



Western Australia

# **Births, Deaths and Marriages Registration Act 1998**

Compare between:

[30 Aug 2010, 02-b0-02] and [01 Oct 2010, 02-c0-02]



Western Australia

## **Births, Deaths and Marriages Registration Act 1998**

**An Act to provide for the registration of births, deaths, marriages,  
changes of name and information about certain parentage changes in  
Western Australia and for related matters.**

*[Long title amended by No. 47 of 2008 s. 47.]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Births, Deaths and Marriages Registration Act 1998*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

### **3. Objects of Act**

The objects of this Act are to provide for —

- (a) the registration of births, deaths, marriages, changes of name and parentage change information in Western Australia;
- (b) the keeping of registers for recording and preserving information about births, deaths, marriages, changes of name and parentage changes in perpetuity;
- (c) 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;
- (d) the issue of certified and uncertified information from the registers; and
- (e) the collection and dissemination of statistical information.

*[Section 3 amended by No. 47 of 2008 s. 48.]*

### **4. Terms used**

In this Act, unless the contrary intention appears —

**adult** means a person who —

- (a) is 18 years of age or more; or

(b) although under 18 years of age, is or has been married;

**approved** means approved by the Registrar;

**birth** means the expulsion or extraction of a child from its mother;

**birth registration statement** means the statement referred to in section 14;

**change**, in relation to a name, includes an addition, omission or substitution;

**child** includes a still-born child;

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

**death** includes still-birth;

**disposal**, in relation to human remains, means —

- (a) cremation of the remains;
- (b) burial of the remains (including burial at sea);
- (c) placing the remains in a mausoleum or other permanent resting place; or
- (d) 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** has the meaning given to **medical practitioner** in the *Medical Practitioners Act 2008* section 4;

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

**human remains** includes the remains of a still-born child;

**neonatal death** means the death of a live-born child within 28 days after the birth;

**prohibited name** means a name that, in the opinion of the Registrar —

- (a) is obscene or offensive;

**s. 4**

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- (b) could not practicably be established by repute or usage —
  - (i) because it is too long;
  - (ii) because it consists of or includes symbols without phonetic significance; or
  - (iii) for some other reason;
- (c) is contrary to the public interest for some other reason;

**Register** means the Register referred to in section 49(1);

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

**registrable event** means a birth, death, marriage, change of name or an adoption or discharge of an adoption or the making or discharge of a parentage order as defined in the *Surrogacy Act 2008* section 14;

**registrable information** means the particulars and the further information referred to in section 49(2) that must or may be included in the Register;

**Registrar** means the Registrar of Births, Deaths and Marriages referred to in section 5;

**State** includes a Territory;

**State court** means the Supreme Court, the District Court, the Family Court (including a court of summary jurisdiction having jurisdiction that may be exercised by the Family Court) or the Children's Court;

**still-birth** means the birth of a still-born child;

**still-born child** means a child —

- (a) of at least 20 weeks' gestation; or

- (b) if it cannot be reliably established whether the child's period of gestation is more or less than 20 weeks, with a body mass of at least 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, immediately after birth.

*[Section 4 amended by No. 22 of 2008 Sch. 3 cl. 5; No. 47 of 2008 s. 49.]*

## **Part 2 — Administration**

### **Division 1 — The Registrar and staff**

#### **5. Registrar**

There is to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* a Registrar of Births, Deaths and Marriages for the State.

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

The Registrar's general functions are to —

- (a) establish and maintain the registers necessary for the purposes of this Act;
- (b) administer the registration system established by this Act and ensure that it operates efficiently, effectively and economically; and
- (c) ensure that this Act is administered in the way best calculated to achieve its objects.

#### **7. Registrar's staff**

- (1) There are to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* —
  - (a) one or more Deputy Registrars of Births, Deaths and Marriages; and
  - (b) such other staff as are necessary for the proper administration of this Act.
- (2) A Deputy Registrar has the powers and functions of the Registrar but is subject to direction by the Registrar.
- (3) Subject to subsection (2), a Deputy Registrar may act as the Registrar when the Registrar is temporarily unavailable for any reason to perform the functions of office.



