

South Australia

# **Births, Deaths and Marriages Registration Act 1996**

An Act about the registration of births, deaths and marriages and related matters.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Births, Deaths and Marriages Registration Act 1996*.

### **3—Objects of Act**

The objects of this Act are to provide for—

- (a) the registration of births, deaths and marriages in South Australia; and
- (b) the registration of changes of name; and
- (c) the keeping of registers for recording and preserving information about births, deaths, marriages and changes of name in perpetuity; and
- (d) access to the information in the registers in appropriate cases by government or private agencies and members of the public, from within and outside the State; and
- (e) the issue of certified information from the registers; and
- (f) the collection and dissemination of statistical information.

### **4—Definitions**

In this Act—

**adult** means a person who is 18 or above or, although under 18, is or has been married;

**authorised celebrant** means an authorised celebrant under the *Marriage Act 1961* (Cwth);

**birth** means the expulsion or extraction of a child from its mother;

**change** of name includes an addition, omission or substitution;

**child** includes a still-born child;

**corresponding law** means a law of another State that provides for the registration of births, deaths and marriages;

**Court** means the Magistrates Court;

**cremated remains** has the same meaning as in the *Burial and Cremation Act 2013*;

**death** includes still-birth;

**disposal** of human remains means—

- (a) cremation of the remains; or
- (b) burial of the remains (including burial at sea); or
- (c) placing the remains in a mausoleum or other permanent resting place; or
- (d) placing the remains in the custody of an educational or scientific institution for the purpose of medical education or research; or

- (e) removal of the remains from the State (but not if the remains have been cremated or are taken from the State by sea and buried at sea in the course of the voyage);

**doctor** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**funeral director** means a person who carries on the business of arranging for the disposal of human remains;

**human remains** includes the remains of a still-born child;

**prohibited name** means a name that—

- (a) is obscene or offensive; or
- (b) could not practicably be established by repute or usage—
- (i) because it is too long; or
  - (ii) because it consists of or includes symbols without phonetic significance; or
  - (iii) for some other reason; or
- (c) is contrary to the public interest for some other reason;

**registrable event** means a birth, change of name, death or marriage and includes the making or discharge of a surrogacy order;

**registrable information** means information that must or may be included in the Register<sup>1</sup>;

**Register**—See section 40;

**registering authority** means an authority responsible under a corresponding law for the registration of births, deaths and marriages;

**Registrar** means the Registrar of Births, Deaths and Marriages;

**State** includes a Territory;

**still-birth** means the birth of a still-born child;

**still-born child** means a child of at least 20 weeks' gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of at least 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth but does not include the product of a procedure for the termination of pregnancy;

**surrogacy order** means an order under section 10HB of the *Family Relationships Act 1975*.

**Note—**

- 1 See section 40(2).

## Part 2—Administration

### Division 1—The Registrar

#### 5—Registrar

- (1) The Registrar of Births, Deaths and Marriages is responsible, subject to the Minister's control and direction, for the administration of this Act.
- (2) The Registrar is to be a Public Service employee.

#### 6—Registrar's general functions

The Registrar's general functions are to—

- (a) establish and maintain the registers<sup>1</sup> necessary for the purposes of this Act; and
- (b) administer the registration system established by this Act and ensure that it operates efficiently, effectively and economically; and
- (c) ensure that this Act is administered in the way best calculated to achieve its objects.

**Note—**

- 1 The registers are collectively referred to as the *Register*—See section 40.

#### 7—Registrar's staff

- (1) The Registrar's staff consists of—
  - (a) one or more Deputy Registrars of Births, Deaths and Marriages; and
  - (b) the other staff necessary for the proper administration of this Act.
- (2) A Deputy Registrar has the powers and functions of the Registrar but is subject to direction by the Registrar.
- (3) The staff are to be Public Service employees.

#### 8—Delegation

- (1) The Registrar may delegate powers or functions under this or any other Act.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in any matter; and
  - (d) is revocable at will by the delegator.

## **Division 2—Execution of documents**

### **9—The Registrar's seal**

The Registrar has a seal.

### **10—Execution of documents**

- (1) The Registrar may issue a certificate or other document under the Registrar's signature and seal, or a facsimile of the Registrar's signature and seal produced by stamp, machine imprint or some other method authorised by regulation.
- (2) If a document produced before a court or an administrative authority or official is apparently under—
  - (a) the Registrar's signature and seal; or
  - (b) a facsimile of the Registrar's signature and seal produced by stamp, machine imprint, or some other method authorised by regulation,

the court, authority or official must presume, in the absence of evidence to the contrary, that the document was properly issued under the Registrar's authority.

