

1997

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1997**

AND

**BIRTHS, DEATHS AND MARRIAGES REGISTRATION  
(CONSEQUENTIAL PROVISIONS) BILL 1997**

AND

**WILLS (AMENDMENT) BILL 1997**

EXPLANATORY MEMORANDUM

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# **BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1997 AND BIRTHS, DEATHS AND MARRIAGES REGISTRATION (CONSEQUENTIAL PROVISIONS) BILL 1997**

## **BACKGROUND**

In 1995 the Standing Committee of Attorneys-General (SCAG) agreed to the introduction of a uniform scheme of legislation covering the registration of births, deaths and marriages. A model Births, Deaths and Marriages Registration Bill was drafted by the South Australian Parliamentary Counsel and was accepted by the Attorneys-General as the basis of uniform legislation in all jurisdictions.

The model Bill was prepared over a number of years in consultation with all Australian Registrars. It retains the traditional framework of compulsory civil registration but adopts a more flexible approach to changing social needs (for example, multicultural needs) and codifies the provisions for access to registry records. The model is also designed to facilitate the introduction of common services across all States and Territories, as well as the application of new technology.

A number of jurisdictions have amended their Births, Deaths and Marriages Registration Acts to include provisions for persons who have undergone gender reassignment surgery to register the change of sex on the birth record and be issued with a new birth certificate showing the sex of choice. The Bill includes similar provisions.

## **THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1997 - SUMMARY**

The Bill repeals and replaces the *Registration of Births, Deaths and Marriages Act 1963* (the Former Act). While it provides for essentially the same system of registration of births, deaths and marriages, out-dated provisions and provisions which were not really related to the registration system have been removed. Significant changes are noted below.

The concept of a "prohibited name" is introduced [see clause 4]. The aim is to have a uniform definition across all States and Territories to prevent the registration of names which are unusable or unacceptable to the community. It will also mean that a name accepted for registration in one State or Territory will not be rejected in another participating State or Territory.

between all States and Territories It focuses on the gestational age of the child rather than the body weight

There is provision for reciprocal agreements with other States and Territories so that there can be agency arrangements between jurisdictions for the exercise of powers and functions under corresponding registration legislation [see clause 66]

A responsibility is placed on the chief executive officer of a hospital where a child is born or, where the child is not born in or brought to a hospital, the doctor or midwife attending the mother, to notify the Registrar-General of the details of the birth This reflects the provisions in the Former Act but the time for notification is extended to 7 days from 2 days If the child is still born the time given for notification is 48 hours [see clause 5]

Parents are given joint responsibility for registering the birth of a child [see clauses 4, and 8] The time for lodging a birth registration statement is extended from 28 days to 60 days [see clause 10]

If the child is a foundling the responsibility for registering the birth is placed on the person having custody of the child [see clause 8] rather than on the member of the Police Force to whom the finding of the child was reported as provided in the Former Act.

Discriminatory provisions about acknowledgment of paternity are replaced by provisions requiring both parents to agree to parentage details being added to a child's birth record [see clauses 14 and 16] There is provision for recourse to the Supreme Court to resolve disputes [see clauses 15 and 16]

Restrictions contained in the Former Act on the names to be given to a child are not reproduced in the Bill Only if the name included in the birth registration statement is a prohibited name will it not be registered and the Registrar-General will instead assign a name to the child [see clause 12]

Provisions in the Former Act specifically providing for the addition of baptismal names to the birth record are not reproduced in the Bill Instead there are provisions for registration of a change of name for a child or an adult [see clauses 17, 18, 19, 20, 21 and 22] As the Bill provides a complete scheme for registering a change of name of children, the Consequential Provisions Bill amends the *Registration of Deeds Act 1957* to prevent registration of a deed poll purporting to be signed on behalf of a child by a parent This will prevent the current practice of one parent changing a child's name without consultation and obtaining the appearance of official sanction through the registration process

A major change to current law is the provision for transsexual persons to register a change of sex after reassignment surgery In support of an application to

register a change of sex a person will have to provide a statutory declaration by 2 doctors that the surgery has been performed. Once the change is registered a new birth certificate will be issued showing the new sex and with no indication that the record has been altered. The new certificate will be conclusive evidence that the person's sex is as shown [see clauses 23, 24, 25, 26, 27, 28 and 29].

Notification of deaths is simplified by the Bill. The Registrar-General is to be notified either by a doctor who is able to certify the cause of death or by the Coroner under the provisions of the *Coroners Act* [see clause 35]. There will no longer be a requirement for the occupier of premises in which a person has died to notify the Registrar-General of the death.