**8. Delegation**

- (1) The Registrar may, by instrument in writing, delegate to any person, either generally or as otherwise provided in the instrument, a power or duty that the Registrar has under this Act, other than this power of delegation.
- (2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Registrar.

**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 —
  - (a) the Registrar's signature and seal; or
  - (b) a facsimile of the Registrar's signature and seal produced by stamp, machine imprint or a prescribed method.
- (2) If a document produced before a court or a person acting judicially, 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, machine imprint or a prescribed method,

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

**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 and the arrangement may provide for —
  - (a) the performance by the Registrar of functions of the registering authority under the corresponding law; and
  - (b) the performance 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 perform, 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 perform, to the extent authorised by the arrangement (but subject to the conditions of the arrangement), the functions of 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;
  - (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) In this section —

*responsible person*, in relation to the birth of a child —

- (a) if the child was born in a hospital or brought to a hospital within 24 hours after the child's birth, means the chief executive officer or general manager of the hospital; or
- (b) in any other case —
  - (i) means the doctor or midwife responsible for the professional care of the child's mother at the birth;
  - (ii) if the child was still-born, means the doctor who examined the child's body after the birth; or
  - (iii) if no doctor or midwife was in attendance at the child's birth, means any person in attendance at the birth.

(2) When a child is born in the State, the responsible person must give the Registrar notice of the birth —

- (a) within one month after the birth; and
- (b) in an approved form and manner.

Penalty: \$1 000.

(3) A person does not commit an offence under subsection (2) if notice of the birth is given by another person.

### **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 State court orders that a birth be registered in this State, the birth must be registered under this Act.
- (3) If a court of another State or of the Commonwealth makes a determination that a birth should be registered in this State, the birth may be registered under this Act if the Registrar considers that it is appropriate to do so.
- (4) If a child is born —
  - (a) in an aircraft during a flight to an airport in the State; or
  - (b) on a vessel during a voyage to a port in the State,the birth may be registered under this Act.
- (5) If a child is born outside the Commonwealth, but the child is to become (or in the case of a still-birth, was to become) a resident of the State, the birth may be registered under this Act.
- (6) The Registrar must not register a birth under subsection (4) or (5) 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 lodging a statement (the “birth registration statement”) in an approved form.

#### **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 impracticable for the other parent to join or be required to join in the application because of his or her death, disappearance, ill health or unavailability or the need to avoid unwarranted distress to obtain the signatures of both parents on the birth registration statement.

- (2) If a child is a foundling, the person with responsibility for the long-term care, welfare and development 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 who is responsible under section 15(1) or (2) for having a child's birth registered must ensure that a birth registration statement is lodged with the Registrar within 60 days after the date of the birth.

Penalty: \$1 000.

- (2) The Registrar must accept a birth registration statement even though it is lodged after the end of the 60 day period.

**17. Registration of birth**

- (1) The Registrar is to register a birth by making an entry about the birth in the Register including such particulars as the Registrar considers appropriate to register the birth.
- (2) 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**

- (1) The Registrar is not to include information about the identity of a child's parents in the Register unless —
  - (a) both parents of the child make a joint application for the inclusion of registrable information about that identity;
  - (b) one parent of the child makes an application for the inclusion of registrable information about that identity and the other parent cannot join in the application because —
    - (i) he or she is dead;
    - (ii) he or she cannot be found; or
    - (iii) of some other reason;
  - (c) one parent of the child makes an application for the inclusion of registrable information about that identity and the Registrar is satisfied that the other parent does not dispute the correctness of that information;
  - (d) a State court orders the inclusion of registrable information about the identity in the Register or makes a finding that a particular person is a parent of a child;
  - (e) a court of another State or of the Commonwealth makes a determination that registrable information about the identity should be included in the Register or makes a finding that a particular person is a parent of a child and the Registrar considers that it is appropriate to include the information in the Register; 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.
- (2) The Registrar may include information about the identity of a child's parent in the Register if —
  - (a) the Registrar is not prohibited by subsection (1) from doing so;

- (b) despite subsection (1), both parents are unable to give registrable information about the identity of a child's parent or parents for some reason or are unavailable and another person can provide information to the Registrar's satisfaction as to the identity of the child's parent or parents; or
- (c) despite subsection (1), one parent has provided the birth registration statement and the registrable information relates only to the identity of that parent.

