at time of death, complements the proposal to allow historical register images to be viewed online.
50. The Department considered but decided against including marriage information in the death record “trigger”. A reduction in the threshold for access to marriage records is more likely to impact living persons (eg, a surviving spouse), especially where the individual dies at an early age. However, the proposal for a slight reduction in the age limit for access to historical marriage records (from 80 years to 75 years) recognises the increase in the median age of marriage over the last 20 years. The Department considers its proposal is an appropriate response to that demographic change.

Source documents

Purpose

51. Source documents, which cover a wide range of life events including notifications of births, adoptions, name changes, deaths, intended marriages, and registered marriages, contain the information used to populate and update BDM registers. Source documents may also include “unregistered information” (eg, contact details) necessary for the effective administration of the Act.

52. The rules limiting public access to source documents were introduced in 2009, alongside the other access provisions to (a) emphasise registered information should be relied on as the official record; and (b) ensure access requests for historical and non-historical BDM information were treated consistently. The rules also recognised privacy interests associated with non-historical unregistered information, and the potential for this information to be misused, outweighed any public interest in access to source documents. Then, as now, printouts and certificates were (are) the main means by which members of the public access BDM information about a named person.

Current situation

53. Source documents cannot be accessed, other than by the person who is the subject of the record, without a valid reason. The Act provides the Registrar-General may approve an access request from a member of the public for the limited purposes of (a) ensuring registered information is accurate, or for (b) reasons consistent with the Act’s purposes that cannot be met by obtaining a certificate or printout.

54. As noted in the Discussion Paper, the numbers of requests for access to source documents is very small; they are a fraction of one per cent of all access requests.

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6 In 2014, the median age at first marriage was 30.2 years for men and 28.7 years for women – up from 27.5 and 25.5 years in 1994, Statistics New Zealand Marriages, Civil Unions, and Divorces: Year ended December 2014 (5 May 2015).

7 The general rule that an individual who is the subject of the record is entitled to access as of right does not extend to the pre-1998 paper-based registers from which the computerised registers were compiled.
What submitters said

55. Some submitters were unaware of the rules for accessing source documents. Those who had sought access did so to check information had been accurately transcribed to the relevant register. The Privacy Commissioner noted the current rules for access to source documents were an important privacy safeguard in respect of the non-registered information such records may contain.

Department’s proposals

56. The Department is satisfied the current rules for access to source records are appropriate, and are working well. Submitters did not raise any particular concerns. Consequently, the Department does not propose any change to the basic regime.

57. However, in the course of reviewing the rules for access to source documents, the Department did notice an anomaly in operational practice for granting access to intention to marry records (ItMs). To address this anomaly, the Department proposes to amend the Act to classify ItM books as marriage registers (which would reflect the way they are recorded – as book entries), and authorise access in the same way, and subject to the same rules, as apply to solemnised marriage records.

Department’s reasons for classifying intention to marry records as marriage registers

58. A notice of intention to marry was part of the marriage registration process up until 1955 when the current licensing regime was introduced. An ItM was the legislative equivalent of “reading the banns”, and enabled members of the public to notify their objection(s) to a proposed marriage. Unlike marriage registers, which were always a single entry per page, ItMs were recorded in a book with multiple entries per page. Archives New Zealand, originally established under the Archives Act 1957, holds most ItM books for the period 1856–1955.

59. A presumption of open (but not completely unrestricted) access underpins the Public Records Act 2005. The 2005 Act (as did the 1957 Act) provides access to records transferred Archives NZ is subject to any restrictions in any other enactment. However, before 2009, the Births, Deaths, Marriages, and Relationships Registration Act and its predecessors did not differentiate between ItM books (which are source documents) and marriage registers; nor did the Act differentiate between historical and non-historical records. Consequently, ItMs were classified as open access records under the 1957 and 2005 Acts, and access was unrestricted after the ItMs were transferred to Archives NZ circa 1980. But the classification of ItMs as source documents means an open access classification is no longer appropriate.

