



REPORT OF THE
CONSTITUTIONAL AFFAIRS COMMITTEE
IN RELATION TO THE
BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1998
AND
*ACTS REPEAL AND AMENDMENT (BIRTHS, DEATHS AND
MARRIAGES REGISTRATION) BILL 1998*

Presented by the Hon Murray Nixon, MLC

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

21 December 1989

Terms of Reference:

1. The functions of the committee are to inquire into and report on:
 - (a) the constitutional law, customs and usages of Western Australia;
 - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - (d) any petition.
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

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Hon T Helm MLC

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1 EXECUTIVE SUMMARY AND RECOMMENDATIONS

1.1 Executive Summary

1.1.1 The principal purpose of the *Births Deaths and Marriages Bill* ("The Principal Bill") is to retain the traditional framework of compulsory civil registration while facilitating the introduction of common services across Australia. The Principal Bill is pursuant to recommendations of the 1993 report entitled *Project Link* ("the Report") commissioned by the *Standing Committee of Attorneys General*. The report recommended the integration of State Registry services.

1.1.2 Features of the Principal Bill include provisions to -

- enable the freedom of choice in naming of a child at the time of registration of birth, including the recognition of traditional and religious naming procedures of all ethnic groups;
- allow children of the same parents to have different surnames which is presently not available;
- enable the Minister to enter into arrangements with other State and Territory Ministers for provision of improved registry services;
- ensure that all births in WA are registered by making it compulsory for a hospital, doctor, midwife or other responsible person to notify Registrar of Births;
- provide the Registrar with greater scope to record parentage details;
- provide the Registrar with greater scope to receive and register information about a birth from a person other than a parent of a child;
- enable the Registrar to give effect to a finding of court in relation to identity of child's parent;
- recognise that both parents are equally responsible to register the birth of a child;
- remove any reference to the legitimacy of child;
- recognise a person's right under common law to change their name; and
- rationalise procedures for name changing.

1.1.3 The Committee's report makes recommendations in relation to each and every clause of the Principal Bill and, where appropriate, provides comment on the clause. The Committee also makes recommendations in relation to each and every clause of the

Amendment Bill which is considered in the latter part of the report and highlights where the Principal Bill changes existing legislation and procedures.

1.2 Recommended Amendments

The Principal Bill and the Amendment Bill be passed with the following amendments:-

- 1) Paragraph (c) of the definition of “prohibited name” in clause 4 be deleted.**
- 2) The words “it is not practicable” in Clause 15 are deleted and the words “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.” be inserted.**
- 3) There be further examination of difficulties arising from the registration of names of people of Asian extraction.**
- 4) In clause 34(2), the words “the change of name may be registered under this Act if the Registrar considers that it is appropriate to do so” be deleted and the words “the Registrar is to register the change of name unless the personal safety of the person requires otherwise” be inserted.**
- 5) Clause 59 be amended to provide a maximum penalty of \$10,000 for false representation.**

**Report of the Legislative Council
Constitutional Affairs Committee**

in relation to the

Births, Deaths and Marriages Registration Bill 1998

and

***Acts Repeal and Amendments
(Births, Deaths and Marriages Registration Bill) 1998***

2. CONTENTS AND PURPOSES OF THE BIRTHS DEATHS AND MARRIAGES REGISTRATION BILL

- 2.1 The *Births, Deaths and Marriages Registration Bill 1998* ("The Principal Bill") and the Acts Repeals and Amendments (Births, Deaths and Marriages Registration Bill) 1998 ("*Amendment Bill*") were referred to the Constitutional Affairs Committee on a motion by the Attorney General, the Hon Peter Foss MLC.
- 2.2 The Principal Bill corresponds with legislation enacted by South Australia, New South Wales, Victoria and the Northern Territory.
- 2.3 The principal purpose of the *Births Deaths and Marriages Bill* is to retain the traditional framework of compulsory civil registration while facilitating the introduction of common services across Australia.
- 2.4 In his Second Reading speech in the Legislative Council, Hon Peter Foss MLC said that the Principal Bill:

"... is designed to more adequately address the needs of contemporary society by acknowledging changes in social attitudes, recognise the cultural diversity of our community and the existence of modern technology and administrative procedures."

- 2.5 The Principal Bill is pursuant to recommendations of the 1993 report entitled *Project Link* ("the Report") commissioned by the *Standing Committee of Attorneys General*. The report recommended the integration of State Registry services. The report noted:-

"The historical development of these registries has resulted in a system with excessive functional duplication and therefore cost, limited automation, non-standard data sets, patchy and often inconvenient service to client and

often unsatisfactory service to public agents. Integrated service delivery would offer the prospect of overcoming these problems.”

