

2016

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

**JUSTICE LEGISLATION AMENDMENT BILL 2015
Amendments to be moved by the
Minister for Justice and Consumer Affairs**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA
Minister for Justice and Consumer Affairs**

JUSTICE LEGISLATION AMENDMENT BILL 2015

Introduction

This explanatory statement relates to further amendments 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.

Purpose of the Bill

The Bill amends several pieces of legislation to provide for the recognition of interstate parentage orders; provide flexibility in documenting name changes; remove gender specific terms in the *Births, Deaths and Marriages Registration Act 1997* (BDMR Act) 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.

Outline

Background

Clause 8 of the Bill amends section 21 (3) of the BDMR Act.

The effect of this amendment is to allow flexibility when recording a change of name on a 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, rather than replacing the birth name. Provision is made for the Registrar-General to note the applicant's change of name on the reverse of the new birth certificate or, alternatively note the person's former name on the reverse of that certificate.

This amendment is intended to make clear that the decision about which side of the birth certificate on which the applicant's change of name is recorded – the front side or the reverse – is to be made by the applicant rather than the Registrar-General.

Clause 26 of the Bill amends new section 5(2) of the BDMR Act. This amendment makes it clear that the word 'mother' or father' may be used for either or both parents of the child.

Clause 48 of the Bill inserts new section 11 (3) to (6) into the *Parentage Act 2004*. The new section prescribes presumptions of parentage that arise when a person undergoes a procedure as a result of which they become pregnant. The amendment is intended to provide certainty that where a person provides an ovum to their domestic partner for use in such a procedure that person will be presumed to be a parent any child born as a result of the procedure.

Human Rights considerations

The amendments in the Bill promote section 8 of the *Human Rights Act 2004* (HRA) – 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 also promotes section 11 of the HRA, the protection of family and children, by recognising gender diversity in parents and families.

Clause notes

Part 2 – *Births, Deaths and Marriages Registration Act 1997*

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. This clause also provides for an applicant to choose whether their change of name is noted on the reverse side or the front side of the new certificate.

Part 3 – *Births, Deaths and Marriages Registration Regulation 1998*

Clause 26 (Section 5(2)) provides that the word ‘mother’ or ‘father’ may be used to describe either or both parents of the child.

Part 5 – *Parentage Act 2004*

Clause 48 (Section 11) substitutes existing section 11 to remove gender specific terms. This clause also qualifies that the conclusive presumption against parentage only applies where the ovum used in the procedure was produced by a person other than the domestic partner of the person undergoing the procedure.