

Explanatory Statement

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT BILL 2022 SERIAL NO. 40

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

GENERAL OUTLINE

The Births, Deaths and Marriages Registration Amendment Bill 2022 provides:

- (a) that the only persons who can register a change of name in the Northern Territory are persons born in the Northern Territory or outside of Australia. For other persons born in most other parts of Australia they will need to register any change of name in the place in Australia where they were born (clauses 10 and 11);
- (b) a requirement that persons seeking to change their name must include details of any conviction for an offence for which a sentence of imprisonment of 12 months or more may be imposed (clause 12);
- (c) that the Registrar may refuse to register a change of name if there is a conviction relating to fraud or in relation to identity or if the applicant fails to establish the matters set out in section 26(1) of the Act (clause 13);
- (d) for limitations on the number of name changes (one in any 12 month period and three over the lifetime (with the period commencing on the day of commencement of section 26A) (clause 14, section 26A);
- (e) that the limitations in section 26A do not apply if the name change is needed to protect a victim of domestic violence or is the result of marriage or divorce or if the change of name is ordered by a court or tribunal (Clause 14, section 26B);
- (f) for technical clarifications of the particulars that are required concerning the registration of a birth or the registration of a death (clauses 9 and 18);
- (g) for the correction of a typographical error (clause 7);
- (h) for the application of Part IIAA of the Criminal Code to offences against the Act (clauses 5, 6, 8, 15, 16, 17, 19, 20, 21 and 22).

NOTES ON CLAUSES

Clause 1. Short title

This is a formal clause providing for the citation of the Bill. The Bill, when passed, may be cited as *Births, Deaths and Marriages Registration Amendment Act 2022*.

Clause 2. Commencement

This is a formal clause that provides that the provisions of the Act commence on the date or dates fixed by the Administrator but if no date is fixed, the day of commencement is 13 February 2024.

Clause 3. Act Amended

This clause provides that the Bill deals with amendments to the *Births, Deaths and Marriages Registration Act 1996* (the Act).

Clause 4. Section 4 amended (Definitions)

Clause 4 amends section 4 by including a standard drafting note concerning other definitions and provisions that might be contained in the *Interpretation Act 1978*.

Clause 5. Section 4A inserted

This clause inserts new section 4A into Part 1 of the Act.

4A Application of Criminal Code

New section 4A provides that the criminal responsibility provisions set out in Part IIAA of the Criminal Code apply to offences under the Act.

Clause 6. Section 12 amended (Notification of births)

Clause 6(1) omits the penalty for breach of section 12(1).

Clause 6(2) inserts new subsections 12(5A), 12(5B) and 12(5C). These provide for the application of Part IIAA of the Criminal Code. A failure to comply with section 12(1) (requirement by the person in charge of the place of birth to give notice of birth) or with section 12(3) (requirement to give notice within 10 days) is an offence of strict liability and with the maximum penalty being 8 penalty units.

Clause 7. Section 15 amended (Responsibility to have birth registered)

Clause 7(1) corrects a typographical error. The two words 'in appropriate' should be the single word 'inappropriate'.

Clause 7(2) replaces sexist language ('his or her') with neutral terminology ('the parent's').

Clause 8. Section 16 amended (Obligation to have birth registered)

Clause 8(1) revises the operation of section 16(1) so that there is clear obligation on a parent to lodge a birth registration statement.

Clause 8(2) inserts new sub-section (1A) so as to spell out, for the purposes of determining criminal responsibility, that the offence in section 16(1) is an offence of strict liability.

Clause 9. Section 17 amended (Registration)

Clause 9(1) omits the reference to ‘particulars required by regulations’ and replaces those words with a reference to the particulars required for the purposes of the notification of births. The aim is to remedy a technical problem with section 17 in that there is no specific prescription in the regulations as to what are the particulars relevant for the registration of the birth.

The amendment removes the need for specific regulations to be made for section 17 and links the operation of section 17 to the particulars required for the purpose of section 14.

Clause 10. Section 23 amended (Application to register change of adult’s name)

Clause 10 omits and replaces section 23(a).

Currently section 23(a) operates so that an adult person domiciled or ordinarily resident in the Northern Territory can apply for a change of name. Section 23(b) provides that any person born in the Northern Territory can apply to have their name changed.

