



Australian Government

Department of Infrastructure, Regional Development and Cities

Norfolk Island Births, Deaths and Marriages Legislation

Proposed changes

Consultation paper

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The *Registration of Births, Deaths and Marriages Act 1963* (NI) (the Act) provides for the appointment of the Registrar and Deputy Registrar of Births, Deaths and Marriages, and sets out how records of births, deaths and marriages on Norfolk Island are made and amended in each of the registers. The Act is a continued law of Norfolk Island.

It is proposed to make a number of amendments to the Act to improve its operation. The key changes are to set out the information that must be supplied for various functions under the Act. The Registrar would also be given the discretion to determine the forms and particulars required for other functions.

Background

Although a range of provisions in the Act refer to forms and particulars (specified information) ‘prescribed by regulation’, no regulations have been made under the Act. This means that there are no prescribed forms for a number of functions, including the registration of births and deaths.

The provisions relating to registration of names and changes of name are not consistent with other Australian jurisdictions, for reasons outlined in this paper. In addition, legislative changes arising from the Commonwealth marriage equality reforms in 2017 require an amendment to the Act in relation to registration of a married person’s change of sex.

This paper does not deal with fees that are prescribed under the Act. The Council has the power to determine these fees in accordance with the *Local Government Act 1993* (NSW) (NI). References to prescribed fees in this Act and others will be addressed in a separate Ordinance dealing with fees and other matters.

Purpose of this paper

This consultation paper explains the proposed changes to the Act and gives stakeholders an opportunity to comment.

There is an agreed process to follow when consulting with the Norfolk Island community about proposed changes to laws. This is set out in the Norfolk Island Legislation Consultation Framework published on the Department’s website at:

http://regional.gov.au/territories/norfolk_island/governance/legislation-updates.aspx

Releasing this paper and seeking feedback on the proposed changes is consistent with that framework.

Proposed changes

This process is not a comprehensive review of all provisions of the Act. It addresses necessary changes to update the Act and allow for the effective operation of its current provisions, including by specifying the information that must be supplied to the Registrar. Details of each of the proposed changes are set out below under the following headings:

- allowing the Registrar to determine the forms and particulars required for most matters;
- prescribing certain particulars in a Schedule to the Act;
- registering names and changes of name;
- registering a married person's change of sex; and
- updating legislative references and terminology.

Allowing the Registrar to determine the forms and particulars required for most matters

The Act refers to a range of prescribed forms or particulars (details) that are required for various purposes. It is proposed that the Registrar should determine the content and wording of most of these forms, or the particulars that must be provided. This is because the Registrar will be best placed to make the decision about what should be required, and will be able to promptly amend those requirements if necessary without the need for legislative change, a much lengthier process.

It is proposed that the content and wording of the following forms, notices and required particulars be left to the discretion of the Registrar:

- Form signed by a medical practitioner authorising the disposal of the body of a child not born alive (paragraph 25(1)(a) of the Act);
- Notice given to the Registrar of the disposal of the body of a child not born alive (subsection 25(3));
- Particulars furnished by the Coroner to the Registrar where a member of the police finds a body (subsection 29(2));
- Notice to the occupier of the premises where a person died that an attending medical practitioner has signed a medical certificate relating to the death (paragraph 34(1)(b));
- Notice to the occupier of the premises where a person died that a medical practitioner who did not attend the person has signed a medical certificate relating to the death (paragraph 34(2)(b));
- Notice signed by a medical practitioner required before a person is buried (paragraph 35(1)(a));
- Notice of burial given by the undertaker to the Registrar (section 37);
- Certificate by the Registrar stating the date on which a death was registered (section 38);
- Notice signed by a medical practitioner relating to the death of a person, required before removal of a body from the Territory (paragraph 39(1)(a));
- Certificate by the Coroner relating to the death of a person, required before removal of a body from the Territory (paragraph 39(1)(b));

- Certificate by the Registrar relating to the death of a person, required before removal of a body from the Territory (paragraph 39(1)(c));¹
- Copy or extract of an entry in a register (paragraph 51(3)(b));
- Notice of intended marriage in a country outside Australia (subsection 57(1)); and
- Certificate by Registrar relating to intended marriage in a country outside Australia (subsection 57(4)).

