This practice manual has been developed to assist Office of Regulatory Services (ORS) clients and staff in the interpretation and administration of the Births, Deaths and Marriages Registration Act 1997 (the Act), Births, Deaths and Marriages Regulation 1998, Civil Partnerships Act 2008, Parentage Act 2004, Adoptions Act 1993, Marriage Act 1961 (Cwlth), Marriage Regulations 1963 (Cwlth) and Registration of Deaths Abroad Act 1984 (Cwlth).

It is intended that this practice manual will operate as a living document, which will be improved upon as policy or if the law is amended. This may also include capturing responses to issues as they arise in the application of the policy and the law.

We encourage all stakeholders to feel comfortable in raising issues regarding this manual, with a view to clarifying policy or legal issues to improve the administration of the legislation.

Written and published by the ACT Office of Regulatory Services
OUR CUSTOMER COMMITMENT

Who We Are:

The Office of Regulatory Services (ORS) was formed to provide a single coordinated approach to regulation and enforcement of a number of activities previously provided by several areas of the ACT Government. The ORS brings together capability from across the government to undertake licensing, registration and accreditation and consumer and trader assistance, compliance and enforcement/litigation, and education.

There are seven business streams within ORS. Those business streams are:

- Births, Deaths and Marriages;
- Business and Industry Licensing;
- Fair Trading;
- Land Titles;
- Parking;
- Rental Bonds; and,
- WorkSafe ACT.

Objective:

In line with the Department of Justice and Community Safety, ORS recognises that to provide a high standard of service we must be RESPONSIVE, demonstrate RESPECT, and aspire to QUALITY.

About the Births, Deaths and Marriages Unit:

The Births, Deaths and Marriages Unit (BDMU) is responsible for registration of events occurring in the ACT, the maintenance of those registers, and the provision of certificates relating to registered events. The main areas of activity are:

- births;
- deaths;
- marriages;
- changes of name;
- parentage; and
- civil partnerships.

The ORS is structured in the following manner:
What you can expect from us:

As a customer of the BDMU you can expect polite, courteous and highly trained staff committed to the provision of high quality service. You can expect registrations within five working days of receipt of all required documentation, and the provision of certificates within 30 minutes over the counter, or two days via internet or mail, not including postage time and providing all required documentation is supplied.

Where to get more information:

Information relating to births, deaths and marriages can be found on our website at: www.ors.act.gov.au

If you wish to make a complaint or you have a suggestion:

Please contact the ORS on (02) 6207 3000 or attend the office at 255 Canberra Avenue, Fyshwick ACT 2609.

Our office hours are 9:00am – 4:30pm Monday to Friday (excluding Public Holidays).

You may also wish to refer to our Complaints Policy at www.ors.act.gov.au.
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CHAPTER 1 – THE LEGISLATION

1.1 PURPOSE OF THE LEGISLATION

1.1.1 PURPOSE OF THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 1997

The Births, Deaths and Marriages Registration Act 1997 (the BDMR Act) and the Births, Deaths and Marriages Registration Regulation 1998 (the BDMR Reg) provides for, and regulates, the registration of various life events. These include the registration and maintenance of records relating to:

- births;
- deaths;
- marriages;
- changes of name;
- changes of sex;
- parentage; and,
- corrections and amendments to information maintained on our registers.

As part of our function, we offer a number of valuable services to the public. We provide documentation of records maintained in the register to assist individuals to establish a range of legal entitlements. The Office of Regulatory Services (ORS) also collects statistical information and data for government bodies and research organisations.

The registrations that are undertaken and the records maintained are discussed in greater detail throughout this manual.

You may access the BDMR Act and other legislation and regulations at www.legislation.act.gov.au.

1.1.2 OTHER LEGISLATION ADMINISTERED BY THE BIRTHS, DEATHS AND MARRIAGES UNIT

The Births Deaths and Marriages Unit (BDMU) also administers the following legislation:

- Civil Partnerships Act 2008;
- Parentage Act 2004; and
- Registration of Deaths Abroad Act 1984 (C’wlth).
Other relevant legislation includes:

- Adoption Act 1993;
- Coroners Act 1997;
- Discrimination Act 1991;
- Children and Young Persons Act 2008;
- Human Rights Act 2004;
- Administration and Probate Act 1929;
- Marriage Act 1961 (C'wlth);
- Privacy Act 1988 (C'wlth); and

1.2 IMPORTANT CONCEPTS

1.2.1 FORM COMPLETION

The BDMR Act provides that various forms under the BDMR Act shall be in a form approved by the Minister. The Minister has delegated the form approval function to the Registrar-General.

The completion of all forms should be undertaken noting the following instructions:

- Use black pen if completed by hand;
- Forms must be completed in full;
- Any alterations are to be struck through and re-written with black pen;
- Each alteration is to be countersigned in the margin by all parties;
- All signatures to be clear;
- Correction tape or fluid is not to be used;
- Photocopies of signatures are not to be used;
- The current approved for is to be used; and,
- It is recommended that parties do not sign a blank form.

1.2.2 FORM TYPES

The BDMU has designed and published the following forms which are available from the ORS website www.ors.act.gov.au.

- Birth Registration Statement (BRS);
• Application to Add Details of Parentage After Registration of Birth (AAP);
• Application to Note Relationship Details (ANR);
• Application to Alter Birth Register to Record Change of Sex (ACS);
• Medical Practitioner’s Declaration in Support of a Change of Sex (MPD);
• Application to Register a Change of Name for an Adult (CAN);
• Application to Register a Change of Name of a Child (CNC);
• Application for Certificate (APP);
• Application to Correct a Register (ACR);
• Death Registration Statement (DRS);
• Application to Register a Death Abroad (ADA);
• Application to Register a Death Abroad of a Person who has Disappeared (ADD);
• Application for Shortening of Time (AST);
• Notification of Birth not Occurring in a Hospital (NHB);
• Application to Register a Civil Partnership (ACP);
• Notice to Terminate a Civil Partnership (TCP); and,
• Notice of Withdrawal of a Termination of a Civil Partnership (WCP).

1.2.3 ACCESS TO THE RECORDS

The BDMU is required to provide certified copies of records to assist individuals to establish a range of legal entitlements. Access to information in the register may only be made in accordance with a strict access policy and at the discretion of the Registrar-General.

Information contained in the register is private and confidential; however authorised agencies such as the Australian Bureau of Statistics (ABS) and the Supreme Court receive information where the Registrar-General is required to provide it. The access policy is covered further throughout this manual.
CHAPTER 2 – IDENTITY MANAGEMENT

2.1 IDENTITY VERIFICATION AND CERTIFICATE VALIDATION

Primary Proof of Identity (at least one required or two without secondary ID)

- A Photographic Driver Licence issued in Australia (current or expired up to 2 years).
- Australian Birth Certificate (not a Commemorative Certificate or an extract). If the certificate is not in the name currently used appropriate linking documentation will be required.
- Australian Passport (current or expired up to 2 years).
- Overseas Passport (expired by up to 2 years if accompanied by a current Australian Visa).
- Australian Citizenship Certificate or Naturalisation Certificate.
- Department of Immigration and Citizenship travel document (valid up to 5 years after issue).
- Department of Immigration and Citizenship Certificate of Evidence of Resident Status.
- Police Officer Photo-identity card (from ACT only).
- Australian Proof of Age Card (includes NSW Photo Card) with appropriate security features, showing date of issue by an Authority, that is current or expired up to 2 years.

Secondary Proof of Identity (at least two required with one form of primary ID)

- Current Medicare Card.
- Current Credit Card or Account Card, with signature and embossed name from a Bank, Building Society or Credit Union.
- Current Student Identity Document (with photo and / or signature) issued by an Educational Institution.
- Current Centrelink or Department of Veterans Affairs Concession Card.
- Australian-issued Security Guard / Crowd Controller Licence (with photo).
- Australian-issued Firearm Licence (with photo).
- Current Consular photograph identity card issued by Department of Foreign Affairs and Trade.
- Current State, Territory, or Federal Government employee photo-identity card.
- Australian Defence Force Photo-identity card (excluding civilians).
- ACT Services Access Card issued by the ACT Government (for Asylum seekers).

Proof of Residency (at least two required).

Provided the applicant’s residential address is listed on the document the following are acceptable:

- A Photographic Driver Licence issued in Australia (current or expired up to 2 years).
- Contract of Purchase, Current Lease or Rental Document for relevant premises (a receipt only is not acceptable) prepared by a real estate agency or ACT Government.
- ACT Revenue Office Rates Notice (current).
• Land Tax Valuation Notice (current).
• Australian Taxation Office Assessment (last or current financial year) or Australian Taxation Office tax file number notice (issued within the last 12 months) mailed to the nominated physical address. To protect your privacy customers are advised to block out their Tax File Number.
• Utility Accounts relating to the nominated physical address (Electricity, Gas, Landline Telephone or Water) paid within the last 6 months.
• Pay Television account relating to the applicants nominated physical address paid within the last 6 months.
• Home Contents Policy relating to the applicants nominated physical address within one year of application.
• Motor Vehicle Insurance Policy dated within one year of application.
• Current Health/Life Insurance Policy or renewal notice within one year of application.

2.1.1 CERTVALID

The BDMU is an active issuer in CertValid which is an online verification system that enables birth, death, marriage and change of name certificates issued by the BDM Registry’s across Australia to be validated.

The aim of CertValid is to ensure that identity fraud is reduced by detecting fraudulent certificates not issued by the BDM Registry.

Certificates issued by this office may also be verified by other organisations using CertValid as a means of identification. The main subscriber to the service is the Passport Office, Department of Foreign Affairs and Trade.

In order to validate a certificate or birth card the following details appearing on that certificate or birth card are entered.

• Registration number
• Family name
• Given names
• Date of event
• Year of registration

The Certificate Validation will provide a response indicating “validated” or “not validated”. If the “not validated” response is received, the subscriber must contact BDM to confirm the validity or otherwise of the certificate presented as a document of identity.

2.1.2 CERTIFICATE VALIDATION SERVICE CHANGE OF NAME (CVSCON)

When an application for a change of name is provided to the BDMU a number of checks are undertaken to ensure that the person is not seeking a change of name for fraudulent or improper purposes and that the person has not sought to change of his/her name more than once within a 12 month period.

All States and Territory BDM Registry’s use the CVSCON system to verify a change of name request. It is used when a person lodges an application to register a change of name, in order to
confirm the applicant has registered other changes of name in other jurisdictions and has disclosed
the information as part of their application for the change of name in the Territory.

When the change of name is entered into the system, any previous changes of name registered in
another jurisdiction will appear in the results.

### 2.2 ALERTER SYSTEM

To ensure the risk of identity fraud is minimised, the BDMU utilises a function in its operating
system that enables staff to apply an alerter against a record in the register.

The alerter is used in cases when there is suspected fraudulent activity, including:

- BDMU notified of a rejected change or name application by another interstate BDM Registry;
- or
- BDMU is notified by the AFP of suspected fraudulent activity against a name; or
- BDMU rejects a change of name application.

The alerter is used as a flag in case the suspected person or rejected applicant applies again and is
served by a different member of staff.
CHAPTER 3 – HUMAN RIGHTS

3.1 APPLICATION OF THE HUMAN RIGHTS ACT 2004

The Human Rights Act (2004) aims to promote a human rights culture by recognising and protecting fundamental civil and political rights in ACT law. It is based on the fundamental equality of all peoples and helps us to live lives of dignity and value. The ACT is first jurisdiction in Australia to directly incorporate international human rights standards into local law.

3.1.1 WHICH HUMAN RIGHTS ARE INCLUDED IN THE ACT?

The Act started on 1 July 2004 and protects rights in the International Covenant on Civil and Political Rights:

- to recognition and equality before the law
- to life from the time of birth
- to protection from torture and cruel, inhuman or degrading treatment
- to protection of the family and children
- to privacy and reputation
- to freedom of movement
- to freedom of thought, conscience, religion and belief
- to peaceful assembly and freedom of association
- to freedom of expression
- to take part in public life
- to liberty and security of person
- to humane treatment when deprived of liberty
- of children in the criminal process
- to a fair trial
- in criminal proceedings
- to compensation for wrongful conviction
- not to be tried or punished more than once
- not to be subject to retrospective criminal laws
- to freedom from forced work
- of ethnic, religious or linguistic minorities

3.1.2 OBLIGATION UNDER THE ACT

The Human Rights Act comprises of obligations that are both substantive and procedural:

Substantive Obligation: Public authorities must act consistently with human rights. ‘Act’ means positive conduct, a failure to act or a proposal to act. If an action is found by the courts to be incompatible with a human right, it will be unlawful.

Procedural obligation: Section 40B(1)(b) of the Human Rights Act requires public authorities to give proper consideration to human rights when making decisions. A failure to do so will amount to unlawfulness. This is a procedural obligation in the sense that it directs public authorities to
make decisions in a particular manner. Public authorities must actively and properly incorporate human rights into decision making processes where relevant.

When a Deputy Registrar-General is making a decision with regard to a Birth, Death and Marriage or Change of Name activity, consideration will be given to the following, in relation to the application of the Human Rights Act:

**Step 1: What is the decision or action?**

- What is the objective of the decision or action?
- Who will be affected by the decision or action?
- Has there been consultation with groups or individuals likely to be affected?

**Step 2: Does the decision or action engage human rights?**

- Does the decision or action fall into any of the areas covered by the rights defined?
- Will the decision or action limit any of the human rights it engages?