2.6 The Report further noted that the benefits of integration included:

- *Individuals would have better access to information recorded in a state other than that where they resided;*
- *Greater efficiency and certificate timeliness;*
- *Improved access to standardised information for government and some private agencies; and*
- *Reduced costs and greater efficiency for registries.*

2.7 Features of the Principal Bill include provisions to -

- enable the freedom of choice in naming of a child at the time of registration of birth, including the recognition of traditional and religious naming procedures of all ethnic groups;
- allow children of the same parents to have different surnames which is presently not available;
- enable the Minister to enter into arrangements with other State and Territory Ministers for provision of improved registry services;
- ensure that all births in WA are registered by making it compulsory for a hospital, doctor, midwife or other responsible person to notify Registrar of Births;
- provide the Registrar with greater scope to record parentage details;
- provide the Registrar with greater scope to receive and register information about a birth from a person other than a parent of a child;
- enable the Registrar to give effect to a finding of court in relation to identity of child's parent;
- recognise that both parents are equally responsible to register the birth of a child;
- remove any reference to the legitimacy of child;
- recognise a person's right under common law to change their name; and
- rationalise procedures for name changing.

3 LEGITIMACY AND NAMES AT COMMON LAW

- 3.1 A person's original given name is that, or are those, given at baptism. However, the common law has never prevented a person from assuming any other given name of his or her choice. Strictly speaking any such assumed name does not displace a person's given name, though it is nonetheless regarded as valid for the purposes of legal identification.

A surname is not a legal name but merely an assumed name, which is first acquired and can then be changed simply by reputation and usage. In practice, the original surname of a person is taken to be that specified on his or her birth certificate. The parents of a child are allowed a choice in the surname that is entered for a child in the register of births. If no surname is specified in a birth certificate, the presumption would appear to be that a child's surname is that of his or her father if he or she was born in marriage, or is that of his or her mother if he or she is ex-nuptial.

However, Western Australia, alone of all Australian jurisdictions, regulates a person's name by statute. Under the *Change of Names Regulation Act 1923*, it is an offence for anyone to use any name other than that by which he or she was registered at birth, unless the new name has been assumed by marriage, deed poll or licence of the Registrar General of Births, Deaths and Marriages. Once a new name has been assumed in one of these ways, the former name cannot be reassumed except in one of the formal ways just indicated, unless it was one registered or given at birth.

- 3.2 A child is illegitimate if he or she is born out of wedlock. Until the second half of the 18 th century, an illegitimate child was unable to inherit from his or her parents. The child was "filius nulus" - literally speaking "the child of no-one". By virtue of the *Legitimation Act 1909* and s 89 of the *Marriages Act 1961 (Cth)* a child is legitimated by the subsequent marriage of his or her parents.

Until recently, only Western Australia had not passed legislation to make legitimate and illegitimate children equal in status. However, the *Family Court Act 1997*, which is yet to be assented to, remedies this situation.

4. COMMITTEE'S APPROACH

- 4.1 The Principal Bill contains seventy-two (72) clauses in nine (9) parts:

- Part 1: Preliminary**
- Part 2: Administration**
- Part 3: Registration of Births**
- Part 4: Registration of Adoption Information**
- Part 5: Change of Name**
- Part 6: Registration of Marriages**
- Part 7: Registration of Deaths**

Part 8: The Register**Part 9: Miscellaneous**

- 4.2 The Committee's report makes recommendations in relation to each and every clause of the Principal Bill and, where appropriate, provides comment on the clause.
- 4.3 The Committee also makes recommendations in relation to each and every clause of the *Amendment Bill* which is considered in the latter part of the report.
- 4.4 The Committee has also sought to highlight where the Principal Bill changes existing legislation and procedures.

5. BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 1998

PART 1 — PRELIMINARY

Short title

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

Recommendation 1: the section be passed

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Recommendation 2: the section be passed

Objects of Act

3. The objects of this Act are to provide for —

- (a) the registration of births, deaths, marriages, changes of name and adoptions information in Western Australia;
- (b) the keeping of registers for recording and preserving information about births, deaths, marriages, changes of name and adoptions 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.

Recommendation 3: the section be passed

Definitions

4. 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**” means a person registered as a medical practitioner under the *Medical Act 1894*;

“**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;
- (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) includes or resembles an official title or rank; or
- (d) 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;

``**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.

Comment: In South Australia, the definition of still-born child was amended to exclude terminations of pregnancy performed after 20 weeks. It was argued that in the rare cases that a birth is terminated after the 20 week period because of risk to the mother's life or congenital abnormality, the mother should not be put through the added trauma of being obliged to notify the Registrar of the procedure as a birth and death. The Committee has chosen not to include this amendment and to leave the matter to Parliament to debate the issue.

Recommendation 4: The definition of "prohibited name" operates to exclude normal use of established names like Duke, Earl or King. The "public interests" provision of paragraph (d) should be sufficient to prevent any undesirable use of an official rank or title.

Therefore, the Committee recommends that paragraph (c) be deleted.

PART 2 — ADMINISTRATION

Division 1 — The Registrar and staff

Registrar

5. 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.

