

[Act 1995 No 62]



New South Wales

# Births, Deaths and Marriages Registration Bill 1995

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to repeal the *Registration of Births, Deaths and Marriages Act 1973* and replace it with an Act that provides a simplified administrative procedure for the registration of births, deaths, marriages, adoption information and changes of name and for obtaining access to the Register. The Bill also transfers some provisions in the current Act to the *Coroners Act 1980* and makes consequential amendments to other Acts. The main features of the Bill are as follows:

- (a) The Bill simplifies the procedure for notification of registrable events. For instance, there will no longer be an obligation on relatives of a deceased person to notify the Registrar of Births, Deaths and Marriages of the death. Instead, the obligation will fall on a doctor and funeral director.
  - (b) The Bill provides a simplified procedure for change of name.
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- (c) A concept of prohibited name is introduced. This will prevent the registration of a name that is, for example, obscene or offensive.
- (d) The definition of “stillbirth” is changed, so that the weight at birth is relevant only if it cannot be established that the child is of at least 20 weeks gestation (rather than weight being the determining factor as at present).
- (e) The procedure for registering information relating to the parentage of a child is simplified.
- (f) The procedure for correcting the Register is simplified.
- (g) The Bill specifies the factors that are to be taken into account in determining whether a person should be granted access to the Register (such as privacy concerns and restrictions on access to adoption information contained in the *Adoption Information Act 1990*).
- (h) Penalties for offences relating to fraud and unauthorised access to, or interference with, the Register are increased.
- (i) Provisions in the current Act relating to the reporting of certain deaths to the coroner and the disposal of human remains without proper authority are transferred to the *Coroners Act 1980*.

The Bill is based on model provisions developed in consultation with the States and Territories.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** sets out the objects of the proposed Act. The objects of the Act are to provide for the following:

- (a) the registration of births, deaths and marriages in New South Wales,
- (b) the registration of adoption information,
- (c) the registration of changes of name,
- (d) the keeping of registers for recording and preserving information about births, adoptions, deaths, marriages and changes of name in perpetuity,

- (e) access to the information in the registers in appropriate cases by government or private agencies and members of the public, from within and outside the State,
- (f) the issue of certified information from the registers,
- (g) the collection and dissemination of statistical information.

**Clause 4** defines certain words and expressions used in the proposed Act. Important definitions include *prohibited name*, *registrable event* and *stillborn child*.

## **Part 2 Administration**

### **Division 1 The Registrar**

**Clause 5** provides that the Registrar of Births, Deaths and Marriages is, in the exercise of functions under the Act, subject to the control and direction of the Minister.

**Clause 6** sets out the general functions of the Registrar. These include establishing and maintaining the Register and administering the registration system established by the proposed Act.

**Clause 7** provides for the staff of the Registrar.

**Clause 8** allows the Registrar to delegate functions under the Act.

### **Division 2 Execution of documents**

**Clause 9** provides that the Registrar is to have a seal.

**Clause 10** allows the Registrar to issue documents under seal and provides for judicial recognition of the execution of documents by the Registrar.

### **Division 3 Reciprocal administrative arrangements**

**Clause 11** allows the Minister to enter into an arrangement with any Minister administering a corresponding law (a law of another State or a Territory providing for the registration of births, deaths and marriages) providing for reciprocal powers of the registering authorities under the corresponding laws.

## **Part 3 Registration of births**

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

**Clause 12** requires the birth of a child in the State to be notified to the Registrar. The person responsible for giving notice of the birth of a child is the chief executive officer of the hospital in which the child is born or to which the child is brought following birth or, in other circumstances, the doctor or midwife responsible for the professional care of the mother of the child at birth. If the child concerned was stillborn, the responsible person must also give the Registrar a doctor's certificate or notice with respect to the cause of foetal death.

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

**Clause 13** requires the birth of a child in the State to be registered under the proposed Act. It also provides for other circumstances in which the birth of a child may be registered under the proposed Act.

**Clause 14** provides for the method of registration of the birth of a child.

**Clause 15** makes the parents of a child jointly responsible for birth registration. If the child is a foundling, the person who has custody of the child is responsible for registration of birth.

**Clause 16** requires the person responsible for registration of a child's birth to ensure that a birth registration statement is given to the Registrar within 60 days after the birth.

**Clause 17** provides for the entry of the particulars regarding the birth of a child in the Register.

**Clause 18** restricts the Circumstances in which the Registrar can register the identity of the parent of a child. The Registrar may only register parentage information in the following cases:

- (a) if both parents apply for the inclusion of the information,
- (b) if only one parent applies for the inclusion of the information because the other parent cannot join in the application,
- (c) if only one parent applies for the inclusion of the information but the Registrar is satisfied the other parent does not dispute the correctness of the claim,

- (d) if a court makes a finding or order as to the parentage of a child,
- (e) if the Registrar is entitled by law to make a presumption as to the parentage of the child,
- (f) if the regulations authorise the inclusion of parentage information.