*[Section 18 amended by No. 3 of 2002 s. 30.]*

**19. Addition of details after birth registration**

- (1) Subject to section 18, a person may apply to the Registrar for the inclusion of additional registrable information about a person's birth registration in the Register.
- (2) An application under subsection (1) —
  - (a) must be made in writing;
  - (b) must include such information that may be required by the Registrar;
  - (c) in relation to a child, may include a request that a different surname for the child be entered in the Register (the ***proposed surname***); and
  - (d) 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 other evidence the Registrar may require.
- (3) Subject to subsection (4), on an application under subsection (1) that includes a request that a different surname for a child be entered in the Register —
  - (a) if the application is jointly made by both parents of the child, the Registrar may change the surname for the child entered in the Register to the proposed surname; or

**Births, Deaths and Marriages Registration Act 1998**

**Part 3** Registration of births

**Division 3** Court orders relating to registration of birth

**s. 20**

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- (b) if the application is not jointly made by both parents of the child, the Registrar may change the surname for the child entered in the Register to the proposed surname if —
  - (i) the child's other parent has died; or
  - (ii) the child's other parent cannot be found but other children of the same parents are registered in the proposed surname.
- (4) On an application under subsection (1) that includes a request that a different surname for a child be entered in the Register the Registrar may change the surname for the child entered in the Register to the proposed surname —
  - (a) if the proposed surname is not a prohibited name; and
  - (b) if the child is 12 years of age or more and —
    - (i) the child consents to the proposed surname; or
    - (ii) the child is unable to understand the meaning and implications of the change of surname.

*[Section 19 amended by No. 3 of 2002 s. 31.]*

**Division 3 — Court orders relating to registration of birth**

**20. Powers of State courts**

A State court may, on application by an interested person or on its own initiative, order the Registrar to —

- (a) register a birth; or
- (b) include or correct registrable information about a birth or a child's parents in the Register.

**21. Registration of birth etc. after court findings**

- (1) If a State court finds that —
  - (a) the birth of a person is not registered as required under this Act or a corresponding law;



- (b) the registrable information contained in an entry about a birth in the Register under this Act or a corresponding law is incomplete or incorrect; or
- (c) information about the identity of a child's parents should be included in the Register under this Act or a corresponding law,

the State court may order the registration of the birth or order the inclusion or correction of registrable information in the Register or make a determination for the purposes of the corresponding law (as is applicable to the case).

- (2) The Registrar may register a birth or amend the Register in accordance with the determination of a court of another State or of the Commonwealth which has made a finding of a kind referred to in subsection (1) if the Registrar considers it is appropriate to do so.

#### **Division 4 — Child's name**

#### **22. Name of child**

- (1) The birth registration statement for a child must state the name of the child.
- (2) Subsection (1) does not require a still-born child or a child who has a neonatal death to be named but nothing in this subsection prevents such a child from being named if the persons lodging the birth registration statement for the child so wish.
- (3) The name is a matter of choice for the person or persons lodging the birth registration statement and nothing in this Act requires that —
  - (a) the name be made up of both a surname and a given name or given names; or
  - (b) the surname be the same as that of a parent of the child.

- (4) The Registrar may assign a name to a 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.
- (5) If the Family Court has resolved a dispute about a child's name the Registrar must assign or re-assign the child's name in accordance with the court orders.
- (6) If a court of another State or of the Commonwealth has resolved a dispute about a child's name the Registrar may assign or re-assign the child's name in accordance with the determination if the Registrar considers that it is appropriate to do so.

