



New South Wales

Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009 No 59

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New South Wales

Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009 No 59

Act No 59, 2009

An Act to amend the *Births, Deaths and Marriages Registration Act 1995* to make further provision with respect to registration of a change of name; and for other purposes. [Assented to 16 September 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009*.

2 Commencement

This Act commences on the date of assent.

Schedule 1 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

[1] Section 27

Omit the section. Insert instead:

27 Application to register change of adult's name

An adult person may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's name if:

- (a) the person's birth is registered in the State, or
- (b) the person was born outside Australia, the person's birth is not registered in Australia and the person has been resident in the State for at least 3 consecutive years immediately preceding the date of the application.

[2] Section 28 Application to register change of child's name

Omit section 28 (1)–(2A). Insert instead:

- (1) The parents of a child may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the child's name if:
 - (a) the child's birth is registered in the State, or
 - (b) the child was born outside Australia, the child's birth is not registered in Australia and the child has been resident in the State for at least 3 consecutive years immediately preceding the date of the application.
- (2) If the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child, the application may be made by a person to whom a court within Australia has allocated:
 - (a) parental responsibility for the child, or
 - (b) specific aspects of parental responsibility for the child so long as the making of the application is not outside the scope of the aspects allocated.
- (2A) If there is more than one such person referred to in subsection (2), the application may be made only as a joint application of those persons.

[3] Sections 29A–29C

Insert after section 29:

29A Requirement to disclose criminal record

- (1) The form approved by the Registrar for an application for registration of a change of an adult's name is to include a requirement to the effect that the applicant disclose whether he or she has been convicted of a relevant offence.
- (2) The form approved by the Registrar for an application for registration of a change of a child's name is to include a requirement to the effect that the applicant disclose whether the child has been convicted of a relevant offence.
- (3) An offence against section 57 in relation to a false or misleading disclosure referred to in this section in an application for registration of a change of name is in addition to an offence against that section for any other false or misleading representation made in the same application.
- (4) In this section:
conviction for an offence:
 - (a) includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and
 - (b) does not include a spent conviction within the meaning of Part 2 of the *Criminal Records Act 1991* or a conviction that is taken to be quashed within the meaning of Part 4 of that Act.

relevant offence means:

- (a) an offence in New South Wales that is punishable by imprisonment for 12 months or more, or
- (b) an offence in a jurisdiction other than New South Wales that, if committed in New South Wales, would be an offence so punishable.

Note. The provision of false or misleading information in an application for registration of a change of name in relation to disclosure of convictions for relevant offences constitutes an offence against section 57 with a maximum penalty of 100 penalty units or 2 years imprisonment or both.

29B Restrictions on number of changes of name that may be registered

The Registrar is not to register a change of name of a person on application made under this Act if the Registrar is aware that:

- (a) a change of the person's name has been registered (whether in this State or in another State) within the period of 12 months immediately preceding the date of the application, or
- (b) 3 or more changes of the person's name have been registered (whether in this State or in another State).

29C Exceptions to certain change of name restrictions

- (1) The Registrar may register a change of name of a person despite any restriction imposed by section 27 (a) or 28 (1) (a) that the person's birth must be registered in the State if satisfied that an order has been made (whether in the State or elsewhere) for the protection of the person or the person's children from domestic violence.
- (2) The Registrar may register a change of name of a person despite any restriction imposed by section 27 (b) or 28 (1) (b) as to the period for which the person must be resident in the State, or any restriction imposed by section 29B, if:
 - (a) the Registrar is satisfied that the reason for the proposed change of name warrants the registration of the change of name, or
 - (b) without limiting paragraph (a), the Registrar is satisfied that the proposed change of name is sought for the protection of the person, the person's children or anyone else associated with the person, or
 - (c) the proposed change of name is because of the marriage of the person, or
 - (d) the District Court has approved the proposed change of name on application under section 28 (4).
- (3) Nothing in this Part limits or affects:
 - (a) any power that a court has under another Act or law (whether of this State, another State, the Commonwealth or New Zealand) to order that a change of name is to be registered or the ability of the Registrar to comply with such an order, or
 - (b) the operation of the *Adoption Act 2000*, the *Law Enforcement and National Security (Assumed Identities) Act 1998* or the *Witness Protection Act 1995*.

[4] Section 30 Registration of change of name

Insert at the end of section 30 (1) (c):

, and

- (d) the reasons for making the application for registration of the change of name if the registration of the change would require the Registrar to exercise his or her discretion under section 29C.

[5] Section 46A

Insert after section 46:

46A Access to change of name information by law enforcement agencies

- (1) The Registrar may allow access by officers of a law enforcement agency to entries in the Register regarding changes of names, but only in accordance with a memorandum of understanding entered into by the Registrar with the head of the agency.
- (2) The Registrar must not enter into a memorandum of understanding unless satisfied that the terms of the memorandum, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.
- (3) A memorandum of understanding entered into for the purposes of this section may be amended, revoked or replaced from time to time.
- (4) The functions of the Registrar and of each law enforcement agency must as far as practicable be exercised in conformity with a memorandum of understanding entered into by them under this section. However, a failure to comply with this subsection does not itself invalidate anything done or omitted to be done by the Registrar or the law enforcement agency.
- (5) In this section, *law enforcement agency* means:
 - (a) the NSW Police Force, or
 - (b) the New South Wales Crime Commission, or
 - (c) the police force of another State or the Commonwealth, or
 - (d) any other law enforcement or investigative agency of the government of New South Wales or the government of another State or the Commonwealth prescribed by the regulations.

[6] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009

[7] Schedule 3, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009

20 Pending applications

An amendment made to this Act by the *Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009* does not apply to, or affect the determination of, an application under this Act for registration of a change of name if the application was made before the commencement of the amendment but was not finally determined before that commencement.

21 Memorandum of understanding

The memorandum of understanding entered into for the purposes of clause 8 (2) of the *Births, Deaths and Marriages Registration Regulation 2006* (as in force before its repeal by the *Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009*) is taken to have been entered into for the purposes of section 46A and may be amended, revoked or replaced accordingly.

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Schedule 2 Amendment of Births, Deaths and Marriages Registration Regulation 2006

Schedule 2 Amendment of Births, Deaths and Marriages Registration Regulation 2006

Clause 8 Registration of change of name

Omit clause 8 (2) and (3).

[Agreement in principle speech made in Legislative Assembly on 3 September 2009
Second reading speech made in Legislative Council on 9 September 2009]

BY AUTHORITY