

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES (AMENDMENT)
ORDINANCE 1988

No. 92, 1988

The Registration of Births, Deaths and Marriages (Amendment) Ordinance 1988 (the Ordinance) is consequent upon the new Birth (Equality of Status) Ordinance 1988. It sets up the administrative changes within the Registrar's office necessary to give effect to the equality of status legislation.

The Ordinance introduces a new Register of Parentage Information which allows for the registration of acknowledgements of paternity, declarations of paternity and certain court orders. The relevant provision also enables the Registrar to include in the Register of Parentage Information any acknowledgement, order or document transmitted by the Registrar of a State or another Territory. This allows for a reciprocal arrangement to operate similar to the existing arrangement for adoption orders. On receipt of these instruments, the Ordinance empowers the Registrar to alter the birth certificate in accordance with the instruments.

The Ordinance also allows certain persons to apply for a certified copy of these instruments and if refused, to apply to the Administrative Appeals Tribunal for a review of the decision. Finally, the Ordinance will prevent the Registrar from issuing a birth extract which discloses that the child is ex-nuptial.

Details of the Ordinance are as follows.

Section 1 provides that the proposed Ordinance may be cited as the Registration of Births, Deaths and Marriages (Amendment) Ordinance 1988.

Section 2 provides that the Ordinance shall come into operation on a date fixed by the Minister and notified in the gazette.

Section 3 provides that "Principal Ordinance" means the Registration of Births, Deaths and Marriages Ordinance 1963.

Section 4 is an interpretation provision, which defines the following:

- "acknowledgement of paternity" means an acknowledgement made in accordance with subsection 10(1) of the Birth (Equality of Status) Ordinance 1988 or in accordance with a corresponding law;
- "corresponding law" means a law of a State or another Territory that is similar to this Territory law;

- "declaration of parentage" means a declaration made under subsection 12(1) of the Birth (Equality of Status) Ordinance or a corresponding law;
- "ex-nuptial child" means a child that is neither legitimate (conceived and born in wedlock) nor legitimated (parents married after conception).

Section 5 amends section 8 of the Principal Ordinance to provide for the creation of a new Register of Parentage Information which is to be kept in a manner prescribed.

Section 6 repeals section 17 of the Principal Ordinance. Any entries that were made under section 17 shall be deemed to have been made under the new section 46C (see below). Section 17 was deficient because it did not provide a means for the mother of an ex-nuptial child to have the father's name on the birth certificate if the father was deceased. Under the new scheme, a mother in this position can apply for a declaration of parentage in accordance with section 11 of the Birth (Equality of Status) Ordinance 1988.

Section 7 amends section 20 of the Principal Ordinance to provide that an instrument changing a child's surname may be witnessed by a person authorised to administer an oath under the Oaths and Affirmations Ordinance 1984 or by a Commissioner for Declarations under the Statutory Declarations Act 1959. Section 20 had, through oversight, failed to include a Commissioner for Declarations as a competent witness.

Section 8 amends the heading to Part VI so that reference is also made to the registration of parentage information. This section also provides a Division heading for sections 44 to 46 inclusive.

Section 9 creates new Division 2 which contains new sections 46A-46G.

Section 46A provides that where the Registrar receives an acknowledgement of paternity, a declaration of paternity, a copy of a court order under the Birth (Equality of Status) Ordinance 1988, or an order annulling an acknowledgment of paternity or declaration of parentage, the Registrar shall register the document by filing it in the Register of Parentage Information and shall keep an index of all instruments registered. It also provides that the Registrar shall bring the Division to the notice of any person providing information concerning the birth of an ex-nuptial child.

Section 46B provides that where the Registrar receives documentary information about a child whose birth was not registered in the ACT, the Registrar may send the documents to the registrar of births of the State or Territory where the child is registered.

Section 46C provides that where the Registrar receives an acknowledgement of paternity, declaration of parentage or order in respect of a child registered in the ACT Register of Births

the Registrar shall make such additions or alterations to the birth entry as are consistent with the acknowledgement, declaration or order. On making such alterations, the Registrar shall date and sign his or her name under the entry.

Section 46D provides that the child, any party to the declaration proceedings or the acknowledgement or any person who, in the Registrar's opinion, has a proper interest in the matter may apply for a certified copy of the acknowledgement, declaration or order.

Section 46E provides that an executor, administrator or trustee of a deceased person's estate may request the Registrar to search the Register of Births and Register of Parentage Information to ascertain whether the deceased person is a parent of an ex-nuptial child. If the Registrar is satisfied that the applicant is entitled to apply, the Registrar, after searching the registers, shall notify the applicant in writing of the result.

Section 46F provides for application to the Administrative Appeals Tribunal for a review of the Registrar's decision refusing to issue a certified copy of an acknowledgement, declaration or order.

Section 46G provides that where the Registrar does refuse to issue a certified copy, he or she shall, within 28 days, give written notice of the decision to each person whose interests are affected. The notice shall inform the parties that application may be made to the Administrative Appeals Tribunal to review the decision and that they have a right to request reasons for the decision. Non-compliance with the formal requirements does not invalidate the decision.

Section 10 amends section 51 of the Principal Ordinance to provide that the Registrar shall not issue an extract from the Register of Births or Register of Parentage Information which discloses that a child is ex-nuptial or that a person is a parent of an ex-nuptial child.

Section 11 amends the evidentiary provision of the Principal Ordinance (section 55) so that those provisions also apply to the new Register of Parentage Information.

**Authorised by the Minister
of State for the Arts and
Territories**