The Bill gives the Registrar-General powers of inquiry to determine the details of a birth, death, marriage, change of name or change of sex [see clause 41]. The Registrar-General is also given broader powers to correct the information on the Register than in the Former Act [see clause 40].

Specific provision is made in the Bill for protection of the privacy of persons about whom there are entries in the Register [see clause 44]. There is also to be an access policy to provide guidelines for determining whether a person is entitled to information from the Register [see clause 46]. The access policy is to be uniform across all States and Territories to avoid confusion for persons needing access to Registers in more than one State or Territory and to facilitate interstate agency agreements. Copies of the access policy will be available to the public at the office of the Registrar-General.

The Registrar-General is given power to collect information related to births, deaths and marriages other than the information to be entered in the Register [see clause 47]. This is to allow for the collection of statistical information.

There is also provision to allow the Registrar-General to provide additional services [see clause 48]. These might include the provision of statistical information or specialist services for genealogical research. It will also allow the sale of decorative birth certificates which have proved popular in a number of States. The Registrar-General will be able to set appropriate fees for these special services.

There will no longer be provision for the Registrar-General to note the dissolution or annulment of a marriage on the record of marriage in the Register.

Provisions for re-registration of legitimated children will not be reproduced, neither will provisions for keeping a separate Register of Parentage Information. These are effectively replaced by the provisions for the addition of parentage information to the Register after a birth has been registered [see clause 16].

The Bill contains new provisions prohibiting the making of false or misleading applications and falsification of certificates [see clauses 49 and 51] There are also new provisions to allow the Registrar-General to confiscate a document issued in error or as the result of fraud and to demand surrender of such a document [see clause 52]

Certain decisions will be subject to review by the Administrative Appeals Tribunal [see clause 53]

There is a new power for the Registrar-General to remit fees if satisfied that it is appropriate to do so [see clause 68] An example of an appropriate situation is where a fee is paid but the service required is not able to be provided

### **THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION (CONSEQUENTIAL PROVISIONS) BILL 1997 - SUMMARY**

The *Registration of Deeds Act 1957* is amended to prevent registration of deeds poll purporting to be signed on behalf of children by a parent This will prevent the current practice of one parent changing a child's name without consultation and obtaining the appearance of official sanction through the registration process

Other legislation is amended to change references from the Former Act to those appropriate to the Births, Deaths and Marriages Registration Bill 1997

### **WILLS (AMENDMENT) BILL 1997 - SUMMARY**

It is possible that a transsexual person could be disadvantaged where a will uses terms which relate to the sex of a beneficiary In order to avoid such a result this Bill provides that if a person has changed his or her sex between the making of a will and the death of the testator the transsexual person is to be treated as if his or her sex had not changed

### **FINANCIAL CONSIDERATIONS**

The financial impact of the proposed changes is expected to be minimal The provisions in the Bill which allow the Registrar-General's Office to produce decorative birth certificates may result in the generation of additional revenue

### **DETAILS OF THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1997**

#### **PART I - PRELIMINARY**

Clause 1 provides for the short title of the Act to be the *Births, Deaths and Marriages Registration Act 1997*

Clause 2 provides for sections 1 and 2 of the Bill to commence on the day it is notified in the *Gazette* and for the remainder of the Bill to commence on a day fixed by the Minister by notice in the *Gazette*.

Clause 3 repeals the Acts set out in the Schedule. They are the *Registration of Births, Deaths and Marriages Act 1963* (the Former Act) and Acts which amend that Act

Clause 4 sets out the meaning of certain words used in the Bill. Some of the words were used in the Former Act but others are new.

An important addition is the definition of “prohibited name”. That term is used to limit the names which may be refused registration. The restriction in the Former Act on surnames which could be registered on a child’s birth record is removed in favour of a general prohibition on names which are obscene or offensive, cannot practically be established by usage, which resemble an official title or rank or are undesirable for some other reason. The new restriction applies to forenames and surnames.

Instead of the various registers kept under the Former Act there is to be one Register for all registrable events. The Register includes all the registers kept under the Former Act so as to ensure continuity of records.

The term “registrable event” is defined to mean a birth, a death, a marriage, a change of name or a change of sex.

The clause also provides that reference to the parents of a child is to mean both parents jointly.