**23. Given names can be changed once within a year of birth**

- (1) A person may apply to the Registrar requesting the Registrar to change a name or names of a child entered in the Register other than the child's surname.
- (2) An application under subsection (1) —
  - (a) must be made in writing;
  - (b) must be made within 12 months after the date of the child's birth;
  - (c) must be made —
    - (i) if both of the child's parents signed the birth registration statement for the child, by both parents;
    - (ii) if the Registrar accepted the birth registration statement for the child from one parent under section 15(1), by that parent;
    - (iii) if, after the time when the birth registration statement for the child was lodged, one of the child's parents has died, by the other parent; or

- (iv) if, after the time when the birth registration statement for the child was lodged, both of the child's parents have died, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child, by the child's guardian;
  - and
  - (d) cannot be made if a previous application under this section has been made.
- (3) On an application under subsection (1) the Registrar may change a name or names of the child entered in the Register other than the child's surname to the name or names in accordance with the request unless a requested name is a prohibited name.

**Part 4 — Registration of information about certain parentage changes**

*[Heading inserted by No. 47 of 2008 s. 50.]*

**24. WA order: birth registered in WA**

- (1) On receipt of a notice under section 78(1) of the *Adoption Act 1994* in relation to an adoptee whose birth is registered in this State, the particulars provided in the notice must be registered by the Registrar in relation to the registration of the adoptee's birth.
- (2) On receipt of a notice under section 32(1) of the *Surrogacy Act 2008* in relation to the making or discharge of a parentage order about a child whose birth is registered in this State, the particulars provided in the notice must be registered by the Registrar in relation to the registration of the child's birth.

*[Section 24 amended by No. 47 of 2008 s. 51.]*

**25. WA order: birth not registered in WA**

- (1) On receipt of a notice under section 78(1) of the *Adoption Act 1994* in relation to an adoptee whose birth is registered in another State, the Registrar —
  - (a) must send a copy of the notice to the relevant registering authority; and
  - (b) subject to subsection (2), must register the adoptee's birth in accordance with the information provided under section 78 of that Act.
- (2A) On receipt of a notice under section 32(1) of the *Surrogacy Act 2008* in relation to the making or discharge of a parentage order about a child whose birth is registered in another State, the Registrar —
  - (a) must send a copy of the notice to the relevant registering authority; and

- (b) subject to subsection (2), must register the child's birth in accordance with the information provided under section 32 of that Act.
- (2) The Registrar is not required to register a birth under subsection (1) or (2A) if —
  - (a) the birth is registered under a corresponding law; and
  - (b) information about the adoption order or parentage order, or the discharge of the adoption order or parentage order, as is applicable in the case, is registered under a corresponding law.
- (3) If a birth is to be registered under subsection (1) or (2A) but some of the information required to register the birth is not available, the Registrar may endorse the birth registration to the effect that the information was not available when the birth was registered.

*[Section 25 amended by No. 47 of 2008 s. 52.]*

**26. Order in other State: birth registered in WA**

- (1) If —
  - (a) an adoption order or parentage order is made or discharged under a law in force in another State; and
  - (b) the order was made or discharged in relation to a person whose birth is registered under this Act,

the particulars (if any) provided under that law must be registered by the Registrar in relation to the registration of the person's birth.

- (2) In subsection (1) —

***parentage order*** means an order substantially similar in effect to a parentage order under the *Surrogacy Act 2008*.

*[Section 26 amended by No. 47 of 2008 s. 53]*

**s. 27**

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**27. Manner and form of adoption information in the Register**

A registration or endorsement required under this Part and any related entry in the Register are to be made in an approved manner and form.

**28. Certain certified copies**

If the *Adoption Act 1994* section 86 or the *Surrogacy Act 2008* section 39 requires the Registrar to issue a certified copy of that portion of the registration of a person's birth that does not refer to —

- (a) the person's birth parents; or
- (b) as the case requires, the person's adoption or change of parentage under the *Surrogacy Act 2008*,

the certified copy is to be in an approved form.

