



Western Australia

# **Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2020**



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Western Australia

## **Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2020**

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**No. 46 of 2020**

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**An Act to amend the *Births, Deaths and Marriages Registration Act 1998*.**

*[Assented to 9 December 2020]*

The Parliament of Western Australia enacts as follows:

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**1. Short title**

This is the *Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2020*.

**2. Commencement**

(1) This Act comes into operation as follows —

- (a) sections 1 to 3 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) However —

- (a) if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.

**3. Act amended**

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

**4. Part 5 Division 1 inserted**

At the beginning of Part 5 insert:

**Division 1 — Terms used**

**28A. Terms used**

In this Part —

***Australian citizen*** has the meaning given in the *Australian Citizenship Act 2007* (Commonwealth) section 3;

***detainee*** has the meaning given in the *Young Offenders Act 1994* section 3;

***early release order*** has the meaning given in the *Sentence Administration Act 2003* section 4(2);

***high risk serious offender*** means a person subject to —

- (a) a supervision order as defined in the *High Risk Serious Offenders Act 2020* section 27(1); or
- (b) an order under the *High Risk Serious Offenders Act 2020* section 58;

***permanent resident*** has the meaning given in the *Australian Citizenship Act 2007* (Commonwealth) section 3;

***prisoner*** has the meaning given in the *Prisons Act 1981* section 3(1);

***reportable offender*** has the meaning given in the *Community Protection (Offender Reporting) Act 2004* section 3;

***required declarant*** means a person who is any of the following —

- (a) a high risk serious offender;
- (b) a detainee;

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- (c) a person subject to an early release order;
- (d) a prisoner;
- (e) a reportable offender;
- (f) a supervised offender;
- (g) a supervised young offender;

***supervised offender*** —

- (a) means a person who is subject to an order under which the person is supervised or monitored under the *Sentencing Act 1995*, the *Sentence Administration Act 2003* or the *Young Offenders Act 1994*; but
- (b) does not include a supervised young offender or a person subject to an early release order;

***supervised young offender*** means a person who is the subject of a supervised release order as defined in the *Young Offenders Act 1994* section 3.

**5. Part 5 Division 2 heading inserted**

Before section 29 insert:

**Division 2 — General requirements relating to change of name**



**6. Section 29A inserted**

After section 29 insert:

**29A. Registrar may register change of name despite restrictions**

- (1) Despite any restriction imposed by this Division, the Registrar may, on application, register a change of a person's name if the Registrar is satisfied that —
  - (a) the change is for the personal protection of the person; or
  - (b) the change is because of the marriage or divorce of the person; or
  - (c) the change is justified by exceptional circumstances.
- (2) The Registrar may require the applicant to provide evidence to enable the Registrar to be satisfied under subsection (1).

**7. Section 30 replaced**

Delete section 30 and insert:

**30. Application to register change of adult's name**

- (1) An adult may apply to the Registrar for registration of a change of the adult's name if —
  - (a) the adult's birth is registered in the State; or
  - (b) the adult was born outside Australia and —
    - (i) the adult is an Australian citizen or permanent resident; and
    - (ii) the adult's birth is not registered in another State; and

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- (iii) the adult has lived in the State for at least 12 consecutive months immediately before the day the application is made.
- (2) The application must be made in the approved form.
- (3) The application must contain a declaration by the applicant setting out whether the applicant is, at the time the application is made, a required declarant.

**30A. Restrictions on changes of adult's name**

- (1) The Registrar must not register a change of an adult's name on an application under section 30 if the Registrar is aware that —
  - (a) a change of the adult's name has been registered (whether in this State or in another State) within the period of 12 months immediately before the day the application is made; or
  - (b) 3 or more changes of the adult's name have been registered (whether in this State or in another State).
- (2) When counting the number of changes of name for the purposes of subsection (1)(b), a change of name made before the applicant becomes an adult must not be counted.

**8. Section 31 replaced**

Delete section 31 and insert:

**31. Application to register change of child's name**

- (1) The parents or guardian of a child may apply to the Registrar for registration of a change of the child's name if the child's birth is registered in the State.
- (2) The parents or guardian of a child may also apply to the Registrar for registration of a change of the child's name if —
  - (a) the child was born outside Australia; and
  - (b) the child is an Australian citizen or permanent resident; and
  - (c) the child's birth is not registered in another State; and
  - (d) either —
    - (i) the application is made within 12 months after the date of the child's birth and at least 1 of the child's parents or guardians has lived in the State for at least 12 consecutive months immediately before the day the application is made; or
    - (ii) the application is not made within 12 months after the date of the child's birth and the child has lived in the State for at least 12 consecutive months immediately before the day the application is made.
- (3) An application under subsection (1) or (2) may be made by a child's guardian only if the parents of the child are dead, cannot be found or for some other

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reason cannot exercise their parental responsibilities for the child.