## **PART II - REGISTRATION OF BIRTHS**

### ***Division 1 - Notification of births***

Clause 5 provides for a birth in the Territory to be notified to the Registrar. Notification is to be made by the “responsible person”. The clause defines “responsible person” to mean the chief executive officer of the hospital where the child was born or taken within 24 hours after birth or, alternatively, the doctor or midwife responsible for the professional care of the mother during the birth. There is a penalty for failure to provide the notification

The notice is to be given to the Registrar within 7 days after the birth if the child is born alive and within 48 hours after the birth if the child is still born.

A still born child is a child of at least 20 weeks gestation or a body mass of at least 400 grams at birth who shows no signs of life immediately after birth.

If a child is still born the doctor responsible for the professional care of the mother during the birth or the doctor who examined the body of the child after birth is required to give the Registrar a certificate specifying the cause of death. The certificate is required within 48 hours after the birth and there is a penalty for failure to provide it. It is a defence to prosecution for failure to give a certificate that the doctor believed on reasonable grounds that another doctor had given the necessary certificate.

## ***Division 2 - Registration of births***

Clause 6 defines "birth registration statement". It will be in a form approved by the Registrar-General and will contain the information necessary to register the birth of a child.

Clause 7 sets out the circumstances in which a birth can or may be registered under the Bill. If a child is born in the ACT the birth must be registered. If a child is born outside the Commonwealth of Australia and is going to be a resident of the ACT the birth may be registered. The birth of a child born on an aircraft during a flight to the ACT may be registered.

If a child is born outside the Commonwealth and the birth is registered in another State or Territory it cannot be registered under the Bill.

Clause 8 sets out who is responsible for having a birth registered. The primary responsibility belongs to the parents of the child jointly.

If the child is a foundling the responsibility for registering the birth lies with the person who has custody of the child.

Clause 9 provides that a person responsible for the registration of a birth can have the registration done by signing a birth registration statement and lodging it with the Registrar. A birth registration statement signed by only one parent can be accepted by the Registrar if he or she is satisfied that it is not practicable to get both signatures. The statement may also be accepted even though it does not contain all the required information provided that the Registrar-General is satisfied that it is not practicable to obtain the missing information.

The Registrar is able to accept a birth registration statement from a person who is not responsible for having a birth registered if he or she is satisfied that the person knows the information provided in the statement and that the parents of the child are unable or unlikely to lodge a birth registration statement themselves.

Clause 10 provides that a person responsible for having a birth registered must do so within 60 days after the birth. Failure without reasonable cause to lodge a birth registration statement within that time makes a person liable to a penalty.

However the Registrar must accept a birth registration statement even if it is lodged after the 60 day period is ended

Clause 11 provides that the Registrar registers a birth by making an entry in the Register that includes the name of the child and the particulars prescribed by regulation. However, the provision is subject to clause 14 which limits the circumstances in which parentage information can be included in a child's birth record. Clause 17 allows the Registrar to register a birth even though all the prescribed particulars are not available. Where all the particulars are not available the entry will contain those particulars which are available

Clause 12 provides that the Registrar-General must give a name to a child if the name included in the birth registration statement is a prohibited name.

If the parents of a child satisfy the Registrar-General that they cannot agree about the name of the child the Registrar-General is able to give the child a name.

Clause 13 also deals with disputes between parents about the name to be given to a child. It provides that either parent may apply to the Magistrates Court for resolution of the dispute. The Magistrates Court is able to resolve the dispute as it considers appropriate and can order the Registrar-General to register the child's name as set out in the order.

Clause 14 places restrictions on the inclusion of parentage information in a child's record of birth. The Registrar can include parentage information if both parents of the child apply for inclusion of the information. If only one parent applies the information can be included if the Registrar is satisfied that the other parent is dead or cannot be found or cannot join in the application for some other reason or if the Registrar is satisfied that the other parent does not dispute the correctness of the information.

Parentage information can also be included if the Registrar is entitled under an ACT Act or a law of a State, another Territory or the Commonwealth to make a presumption as to the identity of a parent of the child. In the ACT these parentage presumptions are contained in the *Birth (Equality of Status) Act 1988*

If the inclusion of the information is authorised by the regulations the Registrar is able to include it. Information about the parent of a child which is available to the Registrar from the notification of birth provided under clause 5 may also be included.

Clause 15 provides that the Supreme Court is able to order the registration of a birth or the inclusion in the Register of information about a birth or a child's parent. The order may be made on the application of an interested person or on the Court's own initiative.



### ***Division 3 - Alteration of details of birth registration***

Clause 16 provides for the inclusion of information about a child's parent in the Register after the registration of the child's birth. However, information about a parent's change of sex cannot be included. The clause is designed to prevent information being added at the request of one parent only.

