



New South Wales

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

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Births, Deaths and Marriages Registration Act 1995 (the Principal Act)*:

- (a) to change the application criteria for the registration of a change of name, and
- (b) to place restrictions on the registration of a change of name, and
- (c) to require that an applicant for registration of a change of name disclose whether he or she has a criminal record, and
- (d) to facilitate access to change of name information on the Register by specified law enforcement and investigative agencies.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

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

**Schedule 1 [1]** substitutes section 27 of the Principal Act to provide that an adult may apply for registration of a change of his or her name only if the applicant's birth is registered in New South Wales or, if the applicant was born overseas and his or her birth is not registered in Australia, the applicant has been resident in New South Wales for the period of 3 years immediately preceding the application.

**Schedule 1 [2]** amends section 28 of the Principal Act to provide that an application may be made for a change of a child's name only if the child's birth is registered in New South Wales or, if the child was born overseas and his or her birth is not registered in Australia, the child has been resident in New South Wales for the period of 3 years immediately preceding the application.

**Schedule 1 [3]** inserts proposed sections 29A–29C into the Principal Act.

**Proposed section 29A** states that the Registrar is to include a requirement in an application form for registration of a change of name that the applicant disclose whether or not he or she has been convicted of any specified offences or, if the application is made on behalf of a child, whether the child has been convicted of any specified offences. The provision of false or misleading information in this regard constitutes a separate offence against section 57 of the Principal Act with a maximum penalty of 100 penalty units or 2 years imprisonment or both.

**Proposed section 29B** prevents the Registrar from registering a change of name if the Registrar is aware that the applicant has already registered a change of name in Australia during the preceding 12 months or has already registered 3 or more changes of name in Australia.

**Proposed section 29C** specifies circumstances in which a change of name may be registered despite the restrictions imposed by the proposed amendments and gives the Registrar a discretion to register a change of name in certain circumstances.

The Registrar is given a discretion to register a change of a person's name despite the restriction that the person's birth must be registered in New South Wales if satisfied that an order has been made for the protection of the person or the person's children from domestic violence.

The Registrar is given a discretion to register a change of name despite the restrictions referred to in proposed section 29B and the restriction for persons born overseas and whose birth is not registered in Australia that they must be resident in New South Wales for the preceding 3 years if satisfied that registration is warranted and, in particular, is given a discretion to register a change of name if satisfied that the change of name is for the protection of the person concerned, the person's children or anyone else associated with the person.

**Schedule 1 [4]** amends section 30 of the Principal Act to enable the Registrar to require an applicant for a change of name to produce evidence to satisfy the Registrar that the Registrar should exercise his or her discretion under proposed section 29C to register the change of name.

**Schedule 1 [5]** inserts proposed section 46A into the Principal Act to enable the Registrar to give access to change of name information on the Register to the NSW Police Force and other specified law enforcement and investigative agencies. Access to the information is to be in accordance with a memorandum of understanding entered into by the Registrar and the head of the agency concerned. Currently, clause 8 (2) and (3) of the *Births, Deaths and Marriages Registration Regulation 2006* provide for such a memorandum of understanding between the Commissioner of Police and the Registrar. Clause 8 (2) and (3) of that Regulation are to be repealed by Schedule 2 to the proposed Act.

**Schedule 1 [6] and [7]** amend Schedule 3 to the Principal Act to provide for savings and transitional matters.

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

**Schedule 2** repeals clause 8 (2) and (3) of the *Births, Deaths and Marriages Registration Regulation 2006* to remove provisions that will be covered by proposed section 46A of the Principal Act. (See Schedule 1 [5]).



First print



New South Wales

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

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New South Wales

# **Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009**

No. , 2009

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## **A Bill for**

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.