*[Section 28 inserted by No. 47 of 2008 s. 54.]*

## **Part 5 — Change of name**

### **29. Change of name by registration**

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

### **30. 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, in an approved form, apply to the Registrar for registration of a change of the person's name.

### **31. 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, in an approved form, apply to the Registrar for registration of a change of the child's name.

- (2) 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; or
- (b) the child's other parent has died.

- (3) If the parents of a child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities for a child, the child's guardian may apply for registration of a change of the child's name.

**s. 32**

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**32. Child's consent to change of name**

A change of a name of a child who is 12 years of age or more and in respect of whom an application under section 31 has been made 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.

**33. Application to register change of child's name approved by Family Court**

- (1) If the Family Court has approved the change of a child's name or names any person may, in an approved form, apply to the Registrar for registration of the change of the child's name in accordance with the court orders.
- (2) The Registrar must register a change of name made on an application under this section.

**34. Registration of change of name**

- (1) Before registering a change of name under this Division, 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;
  - (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 who is 12 years of age or more, that —
    - (i) the child consents to the change of name; or
    - (ii) the child 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 the law, or by



order of a court, of another State or of the Commonwealth, the change of name may be registered under this Act if the Registrar considers that it is appropriate to do so.

- (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.
- (4) This section does not apply to an application under section 33.

**35. Entries to be made in the Register**

- (1) The Registrar is to register a change of name by making an entry about the change of name in the Register including such particulars as the Registrar considers appropriate to register the change of name.
- (2) If the birth of the person whose name has been changed is registered under this Act, the Registrar may note the change of name in the entry relating to the birth.
- (3) If the birth of the person whose name has been changed is registered under a corresponding law, the Registrar may notify the relevant registering authority of the change of name.
- (4) 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.

**36. Change of name may be established by repute or usage**

This Part does not prevent a change of name by repute or usage if the change is made after the commencement of this Act.

## **Part 6 — Registration of marriages**

### **37. Marriages in the State to be registered**

If a marriage is solemnized in the State, the marriage must be registered under this Act.

### **38. How to have marriage registered**

A person may have 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 solemnized before the commencement of that Act, the evidence of the marriage required by the Registrar.

Note: Under section 50(4) of the *Marriage Act 1961* of the Commonwealth the authorised celebrant is responsible for lodging the certificate of marriage with the Registrar.

### **39. 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**

#### **40. 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 State court or a coroner in the State orders that a death be registered in this State, the death must be registered under this Act.
- (3) If a court or coroner of another State or of the Commonwealth makes a determination that a death should be registered in this State, the death may be registered under this Act if the Registrar considers that it is appropriate to do so.
- (4) If a person dies —
  - (a) in an aircraft during a flight to an airport in the State; or
  - (b) on a vessel during a voyage to a port in the State,the death may be registered under this Act.
- (5) If a person dies outside the Commonwealth and the person —
  - (a) is domiciled or ordinarily resident in the State; or
  - (b) leaves property in the State,the death may be registered under this Act.
- (6) The Registrar may refuse to register a death under subsection (4) or (5) if the death is registered under a corresponding law.
- (7) The death of a still-born child must be registered under this Act.

**41. Powers of State courts and coroners and registration of death etc. after court findings**

- (1) A State court or a coroner in the State may, on application by an interested person or on its own initiative, order the Registrar —
  - (a) to register a death; or
  - (b) to include registrable information about a death in the Register.
- (2) If a State court or coroner in the State finds that —
  - (a) the death of a person is not registered as required under this Act or a corresponding law; or
  - (b) the registrable information contained in an entry about a death in the Register under this Act or a corresponding law is incomplete or incorrect,

the State court or coroner may order the registration of the death or order the inclusion or correction of registrable information in the Register or make a determination for the purposes of the corresponding law (as is applicable to the case).

- (3) The Registrar may register a death or amend the Register in accordance with a determination made by a court or coroner of another State or of the Commonwealth which has made a finding of a kind referred to in subsection (2) if the Registrar considers that it is appropriate to do so.

