

AUSTRALIAN CAPITAL TERRITORY

Sex Discrimination (Miscellaneous Amendments) Ordinance 1986

No. 31 of 1986

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 24 July 1986.

J. A. ROWLAND
Administrator

By His Excellency's Command,

G. SCHOLES

Minister of State for Territories and for and on behalf of the Attorney-General

An Ordinance to amend certain Ordinances in relation to the avoidance of discrimination on the grounds of sex or marital status

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Sex Discrimination (Miscellaneous Amendments) Ordinance 1986*.¹

Commencement

2. This Ordinance shall come into operation on 1 August 1986.

**PART II—AMENDMENTS OF THE REAL PROPERTY
ORDINANCE 1925**

Principal Ordinance

3. In this Part, “Principal Ordinance” means the *Real Property Ordinance 1925*.

Power of Registrar

4. Section 14 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (e) “coverture”; and
- (b) by adding at the end the following sub-sections:

“(4) The Registrar may, on the production by a registered proprietor of such evidence as the Registrar requires, alter any entry in the Register Book or on a grant or certificate of title relating to the name, address, occupation or status of the registered proprietor.

“(5) When making an alteration pursuant to sub-section (4), the Registrar shall not erase or render illegible the original words, and shall append to the alteration the date on which the alteration was made and his or her initials.”.

Land brought under Ordinance

5. Section 18 of the Principal Ordinance is amended—

- (a) by omitting paragraph (2) (f) and substituting the following paragraph:

“(f) a parent or guardian of an infant, in the name of the infants; or”; and

- (b) by omitting sub-section (4).

Registration of survivor of joint proprietors

6. Section 55 of the Principal Ordinance is amended by omitting paragraphs (a) and (b).

Repeal of section 134

7. Section 134 of the Principal Ordinance is repealed.

Repeal of section 175

8. Section 175 of the Principal Ordinance is repealed.

First Schedule

9. The First Schedule to the Principal Ordinance is amended by omitting from the form of *Application to bring lands under the provisions of the Real Property Ordinance 1925* “; if to a married woman, the name of her husband, together with his residence and occupation, should be stated”.

Fourth Schedule

10. The Fourth Schedule to the Principal Ordinance is amended by omitting from the form of *Memorandum of Transfer (Real Property Ordinance 1925)* “; if a married woman, state name, residence and occupation of husband”.

Fifth Schedule

11. The Fifth Schedule to the Principal Ordinance is amended by omitting from the form of *Memorandum of transfer of lease (Real Property Ordinance 1925)* “; if a married woman, state name, residence, and occupation of husband”.

Sixth Schedule

12. The Sixth Schedule to the Principal Ordinance is amended by omitting from the form of *Memorandum of transfer of mortgage (Real Property Ordinance 1925)* “; if a married woman, state name, residence and occupation of husband”.

Eleventh Schedule

13. The Eleventh Schedule to the Principal Ordinance is amended by omitting from the form of *Memorandum of Transfer by Mortgage under Power of Sale (Real Property Ordinance 1925, Section ninety-four)* “; if a married woman, state name, residence and occupation of husband”.

PART III—AMENDMENTS OF THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES ORDINANCE 1963

Principal Ordinance

14. In this Part, “Principal Ordinance” means the *Registration of Births, Deaths and Marriages Ordinance 1963*.

Interpretation

15. Section 5 of the Principal Ordinance is amended—

- (a) by inserting after the definition of “coroner” in sub-section (1) the following definitions:

“ ‘de facto spouse’, in relation to a parent of a child, means a person of the opposite sex to the parent who lives with the parent as the husband or wife of the parent on a *bona fide* domestic basis although not married to the parent;

‘guardian’, in relation to a child, does not include a parent of the child;”;

- (b) by omitting from sub-section (1) the definition of “parent”; and
(c) by adding at the end the following sub-section:

“(7) A reference in this Ordinance to a parent, in relation to a child, shall not be read as including a reference—

- (a) to a stepparent or foster parent of the child; or
(b) where the de facto spouse (if any) of the parent is not the father or mother of the child—to the de facto spouse.”.

Particulars for registration of birth

16. Section 13 of the Principal Ordinance is amended by omitting from paragraph (2) (b) all the words from and including “, by reason” to and including “father of the child,”.

Surname to be entered in Register of Births

17. Section 18 of the Principal Ordinance is amended by omitting sub-sections (1), (1A) and (1B) and substituting the following sub-sections:

“(1) The name to be entered in the Register of Births as the surname of a child is the name nominated by one or both parents of the child and specified as the surname of the child in the particulars furnished to the Registrar in relation to the child pursuant to sub-section 13 (1), being—

- (a) where the names of both parents are, or are to be, registered as the names of the child’s parents—
- (i) the maiden name or other surname of the child’s mother;
- (ii) the surname of the child’s father; or
- (iii) a surname formed by combining the mother’s maiden name or other surname and the father’s surname; or

- (b) where the name of only one parent is, or is to be, registered as the name of a parent of the child—the maiden name or other surname of that parent.