Recommendation 5: the section be passed

Registrar's general functions

6. 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.

Recommendation 6: the section be passed

Registrar's staff

7. (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.

Recommendation 7: the section be passed

Delegation

8. (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.

Recommendation 8: the section be passed

Division 2 — Execution of documents

The Registrar's seal

9. The Registrar is to have a seal.

Recommendation 9: the section be passed

Execution of documents

10. (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.

Recommendation 10: the section be passed

Division 3 — Reciprocal administrative arrangements

Reciprocal administrative arrangements

11. (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 authorized 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 authorized 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.

Comment: Under this clause the Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing the Registering authorities with the ability to exercise each other's powers and functions to the extent authorised by the arrangement. An arrangement may also establish and provide for the use of a data base in which information is recorded for the benefit of all the participants in the arrangement.

Recommendation 11: the section be passed

PART 3 — REGISTRATION OF BIRTHS***Division 1 — Notification of births*****Notification of births**

12. (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.

Comment: There is no equivalent procedure under the *Registration of Births, Deaths and Marriages Act 1961* for notification of birth. Under the Principal Bill a child's birth must be notified and registered.

This clause imposes a duty of care on health professionals to notify the Registrar of any births they are involved in. It also requires that a notice and death certificate be provided to the Registrar where there has been a still birth.

Recommendation 12: the section be passed

Division 2 — Registration of births

Cases in which registration of birth is required or authorized

- 13.** (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.

Comment: Any birth occurring in the State must be registered in this State and a Court of any State or the Commonwealth may direct the registration of a birth. The section also provides for registration where the child is born out of the State or on a vessel or aircraft.

Recommendation 13: the section be passed

How to have the birth of a child registered

- 14.** A person has the birth of a child registered under this Act by lodging a statement (the "**birth registration statement**") in an approved form.

Recommendation 14: the section be passed

Responsibility to have birth registered

15. (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 not practicable 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.

Comment: The section imposes a joint obligation on the parents to register the birth of a child, unlike the *Registration of Births, Deaths and Marriages Act 1961* which requires that only one parent register the birth of a child. However, under the Principal Act the Registrar may accept a birth registration statement from one person if satisfied that it is not practicable to obtain the signatures of both parents.

Recommendation 15: The Committee is concerned by the broadness of the discretion granted to the Registrar in requiring both parents to sign a birth registration statement. The Committee can foresee circumstances where it would be unfair to require both parents to sign a birth registration statement. For example, where the birth results from a sexual assault, and the father's whereabouts is known, but to require him to be named and to sign the statement would cause great distress to the mother. On the other hand, there may be circumstances where a parent may seek to register the birth of a child without the other parent's knowledge or consent, which in the circumstances it is reasonable to obtain.

Therefore, the Committee recommends leaving out the words "it is not practicable" and insert "it is impossible, impracticable or inappropriate 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."

Obligation to have birth registered

16. (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.

Comment: Under the old *Registration of Births, Deaths and Marriages Act 1961* a birth is not to be registered without the written authority of the Registrar-General if it is not registered within 12 months of the birth of the child.

Recommendation 16: the section be passed

Registration of birth

17. (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.

Recommendation 17: the section be passed

Registration of parentage details

18. (1) The Registrar is not to include information about the identity of a child's parents in the Register unless —

- (a) the father and the mother 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.

Comment: Under the *Registration of Births, Deaths and Marriages Act 1961* the father of an illegitimate child is not required to provide registrable information and the father is not to register information about himself unless he swears a statutory declaration that he is the father of the child.

Recommendation 18: the section be passed

Addition of details after birth registration

19. (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 the child's father and mother, the Registrar may change the surname for the child entered in the Register to the proposed surname; or
- (b) if the application is not jointly made by the child's father and mother, 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.

Recommendation 19: the section be passed

Division 3 — Court orders relating to registration of birth**Powers of State courts**

20. 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.

Recommendation 20: the section be passed

Registration of birth etc. after court findings

21. (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.

Recommendation 21: the section be passed

Division 4 — Child's name

Name of child

22. (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.

Comment:

22.1 The Committee notes that it is possible for a person to be known only by one name or to have a surname which is not the same as either of their parents or spouse.

22.2 The *Registration of Births, Deaths and Marriages Act 1961* states that a legitimate child is to bear the surname of his or her father and in all other cases the surname of the mother except where the parents have different surnames and they request the Registrar to enter the mother's surname or a combination of the mother's and father's surnames.

In the case where the father or mother of a child belongs to a prescribed ethnic group, the Registrar-General may register a surname which in his or her opinion is in accordance with a prescribed recognised religious custom or naming procedure. However, children of the same mother and father are to bear the same surname unless the mother and father agree and the Registrar-General is satisfied that the use of a different surname is in accordance with a prescribed recognised religious custom or naming procedure of the ethnic group to which either parent of the child belongs.