New section 23(a) will operate so that, for persons not born in the Northern Territory, only such persons born outside of Australia can register a change of name in the Northern Territory. Persons born inside Australia will, for most births, need to have their change of name registered in the place within Australia where they were born.

A person born in Australia but whose birth is not registered will need to get their birth registered if they wish to change their name.

These amendments bring Northern Territory legislation in line with the generality of the change-of-name laws in places elsewhere in Australia:

- section 27, *Births, Deaths and Marriages Registration Act 1996* (NSW);
- section 24, *Births, Deaths and Marriages Registration Act 1996* (SA);
- section 30, *Births, Deaths and Marriages Registration Act 1998* (WA);
- section 16, *Births, Deaths and Marriages Registration Act 2003* (QLD);
- section 25, *Births, Deaths and Marriages Registration Act 1996* (VIC); and

Tasmanian and ACT laws remain similar to those currently in the NT.

These provisions operate subject to section 26B – which operates to provide for circumstances in which the registration of change of name may occur despite the limitations in section 23.

Clause 11. Section 24 amended (Application to register change of child’s name)

Clause 11(1) omits and replaces section 24(1).

Currently section 24 operates so that the parent of a child domiciled or ordinarily resident in the Northern Territory can apply for a change of name of the child.

New section 24(1) will operate so that, for a child not born in the Northern Territory, an application can only be made if the child was born outside of Australia.

These provisions operate subject to section 26B – which operates to provide for circumstances in which the registration of change of name may occur despite the limitations in section 24(1).

Clause 11(2) removes sexist language from section 24(3)

Clause 12. Section 25A inserted

Clause 12 provides for new section 25A.

25A Convictions of person to be included in application

New section 25A provides that a person seeking the registration of a change of name must provide details of any of their convictions for certain offences. For the purposes of this section the word 'conviction' is defined so that it includes qualified findings of guilt based around mental impairment.

The main such offences are those for which in the Northern Territory the maximum penalty (by way of imprisonment) is 12 months or more. This requirement to disclose also applies to offences committed outside of the Northern Territory for offences that in the Northern Territory would have such a maximum penalty.

The section does not require the disclosure of convictions that do not need be disclosed owing to the operation of the *Criminal Records (Spent Convictions) Act 1992*.

This section based in section 29A of the *Births, Deaths and Marriages Act 1995* (NSW).

Clause 13. Section 26 amended (Registration of change of name)

Clause 13 inserts new sections 26(4) and (5).

Section 13(4) spells out that registration of a change of name can be refused if the applicant has a conviction for fraud or other deception.

Section 13(5) provides that the Registrar may refuse to register a change of name if the person seeking the change fails to satisfy the Registrar of the matters referred to in section 26(1). These matters relate to identity, purpose of the change or, in the case of a child if a child has not consented or does not understand the meaning or impact of the change.

Clause 14. Sections 26A and 26B inserted

Clause 14 inserts new sections 26A and 26B.

26A Limitation on number of changes of name

New section 26A provides that, as a general rule, the Registrar cannot accept an application for a change of name if one of the following is the factual position:

- another change of the person's change of name has been registered in the Northern Territory or elsewhere in Australia in the 12 month period before the application; or
- there have been three previous registrations of change of name the Northern Territory or elsewhere in Australia after the date of commencement of amended section 26A.

These provisions operate subject to section 26B – which operates to provide for circumstances in which the registration of change of name may occur despite the limitations in section 26A.

26B Exceptions to certain requirements and limitation

Section 26B sets out the circumstances in which a change of name can be registered notwithstanding that accepting the application would otherwise be in breach of section 23(a), 24(1) (a) or 26A.

The circumstances are to protect a person and the person's children from domestic violence or if the changes come about because of marriage or divorce or if the change of name is ordered by any court or tribunal of the Northern Territory, the Commonwealth, a state or the Australian Capital Territory.

Clause 15. Section 28G replaced

Clause 15 repeals and replaces section 28G.

28G Use of old birth certificate

New section 28G deals with the same type of conduct as current section 28G excepting that it has reworded for the purposes of Part IIAA of the Criminal Code. Additionally, its scope has been broadened so that it applies to the misuse by anyone of an old birth certificate. Currently section 28G appears to only apply to misuse by the persons whose sex or gender has been changed. This clarification is in line with similar offences in similar legislation in South Australia and the Australian Capital Territory.

