

Passed by both Houses



New South Wales

Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2012

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2012*



New South Wales

Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2012

Act No , 2012

An Act to amend the *Births, Deaths and Marriages Registration Act 1995* in relation to change of name restrictions for certain persons; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

Clause 1 Births, Deaths and Marriages Registration Amendment (Change of Name)
Bill 2012

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 2012*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

[1] Part 5 Change of name

Insert after the heading to the Part:

Division 1 Preliminary

25F Definitions

In this Part:

Commissioner of Corrective Services has the same meaning as **Commissioner** in the *Crimes (Administration of Sentences) Act 1999*.

correctional centre has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

correctional patient has the same meaning as in Part 5 of the *Mental Health (Forensic Provisions) Act 1990*.

forensic patient has the same meaning as in the *Mental Health (Forensic Provisions) Act 1990*.

former serious offender means a person who was a serious offender but is no longer a serious offender.

inmate has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

interstate Registrar means an authority responsible under a corresponding law for the registration of births, deaths and marriages.

mental health facility has the same meaning as in the *Mental Health Act 2007*.

Mental Health Review Tribunal means the Mental Health Review Tribunal constituted under the *Mental Health Act 2007*.

parolee means a person who:

- (a) is released on parole in accordance with the *Crimes (Administration of Sentences) Act 1999*, or
- (b) is the subject of a parole order that was made under a law of another State or a Territory and that is registered under the *Parole Orders (Transfer) Act 1983*.

periodic detainee means a person who is subject to a periodic detention order made under section 6 of the *Crimes (Sentencing Procedure) Act 1999* before the repeal of that section by the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* and that is in force.

person on remand means any person the subject of a warrant or order by which a court has committed the person to a correctional centre in connection with proceedings for an offence committed, or alleged to have been committed, by the person.

restricted person—see section 31B.

serious offender has the same meaning as in the *Crimes (Administration of Sentences) Act 1999* and includes a person who has been convicted of an offence, or is serving a sentence of imprisonment, elsewhere than in New South Wales that would, if the person were convicted or serving the sentence in New South Wales, result in the person being a serious offender within the meaning of that Act.

supervising authority means:

- (a) in relation to a restricted person who is a forensic patient, the Mental Health Review Tribunal, or
- (b) in relation to a restricted person who is not a forensic patient and who is of a class of restricted persons for whom a supervising authority is prescribed by the regulations, that supervising authority, or
- (c) in relation to any restricted person not referred to in paragraph (a) or (b), the Commissioner of Corrective Services.

supervision order means:

- (a) an interim supervision order or extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*, or
- (b) a community supervision order within the meaning of Part 4A of the *Crimes (Administration of Sentences) Act 1999* or an intensive correction order or home detention order within the meaning of that Act.

Division 2 General requirements relating to change of name

[2] Part 5, Division 3

Insert after section 31:

Division 3 Change of name restrictions for certain persons

31A Application of Division

- (1) The requirements and restrictions contained in this Division are in addition to any other requirements and restrictions contained in this Part.
- (2) This Division does not apply to a change of name resulting from the exercise of a power, or the operation of an Act, referred to in section 29C (3).

Note. The *Child Protection (Offenders Registration) Act 2000* contains additional requirements and restrictions in relation to the change of name of registrable persons within the meaning of that Act.

31B Restricted persons

- (1) For the purposes of this Part, a *restricted person* means any of the following persons:
 - (a) an inmate,
 - (b) a person on remand,
 - (c) a parolee,
 - (d) a periodic detainee,
 - (e) a person who is subject to a supervision order,
 - (f) a forensic patient,
 - (g) a correctional patient,
 - (h) a person of a class included by the regulations under subsection (2).
- (2) The regulations may include as a class of *restricted person* any person of a class that comprises the whole or any part of either or both of the following classes:
 - (a) persons that are in lawful custody,
 - (b) persons that are the subject of an order made under an Act authorising some form of supervision or conditional release of the person concerned in connection with the commission, or the alleged commission, of an offence

- (3) Despite subsection (1), a *restricted person* does not include any person of a class prescribed by the regulations as not being a class of restricted persons.

31C Applications for change of name by or on behalf of restricted person

- (1) A restricted person must not do any of the following without having first obtained the written approval of the supervising authority:
- (a) apply to the Registrar to register a change of his or her name under this Act,
 - (b) apply to an interstate Registrar to register a change of his or her name under a corresponding law.

