

## EXPLANATORY STATEMENT

**SEAT OF GOVERNMENT (ADMINISTRATION) ACT 1910  
AUSTRALIAN CAPITAL TERRITORY  
SEX DISCRIMINATION (MISCELLANEOUS AMENDMENTS)  
ORDINANCE 1986  
No 31, 1986**

The Sex Discrimination (Miscellaneous Amendments) Ordinance 1986 amends eleven Ordinances of the Australian Capital Territory and the Conveyancing Act, 1919 (NSW) in its application to the Territory. The Ordinance gives effect to the Government's policy of eliminating discrimination in legislation on the basis of sex and marital status as set out in the Sex Discrimination Act 1984.

Details of the Ordinance are outlined in the Attachment.

## ATTACHMENT

### SEX DISCRIMINATION (MISCELLANEOUS AMENDMENTS) ORDINANCE 1986

Section 1 cites the short title of the Ordinance as the Sex Discrimination (Miscellaneous Amendments) Ordinance 1986.

Section 2 provides for the commencement of the Ordinance on 1 August 1986, as exemption under section 40 of the Sex Discrimination Act 1984 for acts of discrimination done in direct compliance with the law of a Territory only operates until 31 July 1986.

Section 3 defines "Principal Ordinance" for the purposes of Part II as the Real Property Ordinance 1925.

Section 4 amends section 14 of the Real Property Ordinance 1925 as follows:

- (a) the reference to coverture in paragraph (1)(e) is omitted;
- (b) a new sub-section (4) is inserted to allow the Registrar to alter an entry in the Register Book or on the certificate of title in relation to the name, address, occupation or status of the registered proprietor on production of such evidence as the Registrar will require;
- (c) a new sub-section (5) is inserted to provide for the manner in which the Registrar is to make alterations under the new sub-section (4).

Section 5 amends section 18 of the Real Property Ordinance 1925 as follows:

- (a) paragraph (2)(f) is amended to allow a parent or guardian of an infant to apply to bring land under the Principal Ordinance;
- (b) sub-section (4), which required that in certain circumstances the consent of the husband was necessary to the application by a married woman, is omitted.

Section 6 amends section 55 of the Real property Ordinance 1925 by omitting paragraphs (a) and (b). Section 55 deals with the registration of the survivor of joint proprietors, and it is no longer necessary to differentiate between joint proprietors who are married and those who are not; paragraphs (a) and (b) dealt with married joint proprietors; paragraph (c) deals with joint proprietors in general.

Section 7 repeals section 134 of the Real Property Ordinance 1925, which provided for the marriage of a female proprietor to be certified to the Registrar, and for the Registrar to amend the entry in the Register Book accordingly. This provision is not necessary in view of the new sub-section 14(4), which is inserted by section 4 of the proposed Ordinance.

Section 8 repeals section 175 of the Real Property Ordinance 1925 as it is no longer required to specify that an acknowledgment by a married woman of an instrument executed by her is not necessary.

Sections 9, 10, 11, 12 and 13 amend the First, Fourth, Fifth, Sixth and Eleventh Schedules respectively to the Real Property Ordinance 1925 by omitting in each case the necessity for a married woman to state the name, residence and occupation of her husband.

Section 14 defines "Principal Ordinance" for the purposes of Part III as the Registration of Births, Deaths and Marriages Ordinance 1963.

Section 15 amends section 5 of the Registration of Births, Deaths and Marriages Ordinance 1963 as follows:

- (a) by inserting a definition of "de facto spouse" as a person of the opposite sex to a parent who lives with that parent on a bona fide domestic basis although not married to the parent;
- (b) by inserting a definition of "guardian" to exclude a parent of a child;
- (c) by omitting the definition in sub-section (1) of "parent";
- (d) by adding a new sub-section (7) which excludes from a reference to "parent" a step-parent, foster parent or a de facto spouse of a parent.

Section 16 amends section 13 of the Registration of Births, Deaths and Marriages Ordinance 1963 by omitting from paragraph (2)(b) the different qualifications for a mother and father of a child for not complying with the section.

