

# Births, Deaths and Marriages Registration Act 1995 No 62

[1995-62]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Miscellaneous Acts Amendment \(Same Sex Relationships\) Act 2008 No 23](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2008](#)
  - [Courts and Crimes Legislation Amendment Bill 2008](#)

### Authorisation

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# Births, Deaths and Marriages Registration Act 1995 No 62



New South Wales

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# Births, Deaths and Marriages Registration Act 1995 No 62



New South Wales

An Act to provide for the registration of births, deaths and marriages and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Births, Deaths and Marriages Registration Act 1995*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are to provide for:

- (a) the registration of births, deaths and marriages in New South Wales, and
- (b) the registration of adoption information, and
- (c) the registration of changes of name and the recording of changes of sex, and
- (d) the keeping of registers for recording and preserving information about births, adoptions, deaths, marriages, changes of name and changes of sex in perpetuity, and
- (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, and
- (f) the issue of certified information from the registers, and
- (g) the collection and dissemination of statistical information.

### 4 Definitions

(1) In this Act:

**adult** means a person who is 18 or above or, although under 18, is or has been married.

**birth** includes a stillbirth.

**birth registration statement** see section 14.

**change** of name includes an addition, omission or substitution.

**child** includes a stillborn child.

**corresponding law** means a law of another State that provides for the registration of births, deaths and marriages.

**death** does not include a stillbirth.

**disposal** of human remains means:

- (a) cremation of the remains, or
- (b) burial of the remains (including burial at sea), or
- (c) placing the remains in a mausoleum or other permanent resting place, or
- (d) placing the remains in the custody of an educational or scientific institution for the purpose of medical education or research, or
- (e) removal of the remains from the State (but not if the remains have been cremated or are taken from the State by sea and buried at sea in the course of the voyage).

**doctor** means a person registered as a medical practitioner under the [Medical Practice Act 1992](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**funeral director** means a person who carries on the business of arranging for the disposal of human remains.

**prohibited name** means a name that:

- (a) is obscene or offensive, or
- (b) could not practicably be established by repute or usage:
  - (i) because it is too long, or
  - (ii) because it consists of or includes symbols without phonetic significance, or
  - (iii) for some other reason, or
- (c) includes or resembles an official title or rank, or



(d) is contrary to the public interest for some other reason.

**registrable event** means a birth, adoption or discharge of adoption, change of name, death or marriage.

**registrable information** means information that must or may be included in the Register<sup>1</sup>.

**Register** see section 43.

**registering authority** means an authority responsible under a corresponding law for the registration of births, deaths and marriages.

**Registrar** means the Registrar of Births, Deaths and Marriages holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

**State** includes a Territory.

**stillbirth** means the birth of a stillborn child.

**stillborn child** means a child that exhibits no sign of respiration or heartbeat, or other sign of life, after birth and that:

(a) is of at least 20 weeks' gestation, or

(b) if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth.

(2) Notes in the text of this Act do not form part of this Act.

**Note—**

<sup>1</sup>See section 43 (2)

## **Part 2 Administration**

### **Division 1 The Registrar**

#### **5 Registrar**

The Registrar is, in the exercise of functions under this Act, subject to the control and direction of the Minister.

#### **6 Registrar's general functions**

The Registrar's general functions are:

(a) to establish and maintain the registers<sup>1</sup> necessary for the purposes of this Act, and

(a1) to maintain the integrity of the Register and to seek to prevent identity fraud associated with the Register and the information extracted from the Register, and

- (b) to administer the registration system established by this Act and ensure that the system operates efficiently, effectively and economically, and
- (c) to ensure that this Act is administered in the way best calculated to achieve its objects.

**Note—**

<sup>1</sup>The registers are collectively referred to as the “Register”. See section 43.

## **7 Registrar’s staff**

Such staff as may be necessary for the proper administration of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.

## **8 Delegation**

- (1) The Registrar may delegate to an authorised person any of the Registrar’s functions under this Act, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Registrar if the delegate is authorised in writing to do so by the Registrar.
- (3) In this section:

**authorised person** means an officer or temporary employee of the Public Service or a person otherwise employed in the public sector.

## **Division 2 Execution of documents**

### **9 The Registrar’s seal**

The Registrar is to have a seal.

### **10 Execution of documents**

- (1) The Registrar may issue a certificate or other document under the Registrar’s signature and seal, or under a facsimile of the Registrar’s signature and seal produced by stamp or machine imprint or by some other method authorised by the regulations.
- (2) If a document produced before a court or an administrative authority or official is apparently under:
  - (a) the Registrar’s signature and seal, or
  - (b) a facsimile of the Registrar’s signature and seal produced by stamp or machine imprint or by some other method authorised by the regulations,

the court, authority or official must presume, in the absence of evidence to the contrary, that the document was properly issued under the Registrar’s authority.

- (3) Judicial notice is to be taken of the Registrar's seal.

