

Serial 70

Births, Deaths and Marriages Registration and Other Legislation Amendment
Bill 2018

Ms Fyles

A Bill for an Act to amend the *Births, Deaths and Marriages Registration Act*
and other legislation in consequence of the enactment of the *Sex
Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex
Status) Act 2013* (Cth) and the *Marriage Amendment (Definition and Religious
Freedoms) Act 2017* (Cth) and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AND OTHER LEGISLATION AMENDMENT ACT 2018

Act No. [] of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

An Act to amend the *Births, Deaths and Marriages Registration Act* and other legislation in consequence of the enactment of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) and the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) and for related purposes

[Assented to [] 2018]
[Introduced [] 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Births, Deaths and Marriages Registration and Other Legislation Amendment Act 2018*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Births, Deaths and Marriages Registration Act

3 Act amended

This Part amends the *Births, Deaths and Marriages Registration Act*.

4 Section 3 amended (Objects of Act)

Section 3(b), after "sex"

insert

or gender identity

5 Section 23 replaced

Section 23

repeal, insert

23 Application to register change of adult's name

Subject to this section, an adult person may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's name if:

- (a) the person is domiciled or ordinarily resident in the Territory;
or
- (b) the person's birth is registered in the Territory.

6 Sections 28A, 28B, 28C and 28D replaced

Sections 28A, 28B, 28C and 28D

repeal, insert

28A Definitions

In this Part:

intersex person means a person who is born with physical or biological sex characteristics that do not fit typical classifications of male or female bodies.

psychologist means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student).

recognition certificate means a certificate issued under any law certifying that a person has a sex or gender identity that is different to the sex or gender identity specified for that person in the Register.

28B Application to register change of sex or gender identity

- (1) An adult may apply to the Registrar, in a form approved by the Registrar, to register a change of the adult's sex or gender identity if:
 - (a) the adult's birth is entered in the Register; and
 - (b) the adult believes the adult's sex or gender identity to be the sex or gender identity specified in the application; and
 - (c) the adult:
 - (i) has received appropriate clinical treatment in relation to the adult's sex or gender identity; or
 - (ii) is an intersex person.
- (2) The parents of a child may apply to the Registrar, in a form approved by the Registrar, to register a change of the child's sex or gender identity if:
 - (a) the child's birth is entered in the Register; and
 - (b) the applicants believe on reasonable grounds that alteration of the record of the child's sex or gender identity to the sex or gender identity specified in the application is in the best interest of the child; and
 - (c) the child:
 - (i) has received appropriate clinical treatment in relation to the child's sex or gender identity; or
 - (ii) is an intersex person.
- (3) An application for registration of a change of a child's sex or gender identity may be made by one parent if:
 - (a) the applicant is the sole parent named in the registration of the child's birth; or
 - (b) the applicant is the only surviving parent of the child.
- (4) 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 guardian may apply for registration of a change of the child's sex or gender identity.
- (5) The sex or gender identity specified in an application under this section must be of a kind recognised in the Regulations.

28C Information that must accompany application

- (1) An application under section 28B(1) must be accompanied by the following:
 - (a) a statement by a medical practitioner or a psychologist certifying that the adult:
 - (i) has received appropriate clinical treatment in relation to the adult's sex or gender identity; or
 - (ii) is an intersex person;
 - (b) any other documents or information prescribed for this subsection.
- (2) An application under section 28B(2) must be accompanied by the following:
 - (a) if section 28CA applies – a statement from the child consenting to the change;
 - (b) a statement by a medical practitioner or a psychologist certifying that the child:
 - (i) has received appropriate clinical treatment in relation to the child's sex or gender identity; or
 - (ii) is an intersex person;
 - (c) any other documents or information prescribed for this subsection.

28CA Child's consent to change of sex or gender identity

- (1) The Registrar must not register a change of sex or gender identity of a child after the time when the child is aware of the meaning and implication of the child's sex or gender identity unless the child consents to the change.
- (2) For this section, in the absence of evidence to the contrary, a child who has attained the age of 14 years is taken to be aware of the meaning and implication of the child's sex or gender identity.

28D Registration of change of sex or gender identity

On receipt of an application under section 28B, the Registrar must:

- (a) make the requested change to the Register; or
- (b) refuse to make the requested change.

28DA Registrar may limit number of applications

- (1) The Registrar may determine a limit on the number of applications that may be made under this Part in respect of a person.
- (2) The Registrar must publish the limit in the manner the Registrar considers appropriate.
- (3) The Registrar may reject an application in relation to a person under this Part if the number of applications in respect of the person exceeds the limit.

7 Act further amended

Schedule 1 has effect.

Part 3 Amendment of Criminal Code**8 Act amended**

This Part amends the Criminal Code.

9 Section 1 amended (Definitions)

Section 1, definition ***husband*** and ***wife***

omit

10 Section 13 amended (Accessories after the fact)

Section 13(2)

omit, insert

- (2) The rule of law under which a wife cannot be an accessory after the fact to an offence committed by her husband is abolished.

11 Section 128 amended (Sexual intercourse or gross indecency involving child over 16 years under special care)

Section 128(4)

omit

husband, wife

insert

spouse

12 Section 130 amended (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)

Section 130(3)(a)

omit

husband or wife of, or a de facto partner of,

insert

spouse or de facto partner of

13 Section 291 replaced

Section 291

repeal, insert

291 Conspiracy by husband and wife

Any rule of law under which a husband and wife are incapable of criminally conspiring together is abolished.

Part 4 Amendment of Domicile Act**14 Act amended**

This Part amends the *Domicile Act*.

