

BIRTHS, DEATHS AND MARRIAGES AMENDMENT (CHANGE OF NAME) BILL 2018

EXPLANATORY MEMORANDUM

Overview of the Bill

The Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018 (the Bill) amends the *Births, Deaths and Marriages Registration Act 1998* (WA) to improve change of name processes and minimise exploitation of the current system for fraudulent or criminal activity or other wrongful purposes.

The Bill will restrict certain classes of persons including prisoners, parolees, detainees, dangerous sexual offenders, and other offenders supervised in the community from applying to change their name without the prior approval of a relevant supervisory authority.

The Bill will require persons born in an Australian State or Territory to apply for any change of name in their birth state. This will allow for greater transparency as each and every change of a name will be formally linked to the applicant's birth registration. It will also restrict overseas born people from changing their name unless they are an Australian citizen or a permanent resident.

The Bill will also place limits on the frequency and number of times a person can change their name, which will reduce the ability to create multiple identities to avoid detection or other inappropriate purposes.

The Bill will further improve information sharing with government and other approved organisations and overseas countries such as New Zealand. It will also allow the Registry of Births, Deaths and Marriages to fully participate in the National Document Verification Service, which enables identity credentials such as birth certificates, passports, citizenship certificates and motor driver's licences to be authenticated with the issuing authority to strengthen name-based enrolment and identity checks.

Preliminary

Clause 1 Short title

This clause provides that the short title is the *Births, Deaths and Marriages Amendment (Change of Name) Act 2018*.

Clause 2 Commencement

Sections 1 and 2 will come into operation on the day the Act receives the Royal Assent.

The remainder of the Act will come into operation on a day fixed by proclamation and different days may be fixed for different provisions of the Act.

Clause 3 Act amended

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

Clause 4 Part 5 Division 1 inserted

This clause creates a new Division 1 in Part 5 of the Act and inserts proposed section 28A.

Proposed section 28A includes terms and definitions for the purposes of new Part 5, Divisions 2 and 3 of the Act as follows:

- **Australian citizen** has the meaning given in the *Australian Citizenship Act 2007* (Commonwealth) section 3;
- **dangerous sexual offender** means a person subject to a supervision order as defined in the *Dangerous Sexual Offenders Act 2006* section 3(1);
- **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);
- **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 dangerous sexual offender;
 - (b) a detainee;
 - (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.

Clause 5 Part 5 Division 2 heading inserted

This clause inserts a new heading – General requirements relating to change of name - before section 29 of the Act.

Clause 6 Subsection 29A inserted

Proposed section 29A provides that the Registrar may register a change of name despite restrictions imposed by new Division 2.

Proposed subsection 29A(1) provides authority for the Registrar to register a change of name for a person, notwithstanding the general requirements imposed by this Division, if the Registrar is satisfied the reason provided for the change warrants approval. This may be for the personal protection of the person, the person wishes to change their name after marriage

or divorce, or for other exceptional circumstances. It is noted that this section does not allow the Registrar to register a change of name where the applicant is a restricted person under clause 13 of the Bill.

The reference to a person in the proposed section 29A includes a child where the application is made by the child's parents or guardians in accordance with Sections 31 and 32 of the Act.

Proposed subsection 29A(2) allows the Registrar to require an applicant to provide evidence to satisfy the Registrar to exercise the authority provided under subsection 29A(1).

Clause 7 Section 30 replaced

Clause 7 deletes existing section 30 and inserts proposed sections 30 and 30A.

Proposed sections 30 deals with applications to register a change of name for an adult.

Proposed subsection 30(1) provides that, in order to apply to the Registrar, an adult applicant must be a person whose birth is registered in Western Australia (WA). Or if born outside of Australia the applicant must be either a permanent resident or an Australian citizen, and must not have their birth registered elsewhere in Australia and must have resided in WA for a period of 12 continuous months immediately preceding the making of the application.

This will ensure the birth and change of name records are linked with the State of birth or residency, limiting 'jurisdictional shopping' to register multiple names from state-to-state.

Proposed subsection 30(2) requires an application to register a change of name to be made in an approved form.

Proposed subsection 30(3) provides that at the time of application an applicant must declare if they are a **required declarant** pursuant to proposed section 28A.

Proposed section 30A places restrictions on the frequency and number of changes of name for an adult.

Proposed subsection 30A(1)(a) provides that the Registrar must not register a change of name for an adult if the applicant has changed their name, whether in WA or another State, within the period of 12 consecutive months immediately preceding the date of the application. In addition, proposed subsection 30A(1)(b) restricts a change of name where the applicant has previously had three registered changes of name.

Proposed subsection 30A(2) qualifies that when counting the number of changes of name at proposed subsection 30A(1)(b) any change of name made before the applicant becomes an adult are not counted.

However, the Registrar retains the authority to grant an application for a person who does not meet the requirements under 30(1) or 30A, but meets the requirements of proposed section 29A.

Clause 8 Section 31 replaced

Clause 8 deletes section 31 and inserts proposed section 31, which provides for applications to register a change of a child's name.

