

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

Births, Deaths and Marriages Registration Amendment Bill 2020

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Births, Deaths and Marriages Registration Amendment Bill 2020

A Bill for

An Act to amend the *Births, Deaths and Marriages Registration Act 1997*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Births, Deaths and Marriages Registration*
3 *Amendment Act 2020*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written notice.

6 *Note 1* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see [Legislation Act](#),
10 s 77 (1)).

11 (2) If this Act has not commenced within 12 months beginning on its
12 notification day, it automatically commences on the first day after that
13 period.

14 (3) The [Legislation Act](#), section 79 (Automatic commencement of
15 postponed law) does not apply to this Act.

16 **3 Legislation amended**

17 This Act amends the *Births, Deaths and Marriages Registration*
18 *Act 1997*.

19 *Note* This Act also amends the *Adoption Act 1993* (see sch 1).

1 **4 Section 19 heading**

2 *substitute*

3 **19 Application by parent to register change of child's name**

4 **5 New section 19A**

5 *insert*

6 **19A Application by young person to register change of given**
7 **name**

8 A young person may apply to the registrar-general for registration of
9 a change of any of the person's given names if—

10 (a) either—

11 (i) the young person is domiciled or resident in the ACT; or

12 (ii) the young person's birth is registered in the ACT; and

13 (b) the young person is—

14 (i) at least 16 years old and the application is made to better
15 reflect their gender identity; or

16 (ii) at least 12 years old, but not yet 16 years old and—

17 (A) the parents of the young person consent to the
18 application; or

19 (B) if it is not practicable or reasonable to obtain the
20 consent of both parents—1 parent consents to the
21 application; or

22 (C) if a circumstance prescribed by regulation applies—
23 a stated person with parental responsibility for the
24 young person consents to the application; or

- 1 (iii) not yet 16 years old and the ACAT has granted leave under
2 part 4A (ACAT leave for certain applications) for the
3 young person to apply.

4 *Note* A fee may be determined under s 67 for this provision.

5 **6 Application to alter register to record change of sex**
6 **Section 24 (1) (a)**

7 *substitute*

- 8 (a) the person is—
9 (i) at least 16 years old; or
10 (ii) at least 12 years old, but not yet 16 years old and—
11 (A) the parents of the young person consent to the
12 application; or
13 (B) if it is not practicable or reasonable to obtain the
14 consent of both parents—1 parent consents to the
15 application; or
16 (C) if a circumstance prescribed by regulation applies—
17 a stated person with parental responsibility for the
18 young person consents to the application; or
19 (iii) not yet 16 years old and the ACAT has granted leave under
20 part 4A (ACAT leave for certain applications) for the
21 young person to apply; and

22 **7 New section 24 (2) (d)**

23 *insert*

- 24 (d) the child has not applied under subsection (1) (a) for alteration
25 of the record.

1 **8 Evidence in support of application**
2 **Section 25 (1)**

3 *omit*

4 who is at least 18 years old

5 **9 New section 25 (1) (aa)**

6 *insert*

7 (aa) for an application under section 24 (2)—a statement that the
8 applicant believes that the alteration of the record of the child's
9 sex is in the best interests of the child; and

10 **10 Section 25 (2)**

11 *omit*

12 **11 Application for recognised details certificate**
13 **Section 29A (1) (a)**

14 *substitute*

15 (a) the person is—

16 (i) at least 16 years old; or

17 (ii) at least 12 years old, but not yet 16 years old and—

18 (A) the parents of the young person consent to the
19 application; or

20 (B) if it is not practicable or reasonable to obtain the
21 consent of both parents—1 parent consents to the
22 application; or

23 (C) if a circumstance prescribed by regulation applies—
24 a stated person with parental responsibility for the
25 young person consents to the application; or

1 (iii) not yet 16 years old and the ACAT has granted leave under
2 part 4A (ACAT leave for certain applications) for the
3 young person to apply; and

4 **12 Evidence in support of application for recognised details**
5 **certificate**
6 **Section 29B (1)**

7 *omit*

8 under section 29A for a recognised details certificate for a person who
9 is at least 18 years old

10 *substitute*

11 under section 29A (1) for a recognised details certificate

12 **13 Section 29B (2)**

13 *omit*

14 under section 29A for a recognised details certificate for a child

15 *substitute*

16 under section 29A (2) for a recognised details certificate

14 **New part 4A***insert***Part 4A** **ACAT leave for certain applications****29E** **Application by young person for leave to apply for change of given name or sex etc**

- (1) A young person who is not yet 16 years old may apply to the ACAT for leave to apply to the registrar-general—
- (a) under section 19A for registration of a change of any of the person's given names; or
 - (b) under section 24 for alteration of the record of the person's sex in the registration of the person's birth; or
 - (c) under section 29A for a recognised details certificate.
- (2) A young person may apply to the ACAT for leave under this section only if the person satisfies the relevant requirement mentioned in section 19A (a), section 24 (1) (b) or section 29A (1) (b).
- (3) Also, a young person who is not yet 12 years old may apply to the ACAT for leave under this section only if the ACAT is satisfied that—
- (a) at least 1 parent, or a person with parental responsibility for the young person, consents to the application being made; and
 - (b) exceptional circumstances apply to the young person, for example, the young person has socially transitioned their gender identity by showing a definite and consistent gender identity over a reasonable period.