**Division 2 — Notification of death**

**42. Person responsible for notification of death**

If a person dies in the State —

- (a) the funeral director or other person who arranges for the disposal of the person's remains; or

- (b) the person who is in charge of an educational or scientific institution where the person's remains are placed for the purpose of medical education or research,

must, within 14 days of the date of death, finding of the person's body or placement of the person's body, as is relevant to the case —

- (c) notify the Registrar of the person's death by lodging a death registration statement in an approved form and manner; and
- (d) give the Registrar the certificate of cause of death provided under section 44 in relation to the person.

Penalty: \$1 000.

**43. Notification of suspected death**

If a coroner holds an inquest into the circumstances of a suspected death and finds that the death has been established, the coroner is to be treated as the notifying person for the purposes of this Act.

**Division 3 — Certificates of cause of death**

**44. Doctor to provide certificate of cause of death unless the death is reportable to a coroner**

- (1) In the case of a person's death other than a still-birth or a neonatal death, the doctor who —
  - (a) was responsible for the person's medical care immediately before the death; or
  - (b) examined the person's deceased body,must, within 48 hours after the person's death —
  - (c) certify, in an approved form, the cause of the death; and
  - (d) give the certificate to the person who is responsible under section 42 for notifying the Registrar of the death.

**Births, Deaths and Marriages Registration Act 1998**

**Part 7** Registration of deaths

**Division 4** Disposal of human remains

**s. 45**

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- (2) If a child is still-born, the doctor who —
- (a) was responsible for the professional care of the mother at the birth; or
  - (b) examined the body of the still-born child after the birth,
- must, within 48 hours after the child's death —
- (c) certify, in an approved form, the cause of the death; and
  - (d) give the certificate to the person who is responsible under section 42 for notifying the Registrar of the death.
- (3) If a child has a neonatal death, the doctor who —
- (a) was responsible for the child's medical care immediately before the death; or
  - (b) examined the child's deceased body,
- must, within 48 hours after the child's death —
- (c) certify, in an approved form the cause of the death; and
  - (d) give the certificate to the person who is responsible under section 42 for notifying the Registrar of the death.
- Penalty applicable to subsections (1), (2) and (3): \$1 000.
- (4) A doctor does not commit an offence under subsection (1), (2) or (3) if —
- (a) a certificate required under the subsection is given by another doctor; or
  - (b) the doctor had reasonable cause for not being able to comply.
- (5) This section does not require a doctor to give a certificate of the cause of a person's death if the doctor is required under section 17(3) of the *Coroners Act 1996* to report the person's death to a coroner.

#### **Division 4 — Disposal of human remains**

**45. Notification of disposal of human remains in the State**

A funeral director or other person who arranges for the disposal of human remains, other than by way of removal of the remains from the State, must within 7 days after the disposal of the remains, give the Registrar notice in an approved form.

Penalty: \$1 000.

**46. Notification of disposal of human remains out of the State**

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—

- (a) within 7 days after the removal of the remains from the State give the Registrar notice in an approved form; and
- (b) within 28 days after the remains are disposed of outside the State give the Registrar notice in an approved form.

Penalty: \$1 000.

**47. Notification if disposal has not occurred within 30 days**

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 notice in an approved form.

Penalty: \$1 000.

#### **Division 5 — Registration of death**

**48. Registration of death**

- (1) The Registrar is to register a death by making an entry about the death in the Register including such particulars as the Registrar considers appropriate to register the death.

***Births, Deaths and Marriages Registration Act 1998***

**Part 7** Registration of deaths

**Division 5** Registration of death

**s. 48**

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- (2) If the particulars available to the Registrar are incomplete the Registrar may register a death on the basis of incomplete particulars.
- (3) The Registrar may register a death even though the death is subject to an inquest or other coronial investigation and a finding has not been made about the cause of death.
- (4) A death certificate issued before the completion of an inquest or other coronial investigation into the cause of death must be endorsed in a manner that the Registrar considers appropriate to indicate that fact.