**Step 3: Is the limitation on rights reasonable?**

- Is there a legal basis for the restriction?
- Does the restriction have a legitimate aim?
- Is the restriction necessary in a democratic society?
- Is the response proportionate?

In most cases a decision or action under the BDMA is purely administrative; however, there are circumstances under which careful consideration must be given to the application of the Human Rights Act.

For example: A person who was registered as a particular sex at birth, but is currently under treatment (various circumstances – hormonal, reassignment surgery), may seek to change their name. It may be necessary for the Deputy Registrar-General to consider the rights of the person given the type of information presented on a change of name certificate. If a person feels that the inclusion of their former name and/or the inclusion of their sex as registered a birth, will put them at personal risk, the decision maker may consider alternative measures to address the matter. For example: notation that former names are registered, but no detail provided on the certificate.
CHAPTER 4 – BIRTHS REGISTER

4.1.1 BIRTHS REGISTER

The Births Register contains details of all births registered in the Australian Capital Territory (ACT) since 1930. Prior to that, ACT births were registered in New South Wales (NSW). Births that occur in the ACT are registered in accordance with the Act. Stillbirths and births where the infant is of at least 20 weeks gestation, or of no less than 400 grams at the time of birth, are also registered under the Act.

The Act provides for the registration of a birth where the child is born during a flight to an airport in the Territory.

The Act also provides for the registration of a birth where the child is born outside of the Commonwealth and will become a resident of the Territory under certain circumstances. An example of this situation is the birth of a child to an Australian person with diplomatic or consular status while on an overseas posting. Another example is the birth of a child to parents on an extended overseas holiday or business trip but who intend to return to Australia at some later stage. Such a registration may only be affected where the birth has not been registered under a corresponding law (section 7(4)). Further information on overseas birth is at chapter 2.5.

4.1.2 NOTIFYING A BIRTH

The ORS must be notified in writing of all births in the ACT by the responsible person where the birth occurred. The responsible person is usually identified as the Chief Executive of the hospital where the child was born, or otherwise, the midwife/doctor responsible for the professional care of the mother at birth.

Notification of all live births must be provided to the ORS within 7 days and in the case of a stillbirth within 48 hours. The advice provided by the responsible person/hospital/midwife is locally called a “hospital notification”. The notification must provide specific information as prescribed in the Births, Deaths and Marriages Regulations 1998 (the Regulations). The prescribed particulars required are:

a) if the child was born in a hospital or was brought to a hospital within 24 hours after birth – the name of the hospital;
b) if the sex of the child is determinable—the sex of the child;
c) the date of birth of the child;
d) whether the child was born alive or stillborn;
e) the weight of the child at birth and if the child was stillborn, the period of gestation of the child;
f) whether or not the birth was a multiple birth;
g) the name and place of residence of the mother of the child;
h) the name of the doctor or midwife responsible for the professional care of the mother at the birth;
i) if it is known that the child is to be adopted – an indication of that fact; and,
j) the name and occupation of the person giving the notice.

If the child was stillborn the following information is also required:

a) the weight of the child to be expressed in grams; and,
b) the period of pregnancy to be completed in weeks.

The hospital notifications can be provided electronically, by post or hand delivered to the ORS. The notifications are usually provided every 2-3 days. Upon receipt, the information is entered into the register (but not registered) and is subsequently validated against information provided by the parent/s of the child upon lodgement of a Birth Registration Statement (BRS).

### 4.1.3 RESPONSIBILITY FOR BIRTH REGISTRATION

The parents of a child born in the Territory are jointly responsible for ensuring that the birth is registered.

The parent/s of the child is given a Birth Registration Statement (BRS) by the hospital at the time of birth. Parents are encouraged to complete and lodge the BRS as soon as possible.

The BRS has been designed to capture the information prescribed under the Regulations. The regulations require the:

- name of child;
- sex of child;
- date and place of birth of child;
- whether child was born alive or still-born;
- details of mother and father/parent including place of birth, occupation, etc;
- marriage or civil partnership details of birth parents; and,
- other siblings of the same relationship.

Both parents are required to sign the BRS. This is essential, as registration of a birth under the Act gives rise to a presumption of parentage. The ORS may accept a BRS signed by only one parent where satisfied that it is not practicable to obtain both signatures. An example of such a situation is where the mother has not named the father/parent.

The ORS may also accept a BRS from another person where satisfied that the person is aware of the relevant facts (ie of the birth) and that the child’s parent/s are unable or unwilling to lodge the form. For example, if a single mother dies at the time of childbirth, another party, perhaps a social worker may lodge the BRS. In this instance the person must contact the ORS and provide evidence as required.

If the child is a foundling, the person who has custody of the child is responsible for the registration of the birth.

The Act requires ACT births to be registered within 6 months. Where the parents do not contact ORS within the defined period, ORS will attempt to contact the parents to seek their cooperation in registering the birth. Operationally this is achieved by posting a reminder letter and a BRS to the address provided by the hospital notification.

The 6 month time frame for registration is to reduce pressure on parents of babies who are not clearly male or female by allowing additional time to make complex decisions about the registered sex of their child.
4.1.4 THE REGISTRATION PROCESS

Upon receipt of the BRS from the parent/s, ORS validates the information by referencing the birth notification provided by the responsible person/hospital/midwife. The prescribed particulars provided by the BRS are entered into a database and then validated for accuracy. When the validation process is complete, the system automatically registers the birth. If there are any validation issues, and information does not match, an officer will investigate the matter or obtain additional information to allow the registration to take place.

Where not all the prescribed particulars are available to the ORS, the birth may be registered by including in the entry any such particulars as are available.

4.1.5 BRS SIGNED BY ONLY PARENT

In accordance with S.14 of the Act the ORS may accept a BRS signed by only one parent if satisfied that the other parent is deceased, cannot be found or where other extenuating circumstances exist.

4.1.6 REGISTRATION OF A FATHER/PARENT ON THE REGISTER

The ORS will only include the name of the father/parent in the Register where:

• both parents sign the BRS; or
• a court order is obtained which establishes the identity of the father/parent; or
• the ORS is satisfied that the other parent does not dispute the correctness of the information.

4.1.7 WHERE FATHER/PARENT IS OVERSEAS AND UNABLE TO SIGN BRS

If it is unpractical to obtain the signature of the father/parent, the birth will be registered without the father/parents details and the mother advised that an ‘Application to Add Parentage after Registration of Birth Form’ should be completed and signed by both parties at a later date. No fee is payable to update the births register however if an updated certificate is required, a fee for certificate may apply.

4.1.8 NAME OF CHILD

The ORS can assign a name to the child for registration if it is considered that the name stated in the BRS is a prohibited name (section 12).

In the same manner, if the parents satisfy the ORS that they are unable to agree on a name, the ORS shall assign a name to the child for registration.

Phonetic symbols may be written on a BRS by the parents, but cannot be recorded in the register or printed on a certificate.

4.1.9 DISPUTE ABOUT A CHILD’S NAME

If there is a dispute about a child’s name, the parents may apply to the Magistrates Court for resolution.
If the parents apply to the court for resolution, the court may resolve the dispute and order the ORS to register the child’s name as specified in the order.

4.1.10 WHERE A PARENT IS DECEASED

Where a parent dies before the registration of a child, the ORS normally requires an order from the Supreme Court in accordance with the Act. The ORS may however, accept a statutory declaration from the surviving parent, and statements from relatives of the deceased.

The statement must include:
• the full name of the deceased parent;
• the full name of the child;
• the length of time of the parental relationship; and,
• a statement that the deceased person is the mother or father/parent of the child.

The declaration needs to include the names of two persons related to the deceased (preferably parents) who can verify the relationship and their addresses and contact telephone numbers.

The surviving parent must also provide a certified copy of the death certificate (where the death occurs outside of the Territory).

It may be necessary to contact the persons identified to verify the information in the statement. Once we have verified the details the ORS may include the details of the deceased person in the Register.

Where a surviving parent is unable to provide sufficient information to establish the situation, the ORS may ask the parent to seek legal advice on the situation or refer the matter to the Supreme Court for decision.

4.1.11 DETAILS OF MARRIAGE, CIVIL UNION OR CIVIL PARTNERSHIP ON THE BIRTH REGISTRATION STATEMENT

Marriage details should only be included on a BRS where the marriage was conducted by a properly appointed Marriage Celebrant or Minister of Religion under the Marriage Act 1961, or in accordance with the law of another country.

Details of a Civil Partnership or Civil Union should only be included on the BRS where the Civil Partnership or civil union is registered under the Civil Partnerships Act 2008, Civil Unions Act 2012 or the Domestic Relationships Act 1994.

4.2 PRESUMPTIONS AS TO PARENTAGE

The Parentage Act 2004 was established to remove the legal disability of persons born outside of marriage, and to provide for declarations of parentage in the case of a domestic relationship or by way of a procedure. Together with the Births, Deaths and Marriages Registration Act 1997, it establishes presumptions in respect to the parentage of a child.

A number of presumptions about parentage are established upon the following registrations –
• by the registration of the child’s birth under the Act. Provided the BRS is signed by each of the parents named in the form, the child’s parents are registered irrespective as to whether they are married or in a registered civil partnership. Where a person has been named as a parent in a BRS, but has not signed the form, that person will not be registered as the parent of child named in the BRS; and

• by registration of an instrument, registered in the register of parentage under the Parentage Act 2004 by which a man acknowledges that he is the father of a child born outside of marriage or registered civil partnership where a person acknowledges that they are the parent through a domestic relationship as identified in section 7 of the Parentage Act 2004.

4.2.1 PRESUMPTION ARISING FROM MARRIAGE OR CIVIL PARTNERSHIP

The Parentage Act 2004 presumes that –

• A child born to a woman while she is married or in a civil partnership is presumed to be a child of the woman and her spouse or civil partner.

• A child born to a woman within 44 weeks after the death of her spouse or civil partner is presumed to be the child of the woman and her spouse or civil partner who died.

• A child born to a woman within 44 weeks after the annulment of her purported marriage is presumed to be the child of the woman and her purported spouse or civil partner.

• A child born to a woman after the end of her marriage or civil partnership, but within 44 weeks after she last separated from her spouse in that marriage or civil partnership, is presumed to be the child of the woman and her spouse in that marriage or civil partnership.

4.2.2 PRESUMPTION ARISING FROM A DOMESTIC PARTNERSHIP

The Parentage Act 2004 presumes that –

• A person is presumed to be a parent of a child if the person was in a domestic partnership with the woman who gave birth to the child at any time during the period beginning not earlier than 44 weeks, and ending not later than 20 weeks, before the birth of the child.

• This presumption applies whether the child was born before or after the commencement of this Act.

4.2.3 PRESUMPTION ARISING FROM FINDINGS OF COURTS

Where, during a person’s life, or after their death, a court of a State or Territory or of the Commonwealth finds that the person is or was a parent of a child, the person is presumed to be a parent of the child (s10).

4.2.4 PRESUMPTIONS ARISING FROM A PROCEDURE

The Parentage Act 2004 provides for the determination of the parentage of a child conceived as a result of a procedure. Section 11 of the Parentage Act 2004 defines a procedure as:

(a) artificial insemination; or
(b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body; or

(c) any other way (whether medically assisted or not) by which a woman can become pregnant other than by having sexual intercourse with a man.

The following presumptions from a procedure are made under the Act –

- The woman is conclusively presumed to be the mother of any child born as a result of the pregnancy.
- If the ovum used in the procedure was produced by another woman, that other woman is conclusively presumed not to be the mother of any child born as a result of the pregnancy.
- If the woman undergoes the procedure with the consent of her 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.
- If semen used in the procedure was produced by a man other than the woman’s domestic partner at the time of the procedure, the man who produced the semen is conclusively presumed not to be the father of any child born as a result of the pregnancy.
- For point three (3), 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.

Upon receipt of the BRS.

4.2.5 PRESUMPTIONS NOT TO ALLOW MORE THAN TWO PARENTS

Despite anything in this Act or in any other Territory law, a child cannot have more than 2 parents at any one time.

4.2.6 CONFLICTING PRESUMPTIONS

Where 2 or more presumptions about the parentage of a child are relevant, if one of those presumptions is arising from the findings of the courts, that presumption prevails over any other presumption.

If one of the presumptions arises as a result of a presumption of parentage resulting from a medical procedure, that presumption prevails over any other presumption except where a presumption has arisen as the result of the findings of a court.

In no presumption arises from as a result of a medical procedure or from a court proceeding, the court must decide which presumption prevails having regard to the interest of justice and the best interest of the child.

4.2.7 APPLICATION FOR DECLARATION OF PARENTAGE

An application for a parentage declaration may be made to the Supreme Court by—

(a) a parent of a child who claims that another particular person is also a parent of the child; or

(b) a person who claims that he or she is a parent of a particular child; or

(c) a person who claims that a particular person is his or her parent; or
(d) the registrar-general, or someone else having a proper interest in the matter, if a decision is sought about whether a particular person is a parent of a particular child.

On an application the Supreme Court may declare that a particular person is a parent of a particular child.

A parentage declaration may be made about a child whether or not—

- the child is born; or
- the parent or child is alive.

### 4.2.8 ANNULMENT OF PARENTAGE

The Supreme Court may, by order, annul a parentage declaration if—

(a) the court considers that facts exist, or circumstances have arisen, that—

   (i) were not disclosed to the court before the declaration was made; and

   (ii) could not, by the exercise of reasonable diligence, have been disclosed to the court by the applicant when the application for the declaration was heard; and

   (iii) are material to the question whether the relationship stated in the declaration exists; and

(b) after considering those facts or circumstances the court is not satisfied that the relationship is established.