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8 Public Records Act 2005, s 44(1)(b).
9 Other source documents held by Archives NZ (e.g., historic paper registers) are classified as restricted access (i.e., access to these records is subject to the written permission of the Registrar-General).
60. The proposal to classify ItM books as marriage registers would mean ItMs older than 75 years\textsuperscript{10} could be made available as historical records, including through future digital and online channels (see paras 44 and 50 above). The proposal would see all ItMs available for public access by 2030 when the most recent records are 75 years old.

61. As source documents, access to ItMs could be permanently restricted (which is what the current access provisions provide). However, the most recent ItMs are 60 years old, which substantially reduces privacy concerns, and militates against the risk of misuse. Further, the Department is satisfied making ItMs available on the same basis as historical solemnised marriage records would not pose any risk to the integrity of the marriage register.

62. The Department considers its proposal is a reasonable compromise that balances the interest genealogist and family historians have in ItMs, and the principle registered information should be relied on as the official record.\textsuperscript{11}

\section*{Access register}

\subsection*{Purpose}

63. The access register was established in 2009 as one of the checks and balances to minimise the risk of misuse of BDM information. The register enables an individual, or her or his personal representative, to find out who has sought access to their BDM information, including requests where access was denied (eg, if a non-disclosure direction is in place – see paras 71–72 below).

64. The access register introduced a degree of personal control by empowering individuals to follow-up or report access they consider inappropriate. Further, the simple fact a requestor must provide evidence of identity and will have their details recorded, was seen as an effective deterrent to misuse, except among the most determined individuals.

65. Public sector agencies can search the access register for law enforcement purposes, but such requests are not themselves recorded in the register.\textsuperscript{12}

\subsection*{Current situation}

66. The access register provisions do not apply to access requests for death records or historical information, or for access authorised under another enactment (eg, an approved information sharing agreement under the Privacy Act 1993).

67. On average, 10 access requests per year are received. The Act allows a fee to be charged, but no fee has been set, and there are no plans to change that.

\textsuperscript{10} Assumimg the proposal to reduce the age limit for access to historical marriage records from 80 years to 75 years is approved.

\textsuperscript{11} If an ItM was not followed by a solemnised marriage, there will be no marriage register entry—but this can be an aspect of family history that is of particular interest to family historians.

\textsuperscript{12} Law enforcement-related enquiries can relate to a particular individual’s record(s) (eg, to identify next-of-kin, or to identify who has sought access to those records); or a particular person (eg, what records has Person A sought access to?).
What submitters said

68. Most submitters who commented on the access register provisions were satisfied the register was an effective deterrent to potential misuse of an individual’s BDM information.

Department’s proposals

69. The Department has no specific proposals. We believe the access register, and the requirement for a member of the public to provide evidence of identity when accessing non-historical BDM information, are important safeguards against misuse of BDM information. Further, confirmation that an access request has been declined can reassure an individual who has obtained a non-disclosure direction.

70. The Department notes a key aspect of its proposal to develop new digital and online channels over time is the use of a verified online identity to access BDM information. This will complement the access register, and further disincentive those considering accessing BDM information for inappropriate and potentially criminal purposes.

Non-disclosure directions

Purpose

71. An individual can apply for a non-disclosure direction to prevent a member of the public accessing their BDM information on the basis disclosure could threaten their and/or their family’s personal safety. The non-disclosure direction mechanism complements the Domestic Violence (Public Registers) Regulations 1998, which apply when a protection order is obtained.

72. Non-disclosure directions are subject to a limited number of exceptions that allow access for law enforcement purposes, court proceedings, administration of an estate or trust, or to enable an adopted person to search for her or his birth family.

Current situation

73. The Act and the related Regulations do not prescribe a form or specific process for applying for a non-disclosure direction. This gives the Registrar-General a wide discretion over the type of evidence accepted in support of an application. Relevant evidence could include, for example, a restraining order under the Harassment Act 1997, a statutory declaration from the applicant with some corroborating evidence, or a report or letter from the New Zealand Police, a lawyer, or employer.