### **Division 3 Court powers**

**Clause 19** allows an application to be made to the District Court for an order directing the registration of a birth or the inclusion of certain information concerning a child in the Register. It also allows other courts to make such orders.

### **Division 4 Alteration of details of birth registration**

**Clause 20** allows the Registrar, on application, to enter further details in the Register after the initial registration of a child's birth.

### **Division 5 Child's name**

**Clause 21** requires a birth registration statement to state a name for the child. If the name is a prohibited name (such as a name that is offensive or obscene or contrary to the public interest), the Registrar may assign a name to the child.

**Clause 22** allows either parent of a child to apply to the District Court for the resolution of a dispute concerning the name of the child.

## **Part 4 Registration of adoptions**

**Clause 23** requires adoption orders and orders for the discharge of an adoption to be registered.

**Clause 24** sets out how the Registrar registers adoptions and discharges of adoption.

**Clause 25** requires the Registrar to make an appropriate entry in or on a person's birth registration regarding an adoption or discharge of adoption. If the child's birth is not registered in the State, the Registrar is to cause the information to be sent to the relevant registering authority.

## **Part 5 Change of name**

**Clause 26** provides that a person's name may be changed by registration of the change under the proposed Part.

**Clause 27** allows a person domiciled or ordinarily resident in the State or whose birth is registered in the State to apply to the Registrar for registration of a change of the person's name.

**Clause 28** allows a parent or guardian to apply for registration of a change in the name of a child. Application may be made by one parent only if the applicant is the sole parent named in the child's birth registration, there is no other surviving parent of the child or a court approves the change of name. Any parent may apply to the District Court for approval of a change of name of a child.

**Clause 29** provides that a change in the name of a child cannot be registered unless the child consents to the change of name or is unable to understand the meaning and implications of the change of name.

**Clause 30** allows the Registrar to require additional information before registering a change of name and provides for circumstances in which a change of name cannot be registered (for example, where the change is being sought for a fraudulent purpose).

**Clause 31** provides for the registration of a change of name by the making of an appropriate entry about the change in the Register including, if the applicant requests it, by appropriate notation on the person's birth registration.

**Clause 32** makes it clear that the Part does not prevent a person changing his or her name by repute or usage.

## **Part 6 Registration of marriages**

**Clause 33** requires a marriage that is solemnised in the State to be registered under the proposed Act.

**Clause 34** provides for the registration of a marriage by lodgement of the marriage certificate with the Registrar.

**Clause 35** provides that a marriage is registered by inclusion of the marriage certificate or the particulars of the marriage in the Register.

## **Part 7 Registration of deaths**

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

**Clause 36** provides for the circumstances in which a death may be registered under the Act. These include where a person dies in the State, where a person ordinarily resident in the State dies outside the State or dies in a ship or aircraft which is proceeding to a place in the State. Stillbirths are not considered to be deaths and are not to be registered as deaths.

**Clause 37** allows any court (including a court of the Commonwealth, another State or a Territory) to order the registration of the death of a person who died in the State.

**Clause 38** prevents the Registrar from registering a death unless the Registrar has been given notice of the death by a doctor (see clause 39), a coroner has authorised disposal of the remains of the person, a coroner has given notice of the death to the Registrar for the purpose of effecting registration or a similar notice or order has been given under another Australian law. This does not prevent a court ordering registration of the death or the Registrar registering the death if the Registrar considers that in the circumstances it is appropriate.

### **Division 2 Notification of deaths**

**Clause 39** requires a doctor who was responsible for the care of a person immediately before the person's death, or who examines the body of the deceased person after death, to give notice to the Registrar of the death and the cause of death, unless another doctor has already given the required notice or a coroner has been notified of the death. The notice must not be given if the doctor is prevented from certifying the cause of death of a person by reason of the fact that the death is reportable to a coroner. The circumstances in which a death is reportable to a coroner are contained in the amendments to the *Coroners Act 1980* (see Schedule 1 [2]). If a death is reported to a coroner, the coroner must notify the Registrar of the death.

**Clause 40** requires a coroner to give the Registrar copies of any order authorising the disposal of human remains or any finding about the cause of a person's death. A death certificate issued before completion of a coroner's inquest must be endorsed to indicate that fact.

**Clause 41** requires a funeral director or other person who arranges for the disposal of human remains to give notice to the Registrar of certain information relating to the deceased person. Similar requirements apply if a funeral director or other person arranges for the removal of human remains from the State or if the remains have not been disposed of within 30 days after the person's death.