However, subsection (a) (ii) does not apply if the applicant for the order is—

(a) a person who was a child when the declaration was made; or

(b) the registrar-general.

If the Supreme Court makes an order annulling a declaration—

(a) the declaration ceases to have effect; and

(b) the annulment does not affect anything done relying on the declaration before the order was made.

If the Supreme Court makes an order annulling a declaration, it may make the ancillary orders (including orders varying property rights) that it considers just and equitable to place everyone affected by the annulment as far as practicable in the position he or she would have been in if the declaration had not been made.

### 4.2.9 PARENTAGE ORDER/SURROGACY

Division 2.5 of the Parentage Act 2004 provides for an application to be made to the Supreme Court for a parentage order about a child where the birth parents and substitute parents have participated in a substitute parentage agreement. A parentage order can only be made about such a child if other conditions are also met. These conditions are:

- that the procedure resulting in conception of the child was carried out in the ACT;

- that neither the woman who gave birth to the child nor her husband or domestic partner is a genetic parent of the child;
that a substitute parent agreement other than a commercial substitute parent agreement had been made about the child, including the intention that an application for a parentage order be made;

that at least one of the people who, in the substitute parents agreement, indicated they would apply for a parentage order about the child, is a genetic parent of the child; and

that the people who seek to become the parents of the child under the parentage order live in the ACT.

The operation of the parentage orders can only be made if the fertilisation procedure was done in the ACT and the commissioning couple live in the ACT. The BDM cannot update the birth registry if a child surrogates was born outside the ACT.

An application may be made to the Supreme Court for a parentage order about the child by either or both of the substitute parents. An application may only be made when the child is between the ages of 6 weeks and 6 months.

4.2.10 REGISTRATION OF A PARENTAGE ORDER

A declaration of a parentage made by the Supreme Court can only be registered if the BDMU receives a sealed copy of a parentage order made under the Parentage Act 2004.

4.2.11 RE-REGISTRATION OF BIRTH IF PARENTAGE ORDER MADE

If the Supreme Court declares a parentage order and the birth is already registered under this Act, the BDMU must re-register the birth of the child by entering in the register:

- the child’s name after the order was made; and
- the child’s sex, date and place of birth; and
- the substitute parent or substitute parents of the child in whose favour the order was made.

4.3 PROHIBITED NAMES

Where a given name is nominated on a BRS, the ORS will accept the name for registration provided the name is not a prohibited name. The term “Prohibited Names” is defined in the dictionary of the Act to include those which:

- are obscene or offensive;
- are too long;
- consist of or include symbols without phonetic significance;
- include or resemble an official title or rank;
- are misleading because of their similarity to the name of a registered or recognised body or organisation;
- are, in the opinion of the registrar-general, undesirable; and,
- are prohibited by the Regulations.
Section 12 of the Act prevents the registration of a child’s birth where a prohibited name is stated on the BRS. Section 20 prevents the registration of a change of name to a prohibited name.

Section 20(2)(b) additionally prevents the registration of a change of name where the ORS is of the opinion that the name is sought for a fraudulent or improper purpose.

The Act defines a prohibited name for the purposes of the Act as including “a name that could not practically be established by repute to usage because it consists of or includes symbols without phonetic significance in the English language.

4.4 CHANGES FOLLOWING REGISTRATION

4.4.1 ADDING MARRIAGE DETAILS TO A BIRTH REGISTRATION

Where the parents of a child born in the Territory marry or enter into a civil partnership after the birth, the ORS may include details of the marriage or civil partnership in the Register of Births (section 16 (3)). The ORS will require the parents to complete an “Application to Note Relationship Details” form. The ORS will also need to sight the marriage certificate, if the marriage was registered outside of the ACT.

The parents may request us to change the surname of the child to the father/parent surname or to a combination of both parents’ surnames. Such a request must be made by completing an “Application to Register a Change of Name of a Child” form.

Where the father/parents details do not appear in the Birth Register, the Registrar-General will require the parents to complete and lodge a “Application to add Details of Parentage after Registration of Birth” form under the Parentage Act 2004. The father’s/parent’s details and marriage details will then be included in the Register.

4.4.2 BIRTH REGISTRATION WITH LIMITED INFORMATION

There are situations where the information available from the hospital is not matched with a birth registration statement for some time.

The Act allows the ORS to register information as provided by the hospital.

In most cases, a parent will eventually lodge a BRS and ORS is able to match the BRS with the hospital notification. In rare cases, evidence of the birth may not be available due to a variety of circumstances. In this case, please contact ORS.

4.5 REGISTRATION OF OVERSEAS BIRTHS

The ORS has noted that an increased number of people are wishing to register the birth of their child born overseas under section 7(2) of the Act. Under section 7(2) of the Act the birth of a child born outside of the ACT may be registered in the ACT. There is however no requirement to register these births. As such, each application will be assessed individually and approval of registration should not be assumed.
To be eligible to be considered for registration, the child born outside of the ACT must be a resident of the ACT and evidence demonstrating the child’s residency must be provided. Examples of evidence include:

- registration of the child at a medical practice;
- receipts of childcare; and
- rates and utility notices for parents of the child demonstrating ACT residency.

The ORS could also consider evidence of the family’s intention to return to and live in the ACT. For example, a letter from employer stating period of secondment to overseas locations and date of return to ACT.

Also required with an application is:

- the child’s original official overseas birth certificate;
- original English translation of child’s birth certificate (if appropriate);
- original ‘Citizenship by Descent certificate (if appropriate); and,
- reason why registration is being sought in the ACT.

Once the above documents are received, a submission will be prepared for the decision maker’s consideration. If approved, the applicant will be issued with a Birth Registration Statement to be completed and signed by both parents.
CHAPTER 5 – DEATHS

5.1 REGISTRATION OF DEATHS

5.1.1 DEATHS REGISTER

The Deaths Register contains details of all deaths registered in the Australian Capital Territory (ACT) since 1930. Prior to that, ACT deaths were registered in New South Wales (NSW). Deaths that occur in the ACT are registered in accordance with the Act.

The Act provides for the registration of a death where the person dies during a flight to an airport in the Territory.

The Act also provides for the registration of a death where the person dies outside of the Commonwealth if the person is ordinarily a resident or domiciled in the ACT, or the person dies leaving property in the ACT. Such a registration may only be affected where the death has not been registered under a corresponding law.

The Registrar-General shall not register a death unless formal notification has been provided. Notification includes the Death Registration Statement (DRS) and a Removal of Body Form if applicable, a Medical Certificate of Cause of Death or a Coroner’s Report.

The Registrar-General is unable to register stillbirths as deaths (section 33(6)). The Registrar-General is also unable to register deaths that occur in other Australian states and territories.

5.2 NOTIFICATION OF DEATHS

5.2.1 NOTIFICATION OF DEATHS

Deaths within the Territory are notified on a Death Registration Statement (DRS). The DRS identifies the particulars of the deceased for inclusion in the Register of Deaths. The DRS includes provision for completion of a “Certificate of Burial or Delivery to Crematorium”, a “Certificate of Cremation” and a “Statement of Non-Disposal of Remains within 30 Days of Death”. The latter statement is required to be completed where, for whatever reason, the deceased has not been buried or cremated.

5.2.2 NOTIFICATION OF DEATHS BY FUNERAL DIRECTOR

The DRS must be completed and lodged within seven days after the disposal of the remains of the deceased. The DRS contains information that is required for registration and includes the full name of the deceased and particulars of the date and exact place of death, details of the person’s occupation and details of his or her parents and children. It also includes details of all marriages and civil partnerships to which the deceased was a party.
The required particulars can be found in more detail in section 37(1) of the Act and sections 9, 10 and 11 of the Regulations.

The person responsible for the funeral (normally the funeral director) sends the DRS to this office.

5.2.3 NOTIFICATION OF DEATH BY DOCTORS

The doctor who is responsible for the deceased person’s medical care immediately before death, or who examines the body of a deceased person after death, shall within 48 hours notify the Registrar-General of the death and the cause of death.

The Medical Certificate of Cause of Death is either forwarded directly to the ORS by the doctor/hospital/nursing home, or is given to the funeral director to send with the DRS.

5.2.4 CORONIAL INQUESTS

Where a death is subject to a coronial inquest, the cause of death will not be completed by the attending doctor.

Deaths subject to a coronial inquest include those where:

- there are suspicious circumstances or evidence of unnatural causes;
- there are no apparent medical reasons for the death; and a medical practitioner will not sign the certificate of death; and
- dies not having been attended by a medical practitioner at any time within 3 months prior to the death.

The cause of death is completed in the death registration when we receive the final Coroner’s Report establishing the date, place and cause of death. A second certificate is then issued to the original applicant with the updated information at no cost.

Coronial Reports are collected weekly by the ORS from the ACT Magistrates Court.

5.3 REGISTRATION OF DEATHS

The ORS examines the DRS to ensure completeness and compliance with legislation. Generally speaking, every DRS must have a Medical Certificate of Cause of Death or a Coroner’s Report to allow registration (section 34(1)), however, the ORS will register a death notwithstanding that it may be subject to a Coroner’s Inquest and if requested, issue a death certificate without an exact place or cause of death. This registration however, is classed as “Incomplete” (section 36(1)).

5.4 DEATHS ABROAD

The Registration of Deaths Abroad Act 1984 (C’wlth) commenced on 1 December 1985. It provides for the deaths of Australian Citizens, residents and pensioners, who die in overseas countries or
external Territories, to be registered by the Registrar of Deaths Abroad. The Registrar-General for the ACT, presently undertakes the function of Registrar of Deaths Abroad.

Registration of these deaths will enable relatives and other relevant persons or organisations to readily obtain certificates or results of searches without difficulty or delay. An Australian document will also streamline the settlement of estates, insurance claims and a variety of other matters. Registrations under the Act are not compulsory.

It should also be noted that each state and territory has provision in their own legislation that allows them to register overseas deaths for people who are usually domiciled or own property in the state or territory.

The registration of a death abroad may only be achieved where the registration of the death cannot be established under state or territory legislation (Part II, section 2(b) Registration of Deaths Abroad Act 1984 (C’wlth)).

### 5.4.1 APPLICATIONS FOR REGISTRATION OF A DEATH ABROAD

Registration under this Act may only be made if the registration cannot be established under a State or Territory Act. Applications made on the prescribed form can be made to a Registering Officer at an Australian Embassy, High Commission in an overseas country or to the Registrar-General in his capacity as Registrar of Deaths Abroad in Canberra.

Any person who requires the death to be registered or believes that the death should be registered in Australia may apply for the registration.

To enable registration in the Register of Deaths Abroad, the Registrar-General requires:

- A completed Application Form;
- An original registered death certificate (where registered overseas);
- An original Coroner’s Report (where applicable); or Medical Practitioners Certificate; and
- Any other supporting documents, such as,
  - a burial certificate,
  - a cremation certificate, or
  - transport of body certificate.

An official English translation is required if the documents are in a foreign language. Difficulties may be experienced in obtaining some of the documents indicated above. Where this is the case the Registrar-General may ask for alternative documentation.

**All original documents will be returned to the person applying for the death to be registered.**
CHAPTER 6 – MARRIAGES

6.1 MARRIAGE POLICY

Marriages in Australia are conducted under the terms prescribed by the Marriage Act 1961 (C’wlth). Marriage according to Australian Law, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

The Act makes provision for three different classes of celebrants who may solemnize marriages in Australia. They include:

- Ministers of religion of recognised denominations (church related);
- Other officers of a state or territory or other fit and proper persons authorised by the Attorney-General (civil celebrants, and others of non-denominational); and,
- Person who, under the law of a state or territory, have the function of registering marriages (staff of Births, Deaths and Marriages).

For further information on how to become a marriage celebrant, please visit the Commonwealth Attorney-General’s Department website at:

6.2 CELEBRANTS

6.2.1 RELIGIOUS CELEBRANTS

The term ‘minister of religion’ as defined in the Marriage Act 1961 (C’wlth) is a general term, comprehending the various persons, by whatever title known, who are either recognised by a religious body or religious organisation as having authority to solemnise marriages according to the rites or customers of that body or organisation, or are specifically nominated by a religious body or organisation to be an authorised celebrant for the purpose of the Marriage Act 1961 (C’wlth).

The Marriage Act 1961 (C’wlth) specifically provides that it does not impose on an any authorised celebrant who is a minister of religion any obligation to solemnise any marriage, nor does it prevent an authorised celebrant, who is a minister of religion from making it a condition of solemnisation of marriage that requirements additional to those provided by the Marriage Act 1961 (C’wlth) are observed, for example, requirements at services or church counselling.

A marriage celebrant from a recognised denomination is registered to conduct marriage according to the rites of their religious organisation only.

In order that a person may become registered as a minister of religion under subdivision ‘A’ of Division I of Part IV of the Marriage Act 1961 (C’wlth), the religious body or organisation of which the person is a minister of religion must be a recognised denomination.
A recognised denomination means a religious body or organisation in respect of which a proclamation under section 26 of the *Marriage Act 1961* (C’wlth) is in force.

Couples intending to be married according to a religious ceremony need to contact an authorised minister of religion. A list of authorised religious celebrants can be located in the Telstra Yellow Pages telephone directory under the heading “Churches, Mosques & Temples”.