74. Although the Act provides for fees to be set by regulation, there is currently no charge to add, reinstate, or withdraw a non-disclosure direction, and the Department has no plans to change that. The number of applications is small, and there is no evidence the process is being abused. A fee could pose a barrier to bona fide applicants.

14 Births, Deaths, Marriages, and Relationships Registration Act 1995, ss 75C, 75E, 75F.
What submitters said

75. The submitters who responded to this part of the Discussion Paper agreed there was a need to restrict public access to BDM information in certain circumstances. They were also satisfied non-disclosure directions were an effective protection mechanism.

76. A small number of submitters suggested adding additional grounds for obtaining a non-disclosure direction (eg, sensitive birth information, national security, gender change, previous identity fraud).

Department’s proposals

77. The Department has no specific proposals. The existing mechanism is consistent with the approach under other legislation with public register provisions, and which provide personal safety is a ground for restricting public access. The Department does not consider the evidential threshold to obtain a non-disclosure direction is a barrier to genuine applicants. Further, we are unaware of any evidence that would justify adding a new ground or grounds for applying a non-disclosure direction.

78. The Department notes the Act already restricts access to certain sensitive information (eg, pre-adoption records, sexual reassignment/gender identity changes, and protected witnesses’ identities). This information does not form part of the public register so there is no need for an individual to apply for a non-disclosure direction.

Research purposes (statistics, health, historical, demographic)

Purpose

79. The rules on access to BDM information for research purposes aim to balance public interest in research with individuals’ privacy interests.

80. Non-identifying BDM information (but not information about particular individuals) has been accessible by health, demographic, or statistical researchers since 1991. The current access provisions extended research access to include identifying information if the request related to people who had died, or were likely to have died because they were born 120 years ago. Historical research was also included for the first time. Further, access for medical research was extended to include identifying information relating to living individuals (where it is in the public interest) because of the high public benefit nature of medical research.

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15 Eg, Electoral Act 1993, s 115; Fisheries Act 1996, s 102(3).
16 Typically, applications that are declined fall into one of two main groups: (a) there is no supporting evidence – in such cases the applicant is always given the opportunity to provide the evidence; or (b) the applicant simply wants to assert a “right” (inconsistent with the Act) to exclude their BDM information from the public register(s).
17 Births, Deaths, Marriages, and Relationships Registration Act 1995, ss 76–78.
**Current situation**

81. The Department does receive a number of access requests for research purposes. However, pre-1998 digitised paper records are stored as images, which are difficult to “interrogate” electronically. Also, what information was collected historically and how it was recorded may mean a researcher finds either (a) the information she or he is seeking is not available, or (b) the amount of manual intervention required to produce the data would be cost prohibitive.\(^{18}\) In most cases, the index information alone is insufficient to respond comprehensively to a research request. Consequently, large-scale research requests that include information collected before BDM registrations were computerised may not progress beyond the enquiry stage.

82. Notwithstanding the limitations of the digitised paper records, the Department works with researchers to identify options for accessing the information they require. In some cases, that may involve identifying alternative sources of information (eg, Statistics New Zealand’s public data and statistics).\(^{19}\)

**What submitters said**

83. Fewer than half of submitters responded to this section of the Discussion Paper. There was no consensus on whether health researchers should be able to access identifying BDM information. Most of the submitters that did respond favoured a reduction in the 120 year threshold for access to identifying information in historical records.

**Department’s proposals**

84. The Department has no specific proposals. We consider the current rules (including limits on identifying information) strike the right balance between individual rights, and ensuring BDM information is available for public interest research. The Department will continue to look for technological solutions that could improve access to the information contained in historic images.

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\(^{18}\) Ad hoc research requests under s 75G are not subject to a set fee, but the Registrar-General will seek to recover actual costs incurred (eg, developing reports, staff time, printing costs, etc).