## **Division 3 Reciprocal administrative arrangements**

### **11 Reciprocal administrative arrangements**

- (1) The Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing for:
- (a) the exercise by the Registrar of functions of the registering authority under the corresponding law, and
  - (b) the exercise by the registering authority under the corresponding law of functions of the Registrar under this Act.
- (2) When an arrangement is in force under this section:
- (a) the Registrar may exercise, to the extent authorised by the arrangement (but subject to the conditions of the arrangement), the functions of the registering authority under the corresponding law, and
  - (b) the registering authority under the corresponding law may exercise, to the extent authorised by the arrangement (but subject to the conditions of the arrangement), the functions of the Registrar under this Act and anything done by the registering authority under this paragraph is taken to have been done by the Registrar under this Act.
- (3) An arrangement under this section may:
- (a) establish a database in which information is recorded for the benefit of all the participants in the arrangement, and
  - (b) provide for access to information contained in the database, and
  - (c) provide for payments by or to participants in the arrangement for services provided under the arrangement.

## **Part 3 Registration of births**

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

#### **12 Notification of births**

- (1) When a child is born in the State, the responsible person must give notice of the birth to the Registrar in a form and manner required by the Registrar, specifying the particulars required by the regulations.

Maximum penalty: 5 penalty units.

- (2) The notice must be given:
  - (a) in the case of a child born alive—within 7 days after birth, or
  - (b) in the case of a stillbirth—within 48 hours after stillbirth.
- (3) When notice of a stillbirth is given, the responsible person must also give the Registrar, in a form and manner required by the Registrar:
  - (a) a doctor's certificate certifying the cause of foetal death, or
  - (b) if a doctor is of the opinion that it is impracticable or undesirable to certify the cause of foetal death at the time the notice referred to in subsection (2) (b) is given, a notice signed by a doctor stating the doctor's intention to complete such a certificate.
- (4) The certificate or notice referred to in subsection (3) must be completed by the doctor responsible for the professional care of the mother at the birth or a doctor who examined the body of the stillborn child after the stillbirth.
- (5) In this section:

**responsible person** means:

  - (a) in the case of a child born in a hospital or brought to a hospital within 24 hours after birth—the chief executive officer of the hospital, or
  - (b) if the child was not born in a hospital or brought to a hospital within 24 hours after birth, and a doctor or midwife was responsible for the professional care of the mother at the birth—that doctor or midwife.

## Division 2 Registration of births

### 13 Cases in which registration of birth is required or authorised

- (1) If a child is born in the State, the birth must be registered under this Act.
- (2) If a court<sup>1</sup> orders the registration of a birth, the birth must be registered under this Act.

**Note—**

<sup>1</sup>The power to order registration of birth may be exercised by courts of this State and also by courts of other States and the Commonwealth (see section 19).

- (3) If a child is born:
  - (a) in an aircraft during a flight to an airport in the State, or
  - (b) on a ship during a voyage to a port in the State,the birth may be registered under this Act.

- (4) If a child is born outside the Commonwealth, but the child is to become (or in the case of a stillbirth, was to become) a resident of the State, the birth may be registered under this Act.
- (5) However, the birth of a child born outside the State is not to be registered under this Act if the birth is registered under a corresponding law.

#### **14 How to have the birth of a child registered**

A person has the birth of a child registered under this Act by giving notice of the birth to the Registrar (the **birth registration statement**) in a form and manner required by the Registrar, specifying the particulars required by the regulations.

#### **15 Responsibility to have birth registered**

- (1) The parents of a child are jointly responsible for having the child's birth registered under this Act (and must both sign the birth registration statement) but the Registrar may accept a birth registration statement from one of the parents if satisfied that it is not practicable to obtain the signatures of both parents on the birth registration statement.
- (2) If a child is a foundling, the person who has custody of the child is responsible for having the child's birth registered.
- (3) The Registrar may accept a birth registration statement from a person who is not responsible for having the child's birth registered if satisfied that:
  - (a) the person lodging the statement has knowledge of the relevant facts, and
  - (b) the child's parents are unable or unlikely to lodge a birth registration statement.

#### **16 Obligation to have birth registered**

- (1) A person responsible for having the birth of a child registered must have the birth registered (as provided by section 14) within 60 days after the date of the birth.  
Maximum penalty: 10 penalty units.
- (2) However, the Registrar must accept a birth registration statement given for the purposes of having a birth registered even though it is given after the end of the 60 day period.

#### **17 Registration**

- (1) The Registrar registers a birth by making an entry about the birth in the Register including the particulars required by the regulations.
- (2) However, if the particulars available to the Registrar are incomplete the Registrar may register a birth on the basis of incomplete particulars.

## **18 Registration of parentage details**

The Registrar must not include registrable information about the identity of a child's parent in the Register unless:

- (a) the father and mother of the child make a joint application for the inclusion of the information, or
- (b) one parent of the child makes an application for the inclusion of the information and the other parent cannot join in the application because he or she is dead or cannot be found, or for some other reason, or
- (c) one parent of the child makes an application for the inclusion of the information and the Registrar is satisfied that the other parent does not dispute the correctness of that information, or
- (d) a court orders the inclusion of the information in the Register, or
- (e) a court makes a finding that a particular person is a parent of the child, or
- (f) the Registrar is entitled under any law (including a law of another State or the Commonwealth) to make a presumption as to the identity of the child's parent, or
- (g) the regulations authorise the Registrar to include the information.

## **Division 3 Court powers**

### **19 Orders for registration of birth or inclusion of registrable information**

- (1) The District Court may, on application by an interested person or on its own initiative, order:
  - (a) the registration of a birth, or
  - (b) the inclusion of registrable information about a birth or a child's parents (including details of the marriage of a child's parents) in the Register.
- (2) If any court (including any court of another State or the Commonwealth) makes a finding about a birth or a child's parents, the court may order registration of the birth or inclusion of registrable information about the birth or the parents in the Register.