### 6.2.2 Civil Celebrants

The Marriage Celebrant Program was established in 1973 to provide marrying couples who did not want to have a religious ceremony with a dignified and meaningful alternative to a registry wedding. Since 1 September 2003, marriage celebrants have been appointed by a registrar of marriage celebrants within the Commonwealth Attorney-General’s Department.

Where a couple decide to be married under a civil ceremony, they need to contact an authorised civil marriage celebrant. A list of authorised civil celebrants can be located in the Telstra Yellow Pages telephone directory under the heading “Celebrants–Marriage–Civil”.

### 6.3 Registration of Celebrants

Each state and territory Registrar of Ministers of Religion is required to maintain a register of Ministers of Religion under the *Marriage Act 1961* (C’wlth) (see section 27).

The register is a list of persons authorised to solemnise marriages according to the rites or customs of that body or organisation.

The Act only requires the Minister to register in the state or territory that they usually reside. If a Minister of religion is registered on two or more State or Territory registers, the minister should notify each Registrar so that the Minister’s name can be removed from the register other than the register of the state or territory of the Minister’s ordinary residence.

### 6.3.1 Power to Solemnise Marriages Anywhere in Australia

Not all Ministers of Religion are authorised to solemnise marriages. Before a Minister of Religion is able to solemnise marriage, they are to be nominated by the Nominating Authority from a “Recognised Denomination”. A recognised denomination means a religious body or organisation that has been proclaimed by the Governor-General.

Once ORS receives a completed Nominating Authority, nominating a Minister of Religion to perform ceremonies, the Registrar-General will issue the Minister of Religion with a Celebrant Authorisation Number. This number is to be quoted on all Notice of Intended Marriage Forms and Marriage Certificates prepared and signed by the Minister of Religion. This is a unique identifiable number and no two celebrants should have the same number. It is unacceptable for anyone other than the authorised celebrant to use the celebrant’s authorisation number. Ministers of Religion who are authorised celebrants can perform ceremonies anywhere in Australia.
6.3.2 CHANGE OF ADDRESS TO BE NOTIFIED

Where a registered Minister of Religion changes his or her name, address or designation, the person shall within 30 days notify the Births, Deaths and Marriages in writing (section 35).

The Registrar-General upon receiving such notification and is satisfied that the particulars shown in the register are not correct, amend the register accordingly.

6.3.3 TRANSFER TO ANOTHER STATE OR TERRITORY

Where a person whose name is included in a register kept by the Registrar-General transfers to another state or territory, the person is to be removed from the ACT register and added to the Register of the state or territory into which they are transferring.

The onus is on the person to advise the new state or territory Registrar of the transfer. The state or territory will add the details to their Register and advise the person of a new registration number. At the same time they will advise Births, Deaths and Marriages so that the person can be removed from our register (section 36). The same procedure is followed when a person transfers into the ACT.

6.3.4 ANNUAL LIST OF AUTHORIZED CELEBRANTS

The federal Attorney-General’s Department publishes annually a list of authorized celebrants, based in part upon the list kept by the Registrars of Ministers of Religion. (section 115).

Before the 1st February in each year, every recognized denomination, must provide the Registrar-General of each State or Territory, with particulars relating to any registered minister of that denomination, that is a resident of that State or Territory. The minister of religion needs to have been performing the function of an authorized celebrant on the first day of January of that year.

The particulars that need to be provided include:

- the full name, designation and place of residence of each of the persons to whom the list relates; and
- in respect of each person whose name and other particulars are not included, but were included in the previous years list, the reason why the name and other particulars are not included.

The following web address provides a full list of up-to-date information regarding authorized celebrants. This information is updated regularly from information received by the State and Territory Registrars. [http://www.law.gov.au/mclisting](http://www.law.gov.au/mclisting)

6.4 NOTICE OF INTENDED MARRIAGE

6.4.1 GIVING NOTICE

A marriage cannot be solemnised, unless a “Notice of Intended Marriage” (NIM) has been given to the proposed celebrant, a birth certificate has been produced and each of the parties to the marriage has made a declaration. Section 42(1) of the Act requires that the parties to an intended marriage must complete a “Notice of Intended Marriage” (NIM) form and lodge it with the
marriage celebrant no more than eighteen months before the intended date of marriage. The marriage can not be solemnised until after 1 calendar month from the date of the authorised celebrant receives the notice, unless a shorting of time has been approved by a prescribed authority.

The NIM sets out personal information concerning the parties to the marriage as prescribed by the regulations.

6.4.2 BACK DATING NOTICE

The date of receipt of the Notice of Intended Marriage cannot be backdated. Solemnising a marriage without giving proper prior notice is an offence that attracts a penalty of a fine or six months imprisonment (section 104). Any celebrant who signs a document knowing that it contains a false information will be asked to show cause why he or she should not be revoked.

6.4.3 TRANSFERRING NOTICE

Couples have the right to change celebrants and the original celebrant must accept the couple's decision and facilitate the transfer of documents in a professional manner. The original civil marriage celebrant has a right to charge for the services provided already. If for some reason you need to change your marriage celebrant you will need to obtain the Notice of Intended Marriage form that you lodged with the original celebrant and give it to your new celebrant or fill in a new form and wait a further month.

6.4.4 LODGING NOTICE FROM OVERSEAS

A Notice of Intended Marriage form can be lodged from overseas as long as it has been signed in the presence of an Australian Consular or Diplomatic Officer or a person holding the following qualification or profession under Australian law:

- Justice of the Peace;
- barrister or solicitor;
- legally qualified medical practitioner; or
- member of the Australian Federal Police or of the Police Force of a State or Territory.

When the signature of one party to an intended marriage cannot conveniently be obtained, one party may sign and lodge a Notice of Intended Marriage form, but the other party must also sign the form in the presence of an authorised celebrant before the marriage takes place.

6.4.5 GIVING NOTICE WHILE MARRIED

A couple can lodge a Notice of Intended Marriage Form with a marriage celebrant prior to divorce proceedings being finalised. However, celebrants should ensure that they take note of the date when the decree becomes absolute as a marriage can only take place after that date. As from 1 July 2002, the Family Court and Federal Magistrates Service ceased issuing separate documents for a decree nisi of dissolution of marriage and a decree absolute. They now issue a document headed "Certificate of Divorce" which contains the date of both the decree nisi and the decree absolute. This certificate is evidence of divorce for the purposes of solemnising a marriage (see section 42(10)).
6.4.6 NOTARIES

A number of queries have been raised about notaries public witnessing NOIMs overseas. These have included requests for a definition of ‘notary public’. ‘Notary public’ is an office that has been in existence for many hundreds of years. They are to be found in every country and are essential for the continued conduct of international government and private business. There is no definition of the term in the Marriage Amendment Act 2002 because it is such a well recognised office internationally that there was no need to do so.

A summary of the position is that a notary public is a legal officer with specific authority to witness legal documents usually with an official seal. The Concise Oxford Dictionary defines the position as being a person publicly authorised to draw up or attest contracts and perform other formalities.

It is the responsibility of a party to a marriage to locate an appropriate witness overseas and not the responsibility of the celebrant. Most couples overseas will be able to visit an Australian Embassy, High Commission or Consulate to have the NOIM witnessed.

6.4.7 OVERSEAS PASSPORTS

Overseas passports are an additional option to establish date and place of birth over and above what was previously set out in the Marriage Act (that is a birth certificate or extract or a statutory declaration) and deals with the particular problem that people who were born overseas in countries from which they cannot obtain their birth certificate may have in establishing date and place of birth.

A passport issued by the Government of an overseas country may be accepted as evidence of the date and place of birth of a party to a proposed marriage born outside Australia in the absence of a birth certificate or extract. Persons born in Australia should still produce a birth certificate or extract.

The requirements for evidence of date and place of birth are:

- **For a person born in Australia** - a birth certificate or extract. It is very rare that a person born in Australia will find it impracticable to obtain a birth certificate or an extract of a birth certificate. In these rare instances, a statutory declaration stating why it is impracticable to obtain the certificate or extract and stating to the best of the person’s knowledge and belief where and when they were born is acceptable.

- **For a person born overseas** - a birth certificate or a passport issued by a government of an overseas country, showing the date and place of the party’s birth will be acceptable. Where a person has been born overseas does not have a birth certificate or a passport issued by the government of an overseas country, a statutory declaration is still acceptable. Such declarations should only be used where the celebrant is satisfied that this is the only option left reasonably available.
6.5 SHORTENING OF TIME OF NOTICE OF INTENDED MARRIAGE

A couple intending to get married must provide a Notice of Intended Marriage to a marriage celebrant at least one month before the date of the wedding. Section 42(5) of the Act provides that a “Prescribed Authority” may agree to shorten this period of notice. A “Prescribed Authority” is defined at section 5 of the Act as including a person appointed by the Federal Attorney-General for that purpose. In the ACT, the Registrar-General is the Prescribed Authority and may approve an application to shorten the period of notice. This Application is called a “Shortening of Time” and details the circumstances under which a shortening of time may be approved in accordance with the Marriage regulations 1963 (C’wlth). Any Prescribed Authority appointed by the Attorney-General may approve an application irrespective as to whether the marriage is to be conducted in that State/Territory or another.

If a couple is seeking a shortening of time, the practice is, to submit an application for consideration by the Registrar-General. A decision will not be made on the spot. The application should be lodged, together with payment of the prescribed fee and supporting evidence. The couple will be required to satisfy the Registrar-General that there is a valid reason for wanting to shorten the time in accordance with the regulations.

There are a variety of circumstances under which a shortening of time will not be considered valid, for example:

- an immigration situation (eg. where a visa is due to expire which may result in deportation of one of the parties); or
- a requirement for a party to appear in a court of law.

As well as providing a valid reason for shortening the period, the parties should prove that they have:

- known each other for at least 31 days;
- an understanding of the marriage contract (solemn and binding); and
- arranged for a marriage celebrant to perform the wedding if the application is granted.

Before the Registrar-General will consider the application for a shortening of time, the couple are required to lodge with ORS:

- a completed Notice of Intended Marriage;
- a letter signed by both parties detailing the reason and date proposed;
- contact details;
- a letter from the authorised celebrant;
- copies of supporting documentation to the claim;
- application fee (this is an application fee, not an approval fee).
Once the Registrar-General has made a decision, a letter will be sent to the applicants with the decision.

### 6.6 GROUNDS FOR CONSIDERING A SHORTENING OF TIME

Marriage regulations provide circumstances that the Registrar-General should take into consideration when authorising an application for a shortening of time. Information about the circumstances and the types of evidence required by the Registrar-General to help reach a decision are identified below.

#### 6.6.1 EMPLOYMENT-RELATED OR OTHER TRAVEL COMMITMENTS

A couple may seek a shortening of time because a party to the marriage or someone involved in the proposed wedding has:

- employment commitments necessitating absence from the location of the proposed wedding for a considerable period of time; or,
- other travel commitments.

The couple will be required to provide the Registrar-General with evidence of their employment related or other travel commitments. This may include, but is not limited too;

- documents relating to the employment commitments such as a letter of offer and a letter of acceptance;
- documents relating to the travel such as dated receipts and/or tickets;
- an explanation for giving notice sooner; and,
- an explanation for not postponing the proposed wedding

When reaching a decision the Registrar-General will consider the follow factors;

- why the wedding cannot be postponed;
- why the applicants failed to give notice in time;
- if there was sufficient time to lodge notice from the time posting was accepted;
- the length of the applicants relationship;
- duration of overseas assignment;
- what financial hardship would be caused if the applicants are required to postpone the wedding; and
- what emotional hardship the applicants would suffer if they are required to postpone the wedding?

**Example:** A party to the intended marriage has accepted an offer to employment for imminent transfer or posting overseas or to a part of Australia distant from the location of the proposed wedding for at least 3 months, and wishes to be married with the party’s family and friends present.

#### 6.6.2 WEDDING OR CELEBRATION ARRANGEMENTS

A couple may seek a shortening because of the binding nature of the wedding or celebration arrangements.
The couple will be required to provide the Registrar-General with evidence of their employment related or other travel commitments. This may include, by is not limited too;

- documents showing the extent of preparations for the proposed wedding, such as receipts showing dates and amounts of payments connected with the wedding and wedding invitations;
- an explanation provided for not giving the notice sooner;
- an explanation for not postponing the proposed wedding; and
- travel bookings.

When reaching a decision the Registrar-General will consider the follow factors;

- why the wedding cannot be postponed;
- why the applicants failed to give notice in time;
- dates of receipts proved as supporting evidence;
- documentation supporting non-refundable payments made in preparation of the wedding;
- the length of the applicants relationship;
- what financial hardship would be caused if the applicants are required to postpone the wedding; and
- what emotional hardship the applicants would suffer if they are required to postpone the wedding?

Example: Arrangements and non-refundable payments of a considerable sum have been made for the proposed wedding and the date for the wedding cannot be changed.

### 6.6.3 MEDICAL REASONS

A couple may seek a shortening because a party to the marriage, or someone involved with the proposed wedding has a serious medical condition that would prevent that person attending the wedding at any other time.

The couple will be required to provide the Registrar-General evidence of the medically related reasons. This may include, but is not limited too;

- A letter from a medical practitioner confirming relevant health circumstances.

When reaching a decision the Registrar-General will consider the follow factors;

- why the wedding cannot be postponed;
- why the applicants failed to give notice in time;
- the length of the applicants relationship; and
- what emotional hardship the applicants would suffer if they are required to postpone the wedding?