Information can be included at the joint request of both parents. If only one parent applies, the information can be added if the Registrar-General is satisfied that the other parent is dead or cannot be found or cannot join the application for some other reason. It can also be added if the Registrar-General is satisfied that the other parent does not dispute the correctness of the information.

Parentage information can also be included if the Supreme Court orders its inclusion or if any court makes a finding that a particular person is a parent of the child.

The Registrar-General may include parentage information if he or she is entitled to make a presumption under a law of the ACT or a State or another Territory or the Commonwealth about the identity of a parent of the child's. In the ACT such parentage presumptions are set out in the *Birth (Equality of Status) Act 1988*.

There is provision for regulations to be made authorising inclusion of parentage information under certain circumstances.

Sub-clause 16(2) sets out the requirements of an application for inclusion of information about a child's parent in the Register. The application must be in writing and include information required by the Registrar-General. The Registrar-General may require verification of the information contained in the application.

Sub-clause 16(3) provides that an interested person may apply to the Supreme Court for an order that the Register be amended by the taking out or adding specified information about a child's parents or by adding information about the marriage of a child's parents.

### **PART III - CHANGE OF NAME**

Clause 17 provides that a person's name can be changed by registration under the Bill. At common law a person can change his or her name by stating the change of name or by using the new name. Clause 22 preserves that ability to change name by repute or usage.

Clause 18 provides that an adult who lives in the ACT and whose birth is registered in the ACT can apply to the Registrar-General for registration of his or her change of name.

Clause 19 provides that the parents of a child who lives in the ACT and whose birth is registered in the ACT can apply to the Registrar-General for registration of a change of the child's name

One parent may apply if the other parent is dead or if he or she is the only parent named in the record of the child's birth. An application may be made by one parent if the Supreme Court has approved the change of name under sub-clause (3) which requires the Court to be satisfied that the change is in the child's best interests. Under circumstances where the child's parents are dead or cannot be found or are unable to exercise parental responsibilities the guardian of the child may apply to register a change of name for the child

Clause 20 contains a general requirement for the Registrar-General to register a change of name. However, before registering the change he or she must be satisfied about the name and identity of the person whose name is to be changed and that the change is not for fraudulent or other improper purposes.

Where the application is for the name of a child of 14 or older to be changed the Registrar-General must be satisfied that either the child agrees to the change of name or that the child is not able to understand the meaning and implications of the change. At 14 years old most children will be able to understand the implications of a change of name and will have a view as to whether or not the change should be made

Sub-clause 20(4) requires the Registrar-General to register a change of name of a person whose birth is registered in the ACT if satisfied that the name has been changed under a law of the Commonwealth or by an order of any court in Australia. As part of the uniform scheme of legislation, the Registrar-General is required to register a change of name if the person has changed his or her name under any corresponding law. A corresponding law is a law of a State or another Territory that provides for registration of births, deaths and marriages.

The Registrar-General is not to register a change of name if the change would make it a prohibited name. However, if the name has been approved by the Supreme Court under sub-clause 19(3) or has been changed by order of another Australian court or under a law of the Commonwealth or under a corresponding law the Registrar-General does not have to consider whether or not it is a prohibited name.

If a person changes his or her name clause 21 provides for the new name to be noted in the person's birth record in the Register. The name in the entry relating to the person's birth is changed to the new name and any birth certificate issued for the person after that is to show the person's name as changed. If the person's birth is registered in another Territory or in a State the Registrar-General is to notify the registering authority in that State or Territory of the change of name. The uniform legislative scheme will facilitate this exchange of

information and allow a person living in the ACT to have his or her birth record altered even though it is kept in another jurisdiction

Clause 22 preserves the ability of any person to change his or her name by repute or usage.

#### PART IV - CHANGE OF SEX

Clause 23 is an interpretation provision which gives meanings to certain terms for the purposes of Part IV "Doctor" is defined to include medical practitioners registered in a State or another Territory. "Sexual reassignment surgery" is defined include surgery both to change a person's sex and to eliminate any ambiguity about a person's sex A "transsexual person" is defined as a person whose birth record has been altered under clause 26 to show a different sex

Clause 24 is a new provision to allow a person to apply to have the sex shown on his or her birth record altered. As a result a person who has had sexual reassignment surgery is able to obtain a birth certificate showing the chosen sex. The provisions for noting a change of name on a record of birth will allow the person to have on the birth record a name appropriate to the sex chosen

Clause 24 allows a person to apply for an alteration of the sex shown in the registration of the person's birth if that person is 18 or older, is not married and has undergone sexual reassignment surgery. The person's birth must be registered in the ACT

The parents of a child may jointly make an application for alteration of the sex shown in the child's record of birth. One parent may make the application if the other parent is dead or if the parent is the only one shown in the child's birth record. A guardian of a child may make the application.