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

### **20 Alteration of details after birth registration**

- (1) An application to the Registrar for the addition of registrable information in a person's birth registration:
  - (a) must be made in writing, and

- (b) must include the information required by the Registrar, and
  - (c) must, if the Registrar requires verification of the information contained in the application, be accompanied by a statutory declaration verifying the information contained in the application and any other evidence that the Registrar may require.
- (2) This section is subject to section 18.
- (3) In this section, **registrable information** does not include information relating to a person's change of sex.

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

### **21 Name of child**

- (1) The birth registration statement must state the name of the child.
- (2) However, the Registrar may assign a name to the child if:
  - (a) the name stated in the birth registration statement is a prohibited name, or
  - (b) the birth registration statement is lodged by both parents of the child and they satisfy the Registrar that they are unable to agree on the child's name.

### **22 Dispute about child's name**

- (1) If there is a dispute between parents about a child's name, either parent may apply to the District Court for a resolution of the dispute.
- (2) On an application under subsection (1), the District Court may:
  - (a) resolve the dispute about the child's name as the Court considers appropriate, and
  - (b) order the Registrar to register the child's name in a form specified in the order.
- (3) If any court (including any court of another State or the Commonwealth) resolves a dispute about a child's name, the court may order the Registrar to register the child's name in a form specified in the order.

## **Part 4 Registration of adoptions**

### **23 Duty to register adoptions**

- (1) If a State adoption order is made or an order is made for the discharge of such an order, the adoption or discharge of adoption must be registered under this Act.
- (2) If an Interstate adoption order is made in relation to a person whose birth or previous adoption is registered under this Act or an order is made for the discharge of an

Interstate adoption order in relation to such a person, the adoption or discharge of adoption must be registered under this Act.

(3) In this section:

**Interstate adoption order** means an adoption order made (whether by a court or not) under the law in force in another State.

**State adoption order** means an adoption order or order under section 117 (Declaration of validity of foreign adoptions) under the [Adoption Act 2000](#).

## 24 How adoptions are registered

- (1) The Registrar is to register an adoption or discharge of an adoption by registering the record of the adoption or discharge sent to the Registrar under Chapter 7 of the [Adoption Act 2000](#).
- (2) The Registrar registers the record by making an entry about it in the Register including the information required by the regulations.
- (3) If the record relates to a person in relation to whom such a record has previously been registered under this Act, the Registrar is also to note a reference to the later record in the entry in the Register relating to the previous record.

### 24A Registration of deceased person's former intention to adopt

- (1) The adoptive parent of a person in relation to whom a record is registered under this Part may apply to the Registrar, in a form approved by the Registrar, for registration of the intention of a deceased person before his or her death to adopt the person jointly with the adoptive parent.
- (2) The Registrar registers an intention of a deceased person to adopt by making an entry about the intention to adopt in the Register including the information required by the regulations.
- (3) An application to the Registrar under this section must, if the Registrar requires verification of the information contained in the application, be accompanied by a statutory declaration obtained from the Director-General of the Department of Community Services or an appropriate principal officer (within the meaning of the [Adoption Act 2000](#)) verifying the information contained in the application and any other evidence that the Registrar may require.

## 25 Adoption record to be noted in birth registration

- (1) If a memorandum registered under this Part relates to a person whose birth is registered under this Act, the Registrar is to note a reference to the memorandum in the entry relating to the birth of the person.



- (2) If a memorandum received by the Registrar under section 130 or 132 of the [Adoption Act 2000](#) relates to a person whose birth is registered under a corresponding law, the Registrar is to cause a copy of the memorandum to be sent to the relevant registering authority.

## **Part 5 Change of name**

### **26 Change of name by registration**

A person's name may be changed by registration of the change under this Part.

### **27 Application to register change of adult's name**

An adult person:

- (a) who is domiciled or ordinarily resident in the State, or
- (b) whose birth is registered in the State,

may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's name.

### **28 Application to register change of child's name**

- (1) The parents of a child:

- (a) who is domiciled or ordinarily resident in the State, or
- (b) whose birth is registered in the State,

may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the child's name.

- (2) If the parents of a child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to a child, the child's primary care-giver may apply for registration of a change of the child's name.
- (3) An application for registration of a change of a child's name may be made by one parent if:
  - (a) the applicant is the sole parent named in the registration of the child's birth under this Act or any other law (including a corresponding law), or
  - (b) there is no other surviving parent of the child, or
  - (c) a court approves the proposed change of name.
- (4) The District Court may, on application by a child's parent, approve a proposed change of name for the child if satisfied that the change is in the child's best interests.

- (5) If any court (including any court of another State or the Commonwealth) approves a proposed name for a child, the court may order the Registrar to register the child's name in a form specified in the order.
- (6) In this section, **primary care-giver**, in relation to a child, means a person who is primarily responsible for the care and control, including the day-to-day care and control, of the child (whether or not that person is the person with parental responsibility or care responsibility for the child).

### **29 Child's consent to change of name**

A change of a child's name must not be registered unless:

- (a) the child consents to the change of name, or
- (b) the child is unable to understand the meaning and implications of the change of name.

