



Australian Capital Territory

Justice Legislation Amendment Act 2016

A2016-7

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Australian Capital Territory

Justice Legislation Amendment Act 2016

A2016-7

An Act to amend legislation about births, deaths and marriages, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Justice Legislation Amendment Act 2016*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the following legislation:

- [Births, Deaths and Marriages Registration Act 1997](#)
- [Births, Deaths and Marriages Registration Regulation 1998](#)
- [Liquor Act 2010](#)
- [Parentage Act 2004](#).

Note This Act also amends other legislation (see sch 1).

Part 2 Births, Deaths and Marriages Registration Act 1997

4 Notification of births Section 5

omit

mother

substitute

birth parent

5 New section 5 (8)

insert

(8) In this section:

birth parent, of a child, means the person who gave birth to the child.

6 Registration of parentage order Section 16A (1)

after

section 26,

insert

or a corresponding parentage law,

7 Change of name entries in register
Section 21 (2) (a) (i)

substitute

- (i) if the person's birth is registered in the ACT—
 - (A) alter the register by changing the person's name in the entry relating to the person's birth; or
 - (B) if the applicant for registration of the change of name asks the registrar-general to note the change of name in the particulars of the person's birth—note the change of name in the entry relating to the person's birth; or

8 Section 21 (3)

substitute

- (3) Any birth certificate issued by the registrar-general for the person must—
 - (a) if the register is altered under subsection (2) (a) (i) (A)—show the person's name as changed on the front side of the certificate; or
 - (b) if the change of name is noted in the register under subsection (2) (a) (i) (B)—note the person's name as changed on the reverse side of the certificate.

9 New division 4.1 heading

before section 24, insert

Division 4.1 People with birth registered in the ACT

**10 Application to alter register to record change of sex
Section 24 (2)**

omit 1st mention of

the child

substitute

a child

**11 Evidence in support of application
Section 25 (1), new notes**

insert

Note 1 The [Statutory Declarations Act 1959](#) (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

12 New division 4.2

insert

Division 4.2 ACT residents with birth registered elsewhere**29A Application for recognised details certificate**

- (1) A person may apply to the registrar-general for a document that acknowledges a person's name and sex (a *recognised details certificate*) if—
 - (a) the person is at least 18 years old; and
 - (b) the person is domiciled or resident in the ACT; and
 - (c) the person's birth is registered in a place other than the ACT; and

- (d) the person believes their sex to be the sex nominated in the application (the *altered sex*), and—
 - (i) has received appropriate clinical treatment for alteration of the person's sex; or
 - (ii) is an intersex person.

Note 1 If a form is approved under s 69 for an application, the form must be used.

Note 2 A fee may be determined under s 67 for an application.

- (2) The parents of, or a person with parental responsibility for, a child may apply to the registrar-general for a recognised details certificate for the child if—
 - (a) the child is domiciled or resident in the ACT; and
 - (b) the child's birth is registered in a place other than the ACT; and
 - (c) the parents, or person with parental responsibility, believe on reasonable grounds that a recognised details certificate for the child is in the best interests of the child; and
 - (d) the child—
 - (i) has received appropriate clinical treatment for alteration of the child's sex; or
 - (ii) is an intersex person.
- (3) However, an application under subsection (2) may be made by 1 parent if—
 - (a) the applicant is the only parent named in a register kept under a corresponding law or the law of any place outside Australia; or
 - (b) there is no other surviving parent of the child.
- (4) An application under this section must set out, or be accompanied by, the particulars prescribed by regulation.

29B Evidence in support of application for recognised details certificate

- (1) An application under section 29A for a recognised details certificate for a person who is at least 18 years old must be accompanied by—
 - (a) a statutory declaration by a doctor, or a psychologist, certifying that the person—
 - (i) has received appropriate clinical treatment for alteration of the person's sex; or
 - (ii) is an intersex person; and
 - (b) documents confirming that—
 - (i) the person is domiciled or resident in the ACT; and
 - (ii) the person's birth is registered in a place other than the ACT; and
 - (c) any other documents and information prescribed by regulation.
- Note 1* The [Statutory Declarations Act 1959](#) (Cwlth) applies to the making of statutory declarations under ACT laws.
- Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).
- (2) An application under section 29A for a recognised details certificate for a child must be accompanied by—
 - (a) a statement signed by the parents of, or a person with parental responsibility for, the child stating that a recognised details certificate for the child is in the best interests of the child; and
 - (b) a statutory declaration by a doctor, or a psychologist, certifying that the child—
 - (i) has received appropriate clinical treatment for alteration of the child's sex; or

- (ii) is an intersex person; and
- (c) documents confirming that—
 - (i) the child is domiciled or resident in the ACT; and
 - (ii) the child's birth is registered in a place other than the ACT; and
- (d) any other documents and information prescribed by regulation.
- (3) In this section:
psychologist means a person registered under the *Health Practitioner Regulation National Law (ACT)* to practise in the psychology profession (other than as a student).