“(1A) Where, within 12 months after the birth of a child, a parent of the child notifies the Registrar in writing that the parents disagree as to the name that is, or is to be, registered as the child’s surname, the Registrar shall, subject to sub-section (1D), register as the child’s surname the surnames of the parents hyphenated in alphabetical order.

“(1B) A parent of a child is not entitled to notify the Registrar in accordance with sub-section (1A) unless the parent’s name is registered, or is registrable, under this Ordinance as the name of a parent of the child.

“(1C) For the purposes of sub-section (1A), the surname of a child’s mother shall be taken to be her surname at the time of the child’s birth.

“(1D) Where the surname declared by the court, on an application under paragraph 20A (1) (a), to be the surname to be registered as a child’s surname is not already registered, the Registrar shall enter the surname in the Register of Births as the surname of the child.”.

Additional name given at baptism or by notice to the Registrar

18. Section 19 of the Principal Ordinance is amended—

- (a) by adding at the end of sub-section (1) “and the parents of the child”; and
- (b) by omitting sub-section (7) and substituting the following sub-sections:

“(7) A reference in sub-section (1) or (3) to the parents of a child shall be read as a reference—

- (a) where the names of both parents appear in the Register of Births as the names of the child’s parents—to both parents; or
- (b) where the name of only one parent appears in the Register of Births as the name of a parent of the child—to that parent.

“(8) Where the Registrar is satisfied that a parent of a child referred to in sub-section (1) or (3) is dead, or that the parent’s whereabouts are unknown, the Registrar may proceed under sub-section (6) notwithstanding that the parent has not signed the certificate in respect of the child furnished to the Registrar pursuant to

sub-section (1), or the notice in respect of the child furnished to the Registrar in accordance with sub-section (3), as the case requires.”.

19. Section 20 of the Principal Ordinance is repealed and the following sections substituted:

Change of child’s surname

“20. (1) A person whose name appears in the Register of Births as the name of a parent of a child may, by instrument in writing in accordance with Form 2 in the Fourth Schedule, change the child’s surname—

- (a) to that person’s maiden name or other surname;
- (b) to the surname of the spouse or de facto spouse of that person; or
- (c) to a surname formed by combining the maiden name or other surname of that person and the surname of the spouse or de facto spouse of that person.

“(2) Subject to sub-section (3), an instrument referred to in sub-section (1) is not effective to change the surname of the child to whom the instrument relates unless—

- (a) there appears on the instrument the consent of—
 - (i) where, at the time the instrument is executed, the child has attained the age of 16 years—the child;
 - (ii) where the name of the child’s other parent appears in the Register of Births as the name of a parent of the child—the other parent;
 - (iii) where the child has a guardian or guardians—the guardian, or each guardian, as the case requires; and
 - (iv) where the child’s surname is to be changed to the surname of the spouse or de facto spouse of the person referred to in sub-section (1) (whether or not the latter surname is combined with the maiden name or other surname of that person)—the spouse or de facto spouse, as the case requires;
- (b) the signature on the instrument of that person and of any person whose consent is required pursuant to paragraph (a) has been witnessed by a person authorised to administer an oath under sub-section 11 (1) of the *Oaths and Affirmations Ordinance 1984*; and

- (c) the instrument is registered in the General Register of Deeds kept pursuant to the *Registration of Deeds Ordinance 1957*.

“(3) The consent of the other parent, or of any guardian or guardians, is not required on an instrument referred to in sub-section (1) if the Magistrates Court has, on an application under paragraph 20A (1) (b), declared that the instrument is to be effective without that consent.

“(4) Where—

- (a) the Registrar is satisfied that the other parent of a child to whom an instrument referred to in sub-section (1) relates is dead or that the parent’s whereabouts are unknown; or
- (b) the Magistrates Court has made a declaration on an application under paragraph 20A (1) (b),

the Registrar may enter in the Register of Births, as the surname of the child, the surname to which the child’s name is to be changed, notwithstanding that the parent’s consent to the change does not appear on the instrument.

“(5) Where—

- (a) the surname to which a child’s name is to be changed has, pursuant to paragraph (4) (a), been entered in the Register of Births as the child’s surname; and
- (b) the other parent of the child subsequently lodges with the Registrar an objection in writing to the change of the child’s surname,

the Registrar shall give notice of the objection to the person who made the instrument by which the change was effected, and shall inform the person to the effect that, unless the Registrar is satisfied that the person has, within the period of 21 days after the date of the notice, made an application to the Magistrates Court pursuant to sub-section 20A (2), the Registrar is required to re-register the child’s former surname as the surname of the child.