Clause 25 requires an application for change of sex to be accompanied by statutory declarations by 2 doctors verifying that the person has had sexual reassignment surgery. The wider definition of "doctor" allows the declarations to be provided by medical practitioners from interstate

Clause 26 requires the Registrar-General to make a decision on an application for change of sex and to either register the change or refuse to register it

Clause 27 provides that once a person's sex has been changed in the Register any birth certificates issued for that person are to show the sex as it is after the change with no indication on it that there has been a change made. However, the original birth certificate, showing the person's sex as it was before the change can be issued to the transsexual person or to a child of that person

If a person has had a change of sex registered, Clause 28 prohibits the use for the purpose of deception a birth certificate showing that person's sex before the change.

Clause 29 makes a birth certificate issued for a transsexual person conclusive evidence, for the purpose of ACT law, that the person's sex is the one shown as the result of registration of a change of sex. As a result, after a person has registered a change of sex he or she will be treated, under ACT law, as a person of the sex chosen.

The clause also allows for recognition of certificates issued by a State or another Territory to transsexual persons. It provides in sub-clause (2) that a certificate from a State or another Territory (called an "interstate recognition certificate") is evidence that the person to whom it refers is the sex shown in the certificate.

The provision for recognition of interstate certificates is intended to fit with provisions in other jurisdictions which allow their transsexual birth certificates to be used only in States or Territories which specifically recognise them.

## **PART V - REGISTRATION OF MARRIAGES**

Clause 30 requires a marriage solemnised in the ACT to be registered under the Bill.

The Commonwealth *Marriage Act 1961* sets out the requirements for solemnising marriages. It also provides for information about marriages to be given to the Registrar-General by marriage celebrants authorised under the Act.

Clause 31 provides that a person may have a marriage registered by lodging a certificate of marriage issued under the Commonwealth *Marriage Act 1961* with the Registrar-General or giving other evidence if the marriage occurred before that Act commenced.

Clause 32 sets out the way in which the Registrar-General is to register a marriage.

## **PART VI - REGISTRATION OF DEATHS**

### ***Division 1 - Cases where registration of death is required or authorised***

Clause 33 sets out the general rules as to which deaths are to be registered under the Bill. When a person dies in the ACT the death is to be registered under the Bill. If a person dies in an aircraft on a flight to the ACT the death may be registered under the Bill.

If a person who normally lives in the ACT dies outside the Commonwealth of Australia the death may be registered under the Bill. The death of a person who dies outside the Commonwealth of Australia leaving property in the ACT can also be registered under the Bill. However, the Registrar-General does not have to register a death under either circumstance if it has already been registered under a corresponding law in a State or another Territory.

The death of a still born child is not to be registered as a death. A still born child is a child of at least 20 weeks gestation or a body mass of at least 400 grams at birth who shows no signs of life immediately after birth. When a child is still born no birth record is created although the still birth is recorded. It is therefore appropriate that there should be no record of a person having died.

Clause 34 sets out the circumstances in which a death is not to be registered. The Registrar-General is not to register a death unless he or she has been given notification of the death by a doctor under clause 35 or notification under the *Coroners Act* that a death has occurred and is to be investigated by a Coroner. The Registrar-General may register a death if he or she has received notification equivalent to either of those from a State, another Territory or the Commonwealth.

However, the Registrar-General may still register a death without such notification if he or she is satisfied that an Australian court has found that the person died in the ACT or that under all the circumstances it is proper to register the death.

### ***Division 2 - Notification and registration of deaths***

Clause 35 provides that a doctor who is responsible for a person's medical care immediately before that person dies or who examines a person's body within 48 hours after that person's death is to notify the Registrar-General of the death and of the cause of death.

There is a penalty for failure to notify the Registrar-General. However it is a defence to prosecution for the doctor to satisfy the court that he or she believes on reasonable grounds that another doctor has given the notice or that the death has been reported to a Coroner.

The clause includes transitional provisions to cover deaths occurring before the commencement of the Bill but in relation to which there has been no certificate under the equivalent provision in the Former Act.

Clause 36 provides that the Registrar-General can issue a death certificate about a death which is still the subject of inquiry by a Coroner. Such a death certificate is to have some note to indicate that the inquest has not been completed.