### **30 Registration of change of name**

- (1) Before registering a change of name under this Part, the Registrar may require the applicant to provide evidence to establish to the Registrar's satisfaction:
  - (a) the identity and age of the person whose name is to be changed, and
  - (b) that the change of name is not sought for a fraudulent or other improper purpose, and
  - (c) if the person whose name is to be changed is a child—that the child consents to the change of name or is unable to understand the meaning and implications of the change of name.
- (2) If the Registrar is satisfied that the name of a person whose birth is registered in the State has been changed under another law (including a law of another State or the Commonwealth) or by order of a court (including any court of another State or the Commonwealth) the change of name may be registered under this Act.
- (3) The Registrar may refuse to register a change of name if, as a result of the change, the name would become a prohibited name.

### **31 Entries to be made in the Register**

- (1) The Registrar registers a change of name by making an entry about the change of name in the Register including the particulars required by the regulations.
- (2) If the applicant for registration of the change of name asks the Registrar to arrange for noting the change of name in the particulars of the person's birth, and the person's birth is registered under this Act or a corresponding law, the Registrar must:

- (a) if the birth is registered under this Act—note the change of name in the entry relating to the birth, or
  - (b) if the birth is registered under a corresponding law—give notice to the relevant registering authority of the change of name.
- (3) If the change of name is noted in the Register under subsection (2), a birth certificate issued by the Registrar for the person must show the person's name as changed under this Part.

### **32 Change of name may still be established by repute or usage**

This Part does not prevent a change of name by repute or usage.

## **Part 5A Change of sex**

### **32A Definitions**

In this Part:

**birth certificate** means a certificate issued under section 32E or 49 certifying particulars contained in an entry in the Register of a person's birth.

**sexual reassignment surgery** means a surgical procedure involving the alteration of a person's reproductive organs carried out:

- (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or
- (b) to correct or eliminate ambiguities relating to the sex of the person.

### **32B Application to alter register to record change of sex**

(1) A person who is 18 or above:

- (a) whose birth is registered in New South Wales, and
- (b) who has undergone sexual reassignment surgery, and
- (c) who is not married,

may apply to the Registrar, in a form approved by the Registrar, for alteration of the record of the person's sex in the registration of the person's birth.

(2) The parents of a child (or a parent if the applicant is the sole parent), or the guardian of a child:

- (a) whose birth is registered in New South Wales, and
- (b) who has undergone sexual reassignment surgery, and

(c) who is not married,

may apply to the Registrar, in a form approved by the Registrar, for alteration of the record of the child's sex in the registration of the child's birth.

### **32C Application must be accompanied by declarations by doctors**

An application under section 32B must be accompanied by:

- (a) statutory declarations by 2 doctors, or by 2 medical practitioners registered under the law of any other State, verifying that the person the subject of the application has undergone sexual reassignment surgery, and
- (b) such other documents and information as may be prescribed by the regulations.

### **32D Alteration of register**

- (1) The Registrar is to determine an application under section 32B by making the alteration or by refusing to make the alteration.
- (2) Before altering the record of a person's sex in the registration of the person's birth, the Registrar may require the applicant to provide such particulars relating to the change of sex as may be prescribed by the regulations.
- (3) An alteration of the record of a person's sex must not be made if the person is married.

### **32E Issuing of new birth certificate**

- (1) After the record of a person's sex is altered under this Part, a birth certificate issued by the Registrar for the person must, unless otherwise requested by the person, show the person's sex in accordance with the record as altered.
- (2) Any such birth certificate must not include a statement that the person has changed sex.

### **32F Issuing of old birth certificate**

- (1) The child of a person the record of whose sex is altered under this Part, or a person prescribed by the regulations, may apply to the Registrar for a birth certificate for the person that shows the person's sex before the record was so altered.
- (2) Despite section 32E, the Registrar may issue such a birth certificate to the child or prescribed person.

### **32G Use of new birth certificate**

A person who knows that the record of the sex of a person, being that person or another person (the **transgender person**), has been altered under this Part must not produce to

another person, for the purposes of a law of another jurisdiction, a birth certificate issued for the transgender person (or a copy of or extract from such a birth certificate) that shows the transgender person's sex after the record was so altered unless:

- (a) the laws of that other jurisdiction expressly allow such a certificate (or copy or extract) to be so produced, or
- (b) the person, when producing the certificate (or copy or extract) informs the person to whom it is produced that the record of the transgender person's sex has been altered to the sex shown in the certificate (or copy or extract).

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

### **32H Use of old birth certificate**

A person the record of whose sex is altered under this Part must not, with intention to deceive, produce to another person a birth certificate (or a copy of or extract from a birth certificate) issued for the person that shows the person's sex before the record was so altered.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

### **32I Effect of alteration of register and interstate recognition certificates**

- (1) A person the record of whose sex is altered under this Part is, for the purposes of, but subject to, any law of New South Wales, a person of the sex as so altered.
- (2) A person to whom an interstate recognition certificate relates is, for the purposes of, but subject to, any law of New South Wales, a person of the sex as stated in the certificate.
- (3) An ***interstate recognition certificate*** is a certificate issued under the law of another State that is prescribed by the regulations for the purposes of this section.

## **Part 6 Registration of marriages**

### **33 Cases in which registration of marriage is required**

If a marriage is solemnised in the State in accordance with law, the marriage must be registered under this Act.

