



THE LAW SOCIETY  
OF NEW SOUTH WALES

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22 May 2025

Director, Civil Justice, Vulnerable Communities and Inclusion  
Policy, Reform and Legislation Branch  
Department of Communities and Justice  
Locked Bag 5000  
Parramatta, NSW, 2124

By email: [policy@dcj.nsw.gov.au](mailto:policy@dcj.nsw.gov.au)

Dear Director,

## REMAKE OF THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION REGULATION 2017

The Law Society thanks the Department of Communities and Justice for the opportunity to comment on the draft Births, Deaths and Marriages Registration Regulation 2025 (**Draft Regulation**). The Law Society's Children's Legal Issues and Family Law Committees contributed to this submission.

### Fees

The Law Society has no objection to the proposed increase to fees for registering a change of name under Part 5 of the *Births, Deaths and Marriages Registration Act 1995* (NSW) (**Act**) nor to the proposed indexation of fees in line with the Consumer Price Index. However, to ensure these increases do not cause undue financial hardship to applicants, we consider it crucial that the Registry of Births, Deaths and Marriages (**Registry**) retain its discretion to waive fees on compassionate grounds.

Additionally, we suggest that it may be beneficial to set out explicit circumstances where applicants will be exempt from the fee, rather than requiring the applicant to apply for waiver. We suggest this might include where the applicant is a child under the parental responsibility of the Minister and the change of name is due to an error in the registration of the child's name. Fee exemption in these circumstances would reduce unnecessary stress and administrative burden to an already vulnerable cohort required to amend their records due to no fault of their own.

### Birth Registration

Section 5(1)(a) of the Draft Regulation requires the registration of the "sex of the child" at birth. We note that it may be helpful to clarify that this refers to a child's assigned biological sex at birth, based on hospital records, rather than a broader interpretation inclusive of gender.

## Qualified counsellor

We note that the *Equality Legislation Amendment (LGBTIQA+) Act 2024* (NSW) amended Part 5A of the Act to introduce a new scheme for registering a change of sex. New provisions will commence on 1 July 2025, including section 32C which relates to applications by parents or guardians seeking to alter the records relating to a child's sex.

Pursuant to section 32C(2)(c), an application to alter the record of the sex of a child under the age of 18 years must be accompanied by a statement from a qualified counsellor who has provided counselling to the child. The statement must confirm that the child has undertaken counselling in relation to whether or not the application ought to be made, and about the implications of the alternation of the record of the child's sex. The application must also be accompanied by a statement from the qualified counsellor stating that the counsellor supports the application.

The Law Society queries the inclusion of "nurse practitioner", "eligible to be a clinical member of the Psychotherapy and Counselling Federation of Australia" and "eligible for membership in the Australian Association of Social Workers" in the definition of "qualified counsellor" in the Draft Regulation. We consider it important that the Draft Regulation set an appropriately high standard of qualification to ensure children receive counselling from practitioners with the appropriate qualifications and professional experience. Restricting the definition of "qualified counsellor" to include only qualified medical practitioners and psychologists will help to ensure that statements provided under the Act are patient-centred and evidence-based. This is particularly important given that there is no mechanism in s 32C or elsewhere in the Act that provides for judicial oversight of the independence and neutrality of the "qualified counsellor".

## Restricted persons

We note that Part 5, Division 3 and Part 5A, Division 6 of the Act precludes "restricted persons" from making an application to register a change of name or sex without the approval of a supervising authority. As per the Regulatory Impact Statement, the Law Society understands that this preclusion is intended to mitigate against the risk of identity fraud and bad faith applications perpetrated by such persons.

The Law Society queries the inclusion of persons subject to a conditional release order (**CRO**) in the "restricted persons" category, as set out in the Draft Regulation. Pursuant to the *Crimes (Sentencing Procedure) Act 1999*, a CRO may be imposed with or without conviction, and is typically used for first time or less serious offenders where the offender is unlikely to present a risk to the community.<sup>1</sup> Noting the purpose of the 'restricted persons' regime, we suggest that, unless conviction was recorded for a dishonesty or fraud offence, the inclusion of persons subject to a CRO in this category is inappropriate.

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<sup>1</sup> See further information at Department of Communities and Justice, 'Conditional Release Orders' (Webpage updated 11 May 2023): <https://correctiveservices.dcj.nsw.gov.au/community-corrections/community-based-order/conditional-release-orders.html>.



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Thank you for the opportunity to comment. Should you have any further queries in relation to this submission, please contact Jade Fodera, Policy Lawyer, on (02) 9926 0218 or [jade.fodera@lawsociety.com.au](mailto:jade.fodera@lawsociety.com.au).

Yours sincerely,

**Jennifer Ball**  
President