Prescribing certain particulars in a Schedule to the Act

Some information is so fundamental to the maintenance of proper records that the requirements should be spelt out in legislation, particularly in cases where standard information is collected across Australian jurisdictions.

It is proposed that a new Schedule to the Act would set out the information that must be provided in relation to the five matters listed below. The Registrar should be granted the power to approve the forms that require the specified particulars and any other information the Registrar considers relevant.

- **Particulars to be entered when registering a birth (paragraph 5(2)(a)):**
 - Full name of child (where given)
 - Date and place of birth
 - Sex
 - Full names, and any former names, of parents in accordance with the Act²
 - Parents' dates of birth, occupations, and places of residence
 - Where there are multiple births, the order of the child's birth³
 - Names and year of birth of any other children born to parents' relationship (including children born alive who are deceased)
 - Parents' marital status
 - Name of attending medical practitioner
 - Details of the person completing the application for registration.
- **Particulars to be entered when registering a death (paragraph 5(2)(b)):**
 - Full name (and former names) of the deceased
 - Date and place of birth
 - Date and place of death
 - Sex of deceased
 - Cause of death (except where the death has been reported to the Coroner and the Coroner has not either reported his or her findings or dispensed with the holding of an inquest – see section 32)

¹ The three certificates provided under paragraphs 39(1)(a)-(c) are alternatives, depending on the circumstances of the death including whether it has been referred to the Coroner.

² Where the parents are not married, section 17 provides that the particulars relating to the father shall not be included unless both parents request they be included (provided the mother is not deceased or of unsound mind) and the father acknowledges paternity.

³ A separate application must be completed for each child where there are multiple births.

- Last place of residence
 - Occupation
 - Marital status
 - For each marriage: place of marriage, full name of spouse, date the marriage ended (if applicable), names and years of birth of the children of each marriage
 - For any civil union or civil partnership: similar details to those required for a marriage
 - Names and years of birth of any other children of the deceased
 - Parents' full names and former names
 - If born outside Australia, estimated length of residence in Australia
 - Details of disposal of the person's remains (if available at the time of registration of death)
 - Details of the person completing the application for registration.
- **Particulars to be given in an application for a change of the name of a child (subsections 19(1) (additional name given at baptism), 19(3) (change of name by notice to Registrar) and 20(1) (change of last name)):**
 - Full current name
 - Name shown on child's birth certificate
 - Any other former names
 - Date and place of birth
 - Sex
 - Proposed full name
 - Full names of parents
 - Reason for name change
 - If the child is 16 years of age or older (subsection 20(3)): the written consent of the child
 - If subsection 20(4) applies: the father's written consent to the change of the child's last name
 - Details of the person completing the application for registration.
- **Particulars to be given when applying to register a change of sex (paragraph 23B(4)(c)):⁴**
 - Full name of the person
 - Place of residence
 - Date and place of birth

⁴ Note that subsection 23B(4) requires certain supporting documents to be provided with the application - statutory declarations by two medical practitioners and a recognition certificate.

- Parents' full names
- Former sex
- New sex
- Details of the person completing the application for registration.⁵

- **Particulars to be included in a Coroner's permit, where a death has been reported to the Coroner, for the body to be taken out of the Territory for burial or cremation (subsection 33(2)):**

- Full name of deceased
- Last place of residence
- Name of attending medical practitioner
- Date of death
- Cause of death
- Certification by the Coroner that he or she is satisfied that there is no reason why the person's body should not be taken out of the Territory for burial or cremation.

It should be noted that where not all information is available at the time the application is made, the Act already allows for the Registrar to only enter the particulars that the Registrar is reasonably able to ascertain (subsections 11(2) and 26(2) in relation to an application for registration of a birth or death). These provisions would remain.

Registering names and changes of name

Part 3 Division 2 of the Act provides for the entry of a child's name in the Register of Births and the circumstances in which a name may be changed.