Clause 37 requires a person who disposes of human remains to notify the Registrar-General within 7 days after the disposal. The person will usually be a funeral director. For the purposes of this clause "human remains" includes the remains of a still born child. This ensures proper notification of disposal of a still born child even though no death is recorded.

As well as notifying of the disposal the funeral director is to give the Registrar-General as much of the following information as he or she knows or can reasonably find out:

- the name of the deceased
- the address of the last place the deceased lived
- if the death was reported to the Coroner
- the place and manner of disposal of the remains
- other information required by the regulations.

There is a penalty for failure to provide the notification.

If human remains which have not been cremated are taken out of the ACT the person who arranges for the removal must advise the Registrar-General in writing of where and how the remains were disposed of as well as any other particulars required by regulation. The notification is to be given within 28 days after disposal of the remains. There is a penalty for failure to comply with the requirement.

If human remains have not been disposed of within 30 days after death the person who has custody of them must notify the Registrar-General and give a statement containing:

- the name of the deceased
- the last residential address of the deceased
- if the death was reported to the Coroner
- any other information required by the regulations

Clause 38 sets out the way in which the Registrar-General is to register a death and allows a registration to be made on the basis of information available in those cases where not all the particulars required by the regulations are available.

## **PART VII - THE REGISTER AND OTHER RECORDS**

### ***Division 1 - Keeping the Register***

Clause 39 requires the Registrar-General to keep a Register of registrable events. In clause 4 "registrable event" is defined as a birth, death, marriage, change of name or change of sex. The Register is to contain the information required by the legislation and may contain other details as well. It may be kept wholly or partly as a computer record or in some other form which the Registrar-

General considers appropriate. The Registrar-General is to ensure that indexes are kept to make the information in the Register reasonably accessible.

Clause 39 also provides that the registers kept under the Former Act are part of the Register kept under the Bill. This is to ensure continuity of the records.

Clause 40 gives the Registrar-General power to correct the Register to reflect the best information about the facts relating to a registrable event. The information may be obtained from an inquiry by the Registrar-General under clause 41 of the Bill. The Register may also be corrected to make an entry consistent with the findings of an Australian court.

### ***Division 2 - Inquiries***

Clause 41 gives the Registrar-General power to make a inquiries about a registrable event to determine

- whether the event happened
- the particulars of the event
- whether the entry in the Register about the event is correct

The Registrar-General may give a notice to a person to provide information relevant to an inquiry under the clause. The person must be one whom the Registrar-General thinks will be able to provide the information. It is an offence to fail without reasonable cause to comply with such a notice.

### ***Division 3 - Access to, and certification of, Register entries***

Clause 42 provides for access to the Register. A person may obtain access to the Register on payment of the determined fee provided that the Registrar-General is satisfied that the person has an adequate reason for wanting the access and that the access policy required under clause 46 would be satisfied in respect of the person seeking access. The access granted will be subject to any conditions set out in the access policy and any other conditions imposed by the Registrar-General to protect the privacy of any person referred to in the Register.

In deciding whether a person has an adequate reason for wanting access to the Register the Registrar-General is to consider

- the nature of the person's interest
- the sensitivity of the information
- the use to be made of the information
- any other relevant factor

Clause 43 provides for a person to have a search made for an entry about a particular registrable event. The Registrar-General is to be satisfied that the person has an adequate reason for seeking the information and the access

policy required under clause 46 is satisfied before searching the Register for the relevant entry

In deciding whether the person has an adequate reason for wanting the information the Registrar-General is to consider

- the relationship between the person referred to in the entry and the person seeking the information
- the age of the entry
- the contents of the entry
- any other relevant factor

Clause 44 requires the Registrar-General when providing information from the Register to protect the person to whom the entry relates from unreasonable intrusion into his or her privacy

Clause 45 provides that after doing a search of the Register the Registrar-General is to issue a certificate either containing particulars of the entry or certifying that no entry about the event was found in the Register

The particulars to be contained in the certificate may be limited by the requirement in clause 44 to protect privacy

The clause also contains a requirement that an entry in the Register which uses a term such as “illegitimate” which indicates that a child was born outside marriage that entry is to be taken not to include that term. The effect of this will be to prevent certificates being issued with the word “illegitimate” or some other similar term included in them. The requirement gives practical effect to the policy that there should be no distinction between children whose parents are married and those whose parents are not married.