- 1 (4) The young person—
- 2 (a) must state in the application that they understand the ACAT
- 3 must give notice about the application to each parent or person
- 4 with parental responsibility for the young person under
- 5 section 29F (1) (a); and
- 6 (b) may make a submission to the ACAT that they do not want those
- 7 people to be notified because the young person would be
- 8 adversely affected.
- 9 *Note* The ACAT must not notify a parent, or a person with parental
- 10 responsibility for the young person, about the application if doing so
- 11 could reasonably be expected to adversely affect the young person (see
- 12 s 29F (1) (b)).
- 13 (5) To remove any doubt, a young person who makes an application
- 14 under this part is not legally incompetent only because of the person’s
- 15 age.

16 **29F Notification about application**

- 17 (1) Subject to subsection (2), the ACAT—
- 18 (a) must take reasonable steps to notify the following people about
- 19 the application:
- 20 (i) each parent or person with parental responsibility for the
- 21 young person;
- 22 (ii) the public advocate; and
- 23 (b) must not notify a parent, or a person with parental responsibility
- 24 for the young person, about the application if doing so could
- 25 reasonably be expected to adversely affect the young person.

- 1 (2) If a young person makes a submission under section 29E (4) (b) about
2 a parent or a person with parental responsibility for the young person
3 being notified about the application—
- 4 (a) the ACAT must, after considering the submission, decide if
5 giving notice under subsection (1) (a) (i) could reasonably be
6 expected to adversely affect the young person; and
- 7 (b) if the ACAT decides that the young person could not reasonably
8 be expected to be adversely affected by the notification, the
9 ACAT must give the young person a written notice stating—
- 10 (i) the reasons for its decision; and
- 11 (ii) that the young person may, in writing, withdraw their
12 application before the end of a stated period of at least
13 14 days after the day the notice is given to the young
14 person; and
- 15 (iii) that, if the application is not withdrawn before the end of
16 the stated period, the ACAT will notify each parent or
17 person with parental responsibility for the young person in
18 accordance with subsection (1).
- 19 (3) For this section, a young person is not *adversely affected* by an
20 application if the only reason they are affected is that a parent, or a
21 person with parental responsibility, disagrees with the application and
22 that disagreement causes the young person discomfort.

23 **29G ACAT hearing an application for leave etc**

- 24 (1) An application for leave under section 29E must not be heard until—
- 25 (a) after the end of the stated period under section 29F (2) (b) (ii);
26 or
- 27 (b) if the young person confirms, in writing, that they want the
28 application to proceed—after the ACAT receives the written
29 confirmation.

- 1 (2) The hearing must be held in private.
- 2 (3) A private hearing is taken to be a hearing to which the *ACT Civil and*
3 *Administrative Tribunal Act 2008*, section 39 (Hearings in private or
4 partly in private) applies.
- 5 *Note* Requirements for keeping private hearings secret are set out in the *ACT*
6 *Civil and Administrative Tribunal Act 2008*, s 40.
- 7 (4) In addition to the young person, the following people may also make
8 submissions at the hearing in relation to the application, but only
9 about the matters mentioned in section 29H (1):
- 10 (a) a parent, or a person with parental responsibility, for the young
11 person;
- 12 (b) the public advocate.
- 13 (5) To remove any doubt, a person who makes a submission under
14 subsection (4) is not a party to the application.

15 **29H ACAT deciding an application for leave**

- 16 (1) The ACAT must, by order, grant an application for leave under
17 section 29E if satisfied on reasonable grounds that—
- 18 (a) the young person has sufficient decision-making ability to
19 understand the meaning and legal implications of the change;
20 and
- 21 (b) the young person believes that the change would better reflect
22 their gender identity.
- 23 (2) In deciding the application for leave, it is not relevant for the ACAT
24 to consider whether—
- 25 (a) the change is in the best interests of the young person; or
26 (b) any other requirement under this Act in relation to the change is
27 satisfied.

1 **29I Copy of order for registrar-general**

- 2 (1) The registrar-general may ask the ACAT, in writing, for a copy of an
3 order made under section 29H in relation to a young person.
- 4 (2) The ACAT must, if asked under subsection (1), give the
5 registrar-general a copy of the order.

6 **15 Issue of certificates**
7 **New section 45 (3) and (4)**

8 *insert*

- 9 (3) On completing a search of the register under section 43 (2), the
10 registrar-general may also issue an integrated birth certificate to an
11 adopted person if the person has requested the certificate and the
12 registrar-general is satisfied that—

13 (a) either—

14 (i) the person's birth was registered in the ACT and an
15 adoption order in relation to the person was made in the
16 ACT or another State or Territory; or

17 (ii) the person was born in a country outside Australia and an
18 adoption order in relation to the person was made in the
19 ACT; and

20 (b) the adopted person is entitled to access information in relation
21 to their adoption under the *Adoption Act 1993*, part 5.

22 (4) In this section:

23 *integrated birth certificate*, in relation to an adopted person, means a
24 certificate about the person's birth that includes information included
25 on the register about the adopted person's parents after the person's—

26 (a) birth; and

27 (b) adoption.

- 1 **16 Dictionary, new definition of *young person***
- 2 *insert*
- 3 *young person* means a person who is not yet 18 years old.

1 **Schedule 1 Adoption Act 1993—**
2 **Consequential amendments**

3 (see s 3)
4

5 **[1.1] Section 62 (3) (c)**

6 *substitute*

7 (c) a copy of, or an extract from, the relevant entry and, if requested,
8 an integrated birth certificate; or

9 **[1.2] New section 62 (4)**

10 *insert*

11 (4) In this section:

12 *integrated birth certificate*—see the *Births, Deaths and Marriages*
13 *Registration Act 1997*, section 45 (4).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 July 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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