Maximum penalty: 5 penalty units.

- (2) A person must not, on behalf of a restricted person, do any of the following without having first obtained the written approval of the supervising authority:
- (a) apply to the Registrar to register a change of the restricted person's name under this Act,
 - (b) apply to an interstate Registrar to register a change of the restricted person's name under a corresponding law.

Maximum penalty: 5 penalty units.

31D Approval by supervising authority

- (1) The supervising authority may approve the making of an application to the Registrar for registration of a change of name of a restricted person only if the authority is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The supervising authority must not approve the making of an application to the Registrar for registration of a change of name of a restricted person if the authority is satisfied that:
- (a) the change of name would, if registered, be reasonably likely:
 - (i) to adversely affect the security, discipline or good order of any premises or facility at which the restricted person is held or accommodated, or
 - (ii) to jeopardise the restricted person's or another person's health or safety, or
 - (iii) to be used to further an unlawful activity or purpose, or

- (iv) to be used to evade or hinder the supervision of the restricted person, or
 - (b) the proposed name would be reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community.
- (3) The supervising authority for a restricted person who is a forensic patient and a person referred to in section 31B (1) (a), (b), (c), (d) or (e) must not approve the making of an application to the Registrar for registration of a change of the person's name unless the authority has consulted with the Commissioner of Corrective Services and the Commissioner has given concurrence.
Note. The supervising authority for all forensic patients is the Mental Health Review Tribunal.
- (4) Subsections (1) and (2) apply to a determination of the Commissioner of Corrective Services as to whether to give concurrence in the same way as those subsections apply to a determination of a supervising authority as to whether to give approval.
- (5) If the supervising authority approves of the making of an application to the Registrar for registration of a change of name of a restricted person, the authority must:
 - (a) as soon as practicable, give written notice of the approval to the person who intends to make the application, and
 - (b) give a copy of the written notice of approval to the Registrar or the interstate Registrar (as the case requires).

31E Additional requirements for registration of change of name of restricted person

- (1) The Registrar must not register a change of name of a restricted person unless the Registrar has received a copy of the notice of approval of the supervising authority to the application for registration of a change of name.
- (2) The Registrar must give written notice to the supervising authority of a decision of the Registrar to register or refuse to register a change of name of a restricted person.
- (3) The Registrar must give written notice:
 - (a) to the Commissioner of Corrective Services when the Registrar registers the name of a person who is a forensic patient and a person referred to in section 31B (1) (a), (b), (c), (d) or (e), and

- (b) to the Commissioner of Police when the Registrar registers the name of a person who is a restricted person and a registrable person (within the meaning of the *Child Protection (Offenders Registration) Act 2000*).

31F Additional requirements for registration of change of name of former serious offender

- (1) The Registrar must not register a change of name of a former serious offender unless the Registrar has first obtained the written approval of the Commissioner of Corrective Services and the Commissioner of Police.
- (2) However, the Registrar is not required to obtain the approval of the Commissioner of Police under this section if the Commissioner has given approval under Part 3A of the *Child Protection (Offenders Registration) Act 2000* to the making of the relevant application to change the name.
- (3) The Commissioner of Corrective Services and the Commissioner of Police may approve the making of an application to the Registrar for registration of a change of name of a former serious offender only if satisfied that the change of name is in all the circumstances necessary or reasonable.
- (4) The Commissioner of Corrective Services and the Commissioner of Police must not give an approval under this section if satisfied that:
 - (a) the change of name would, if registered, be reasonably likely:
 - (i) to jeopardise the former serious offender's or another person's health or safety, or
 - (ii) to be used to further an unlawful activity or purpose, or
 - (b) the proposed name would be reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community.
- (5) This section does not apply to the change of name of a person who is a former serious offender if:
 - (a) at any time since the release date, the person has had a prison-free period of 10 consecutive years, or
 - (b) at the time of making the application for the change of name, the person is a restricted person, or

- (c) the person's conviction for an offence as a result of which the person became a serious offender has been quashed or set aside.
- (6) This section applies to a former serious offender despite the *Criminal Records Act 1991*.
- (7) In this section:
 - prison-free period***, in relation to a person who is a former serious offender, means any period during which the person has not served any part of a term of imprisonment (whether in New South Wales or elsewhere) as a result of being convicted of any offence.
 - release date***, in relation to a person who is a former serious offender, means:
 - (a) the date on which the last sentence of imprisonment that the person served wholly or partly as a serious offender (whether in New South Wales or elsewhere) expired or, if the person was serving one or more other sentences of imprisonment consecutively or concurrently with that sentence of imprisonment, the date on which the combined terms of all of the sentences expired, or
 - (b) if the person was a serious offender and a forensic patient, the date on which the person ceased to be a serious offender.