- 22.3 The Committee received a submission from Mr Anthony Quahe Cheng Hai. Mr Hai expressed concern that while the Principal Bill attempted to provide for ethnic naming practices it would not succeed. He stated that the problem arose in the case of persons who originated from East Asia and South East Asia, where those persons add a European name to his or her traditional name. However, the forms provided by the Registrar's office were not able to accommodate these cases and properly reflect order of the traditional name and the western name. For example, the name James Lee Meng Kee is registered as James Meng Kee Lee. This has created delays in some financial transactions where a financial institution has refused to accept documentation bearing a name which does not exactly match the registered name.

The Committee is unable to recommend any changes to the *Births Deaths and Marriages Bill* to rectify the problem and mentions this matter in order to draw it to the attention of the Office of the Registrar so that they may devise a method of accommodating these naming procedures.

Recommendation 22: the section be passed

Given names can be changed once within a year of birth

23. (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.

Recommendation 23: the section be passed

PART 4 — REGISTRATION OF ADOPTION INFORMATION**Registration of State adoption order, or State discharge of adoption order, if adoptee's birth registered in this State**

24. 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.

Recommendation 24: the section be passed

Registration of State adoption order, or State discharge of adoption order, if adoptee's birth not registered in this State

25. (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.

(2) The Registrar is not required to register a birth under subsection (1) if —

- (a) the birth is registered under a corresponding law; and
- (b) information about the adoption order, or the discharge of the adoption order, as is applicable in the case, is registered under a corresponding law.

(3) If a birth is to be registered under subsection (1) 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.

Recommendation 25: the section be passed

Registration of interstate adoption order, or interstate discharge of adoption order, if adoptee's birth registered in this State

26. If —

- (a) an adoption 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.

Recommendation 26: the section be passed

Manner and form of adoption information in the Register

27. 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.

Recommendation 27: the section be passed

Certain certified copies

28. If the Registrar is required under section 86 of the *Adoption Act 1994* to issue a certified copy of that portion of the registration of an adoptee's birth that does not refer to the adoptee's adoption or birth parents, the certified copy is to be in an approved form.

Recommendation 28: the section be passed

PART 5 — CHANGE OF NAME

Change of name by registration

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

Comment: It is currently an offence under the *Change of Name Regulation Act 1923* for anyone to use any name other than that by which he or she was registered at birth unless the new name has been assumed by marriage, deed poll or licence of the Registrar General of Births, Deaths and Marriages.

Recommendation 29: the section be passed

Application to register change of adult's name

30. 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.

Recommendation 30: the section be passed

Application to register change of child's name

31. (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.

Recommendation 31: the section be passed

Child's consent to change of name

32. 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.

Recommendation 32: the section be passed

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

33. (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.

Recommendation 33: the section be passed

Registration of change of name

34. (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.

Comment: The Committee is concerned that the Registrar is not obliged to change a person's name on the register when they have changed it in another State. As a result, a situation may arise where a known criminal is able to go under a different name in different states in order to avoid detection. However, in the case where a person enters a witness protection scheme some flexibility may still be required.

Recommendation 34: in para (2) the words “the change of name may be registered under this Act if the Registrar considers that it is appropriate to do so” be deleted and the words “the Registrar is to register the change of name unless the personal safety of the person requires otherwise” be inserted.

Entries to be made in the Register

35. (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.

Recommendation 35: the section be passed.

Change of name may be established by repute or usage

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

Comment: This section restates the common law rule that people may change their name by repute or usage without registering this change. The most common example of this is a married woman taking her husband's surname without specifically registering it as a change of name.

Recommendation 36: the section be passed

PART 6 — REGISTRATION OF MARRIAGES

Marriages in the State to be registered

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

Recommendation 37: the section be passed

How to have marriage registered

38. 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 authorized celebrant is responsible for lodging the certificate of marriage with the Registrar.

Recommendation 38: the section be passed

Registration of marriage

39. 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.

Recommendation 39: the section be passed

PART 7 — REGISTRATION OF DEATHS

Division 1 — Cases where registration of death is required or authorized

Deaths to be registered under this Act

40. (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.

Recommendation 40: the section be passed

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

41. (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.

Recommendation 41: the section be passed

Division 2 — Notification of death

Person responsible for notification of death

42. 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.

Comment: This notification procedure does not exist under the *Registration of Births, Deaths and Marriages Act 1961*. Under the Principal Bill, someone (usually the person who arranges for the disposal of the person's remains) must provide the Registrar with a death registration statement and the medical certificate of cause of death.

Recommendation 42: the section be passed

Notification of suspected death

43. 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.

Recommendation 43: the section be passed

Division 3 — Certificates of cause of death

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

44. (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.
- (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.

Recommendation 44: the section be passed

Division 4 — Disposal of human remains

Notification of disposal of human remains in the State

45. 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.