### **34 How to have marriage registered**

A person has a marriage registered by lodging with the Registrar a certificate of the marriage under the [Marriage Act 1961](#) of the Commonwealth or, if the marriage was solemnised before the commencement of that Act, the evidence of the marriage required by the Registrar.<sup>1</sup>

**Note—**

<sup>1</sup>Under section 50 (4) of the *Marriage Act 1961* of the Commonwealth the authorised celebrant (within the meaning of that Act) is responsible for lodging the certificate of marriage with the Registrar.

### **35 Registration of marriage**

A marriage may be registered by:

- (a) including the marriage certificate as part of the Register, or
- (b) including particulars of the marriage in the Register.

## **Part 7 Registration of deaths**

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

#### **36 Deaths to be registered under this Act**

- (1) If a person dies in the State, the death must be registered under this Act.
- (2) If a court<sup>1</sup> orders the registration of a death, the death must be registered under this Act.
- (3) If a person dies:
  - (a) in an aircraft during a flight to an airport in the State, or
  - (b) on a ship during a voyage to a port in the State,the death may be registered under this Act.
- (4) If a person who is domiciled or ordinarily resident in the State dies outside the Commonwealth, or a person dies outside the Commonwealth leaving property in the State, the death may be registered under this Act.
- (5) However, the Registrar is not obliged to register a death under subsection (3) or (4) if the death is registered under a corresponding law.
- (6) If a child is stillborn, the child's death<sup>2</sup> is not to be registered under this Part.
- (7) This section is subject to section 38.

#### **Notes—**

<sup>1</sup> The power to order registration of death may be exercised by courts of this State and also by courts of other States and the Commonwealth (see section 37).

<sup>2</sup> ie the foetal death. A stillbirth is registered as a birth but not as a death.

#### **37 Power to order registration of death**

If a court (including any court of another State or the Commonwealth) finds that a person whose death is not registered under this Act died in the State, the court may order

registration of the death.

### **38 Circumstances in which death must not be registered**

- (1) The Registrar must not register the death of a person unless the Registrar has been given one of the following:
  - (a) a notice given by a doctor under section 39 in relation to the death of the person,
  - (b) an order made by a coroner under section 53B of the *Coroners Act 1980* that authorises the disposal of the remains of the deceased person,
  - (c) a notice given by a coroner under section 16A (1) or (2) of the *Coroners Act 1980* for the purpose of effecting or completing registration of the death,
  - (d) a document issued, made or given in relation to the death under the law of another State or the Commonwealth or any other place, being a document which the Registrar is satisfied is equivalent to a notice or order referred to in paragraph (a), (b) or (c).
- (2) Despite subsection (1), a death is to be registered if:
  - (a) a court orders the registration of the death, or
  - (b) the Registrar is of the opinion that, having regard to the circumstances of the case, it is proper that the death should be registered without any notice, order or document referred to in that subsection.

## **Division 2 Notification of deaths**

### **39 Notification of deaths by doctors**

- (1) A doctor who was responsible for a person's medical care immediately before death, or who examines the body of a deceased person after death, must, within 48 hours after the death:
  - (a) give the Registrar notice of the death and of the cause of death in a form and manner required by the Registrar, or
  - (b) if the doctor is of the opinion that it is impracticable or undesirable to give notice of the cause of death of the person within that time, give the Registrar notice of the death, and of the doctor's intention to give notice of the cause of death, in a form and manner required by the Registrar.

Maximum penalty: 5 penalty units.

- (2) However, a doctor need not give a notice under this section if:
  - (a) another doctor has given the required notice, or

(b) the death has been reported to a coroner under the *Coroners Act 1980*<sup>1</sup>.

**Note—**

<sup>1</sup> See section 12A of the *Coroners Act 1980*.

- (3) A doctor must not give a notice under this section if the doctor is prevented from giving a certificate as to the cause of death of the person by section 12B of the *Coroners Act 1980*.
- (4) If a death is reported to a coroner under the *Coroners Act 1980*, the coroner must give the Registrar notice of the death as soon as practicable.

**40 Notification of cause of death by coroner**

- (1) If a coroner authorises the disposal of human remains, or makes a finding about the cause of a death, the coroner must give a copy of the disposal authorisation or the finding to the Registrar.
- (2) The Registrar may register a death even though the death is subject to coronial inquest and a finding has not been made about the cause of death.
- (3) A death certificate issued before a coronial inquest into the cause of death is completed must be endorsed in such manner as the Registrar considers appropriate to indicate that fact.
- (4) This section is subject to section 38.

**41 Notification by funeral director and others**

- (1) A funeral director or other person who arranges for the disposal of human remains must within 7 days after disposal of the remains give the Registrar a notice, in a form and manner required by the Registrar, specifying the following particulars together with such supporting documentation as may be required by the Registrar:
  - (a) the name and last residential address of the deceased,
  - (b) whether or not the death was reported to a coroner,
  - (c) the place and manner of disposal,
  - (d) the information required by the regulations.

Maximum penalty: 5 penalty units.

- (2) If human remains (other than cremated remains) are removed from the State, the funeral director or other person who arranges for the removal of the remains from the State must, within 28 days after the remains are disposed of outside the State, give the Registrar a notice, in a form and manner required by the Registrar, specifying the following particulars together with such supporting documentation as may be required



by the Registrar:

- (a) the place and manner of disposal,
- (b) the information required by the regulations.