Example: A party to the intended marriage, or a parent or close relative of the party has a serious illness that will prevent the person from attending the wedding unless it is held in less than a month.
6.6.4 LEGAL PROCEEDINGS

A couple may seek a shortening because a party to the marriage is involved in a legal proceeding that would prevent the marriage from being postponed.

The couple will be required to provide the Registrar-General evidence that a party to the marriage is involved in a legal proceeding. This may include, but is not limited too;

- a sealed copy of any applicable court order; and
- a letter from the party’s solicitor stating the dates and nature of a pending court proceeding.

When reaching a decision the Registrar-General will consider the following factors;

- why the wedding cannot be postponed;
- why the applicants failed to give notice in time;
- the length of the applicants relationship; and
- what emotional hardship the applicants would suffer if they are required to postpone the wedding.

Example: A party to the intended marriage is subject to a pending court proceeding, and at risk of imprisonment.

6.6.5 ERROR IN GIVING NOTICE

A couple may seek a shortening of time if there was an error in giving notice due to an error on the part of the celebrant in not giving notice, the notice given was invalid, the notice given was lost, the notice given was stale and significant arrangements have been made for the wedding to take place in less than one month.

The couple will be required to provide the Registrar-General evidence that there was a genuine error in giving notice. This may include, but is not limited too;

- receipts, payments and wedding invitations;
- statement made by the celebrant outlining an error in giving notice on their part;
- statement made by the celebrant detailing that they received the notice however have subsequently mislaid the document; and,
- statement made by the celebrant advising that the notice they received was lost or invalid.

When reaching a decision the Registrar-General will consider the following factors;

- why the wedding cannot be postponed;
- why the applicants failed to give notice in time;
- the length of the applicants relationship; and,
- what emotional hardship the applicants would suffer if they are required to postpone the wedding.

Example: The parties have given significant notice to the authorised celebrant orally, and arrangements for the proposed wedding have been made, but written notice was not given in the required time because the authorised celebrant failed to explain the notice requirements properly.
4.7 THE MARRIAGE PROCESS

Prior to solemnising a marriage, the celebrant will prepare a number of documents under the Marriage Act 1961 (C’wlth). These documents will be signed and witnessed prior to the ceremony.

The ceremony documents are –

- Notice of Intended Marriage – to be signed by the couple, witnesses and the celebrant and submitted to ORS for the registration of the marriage.

- Certificate of Marriage – issued to the couple as their official record of marriage. Before a Certificate of Marriage is issued, declarations by the couple must be made, such as details of previous marriages, prohibited relationships, marriageable age etc. This must not be confused as the official Certificate of Registration of Marriage issued by ORS.

- A short form Certificate of Marriage (A5 paper) often called a “Marriage Certificate” that is retained by the marriage celebrant for their records.

- In signing the Certificates above, the bride signs in her maiden name.

- Witnesses must be nominated by the couple and must be at least 18 years old.

6.8 INVALID MARRIAGES

A valid marriage is one that meets all of the requirements of the Act.

There are exceptions, where a marriage does not meet certain requirements under the Act, but may still be regarded as valid.

However the Act sets out a number of prerequisites to marriage, which if not met, will render the marriage void.

Generally, the requirements for a valid marriage are as follows –

- **Authorised Celebrant** (section 41). Generally, where the marriage celebrant is not authorised and the parties are aware, the marriage will not be valid. However section 48(3) provides that a marriage is not invalid where the parties were unaware that the celebrant was not authorised by law to perform the marriage.

- **Marriageable Age** (section 11). A person is of marriageable age if they have attained the age of 18 years. A person who has attained the age of 16 years may apply to the Court for an order authorising marriage. An order ceases to have effect after 3 months (section 12(5)). The Act also requires that a marriage involving a person under marriageable age requires certain consents eg parent. The Act also permits a prescribed authority to dispense with that consent in certain circumstances (section 15).
• **Prohibited Relationship** (section 23(2)). A marriage between persons in a prohibited relationship is void. The Act defines a prohibited relationship to include –
  
  i. between a person and an ancestor or descendant of that person; or
  
  ii. between a brother and a sister (whether whole or half blood).

  (See also section 23(3) in respect to adopted persons).

• **Previously Married** (section 42(1)(c)(i)). The Act requires the parties to make a declaration as to conjugal status. The declaration must state that the parties have not previously been married. If either of the parties was previously married, evidence must be provided as follows;

  i. that the marriage has been legally terminated in which case a *decreed or divorce certificate* must be produced to the celebrant;

  ii. certificate of the death of the former spouse; or

  iii. evidence that the earlier marriage was void under the Act.

• **Duress or Fraud** (section 23(1)(d)(i)). Where one of the parties to the marriage consented to the marriage under duress or their consent was obtained by fraudulent means.

• **Mistaken Identity** (section 23(1)(d)(ii)). Where one of the parties to the marriage was mistaken as to the identity of the other, the marriage is void.

• **Nature of the Ceremony** performed (section 23(1)(d)(ii)); Where one of the parties to a marriage was mistaken as to the nature of the ceremony (ie was unaware that it was a marriage ceremony), the marriage is void.

• **Mental Incapacity** (section 23(1)(d)(iii)). Where one of the parties to a marriage was mentally incapable of understanding the nature and effect of the marriage ceremony, the marriage is void.

Section 48(2) of the Act states that a marriage is not invalid merely by reason of the following:

Failure to give Notice of Intended Marriage under (section 42) of the *Marriage Act 1961* (C’wlth) Act.

  • Including a false statement, defect or error in a Notice.

  • Failure to provide to the celebrant a declaration or an extract or entry required by section 42 in respect to a Notice.

  • An informality in respect to a witness or the age of a witness.

  • Failure by the celebrant to explain the binding nature of the marriage relationship.

  • Failure by a parent to consent to the marriage of a minor.
6.9 THE REGISTRATION PROCESS

Once a marriage has been solemnised, and the certificate of marriage appropriately signed, the certificate and the Notice of Intended marriage form must be forwarded to the Births, Deaths and Marriages for registration of the marriage within 14 days of the ceremony.

The marriage celebrant is responsible for lodging these documents and for ensuring that they are complete and correctly signed.

The marriage celebrant presents the bride and groom with a ceremonial certificate on the day of the marriage. Historically this certificate was accepted in the ACT as sufficient evidence for persons to assume their partners surname on documents such as their driver's licence, bank accounts etc however more recently the registered marriage certificate is requested for this purpose. It is not a legal requirement for a person to change their surname once married.

Prior to registering the marriage Births, Deaths and Marriages examines the documents for completeness and correctness, checking for details such as missing signatures and the ages of the parties to the marriage. Where any inconsistencies are noted, the documents are returned to the marriage celebrant for rectification. The marriage celebrant is responsible for initiating the corrections and returning the documents.

When the documents are complete, the marriage is registered. The registered particulars may then be searched and accessed by an entitled person under the Access Policy.

6.10 OVERSEAS MARRIAGES

The Marriages Act 1961 (C’wth) makes provision for the solemnisation of certain marriages by or in the presence of a defence force chaplain in the limited circumstances.

The process is very similar to that of those marriages solemnized in Australia, however, marriages performed under these circumstances must be registered in Canberra by the Registrar of Overseas Marriages.

6.10.1 OVERSEAS MARRIAGES UNDER LOCAL LAW

An Australian citizen may also be married in an overseas country in accordance with the law of the country. Before permitting a citizen of another country to be married in their country, some countries require the person to produce a certificate of non impediment. Where a resident of a state or territory proposes going overseas to be married in a country which requires a certificate of non impediment, the person should be directed to the Department of Foreign Affairs and Trade who produce the required document.

6.10.2 MARRIAGES BY FOREIGN DIPLOMATIC OR CONSULAR OFFICERS

Division 3 of the Marriage Act 1961 provides for the conduct of marriages by foreign diplomatic or consular officers in Australia.
For the purposes of the Act, the Registrar-General of the Australian Capital Territory is the Registrar of Foreign Marriages.

The following should be noted—

The diplomatic or consular officer solemnising the marriage must be a representative of an overseas country in respect of which a Proclamation has been made by the Governor-General under section 54 of that Act.

At least one party to the marriage must be a national of that country.

The Registrar-General is unconcerned as to whether the laws of that country permit diplomatic or consular officers to solemnise marriages outside of that country as that is a prerequisite of the Governor-General’s proclamation and the Registrar-General may assume that they are if the country is proclaimed.

An Australian citizen may be a party to the marriage but neither party is required to be an Australian citizen. The marriage must not be a void or voidable marriage under paragraph 23B(1)(a), (b) or (e) of the Act.

The marriage certificate must bear the seal of the Registrar of Foreign Marriages.

In order to meet registration requirements, Births, Deaths and Marriages requires that the following papers be presented for registration;

- The certificate of the conduct of the marriage under the laws of the foreign country must be presented. If the certificate is prepared in a foreign language, a translation into English must be provided.

- The diplomatic or consular office solemnising the marriage must complete a statutory declaration in the following form;

  “I ………. (full name) a Diplomatic/Consular Officer resident in Australia and performing the official duties of ……………………… (occupation) for the Embassy of ………………………………………………………………………………….(country), hereby declares –

  I am authorised under the laws of ………………………………………………………………………………….(proclaimed country) to solemnise marriages outside of that country or in that country under Division 2 of Part V of the Marriage Act 1961.

  A marriage was solemnised at …………….(town/city/state) on …………... (date)
  between ………………………….(bride) and ……………………………….. (groom).

  At least one of the parties to the marriage possesses …………………………………………………. (name of proclaimed country) nationality.

  The bride and groom have both attained the age of 18 years.

  Neither party to the marriage was legally married immediately prior to the marriage.
The parties to the marriage were in a prohibited relationship ie were not related to one another as prescribed in section 23 of the Act.

…………………………………
(Signature of Diplomatic/Consular Officer)
……………………………….
(date of declaration)

The marriage certificate issued by the Registrar-General will take a specified form and the certificate will automatically print in that form and be signed and sealed in the name of the Registrar-General in his/her capacity as Registrar of Foreign Marriages and under that seal.

6.10.3 MARRIAGE TO A RELATIVE

The Marriage Act prohibits people marrying:
- an ancestor or descendant; or
- their brother or sister (whether whole blood or half-blood siblings)

These restrictions also apply to adoptive relationships even if these have been annulled, cancelled, discharged or cease to be effective for any reason (for example, due to a subsequent adoption order being made).

This means, for example, that a person cannot marry their parent, grandparent, child, grandchild, brother or sister. However, (depending of course on the sex of the party) a person may marry their aunt or uncle, niece or nephew, "first" cousin or step-sibling.

6.10.4 SAME-SEX COMMITMENT CEREMONY

The Marriage Act 1961 defines marriage as "...the union of a man and a woman to the exclusion of all others, voluntarily entered into for life." Accordingly, it is not possible for same sex couples to marry under existing Australian law.

It is not illegal to conduct commitment ceremonies between same-sex couples provided that they do not purport to be legal marriages under the Marriages Act 1961.

However, the Civil Partnerships Act 2008 and the Civil Unions Act 2012 provide for the legal registration of same sex relationships.
CHAPTER 7 – CHANGE OF NAME

7.1 CHANGE OF NAME POLICY

7.1.1 GENERAL POLICY

The Births, Deaths and Marriages Registration Act 1997 (the Act) provides for a person (i.e. an adult or a child) to legally change his or her name. The person must have been born in the Territory or be domiciled or resident in the Territory. A person is taken to be domiciled or resident in the Territory if he or she has lived in the territory for three months continuously immediately prior to lodging the application to change his or her name.

A person may choose to change his or her name in circumstances including:

- those with a foreign name who wish to “Anglicise” the name;
- personal preferences;
- people whose parents changed their minds about a name following the registration of the birth but neglected to register the changed name; or
- those undertaking sex changes.

The Registrar-General may refuse to register a change of name if it is considered that the proposed name is offensive, obscene, too long, includes symbols without significance in the English language or is contrary to the public interest.

Only one (1) Change of Name will be registered for each person within a 12 month period.

For a person born in ACT, the birth entry will be updated to show the new name. For a person born in another State or Territory of Australia, the relevant Registrar will be advised of the change of name even if it is not recorded on the birth certificate.

If the father/parent of a child is not shown on the child’s birth registration, the mother can apply on her own for a change of name.

If the father/parent is shown on the child’s birth registration, both parents must apply, unless;

- the Supreme Court has approved the proposed change of name on application by one of the parents; or
- one registered parent is deceased, in which case the surviving parent can apply. A copy of the death certificate must be provided;

If both parents of a child are deceased, cannot be found or for some other reason cannot exercise their parental responsibilities to the child, the child’s guardian(s) can apply. Sufficient documentation supporting the circumstances for a guardian(s) application together with evidence of guardianship or parentage must be provided at the time of application.
7.1.2 SIGNATURES WITNESSED BY A QUALIFIED PERSON

The signatures on an Application to Register a Change of Name form must be witnessed by a Justice of the Peace, Police Officer, Solicitor or a Deputy Registrar-General at the Births, Deaths and Marriages counter.

7.1.3 DOCUMENTS REQUIREING TRANSLATION

Documents in a language other than English, must be accompanied by a certified translation.

7.1.4 COMMON USAGE

Common law provides that a person's name is established through assumption and use of that name.