15 Section 5 replaced

Section 5

repeal, insert

5 Abolition of rule of dependent domicile of married woman

The rule of law under which a married woman has at all times the domicile of her husband is abolished.

16 Section 8 amended (Domicile of certain children)

Section 8(3)(a)

omit

in wedlock

Part 5 Amendment of Evidence (National Uniform Legislation) Act

17 Act amended

This Part amends the *Evidence (National Uniform Legislation) Act*.

18 Section 73 amended (Exception – reputation as to relationships and age)

Section 73(1)(b)

omit

a man and a woman

insert

2 people

19 Chapter 9 inserted

After section 218

insert

Chapter 9 Transitional matters for Births, Deaths and Marriages Registration and Other Legislation Amendment Act 2018

219 Application of section 73

Section 73, as amended by the *Births, Deaths and Marriages Registration and Other Legislation Amendment Act*, applies in relation to evidence adduced in proceedings on or after the day on which this Part commences, whether the proceedings are instituted before or after that commencement.

Part 6 Amendment of Law of Property Act

20 Act amended

This Part amends the *Law of Property Act*.

21 Section 14 amended (Rights of husband and wife)

- (1) Section 14, heading

omit

husband and wife

insert

spouses

- (2) Section 14

omit

all words from "A" to "married"

insert

Two persons who are married to each other

22 Section 188 amended (Unborn husband or wife)

- (1) Section 188, heading

omit

husband or wife

insert

spouse

- (2) Section 188

omit

The widow or widower

insert

The surviving spouse

- (3) Section 188(a)

omit

that widow or widower

insert

that surviving spouse

(4) Section 188(b)(iv), (v) and (vi)

omit

his widow or her widower

insert

the person's surviving spouse

Part 7 Amendment of Law Reform (Miscellaneous Provisions) Act

23 Act amended

This Part amends the *Law Reform (Miscellaneous Provisions) Act*.

24 Section 12 amended (Proceedings against and contribution between joint and several tort-feasors)

Section 12(3)

omit

All words from "brother" to "half-sister"

insert

sibling, half-sibling

25 Section 23 amended (Definitions)

Section 23, definition ***member of the family***

omit

All words after "means"

insert

the spouse, de facto partner, parent, child, sibling or half-sibling of that person.

26 Section 25 amended (Extension of liability in certain cases)

(1) Section 25(1)(a)

omit

husband or wife

insert

spouse

(2) section 25(1)(a)

omit

so

Part 8 Amendment of Married Persons (Equality of Status) Act

27 Act amended

This Part amends the *Married Persons (Equality of Status) Act*.

28 Section 4 amended (Interspousal tort)

Section 4

omit

All words after "section 3,"

insert

spouses each have a right of action in tort against the other as if they were not married.

29 Section 5 amended (Spouse as agent)

Section 5

omit

all words after "section 3,"

insert

a person does not, by reason only of the person's status as a spouse, have authority to pledge the credit of the person's spouse for necessities or to act as agent for the person's spouse for the purchase of necessities.

Part 9 Amendment of Summary Offences Act

30 Act amended

This Part amends the *Summary Offences Act*.

31 Section 57 amended (Offences after finding of guilt under section 56, &c.)

- (1) Section 57, heading

omit

, &c.

insert

and other offences

- (2) Section 57(1)(l)

omit

adjacent; or

insert

adjacent;

- (3) Section 57(1)(p)

omit

- (4) Section 57(1)

omit

shall be guilty

insert

is guilty

- (5) section 57(a), (b), (d) and (e), at the end

insert

or

Part 10 Amendment of Births, Deaths and Marriages Registration Regulations

32 Regulations amended

This Part amends the *Births, Deaths and Marriages Registration Regulations*.

33 Regulation 2 amended

Regulation 2

- (1) Before "For"

insert

(1)

- (2) Regulation 2, at the end

insert

- (2) For subregulation (1)(c), the sex of the child may be male, female, intersex or unspecified.

34 Regulation 3 amended

Regulation 3

- (1) Before "For"

insert

(1)

- (2) Regulation 3, at the end

insert

- (2) For subregulation (1)(b), the sex of the child may be male, female, intersex or unspecified.

(3) Regulation 3(m), after "sex"

insert

or gender identity

35 Regulation 4A replaced

Regulation 4A

repeal, insert

4A Recognised sex or gender identity

For section 28B(5) of the Act, each of the following is a recognised sex or gender identity:

- (a) female;
- (b) male;
- (c) non-binary;
- (d) intersex;
- (e) unspecified.

36 Regulations further amended

Schedule 2 has effect.

Part 11 Repeal of Act

37 Repeal of Act

This Act is repealed on the day after it commences.

Schedule 1 Births, Deaths and Marriages Registration Act further amended

section 9

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 4, definition registrable event	name or sex	name, change of sex or gender identity
Part 4A, heading after "sex"		or gender identity
section 28E(1) and (2) after "sex" (<i>all references</i>)		or gender identity
sections 28F and 28G	sex (<i>all references</i>)	sex or gender identity
	his or her	the person's
section 28H, heading, after "sex"		or gender identity
sections 28H and 28J after "sex" (<i>all references</i>)		or gender identity

Schedule 2 Births, Deaths and Marriages Registration Regulations further amended

section 36

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 4B, heading, after " sex "		or gender identity
regulation 4B	sex his or her sex	sex or gender identity the person's sex or gender identity
regulation 4B(e)	he or she his or her	the officer or member the officer's or member's
regulations 5(c), 6(h), 7(b) and (j), 10(d) and (m), 12(b) and (j), after "sex"		or gender identity