29C Issue of recognised details certificate

- (1) On receipt of an application under section 29A, the registrar-general must—
 - (a) issue a recognised details certificate; or
 - (b) refuse to issue the certificate.
- (2) The certificate must not state the applicant's former sex or former name (if any) unless the applicant has requested, in writing, that the information be included.
- (3) The registrar-general may, if the registrar-general considers it appropriate, include in the certificate any other information about the applicant's birth that the applicant has requested, in writing, be included.

29D Effect of recognised details certificate and interstate recognised details certificate

- (1) A person to whom a recognised details certificate relates is, for the purposes of, but subject to, any territory law, a person of the sex stated in the certificate.
- (2) A person to whom an interstate recognised details certificate relates is, for the purposes of, but subject to, any territory law, a person of the sex stated in the certificate.

**13 Protection of privacy
Section 44**

omit

his or her

substitute

the person's

**14 Confiscation of forged etc instruments
Section 51 (2)**

omit

his or her

substitute

the person's

**15 Certificate evidence
New section 65 (2A)**

insert

- (2A) An interstate recognised details certificate is, for the purposes of any territory law, evidence that the person mentioned in it is of the sex stated in the certificate.

16 Regulation-making power
Section 70 (4), definition of *relevant children*

substitute

relevant children—a child is a ***relevant child*** if a parentage order has been made about the child under—

- (a) the *Parentage Act 2004*, section 26; or
- (b) a corresponding parentage law.

17 Reviewable decisions
Schedule 1, new item 6A

insert

| | | | |
|----|-----|------------------------------------------------|-----------|
| 6A | 29C | refuse to issue recognised details certificate | applicant |
|----|-----|------------------------------------------------|-----------|

18 Dictionary, new definitions

insert

corresponding parentage law means a law of a State or another Territory relating to parentage and includes a law prescribed by regulation to be a corresponding parentage law.

interstate recognised details certificate means a recognised details certificate (however described) issued under a corresponding law.

recognised details certificate—see section 29A (1).

Part 3 Births, Deaths and Marriages Registration Regulation 1998

19 New section 3

insert

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*birth parent*—see the [Act](#), section 5 (8).' means that the term 'birth parent' is defined in that section and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

20 Notification of birth Section 4 (1) (g) and (h)

omit

mother

substitute

birth parent

**21 Registration of births
Section 5 (f)**

omit

mother

substitute

birth parent

22 Section 5 (g)

substitute

- (g) the place of birth of the birth parent of the child and the birth parent's date of birth or, if the date of birth is not known, the birth parent's age;

23 Section 5 (h)

omit

father or other parent

substitute

other parent (other than the birth parent)

24 Section 5 (i)

substitute

- (i) the place of birth of the other parent (other than the birth parent) of the child and the other parent's date of birth or, if the date of birth is not known, the other parent's age;

25 Section 5 (m)

omit

male and any deceased female

26 New section 5 (2)

insert

- (2) For subsection (1) (f) to (i), the word ‘mother’ or ‘father’ may be used to describe either or both of the parents of the child.

**27 Change of name entries in register—Act, s 21
Section 5A (f)**

omit

mother

substitute

birth parent

28 Section 5A (g)

omit

father

substitute

other parent (other than the birth parent)

**29 Application to alter register to record change of sex
Section 6 (1) (b)**

omit

mother

substitute

birth parent

30 Section 6 (1) (c)

omit

father

substitute

other parent (other than the birth parent)

**31 Notification of deaths by funeral directors
Section 9 (1) (j)**

omit

mother

substitute

birth parent

32 Section 9 (1) (k)

omit

father or other parent

substitute

other parent (other than the birth parent)

33 New dictionary*insert***Dictionary**

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this regulation.

Note 2 For example, the [Legislation Act](#), dict, pt 1 defines the following terms:

- Act
- civil partnership
- civil union
- must (see s 146).

Note 3 Terms used in this regulation have the same meaning that they have in the [Births, Deaths and Marriages Registration Act 1997](#) (see [Legislation Act](#), s 148). For example, the following terms are defined in the [Births, Deaths and Marriages Registration Act 1997](#), dict:

- birth
- birth certificate
- child (see s 4)
- death
- parents
- register.

birth parent—see the [Act](#), section 5 (8).