Maximum penalty: 5 penalty units.

- (3) If human remains have not been disposed of within 30 days after the date of death, the funeral director or other person who has custody of the remains must give the Registrar a notice, in a form and manner required by the Registrar, specifying the following particulars together with such supporting documentation as may be required by the Registrar:

- (a) the name and last residential address of the deceased,
- (b) whether or not the death was reported to a coroner,
- (c) the information required by the regulations.

Maximum penalty: 5 penalty units.

- (4) This section applies in relation to the disposal of any human remains, including the remains of a stillborn child.

## **Division 3 Registration of death**

### **42 Registration**

- (1) The Registrar registers a death by making an entry about the death in the Register including the particulars required by the regulations.
- (2) However, if the particulars available to the Registrar are incomplete the Registrar may register a death on the basis of incomplete particulars.

## **Part 8 The Register**

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

#### **43 The Register**

- (1) The Registrar must maintain a register or registers of registrable events.
- (2) The Register:
  - (a) must contain the particulars of each registrable event required under this Act, or another law, to be included in the Register, and
  - (b) may contain such further information as the Registrar considers appropriate for inclusion.

- (3) The Register may be wholly or partly in the form of a computer data base, in documentary form, or in another form the Registrar considers appropriate.
- (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.
- (5) A reference in this Act to the **Register** is a reference to all the registers kept under subsection (1).
- (6) The Register may be referred to as the Births, Deaths and Marriages Register and a reference in any Act or any instrument made under any Act to the Births, Deaths and Marriages Register is taken to be a reference to the Register.

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

### **44 Registrar's powers of inquiry**

- (1) The Registrar may conduct an inquiry to find out:
  - (a) whether a registrable event has happened, or
  - (b) particulars of a registrable event, or
  - (c) whether particulars of a specific registrable event have been correctly recorded in the Register.
- (2) The Registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this section, require the person to answer specified questions or to provide other information within a time and manner specified in the notice.
- (3) A person who fails, without reasonable excuse, to comply with a notice under subsection (2) is guilty of an offence.

Maximum penalty: 10 penalty units.

## **Division 3 Correction of Register**

### **45 Correction of Register**

- (1) The Registrar may correct the Register:
  - (a) to reflect a finding made on inquiry under Division 2, or
  - (b) to bring an entry about a particular registrable event into conformity with the most reliable information available to the Registrar of the registrable event.
- (2) The Registrar must, if required by a court, correct the Register.
- (3) The Registrar corrects the Register by adding or cancelling an entry in the Register or

by adding, altering or deleting particulars contained in an entry.

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

### **46 General access to Register**

- (1) The Registrar may, on conditions the Registrar considers appropriate:
  - (a) allow a person or organisation that has an adequate reason for wanting access to the Register, access to the Register, or
  - (b) provide a person or organisation that has an adequate reason for wanting information from the Register, with information extracted from the Register.
- (2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information extracted from the Register, the Registrar must have regard to:
  - (a) the nature of the applicant's interest, and
  - (b) the sensitivity of the information, and
  - (c) the use to be made of the information, and
  - (d) other relevant factors.
- (3) In deciding the conditions on which access to the Register, or information extracted from the Register, is to be given under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

### **47 Search of Register**

- (1) The Registrar may, on application, search the Register for an entry about a particular registrable event.
- (2) The applicant must state the reason for the applicant's interest in the subject-matter of the search.
- (3) The Registrar may reject the application if the applicant does not show an adequate reason for wanting the information to which the application relates.
- (4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to:
  - (a) the relationship (if any) between the applicant and the person to whom the information relates, and
  - (b) the age of the entry, and

- (c) the contents of the entry, and
- (d) other relevant factors.

#### **48 Protection of privacy**

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

#### **49 Issue of certificate**

- (1) On completing a search of the Register, the Registrar may issue a certificate:
  - (a) certifying particulars contained in an entry, or
  - (b) certifying that no entry was located in the Register about the relevant registrable event.
- (2) A certificate under subsection (1) (a) is admissible in legal proceedings as evidence of:
  - (a) the entry to which the certificate relates, and
  - (b) the facts recorded in the entry.
- (3) If the word “illegitimate”, or any other word or expression referring to the fact that a child was born outside marriage, appears in an entry in the Register, that word or expression is not to be included in any certificate issued by the Registrar.
- (4) If requested to do so by an applicant, the Registrar must issue a single certificate (an **adopted person’s birth record**) certifying particulars contained in an entry relating to the birth of a person and particulars relating to a record sent to the Registrar under section 130 or 132 of the [Adoption Act 2000](#) (or a memorandum under the former Acts) and registered under this Act.
- (5) The Registrar-General must not issue a certificate under subsection (4) unless:
  - (a) the certificate relates to a person who is 18 or more years of age, or
  - (b) the Director-General of the Department of Community Services has consented to its issue.

#### **Note—**

The power of the Registrar to issue such a certificate is also subject to the provisions of Chapter 8 of the [Adoption Act 2000](#).

#### **50 Issue of certificate relating to children of deceased person**

- (1) The executor, administrator or trustee of the estate of a deceased person may apply to the Registrar for a certificate certifying whether or not the deceased person is

recorded in the Register as being a parent of any children, and if so, the names of the children and such other particulars relating to the children as may be prescribed by the regulations.