Section 17 amends section 18 of the Registration of Births, Deaths and Marriages Ordinance 1963 by omitting sub-sections (1), (1A) and (1B) and substituting new sub-sections (1), (1A), (1B), (1C) and (1D):

- (a) sub-section 18(1) allows the parents of a child to nominate the name to be registered as the child's surname. Where both parents are, or are to be registered, then the child's surname can be the name or

former name of either parent or a combination of both parents' names; where only one parent is to be registered, then only that parent's name or former name is to be registered as the child's surname;

- (b) sub-section 18(1A) provides for the case where the parents disagree as to the child's surname. The parents have the right to notify the Registrar in writing, within 12 months of the birth of the child, of the disagreement, and the Registrar is then obliged to register as the child's surname the parents' names hyphenated in alphabetical order;
- (c) sub-section 18(1B) allows a parent to disagree as to the child's surname if that person is registered as a parent of the child or is to be so registered;
- (d) sub-section 18(1C) specifies that the surname of a child's mother is to be taken as her name at the time of the birth of the child;
- (e) sub-section 18(1D) requires the Registrar to alter the Register if the Court makes a declaration as to the child's surname under paragraph 20A(1)(a).

Section 18 amends section 19 of the Registration of Births, Deaths and Marriages Ordinance as follows:

- (a) sub-section 19(1) specifies that the parents of the child are to sign the Form 1, which is used to effect the change of a child's name (other than the surname) after names are given to the child at baptism;
- (b) sub-section 19(7) is omitted and substituted by new sub-sections 19(7) and 19(8):
  - (i) sub-section 19(7) specifies that a reference to parents in section 19 is to be read as a reference to the parent or parents appearing in the Register;
  - (ii) sub-section 19(8) allows the Registrar to proceed under section 19 where he or she is satisfied that a parent of a child is dead or the parent's whereabouts are unknown.

Section 19 repeals section 20 of the Registration of Births, Deaths and Marriages Ordinance 1963 and substitutes new sections 20 and 20A:

- (a) sub-section 20(1) allows a registered parent of a child to change the child's surname to that parent's maiden name or other surname, to the name of the spouse or de facto spouse of that parent, or to a name that is a

combination of that parent's name or former name and the name of the spouse or de facto spouse of the parent;

- (b) sub-section 20(2) specifies the following conditions for an instrument to be effective to change a child's surname:
  - (i) the instrument must contain the consent of the child where the child is over 16; the consent of the other parent if that other parent is registered as a parent, the consent of the guardian or guardians of the child where applicable, and where the name of the spouse or de facto spouse of the parent is to be used as the child's surname either alone or in combination with the parent's name, the consent of that spouse or de facto spouse must also be obtained;
  - (ii) the signatures on the instrument of the parent and any consenting parties need to be witnessed by a person authorised to administer an oath under the Oaths and Affirmations Ordinance 1984; and
  - (iii) the instrument needs to be registered in the General Register of Deeds;
- (c) sub-section 20(3) specifies that the consent of any parties is not be required where the Magistrates Court has made a declaration that the instrument is to be effective without the consent;
- (d) sub-section 20(4) allows the Registrar to change the surname of a child where the consent of the child's other parent or guardian is not on the instrument if the Registrar is satisfied that the other parent is dead or the parent's whereabouts are unknown, or that there is no guardian whose consent is not on the instrument, or where the Magistrates Court has made a declaration under paragraph 20A(1)(b);
- (e) sub-section 20(5) allows a parent whose whereabouts were unknown to subsequently lodge with the Registrar an objection in writing to the change of surname of the child. Where the Registrar receives such an objection, he will notify the parent who changed the name of the objection, and that unless an application is made to the Magistrates Court within 21 days, the Registrar is required to re-register the child's former surname as the surname of the child;
- (f) sub-section 20(6) requires the Registrar to re-register the former surname of a child if he is satisfied that no application to the Court has been made under sub-

section 20A(2), or the Court has made a declaration that the former surname is to be re-registered;

- (g) sub-section 20(7) requires the Registrar to alter the Register in the case where a former surname has been entered and the Magistrates Court has made a declaration that the surname to which the child's name was changed by instrument is to be re-registered;
- (h) sub-section 20(8) specifies that section 20 does not apply to a child who has reached 18 years of age;
- (i) sub-section 20A(1) allows a parent of a child to apply to the Magistrates Court for a declaration as to the surname of a child in the case where the parents disagree as to the name under section 18, or where the consent of the other parent or of any guardian where applicable is not obtained to change the child's name under sub-section 20(1);
- (j) sub-section 20A(2) allows a parent to apply to the Magistrates Court for a declaration as to the child's surname in the case where a child's surname has been changed at a time when the other parent's whereabouts were unknown and that other parent subsequently lodges an objection with the Registrar;
- (k) sub-section 20A(3) specifies the circumstances the Magistrates Court is to take into account in determining an application for a declaration as being:
  - (i) the welfare of the child;
  - (ii) the wishes of the child;
  - (iii) whether the child is living with one or both parents;
  - (iv) the nature and frequency of the child's contact with a parent with whom he or she is not living;
  - (v) the surnames of any other children of both parents or of either parent with whom the child is living;
  - (vi) where the application relates to a declaration that a change of name is to be effective without a parent's consent -
    - (1) whether the child ordinarily lives with the parent making the application;
    - (2) whether that person has sole custody and control of the child; and