## **Division 3—Reciprocal administrative arrangements**

### **11—Reciprocal administrative arrangements**

- (1) The Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing for—
  - (a) the exercise by the Registrar of powers and functions of the registering authority under the corresponding law; and
  - (b) the exercise by the registering authority under the corresponding law of powers and functions of the Registrar under this Act.
- (2) When an arrangement is in force under this section—
  - (a) the Registrar may exercise, to the extent authorised by the arrangement (but subject to the conditions of the arrangement), the powers and functions of the registering authority under the corresponding law; and
  - (b) the registering authority under the corresponding law may exercise, to the extent authorised by the arrangement (but subject to the conditions of the arrangement), the powers and functions of the Registrar under this Act.
- (3) An arrangement under this section may—
  - (a) establish a data base in which information is recorded for the benefit of all the participants in the arrangement; and
  - (b) provide for access to information contained in the data base; and
  - (c) provide for payments by or to participants in the arrangement for services provided under the arrangement.

## Part 3—Registration of births

### Division 1—Notification of births

#### 12—Notification of births

- (1) When a child is born in the State, the responsible person must give written notice of the birth to the Registrar including the particulars required by regulation.  
Maximum penalty: \$1 250.
- (2) The notice must be given—
  - (a) in the case of a child born alive—within 7 days after birth;
  - (b) in the case of a still-birth—within 48 hours after birth.
- (3) When notice of a still-birth is given, the responsible person must also give a doctor's certificate in a form approved by the Registrar, certifying the cause of foetal death, to—
  - (a) the Registrar; and
  - (b) the funeral director or other person who will be arranging for the disposal of the human remains.  
Maximum penalty: \$1 250.
- (4) The certificate must be completed by the doctor responsible for the professional care of the mother at the birth or a doctor who examined the body of the still-born child after the birth.
- (5) In this section—  
*responsible person* means—
  - (a) in the case of a child born in a hospital or brought to a hospital within 24 hours after birth—the chief executive officer of the hospital; or
  - (b) in other cases—the doctor or midwife responsible for the professional care of the mother at the birth.

### Division 2—Registration of births

#### 13—Cases in which registration of birth is required or authorised

- (1) If a child is born in the State, the birth must be registered under this Act.
- (2) If a court (whether of this or any other State or the Commonwealth) directs the registration of a birth, the birth must be registered under this Act.
- (3) If a child is born in an aircraft during a flight or on a vessel during a voyage to a place of disembarkation in the State, the birth may be registered under this Act.
- (4) If a child is born outside the Commonwealth, but—
  - (a) the child is to become a resident of the State; or
  - (b) in the case of a still-born child—a person responsible for having the birth of the child registered is or is to become a resident of the State,

the birth may be registered under this Act.

- (5) However, the Registrar must not register a birth under subsections (3) or (4) if the birth is registered under a corresponding law.

#### **14—How to have the birth of a child registered**

A person has the birth of a child registered under this Act by lodging a statement (the *birth registration statement*) in a form approved by the Registrar containing the information required by regulation.

#### **15—Responsibility to have birth registered**

- (1) The parents of a child are jointly responsible for having the child's birth registered under this Act (and must both sign the birth registration statement) but the Registrar may accept a birth registration statement from one of the parents if satisfied that it is impossible, impracticable or inappropriate for the other parent to join or be required to join in the application whether because of his or her death, disappearance, ill-health or unavailability or the need to avoid unwarranted distress or for some other reason.
- (2) If a child is a foundling, the person who has custody of the child is responsible for having the child's birth registered.
- (3) The Registrar may accept a birth registration statement from a person who is not responsible for having the child's birth registered if satisfied that—
  - (a) the person lodging the statement has knowledge of the relevant facts; and
  - (b) the child's parents are unable or unlikely to lodge a birth registration statement.

#### **16—Obligation to have birth registered**

- (1) A person responsible for having the birth of a child registered must ensure that a birth registration statement is lodged with the Registrar within 60 days after the date of the birth.  
Maximum penalty: \$1 250.
- (2) However, the Registrar must accept a birth registration statement even though it is lodged after the end of the 60 day period.

#### **17—Registration**

- (1) The Registrar registers a birth by making an entry about the birth in the Register including the particulars required by regulation.
- (2) However, if the particulars available to the Registrar are incomplete the Registrar may register a birth on the basis of incomplete particulars.

### **Division 3—Alteration of details of birth registration**

#### **18—Alteration of details of parentage after registration of birth**

- (1) The Registrar may include registrable information about a child's parents in the Register after registration of the child's birth if—
  - (a) the father and mother of the child make a joint application for the addition of the information; or

- (b) one parent of the child makes an application for the addition of the information and the other parent cannot join in the application because he or she is dead or cannot be found, or for some other reason.
- (2) The Registrar must include or correct registrable information about a child's parents in the Register after registration of the child's birth if a court (whether of this or any other State or the Commonwealth) directs the inclusion or correction of the information in the Register or the Registrar is advised of a finding by a court that a particular person is a parent of the child.
- (3) An application to the Registrar for the inclusion of registrable information in the Register—
  - (a) must be made in writing; and
  - (b) must include the information required by the Registrar; and
  - (c) must, if the Registrar requires verification of the information contained in the application, be accompanied by a statutory declaration verifying the information contained in the application and other evidence the Registrar may require.