Comment: The Principal Act changes the notification period from 14 days to 7 days.

Recommendation 45: the section be passed

Notification of disposal of human remains out of the State

46. 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.

Recommendation 46: the section be passed

Notification if disposal has not occurred within 30 days

47. 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.

Recommendation 47: the section be passed

Division 5 — Registration of death

Registration of death

48. (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.

(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.

Recommendation 48: the section be passed

PART 8 — THE REGISTER

Division 1 — Keeping the Register

The Register

49. (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.

Recommendation 49: the section be passed

Division 2 — Registrar's powers of inquiry

Registrar's powers of inquiry

50. (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.

Comment: The inquiry procedure was not available under the *Registration of Births, Deaths and Marriages Act 1961* and required a complainant to initiate Court proceedings to change the Register. This has caused particular problems in relation to matters of parentage. With modern technology such as DNA and blood testing that can positively identify parentage it is desirable that there be an alternative to Court proceedings.

Recommendation 50: the section be passed

Division 3 — Correction and amendment of Register

Correction of Register

51. (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.

Recommendation 51: the section be passed

Amendment of Register

52. 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.

Recommendation 52: the section be passed

Registrar's functions under other Acts

53. 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.

Recommendation 53: the section be passed

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

Access to Register

- 54.** (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.

Recommendation 54: the section be passed

Search of Register

55. (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.

Recommendation 55: the section be passed

Protection of privacy

56. 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.

Recommendation 56: the section be passed

Issue of certificate

57. (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.

Recommendation 57: the section be passed

Access policies

58. (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.

Recommendation 58: the section be passed

PART 9 — MISCELLANEOUS

False representation

59. 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: \$1 500.

Comment: The Committee notes that the maximum penalty under clause 60 for unauthorised access to or interference with the Register is \$10,000 while the maximum penalty for false representation is only \$1500. The Committee believes that the penalty should be increased for false representation, as there are circumstances, for example false representations as to the parentage of a child, which warrant a large monetary penalty.

Recommendation 59: the section be amended to provide a maximum penalty of \$10,000.

Unauthorized access to or interference with Register

60. 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.

Recommendation 60: the section be passed

Falsification of certificate, etc.

61. (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.

Recommendation 61: the section be passed

Revocation of registration of registrable events obtained by fraud

62. (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.

Recommendation 62: the section be passed

Unauthorized disclosure of information

63. 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) authorized or required by law; or
- (e) authorized by the Registrar.

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

Recommendation 63: the section be passed

Power to require and take statutory declarations

64. The Registrar —

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

Recommendation 64: the section be passed

Evidentiary

65. 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.

Recommendation 65: the section be passed

Protection from liability

66. (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.

Recommendation 66: the section be passed

Review

67. (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 Minister for a review of the decision.

(2) On a review, the Minister may —

- (a) confirm, vary or reverse the Registrar's decision; and
- (b) make a consequential or ancillary direction,

and the Registrar must give effect to a direction of the Minister.

Recommendation 67 the section be passed

Adoption Act 1994

68. (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.

(2) This Act is subject to the provisions of the *Adoption Act 1994* relating to access to adoption information in the Register and, to the extent of any inconsistency with this Act, that Act prevails.

Comment: This section enables a birth parent to ensure that information about themselves is included on the Register. However, the Bill remains subject to the *Adoption Act 1994* in relation to accessing adoption information in the Register.

Recommendation 68: the section be passed

Regulations

69. (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.

Recommendation 69: the section be passed

Power to remit fees

70. 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.

Recommendation 70 the section be passed

Repeals, savings and transitional

71. (1) The *Registration of Births, Deaths and Marriages Act 1961* is repealed.

(2) The *Registration of Births, Deaths and Marriages Act, Regulations 1963* are repealed.

(3) Schedule 1 has effect to make savings and transitional provisions.

Recommendation 71 the section be passed

Consequential amendment of other Acts

72. Acts amended as a consequence of the enactment of this Act are referred to in the *Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998*.

Recommendation 72: the section be passed

5.1 Additional Comments by the Committee

Mr John Tregonning made a written submission to the Committee stating that the Principal Bill needed to make provision to allow the registration of information in relation to children born as a result of modern reproductive technology where the parent is not the birth parent or the genetic parent. The Committee notes that registers of information of such procedures are kept under the *Human Reproductive Technology Act 1991* and the *Artificial Conception Act 1985*. However, there is some merit in this submission, as accurate details of all births in this State require centralised recording of such information. However, the Committee feels that to properly deal with this matter requires the Committee to embark on an area which it has neither the time nor the expertise to do as it raises questions and issues which require proper and full inquiry and consultation with the community.

6. ACTS REPEAL AND AMENDMENT (BIRTHS, DEATHS AND MARRIAGES REGISTRATION) BILL 1998

Short title

1. This Act may be cited as the *Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998*.

Recommendation 1: the section be passed

Commencement

2. This Act comes into operation on the day on which the *Births, Deaths and Marriages Registration Act 1998* comes into operation.

