

# PO 06 Access to Information Contained in the Register Policy

## Summary

Section 53 Part 8 of the *Births, Deaths and Marriages Act 1995*(NSW) requires the Registrar to maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division. Register contains information relating to births (including stillbirths, surrogacy and adoptions), deaths, marriages, recognised details, Change of sex and Change of Name.

Sections 46-51 of the Act details the following requirements for accessing information held by the Registry:

- persons entitled to have access to information in the Register
- adequate reasons for allowing access to information, and
- search of register requirements (relationship, age of records, content, other factors).

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Author:	Pritesh Patel
Owner:	Amanda Ianna, Registrar
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# 1 About this document

## 1.1 Purpose

This policy provides information for clients regarding their rights and obligations for accessing records in the Register, and for the Registrar to make accurate, consistent and accountable decisions when assessing applications for access to information.

The Registrar's discretionary powers are not exhausted by this policy. The Registrar delegates the discretionary power of to certain managers and their staff who process applications for certificates or information. These managers and staff 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.

## 1.2 Scope

This policy clarifies the discretion and powers of the Registrar of NSW Births Deaths & Marriages (the Registry) with regards to providing access to information held in the Register, as specified in Part 8 of the *Births, Deaths & Marriages Registration Act 1995* (NSW). It covers accessing information relating to births (including stillbirths, surrogacy and adoptions), deaths, marriages, recognised details, change of sex and change of name. 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 adequacy of the 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
- Section 49 which allows the Registrar to issue certificates, and
- Sections 50 and 51, which relate to the issue of certificates to children of a deceased person and enables disposal of human remains.

## 1.3 Glossary of terms

Terms here are specific to this document.

Term	Description
Act	The <i>Births, Deaths &amp; Marriages Registration Act 1995</i> .
Client	Any person, group, company or agency that uses the products or services of the Registry.

Letter of Authority	A letter authorising a nominated person to make application and collect a certificate on behalf of the registered person.
Power of Attorney	A legal agreement that enables a person to appoint a trusted person - or people - to make financial and/or property decisions on their behalf
Record	An entry of a registrable event recorded in the Register.
Register	The register containing particulars of each registrable event required under the Act or another law.
Registrar	Registrar of NSW Births Deaths & Marriages.
Registry	The NSW Registry of Births Deaths & Marriages.

## 2 Access to the Register

The NSW Registry of Births Deaths & Marriages maintains a restricted access Register and the Registrar may grant access on the following conditions and within the timeframes listed at section 3.2 of this document.

### 2.1 Persons or organisations entitled to have access

Sections 46(1) and 46A of the Act gives discretion to the Registrar to allow a person or organisation access to the Register providing that they have adequate reason to access and they provide adequate identification.

Under this policy persons or organisations entitled to have access are:

- a person applying for their own certificate
- a person who has a letter of authority to apply for another person's certificate (With completed **Letter of authority** and requirements attached to it)
- parents who appear on the birth registration of a child can apply for that child's birth certificate, regardless of the child's age
- a person with Power of Attorney over another person can apply for that person's certificate
- executor, administrator or trustee of the estate of a deceased person
- a person or organisation that has an adequate reason for wanting access to the Register, or
- law enforcement agencies (limited access under the conditions specified in a memorandum of understanding).

## 2.2 Adequate reasons for allowing access to information

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
- (b) the sensitivity of the information
- (c) the use to be made of the information, and
- (d) other relevant factors.

Adequate reason for allowing access to information may include:

- to purchase a certificate
- to enable research for organisations with ethics approval
- to extract statistical information (e.g. ABS, AIHW)
- to extract information for research purposes (e.g. Cancer Council, Australian Institute of Health and Welfare)
- to determine whether a person is deceased (e.g. banks, credit agencies and similar types of organisations), or
- to enable solicitors to act in a matter on behalf of their client who has entitlement, or
- for investigative purposes.

## 3 Search of Register

Sections 46 and 47 of the Act provides for access to and search of information contained in the Register subject to an adequate reason being provided, and require the following factors to be taken into account when determining applications for access to information:

### 3.1 Applicant's Relationship to the Subject

"Relationship" here includes the family relationships of mother, father and child. It can include principal/agent relationships (e.g. 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 Part 1, Section 3 Objects of the Act:

- (e) access to the information in the Register in appropriate cases by government or private agencies, law enforcement agencies and members of the public, from within and outside the State
- (f) the issue of certified information from the Register, and
- (g) the collection and dissemination of statistical information.

Grandparents seeking to access their grandchild's birth certificate usually require

- a court order
- a letter of authority from either parent if the child is under 18, or
- a letter of authority from the subject if over the age of 18.

### 3.2 Age of the Records

The Registry recognises that the sensitivity of personal information and the chances of its fraudulent use reduces with time. For this reason, an index of records is available free of charge, or full records are available for a fee, for the following:

- 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

### 3.3 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*, 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.

### 3.4 Solicitors and their agents accessing the Register

Where a solicitor establishes their identity and qualifications, detail that they represent a person who seeks probate/letters of administration, submits that the particular certificate is relevant to the proceedings, establishes their claim that displays adequate reason(s), then the Registry should release the requested information.

### 3.5 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) – (d) of the Act.

A relevant factor for such an application could be the public interest, because it relates to criminal law enforcement, e.g. 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.

## 4 References

*Births, Deaths & Marriages Registration Act 1995 (NSW)*

*Privacy and Personal Information Protection Act 1998*