## **Division 4—Court orders relating to registration of birth**

### **19—Application to Court**

The Court may, on application by an interested person or on its own initiative, order—

- (a) the registration under this Act of a birth that has occurred in the State; or
- (b) the inclusion or correction of registrable information about a birth or a child's parents in the Register.

### **20—Power to direct registration of birth etc**

If a court finds—

- (a) that the birth of a person is not registered as required under this Act or a corresponding law; or
- (b) that the registrable information contained in an entry about a birth in the Register under this Act or a corresponding law is incomplete or incorrect,

the court may direct registration of the birth, or the inclusion or correction of registrable information in the Register under this Act or the corresponding law (as the case may require).

## **Division 5—Child's name**

### **21—Name of child**

- (1) Subject to this section, the birth registration statement must state the name of the child.
- (2) The name is a matter of choice for the person or persons lodging the statement<sup>1</sup>, but the Registrar may assign a name to a child if—
  - (a) the name stated in the birth registration statement is a prohibited name; or

- (b) the birth registration statement is lodged by both parents of the child and they satisfy the Registrar that they are unable to agree on the child's name.
- (3) A birth registration statement relating to a still-born child need not state the name of the child.

**Note—**

- 1 For example, there is no requirement that the name be made up of both a surname and a given name or given names.

## **22—Dispute about child's name**

- (1) If there is a dispute between parents about a child's name, either parent may apply to the Court for a resolution of the dispute.
- (2) On an application under subsection (1), the Court may—
  - (a) resolve the dispute about the child's name as the Court considers appropriate; and
  - (b) order the Registrar to register the child's name in a form specified in the order.

## **Division 6—Surrogacy orders**

### **22A—Surrogacy orders**

- (1) On receipt of a notice under section 10HD of the *Family Relationships Act 1975* in relation to the making or discharge of a surrogacy order about a child whose birth is registered in this State, the particulars provided in the notice must be registered by the Registrar in relation to the registration of the child's birth and the child's name.
- (2) Without limiting subsection (1), the Registrar must, in relation to the Register, make such entries and alterations as are necessary to give effect to the operation of section 10HB(13) or 10HC(10) (as the case requires) of the *Family Relationships Act 1975*.
- (3) Subject to subsection (4), a certificate issued by the Registrar after the registration of the particulars provided in a notice under section 10HD of the *Family Relationships Act 1975*—
  - (a) must only disclose and certify up-to-date particulars contained in an entry; and
  - (b) must not provide any information disclosing a change in a parent or parents of the relevant child, or a change in the name of the child (including by disclosing the name of, or information about, any birth parent who is no longer considered as a parent of the child).
- (4) A person—
  - (a) who is the subject of a surrogacy order and who has attained the age of 18 years; or
  - (b) who is a party to the surrogacy agreement that gave rise to a surrogacy order, is entitled to a certificate certifying all relevant entries in the Register.

- (5) On the receipt of a notice under section 10HD of the *Family Relationships Act 1975* in relation to the making or discharge of a surrogacy order about a child whose birth is registered in another State, the Registrar must send a copy of the notice to the relevant registering authority.

## **Part 4—Change of name**

### **Division 1—General requirements for change of name**

#### **23—Change of name by registration**

A person's name may be changed by registration of the change under this Part.

#### **24—Application to register change of adult's name**

- (1) Subject to this Part, 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—
- (a) the person's birth is registered in the State; or
  - (b) —
    - (i) the person was born outside Australia; and
    - (ii) the person's birth is not registered in another State or Territory; and
    - (iii) the person has been resident in the State for at least 12 consecutive months immediately before the date of the application.
- (2) The Registrar may waive the requirement under subsection (1)(b)(iii) if the Registrar is satisfied that the change of name—
- (a) is sought for the purpose of the protection of the applicant or a child of the applicant; or
  - (b) is related to a marriage or divorce of the applicant.
- (3) An application under subsection (1) must contain a declaration by the person indicating whether he or she is, at the time of the making of the application—
- (a) a restricted person as defined in section 29B; or
  - (b) a registrable offender within the meaning of the *Child Sex Offenders Registration Act 2006*.

#### **25—Application to register change of child's name**

- (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—
- (a) the child's birth is registered in the State; or
  - (b) —
    - (i) the child was born outside Australia; and
    - (ii) the child's birth is not registered in another State or Territory; and
    - (iii) the child has been resident in the State for at least 12 consecutive months immediately before the date of the application.

- (1a) The Registrar may waive the requirement under subsection (1)(b)(iii) if the Registrar is satisfied that the change of name—
- (a) is sought for the purpose of the protection of the child or the applicants; or
  - (b) the applicants have legally married and wish the child to change to the married name of both applicants.
- (1b) The requirement under subsection (1)(b)(iii) does not apply if the Court has approved the proposed change of a child's name under subsection (2)(c).
- (2) An application for registration of a change of a child's name may be made by one parent if—
- (a) the applicant is the sole parent named in the registration of the child's birth under this Act or any other law; or
  - (b) there is no other surviving parent of the child; or
  - (c) the Court approves the proposed change of name.
- (3) The Court may, on application by a child's parent, approve a proposed change of name for the child if satisfied that the change is in the child's best interests.
- (4) If the parents of a child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to a child, the child's guardian may apply for registration of a change of the child's name.