Clause 46 requires the Registrar-General to have a written statement of the policies which guide decisions about giving or denying access to information on the Register. This provision is an important aspect of the scheme of uniform legislation as it allows for each State and Territory to adopt a uniform policy for access to information on the Registers. Copies of the access policy are to be available on request from the Registrar-General

#### ***Division 4 - Additional information and services***

Clause 47 allows the Registrar-General to keep records about registrable events which contain information other than that required by the Bill for the purpose of registration. This may be done at the request of a person interested in the registrable event or on the initiative of the Registrar-General. Any such records are to be kept separately from the Register



Clause 48 allows the Registrar-General to enter into agreements for the provision of additional services connected with function under the Bill. These could include the provision of decorative certificates, specialist services for genealogists and the provision of additional information collected under clause 47. A fee for such a service can be agreed between the person wanting the service and the Registrar-General and does not have to relate to the cost of providing the service or any fee determined under the Bill.

The clause goes on to provide that information collected under the provisions clause 47 attracts the protection of the provisions of sub-clause 42(3) and clause 44 as if that information was part of the Register. That means that before giving a person access to that information the Registrar-General is to consider

- the nature of that person's interest
- the sensitivity of the information
- the use to be made of the information
- any other relevant factor

In addition the Registrar-General must as far as it is practical protect the privacy of a person to whom the information relates from unreasonable intrusion into his or her privacy.

### ***Division 5 - Offences***

Clause 49 makes it an offence to make a representation that is false or misleading, knowing it to be false or misleading in a document or application under the Bill.

Clause 50 prohibits access to the Register or records kept under clause 47 or to information in the Register or those records without the authority of the Registrar-General or some other authority. Similarly, it prohibits making, altering or deleting an entry in the Register without proper authority and interfering with the Register or the records in any other way without proper authority.

Clause 51 deals with falsification of certificates. It is an offence to forge the Registrar-General's signature or seal on a document which appears to have been made under the Bill or the Former Act. Forging or falsifying a certificate or other document under the Bill is also an offence.

The clause gives the Registrar-General power to confiscate a document which he or she believes has on it a forgery of his or her signature or seal, or is a forged or falsified instrument, or is a certificate issued under the Bill or the Former Act relating to an entry in the Register which has since been cancelled or corrected.

If the Registrar-General believes on reasonable grounds that a person has one of those documents he or she can require the person to hand over the document.

This can be done either in the course of an interview or by sending a notice by post. There is a penalty for failing, without reasonable excuse, to hand over the document.

Clause 52 contains similar provisions for the confiscation of certificates or other documents issued under the Bill or the Former Act in error or as the result of fraud.

## **PART VIII - ADMINISTRATIVE REVIEW**

Clause 53 provides for review of certain decisions of the Registrar-General by the Administrative Appeals Tribunal (AAT). Those decisions are

- to assign a name to a child because the name given on the birth registration statement is a prohibited name
- to refuse to register a change of name because he or she is not satisfied of the identity and age of the person whose name is to be changed
- to refuse to register a change of name because he or she is not satisfied that the change is not sought for an improper purpose
- to refuse to register a change of name of a child of 14 or older because he or she was not satisfied that the child consented to the change or alternatively was unable to understand the meaning and implications of the change
- to refuse to register a change of name because as the result of the change it would become a prohibited name
- to refuse to register a change of sex
- to refuse to refund a fee or a part of a fee.

## **PART IX - TRANSITIONAL PROVISIONS**

### ***Division 1 - Preliminary***

Clause 54 is an interpretation provision.

Clause 55 applies the Bill to registrable events which occurred before the repeal of the Former Act and which were not registered under the Former Act. They are to be dealt with as if they had occurred after the commencement of the Bill.

### ***Division 2 - Births***

Clause 56 provides that notifications of birth prepared under the Former Act will be treated as notifications under the Bill if they relate to unregistered births.

Clause 57 provides for a notice of registrable particulars prepared under the Former Act in respect of an unregistered birth is to be treated as a birth registration statement under the Bill.