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|  |        |
|--|--------|
| <b>The Legislature of New South Wales enacts:</b>  | 1      |
| <b>1 Name of Act</b>   | 2      |
| This Act is the <i>Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009</i> . | 3<br>4 |
| <b>2 Commencement</b>  | 5      |
| This Act commences on the date of assent.  | 6      |



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|--|--|----|
| <b>Schedule 1</b>  | <b>Amendment of Births, Deaths and Marriages Registration Act 1995 No 62</b> | 1  |
|  |  | 2  |
| <b>[1] Section 27</b>  |  | 3  |
| Omit the section. Insert instead:  |  | 4  |
| <b>27 Application to register change of adult's name</b>   |  | 5  |
| 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:   |  | 6  |
|  |  | 7  |
|  |  | 8  |
| (a) the person's birth is registered in the State, or  |  | 9  |
| (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.                       |  | 10 |
|  |  | 11 |
|  |  | 12 |
|  |  | 13 |
| <b>[2] Section 28 Application to register change of child's name</b>   |  | 14 |
| Omit section 28 (1)–(2A). Insert instead:  |  | 15 |
| (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:   |  | 16 |
|  |  | 17 |
|  |  | 18 |
| (a) the child's birth is registered in the State, or   |  | 19 |
| (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.                          |  | 20 |
|  |  | 21 |
|  |  | 22 |
|  |  | 23 |
| (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: |  | 24 |
|  |  | 25 |
|  |  | 26 |
|  |  | 27 |
| (a) parental responsibility for the child, or  |  | 28 |
| (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.  |  | 29 |
|  |  | 30 |
|  |  | 31 |
| (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.  |  | 32 |
|  |  | 33 |
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|  |                            |
|--|----------------------------|
| <b>[3] Sections 29A–29C</b>  | 1                          |
| Insert after section 29:   | 2                          |
| <b>29A Requirement to disclose criminal record</b>   | 3                          |
| (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.  | 4<br>5<br>6<br>7           |
| (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.   | 8<br>9<br>10<br>11         |
| (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.      | 12<br>13<br>14<br>15<br>16 |
| (4) In this section:   | 17                         |
| <b>conviction for an offence:</b>  | 18                         |
| (a) includes the making of an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> , and  | 19<br>20                   |
| (b) does not include a spent conviction within the meaning of Part 2 of the <i>Criminal Records Act 1991</i> or a conviction that is taken to be quashed within the meaning of Part 4 of that Act.   | 21<br>22<br>23<br>24       |
| <b>relevant offence</b> means:   | 25                         |
| (a) an offence in New South Wales that is punishable by imprisonment for 12 months or more, or   | 26<br>27                   |
| (b) an offence in a jurisdiction other than New South Wales that, if committed in New South Wales, would be an offence so punishable.  | 28<br>29<br>30             |
| <b>Note.</b> 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. | 31<br>32<br>33<br>34<br>35 |

|            |  |    |
|------------|--|----|
| <b>29B</b> | <b>Restrictions on number of changes of name that may be registered</b>  | 1  |
|            | 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:   | 2  |
|            |  | 3  |
|            | (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   | 4  |
|            |  | 5  |
|            |  | 6  |
|            |  | 7  |
|            | (b) 3 or more changes of the person's name have been registered (whether in this State or in another State).   | 8  |
|            |  | 9  |
| <b>29C</b> | <b>Exceptions to certain change of name restrictions</b>   | 10 |
| (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. | 11 |
|            |  | 12 |
|            |  | 13 |
|            |  | 14 |
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|            |  | 16 |
| (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:  | 17 |
|            |  | 18 |
|            |  | 19 |
|            |  | 20 |
|            | (a) the Registrar is satisfied that the reason for the proposed change of name warrants the registration of the change of name, or   | 21 |
|            |  | 22 |
|            |  | 23 |
|            | (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  | 24 |
|            |  | 25 |
|            |  | 26 |
|            |  | 27 |
|            | (c) the proposed change of name is because of the marriage of the person, or   | 28 |
|            |  | 29 |
|            | (d) the District Court has approved the proposed change of name on application under section 28 (4).   | 30 |
|            |  | 31 |
| (3)        | Nothing in this Part limits or affects:  | 32 |
|            |  | 33 |
|            | (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  | 34 |
|            |  | 35 |
|            |  | 36 |
|            |  | 37 |
|            | (b) the operation of the <i>Adoption Act 2000</i> , the <i>Law Enforcement and National Security (Assumed Identities) Act 1998</i> or the <i>Witness Protection Act 1995</i> .   | 38 |
|            |  | 39 |
|            |  | 40 |