## **26—Child's consent to change of name**

A change of a child's name must not be registered unless—

- (a) the child consents to the change of name; or
- (b) the child is unable to understand the meaning and implications of the change of name.

## **27—Registration of change of name**

- (1) Before registering a change of name under this Part, the Registrar may require the applicant to provide evidence to establish to the Registrar's satisfaction—
- (a) the identity and age of the person whose name is to be changed; and
  - (b) that the change of name is not sought for a fraudulent or other improper purpose; and
  - (c) if the person whose name is to be changed is a child—that the child consents to the change of name or is unable to understand the meaning and implications of the change of name.
- (2) If the Registrar is satisfied that the name of a person whose birth is registered in the State has been changed under another law or by order of a court, the change of name may be registered under this Act.
- (3) The Registrar may refuse to register a change of name if, as a result of the change, the name would become a prohibited name.

## **28—Entries to be made in the Register**

- (1) The Registrar registers a change of name by making an entry about the change of name in the Register including the particulars required by regulation.
- (2) If the applicant for registration of the change of name asks the Registrar to arrange for noting the change of name in the particulars of the person's birth, and the person's birth is registered under this Act or a corresponding law, the Registrar must—
  - (a) if the birth is registered under this Act—note the change of name in the entry relating to the birth; or
  - (b) if the birth is registered under a corresponding law—notify the relevant registering authority of the change of name.
- (3) If the change of name is noted in the Register under subsection (2), a birth certificate issued by the Registrar for the person must show the person's name as changed under this Part.

## **29—Change of name may still be established by repute or usage**

This Part does not prevent a change of name by repute or usage.

## **29A—Saving provision—surrogacy arrangements**

This Part does not limit the operation of Division 6 of Part 3.

## **Division 2—Requirements for change of name of restricted persons**

### **29B—Interpretation**

In this Division—

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*immediate family* of a person means any 1 or more of the following:

- (a) a spouse or domestic partner;
- (b) a parent (including a person who stands in the position, and undertakes the responsibilities, of a parent);
- (c) a grandparent;
- (d) a child (including an adult child);
- (e) a grandchild (including an adult grandchild);
- (f) a brother or sister;

*restricted person* means—

- (a) a prisoner; or
- (b) a prisoner released on parole or home detention under the *Correctional Services Act 1982*; or
- (c) a person subject to an extended supervision order under the *Criminal Law (High Risk Offenders) Act 2015*; or

- (d) a person released on licence under section 24 of the *Criminal Law (Sentencing) Act 1988*; or
- (e) a person or a class of persons declared by the regulations to be a restricted person;

*prisoner* has the same meaning as in the *Correctional Services Act 1982*;

*spouse*—a person is the spouse of another if they are legally married;

*supervising authority* means—

- (a) the person holding or acting in the position of Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982*; or
- (b) a person declared by the regulations to be a supervising authority in respect of a restricted person or a class of restricted person.

### 29C—Application of Division

- (1) The requirements and restrictions in this Division are in addition to the requirements and restrictions contained in Division 1.
- (2) This Division does not apply to a change of name of a restricted person who is a registrable offender within the meaning of the *Child Sex Offenders Registration Act 2006*.

**Note—**

The *Child Sex Offenders Registration Act 2006* provides for the requirements in relation to changing, or applying to change, the name of a registrable offender.

### 29D—Application for change of name by or on behalf of restricted person

- (1) A restricted person must not—
  - (a) apply to the Registrar to register a change of his or her name under this Act; or
  - (b) apply to a registering authority to register a change of his or her name under a corresponding law,
 without the written approval of the supervising authority.  
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A person must not, on behalf of a restricted person—
  - (a) apply to the Registrar to register a change of his or her name under this Act; or
  - (b) apply to a registering authority to register a change of his or her name under a corresponding law,
 without the written approval of the supervising authority.  
 Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) If a court convicts a person of an offence under subsection (1) or (2), the court may, on application by the prosecution, declare a change of name registered in relation to the person to be void and the Registrar must, on being notified of that declaration, correct the Register.

