

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

JUSTICE LEGISLATION AMENDMENT BILL 2015

EXPLANATORY STATEMENT

**Presented by
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Introduction

This explanatory statement relates to the *Justice Legislation Amendment Bill 2015* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Outline

Purpose of the Bill

The Bill will amend relevant legislation to provide for the recognition of interstate parentage orders; provide flexibility in processes for change of name certificates; remove gender specific terms in the *Births, Deaths and Marriages Registration Act 1997* (BDMR) and *Parentage Act 2004*; provide for recognised details certificates and provide for proof of identity cards to be issued.

The Bill aims to enhance the ability of Canberra residents to have their identity represented in a way that is most meaningful for them while maintaining the integrity of the Births, Deaths and Marriages Register and government documents that relate to identity.

Recognition of interstate parentage orders

The Bill will allow a parentage order from interstate to be recognised in the ACT. Under current legislation, if a child is born in the ACT to a surrogate, but the 'intended parents' have an interstate parentage order because they reside in another jurisdiction, say Queanbeyan, the child's intended NSW parents cannot be recorded as the child's parents on their ACT birth certificate. The Bill rectifies this situation by allowing parentage orders from other Australian jurisdictions to be recognised.

Flexibility in documenting name changes

The Bill amends the BDMR to allow a person's name to be changed without amending their birth name on their birth certificate. Name changes can still be documented in this way, however the Bill provides the additional option of having the new name noted in the register and shown on a birth certificate (for example on the back of the certificate), rather than replacing the birth name.

Removal of gender specific terms

The Bill allows for recognition of gender diverse parents while also acknowledging that the terms 'mother' and 'father' are important to many people and people wish to have them used on official documentation. The Bill replaces the term 'mother' with 'birth parent' and the term 'father' with 'other parent'. The Bill makes it clear people can choose to use 'mother' and 'father' on official documentation such as birth certificates if they choose.

Recognised details certificates

The Bill allows the registrar to issue recognised details certificates. The certificates are useful to people who have changed or altered their gender identity but do not have an ACT birth certificate. These documents can assist people to have their gender recognised within the ACT and in their birth jurisdictions. The criteria for registering a change of gender identity in the ACT on a birth certificate are replicated.

Proof of identity cards

The Bill makes a minor amendment to the *Liquor Act 2010* which will allow the Government to issue Proof of Identity cards rather than Proof of Age cards. Not all Canberra residents, particularly older Canberra residents, find a Proof of Age card appropriate for their needs and this amendment will address that concern.

In summary, the Bill makes amendments to:

- a) allow for recognition of interstate parentage orders;
- b) provide flexibility in documenting name changes;
- c) remove of gender specific terms in the BDMR and *Parentage Act 2004* which recognises the gender diversity of parents;
- d) provide for recognised details certificate; and
- e) allow for proof of identity cards.

Human Rights Considerations

The Bill promotes s8 of the *Human Rights Act 2004* – the right to recognition and equality before the law, by recognising the right of people to have their identity represented in a way that is appropriate and meaningful to them. The Bill promotes s11 of the HRA, the protection of family and children, by recognising gender diversity in parents and families.

Justice Legislation Amendment Bill 2015

Detail

Part 1 - Preliminary

Clause 1 (Name of Act) names the Act the *Justice Legislation Amendment Act 2015*.

Clause 2 (Commencement) provides that the Act commences on a day fixed by the Minister by written notice.

Clause 3 (Legislation amended) specifies that the Act amends the following Acts and Regulation:

- *Births, Deaths and Marriages Registration Act 1997*
- *Births, Deaths and Marriages Registration Regulation 1998*
- *Liquor Act 2010*
- *Parentage Act 2004*.

Part 2 –Births, Deaths and Marriages Registration Act 1997

Clause 4 (Notification of births, Section 5) omits “mother” and substitutes “birth parent”.

Clause 5 (New section 5(8)) inserts a definition of birth parent.

Clause 6 (Registration of a parentage order, Section 16A(1)) inserts “or a corresponding parentage law” so that the registrar must act on an interstate parentage order in the same way as the registrar is required to act on an ACT parentage order.

Clause 7 (Change of name entries in register, Section 21 (2)(a)(i)) amends the provision so a change of name can be noted or altered in the register.

Clause 8 (Section 21 (3)) provides that, if a change of name is noted or altered in the register, that name change must be documented on a new birth certificate. An example is given to show the new name can be noted on the back.

Clause 9 (New division 4.1 heading) inserts “Division 4.1 People with birth registered in the ACT”.

Clause 10 (Application to alter register to record change of sex, Section 24(2)) makes a technical amendment.

Clause 11 (Evidence in support of application, Section 25(1), new notes) inserts new notes relating to evidentiary requirements.

Clause 12 (New division 4.2) this clause inserts a new division which sets out the requirements for applying for a recognised details certificate, the evidentiary requirements to support an application and provides that the register-general must

issue the certificate or refuse the application. The clause makes it clear that it is the applicant who decides if the certificate states their former gender or former name.

Clause 13 (Protection of Privacy, Section 44) removes gender specific language.

Clause 14 (Confiscation of forged etc instruments, Section 51(2)) removes gender specific language.