Proposed subsection 31(1) provides that, in order for the parents or guardians of a child to apply to change the child's name, the child's birth must be registered in WA.

Proposed subsection 31(2) provides that the parents or guardians of a child may apply to change the child's name if the child was born outside of Australia, and the child is either a permanent resident or an Australian citizen and does not have their birth registered elsewhere in Australia. This subsection also requires that where the child is less than 12 months old, at least one of the parents or guardians must have resided in WA for at least 12 consecutive months immediately preceding the date of the application. Or where the child is over 12 months old, then the child must have resided in WA for a period of 12 consecutive months immediately preceding the date of the application.

Proposed subsection 31(3) requires that a child's guardian may only apply to register a child's change of name if the child's parents are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 31(4) provides that one parent only can apply to register a change of name for a child if the applicant is the sole parent named within the child's birth registration or the child's other parent has died.

Proposed subsection 31(5) provides that an application must be made in an approved form and the applicant must declare if the child is a **required declarant** pursuant to proposed section 28A.

Clause 9 Section 32A inserted

Proposed section 32A places restrictions on the frequency and number of changes of name for a child.

Proposed subsection 32A(1) provides that the Registrar must not register a child's change of name if the child has had a registered change of name either in WA or in any other State within 12 months immediately preceding the date of the application.

Proposed subsection 32A(2) provides that the requirements under subsection 32A(1) do not apply to a change of name registered pursuant to sections 23 or 33 or the Act. Section 23 of the Act allows for a change a child's given names within a year of birth. Section 33 requires that if the Family Court has approved a change of name for a child then upon application by any person the Registrar must register that change of name.

Clause 10 Section 34 amended

Clause 10(1) deletes section 34(1) and replaces it.

Proposed subsection 34(1) provides that before registering any change of name the Registrar may require the applicant to provide evidence to establish to the Registrar's satisfaction:

- the identity and age of the applicant;
- that the applicant meets all the general requirements to change their name required under Part 5, Division 2;
- that the applicant has not been convicted or has any pending charges relating to fraud or dishonesty in WA or another State;

- that the change of name is not being sought for the purpose of avoiding the payment of a debt;
- that the change of name is not being sought for the purpose of preventing the applicant's identity or location by a government department, agency or organisation, another State or the Commonwealth or by a body or organisation where there is a requirement under a written law to prove or record the applicant's identity;
- that the change of name is not sought for fraudulent or other improper purposes; or
- if the application is for a child 12 years or more, the child has either consented to the change of name or is unable to understand the meaning and implications of the change of name.

Clause 10(2) deletes part of subsection 34(3) and inserts proposed subsections 34(3)(a) and (b).

Section 34(3) is proposed to be amended by deleting "if, as a result of the change, the name would become a prohibited name".

Proposed subsection 34(3)(a) provides that the Registrar may refuse to register a change of name if, as a result of the change, the name would become a prohibited name.

Proposed subsection 34(3)(b) provides that the Registrar may refuse to register a change of name if, the Registrar is not satisfied that any or all of the matters set out in subsection 34(1) have not been established.

Clause 11 Section 35 amended

Clause 11 amends section 35 by deleting section 35(3).

Currently, section 35(3) of the Act sets out that the Registrar "may" provide the relevant registering authority notice of a change of name. This is replaced by the new requirements in proposed sections 35A and 35B contained at clause 12.

Clause 12 Sections 35A and 35B inserted

Clause 12 inserts new sections 35A and 35B.

Proposed subsection 35A(1) requires that the Registrar must inform the relevant 'registering authority' (as defined at section 4 of the Act) of a change of name for a person born in that state or territory.

However, proposed subsection 35A(2) provides that the Registrar must not comply with section 35A(1) if, in the opinion of the Registrar, informing the relevant registering authority would pose a risk to the safety of the person.

Proposed section 35B allows the Registrar to inform prescribed public authorities of a change of name. The *Births, Deaths and Marriages Registration Regulations 1999* will also be amended to provide for authorities who will be prescribed for this purpose.

Proposed subsection 35B(1) defines a **public authority** as a-

- a government department, agency or organisation of this State, another State or the Commonwealth; or

- a body, corporate or unincorporated, 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
- a body, corporate or unincorporated, in another country that has similar functions to the functions of the Registrar under this Part.

Proposed subsection 35B(2) provides that if the Registrar registers a change of name and informs a prescribed public authority of the change of name, the Registrar may give the public authority sufficient information to identify the person. These authorities will be prescribed under the *Births, Deaths and Marriages Registration Regulations 1999*.

Clause 13 Part 5 Division 3 inserted

This clause creates a new Division 3 in Part 5 of the Act - **Change of name restrictions for restricted persons**.

Division 3 is inserted to place specific requirements on certain restricted persons, in addition to the general requirements contained in Part 5, Division 2. New sections 36A to 36H are proposed to be inserted under Division 3.

36A. Terms used

Proposed section 36A includes terms and definitions used in Division 3 as follows:

restricted person means a person other than a ‘reportable offender’ including a:

- (a) dangerous sexual offender;
- (b) detainee;
- (c) person subject to an early release order;
- (d) prisoner;
- (e) supervised offender;
- (f) supervised young offender.