**29E—Approval by supervising authority for change of name of restricted person**

- (1) The supervising authority may approve the making of an application to the Registrar or a registering authority for registration for a change of name of a restricted person.
- (2) In determining whether to grant an approval under subsection (1), the supervising authority must have regard to the following:
  - (a) the safety of the restricted person and other persons;
  - (b) the rehabilitation, care or treatment of the restricted person;
  - (c) whether the proposed change of name—
    - (i) could be used to further an unlawful activity or purpose; or
    - (ii) could be used to evade or hinder the supervision of the restricted person; or
    - (iii) could be considered offensive to a victim of crime or the immediate family of a deceased victim of crime.
- (3) The supervising authority must not approve the making of an application to the Registrar or a registering authority for registration of a change of name of a restricted person unless the supervising authority is satisfied that the change is necessary or reasonable.
- (4) The supervising authority must, on approving the making of an application under subsection (1)—
  - (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 registering authority (as the case requires).
- (5) The supervising authority may, by instrument in writing, delegate to a person (including a person for the time being holding or acting in a particular position) a function or power of the supervising authority under this section.
- (6) A delegation under subsection (5)—
  - (a) may be unconditional or subject to conditions specified by the delegator; and
  - (b) does not derogate from the power of the delegator to act personally in any matter; and
  - (c) may be further delegated; and
  - (d) is revocable at will by the delegator.

**29F—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 notify the supervising authority of a change of name of a restricted person.

- (3) The Registrar may correct the Register if a change of name of a person has been registered in contravention of this Division.

### **29G—Information exchange between Registrar and supervising authority**

- (1) The Registrar and the supervising authority may enter into an arrangement for the provision or exchange of information for the purposes of this Division.
- (2) Information may be provided or exchanged in accordance with an arrangement under this section despite any other Act or law.

## **Part 5—Registration of marriages**

### **30—Cases in which registration of marriage is required**

If a marriage is solemnised in the State, the marriage must be registered under this Act.

### **31—How to have marriage registered**

A person may have a marriage registered by lodging with the Registrar a certificate of the marriage under the *Marriage Act 1961* of the Commonwealth or, if the marriage was solemnised before the commencement of that Act, the evidence of the marriage required by the Registrar<sup>1</sup>.

Note—

- 1 Under section 50(4) of the *Marriage Act 1961* of the Commonwealth the authorised celebrant is responsible for lodging the certificate of marriage with the Registrar.

### **32—Registration of marriage**

A marriage may be registered by—

- (a) including the marriage certificate as part of the Register; or
- (b) including particulars of the marriage in the Register.

## **Part 6—Registration of deaths**

### **Division 1—Cases where registration of death is required or authorised**

#### **33—Deaths to be registered under this Act**

- (1) If a person dies in the State, the death must be registered under this Act.
- (2) If a court or coroner (whether of this or any other State or the Commonwealth) directs the registration of a death, the death must be registered under this Act.
- (3) If a person dies in an aircraft during a flight or on a vessel during a voyage to a place of disembarkation in the State, the death may be registered under this Act.
- (4) If a person who is domiciled or ordinarily resident in the State dies outside the Commonwealth, or a person dies outside the Commonwealth leaving property in the State, the death may be registered under this Act.
- (5) However, the Registrar is not obliged to register a death under subsection (3) or (4) if the death is registered under a corresponding law.

- (6) If a child is still-born, the child's death<sup>1</sup> is not to be registered under this Part.

**Note—**

- 1           ie the foetal death. A *child* is defined to include a still-born child.

## **Division 2—Court orders relating to registration of death**

### **34—Application to Court**

The Court may, on application by an interested person or on its own initiative, order—

- (a) the registration under this Act of a death that has occurred in the State; or
- (b) the inclusion or correction of registrable information about a death in the Register.

### **35—Power to direct registration of death etc**

If a court or coroner finds—

- (a) that the death of a person is not registered as required under this Act or a corresponding law; or
- (b) that the registrable information contained in an entry about a death in the Register under this Act or a corresponding law is incomplete or incorrect,

the court or coroner may direct registration of the death or the inclusion or correction of registrable information in the Register under this Act or the corresponding law (as the case may require).

## **Division 3—Notification of deaths**

### **36—Notification of deaths by doctors**

- (1) A doctor who was responsible for a person's medical care immediately before death, or who examines the body of a deceased person after death, must, within 48 hours after the death, give written notice of the death to the Registrar, including the particulars required by regulation.

Maximum penalty: \$1 250.

- (2) However, a doctor—

- (a) need not give a notice under this section if another doctor has given the required notice; and
- (b) must not give a notice under this section if the State Coroner or a police officer is required to be notified of the death under the *Coroners Act 2003*.

Maximum penalty: \$1 250.

- (3) When notice of a death is given, the doctor must also give a certificate in a form approved by the Registrar, certifying the cause of death, to—

- (a) the Registrar; and
- (b) the funeral director or other person who will be arranging for the disposal of the human remains.

Maximum penalty: \$1 250.

- (4) If a child is still-born, the child's death is not to be notified under this section<sup>1</sup>.

**Note—**

- 1 In the case of a still-birth notice must be given to the Registrar under section 12.