## **Part 8 — The Register**

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

#### **49. The Register**

- (1) The Registrar must maintain a register or registers of registrable events (the *Register*).
- (2) The Register —
  - (a) must contain the particulars of each registrable event required under this Act, or any other written law, to be included in the Register; and
  - (b) may contain further information if its inclusion is considered appropriate by the Registrar.
- (3) The Register may be wholly or partly in the form of a computer database, 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.

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

#### **50. Registrar's powers of inquiry**

- (1) The Registrar may conduct an inquiry to find out —
  - (a) whether a registrable event has happened;
  - (b) particulars of a registrable event;
  - (c) whether particulars of a particular registrable event have been recorded, or correctly recorded, in the Register; or
  - (d) details of any other registrable information.
- (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 in a way specified in the notice.

- (3) A person must comply with a notice under subsection (2) unless the person has a reasonable excuse to not so comply.

Penalty: \$1 000.

### **Division 3 — Correction and amendment of Register**

#### **51. 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 the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event.
- (2) The Registrar must correct the Register if ordered by a State court to do so.
- (3) The Registrar may correct the Register in accordance with a determination made by a court of another State or of the Commonwealth if the Registrar considers that it is appropriate to do so.
- (4) The Registrar is to correct the Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.

#### **52. Amendment of Register**

The Registrar, whether or not on the application of another person, may, subject to sections 18 and 19, add additional registrable information to an entry in the Register or add an entry in the Register if there is sufficient evidence of the matters to be recorded.

**53. Registrar's functions under other Acts**

Nothing in this Division affects a requirement in another written law for the Registrar to correct or amend the Register for the purposes of that law.

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

**54. Access to Register**

- (1) The Registrar may, on conditions the Registrar considers appropriate —
  - (a) allow a person having an adequate reason for wanting access to the Register, access to the Register; or
  - (b) provide a person having 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;
  - (b) the sensitivity of the information;
  - (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.

**55. Search of Register**

- (1) The Registrar may, on application, search the Register for an entry about a particular registrable event or other information contained in the Register.

- (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;
  - (b) the age of the entry;
  - (c) the contents of the entry; and
  - (d) other relevant factors.
- (5) Nothing in this Act prevents the Registrar from providing a person, subject to such conditions as the Registrar thinks fit, with information contained in the Register for —
  - (a) the keeping of statistics;
  - (b) medical or epidemiological research;
  - (c) the identification of persons;
  - (d) the prevention of fraud; or
  - (e) any other purpose.

**56. 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.

**57. 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) If, in the Registrar's opinion, a word or expression appearing on an entry in the Register is, or may be regarded as, offensive, the Registrar may issue a certificate under subsection (1)(a) without including the word or expression.
- (3) 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.

**58. 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.

## **Part 9 — Miscellaneous**

### **59. False representation**

A person must not make a false or misleading representation in an application or document under this Act, knowing it to be false or misleading.

Penalty: \$10 000.

### **60. 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;
- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Penalty: \$10 000 or imprisonment for 2 years.

### **61. Falsification of certificate etc.**

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

Penalty: \$10 000 or imprisonment for 2 years.

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

Penalty: \$10 000 or imprisonment for 2 years.

- (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;
- (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;

- (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 must comply with a requirement under subsection (3) to return a document or certificate unless the person has a reasonable excuse to not so comply.

Penalty: \$1 000.

**62. Revocation of registration of registrable events obtained by fraud**

- (1) The Registrar may revoke the registration of a registrable event if it appears that the registration was obtained by fraud or other improper means.
- (2) If the Registrar revokes a registration of a registrable event the Supreme Court may make orders consequential to the revocation that are necessary or desirable in the circumstances of the case.

**63. Unauthorised disclosure of information**

A person who has access to the Register —

- (a) in the course of his or her employment; or
- (b) because the Registrar has allowed the person access to the Register under section 54,

must not disclose any information in the Register unless the disclosure is —

- (c) in connection with the administration or execution of this Act;
- (d) authorised or required by law; or

**s. 64**

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(e) authorised by the Registrar.

Penalty: \$5 000 or imprisonment for one year.