- (4) An application under subsection (1) or (2) may be made by 1 parent only 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.
- (5) An application under subsection (1) or (2) must —
  - (a) be made in the approved form; and
  - (b) contain a declaration by the applicant setting out whether the child is, at the time the application is made, a required declarant.

**9. Section 32A inserted**

After section 32 insert:

**32A. Restriction on changes of child's name**

- (1) The Registrar must not register a change of a child's name on an application under section 31 if a change of the child's name has been registered (whether in this State or in another State) within the period of 12 months immediately before the day the application is made.
- (2) Subsection (1) does not apply if the change of the child's name has been registered on an application under section 23 or 33.

**10. Section 34 amended**

(1) Delete section 34(1) and insert:

- (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 any of the following —
- (a) the identity and age of the person whose name is to be changed;
  - (b) that all requirements of this Division have been met;
  - (c) that the person whose name is to be changed is not the subject of a pending charge, within or outside the State, of an offence involving fraud or dishonesty and has not been convicted of such an offence;
  - (d) that the change of name is not sought for the purpose of avoiding the payment of a debt;
  - (e) that the change of name is not sought for the purpose of preventing the location or identification of the person whose name is to be changed by —
    - (i) a government department, agency or organisation of this State, another State or the Commonwealth; or
    - (ii) a body or organisation, if the person is required by a written law or a law of another State or the Commonwealth to prove their identity to that body or organisation; or
    - (iii) a body or organisation that is required by a written law or a law of another State or the Commonwealth to record the person's identity;

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- (f) that the change of name is not sought for a fraudulent or other improper purpose;
  - (g) 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) In section 34(3) delete “if, as a result of the change, the name would become a prohibited name.” and insert:
  - if —
    - (a) as a result of the change, the name would become a prohibited name; or
    - (b) the Registrar is not satisfied that any of the matters set out in subsection (1)(a) to (g) have been established.

**11. Section 35 amended**

Delete section 35(3).

**12. Sections 35A and 35B inserted**

After section 35 insert:

**35A. Registrar must inform certain registering authorities**

- (1) If the Registrar registers a change of a person’s name and the person’s birth was registered by a registering authority, the Registrar must inform the authority of the

change and give the authority sufficient information to identify the person.

- (2) The Registrar must not comply with subsection (1) if, in the Registrar's opinion, informing the authority of the change of the person's name would pose a risk to the safety of the person.

**35B. Registrar may inform prescribed public authorities**

- (1) In this section —

***public authority*** means —

- (a) a government department, agency or organisation of this State, another State or the Commonwealth; or
  - (b) a body, corporate or unincorporate, that is established or continued for a public purpose by this State, another State or the Commonwealth, regardless of the way it is established; or
  - (c) a body, corporate or unincorporate, in another country that has similar functions to the functions of the Registrar under this Part.
- (2) If the Registrar registers a change of a person's name, the Registrar may inform a prescribed public authority of the change and give the authority sufficient information to identify the person.

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**13. Part 5 Division 3 inserted**

At the end of Part 5 insert:

**Division 3 — Change of name restrictions for restricted persons**

**36A. Terms used**

In this Division —

***restricted person*** means a person, other than a reportable offender, who is any of the following —

- (a) a high risk serious offender;
- (b) a detainee;
- (c) a person subject to an early release order;
- (d) a prisoner;
- (e) a supervised offender;
- (f) a supervised young offender;

Note for this definition:

The *Community Protection (Offender Reporting) Act 2004* Part 4A is relevant to changing the name of a person who is a reportable offender.

***supervisory authority*** means —

- (a) for a high risk serious offender, the chief executive officer of the department principally assisting in the administration of the *High Risk Serious Offenders Act 2020* Part 4 Division 2; or
- (b) for a detainee, the chief executive officer as defined in the *Young Offenders Act 1994* section 3; or
- (c) for a person subject to an early release order, the Prisoners Review Board established under the *Sentence Administration Act 2003* section 102(1); or



- (d) for a prisoner, the chief executive officer as defined in the *Prisons Act 1981* section 3(1); or
- (e) for a supervised offender, the chief executive officer of the department principally assisting in the administration of the provision of the Act under which the supervised offender is supervised or monitored; or
- (f) for a supervised young offender, the Supervised Release Review Board established under the *Young Offenders Act 1994* section 151(1).