Part 4 Liquor Act 2010

34 Definitions—div 9.3 Section 149, definition of *caution offence*, paragraph (g)

omit

age

substitute

identity

35 Section 209

substitute

209 What is a *proof of identity card*?—div 14.2

In this division:

proof of identity card, for a person, means a card that includes the following about the person:

- (a) the name of the person;
- (b) a photo of the person;
- (c) the date of birth of the person.

36 Section 210 heading

substitute

210 Proof of identity cards

37 Section 210*omit*

age

substitute

identity

38 Section 211 heading*substitute***211 Offence—child or young person use false identification to obtain proof of identity card****39 Section 211 (b)***omit*

age

substitute

identity

40 New part 22*insert***Part 22 Transitional—proof of age cards****263 Meaning of *commencement day*—pt 22**

In this part:

commencement day means the day the *Justice Legislation Amendment Act 2016*, section 34 commences.

264 Proof of age cards

A proof of age card issued under this Act, section 210 as in force before the commencement day is taken to be a proof of identity card issued under this Act.

265 Expiry—pt 22

This part expires 1 year after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

41 Dictionary, definition of *identification document*, subparagraph (a) (ii)

omit

age

substitute

identity

42 Dictionary, definition of *interstate proof of age card*

omit

43 Dictionary, new definition of *interstate proof of identity card*

insert

interstate proof of identity card means a document corresponding to a proof of identity card that has been issued under the law of a State.

44 Dictionary, definition of *proof of age card*

omit

45 Dictionary, new definition of *proof of identity card*

insert

proof of identity card, for division 14.2 (Children and young people)—see section 209.

Part 5 Parentage Act 2004

46 Section 7

substitute

7 Presumptions arising from marriage, civil union or civil partnership

- (1) A child born to a person while the person is married or in a civil union or civil partnership is presumed to be a child of the person and the person's spouse, civil union partner or civil partner.
- (2) A child born to a person within 44 weeks after the death of the person's spouse, civil union partner or civil partner is presumed to be the child of the person and the person's spouse, civil union partner or civil partner who died.
- (3) A child born to a person within 44 weeks after the annulment of the person's purported marriage is presumed to be the child of the person and the person's purported spouse.
- (4) A child born to a person after the end of the person's marriage, civil union or civil partnership, but within 44 weeks after the person last separated from the person's spouse or partner in that marriage, civil union or civil partnership, is presumed to be the child of the person and the person's spouse or partner in that marriage, civil union or civil partnership.

47 Presumption arising from domestic partnership Section 8 (1)

omit

the woman

substitute

another person

48 Section 11*substitute***11 Presumptions arising from procedure**

- (1) This section sets out presumptions that arise if a person undergoes a procedure as a result of which the person becomes pregnant.
- (2) The person is conclusively presumed to be a parent of any child born as a result of the pregnancy.
- (3) If the ovum used in the procedure was produced by another person other than the person's domestic partner at the time of the procedure, the person who produced the ovum is conclusively presumed not to be a parent of any child born as a result of the pregnancy.
- (4) If semen used in the procedure was produced by another person other than the person's domestic partner at the time of the procedure, the person who produced the semen is conclusively presumed not to be a parent of any child born as a result of the pregnancy.
- (5) If the person undergoes the procedure with the consent of the person's domestic partner at the time of the procedure, the domestic partner is conclusively presumed to be a parent of any child born as a result of the pregnancy.
- (6) For subsection (5), a person is presumed to consent to the carrying out of a procedure in relation to the person's domestic partner, but the presumption is rebuttable.
- (7) The presumptions set out in this section apply—
 - (a) whenever the pregnancy happened and whether or not it resulted from a procedure carried out in the ACT; and
 - (b) in relation to any child born as a result of the pregnancy, whether or not the child was born in the ACT.

- (8) However, this section does not affect the vesting in possession or in interest of any property that happened before the commencement of this Act.
- (9) In this section:
- procedure* means—
- (a) artificial insemination; or
 - (b) the procedure of transferring into the uterus of a person an embryo derived from an ovum fertilised outside the person's body; or
 - (c) any other way (whether medically assisted or not) by which a person can become pregnant other than by having sexual intercourse with a person.

**49 Application for parentage declaration
Section 15 (1) (b)**

omit

that he or she is

substitute

to be

50 Section 15 (1) (c)

omit

his or her

substitute

their

**51 Annulment of parentage declaration
Section 22 (4)**

omit

he or she

substitute

each person

**52 Definitions for div 2.5
Section 23, definition of *birth parent***

omit

woman

substitute

person

53 Section 23, definition of *birth sibling*

substitute

birth sibling, of a child, means any other child who is born as a result of the same pregnancy as the child.