For general purposes, if evidence of a change of name is not required, a person may change their name merely by assuming a new name. This however may not satisfy persons or organisations you propose to deal with eg banks and government agencies. Documentary evidence may be required. Placing a notice in a newspaper is optional.

The assumption of a spouse's name upon marriage establishes a change of name. A marriage certificate is usually accepted as evidence of such a change by most authorities, however the organisation may insist upon evidence of a registered change of name.

7.1.5 CHANGING TO A FORMER Surname

If you wish to change to a previous surname (either voluntarily or perhaps as a result of divorce or separation) the documents you held under your former name may be acceptable as evidence of your name. If divorced, you may be required to produce your certificate of dissolution of marriage (decree absolute/divorce certificate) for evidentiary purposes by some authorities. Some organisations may require evidence of a registered change of name.

7.1.6 CHANGING YOUR NAME TO ONE NAME

There is no law stating that a person must have a surname and given name. A person if they wish is able to change their name to have just one name.

The Application requirements are the same. The only difference is when it comes time for registration. By inserting the words “No Surname” in the New Surname Field, the Promadis System automatically knows not to print a surname on the Change of Name Certificate or Birth Certificate whichever the case may be.

7.1.7 PASSPORTS PROCEDURES RELATING TO A CHANGE OF NAME

From 1 September 2003, passport applicants who have changed their name will need official proof of this change if they wish to use the new name in an Australian passport. There are several ways in which this proof can be provided:
• An amended birth certificate or change of name certificate issued by a State or Territory Registrar of Births, Deaths and Marriages;
• Registered Deed Poll
• A marriage certificate issued by a Registrar of Births, Deaths and Marriages;
• An amended citizenship certificate, where the holders details are recorded incorrectly;
• A divorce certificate issued by the appropriate authority; or

Foreign marriage certificates issued by a foreign country are not acceptable to prove a change of name. People with foreign marriage certificates will be referred to BDM to obtain a change of name certificate.

If a child’s name has been changed, the new name can be used in a passport only on presentation of a change of name certificate or an amended birth certificate issued by a Registrar of Births, Deaths and Marriages, or a Family Court order.

From 1 October 2003, the new requirements will also apply to passport applicants overseas, except for those who were born or married abroad.

The new requirements, together with strengthened identity procedures to be introduced at the same time, help to ensure that only those applicants who clearly establish their identity will be issued with an Australian passport.

For more information call: 1312 32.

### 7.2 CHANGE OF NAME ON THE ACT BIRTHS REGISTER

The most effective means of changing a name for all purposes is under the Births, Deaths and Marriages Registration Act 1997 (the Act).

The process is also open to ACT Residents who were born elsewhere, but will not automatically update the births register in that case

#### 7.2.1 ADULTS (18 YEARS AND OVER)

Adults wishing to perform a registered change of name may take the following steps –

- Complete an Application to Register Change of Name form in accordance with the Act;
- provide a full birth certificate if born in Australia, and citizenship certificate or permanent resident visa if born overseas;
- documents evidencing any previous change/s of name, including marriage certificate where the person assumed their spouse’s name on marriage; and
• three (3) documents of identity from the list provided on the Application Form, whichever may apply.

7.2.2 CHILDREN

Parents/guardians may change a child's given or surname in accordance with the Act by;

• completing an Application to Register Change of Name form;
• if the child is over 14 years of age, or over, the child must sign the Application in the presence of a qualified witness;
• provide a full birth certificate if born in Australia, and citizenship certificate or permanent residency visa if born overseas;
• documents showing parentage if the child was born outside Australia and does not have a birth certificate; and
• Three (3) documents of identity from the list provided on the Application Form are required for each parent and/or guardian.

7.3 REGISTRATION

Upon completion of the Application to Register a Change of Name form, it is to be lodged at the ORS along with the required identification documents, and the prescribed fee.

If everything is in order, once registration is complete the person will be issued with either birth certificate showing the name change if born in the ACT, or a Certificate of Change of Name showing the new and old names, if born outside the ACT.

7.3.1 NOTICE TO OTHER STATES AND TERRITORIES OF CHANGE OF NAME

If a person changes their name in the ACT and their birth was registered in another State or Territory, section 21(2)(ii) of the Births Deaths and Marriage (Registration) Act 1997, requires the ORS to notify the relevant registering authority where the persons birth is registered under a corresponding law.

Most other States and Territories advise the ORS if a person changes their name in that jurisdiction but their birth was registered in the ACT.
CHAPTER 8 – ADOPTIONS

8.1 GENERAL POLICY

The situation concerning adoptions within the Territory is regulated under the terms of the Adoption Act 1993 (ACT). This legislation allows the fact of an adoption to be registered and facilitates access to information necessary to allow a person to trace and contact a birth parent or a child. You need to contact the Adoptions and Permanent Care Unit, Office for Children Youth and Family Support, ACT Department of Disability, Housing and Community Services for general information concerning adoptions in the Territory. You may contact them by telephone (02) 620 71335.

All adoptions in the Territory must be registered through the Supreme Court. The Supreme Court sends a sealed copy of the adoption order to the Registrar-General’s Office. On receipt of this order, the adoption is registered in the Adoption Register. This also applies to any adoption orders received by this office and made under a law of a state or in another territory. These are only received from other jurisdictions in the child was born in Canberra.

Where an order for the adoption of a child born in the territory has been registered in the Register of Adoptions, the Registrar-General shall re-register the birth of the child by entering in the register of births:

- the child’s full name after adoption
- sex, date and place of birth
- details of the adoptive parent/s including marriage details and other children of those parents
- a notation to the entry to the effect that the birth of the child is registered in accordance with section 25(1) of the Adoption Regulations.

A notation is also made on the original entry of the child that the birth has been re-registered in accordance with section 25(4) of the Adoption Regulations. This record then becomes a “closed” registration and any searches or requests for certificates must have authorisation from the Adoptions and Permanent Care Unit.

Once the adopted person has reached the age of 18 years, we may release a copy of the record to the person or to his or her natural mother. Before doing this, we require the person to seek and obtain formal authorisation from the Adoptions and Permanent Care Unit. We require such an authorisation before releasing any information concerning an adoption to any person or agency.

8.1.1 INTERCOUNTRY ADOPTION (CONVENTION)

The Hague Conference consists of member countries who meet to discuss and agree to conventions on Private International Law issues. A number of conventions have been agreed to by the conference. The subject of international co-operation in respect of intercountry adoption was submitted to the conference on 19 January 1988.

The purpose of the proposed Regulation is to update the country list by adding a number of new member countries to this particular convention.
International adoption was posing serious problems. The reasons for including the subject of intercountry adoption on the conference agenda are as follows:

- a dramatic increase in international adoption;
- serious and complex human and legal problems; and
- need for a multilateral approach.

The basic issue is the recognition of the right of the child to a family, where his or her personality is formed and developed. For the full and harmonious development of his or her personality, the child should grow up in a family environment and in an atmosphere of happiness, love and understanding. It was agreed that appropriate measures should be taken by every member country to enable children to remain under the care of their biological family.

The conference stated that intercountry adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family, or cannot in any suitable manner be cared for in the child’s country of origin.

The scope of the convention is to –

- ensure that intercountry adoptions take place in the best interests of the child;
- provide a system of international co-operation amongst the States; and,
- secure in member countries the recognition of adoptions made in accordance with the Convention.

The convention also deals with issues such as –

- Requirements for Intercountry Adoptions
- Central Authorities and Accredited Bodies
- Procedural Requirements in Intercountry Adoption
- Recognition and Effects of Intercountry Adoption

Australia ratified the Convention on 1 December 1998.

6.1.2 FAMILY LAW ACT 1975

Section 125 of the Family Law Act 1975 (C’th)(the Act) provides that the Governor-General may make regulations that are necessary or convenient for carrying out or giving effect to the Act.

Section 111C of the Act provides for the making of regulations prescribing all matters necessary for the purposes of giving effect to international arrangements in respect of intercountry adoptions under the Act.

Sub-section 111C(1) of the Act provides that the Regulations may make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention). Sub-section 111C(5) of the Act provides that
the regulations may confer jurisdiction on federal or Territory courts or invest a State Court with federal jurisdiction.

The purpose of the proposed Regulation is to give effect to the Convention by adding Albania, Slovakia, Germany, Slovenia, Bolivia, Bulgaria, Luxembourg, Latvia, Switzerland and Estonia to the list of new countries in Schedule 2 of the Regulations.

**8.2 INTERNATIONAL ADOPTIONS**

Section 111C of the *Family Law Act 1975* deals with international agreements about adoptions.

The Regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

The regulations make such provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between:

- Australia, or a State or Territory of Australia; and
- a prescribed overseas jurisdiction.

Regulations made for the purposes of subsection (3) may, in particular:

- provide for the recognition of adoptions made under a law of the prescribed overseas jurisdiction; and
- provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions; and
- if a State or Territory has made such a bilateral agreement or arrangement on behalf of other States or Territories—give effect to the agreement or arrangement so far as it relates to all of those States or Territories, or to such of them as the regulations specify.

Regulations made for the purposes of this section may:

- confer jurisdiction on a federal court (other than the High Court) or a court of a Territory; or
- invest a court of a State with federal jurisdiction.

Such jurisdiction is in addition to any other jurisdiction provided for under this Act. Regulations made for the purposes of subsection (5) may make different provision in respect of matters arising in relation to different States or Territories. The power of the Judges, or a majority of them, under section 123 to make Rules of Court extends to making Rules of Court for or in relation to the making of adoption orders.
CHAPTER 9 – CHANGE OF SEX

9.1 CHANGE OF SEX

Birth records for the purpose of change of sex refer to births registered in the Territory under the terms of the Births, Deaths and Marriages Registration Act 1997 (the Act).

Recently, the ACT Legislative Assembly passed the Births, Deaths and Marriages Registration Amendment Act 2014 (the Amendment Act). The Amendment Act improves legal recognition of sex and gender diverse people in the ACT community.

The Amendment Act changes the requirements for people who wish to change their sex on their birth certificate so that sexual reassignment surgery is no longer required. In place of the requirement for sexual reassignment surgery, a person seeking to change a record of their sex must now provide evidence that they are either an intersex person or that they have received appropriate clinical treatment.

In addition to the above legislative changes, the ACT has also changed its policy and will allow a new category to be recorded on birth certificates. This category can be nominated by individuals who are intersex or who identify as having an indeterminate or unspecified sex. The category will be known as unspecified/indeterminate/intersex. Birth certificates issued with this category may state either the entire category or just one of the subcategories eg. indeterminate.

If an application is made to record a change of sex, the “Application to Alter Birth Register to Record Change of Sex” form must be completed and signed by the applicant. To change the sex of a child the application must also include a statement signed by the parents (or a person with parental responsibility) stating that the alteration is in the best interests of the child.

Upon completion, the forms must be lodged with the ORS together with the determined fee.

Access to the original birth record is restricted to persons listed in Section 27(2) of the BDMU Act and section 7 of the Regulations.
**CHAPTER 10 – CIVIL PARTNERSHIP**

The Civil Partnerships Act 2008 (the Act) provides a way for 2 adults who are in a relationship as a couple, regardless of their sex, to have their relationship legally recognised by registration as a civil partnership. The 2 parties to a civil partnership are taken, for all purposes under territory law, to be in a domestic partnership.

### 10.1 METHODS OF ENTERING INTO A CIVIL PARTNERSHIP

There are two options available for people considering entering into a civil partnership in the ACT. People may wish to apply for civil partnership registration over the counter at the ORS shopfront or by post if there is no ceremony to be performed. Alternatively proposed partners of the same sex may wish to have their civil partnership performed by a registered civil partnership notary. A Civil partnership declaration made before a registered civil partnership notary must be performed within the ACT.

Each method has certain criteria that must be met. Civil partnerships are not effective until endorsed and registered by the Registrar-General.

#### 10.1.2 APPLICATION FOR REGISTRATION OVER THE COUNTER OR BY POST

Eligible persons may choose to apply directly to the Registrar-General for registration of their civil partnership.

The partners must complete a form “Application to Register a Civil Partnership without Ceremony”. Instructions for the completion of the form are included within the form.

The form requires certain personal details, proof of identification, and evidence of residency and includes a statutory declaration which both partners must complete. The form and any required documentation must be lodged with the Registrar-General either over the counter or by post.

Where lodged over the counter, ORS staff is able to witness the statutory declaration, however where the application is lodged by post the statutory declaration must be witnessed by a person able to witness under the Statutory Declarations Act 1959. All copies of proof of identity documentation and evidence of residency must be certified as true copies of the original documents by a solicitor, police officer or justice of the peace.

Please refer to the ORS website at [www.ors.act.gov.au](http://www.ors.act.gov.au) for the current determined fee.
10.1.3 APPLICATION FOR REGISTRATION BY CIVIL PARTNERSHIP NOTARY

Eligible persons may choose to have a civil partnership ceremony and make their declaration before a registered civil partnership notary. Please be aware that proposed partners may only have their civil partnership declaration made before a civil partnership notary where the partners are not able to marry under the Marriage Act 1961 (C'Wlth). For example, a male partner and a female partner are not able to have their civil partnership declaration made before a civil partnership notary, as they may marry under the Marriage Act 1961 (C'Wlth).

The proposed partners are able to contact a registered civil partnership notary to organise a ceremony at which their civil partnership declaration may be made. The register of civil partnership notaries is publicly available from the ORS.