31G Registrar may correct Register

- (1) The Registrar may correct the Register under section 45 if a change of name of a person has been registered in contravention of this Division.
- (2) This section does not limit the power of the Registrar under section 45 to correct the Register.

31H Regulations for purposes of Division

The regulations may make provision for or with respect to the making of applications under this Division, the giving of approvals and concurrences under this Division, consultation requirements for supervising authorities, exemptions from the requirements of any of the provisions of this Division and the modification of the application of the provisions of this Division in any specified circumstances.

[3] Part 5, Division 4

Insert before section 32:

Division 4 Miscellaneous

31I Information-sharing between relevant authorities and Registrar

- (1) A supervising authority:
 - (a) must ensure that the Registrar is provided with information as to the identity of the restricted persons for whom it is the supervising authority, including the following information in relation to each of those persons (if known to the authority):
 - (i) the name (including any other name by which a restricted person is or has previously been known),
 - (ii) the date and place of birth of each restricted person,
 - (iii) the residential address or addresses of each restricted person, and
 - (b) must provide that information in the form and manner agreed to from time to time between the authority and the Registrar, and
 - (c) must notify the Registrar as soon as practicable after a person ceases to be a restricted person if the Registrar has previously been notified by the authority that the person is a restricted person.
- (2) The Commissioner of Corrective Services:
 - (a) must ensure that the Registrar is provided with information as to the identity of persons who are former serious offenders, including the following information in relation to each of those persons (if known to the Commissioner):
 - (i) the name (including any other name by which each such person is or has previously been known),
 - (ii) the date and place of birth of each such person,
 - (iii) the residential address or addresses of each such person,
 - (iv) the release date of each such person (within the meaning of section 31F), and
 - (b) must provide that information in the form and manner agreed to from time to time between the Commissioner and the Registrar.
- (3) This section has effect despite any law to the contrary.

31J Review by Administrative Decisions Tribunal of certain decisions under this Part

A person may apply to the Administrative Decisions Tribunal for a review of the following decisions in relation to the making of an application to the Registrar for the change of name of the person:

- (a) a decision of the supervising authority (other than the Mental Health Review Tribunal) under Division 3 to refuse to approve the making of the application,
- (b) a decision by the Commissioner of Corrective Services to refuse to give concurrence under section 31D (3) to the making of the application,
- (c) a decision by the Commissioner of Corrective Services or the Commissioner of Police to refuse to give approval under section 31F to the making of the application.

31K Appeals from decisions of Mental Health Review Tribunal under this Part

- (1) A restricted person may appeal to the Forensic Division of the Mental Health Review Tribunal against a decision of the Tribunal under Division 3 to refuse to approve the making of an application to the Registrar for registration of a change of name of the restricted person.
- (2) A restricted person may appeal against the determination of an appeal by the Forensic Division of the Mental Health Review Tribunal under this section to the Supreme Court in accordance with section 163 of the *Mental Health Act 2007*.
- (3) This section does not give a right of appeal against a decision of the Mental Health Review Tribunal that was made only because the Commissioner of Corrective Services refused to give concurrence under section 31D (3).
- (4) In this section, the *Forensic Division* of the Mental Health Review Tribunal has the same meaning as in Part 5 of the *Mental Health (Forensic Provisions) Act 1990*.