Recommendation 2: the section be passed

Change of Names Regulation Act 1923 repealed

3. (1) The *Change of Names Regulation Act 1923* is repealed.
(2) The *Change of Names Regulations 1990* are repealed.

Comment: The *Change of Names Regulations Act 1923* prevents a person changing their name other than by Deed Poll or by licence.

Recommendation 3: The Act be repealed

Legitimation Act 1909 repealed

4. The *Legitimation Act 1909* is repealed.

Comment: The *Legitimation Act 1909* provides for the legitimation of ex-nuptial children by the marriage of his or her parents.

Recommendation 4: the Act be repealed

Registration of Identity of Persons Act 1975 repealed

5. (1) The *Registration of Identity of Persons Act 1975* is repealed.
- (2) The *Registration of Identity of Persons Regulations, 1975* are repealed.

Comment: The *Registration of Identity of Persons Act 1975* provides for a person to register his or her identity on the Register of Births, Deaths and Marriages.

Recommendation 5: the Act and Regulations be repealed

Adoption Act 1994 amended

6. (1) In this section the *Adoption Act 1994** is referred to as the principal Act.

[* *Act No. 9 of 1994.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 4 and Act No. 57 of 1997.]

- (2) Section 4 of the principal Act is amended by deleting the definition of "Registrar General" and substituting the following definition —

..

"**Registrar**" means the Registrar of Births, Deaths and Marriages;

".

- (3) Section 74 (2) (a) of the principal Act is deleted and the following paragraph is substituted —

..

(a) section 34 (3) of the *Births, Deaths and Marriages Registration Act 1998*;

".

- (4) Section 78 of the principal Act is repealed and the following section is substituted —

..

Court to notify Registrar of adoption order etc.

78. (1) If the Court —
- (a) makes; or
- (b) under section 77 (2) makes an order discharging,

an adoption order, the registrar of the Court is to give the Registrar written notice of the particulars.

(2) If the adoptee's birth is not registered in this State under the *Births, Deaths and Marriages Registration Act 1998* then in addition to the notice referred to in subsection (1), the registrar of the Court is to give the Registrar a copy of the original registration of the adoptee's birth, if available.

(3) In this section —

“**particulars**” means —

- (a) the date of the order;
- (b) the full name, address and occupation of the adoptive parent;
- (c) the name by which the adoptee is known before, and is to be known after, the order becomes effective;
- (d) the terms of consequential or ancillary orders under section 77 (5);
- (e) if available, details of the date and place of the adoptee's birth and name and address of the adoptee's birth parents; and
- (f) if available, such other information required by the Registrar in relation to the registration of the adoptee's birth under the *Births, Deaths and Marriages Registration Act 1998*.

”.

(5) Section 79 (1) (g) of the principal Act is amended by deleting “General”.

(6) Section 80 (1) of the principal Act is amended by deleting “General”.

(7) Section 85 (2) (a) of the principal Act is amended by deleting “General”.

(8) Section 85 (2) (b) of the principal Act is deleted and the following is substituted —

“

(b) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by the Registrar; and

”.

(9) Section 85 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) The production to the Registrar of the authority referred to in subsection (2) (a) is to be treated as an adequate reason, for the purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —

- (a) to allow a person access to the Register;
- (b) to provide a person with information extracted from the Register; or
- (c) to search for information in the Register,

within the meaning of that Act.

”.

(10) Section 86 of the principal Act is amended by deleting “General”.

(11) Section 87 of the principal Act is amended by deleting “Section 19 (1) of the *Registration of Births, Deaths and Marriages Act 1961*” and substituting the following —

“

Section 57 (3) of the *Births, Deaths and Marriages Registration Act 1998*

”.

(12) Section 92 of the principal Act is repealed and the following section is substituted —

“

Registrar to provide information to Director-General

92. (1) The Registrar is to give to the Director-General such information from the Register as the Director-General certifies in writing is required by the Director-General for the purposes of this Act.

(2) If the Registrar receives information that a person has died, and it appears from the Register that the person was an adoptee, the Registrar is to inform the Director-General of the adoptee's death.

(3) In this section —

“**Register**” has the meaning that it has in the *Births, Deaths and Marriages Registration Act 1998*.

”.

Recommendation 6: the Act be amended

Anatomy Act 1930 amended

7. (1) In this section the *Anatomy Act 1930** is referred to as the principal Act.

[* *Reprinted as authorized 18 March 1970.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 10.]

(2) Section 10A (2) of the principal Act is amended by inserting after "certificate" the following —

" or record ".