“(6) Where the other parent of a child has lodged an objection referred to in sub-section (5), and—

- (a) the Registrar is not satisfied that an application under sub-section 20A (2) has been lodged within the period referred to in sub-section (5); or
- (b) the Magistrates Court has, on an application under sub-section 20A (2), made a declaration to the effect that the former surname of the child is to be re-registered as the surname of the child,

the Registrar shall enter the former surname of the child in the Register of Births as the surname of the child.

“(7) Where—

- (a) the Registrar has, pursuant to paragraph (6) (a), entered the former surname of a child in the Register of Births as the surname of the child; and
- (b) the Magistrates Court has, on an application under sub-section 20A (2), made a declaration to the effect that the surname to which the child’s name was changed by an instrument referred to in sub-section 20 (1) is to be re-registered as the surname of the child,

the Registrar shall enter that surname in the Register of Births as the surname of the child.

“(8) This section does not apply in relation to a child who has attained the age of 18 years.

Court declarations in respect of child’s surname

20A. “(1) A parent of a child may apply to the Magistrates Court for an order—

- (a) declaring which surname is to be registered as the child’s surname in accordance with section 18; or
- (b) declaring that an instrument referred to in sub-section 20 (1) is to be effective without the consent of the other parent or of any guardian or guardians, as the case requires.

“(2) Where—

- (a) the surname to which a child’s name is to be changed is entered in the Register of Births pursuant to paragraph 20 (4) (a); and
- (b) the other parent of the child subsequently lodges with the Registrar an objection to the change,

the person who made the instrument by which the change was effected may apply to the Magistrates Court for an order declaring that the surname is the surname to be registered as the surname of the child.

“(3) When determining an application under sub-section (1) or (2), the Magistrates Court shall have regard to—

- (a) the welfare of the child to whom the application relates;

- (b) the wishes of the child;
- (c) whether the child is living with one or both parents;
- (d) the nature and frequency of the child's contact with any parent with whom the child does not live;
- (e) the surnames of any other children of both the child's parents or of either parent with whom the child is living; and
- (f) in the case of an application under paragraph 20A (1) (b) for an order declaring that an instrument referred to in sub-section 20 (1) is to be effective without the consent of the other parent—
 - (i) whether the child ordinarily resides with the person who made the instrument;
 - (ii) whether that person has the sole custody and control of the child; and
 - (iii) whether either parent's guardianship of the child has been revoked by an order of a court.

“(4) On an application under sub-section (1) or (2), the Magistrates Court may make or refuse to make the order sought, and may make such other orders as it thinks just.”.

Notice of dissolution or annulment of marriage

20. Section 43 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “prescribed court” and substituting “court of Australia”; and
- (b) by omitting sub-section (4).

Second Schedule

21. The Second Schedule to the Principal Ordinance is amended—

- (a) by inserting in item 6 “of the mother and” after “birth-place”; and
- (b) by omitting items 7, 8 and 9 and substituting the following items:
 - “7. Any former surnames of the mother or father of the child (including the mother's maiden name where applicable).
 - “8. If the child's parents were married to each other at the date of the child's birth—the date and place of their marriage.

- “9. Names and ages of living children, in order of birth, and the number of any male children and female children who are dead, being children of the same parents (including children who have been adopted by those parents, but not including children not born alive or children of the parents who have been adopted by another person).”.

Third Schedule

22. The Third Schedule to the Principal Ordinance is amended—

- (a) by omitting from item 6 paragraphs (d) and (e);
- (b) by inserting after item 6 the following item:
- “6A. Where the dead person had children—
- (a) Names and ages of living children in order of birth.
- (b) Number of any male children and female children who are dead.”;
- (c) by inserting in item 10 “of the mother and” after “occupation”; and
- (d) by omitting item 11 and substituting the following item:
- “11. Any former surnames of the mother or father of the dead person (including the mother’s maiden name where applicable).”.

Fourth Schedule

23. The Fourth Schedule to the Principal Ordinance is amended—

- (a) by omitting from Form 1—

“Minister of Religion”

and substituting—

“Minister of Religion

(*mother*)

(*father*)

“; and

- (b) by omitting Form 2 and substituting the following form:

FORM 2

Section 20

AUSTRALIAN CAPITAL TERRITORY

Registration of Births, Deaths and Marriages Ordinance 1963

INSTRUMENT CHANGING CHILD’S SURNAME

WHEREAS I, (*full name*) am the mother (*or father*) of (*full name of child*) who was born at _____ on _____ 19 ____ :

*And whereas the marriage of the parents of the child was dissolved by the death of (*full name*), the father (*or mother*) of the child (*or by decree of the* (name of court)) on _____ 19 ____ :