**64. Power to require and take statutory declarations**

The Registrar —

- (a) may require that information be given by statutory declaration; and
- (b) is authorised to take any statutory declarations required for the purposes of this Act.

**65. Evidentiary**

In a proceeding in which it is necessary or expedient to prove the approved form or manner in which notice or a certificate was to be given or lodged under this Act at a particular time, the approved form or manner in which the notice or certificate was to be given or lodged at that time may be sufficiently proved by the production of a certificate of the Registrar setting out the approved form or manner.

**66. Protection from liability**

- (1) A person who is or was —
  - (a) the Registrar;
  - (b) a Deputy Registrar of Births, Deaths and Marriages; or
  - (c) a public service officer in the Registrar's office,is a protected person for the purposes of this section.
- (2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.



- (3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

**67. Review**

- (1) A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of a function under this Act may apply to the State Administrative Tribunal for a review of the decision.

*[(2) deleted]*

*[Section 67 amended by No. 55 of 2004 s. 68.]*

**68. Some effects of *Adoption Act 1994* and *Surrogacy Act 2008***

- (1) Nothing in this Act prevents a birth parent of an adoptee from applying under section 19 or 52 (other than with a request under section 19(2)(c)) to add additional registrable information about the adoptee's birth registration if, but for the adoption, the information could have been included in the Register.
- (2A) Nothing in this Act prevents a birth parent of a child whose parentage was transferred under the *Surrogacy Act 2008* from applying under section 19 or 52 (other than with a request under section 19(2)(c)) to add additional registrable information about the child's birth registration if, but for the transfer of parentage, the information could have been included in the Register.
- (2) To the extent that —
  - (a) a provision of the *Adoption Act 1994* relating to access to adoption information in the Register; or

**s. 69**

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- (b) a provision of the *Surrogacy Act 2008* relating to access to information in the Register about the transfer of parentage under that Act,

is inconsistent with this Act, that Act prevails.

*[Section 68 amended by No. 47 of 2008 s. 55.]*

**69. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may, for the purposes of this Act —
- (a) prescribe fees; or
- (b) prescribe a basis for calculating fees.
- (3) A regulation may impose a penalty not exceeding a fine of \$1 000 for contravention of a provision of the regulations.

**70. Power to remit fees**

The Registrar may remit the whole or part of a fee under this Act if the Registrar considers that in the circumstances it is appropriate to do so.

*[71. Omitted under the Reprints Act 1984 s. 7(4)(f) and (g).]*

*[72. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

*[Schedule 1 omitted under the Reprints Act 1984 s. 7(4)(g).]*

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## Notes

- <sup>1</sup> This is a compilation of the *Births, Deaths and Marriages Registration Act 1998* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Births, Deaths and Marriages Registration Act 1998</i>	39 of 1998	30 Oct 1998	s. 1 and 2: 30 Oct 1998; Act other than s. 1 and 2: 14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 5</i>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<b>Reprint 1: The Births, Deaths and Marriages Registration Act 1998 as at 11 Jun 2004</b> (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 12<sup>2</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Medical Practitioners Act 2008 Sch. 3 cl. 5</i>	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Surrogacy Act 2008 Pt. 4 Div. 1</i>	47 of 2008	10 Dec 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 512)
<b>Reprint 2: The Births, Deaths and Marriages Registration Act 1998 as at 24 Jul 2009</b> (includes amendments listed above)			

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 6 <sup>3</sup>	35 of 2010	30 Aug 2010	<del>To be proclaimed</del> <a href="#">18 Oct 2010</a> (see s. 2(b)) and <i>Gazette</i> <a href="#">1 Oct 2010 p. 5075-6</a>

<sup>2</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>3</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 6 had not come into operation. It reads as follows:

**Division 6 — Births, Deaths and Marriages Registration Act 1998 amended**

**33. Act amended**

This Division amends the *Births, Deaths and Marriages Registration Act 1998*.

**34. Section 4 amended**

In section 4 delete the definition of *doctor* and insert:

*doctor* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;