31L Protection of security sensitive information

- (1) This section applies to the following decisions:
 - (a) a decision of the Commissioner of Corrective Services to refuse to give approval or concurrence under section 31D or 31F on a ground referred to in section 31D (2) (a),

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- (b) a decision of the Commissioner of Police to refuse to give approval under section 31F on a ground referred to in section 31F (4) (a).
- (2) The Commissioner of Corrective Services or the Commissioner of Police is not, under this or any other Act or law, required to give any reasons for a decision of the Commissioner's to which this section applies to the extent that the giving of those reasons would disclose any security sensitive information.
- (3) In determining an application for a review of any decision to which this section applies, the Administrative Decisions Tribunal (and any Appeal Panel in determining any appeal against such a review under the *Administrative Decisions Tribunal Act 1997*):
 - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any security sensitive information without the approval of the Commissioner who made the decision, and
 - (b) in order to prevent the disclosure of any such security sensitive information, is to receive evidence and hear argument in the absence of the public, the applicant for review, the applicant's representative and any other interested party, unless that Commissioner approves otherwise.
- (4) In this section, ***security sensitive information*** means information classified by the Commissioner of Corrective Services or the Commissioner of Police for the purposes of this section as security sensitive information, being information the disclosure of which could reasonably be expected:
 - (a) to prejudice criminal investigations, or
 - (b) to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or
 - (c) to endanger a person's life or physical safety, or
 - (d) to adversely affect the security, discipline or good order of a correctional centre, correctional complex or residential facility (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or
 - (e) to adversely affect the supervision of any parolee or person subject to a supervision order.

[4] Section 56 Review by the Administrative Decisions Tribunal

Insert at the end of the section:

- (2) This section does not give a right of review of a decision of the Registrar to refuse to register a change of name that was made only because the Commissioner of Corrective Services or the Commissioner of Police refused to give approval under section 31F.

[5] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[6] Schedule 3, Part 7

Insert after Part 6:

Part 7 Provisions consequent on enactment of Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2012

22 Definition

In this Part, *amending Act* means the *Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2012*.

23 Approvals required for change of name of restricted persons

Division 3 of Part 5 (as inserted by the amending Act) does not apply to or in respect of a change of name of a restricted person (within the meaning of that Part) if the application for the change of name was made before the commencement of that Division.

24 Change of name of former serious offenders

A reference in section 31F (as inserted by the amending Act):

- (a) to a former serious offender includes a reference to a person who ceased to be a serious offender before the commencement of the section, and

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- (b) to a release date is a reference to a release date whether occurring before or after the commencement of the section, and
- (c) to any period of time includes a reference to any period of time occurring wholly or partly before the commencement of the section.

Schedule 2 Consequential amendment of other legislation

2.1 Births, Deaths and Marriages Registration Regulation 2011

Clause 16A

Insert after clause 16:

16A Exemptions from certain provisions of Division 3 of Part 5 of the Act

- (1) For the purposes of section 31B of the Act, persons who are inmates, parolees, periodic detainees, forensic patients or correctional patients, or are subject to a supervision order, solely because of one or more of the following reasons are prescribed as not being a class of restricted person:
 - (a) because of the commission or alleged commission of an offence under a law of the Commonwealth,
 - (b) because the person is the subject of a warrant under section 170 (1) (a) of the *Defence Force Discipline Act 1982* of the Commonwealth by which an authorised officer under that Act has committed the person to a correctional centre pursuant to a punishment of imprisonment imposed under that Act,
 - (c) because the person is a detainee within the meaning of the *Migration Act 1958* of the Commonwealth and who is held in a correctional centre as referred to in paragraph (b) (ii) of the definition of *immigration detention* in section 5 of that Act,
 - (d) because the person is in the keeping of a correctional officer under section 250 of the *Crimes (Administration of Sentences) Act 1999*.
- (2) A person is exempt from section 31F of the Act if the person is a former serious offender only because of the commission or alleged commission of an offence under a law of the Commonwealth.
- (3) In this clause, terms defined in Part 5 of the Act have the same meanings as they have in that Part.

2.2 Child Protection (Offenders Registration) Act 2000 No 42

Section 19C Application of Part

Insert at the end of the section:

- (2) For the avoidance of doubt, the provisions of Division 3 of Part 5 of the *Births, Deaths and Marriages Registration Act 1995* apply to a change of name of a registrable person in addition to the provisions of this Part.

2.3 Mental Health Regulation 2007

Clause 21 Constitution of Tribunal for certain proceedings

Insert at the end of the clause:

- (2) The Tribunal must be constituted by the President or a Deputy President for the purpose of exercising the function of determining whether to grant an approval to the making of an application for a change of name of a forensic patient as a supervising authority under Division 3 of Part 5 of the *Births, Deaths and Marriages Registration Act 1995*.