54 Section 23, definition of *procedure*

substitute

procedure means the procedure of transferring into the uterus of a person an embryo derived from an ovum fertilised outside the person's body.

55 Section 23, definition of *substitute parent agreement*

omit

woman

substitute

person

**56 Parentage order
Section 26 (3) (c) (ii)**

omit

his or her

substitute

their

**57 Name of child
Section 28**

omit

his or her

substitute

their

**58 Medical information
Section 30 (3) (c) and (d)**

omit

brother, sister, uncle or aunt

substitute

sibling or sibling of the parents

59 Section 30 (3) (e)

omit

his or her

substitute

their

**60 Children all of equal status
Section 38 (1)**

omit

his or her parents

substitute

the person's parents

**61 Construction of instruments
Section 39 (3) (b)**

omit

he or she

substitute

the person

62 Section 39 (8), definition of *exnuptial child*

omit

father and mother

substitute

parents

Schedule 1 Other amendments

(see s 3)

Part 1.1 Casino Control Act 2006

[1.1] Section 78, definition of *document of identification*, paragraph (a)

omit

age

substitute

identity

[1.2] Section 78, definition of *proof of age card*

omit

[1.3] Section 78, new definition of *proof of identity card*

insert

proof of identity card includes a document corresponding to a proof of identity card that has been issued under the law of a State.

[1.4] Dictionary, definition of *proof of age card*

omit

[1.5] Dictionary, new definition of *proof of identity card*

insert

proof of identity card—see section 78.

Part 1.2 **Children and Young People Act 2008**

[1.6] **Section 877 (4), definition of *document of identification*,
paragraph (a) (ii)**

omit

age

substitute

identity

Part 1.3 **Dangerous Substances (Explosives) Regulation 2004**

[1.7] **Dictionary, definition of *identification papers*, example**

omit

age

substitute

identity

Part 1.4 **Dangerous Substances (General) Regulation 2004**

[1.8] **Dictionary, definition of *identification papers*, example**

omit

age

substitute

identity

Part 1.5 Medicines, Poisons and Therapeutic Goods Regulation 2008

[1.9] Section 173 (2), definition of *photo identification document*, paragraph (c)

omit

age

substitute

identity

[1.10] Section 173 (2), definition of *proof of age card*

omit

[1.11] Section 173 (2), new definition of *proof of identity card*

insert

proof of identity card means a proof of identity card issued under—

- (a) the *Liquor Act 2010*, section 210 (Proof of identity cards); or
- (b) the law of a State, an external territory or New Zealand.

Part 1.6 **Race and Sports Bookmaking Act 2001**

[1.12] Section 72A (6), definition of *document of identification*, paragraph (a)

omit

age

substitute

identity

Part 1.7 **Road Transport (Driver Licensing) Act 1999**

[1.13] Section 34 etc

omit

age

substitute

identity

in

- section 34
- section 36 (1)
- section 37 (1) (c)
- sections 39 and 40

[1.14] Dictionary, definition of *proof of age card*

omit

Part 1.9 **Second-hand Dealers Regulation 2002**

**[1.19] Section 6, definition of *photo identification document*,
paragraph (f)**

omit

age

substitute

identity

[1.20] Schedule 2, part 2.1, item 6, column 2

omit

age

substitute

identity

[1.21] Dictionary, definition of *proof of age card*

omit

[1.22] Dictionary, new definition of *proof of identity card*

insert

proof of identity card means a proof of identity card issued under—

- (a) the *Liquor Act 2010*, section 210 (Proof of identity cards); or
- (b) the law of a State, an external territory or New Zealand.

Part 1.10 Smoking in Cars with Children (Prohibition) Act 2011

**[1.23] Section 8 (4), definition of *identification document*,
paragraph (b)**

omit

age

substitute

identity

Part 1.11 Tobacco Act 1927

**[1.24] Section 14 (6), definition of *document of identification*,
paragraph (a) (ii)**

omit

age

substitute

identity

Part 1.12 Totalisator Act 2014

**[1.25] Section 56 (5), definition of *identification document*,
paragraph (a) (ii)**

omit

age

substitute

identity

Part 1.13 Wills Act 1968

[1.26] Section 28A heading

substitute

28A Devises to people who have altered their sex

[1.27] Section 28A (1) (b)

omit

successfully undergoes sexual reassignment surgery

substitute

altered their sex

[1.28] Section 28A (1)

omit

undergone the surgery

substitute

altered their sex

[1.29] Section 28A (2)

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the [Legislation Act](#) on 29 February 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Justice Legislation Amendment Bill 2016, which originated in the Legislative Assembly as the Justice Legislation Amendment Bill 2015 and was passed by the Assembly on 16 February 2016.

Acting Clerk of the Legislative Assembly

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