Where the civil partnership is to be declared before a registered civil partnership notary a form “Notice of Intention to enter into a Civil Partnership” must be completed with the registered civil partnership notary, not earlier than five days before the declaration, and the declaration may not be made later than 18 months after the day the notice was given. Instructions for the completion of this form are included in the form. The statutory declaration to be made by the proposed partners contained within this form must be witnessed by a witness able to witness statutory declarations under the Statutory Declarations Act 1959.

The proposed civil partners must give the completed Notice of Intention to Enter into a Civil Partnership to the Registrar-General prior to the proposed date of declaration. The Registrar-General will note the date of receipt on the Notice of Intention to Enter into a Civil Partnership and give the original back to the proposed partners to provide to the registered civil partnership notary.

Upon making a declaration before a registered civil partnership notary a form “Application to Register a Civil Partnership with Ceremony by Notary” must be completed. Instructions on the completion of this form are included in the form.

Both forms require certain personal details, proof of identification, and evidence of residency. The civil partnership notary is required to lodge both forms with the Registrar-General no later than two weeks after the civil partnership was declared.

Please refer to the ORS website at www.ors.act.gov.au for the current determined fee.
10.2 ELIGIBILITY TO ENTER INTO A CIVIL PARTNERSHIP

A person may enter into a civil partnership only if:

- they 18 years or older;

- at least one of the proposed civil partners resides within the ACT for a period of not less than three months;

- the proposed civil partners are not married or already in a civil partnership; and,

- the proposed civil partners are not in a prohibited relationship.

A prohibited relationship is where the proposed civil partners are:

- lineal ancestors;

- lineal descendents;

- sisters;

- half sisters;

- brothers; or,

- half brothers.

Proposed partners may only have their civil partnership declaration made before a civil partnership notary where the partners are not able to marry under the *Marriage Act 1961 (C’Wlth)*. For example, a male partner and a female partner are not able to have their civil partnership declaration made before a civil partnership notary, as they may marry under the *Marriage Act 1961 (C’Wlth)*.

10.3 CIVIL PARTNERSHIP REGISTRATION

10.3.1 REGISTRATION OF CIVIL PARTNERSHIP OVER THE COUNTER OR BY POST

Where the proposed partners have opted not to have a civil partnership ceremony and have applied directly to the Registrar-General for registration of their civil partnership, and all requirements have been met and the determined fee paid, the Registrar-General will register the civil partnership. Registration is affected by making an entry containing prescribed particulars in the register of civil partnerships and will usually take between 24 and 48 hours from the date of receipt of all required documentation and payment of the determined fee.
10.3.2 REGISTRATION OF CIVIL PARTNERSHIP WHERE DECLARED BEFORE A CIVIL PARTNERSHIP NOTARY

Upon lodgement of the required documentation and payment of the determined fee by the civil partnership notary, the Registrar-General will register the civil partnership by endorsing the Notice of Intention to Enter into a Civil Partnership specifying the day on which the registration is taken to have effect. Upon endorsement the Registrar-General will make an entry containing prescribed particulars in the register of civil partnerships. This will usually take between 24 and 48 hours from the date of receipt of all required documentation and payment of the determined fee.

10.4 PRESCRIBED PARTICULARS FOR REGISTRATION

The following information will be entered in the register of civil partnerships upon registration:

- date and place of registration;
- the partners’ full names;
- the partners’ home addresses;
- the partners’ dates and places of birth;
- each partner’s relationship status immediately prior to registration;
- the partners’ occupations; and,
- the full names of each partner’s parents.

The following information will also be entered in the register of civil partnerships where the declaration was made before a civil partnership notary:

- the date and place the declaration was made;
- the civil partnership notary’s full name;
- the civil partnership notary’s registration number; and,
- the full name of at least one witness to the declaration.

Relationship status is defined in the Act as being:

- single;
- divorced;
- widowed; or,
- domestic partnership, other than the proposed civil partner.
10.5 TERMINATION OF A CIVIL PARTNERSHIP

A civil partnership is automatically terminated upon the death of either partner or the marriage of either partner. A civil partnership may also be terminated by Supreme Court order or by lodging a completed form “Notice to Terminate Civil Partnership”. This termination notice may be lodged by either one of the civil partners or jointly by both civil partners. Instructions for the completion of this form are included on the form.

Where the termination notice has been given by only one civil partner, the notice is only effective if a copy of the notice has been served personally on the other civil partner, and a statutory declaration is given to the Registrar-General with the termination notice, that is made by the person who served the termination notice, that states the notice was served personally by that person, to the other civil partner on the date stated in the statutory declaration.

Termination becomes effective at the end of twelve months after that date the termination notice is given to the Registrar-General, unless the termination notice is withdrawn or the Supreme Court makes an order that the termination notice is not effective to terminate the civil partnership.

Upon termination the Registrar-General will provide both civil partners with a letter informing them of the termination taking effect. The Registrar-General will include the prescribed particulars of the termination in the civil partnership register. The prescribed particulars include:

- the date the termination notice was given to the Registrar-General; or,
- where terminated by a Supreme Court order, the date the order was made; and
- the date of effect of the termination.

10.6 WITHDRAWAL OF TERMINATION PROCESS

Where a termination notice has been lodged with the Registrar-General, the civil partner or partners that lodged the notice are able to withdraw it at any time before the end of 12 months after the date the termination notice was lodged with the Registrar-General. The termination may be withdrawn by Supreme Court order or by lodging a completed form “Notice of Withdrawal of a Termination of a Civil Partnership”.

Where the withdrawal notice has been given by only one civil partner, the notice is only effective to withdraw the termination if a copy of the notice has been served personally on the other civil partner, and a statutory declaration is given to the Registrar-General with the withdrawal notice, that is made by the person who served the withdrawal notice, that states the notice was served personally by that person, to the other civil partner on the date stated in the statutory declaration.
10.7 BECOMING A CIVIL PARTNERSHIP NOTARY

10.7.1 APPLICATION PROCESS

A person may apply to the Registrar-General in writing to be registered as a civil partnership notary. Where a form has been approved by the Minister, the approved form must be used. In this case the approved form is a form “Application to Register as a Civil Partnership Notary”. Instructions for the completion of this form are included on the form.

Upon application the Registrar-General may register the applicant where satisfied that the applicant:

- is an individual aged 18 years or over;
- has the knowledge and the skills or experience necessary to exercise the functions of a civil partnership notary; and,
- is a suitable person to be registered as a civil partnership notary.

In deciding whether a person is a suitable person to be registered as a civil partnership notary, the Registrar-General must have regard to the following:

- whether the person has been convicted, or found guilty, in Australia of an offence punishable by imprisonment for one year or longer;
- whether the person has been convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for one year or longer;
- whether the person has been convicted, or found guilty, of an offence against, or has otherwise contravened the Act;
- whether the person is or has been an undischarged bankrupt, has executed a personal insolvency agreement or has otherwise applied to the benefit of any law for the relief of bankrupt or insolvent debtors; and,
- whether the person has a physical or mental incapacity that may affect the exercise of the person’s functions as a civil partnership notary.

If the Registrar-General is not satisfied of the above, the application will be refused. A refusal to register the application is a reviewable decision. Please refer below for further information if you wish to appeal a decision not to register an application.

The application form may be downloaded from our website at www.ors.act.gov.au. Please also refer to our website for the current application fee.
The Registrar-General will consider all applications based on the information supplied on, and with, the “Application to Register as a Civil Partnership Notary” form.

10.7.2 EVIDENCE OF IDENTITY, AGE AND RESIDENCE

As a part of the application to be registered as a civil partnership notary, evidence of the applicant’s full name, age and address must be provided at the time of application.

The Registrar-General will accept a birth certificate, drivers licence, current passport, or citizenship certificate for the purposes of ensuring the applicant’s age and identity.

Proof of identity documents may have their authenticity verified through the Certificate Validation System (CVS) and/or the National Document Verification System (DVS).

10.7.3 CONVICTIONS AND OFFENCES

The application form includes a section where the applicant is to indicate whether they have been convicted of an offence or not. A conviction does not necessarily exclude a person from applying for registration as a civil partnership notary.

Where the Registrar-General has any concerns as to whether the applicant has been convicted of an offence, they may request a police check or statement of facts to confirm any details the applicant may have indicated on the application form. If the convictions or offences are relevant to the application, the Registrar-General will refuse to register the application.

10.7.4 QUALIFICATIONS, SKILLS AND EXPERIENCE

An applicant’s qualifications, skills and experience will be used by the Registrar-General in determining the applicant’s competency to undertake the role of a civil partnership notary.

The applicant must demonstrate their competency by providing copies and/or details of any qualifications, skills and experience relevant to the application, such as:

- details of any certificates or training that has been undertaken;

- details of the applicant’s ability to liaise and communicate with people who may be from a diverse background, with particular sensitivity to people wishing to enter into a civil partnership; and,

- any experience that the applicant considers relevant to assist in performing the functions of a civil partnership notary.

10.7.5 CONFLICTS OF INTEREST

The applicant must supply to the Registrar-General any relevant information to determine whether there may be a perceived or actual conflict of interest if the applicant were to be registered as a civil partnership notary.
Conflicts of interest may include information relating to the applicant’s occupation, business interests, or affiliation with clubs or associations.

10.7.6 REFERENCES

In support of an application, the applicant must provide two references from persons known to the applicant that are not family members.

The references must address the following:

- The nature and length of time the referee has known the applicant;
- The referee’s knowledge of the applicant’s personal and professional capacity to undertake the responsibility of performing civil partnership ceremonies; and,
- The referee’s knowledge of any personal or professional standards or qualities that may support the application.

The Registrar-General may seek to contact one or both of the referees to obtain additional information or clarification of information supplied.

10.7.7 REGISTRATION

Upon deciding whether an applicant is suitable for registration as a civil partnership notary, the Registrar-General will notify the applicant in writing as to the decision.

Where the Registrar-General is satisfied that an applicant is suitable to be registered as a civil partnership notary, the Registrar-General will provide the applicant with a registration number and include their details on the register of civil partnership notaries. This register is publicly available and will include the civil partnership notaries full name, address and contact details.

Where the Registrar-General is not satisfied that an applicant is suitable to be registered as a civil partnership notary, the Registrar-General will provide a letter explaining the decision to refuse the application.

10.7.8 CANCELLATION OF REGISTRATION

The Registrar-General may cancel a person’s registration as a civil partnership notary if the Registrar-General considers that the person does not satisfy, or no longer satisfies, the criteria for registration as a civil partnership notary.

10.7.9 REVIEW OF DECISION TO REFUSE REGISTRATION

If the Registrar-General refuses to register a person as a civil partnership notary, or cancels the registration of a civil partnership notary, the person, or former civil partnership notary may appeal the decision by making an application to the ACT Civil and Administrative Tribunal (ACAT).
CHAPTER 11 - CORRECTIONS

11.1 ALTERATIONS TO THE BIRTH, DEATH AND CHANGE OF NAME REGISTER

Information included in a record maintained in the Births Deaths and Marriages Registers is compiled from forms registered with ORS. These forms are completed and lodged by persons who have the authority under the Act to provide the information required to complete a registration.

Incorrect information may result through a variety of factors. These include misspelling of names, inaccurate information and/or a lack of knowledge of correct events or details provided by or on the part of the informant.

Other factors may include conflicting details provided by the informant and/or other interested persons or missing information eg, details not initially provided on the BRS. ORS staff may also make errors when entering data.

A request to correct the Register must be made by completing and lodging an “Application to Correct Register” form. A record can only be corrected by the informant, the person whose record it is on attaining the age of 18 or both parents on a child’s birth record. The statement needs to state the nature of the error and formally request that the correct details be entered into the Register. The ORS may also require supporting evidence or documentation verifying or substantiating statement made in the request.

There is no fee to correct the register, however, a fee is charged to issue a new certificate. (There is a 1 month period of grace for new registrations and the incorrect certificates must be returned before new certificates are issued. This does not include correcting a child’s name where a birth certificate has been issued. Such changes need to be performed through a change of name process).

To alter original facts that were correct at the time of registration, an “Application to Correct Register” form must be completed. As above, both parents must sign the application for an amendment to a child’s record. A person cannot change information about another person without their consent, eg a son/daughter cannot change his/her parent’s place of birth without their consent. Supporting evidence or documentation must be produced in all circumstances.

If the error resulted from incorrect transcription by ORS staff, the error will be corrected and a new certificate issued at no cost. ORS staff will keep a note of the reason for the correction on the Promadis system, which will maintain an audit trail explaining any corrections. The incorrect certificate must be returned to ORS.
11.2 CORRECTION OF ERRORS IN THE REGISTERED MARRIAGE CERTIFICATE

Where an error is detected in a Marriage Certificate once registration has occurred, the ORS will accept an “Application to Correct Register” that has been signed by both parties. Depending on the error will depend where or not we require proof of the correct information. For example if there is an error in a date or place of birth, we may require a birth certificate to be produced as proof.

Once the ORS has made the amendment to the register a letter will be sent to the Authorised Celebrant who conducted the ceremony and advise them of the Application to Correct, and asking them to amend their register to reflect the correct information. This service may attract a fee.

A marriage registration is record of the details as at the time of the marriage. A person who has used an assumed name on the marriage documentation will need to go through a formal change of name process to affect the changes to their name. It is not possible for the ORS to change the bride or grooms name on a marriage after the marriage has been registered unless error is due to a typographical error.