### **37—Notification by coroner**

- (1) If the State Coroner is notified of a death under the *Coroners Act 2003* or is inquiring into the cause of a death, the State Coroner must, as soon as practicable, notify the Registrar of that fact.
- (2) If the State Coroner authorises the disposal of human remains, or makes a finding about the cause of a death, the State Coroner must give a copy of the disposal authorisation or the finding to the Registrar.
- (3) The Registrar may register a death even though the death is subject to an inquest or other coronial inquiry and a finding has not been made about the cause of death.
- (4) A certificate by the Registrar, certifying particulars contained in an entry about a death in the Register, issued before an inquest or other coronial inquiry into the cause of death is completed must be endorsed with the words: "Incomplete registration—Cause of death subject to coronial inquiry".

### **38—Notification by funeral director etc**

- (1) A funeral director or other person who arranges for the disposal of human remains must within 7 days after disposal of the remains give the Registrar a written statement of—
  - (a) the name and last residential address of the deceased or, in the case of a still-born child, the name and residential address of the parents of the still-born child; and
  - (b) if the death was reported to a coroner—a statement of that fact; and
  - (c) the place and manner of disposal; and
  - (d) the information required by regulation.

Maximum penalty: \$1 250.

- (2) If human remains (other than cremated remains) are removed from the State, the funeral director or other person who arranges for the removal of the remains from the State must, within 28 days after the remains are disposed of outside the State, give the Registrar a written statement of where and how the remains were disposed of, and the other information required by regulation.

Maximum penalty: \$1 250.

- (3) If human remains have not been disposed of within 30 days after the date of death, the funeral director or other person who has custody of the remains must give the Registrar a written statement of—
  - (a) the name and last residential address of the deceased or, in the case of a still-born child, the name and residential address of the parents of the still-born child; and
  - (b) if the death was reported to a coroner—a statement of that fact; and

- (c) the information required by regulation.

Maximum penalty: \$1 250.

## **Division 3A—Notification by court appointed guardians**

### **38A—Notification by court appointed guardians**

- (1) A person may give notice to the Registrar that a person named in the notice was a court appointed guardian (other than a parent) of a person who has died at the time of the death.
- (2) A notice under subsection (1) must—
- (a) be given as soon as reasonably practicable after the death of the deceased; and
  - (b) be in writing in a form approved by the Registrar; and
  - (c) include a copy of the order of the Youth Court of South Australia placing the child under the guardianship of the person named in the notice; and
  - (d) include the information required by the Registrar.
- (3) The Registrar may require a person giving notice under subsection (1)—
- (a) to provide further specified information or documents within a specified time; and
  - (b) to verify, by statutory declaration, information provided for the purposes of the notice.
- (4) In this section—

*court appointed guardian* means a person (other than a Minister) to whom guardianship of another person is given by the Youth Court of South Australia under section 38(1)(d) of the *Children's Protection Act 1993*.

## **Division 4—Registration of death**

### **39—Registration**

- (1) The Registrar registers a death by making an entry about the death in the Register including the particulars required by regulation.
- (2) However, if the particulars available to the Registrar are incomplete the Registrar may register a death on the basis of incomplete particulars.
- (3) If the Registrar has received a notice under section 38A, the Registrar must include the name of the guardian of the deceased named in the notice in the entry of the Register relating to the death of the deceased.

## **Part 7—The Register**

### **Division 1—Keeping the Register**

#### **40—The Register**

- (1) The Registrar must maintain a register or registers<sup>1</sup> of registrable events.

- (2) The Register—
- (a) must contain the particulars of each registrable event required under this Act, or another law, to be included in the Register; and
  - (b) may contain further information if its inclusion is authorised under the regulations.
- (3) The Register may be wholly or partly in the form of a computer data base, in documentary form, or in another form the Registrar considers appropriate.
- (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

**Note—**

- 1 A reference in this Act to the *Register* extends to all the registers kept under this subsection.

## **Division 2—Registrar's powers of inquiry**

### **41—Registrar's powers of inquiry**

- (1) The Registrar may conduct an inquiry to find out—
- (a) whether a registrable event has happened; or
  - (b) particulars of a registrable event; or
  - (c) whether particulars of a particular registrable event have been correctly recorded in the Register.
- (2) The Registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this section, require the person to answer specified questions or to provide other information within a time and in a way specified in the notice.
- (3) A person who fails, without reasonable excuse, to comply with a notice under subsection (2) is guilty of an offence.
- Maximum penalty: \$1 250.

## **Division 3—Correction of Register**

### **42—Registrar's power to correct Register**

- (1) The Registrar may correct the Register—
- (a) to reflect a finding made on inquiry under Division 2; or
  - (b) to bring the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event.
- (2) The Registrar corrects the Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.
- (3) The Registrar's power to correct the Register under this section is in addition to any other power of the Registrar under this Act.