The maximum fine has been increased from 85 penalty units to 200 penalty units. This brings the fines penalty into the same correlation between maximum imprisonment/maximum fine as in the *Sentencing Act 1995*.

Clause 16. Section 34 amended (Notifications of deaths by doctors)

Clause 16 amends section 34(2).

New section 34(1A) and (2) is the same as old section 34(2) excepting that:

- it has been reworded for the purposes of Part IIAA of the Criminal Code;
- specifies that the offence is one of strict liability with a reasonable grounds defence as set out in section 34(2);
- the maximum fine has been increased from 85 penalty units to 200 penalty units. This brings the fines penalty into the same correlation between maximum imprisonment/maximum fine as in the *Sentencing Act 1995*.

Clause 17. Section 36 amended (Notification by funeral director)

Clause 17 amends section 36 so that the offences in section 36 are strict liability offences.

Clause 18. Section 37 amended (Registration)

Clause 18 omits the reference to 'particulars required by regulations' and replaces those words with a reference to the particulars required to be provided for the purposes of the notification of deaths. The aim is to remedy a technical problem with section 37 in that there is currently no specific prescription in the regulations as to what are the particulars relevant for the registration of the death.

Clause 19. Section 39 amended (Registrar's powers of Inquiry)

Clause 19 repeals and replaces section 39(3). This amendment provides for the offence in section 39(2) to be a Part IIAA offence of strict liability with a reasonable excuse defence.

Clause 20. Section 49 replaced

Clause 20 repeals and replaces section 49

49 Misleading information

Section 49 has been reworded for the purposes of Part IIAA of the Criminal Code.

New section 49(1) provides that it is an offence to give to authorised officers information that is misleading information. New section 49(2) provides that it is an offence to give to authorised officers a document that contains misleading information.

The maximum imprisonment penalty (two years) is unchanged but the maximum fine has been increased from 85 penalty units to 200 penalty units. This brings the fines penalty into the same correlation between maximum imprisonment/maximum fine as in the *Sentencing Act 1995*.

Clause 21. Section 50 replaced

Clause 21 repeals and replaces section 50.

50 Unauthorised access to register

New section 50 provides that it is an offence to intentionally access the register or obtain information from it when there is no appropriate authority from the Registrar for such access or obtaining of information.

New section 50 is the same as old section 50 excepting that:

- it has been reworded for the purposes of Part IIAA of the Criminal Code; and
- it is limited to illegal accessing of the Register noting that there are offences in the Criminal Code relating to altering or interfering or misuse of the register (sections 85(c), 222, 258, 265, 266 and 268).

The maximum imprisonment penalty (two years) is unchanged but maximum fine has been increased from 85 penalty units to 200 penalty units. This brings the fines penalty into the same correlation between maximum imprisonment/maximum fines as in the *Sentencing Act 1995*.

Clause 22. Section 51 amended (Falsification of certificate)

Clause 22 repeals and replaces section 51(1) and (2).

New sub-section 51(1) provides that it is an offence to affix an impression of the Registrar's seal or signature where there is knowledge that the impression is not the Registrar's impression or seal and there is knowledge that there is no authority to affix the signature or seal.

New sub-section 51(1) provides that it is an offence to create a certificate or other document under the Act where there is knowledge that the certificate or document is purporting to be issued under the Act and there is knowledge that the certificate is not being issued under the Act.

New sub-section 51(2A) provides that it is an offence for a person to intentionally amend or vary a certificate or document under the Act with the knowledge that the certificate or document is

issued under the Act and the person has the knowledge that the result of the variation or amendment is that the information in the altered or varied document is different from that when the document was issued under the Act.

These new provisions seek to provide the same policy outcome as current section 51(1) and (2) excepting that:

- They have been reworded for the purposes of Part IIAA of the Criminal Code.
- The maximum imprisonment penalty (two years) is unchanged but maximum fine has been increased from 85 penalty units to 200 penalty units. This brings the fines penalty into the same correlation between maximum imprison/maximum fine as in the *Sentencing Act 1995*.

Clause 23. Repeal of Act

This is a standard clause for parts of legislation that consists entirely of amendments to other legislation. It provides that the Act is repealed the day after it has performed its function of repealing or amending the other legislation.