

31 January 2014

Mr Andrew Cappie-Wood
Director General
Department Attorney General and Justice
Level 14, 10 Spring Street
SYDNEY NSW 2000


Dear Mr Cappie-Wood,

Re: Change of a child's name by parent with sole parental responsibility

Thank you for your letter of 19 November 2013 seeking the views of Legal Aid NSW on section 28 of the *Births, Deaths and Marriages Registration Act 1995* (NSW) ('**BDRM Act**').

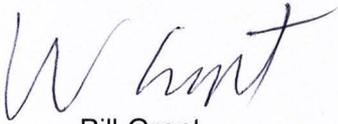
We confirm our preliminary view that the current restrictions in s 28(3) are appropriate. We hold this view for the following reasons:

- For the purposes of the BDRM Act, changes of name include an "omission, inclusion or substitution". Potentially then, a change to a child's registered birth name can erase the registered identity of a child. The need to preserve a child's name and identity is thoroughly enshrined in Australian Law and in Australia's commitment to various Conventions. (See, for example, Articles 7.1, 8.1 and 9 of the *United Nations Convention on the Rights of the Child*).
- The restrictions are consistent with other appropriate restrictions placed on persons with sole parental responsibility. For example, a Federal Magistrate's Court order allocating sole parental responsibility for a child would not, unless explicitly stated, entitle the parent with sole parental responsibility to unilaterally decide to remove a child the subject of the order from the country. They would be required to bring an application before the Court.
- We are not aware of any law that prevents common usage of a name that is not a registered birth name. It is not uncommon and does not usually present any difficulties for a person to be known as one name but to have formal papers such as a driver's license or passport in another name. We would argue that common usage is adequate for any purpose until a child is eighteen years of age and can themselves seek to change their registered birth name through the BDM Registry.

We note the inconsistency between sections 28(2) and 28(3) and think that the position of third parties should be brought into line with that of parents, rather than the other way around.

Legal Aid NSW appreciates the opportunity to provide these submissions. For further information, please contact Erin Gough on (02) 9219 5778 or by email at Erin.Gough@legalaid.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'W Grant', with a large, sweeping flourish at the end.

Bill Grant
Chief Executive Officer