- (2) On receipt of the application, together with any fee required by the regulations, the Registrar is to cause a search of the Register to be made and, on completion of that search, issue the certificate applied for.

### **51 Issue of certificate to enable disposal of human remains**

If the death of a person has been registered before the remains of the person have been disposed of, the Registrar may, on application of a person who satisfies the Registrar that the person requires a certificate to enable the remains to be disposed of in accordance with the *Coroners Act 1980*, issue a certificate certifying that the death of the person has been recorded on the Register.

### **52 Access to information to be given in accordance with [Adoption Act 2000](#)**

This Act is subject to the [Adoption Act 2000](#)<sup>1</sup> and, to the extent of any inconsistency with this Act, that Act prevails.

**Note—**

<sup>1</sup> The [Adoption Act 2000](#) sets out entitlements to and restrictions on access to adoption information held by the Registrar and other information sources. For instance, that Act sets out the circumstances in which the Registrar is entitled to give an adopted person access to his or her original birth certificate.

### **53 Access policies**

- (1) The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division.
- (2) The Registrar must give a copy of the statement, on request, to any person.

### **54 Fees**

- (1) The regulations may prescribe fees, or a basis for calculating fees, for:
  - (a) access to the Register, or
  - (b) a search of the Register, or
  - (c) the issue of a certificate following a search of the Register, or
  - (d) other services provided by the Registrar.
- (2) The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

### **55 Power to remit fees**

The Registrar may, in appropriate cases, remit the whole or part of a fee under this Act.

## **Division 5 Additional information and services**

### **55A Registrar may collect and maintain other information**

- (1) The Registrar may collect and maintain records of information, other than registrable information, relating to registrable events.
- (2) Records maintained under this section must be kept separately from the Register.
- (3) The Registrar may include information in the records maintained under this section at the request of a person interested in the registrable event to which the information relates or on the Registrar's own initiative.
- (4) Sections 46 (3) and 48 apply to any records maintained under this section as if they were part of the Register.

### **55B Additional information services in relation to information in Register and other information**

- (1) In this section, **additional information services** means services relating to the information in the Register or any other information collected and maintained under section 55A that are additional to the services otherwise provided by the Registrar under this Act, including the following:
  - (a) the provision of information relating to a registrable event in the form of a decorative certificate or other document,
  - (b) the provision of historical and genealogical information.
- (2) The Registrar may enter into an arrangement for the provision of additional information services.
- (3) The charge for providing an additional information service is:
  - (a) except as provided by paragraph (b), the amount determined by the Registrar, or
  - (b) if the regulations under section 54 so provide, the amount fixed by, or determined in accordance with, the regulations.

The charge is not required to bear any relation to the cost of providing the service.

- (4) In providing additional information services, the Registrar must, as far as practicable, protect the persons to whom the information concerned relates from unjustified intrusion on their privacy.

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

### **56 Review by the Administrative Decisions Tribunal**

A person who is dissatisfied with a decision of the Registrar made in the exercise or purported exercise of functions under this Act may apply to the Administrative Decisions Tribunal for a review of the decision.

## **Part 10 Miscellaneous**

### **57 False representation**

A person who makes a representation in an application, notice or document under this Act or in response to a notice under section 44 of this Act (Registrar's powers of inquiry), knowing the representation to be false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

### **58 Unauthorised access to or interference with Register**

A person must not, without the authority of the Registrar or other lawful authority:

- (a) obtain access to the Register or information contained in the Register, or
- (b) make, alter or delete an entry in the Register, or
- (c) interfere with the Register in any other way.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

### **59 Falsification of certificates and other documents**

- (1) A person must not forge the Registrar's signature or seal.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (2) A person must not forge or falsify a certificate or other document under this Act.

Maximum penalty: 100 penalty units or 2 years imprisonment, or both.

- (3) The Registrar may impound or require the return of:

- (a) a document which the Registrar has reason to believe bears a forged impression of the Registrar's signature or seal, or
- (b) a certificate or other document purporting to be a certificate or other document under this Act which the Registrar has reason to believe has been forged or falsified, or
- (c) a certificate under this Act about a registrable event if the entry in the Register

about the event has been cancelled or corrected since the issue of the certificate,  
or

(d) a certificate or document issued by the Registrar in error or as a result of fraud.

(4) A person who fails, without reasonable excuse, to comply with a requirement under subsection (3) to return a document or certificate is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **60 Unauthorised disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act, except:

(a) in connection with the administration or execution of this Act, or

(b) as authorised or required by law.

Maximum penalty: 50 penalty units or 1 year imprisonment, or both.

#### **61 Immunity from liability**

Any matter or thing done or omitted by the Registrar does not subject the Registrar personally to any action, liability, claim or demand, if the matter or thing was done or omitted in good faith for the purposes of executing this or any other Act.

#### **62 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

#### **63 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court.

#### **64 Repeal of [Registration of Births, Deaths and Marriages Act 1973 No 87](#)**

The [Registration of Births, Deaths and Marriages Act 1973](#) is repealed.

#### **65, 66 (Repealed)**

#### **67 Savings, transitional and other provisions**

Schedule 3 has effect.