- (3) whether either parent's guardianship of the child has been revoked by a court order;
- (1) sub-section 20A(4) gives the Magistrates Court jurisdiction to make an order under section 20A and any other orders as it thinks fit.

Section 20 amends section 43 of the Registration of Births, Deaths and Marriages Ordinance 1963 by substituting "court of Australia" for "prescribed court" and omitting sub-section (4).

Section 21 amends the Second Schedule to the Registration of Births, Deaths and Marriages Ordinance 1963 by specifying that item 6 of the Particulars Relating to the Birth of a Child shall require the full name, occupation, age and birth-place of the mother and father of a child and by omitting items 7, 8 and 9 and substituting new items 7, 8 and 9 specifying information to be furnished as follows:

- (a) item 7 requires the former surnames of the mother and father of the child;
- (b) item 8 requires the date and place of the parent's marriage if they were married to each other at the time of the child's birth; and
- (c) item 9 requires the names and ages of any children of the same parents who are dead, but not including children not born alive and children of the parents who have been adopted by another person.

Section 22 amends the Third Schedule to the Registration of Births, Deaths and Marriages Ordinance 1963 as follows:

- (a) paragraphs (d) and (e) of item 6 are omitted;
- (b) a new item 6A is inserted to require the furnishing of the names and ages of any living children of the dead person, and the number of any male or female children of the dead person who are dead;
- (c) item 10 requires the furnishing of the full name and occupation of the mother of the dead person as well as the father;
- (d) item 11 is omitted and a new item 11 substituted which requires the furnishing of any former surnames of the mother or father of the dead person.

Section 23 amends the Fourth Schedule to the Births, Deaths and Marriages Ordinance 1963 as follows:

- (a) Form 1 is amended to reflect the amendments to section 19 of the Ordinance by making provision for the signatures of the mother and father on the form;

- (b) Form 2 is amended to reflect the amendments to section 20 of the Ordinance relating to the change of a child's surname.

Section 24 amends section 64 of the Agents Ordinance 1968 by expanding the range of people excluded from being engaged as an agent's auditor in paragraph (b) to include an employee, partner, spouse or de facto spouse, child, parent or brother or sister of the licensed agent. A new sub-section (2) is inserted to define 'de facto spouse' for the purposes of this section as being a person of the opposite sex to the agent who lives with the agent on a bona fide domestic basis although not married to the agent.

Section 25 amends section 2 of the Animal Nuisance Control Ordinance 1975 by substituting "parents" for "father" in sub-section (2).

Section 26 amends section 78 of the Conveyancing Act, 1919 of NSW in its application to the Territory by omitting sub-section (3).

Section 27 amends sub-section 29(7) of the Co-operative Societies Ordinance 1939 by substituting "spouse" for "wife".

Section 28 amends sub-section 5(2) of the Dog Control Ordinance by substituting "parents" for "father".

Section 29 amends section 9 of the Hawkers Ordinance 1936 by substituting "a child" for "the son" in sub-section (1); substituting "child" for "son" in paragraph (3)(a); and substituting "not being a child of the hawker" for "other than his son" in paragraph (3)(b).

Section 30 repeals Part IIIA of the Landlord and Tenant Ordinance 1949. Part IIIA included discriminatory provisions, namely sections 88A and 88B in that protected persons were taken to be either a male member or former member of the Forces or a female dependant of that member, and made no provision for either male dependants or for female members of the Forces. However, following the commencement of the Veterans Entitlement Act 1986 Part IIIA did not have any effective operation.

Section 31 amends section 10 of the Land Rent and Rates (Deferment and Remission) Ordinance 1970 by omitting sub-section (4) and substituting a new sub-section (4) which provides for determinations relating to any joint tenants and tenants in common rather than just those who are married.

Section 32 amends section 23 of the Police Offences Ordinances 1930 by altering references to "male person" and "he" to references to "the person" in sub-section (3).

Section 33 amends section 15 of the Police Ordinance 1927 by altering references to "female person" and "male person" to references to "the person" and "another person".