## **Division 4—Access to, and certification of, Register entries**

### **43—Access to Register**

- (1) The Registrar may, on conditions the Registrar considers appropriate—
  - (a) allow a person or organisation that has an adequate reason for wanting access to the Register, access to the Register; or
  - (b) provide a person or organisation that has an adequate reason for wanting information from the Register, with information extracted from the Register.
- (2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information extracted from the Register, the Registrar must have regard to—
  - (a) the nature of the applicant's interest; and
  - (b) the sensitivity of the information; and
  - (c) the use to be made of the information; and
  - (d) other relevant factors.
- (3) In deciding the conditions on which access to the Register, or information extracted from the Register, is to be given under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

### **44—Search of Register**

- (1) The Registrar may, on application, search the Register for an entry about a particular registrable event.
- (2) The applicant must state the reason for the applicant's interest in the subject-matter of the search.
- (3) The Registrar may reject the application if the applicant does not show an adequate reason for wanting the information to which the application relates.
- (4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to—
  - (a) the relationship (if any) between the applicant and the person to whom the information relates; and
  - (b) the age of the entry; and
  - (c) the contents of the entry; and
  - (d) other relevant factors.

### **45—Protection of privacy**

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

**46—Issue of certificate**

- (1) On completing a search of the Register, the Registrar may issue a certificate—
  - (a) certifying particulars contained in an entry; or
  - (b) certifying that no entry was located in the Register about the relevant registrable event.
- (2) A certificate under subsection (1)(a) is admissible in legal proceedings as evidence of—
  - (a) the entry to which the certificate relates; and
  - (b) the facts recorded in the entry.

**47—Access policies**

- (1) The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division.
- (2) The Registrar must give a copy of the statement, on request, to any person.

**48—Fees**

- (1) The regulations may prescribe fees, or a basis for calculating fees, for—
  - (a) access to the Register; or
  - (b) a search of the Register; or
  - (c) the issue of a certificate following a search of the Register; or
  - (d) other services provided by the Registrar.
- (2) The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

**49—Power to remit fees**

The Registrar may, in appropriate cases, remit the whole or part of a fee under this Act.

**49A—Saving provision—surrogacy arrangements**

- (1) Despite a preceding section of this Part, but subject to subsection (2), the Registrar must restrict access to the Register so as to keep confidential any information that would disclose the making or discharge of a surrogacy order.
- (2) Subsection (1) does not apply if the person seeking access to a relevant part of the Register is—
  - (a) a party to the surrogacy agreement that gave rise to the surrogacy order; or
  - (b) the person who is the subject of the surrogacy order if he or she has attained the age of 18 years.

## **Part 8—General power of review**

### **50—Review**

- (1) A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of functions under this Act may apply to the Court for a review of the decision.
- (2) On a review, the Court may—
  - (a) confirm, vary or reverse the Registrar's decision; and
  - (b) make consequential and ancillary orders and directions.

## **Part 9—Miscellaneous**

### **51—False representation**

A person who makes a false or misleading representation in an application or document under this Act, knowing it to be false or misleading, is guilty of an offence.  
Maximum penalty: \$1 250.

### **52—Unauthorised access to or interference with Register**

A person must not, without the authority of the Registrar or other lawful authority—

- (a) obtain access to the Register or information contained in the Register; or
- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Maximum penalty: \$10 000 or imprisonment for 2 years.

### **53—Falsification of certificate etc**

- (1) A person must not forge the Registrar's signature or seal.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A person must not forge or falsify a certificate or other document under this Act.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) The Registrar may impound—
  - (a) a document which the Registrar has reason to believe bears a forged impression of the Registrar's signature or seal; or
  - (b) a certificate or other document purporting to be a certificate or other document under this Act which the Registrar has reason to believe has been forged or falsified; or
  - (c) a certificate under this Act about a registrable event if the entry in the Register about the event has been cancelled or corrected since the issue of the certificate.

### **55—Regulations**

- (1) The Governor may make regulations for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) impose a penalty not exceeding a fine of \$1 250 for contravention of a provision of the regulations; and
  - (b) fix fees and provide for the payment, recovery, waiver or refund of fees.

## **Schedule 1—Transitional**

### **1—Interpretation**

In this Schedule—

*repealed Act* means the *Births, Deaths and Marriages Registration Act 1966*.

### **3—The Register**

A Register maintained under the repealed Act forms part of the Register under this Act.

### **4—The Registrar and Deputy Registrars**

- (1) The person holding office as the Principal Registrar of Births, Deaths and Marriages immediately before the commencement of this Act continues as the Registrar, subject to the provisions of this Act.
- (2) The person holding office as the Deputy Registrar immediately before the commencement of this Act continues as a deputy registrar, subject to the provisions of this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Births, Deaths and Marriages Registration Act 1996* repealed the following:

*Births, Deaths and Marriages Registration Act 1966*

### Legislation amended by principal Act

The *Births, Deaths and Marriages Registration Act 1996* amended the following:

*Coroners Act 1975*

*Cremation Act 1891*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	6	<i>Births, Deaths and Marriages Registration Act 1996</i>	4.4.1996	3.6.1996 ( <i>Gazette 23.5.1996 p2534</i> )
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cl 5)—1.7.2005 ( <i>Gazette 23.6.2005 p1899</i> )
2006	10	<i>Statutes Amendment (Disposal of Human Remains) Act 2006</i>	29.6.2006	Pt 2 (ss 4 & 5)—24.7.2006 ( <i>Gazette 20.7.2006 p2335</i> )
2009	64	<i>Statutes Amendment (Surrogacy) Act 2009</i>	26.11.2009	Pt 3 (ss 15—18)—26.11.2010: s 2
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 21 (ss 40—42)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cl 3)—1.7.2010 ( <i>Gazette 1.7.2010 p3338</i> )
2013	20	<i>Burial and Cremation Act 2013</i>	14.6.2013	Sch 1 (cll 5 & 6)—1.2.2014 ( <i>Gazette 16.1.2014 p120</i> )
2015	27	<i>Births, Deaths and Marriages Registration (Change of Name) Amendment Act 2015</i>	22.10.2015	Pt 2 (ss 4—7)—1.6.2016 ( <i>Gazette 21.1.2016 p152</i> )

2016	<b>4</b>	<i>Statutes Amendment (Rights of Foster Parents, Guardians and Kinship Carers) Act 2016</i>	17.3.2016	Pt 2 (ss 4 & 5)—17.9.2016: s 2
2016	30	<i>Family Relationships (Parentage Presumptions) Amendment Act 2016</i>	23.6.2016	Sch 1 (cll 1 & 2) & Sch 2 (cl 1)—23.9.2016: s 2

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2005
s 4		
cremated remains	inserted by 20/2013 Sch 1 cl 5	1.2.2014
doctor	substituted by 5/2010 Sch 1 cl 3	1.7.2010
registrable event	amended by 64/2009 s 15(1)	26.11.2010
surrogacy order	inserted by 64/2009 s 15(2)	26.11.2010
Pt 2		
s 5		
s 5(1)	s 5 redesignated as s 5(1) by 84/2009 s 40	1.2.2010
s 5(2)	inserted by 84/2009 s 40	1.2.2010
s 7		
s 7(3)	inserted by 84/2009 s 41	1.2.2010
Pt 3		
Pt 3 Div 2		
s 14		
s 14(1)	s 14 redesignated as s 14(1) by 30/2016 Sch 1 cl 1	23.9.2016—not incorporated
s 14(2)—(5)	inserted by 30/2016 Sch 1 cl 1	23.9.2016—not incorporated
Pt 3 Div 6	inserted by 64/2009 s 16	26.11.2010
Pt 4		
Pt 4 Div 1		
heading	inserted by 27/2015 s 4	1.6.2016
s 24	substituted by 27/2015 s 5	1.6.2016
s 25		
s 25(1)	substituted by 27/2015 s 6	1.6.2016
s 25(1a) and (1b)	inserted by 27/2015 s 6	1.6.2016
s 29A	inserted by 64/2009 s 17	26.11.2010
Pt 4 Div 2	inserted by 27/2015 s 7	1.6.2016
Pt 6		
Pt 6 Div 3		
s 36		

## Births, Deaths and Marriages Registration Act 1996—17.9.2016 to 22.9.2016

### Legislative history

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s 36(2)	amended by 33/2003 Sch (cl 2)	1.7.2005
s 37		
s 37(1)	substituted by 33/2003 Sch (cl 3(1))	1.7.2005
s 37(2)	amended by 33/2003 Sch (cl 3(2), (3))	1.7.2005
<b>Pt 6 Div 3A</b>	<b>inserted by 4/2016 s 4</b>	<b>17.9.2016</b>
Pt 6 Div 4		
s 39		
s 39(3)	<b>inserted by 4/2016 s 5</b>	<b>17.9.2016</b>
Pt 7		
s 46		
s 46(1a) and (1b)	inserted by 30/2016 Sch 1 cl 2	23.9.2016—not incorporated
s 49A	inserted by 64/2009 s 18	26.11.2010
Pt 9		
<i>s 50A before deletion by 20/2013</i>	<i>inserted by 33/2003 Sch (cl 4)</i>	<i>1.7.2005</i>
s 50A(1)	<i>amended by 10/2006 s 4(1)—(3)</i>	<i>24.7.2006</i>
s 50A(2)—(4)	<i>inserted by 10/2006 s 4(4)</i>	<i>24.7.2006</i>
s 50A(5)	<i>s 50A(2) redesignated as s 50A(5) by 10/2006 s 4(5)</i>	<i>24.7.2006</i>
s 50A	<i>deleted by 20/2013 Sch 1 cl 6</i>	<i>1.2.2014</i>
s 54	<i>deleted by 84/2009 s 42</i>	<i>1.2.2010</i>
s 55		
s 55(2)	substituted by 10/2006 s 5	24.7.2006
Sch 1		
cl 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2005</i>
Schs 2 and 3	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2005</i>

### Historical versions

1.7.2005  
24.7.2006  
1.2.2010  
1.7.2010  
26.11.2010  
1.2.2014  
1.6.2016