(3) Section 12 of the principal Act is amended by deleting "a certificate stating in what manner such person came by his death has, previously to the removal of the body, been signed by the medical practitioner who attended such person during the illness whereof he died, or, if no such practitioner attended such person during such illness, then by some medical practitioner or some stipendiary magistrate who is called in after the death of such person to view his body and who states the manner or cause of death, according to the best of his knowledge and belief, but who shall not be concerned in examining the body after removal; and in the case of such removal such certificate" and substituting the following —

"

before the removal of the body —

- (a) a certificate of cause of death has been provided under section 44 of the *Births, Deaths and Marriages Registration Act 1998* in relation to the person by a medical practitioner other than one concerned in examining the body after the removal; or
- (b) a coroner has made findings as to how the death occurred and the cause of death,

as is applicable to the case; and the certificate or the record of the coroner's findings".

(4) Section 13 of the principal Act is amended by inserting after "certificate" the following —

" or record ".

(5) Section 14 of the principal Act is amended by inserting after "certificate" in the 3 places where it occurs the following —

" or record ".

Recommendation 7: the Act be amended

Coroners Act 1996 amended

8. (1) In this section the *Coroners Act 1996** is referred to as the principal Act.

[* *Act No. 2 of 1996.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 52 and Act No. 57 of 1997.]

(2) Section 3 of the principal Act is amended in the definition of "reportable death" in paragraph (l) by deleting "a medical certificate under section 41 (1) (a) of the *Registration of Births, Deaths and Marriages Act 1961* has not been completed and signed" and substituting the following —

..

the cause of death has not been certified under section 44 of the *Births, Deaths and Marriages Registration Act 1998*

".

(3) Section 17 (3) of the principal Act is amended —

(a) after paragraph (a) by deleting "or";

(b) after paragraph (b) by deleting the full stop and substituting the following —

" ; or "; and

(c) after paragraph (b) by inserting the following paragraph —

..

(c) in the opinion of the doctor, the death has occurred under any suspicious circumstances.

".

(4) Section 25 (1) (d) of the principal Act is amended by deleting "*Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

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

(5) Section 28 (1) of the principal Act is amended by deleting "Registrar General within the meaning of the *Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

" Registrar of Births, Deaths and Marriages ".

(6) Section 28 (2) of the principal Act is amended by deleting "Registrar General" and substituting the following —

" Registrar of Births, Deaths and Marriages ".

Recommendation 8: the Act be amended

***Cremation Act 1929* amended**

9. The *Cremation Act 1929** is amended —

(a) by deleting section 8A (a) and substituting the following paragraphs —

"

(a) unless a certificate of cause of death has been provided under section 44 of the *Births, Deaths and Marriages Registration Act 1998* in relation to the deceased person;

(aa) where the deceased person died in a place outside the State, unless a certificate of cause of death has been provided under the law of the place in relation to the deceased person;

";

and

(b) by repealing section 11.

[* *Reprinted as approved 8 April 1971.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 55.]

Recommendation 9: the Act be amended

***The Criminal Code* amended**

10. The *Criminal Code** is amended in section 340 (7) by deleting "a district registrar" and substituting the following —

" the Registrar of Births, Deaths and Marriages ".

[* *Reprinted as at 21 April 1997.*

For subsequent amendments see Acts Nos. 69 of 1996 and 19, 49 and 57 of 1997.]

Recommendation 10: the Act be amended

Electoral Act 1907 amended

11. The *Electoral Act 1907** is amended —

- (a) in section 40 (1) (b) by deleting "Registrar General appointed under the *Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

" Registrar of Births, Deaths and Marriages "; and

- (b) by repealing section 56 and substituting the following section —

"

Lists of deaths occurring in the State

56. The Registrar of Births, Deaths and Marriages shall, as soon as is reasonably practicable after the end of each month, forward to the Electoral Commissioner a list, in the prescribed form, containing the names, address, occupation, and age at the time of death of every person not under 18 years of age, whose death has been registered in the State during the month.

".

[* Reprinted as at 22 April 1997.

For subsequent amendments see Acts Nos. 69 of 1996 and 42 of 1997.]

Recommendation 11: the Act be amended

Evidence Act 1906 amended

12. The *Evidence Act 1906** is amended —

- (a) in section 56 (b) by deleting "Registrar General, Assistant or Deputy Registrar General" and substituting the following —

"

the Registrar or a Deputy Registrar of Births, Deaths and Marriages

";

and

- (b) in section 73B (1) and (3) by deleting "Registrar General" in each case and substituting the following —

" Registrar of Births, Deaths and Marriages ".

[* *Reprinted as at 10 September 1996.*
For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, pp. 76-7 and Acts Nos. 69 of 1996 and 57 of 1997.]

Recommendation 12: the Act be amended

***Friendly Societies Act 1894* amended**

13. (1) In this section the *Friendly Societies Act 1894** is referred to as the principal Act.

[* *Reprinted as authorized 5 August 1974.*
For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 90 and Act No. 1 of 1997.]