\(^{19}\) Statistics New Zealand also maintains the Integrated Data Infrastructure, which is an anonymised, longitudinal dataset that links data from a large number of government departments and agencies. Access is subject to strict safety and privacy controls, and is limited to suitably qualified researchers approved by the Government Statistician – for more information see: <www.stats.govt.nz>.
Disclosure of death information to NGOs and private sector agencies

Purpose

85. The sole purpose of this provision is to enable private sector agencies and non-government organisations (NGOs) to access to death information so they can update their databases and mailing lists.

Current situation

86. The main user of this provision is the Marketing Association of New Zealand, which incorporates death information updates in the data cleansing services it provides to its members (eg, Do Not Call, and Do Not Mail lists). The Department has found individual businesses prefer to use Marketing Association data services (which bring together data from a wide variety of sources) rather than obtaining their own death information updates.

What submitters said

87. The low response rate (around 25 per cent) indicated submitters were generally satisfied with the current arrangements. The majority of those that did respond did not support extending NGO access to other types of BDM information (eg, name changes, and birth information).

Department’s proposals

88. The Department has no specific proposals. Making it easy for businesses to purge their mailing and customer lists when someone dies has clear benefits for family members, as well as a general public benefit. This access is consistent with the Act’s purposes. However, in other situations where a business wants to update its customer records, it should simply ask its customers for the information directly.20

89. Private sector agencies and NGOs working with government agencies to deliver public services can become parties to an Approved Information Sharing Agreement (see Part 9A of the Privacy Act 1993), which will provide an appropriate level of access to personal information.21

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20 The Privacy Act 1993 provides an agency should only collect personal information on a “need to know” basis (Information privacy principle 1) and where possible, personal information should be collected directly from the individual concerned (Information privacy principle 2).

21 AISAs must be linked to a public service mandate, and a government department must be the lead agency.
Submission form

Contact details

Name (Individual and/or organisation):

Contact name (for organisation):

Email address:

Phone (day) (0 )  Phone (mobile) (02 )

Summary of proposals

1. The Department proposals reflect two complementary drivers. First, users’ expectations about how they access BDM information have changed since the access provisions were introduced in 2009. Second, enabling citizens to interact easily with government in a digital environment is a key Government Better Public Services target.

2. In the short to medium term, subject to existing legislative, systems, and technological constraints, the Department will investigate options for enhancing existing online services (eg, improved search functionality). Ultimately, the Department would like to facilitate access to BDM information via an all-of-BDM Internet-based search, pay-for-view, and records access and ordering facility, without compromising individual privacy and security interests.

3. Alongside the specific amendments to the access provisions detailed below, the Department wants to remove remaining legislative barriers to digital and online services (eg, by making language and delivery channels medium-neutral). This will support future enhancements for all BDM services, not just access to BDM information.

The Department proposes to—

General access rules

- Add historical and non-historical BDM indexes, but not full non-historical records, to the BDM information that can be searched online (some information may behind a paywall);
- Authorise unedited historical register images to be made available online (behind a paywall);
- Provide online access to BDM information (beyond an initial high level search) would be subject to evidence of identity established via a RealMe ID, or through another future solution that would enable a verified identity to be asserted online; and
- Allow a user with a verified identity to order a certificate or printout for a non-historical record online.
Do you support the proposals? | Yes ☐ | No ☐
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Please use this space for any additional comments:

**Historical and non-historical information**

- Reduce the time limit that defines historical marriage and civil union information from 80 years to 75 years; and
- Align rules for access to birth information (including information that could be made available through digital and online channels in future) based on when a death record becomes available.

Do you support the proposals? | Yes ☐ | No ☐
---|---|---
Please use this space for any additional comments:

**Source documents**

- Classify Intention to Marry books as marriage registers, and authorise access in the same way, and subject to the same rules, as apply to solemnised marriage records.

Do you support the proposal? | Yes ☐ | No ☐
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Please use this space for any additional comments:
Remaining access provisions

*Access register; non-disclosure directions; research purposes; disclosure of death information*

The Department has no specific proposals. We consider the current rules are appropriate and are working well; the individual privacy and security protections they provide will be integral in the context of the proposed new digital and online access channels.

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Please use this space for any additional comments:

If you want to comment on any other matter related to the access provisions ...

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