Name of a child

While there are provisions relating to the last name that is to be registered for a child,⁶ there are no restrictions on other names for the child, whether those names were originally registered or later amended. In other Australian jurisdictions,⁷ the Registrar has the discretion to refuse to register a 'prohibited name', that is, a name that:

- is obscene or offensive;

⁵ An application to note the reassignment of a child's sex may be made by the child's parents or guardians (subsection 23B(2)).

⁶ Section 18 provides for the surname to be entered in the Register of Births, and section 20 provides for the mother to change the child's surname after she marries.

⁷ See for example the definition of 'prohibited name' in *Births, Deaths and Marriages Registration Act 1997* (ACT), Dictionary; *Births, Deaths and Marriages Registration Act 1995* (NSW), s 4(1); *Births, Deaths and Marriages Registration Act 2003* (Qld), Schedule 2 Dictionary; *Births, Deaths and Marriages Registration Act 1996* (Vic) s 4(1).

- is too long;⁸
- includes symbols without phonetic significance (such as ? or #);
- includes or resembles an official title or rank; or
- is otherwise contrary to the public interest.⁹

It is proposed to include a provision to this effect in the Act. A decision by the Registrar to refuse registration on those grounds would be reviewable by the Norfolk Island Administrative Review Tribunal.

Change of name as an adult

Regardless of what is recorded on their birth certificate, a person is free to call themselves what they wish. There is nothing stopping anyone from assuming a new name without going through an official name change process, and this may become the name by which they are known in their community. This is known as 'name by association'. However, conducting day to day business, such as opening a bank account or getting a drivers licence, will be almost impossible under a new name if it has not been legally changed.

Under the current Act, an adult who wishes to change his or her name legally must sign a prescribed form, deposit it with the Registrar and publish notice of the change in the Gazette (section 21). The change takes effect when it is given to the Registrar. (There is no need to follow this process when a person's last name changes as a result of marriage.)

This process, sometimes known as a 'deed poll', was widely used in the past. However, it is no longer used in other Australian jurisdictions,¹⁰ as it has been replaced with a straightforward name registration process that promotes the maintenance of proper historical records and helps to prevent people from evading justice simply by declaring a new legal name.

The key elements of the name registration process are as follows. To be eligible, an applicant must either have been born in that jurisdiction or be domiciled or ordinarily resident in that jurisdiction (some States require proof of a specific period of residency, and exclude a person who was born in another Australian State or Territory on the basis that they should apply in the jurisdiction where their birth was registered).¹¹ The applicant must provide proof of their identity, including details of their birth and their parents' details, and proof of their residency where relevant. The applicant must also provide a reason for the change of name, and the application may be refused if the

⁸ For example, Births Deaths and Marriages Victoria is guided by a maximum length of 38 characters (including spaces) for the family name, and a total of 38 characters for given names.

⁹ Examples given by Births Deaths and Marriages Victoria include where the name might represent commercial or company interests, such as giving a child a name in response to a marketing competition, or where the name would express a meaning that would cause social disharmony.

¹⁰ New Zealand also has a name registration regime that is similar to Australia's – see Part 3 of the *Births, Deaths, Marriages, and Relationships Registration Act 1995* (NZ).

¹¹ NSW law excludes applications from people born in another Australian jurisdiction and, in the case of people born outside Australia, requires three consecutive years of residency in NSW immediately prior to the application (*Births, Deaths and Marriages Registration Act 1995* (NSW), s 27). By contrast, Victoria and ACT require only that either the person's birth is registered in that jurisdiction or the person is 'domiciled or resident' in the jurisdiction (*Births, Deaths and Marriages Registration Act 1995* (ACT), s 18; *Births, Deaths and Marriages Registration Act 1996* (Vic), s 25(1)).



Registrar believes it is being made for an improper or fraudulent purpose. A prohibited name that would not be accepted for the registration of a child's birth (see above) will not be accepted. Any change of name that has been ordered by a court or that applies by operation of another law (such as adoption, surrogacy, status of children or witness protection laws) will be registered.

Some jurisdictions include further safeguards in their laws. An applicant must provide details of their criminal history, and a prisoner or other 'restricted person'¹² must obtain the approval of the appropriate authority (such as the director of corrective services) before applying. Some States also impose a limit on the number of changes of name (for example, NSW allows for one change in each twelve month period, up to a maximum of three changes in a person's lifetime).