*And whereas I, (*full name*), the mother (*or father*) of the child ceased living with (*full name of other parent of child*), the father (*or mother*) of the child as the spouse (*or de facto spouse*) of the father (*or mother*) on 19 ____ :

*And whereas I, (*full name*), the mother (*or father*) of the child have never lived with (*full name of other parent of child*) as the spouse or de facto spouse of the father (*or mother*):

*And whereas I, (*full name*), am now married to (*or living as de facto spouse with*) (*full name of spouse or de facto spouse*):

*And whereas the child, having attained the age of 16 years, consents, by signing this instrument, to his (*or her*) surname being changed to _____ :

*And whereas (*full name of other parent*), the father (*or mother*) of the child consents, by signing this instrument, to the child's surname being changed to _____ :

*And whereas (*full name of other parent*) is dead:

*And whereas the whereabouts of (*full name of other parent*) are unknown:

*And whereas (*full name of guardian of child*) consents, by signing this instrument, to the child's surname being change to _____ :

*And whereas the child has no guardian:

*And whereas (*full name of spouse or de facto spouse*) consents, by signing this instrument, to the child's surname being changed to _____ :

Now therefore I, (*full name*), do by this instrument, on behalf of myself and my child

- (a) absolutely renounce the use of my child's former surname of _____ , and assume, in its place, the surname of _____ ;

*I, (*full name of other parent*), being the father (*or mother*) of (*full name of child, including existing surname*), consent to my child's surname being changed to

Dated 19
Signed by (*full name of other parent*)
in the presence of—

*I, (*full name of spouse or de facto spouse*), being the spouse (*or de facto spouse*) of (*full name*) consent to her (*or his*) changing the surname of her (*or his*) child (*full name of child, including existing surname*) to

Dated 19
Signed by (*full name of spouse or de facto spouse*) in the presence of—

**Leave out if inapplicable*

PART IV—AMENDMENTS OF OTHER ORDINANCES

Agents Ordinance 1968

24. Section 64 of the *Agents Ordinance 1968* is amended—

(a) by omitting paragraph (b) and substituting the following paragraph:

“(b) who is an employee, a partner, the spouse or de facto spouse, a child, a parent, or a brother or sister, of the licensed agent;”; and

(b) by adding at the end the following sub-section:

“(2) In paragraph (1) (b), ‘de facto spouse’, in relation to an agent, means a person of the opposite sex to the agent who lives with the agent as the husband or wife of the agent on a *bona fide* domestic basis although not married to the agent.”.

Animal Nuisance Control Ordinance 1975

25. Section 2 of the *Animal Nuisance Control Ordinance 1975* is amended by omitting from sub-section (2) “father” and substituting “parents”.

Conveyancing Act, 1919 (N.S.W.)

26. Section 78 of the *Conveyancing Act, 1919* of the State of New South Wales in its application to the Territory is amended by omitting sub-section (3).

Co-operative Societies Ordinance 1939

27. Section 29 of the *Co-operative Societies Ordinance 1939* is amended by omitting from sub-section (7) “wife” and substituting “spouse”.

Dog Control Ordinance 1975

28. Section 5 of the *Dog Control Ordinance 1975* is amended by omitting from sub-section (2) “father” and substituting “parents”.

Hawkers Ordinance 1936

29. Section 9 of the *Hawkers Ordinance 1936* is amended—

- (a) by omitting from sub-section (1) “The son” and substituting “A child”;
- (b) by omitting from paragraph (3) (a) “son” and substituting “child”; and
- (c) by omitting from paragraph (3) (b) “other than his son” and substituting “not being a child of the hawker”.

Landlord and Tenant Ordinance 1949

30. Part IIIA of the *Landlord and Tenant Ordinance 1949* is repealed.

Land Rent and Rates (Deferment and Remission) Ordinance 1970

31. Section 10 of the *Land Rent and Rates (Deferment and Remission) Ordinance 1970* is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) Where a determination relates to 2 or more persons as owners of a parcel of land as joint tenants or tenants in common and one of those persons dies, the Minister shall not give notice of intention to revoke the determination under sub-section (2) unless one of the prescribed grounds is or becomes applicable in relation to the survivor or, where there is more than one survivor, in relation to each of the survivors.”.

Police Offences Ordinance 1930

32. Section 23 of the *Police Offences Ordinance 1930* is amended—

- (a) by omitting from sub-section (3) “male”; and
- (b) by omitting from sub-section (3) “he” (wherever occurring) and substituting “the person”.

Police Ordinance 1927

33. Section 15 of the *Police Ordinance 1927* is amended—

- (a) by omitting “female”;
- (b) by omitting “any male” and substituting “another”; and
- (c) by omitting “the male” and substituting “that other”.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 31 July 1986.