**36B. Registrar not to register name change without approval**

- (1) The Registrar must not register a change of a restricted person's name on an application unless the Registrar has been given a copy of the written approval for the application by the supervisory authority for the person.
- (2) Subsection (1) does not apply if the Registrar receives an application under section 33.

**36C. Restricted person not to apply to change name**

A restricted person must not do any of the following, unless the person has obtained the written approval of the supervisory authority for the person —

- (a) apply, under this Act, to the Registrar for registration of a change of the person's name;
- (b) apply to a registering authority for registration of a change of the person's name.

Penalty: imprisonment for 2 years and a fine of \$12 000.

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**36D. Person not to apply to change restricted person's name**

A person (the *applicant*) must not, in respect of a restricted person, do any of the following, unless the applicant has obtained the written approval of the supervisory authority for the restricted person —

- (a) apply, under this Act, to the Registrar for registration of a change of the restricted person's name;
- (b) apply to a registering authority for registration of a change of the restricted person's name.

Penalty: imprisonment for 2 years and a fine of \$12 000.

**36E. Approval by supervisory authority**

- (1) In this section —

*change of name application* means an application proposed to be made by or in respect of a restricted person for the registration of a change of the person's name.

- (2) A person may apply to a supervisory authority for approval to make a change of name application.
- (3) The application for approval must be made in a manner approved by the supervisory authority.
- (4) A supervisory authority may only approve the making of a change of name application if the authority is satisfied that the change of name is in all the circumstances necessary or reasonable.

- (5) A supervisory authority must not approve the making of a change of name application if the authority is satisfied that the change of name is reasonably likely —
- (a) if the restricted person is detained, to have an adverse effect on the security, discipline or good order of the place in which the restricted person is detained; or
  - (b) to be regarded as offensive by a victim of crime or a significant sector of the community; or
  - (c) to frustrate the administration of any of the following Acts —
    - (i) the *High Risk Serious Offenders Act 2020*;
    - (ii) the *Prisons Act 1981*;
    - (iii) the *Sentence Administration Act 2003*;
    - (iv) the *Sentencing Act 1995*;
    - (v) the *Young Offenders Act 1994*.

**36F. Notice of decision by Registrar**

- (1) The Registrar must notify the supervisory authority for a restricted person —
- (a) if the Registrar registers a change of the person's name; or
  - (b) if the Registrar refuses to register a change of the person's name.
- (2) When notifying a supervisory authority under subsection (1) the Registrar must give the authority sufficient information to identify the restricted person.

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**36G. Supervisory authority to give documents and information**

- (1) If a supervisory authority decides to approve the making of a change of name application under section 36E, the authority must, as soon as is practicable —
  - (a) give written approval to the person who wishes to make the application; and
  - (b) give a copy of the written approval to the Registrar or if the application is to be made to a registering authority, to the registering authority.
- (2) For the purposes of the Registrar verifying the details of an application to register a change of name each supervisory authority must, if the Registrar requests, give the Registrar the following —
  - (a) the name of each restricted person for whom they are the supervisory authority;
  - (b) any other name by which the person is, or has previously been, known (of which the supervisory authority is aware);
  - (c) the date of birth of the person;
  - (d) any other information that may be used to identify the person.

**36H. Delegation by chief executive officers**

- (1) A chief executive officer referred to in the definition of *supervisory authority* in section 36A, may delegate to any person any power or duty of the chief executive officer under another provision of this Division.
- (2) The delegation must be in writing signed by the chief executive officer.

- (3) A person to whom a power or duty is delegated under this section cannot delegate the power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Unless the contrary is shown, it is to be presumed that a document purporting to have been signed by a person as a delegate of the chief executive officer was signed by a person in the performance of a function that at the time was delegated to the person by the chief executive officer.
- (6) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

**14. Section 54 amended**

- (1) In section 54(1):
  - (a) in paragraph (b) delete “Register.” and insert:

Register; or
  - (b) after paragraph (b) insert:
  - (c) verify that information held by a person is the same as the information contained in the Register.

- (2) In section 54(2) delete “In” and insert:

For the purposes of section 54(1)(a) or (b), in

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- (3) In section 54(3) delete “on which access to the Register, or information extracted from the Register, is to be given under this section,” and insert:

under subsection (1)

Note: The heading to amended section 54 is to read:

**Access to and verification of Register**

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