It is proposed to amend the Act to adopt a 'name by registration' approach to future changes of name of an adult person.¹³ This would encompass the following elements:

- To be eligible, either the person's birth must have been entered on the Register of Births in Norfolk Island,¹⁴ or they must be domiciled or ordinarily resident in Norfolk Island.
- They must provide their full current name and any previous names, the date and place of their birth, and the full names of their parents (if known).
- They must provide proof of identity to the Registrar's satisfaction.
- They must provide a reason for the change of name.
- The Registrar may refuse to register a change of name if the Registrar believes the application is being made for an improper or fraudulent purpose.
- A prohibited name (see above) will not be accepted.
- The Registrar's decision to refuse to register a change of name will be reviewable by the Norfolk Island Administrative Review Tribunal.
- A change of name ordered by a court or applying by operation of another law will be registered.
- Where the person's birth was registered in Norfolk Island, the Registrar will amend the Register of Births, as is currently the case (s 22). Where the person's birth was registered in another Australian State or Territory, the Registrar will notify the relevant authority in that jurisdiction that a change of name has been registered in Norfolk Island.
- The requirement for the person to publish a change of their name in the Gazette will no longer apply.
- A change of name arising from the person's marriage will not need to be registered, as is currently the case.
- Previous changes of name made under the current Act will be recognised.

¹² In NSW, this includes people on parole or other corrections orders, forensic patients and other prescribed classes of persons (*Births, Deaths and Marriages Registration Act 1995* (NSW), s 31B).

¹³ Under sections 19 and 20 of the Act, the parents of a child may notify a change of the child's name where the child is under 18 years old.

¹⁴ If the person's birth was registered in the Norfolk Island Register of Births, the Registrar may amend the Register of Births (s 22(1)).

Registering a married person's change of sex

Following changes to the *Sex Discrimination Act 1984* (Cth) as part of the Commonwealth's marriage equality reforms in 2017, it is now unlawful to refuse to register a change of sex on the grounds that the person is married. To reflect this in Norfolk Island legislation, the restriction in subsection 23A(1) of the Act on registering a change of sex where the person is married should be removed.

Updating legislative references and terminology

The following corrections and updates are also proposed:

- amending the definition of 'medical practitioner' in subsections 5(1) and 23B(6) to be consistent with the definition in the *Health Practitioners Act 1983* (NI);¹⁵
- removing the reference in subsection 5(5) to forms as numbered in Schedule 4, as Schedule 4 has been repealed;
- amending section 31 to replace the outdated reference to section 10 of the *Coroners Act 1927* (NI) with a reference to section 12 of the *Coroners Act 1993* (NI);
- amending paragraph 34(5)(h) to refer to a 'hospital for the mentally ill' instead of a 'hospital for the insane', in alignment with the wording of subsection 11(1) of the *Coroners Act 1993* (NI);
- updating the definition of 'prescribed court' in subsection 43(4) (Registrar receiving a notice of dissolution or annulment of marriage) to refer to a court exercising jurisdiction under the *Family Law Act 1975* (Cth);¹⁶
- amending section 60 concerning strict compliance with forms 'prescribed by regulation';
- removing section 63, which allows the Administrator to make regulations under the Act;
- using gender-neutral wording throughout the Act;
- replacing the phrase 'by writing under his hand' wherever it occurs with more modern language; and
- replacing all references to 'prescribed forms' and 'prescribed particulars' throughout the Act with appropriate references (such as 'as determined by the Registrar').

¹⁵ Section 14 of the *Health Practitioners Act 1983* (NI) provides that only a 'registered medical practitioner' within the meaning of that Act may sign a medical certificate of the cause of death.

¹⁶ A reference to the *Family Court Act 1997* (WA) is not necessary as that Act does not deal with divorce.



Next steps

How can you have your say?

The Department invites your comments on the changes proposed in this paper by **Friday 26 April 2019**. You can make comments in writing to: NI_Legislation@infrastructure.gov.au or to GPO Box 594, Canberra ACT 2601.

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