Clause 58 provides for a medical certificate prepared under the Former Act about an unregistered still birth to be treated as if it was a certificate under the Bill

### ***Division 3 - Changes of name***

Clause 59 provides for applications relating to change of name lodged under the Former Act but not dealt with by the Registrar-General before the commencement of the Bill to be treated as if they were applications under the Bill

Clause 60 requires the Registrar-General to give effect to an order of the Magistrates Court made in relation to an application under section 20A of the Former Act Those applications are about children's surnames

### ***Division 4 - Deaths***

Clause 61 provides for a medical certificate about the cause of a death prepared by a medical practitioner under the Former Act to be treated as notification of death under the Bill

Clause 62 provides that certain sections of the Former Act which deal with duties of a coroner will not apply after commencement of the Bill to deaths which occurred before the commencement but which have not been registered

Clause 63 applies the provisions of clause 37 to

- disposal of the remains of a still born child before the commencement of the Bill if notice of the disposal had not been given under the Former Act
- burial of a body before the commencement of the Bill if notice of burial had not been given under the Former Act
- removal of a body from the ACT before the commencement of the Bill if notice of the removal had not been given under the Former Act

Clause 37 requires a funeral director or other person who arranges for disposal of human remains to give to the Registrar-General as much of the following information as he or she knows or can reasonably find out.

- the name of the deceased
- the address of the last place the deceased lived
- if the death was reported to the Coroner
- the place and manner of disposal of the remains
- other information required by the regulations

### ***Division 5 - Offences***

Clause 64 prevents a person from being liable for offences under both the Former Act and the Bill where the offences relate to the same act or omission

## **PART X - MISCELLANEOUS**

Clause 65 provides that a certificate that purports to contain information from the Register (including the Registers kept under the Former Act) and which is signed and sealed by the Registrar is evidence of the matters stated in it. In place of the signature and seal of the Registrar there may be a facsimile of the signature reproduce in a way authorised by the regulations

Clause 66 provides for the Minister to enter into an arrangement with a Minister responsible for the administration of a law about registration of births, deaths and Marriages of a State or another Territory. The arrangement can provide for the Registrar to exercise powers under the law of the State or other Territory or for the Registrar in another jurisdiction to exercise the powers of the Registrar. In this way the Registrars in the various States and Territories can act as agents for each other, allowing members of the public to have easy access to such of their records as are kept in a State or Territory other than the one in which they live

The arrangement may provide for the establishment of a data base for recording information for the benefit of the parties to the arrangement and for access to that data base. It may also provide for payment for services provided under the arrangement.

Clause 67 gives the Minister power to determine fees or the manner in which fees are to be calculated. If fees are agreed by the Registrar-General for special services provided under clause 48 fees calculated in accordance with the Minister's determination are not also payable

Clause 68 gives the Registrar-General power to refund a fee or part of a fee under appropriate circumstances

Clause 69 gives regulations making power to the Executive

The Schedule lists the Acts repealed by the Bill. They are the *Registration of Births, Deaths and Marriages Act 1963* and all its amending Acts.

## DETAILS OF THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION (CONSEQUENTIAL PROVISIONS) BILL 1997

Clause 1 provides for the short title of the Bill

Clause 2 provides for the commencement of the Bill. The substantive provisions are to commence on the day on which the Births, Deaths and Marriages Registration Bill 1997 commences.

Clause 3 provides that the Act set out in the Schedule are amended as indicated in the Schedule.

The Schedule amends a number of Acts to ensure that references to the Former Act are replaced by references to the "Births, Deaths and Marriages Registration Act 1997" and that references to various registers kept under the Former Act are replaced by references to the Register kept under the Births, Deaths and Marriages Registration Bill 1997.

The only substantive amendment is to the *Registration of Deeds Act 1957*. That Act is amended to prevent the registration of documents which are intended to change the names of persons under the age of 18. Without that amendment it is possible for a parent to execute a deed poll on behalf of a child to change the name of the child. The deed poll can then be registered under the Act and an appearance of official acceptance given to the change of name.

The Births, Deaths and Marriages Registration Bill 1997 provides a complete scheme for registration of name changes for both adults and children. Where children are concerned there is a requirement for agreement between the parents with provision for application to the Supreme Court if agreement cannot be reached. There is also a requirement for the consent of older children. This scheme is part of the uniform legislation.

The amendment to the *Registration of Deeds Act 1957* ensures that name changes for children are made in accordance with the intention of the Births, Deaths and Marriages Registration Bill 1997.

## **DETAILS OF THE WILLS (AMENDMENT) BILL 1997**

Clause 1 provides for the short title of the Bill

Clause 2 provides for the commencement of the Bill

Clause 3 is an interpretation provision.

Clause 4 inserts a new section 28A into the *Wills Act 1968*. Section 28A deals with the situation where a will refers to the sex of a person or class of persons and in the period between the making of the will and the death of the testator a person included in that reference successfully undergoes sexual reassignment surgery. The section provides that the transsexual person will be treated as if he or she was still of the sex he or she was at the time when the will was made. The provision does not override any contrary intention expressed by the testator.