Each of these categories of restricted persons are defined in proposed section 28A, Division 1.

supervisory authority means:

(a) for a dangerous sexual offender	the chief executive officer of the department principally assisting in the administration of the <i>Dangerous Sexual Offenders Act 2006</i> Part 2.
(b) for a detainee	the chief executive officer as defined in the <i>Young Offender Act 1994</i> section 3.
(c) for a person subject to an early release order	the Prisoners Review Board established under the <i>Sentence Administration Act 2003</i> section 102(1).
(d) for a prisoner	the chief executive officer as defined in the <i>Prisons Act 1981</i> section 3(1).
(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.
(f) for a supervised young offender	the Supervised Release Review Board established under the <i>Young Offenders Act 1994</i> section 151(1).

36B. Registrar not to register name change without approval

Proposed subsection 36B(1) prevents the Registrar from registering a change of a restricted person's name unless the Registrar has been given a written copy of approval by the supervisory authority for the person.

Proposed subsection 36B(2) provides that section 36(B)(1) does not apply to an application to change a name lodged pursuant to section 33 of the Act. Section 33 requires that if the Family Court has approved a change of name for a child then upon application by any person the Registrar must register that change of name.

36C. Restricted person not to apply to change name

Proposed section 36C provides that a restricted person must not apply to either the Registrar or relevant registering authority to change their name without having obtained the written approval of the required supervisory authority.

This section contains an offence provision, which carries a penalty of imprisonment for 2 years and a fine of \$12 000.

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

Proposed section 36D similarly requires that a person (the **applicant**) must not apply to either the Registrar or relevant registering authority, in respect of a restricted person, for registration of a change of name unless the applicant has obtained the written approval of the required supervisory authority.

This section contains an offence provision which carries a penalty of imprisonment for 2 years and a fine of \$12 000.

36E. Approval by supervisory authority

Proposed subsection 36E(1) defines **change of name application** as an application to be made by or in respect of a restricted person for the registration of a change of the person's name.

Proposed subsection 36E(2) provides that a person may apply to a supervisory authority for approval to make a change of name application to the Registrar.

Proposed subsection 36E(3) requires that an application for supervisory authority approval must be made in a manner approved by the supervisory authority.

Proposed subsection 36E(4) provides that a supervisory authority may only approve the making of a change of name application if satisfied that the change of name is in all the circumstances necessary or reasonable.

Proposed subsection 36E(5) provides that a supervisory authority must not approve a change of name application if satisfied that the change of name is reasonably likely;

- 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
- to be regarded as offensive by a victim of crime or a significant sector of the community; or
- to frustrate the administration of the relevant Act under which the restricted person is managed.

36F. Notice of decision by Registrar

Proposed subsection 36F(1) requires that the Registrar must notify the relevant supervisory authority if the Registrar either registers or refuses to register a change of name for a restricted person.

Proposed subsection 36F(2) requires that when notifying a supervisory authority under subsection (1) the Registrar must give the authority sufficient information to identify the restricted person.

36G. Supervisory authority to give documents and information

Proposed subsection 36G(1) requires that 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 give written approval to the person who wishes to make the application. The supervisory authority must also give a copy of the written approval to the Registrar, or to the relevant registering authority (if the application relates to a person born in another state or territory).

Proposed subsection 36G(2) provides for the Registrar to verify the details of an application to register a change of name with the supervisory authority for a restricted person. The supervisory authority must, if the Registrar requests, provide the Registrar with information relevant for this purpose. This may include the name of restricted persons for whom they are the supervisory authority, any other names by which the person is or has previously been known (of which the supervisory authority is aware), date of birth, and any other information that may be used to identify the restricted person.

36H. Delegation by chief executive officer

Proposed subsection 36H(1) provides that a chief executive officer referred to in the definition of supervisory authority (under proposed section 36A) may delegate to any person any power or duty of the chief executive officer, which is made under another provision of this Division.

Proposed subsection 36H(2) requires that the delegation must be in writing signed by the chief executive officer.

Proposed subsection 36H(3) provides that a person to whom a power or duty is delegated cannot delegate the power or duty to another person.

Proposed subsection 36H(4) provides that a person exercising or performing a power or duty delegated under this section does so under the terms of the delegation unless the contrary is shown.

Proposed subsection 36H(5) presumes that a document purporting to be 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, unless the contrary is shown.

Proposed subsection 36H(6) allows a chief executive officer to perform a function through an officer or agent notwithstanding any of the provisions under section 36(H).

Clause 14 Section 54 amended

Clause 14 amends the heading to section 54 to read Access to and verification of Register and amends section 54(1) by inserting proposed paragraph (c) which allows for a person who holds information to verify it against information held in the Register. This proposed change will allow prescribed authorities to authenticate certificate information provided to them against the Register therefore allowing the WA Registrar to fully participate in the National Document Validation Service (DVS).

Section 54(2) is amended to ensure it only applies to sections 54(1)(a) and (b).

Section 54(3) is amended to ensure it applies to proposed section 54(1).