Clause 15 (Certificate evidence, New section 65(2A)) provides that an interstate recognised details certificate is evidence that the person mentioned is of the sex stated in the certificate.

Clause 16 (Regulation-making power, Section 70(4), definition of *relevant children*) replaces the current definition to allow for the recognition of an order made in another Australian jurisdiction.

Clause 17 (Schedule 1, new item 6A) amends the schedule of reviewable to decisions to provide to an applicant an appeal right for a decision under new section 29C to refuse to issue a recognised details certificate.

Clause 18 (Dictionary, new definitions) inserts the definitions for *corresponding parentage law* and *recognised details certificate*.

Part 3 - Births, Deaths and Marriages Registration Regulation 1998

Clause 19 (New section 3) inserts new notes in the Dictionary.

Clause 20 (Notification of birth, Section 4(1)(g) and (h)) removes gender specific language.

Clause 21 (Registration of births, Section 5 (f)) removes gender specific language.

Clause 22 (Section 5 (g)) removes gender specific language.

Clause 23 (Section 5 (h)) removes gender specific language.

Clause 24 (Section 5 (i)) removes gender specific language.

Clause 25 (Section 5 (m)) removes gender specific language.

Clause 26 (New section 5(2)) clarifies that the terms ‘mother’ and ‘father’ can be used on official documents if a parent makes that choice.

Clause 27 (Change of name entries in register – Act, s 21, Section 5A(f)) removes gender specific language.

Clause 28 (Section 5A (g)) removes gender specific language.

Clause 29 (Application to alter register to record change of sex, Section 6(1)(b)) removes gender specific language.

Clause 30 (Section 6(1)(c)) removes gender specific language.

Clause 31 (Notification of deaths by funeral directors, Section 9(1)(j)) removes gender specific language.

Clause 32 (Section 9(1)(k)) removes gender specific language.

Clause 33 (New dictionary) this clause inserts a new dictionary which defines *birth parent*.

Part 4 – Liquor Act 2010

Clause 34 (Definitions – div 9.3, Section 149, definition of *caution offence*, paragraph (g)) substitutes ‘age’ for ‘identity’.

Clause 35 (Section 209) substitutes section 209 to provide that a proof of age card is now called a proof of identity card.

Clause 36 (Section 210 heading) substitutes ‘age’ for ‘identity’ to reflect the change to the name of the card.

Clause 37 (Section 210) substitutes ‘age’ for ‘identity’.

Clause 38 (Section 211 heading) substitutes the heading to reflect the change to the name of the proof of identity card.

Clause 39 (Section 211(b)) substitutes ‘age’ for ‘identity’.

Clause 40 (New part 22) this clause inserts transitional provisions for replacing ‘Proof of age cards’ with ‘Proof of identity cards’. The provisions make it clear that proof of age cards issued under the previous version of the Liquor Act are considered to be a proof of identity cards under this and other acts.

Clause 41 (Dictionary, definition of *identification document*, subparagraph (a)(ii)) substitutes ‘age’ for ‘identity’.

Clause 42 (Dictionary, definition of *interstate proof of age card*) omits the definition of *interstate proof of age card*.

Clause 43 (Dictionary, new definition of *interstate proof of identity card*) inserts a definition of *interstate proof of identity card*.

Clause 44 (Dictionary, definition of *proof of age card*) omits the definition of *proof of age card*.

Clause 45 (Dictionary, new definition of *proof of identity card*) defines *proof of identity card*.

Part 5 – Parentage Act 2004

Clause 46 (section 7) substitutes existing section 7 to remove gender specific terms.

Clause 47 (Presumption arising from domestic partnership, Section 8(1)) removes gender specific terms.

Clause 48 (Section 11) substitutes existing section 11 to remove gender specific terms.

Clause 49 (Application for parentage declaration, Section 15(1)(b)) removes gender specific terms.

Clause 50 (Section 15(1)(c)) removes gender specific terms.

Clause 51 (Annulment o parentage declaration, Section 22(4)) removes gender specific terms.

Clause 52 (Definitions for div 2.5, Section 23, definition of *birth parent*) removes gender specific terms.

Clause 53 (Section 23, definition of *birth sibling*) substitutes the definition to remove gender specific terms.

Clause 54 (Section 23, definition of *procedure*) substitutes the definition to remove gender specific terms.

Clause 55 (Section 23, definition of *substitute parent agreement*) removes gender specific terms.

Clause 56 (Parentage order, Section 26(3)(c)(ii)) removes gender specific terms.

Clause 57 (Name of child, Section 28) removes gender specific terms.

Clause 58 (Medical information, Section 30(3)(c) and (d)) removes gender specific terms.

Clause 59 (Section 30(3)(e)) removes gender specific terms.

Clause 60 (Children all of equal status, Section 38(1)) removes gender specific terms.

Clause 61 (Construction of instruments, Section 39(3)(b)) removes gender specific terms.

Clause 62 (Section 39(8), definition of *exnuptial child*) removes gender specific terms.

Schedule 1 – Other amendments

This schedule outlines consequential amendments to other ACT statutes following the amendment of the *Liquor Act 2010* by the Bill and part 1.13 replaces inaccurate language about people who have changed gender in the *Wills Act 1968*.