### **Division 3 Registration of death**

**Clause 42** provides for the registration of a person's death by the making of an appropriate entry in the Register.

## **Part 8 The Register**

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

**Clause 43** requires the Registrar to keep a register or registers containing particulars of events that are registrable under the proposed Act. The Register may be maintained as a computer database or in documentary form. An index must be maintained to make the information contained in the Register accessible.

### **Division 2 Registrar's powers of inquiry**

**Clause 44** allows the Registrar to conduct an inquiry into a registrable event and, for the purposes of that inquiry, to require any person to provide relevant information.

### **Division 3 Correction of Register**

**Clause 45** provides for correction of the Register.

### **Division 4 Access to, and certification of, Register entries**

**Clause 46** allows the Registrar to give access to or provide information from the Register to a person or organisation that has an adequate reason for wanting access or information. Access or information may be given subject to conditions. The Registrar is required to take certain factors into account in determining whether to give such access or information.

**Clause 47** allows the Registrar, on application, to search the Register for an entry about a particular event. The Registrar may reject an application if it does not show an adequate reason for wanting the information.

**Clause 48** requires the Registrar, in providing information from the Register, to protect persons from unjustified intrusions on their privacy in so far as it is practicable to do so.

**Clause 49** provides for the certification of entries in the Register.

**Clause 50** gives the executor, administrator or trustee of an estate the right to apply for a certificate from the Registrar certifying, in respect of a deceased person, whether the person is recorded in the Register as being the parent of any children.

**Clause 51** allows the Registrar to issue a certificate to enable the disposal of human remains. (The *Coroners Act 1980* is amended to make it an offence to dispose of human remains without appropriate authorisation. See Schedule 1 [6].)

**Clause 52** makes it clear that access to information in the Register is subject to the provisions of the *Adoption Information Act 1990*.

**Clause 53** requires the Registrar to maintain a written statement of the policies on which access to information contained in the Register is to be given or denied.

**Clause 54** allows fees for the Registrar's services to be fixed by the regulations or by negotiation between the Registrar and the person who asks for the relevant services.

**Clause 55** allows the Registrar to remit the whole or part of a fee under the proposed Act.

## **Part 9     General power of review**

**Clause 56** provides that a person who is dissatisfied with a decision of the Registrar may apply to the District Court for a review of the decision.

## **Part 10    Miscellaneous**

**Clause 57** makes it an offence to knowingly make a false or misleading representation in an application, notice or document under the proposed Act or in response to an inquiry by the Registrar.

**Clause 58** makes it an offence to obtain access to the Register or interfere with the Register without the authority of the Registrar or other lawful authority.

**Clause 59** makes it an offence to forge the Registrar's certificate or seal or to forge or falsify a certificate or other document under the Act. The Registrar may impound or require the return of a forged or falsified document or certificate or a document that was issued as a result of fraud or error.

**Clause 60** makes it an offence to improperly disclose information obtained in connection with the administration of the proposed Act.

**Clause 61** protects the Registrar from liability in respect of his or her exercise of functions under the Act.

**Clause 62** contains a general regulation making power.

**Clause 63** provides for proceedings for offences to be dealt with by a Local court.

**Clause 64** repeals the *Registration of Births, Deaths and Marriages Act 1973*.

**Clause 65** gives effect to the amendments to the *Coroners Act 1980* contained in Schedule 1.

**Clause 66** gives effect to the consequential amendments to other Acts contained in Schedule 2.

**Clause 67** gives effect to the savings, transitional and other provisions contained in Schedule 3.

**Clause 68** provides for review of the proposed Act by the Minister as soon as possible after the period of 5 years from the date of assent.

## Schedules

**Schedule 1** transfers to the *Coroners Act 1980* certain provisions that are currently contained in the *Registration of Births, Deaths and Marriages Act 1973*. These provisions can be summarised as follows:

- Proposed section 12A sets out the circumstances in which a doctor must not certify the cause of death of a person. These circumstances are circumstances in which a coroner has jurisdiction to hold an inquest into the death. If a doctor is of the opinion that a person has died in such circumstances, the doctor is required to notify a member of the police force, who is in turn required to notify a coroner of the death. (See Schedule 1 [1] and [2])

- Proposed section 16A requires a coroner, in certain circumstances, to give the Registrar of Births, Deaths and Marriages particulars relating to the death of a person to enable registration of the death of the person to be effected or completed. (See Schedule 1 [3])
- Proposed Part 6A makes it an offence to dispose of human remains without proper authorisation. It also allows a coroner to make an order authorising the disposal of human remains (including the remains of a stillborn child) and to direct a doctor to examine human remains to determine whether they are the remains of a stillborn child. (See Schedule 1 [4], [5] and [6])

**Schedule 2** makes consequential amendments to other Acts.

**Schedule 3** contains savings, transitional and other provisions.