## **68 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedules 1, 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 67)

### **Part 1 Regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - this Act
  - Births, Deaths and Marriages Registration Amendment Act 2007*
- (2) Any such savings and transitional provisions may make provision for or with respect to the modification of any of the provisions of Part 2 of this Schedule in the event that the whole of the *Registration of Births, Deaths and Marriages Act 1973* is not repealed on the one day.
- (3) Savings or transitional provisions contained in regulations made under this Part may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or any authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definition**

In this Part:

**former Act** means the *Registration of Births, Deaths and Marriages Act 1973*, as in force immediately before its repeal.

### **3 The Register**

- (1) A register kept under the *Registration of Births, Deaths and Marriages Act 1973* forms part of the Register under this Act.
- (2) An index to a register kept under the *Registration of Births, Deaths and Marriages Act 1973* is taken to have been established under this Act.

### **4 General**

Anything done under or for the purposes of a provision of the former Act and having effect immediately before the repeal of the former Act is taken to have been done under or for the purposes of the corresponding provision of this Act.

### **5 Act applies to registrable events whether occurring before or after repeal of former Act**

This Act applies in respect of a registrable event that occurs on or after the repeal of the former Act and, subject to this Part and the regulations under Part 1, extends to apply in respect of a registrable event that occurred before the repeal of the former Act.

### **6 Obligation to give notice of registrable event occurring before repeal of former Act**

The former Act continues to apply in respect of any obligation to give notice of a registrable event that occurred before the repeal of the former Act, as if this Act had not been enacted.

### **7 Applications made before the repeal of former Act**

An application for a certificate, certified copy or extract relating to information on the Register or an application for the inclusion of information in the Register that was made under the former Act, and is pending on the repeal of that Act, is to be dealt with as if this Act had not been enacted.

### **8 Applications to Supreme Court pending on repeal of former Act**

An application pending under section 13 of the former Act (Supreme Court may order registration of birth or stillbirth) immediately before the repeal of the former Act is to be dealt with as if this Act had not been enacted.

## **9 Orders made by coroner under former Act**

- (1) An order made by a coroner under section 49 of the former Act (Order authorising the disposal of a body) that has any effect immediately before the repeal of that Act is taken to have been made under section 53B (1) of the *Coroners Act 1980*.
- (2) An order made by a coroner under section 50 of the former Act (Examination of body for purpose of section 49) that has any effect immediately before the repeal of that Act is taken to have been made under section 53B (4) of the *Coroners Act 1980*.

## **10 Notice given by coroner under former Act for purpose of effecting or completing death registration**

- (1) A notice given by a coroner under section 25 (1) of the former Act is taken to have been given under section 16A (1) of the *Coroners Act 1980*.
- (2) A notice given by a coroner under section 25 (3) of the former Act is taken to have been given under section 16A (2) of the *Coroners Act 1980*.

## **11 Death certificate issued before repeal of former Act**

A certificate issued under section 26 of the former Act (Certificate of registration of death) is taken to have been issued under section 51 of this Act (Issue of certificate to enable disposal of human remains).

## **12 Medical certificate given under former Act**

- (1) A medical certificate or notice signed by a medical practitioner under section 24 (2) of the former Act in respect of a death that occurred before the repeal of the former Act is taken to be a notice under section 39 of this Act.
- (2) A medical certificate or notice signed by a medical practitioner under section 18 (2) of the former Act in respect of a stillbirth that occurred before the repeal of the former Act is taken to be a medical certificate or notice under section 12 (3) of this Act.

## **13 Reference to former Act, Registrars and Register**

- (1) A reference in any other Act or any instrument made under an Act or in any instrument of any other kind to the *Registration of Births, Deaths and Marriages Act 1973* is taken to be a reference to this Act.
- (2) A reference in any other Act or any instrument made under an Act or in any instrument of any other kind to the Principal Registrar, a Deputy Principal Registrar or a local registrar (within the meaning of the former Act), is taken to be a reference to the Registrar.
- (3) A reference (however expressed) in any other Act or any instrument made under an Act or in any instrument of any other kind to a register under the former Act, is taken

to be a reference to the Register under this Act.

#### **14 Local registers kept under former legislation**

- (1) If the Registrar corrects an entry about a particular registrable event in the Register and the Registrar considers it impracticable to correct an entry about the same event in a local register, the Registrar need not correct the local register.
- (2) In such a case the Registrar may cause a written notice to be attached to the local register, in such words as the Registrar considers appropriate, to indicate that the information contained in the Register may not be correct.
- (3) The Registrar may assume custody of any local register and may, subject to the [Archives Act 1960](#), destroy or otherwise dispose of such a register in such manner as the Registrar considers appropriate.
- (4) In this clause, a reference to a **local register** is a reference to a local register within the meaning of the former Act.

#### **15 Saving of regulations under former Act**

- (1) The regulations in force under the former Act immediately before its repeal are taken to have been made under this Act. This does not prevent the future amendment or repeal of those regulations.
- (2) For the purposes of the [Subordinate Legislation Act 1989](#), those regulations are taken to have been made when they were made under the former Act.

### **Part 3 Provisions consequent on enactment of Births, Deaths and Marriages Registration Amendment Act 2007**

#### **16 Notification of births**

The amendment made to section 12 (2) (a) by the [Births, Deaths and Marriages Registration Amendment Act 2007](#) applies only in relation to births that occur after the commencement of that amendment.