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|---|----------------------------------|
| <b>[4] Section 30 Registration of change of name</b>  | 1                                |
| Insert at the end of section 30 (1) (c):  | 2                                |
| , and   | 3                                |
| (d) the reasons for making the application for registration of<br>the change of name if the registration of the change would<br>require the Registrar to exercise his or her discretion under<br>section 29C.   | 4<br>5<br>6<br>7                 |
| <b>[5] Section 46A</b>  | 8                                |
| Insert after section 46:  | 9                                |
| <b>46A Access to change of name information by law enforcement agencies</b>   | 10<br>11                         |
| (1) The Registrar may allow access by officers of a law enforcement<br>agency to entries in the Register regarding changes of names, but<br>only in accordance with a memorandum of understanding entered<br>into by the Registrar with the head of the agency.   | 12<br>13<br>14<br>15             |
| (2) The Registrar must not enter into a memorandum of<br>understanding unless satisfied that the terms of the<br>memorandum, as far as practicable, protect the persons to whom<br>the entries in the Register relate from unjustified intrusion on<br>their privacy.   | 16<br>17<br>18<br>19<br>20       |
| (3) A memorandum of understanding entered into for the purposes of<br>this section may be amended, revoked or replaced from time to<br>time.  | 21<br>22<br>23                   |
| (4) The functions of the Registrar and of each law enforcement<br>agency must as far as practicable be exercised in conformity with<br>a memorandum of understanding entered into by them under this<br>section. However, a failure to comply with this subsection does<br>not itself invalidate anything done or omitted to be done by the<br>Registrar or the law enforcement agency. | 24<br>25<br>26<br>27<br>28<br>29 |
| (5) In this section, <i>law enforcement agency</i> means:   | 30                               |
| (a) the NSW Police Force, or  | 31                               |
| (b) the New South Wales Crime Commission, or  | 32                               |
| (c) the police force of another State or the Commonwealth, or   | 33                               |
| (d) any other law enforcement or investigative agency of the<br>government of New South Wales or the government of<br>another State or the Commonwealth prescribed by the<br>regulations.   | 34<br>35<br>36<br>37             |

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| <b>[6] Schedule 3 Savings, transitional and other provisions</b>   | 1  |
| Insert at the end of clause 1 (1):   | 2  |
| <i>Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009</i>   | 3  |
|  | 4  |
| <b>[7] Schedule 3, Part 6</b>  | 5  |
| Insert after Part 5:   | 6  |
| <b>Part 6 Provisions consequent on enactment of Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009</b>  | 7  |
|  | 8  |
|  | 9  |
| <b>20 Pending applications</b>   | 10 |
| An amendment made to this Act by the <i>Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009</i> 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.                              | 11 |
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|  | 13 |
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| <b>21 Memorandum of understanding</b>  | 18 |
| The memorandum of understanding entered into for the purposes of clause 8 (2) of the <i>Births, Deaths and Marriages Registration Regulation 2006</i> (as in force before its repeal by the <i>Births, Deaths and Marriages Registration Amendment (Change of Name) Act 2009</i> ) is taken to have been entered into for the purposes of section 46A and may be amended, revoked or replaced accordingly. | 19 |
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Births, Deaths and Marriages Registration Amendment (Change of Name)  
Bill 2009

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

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|--|---|---|
| <b>Schedule 2</b>                              | <b>Amendment of Births, Deaths and Marriages Registration Regulation 2006</b> | 1 |
|  |   | 2 |
| <b>Clause 8 Registration of change of name</b> |   | 3 |
| Omit clause 8 (2) and (3).                     |   | 4 |