(2) Section 12 (2) of the principal Act is amended by deleting "a certificate of such death under the hand of the Registrar General or district registrar, or other person having the care of the register of deaths in which such death is or ought to be entered" and substituting the following —

"
 an appropriate certificate from the Registrar of Births, Deaths and Marriages

".

(3) Section 14 (8) of the principal Act is repealed.

(4) Section 37 (2) of the principal Act is amended by deleting "General or district registrar of deaths, or other person having the care of the register of deaths" and substituting the following —

" of Births, Deaths and Marriages ".

(5) Section 37 (3) of the principal Act is amended by deleting "General or district registrar of deaths" in the 2 places where it occurs and substituting the following —

" of Births, Deaths and Marriages ".

(6) Section 37 (4) of the principal Act is amended —

(a) by deleting "General or district registrar of deaths" and substituting the following —

" of Births, Deaths and Marriages "; and

(b) by deleting "on the certificate of a coroner or a legally qualified medical practitioner who attended such deceased child during its last illness".

Recommendation 13: the Act be amended

Health Act 1911 amended

14. (1) In this section the *Health Act 1911** is referred to as the principal Act.

[* Reprinted as at 11 March 1997.

For subsequent amendments see Acts Nos. 103 of 1994, 34 of 1995, 2 of 1996 and 57 of 1997.]

(2) Section 275 (1) of the principal Act is amended by deleting "district registrar of births and deaths in the registry district within which the birth of such child was registered" and substituting the following —

"Registrar of Births, Deaths and Marriages".

(3) Section 284 of the principal Act is amended by deleting "gives a death certificate" and substituting the following —

"

, for the purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certifies the cause of death

".

(4) Section 335 (5) (c) of the principal Act is deleted and the following paragraph is substituted —

"

(c) A medical practitioner who, for the purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certifies the cause of a neonatal death shall notify the Executive Director, Public Health of the fact in the prescribed form within 48 hours of the certification.

".

(5) Section 336A (1) of the principal Act is amended by deleting "was at the time of such stillbirth or death attending that child or who certified that the death of the child had occurred" and substituting the following —

"

, for the purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certified the cause of the child's death

".

Recommendation 14: the Act be amended

Licensed Surveyors Act 1909 amended

15. Section 14 (3) of the *Licensed Surveyors Act 1909** is amended by deleting "Every district registrar of deaths in Western Australia" and substituting the following —

“ The Registrar of Births, Deaths and Marriages ”.

[* Reprinted as approved 1 September 1995.

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 132 and Act No. 79 of 1996.]

Recommendation 15: the Act be amended

Pharmacy Act 1964 amended

16. Section 30 (2) of the *Pharmacy Act 1964** is amended by deleting “Registrar General of Western Australia” and substituting the following —

“ Registrar of Births, Deaths and Marriages ”.

[* Reprinted as approved 18 April 1983.

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 175.]

Recommendation 16: the Act be amended

The Kalgoorlie and Boulder Racing Clubs Act 1904 amended

17. Section 39 of *The Kalgoorlie and Boulder Racing Clubs Act 1904** is repealed.

[* Private Act.

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 121.]

Recommendation 17: the Act be amended

Witness Protection (Western Australia) Act 1996 amended

18. (1) In this section the *Witness Protection (Western Australia) Act 1996** is referred to as the principal Act.

[* Act No. 11 of 1996.

For subsequent amendments see Act No. 57 of 1997.]

(2) Section 3 of the principal Act is amended —

- (a) in the definition of "prescribed authority" by deleting "a person appointed for the purposes of the *Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

" the Registrar of Births, Deaths and Marriages ";

and

- (b) in the definition of "prescribed register" by deleting "*Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

"

Births, Deaths and Marriages Registration Act 1998

".

- (3) Section 18 (1) (b) of the principal Act is amended by deleting "deed poll or a licence under the *Change of Names Regulation Act 1923*" and substituting the following —

"

registration of change of name under Part 5 of the *Births, Deaths and Marriages Registration Act 1998*

".

- (4) Section 18 (4) of the principal Act is amended by deleting "deed poll or a licence under the *Change of Names Regulation Act 1923*" and substituting the following —

"

registration of change of name under Part 5 of the *Births, Deaths and Marriages Registration Act 1998*

".

- (5) Section 19 of the principal Act is amended in the definition of "new identity order" by deleting "Registrar General to make a new entry in the register of births kept under the *Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

"

Registrar of Births, Deaths and Marriages to make a new entry in the register of births kept under the *Births, Deaths and Marriages Registration Act 1998*

".

- (6) Section 21 (1) (c) of the principal Act is amended by deleting "deed poll or by licence under the *Change of Names Regulation Act 1923*" and substituting the following —

"

registration of change of name under Part 5 of the *Births, Deaths and Marriages Registration Act 1998*

".

(7) Section 24 (1) of the principal Act is amended by deleting "*Registration of Births, Deaths and Marriages Act 1961*" and substituting the following —

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

Recommendation 18: the Act be amended