Where an authorised celebrant detects an error prior to registration, he/she may permit the error to be corrected in his or her presence by either of the parties at any time before the marriage to which the notice relates has been solemnised. The alteration should be initialled by each of the parties and the celebrant.
CHAPTER 12 - ACCESS TO THE REGISTER

12.1 OUR ACCESS POLICY

Information held in the registers of Births, Deaths and Marriages is extremely sensitive. This is because the information on the records includes details that can provide a key form of proof of personal identity. In terms of privacy information, we therefore need to impose restrictions on access to information held on these records. Section 46 of the Births Deaths and Marriages Registration Act 1997 requires that the Registrar-General must maintain access policies with respects to access of the registers and information to be given from the register.

We have therefore adopted a policy of restricting access to this information. We call this policy our “Certificate Access Policy”. You may obtain a copy of this policy by telephoning any of the contact officers listed in the “Customer Commitment” section at the front of this manual or accessing it via the ORS website at: http://www.ors.act.gov.au/bdm/index.html.

The policy is designed to establish consistent and equitable treatment in respect to applications for copies of birth, death and marriage certificates. It defines our discretion in allowing access to or searches of registers that we maintain under S.42 and 43 of the Births, Deaths and Marriages Registration Act 1997. It also defines the way in which we exercise our discretion to provide access to these registers in particular situations.

The ORS will not allow anyone access to the registers if we believe that there is not an acceptable reason to search the record. We will however allow access to persons or organisations that can demonstrate a genuine need to access the information.

We will also release information in particular circumstances depending on the applicant’s relationship to the subject. We also take into account the age of the record and the content of the information held on the register. Here we take into account the potential of the release of such information to effect or impact upon the privacy or well being of an individual.

The ORS may make decisions that would generally fall outside the principles of the access policy where there are very specific or unusual cases. The ORS will take into account the circumstances of the case on an individual basis.

Our access policy sets out the circumstances under which we will release information held on our registers. These circumstances and situations are discussed hereunder. Approval may be sought to access records in other circumstances ie. outside the ambit of the access policy.

Approval to access records in other circumstances may be given by the:

- Registrar-General; or
- Senior Director, Registration and Client Services;
- Manager, Births, Deaths and Marriages.
Where there is a change of name by deed poll, the office will apply the same access policy as if it was registered under the Births, Deaths and Marriages Act. A fee also applies for access to these records.

A person may apply to the ORS to obtain a single status search indicating that are not married in the ACT. While the person must provide identification, the ORS will accept such applications without the need for accompanying identification to be certified.

### 12.2 ACCESS TO BIRTH REGISTER

The ORS will issue a birth certificate to the person nominated in the birth certificate or to a parent of that person. We will issue copies of certificates to other entitled persons in certain “need to know” circumstances. We will allow less restricted access to births that occurred over 100 years ago.

Generally speaking, in respect to the release of information held on the Register of Births by a person who is not the person named in the register, we require at least one of the following:

- written authority from the person or one of the parents;
- evidence of custodianship or guardianship of the person;
- power of attorney from the person; or,
- evidence that the requesting person represents the interests of the person (eg. a solicitor).

Special Note: Under advice of the Federal Privacy Commissioner, a parent does not have an automatic right of access to their child’s birth records once the child has turned 18 years of age. The Registrar-General’s Office will permit that access only where the child consents to the application.

For further guidance regarding your eligibility to access a record, please refer to the access policy available on from the following website [www.ors.act.gov.au/bdm/index.html](http://www.ors.act.gov.au/bdm/index.html).

### 12.3 ACCESS TO DEATH REGISTER

If you are a relative of the deceased, we may provide you with a copy of the death certificate in certain circumstances. If you are not a relative listed on the certificate, we may issue you with a copy of a death certificate if the deceased has no spouse, children or parents still living.

Generally speaking, if you are neither a next of kin on the certificate nor a relative of the deceased, we will ask you to provide one of the following:

- written authority from a next of kin;
- evidence of custodianship or guardianship of the person;
- enduring power of attorney from the person; or,
- evidence that you represent the person named or next of kin (solicitor etc.); or
- evidence that you are a funeral director and applying for a certificate within two months of the registration of the death.
The ORS will allow less restrictive access to deaths that occurred over 30 years ago.

For further guidance regarding your eligibility to access a record, please refer to the access policy available on from the following website www.ors.act.gov.au/bdm/index.html.

### 12.4 ACCESS TO MARRIAGE REGISTER

The ORS impose additional restrictions in regard to searches of certificates of marriage. This is because the content of a marriage record includes personal information about both parties (i.e., rather than an individual).

- We will generally only grant access to these certificates to:
  - one of the parties named in the register (i.e., the bride or bridegroom); or
  - a person acting with the written authority of one of those parties.

Where you are not the bride or groom, we will ask you to provide:

- written authority from the bride or groom;
- power of attorney from the bride or groom; or
- evidence that you represent the bride or groom (or a child of the marriage) in some official capacity (e.g., as a solicitor etc).

You may obtain a copy of your parent’s marriage certificate if both parents are deceased. We may also issue you with a copy of a marriage certificate where you can establish your legal right (e.g., under the terms of a will).

The ORS will allow less restrictive access to marriages that occurred over 75 years ago.

For further guidance regarding your eligibility to access a record, please refer to the access policy available on from the following website www.ors.act.gov.au/bdm/index.html.

### 12.5 ACCESS TO REGISTERS OF CHANGE OF NAME REGISTER

Access to changes of name registered under the Act is restricted and subject to the same requirements as a birth certificate. Changes of name registered prior to the commencement of the Act and Deeds Poll are freely available for scrutiny. As indicated above, there is no fee to search the deeds register, we do however charge a fee for copies of these documents.

For further guidance regarding your eligibility to access a record, please refer to the access policy available on from the following website www.ors.act.gov.au/bdm/index.html.
12.6 ACCESS TO CIVIL PARTNERSHIP REGISTER

Access to information or certificates regarding a civil partnership is treated in the same way as records held under the BDMA. Access will generally be provided to:

- one of the partners named in the register; or
- a person acting with the written authority of one of those parties.

Where you are not either of the partners, we will ask you to provide:

- written authority from the one of the partners;
- power of attorney from the one of the partners; or
- evidence that you represent the one of the partners (or a child of the partnership) in some official capacity (eg. as a solicitor etc).

You may obtain a copy of your parent’s civil partnership certificate if both parents are deceased. We may also issue you with a copy of a civil partnership certificate where you can establish your legal right (eg. under the terms of a will).

The ORS will allow less restrictive access to civil partnerships that occurred over 75 years ago.

For further guidance regarding your eligibility to access a record, please refer to the access policy available on from the following website [www.ors.act.gov.au/bdm/index.html](http://www.ors.act.gov.au/bdm/index.html).

12.7 ACCESS TO REGISTERS BY LEGAL PRACTITIONERS

Under section 64(2)(ii) of the Administration and Probate Act 1929 an executor or administrator must apply under the Births, Deaths and Marriages Registration Act 1997 for a search of the register for information about the parents or any children of:

- the deceased person; or
- any other person known by the executor as the administrator to be relevant to the distribution of the assets.

To ensure privacy is maintained in accordance with the access policy, before a search of the register is carried out, a legal practitioner must provide ORS with sufficient proof of identity of themselves, indicate that they have been appointed as executor or administrator, and are conducting the searches in accordance with the provisions of section 64(2)(ii) of the Administration and Probate Act 1929.
CHAPTER 13 – THE APPLICATION PROCESS

There are three methods available for persons wishing to make an application for certificate;

1. Online Application via www.ors.act.gov.au;

2. In Person at the Births, Deaths and Marriages counter; or

3. By submitting a completed “Application for Certificate form” by post, GPO Box 158, Canberra ACT 2601

13.1 ONLINE APPLICATIONS

Persons who wish to apply for their marriage certificate, birth certificate, or for a birth certificate of their child who is under the age of 18, may apply through the online application facility.

When making an application for a certificate online, the applicant will be asked a series of questions at random that relate the event. The applicants' responses to these questions will help the BDMU vet the applicant as well as locate the correct record. Certificates produced and sent as a result of an online application are forwarded the applicant by registered person-to-person post. The applicant must provide photographic identification to the postman before the certificate will be released.

Online applications do not require the applicant to send any identification documents to the office, however if the BDMU has any doubts about the applicants' identity, the application will be suspended and the applicant will be notified that they will need to reapply by post, or in person so that identification documentation can be provided.

Where an applicants name has changed compared to the details held in the register, we require evidence demonstrating how the change in the name was effected. This is typically achieved by providing copies of the applicant's marriage certificate, or a change of name certificates. They are sought to satisfy the ORS office that the applicant, and the person named on the certificate are one and the same person. A staff member from Births, Deaths and Marriages will contact the applicant to arrange how to these documents should be provided.

The online facility is available for person applying for their own certificate, or for the certificate of their child who is under the age of 18.
13.2 POSTAL APPLICATIONS

Persons may make an application for certificate to the Registrar-General by completing an “Application for Certificate” form and posting it to the ORS.

Applications by post must be accompanied by three pieces of identification, one of which should be photographic identification such as a Drivers Licence, Proof of Age Card, or Passport. Other identification that may be provided in support of your application includes a Medicare Card, Savings or Credit Card, Health Care Card or Pension Card.

Where an applicants name has changed compared to the details held in the register, we require evidence demonstrating how the change in the name was effected. This is typically achieved by providing certified copies of the applicant’s marriage certificate, or a change of name certificates. They are sought to satisfy the ORS office that the applicant, and the person named on the certificate are one and the same person.

All identification and documentation and certificates provided in support of an application must be certified as true copies of the original by a Justice of the Peace, Police Officer or Solicitor.

Where an applicant is applying for a certificate on behalf of the person named on the certificate, or a parent applying for their child’s certificate who is aged 18 years or older, the application must be accompanied by authorisation from the person named on the certificate. The authorisation must specify that the applicant may access the record on their behalf. The statement must be signed and accompanied by three pieces of their identification, one of which must be photographic that has been certified by Justice of the Peace, Police Officer or Solicitor. The applicant will also need to provide three pieces of their own identification including one piece of photographic that has also been certified as above.

Certificates produced and sent as a result of a postal application are forwarded the applicant by registered person-to-person post. The applicant must provide photographic identification to the postman before the certificate will be released.

The application form and any accompanying documentation should be sent to:

Office of Regulatory Services
Births, Deaths and Marriages
GPO Box 158
CANBERRA ACT 2601

13.3 APPLICATIONS IN PERSON AT THE COUNTER

Persons may make an application for certificate to the Registrar-General by attending the counter at Births, Deaths and Marriages.
Applicants will need to complete an “Application for Certificate” form and provide three pieces of identification, one of which should be photographic identification such as a Drivers Licence, Proof of Age Card, or Passport. Other identification that may be provided in support of your application includes a Medicare Card, Savings or Credit Card, Health Care Card or Pension Card.

Where an applicants name has changed compared to the details held in the register, we require evidence demonstrating how the change in the name was effected. This is typically achieved by applicants providing their marriage certificate, or a change of name certificates. They are sought to satisfy the ORS office that the applicant, and the person named on the certificate are one and the same person.

Where an applicant is applying for a certificate on behalf of the person named on the certificate, or a parent applying for their child’s certificate who is aged 18 years or older, the application must be accompanied by authorisation from the person named on the certificate. The authorisation must specify that the applicant may access the record on their behalf. The statement must be signed and accompanied by three pieces of their identification, one of which must be photographic that has been certified by Justice of the Peace, Police Officer or Solicitor. The applicant will also need to provide three pieces of their own identification including one piece of photographic upon making the application.
CHAPTER 14 – CERTIFICATES

If an applicant can satisfy the access policy and demonstrate an adequate reason to be granted access to the register and pays the appropriate fee, the registrar-general will perform a search of the register. Where the registrar-general performs a search of the register, the registrar-general must issue a certificate certifying the particulars contained in an entry, or certifying that no entry was located in the register about the relevant event.

The registrar-general must, when issuing a certificate containing particulars from the register, as far as practicable, protect a person to whom the entry relates from unreasonable intrusion into his or her privacy (section 44). The registrar-general may issue a certificate containing limited information to prevent unreasonable intrusion into a persons’ privacy depending on the reason access to the register is sought, and applicant’s relationship to the person that the record relates.

The ORS also offers a variety of Commemorative Birth and Marriage Certificates for sale to customers to commemorate the birth of a child, or the celebration of a marriage.

14.1 STANDARD CERTIFICATES

Standard certificates are available for purchase from the ORS. Standard certificates include particulars contained in the register and is printed onto security paper. Standard certificates produce by the ORS may have their authenticity checked through CertValid and the National Document Verification System (DVS). Consequently, standard certificates are sought by most organisations where evidence of a registered event is required.

From April 2009 the certificate paper used by the ORS has improved security features including water marks to help mitigate the production of fraudulent certificates. The security paper also includes a barcode and is individually numbered and referenced to the registration from the register that is printed on it.

14.1.1 BIRTH CERTIFICATE

On a standard Birth Certificate the following information is considered relevant by the Registrar-General in accordance with section 42(2) of the BDMU Act:

- child’s name;
- sex of the child;
- date of birth of the child;
- place of birth;
- if the child was or stillborn;
- details of the mother and father;
- details of the marriage of parents;
- previous children of the parents;
- details of the informant;
- registration details.

On the back of the certificates,
• details of any attendants at the time of the birth; and
• previous children from a previous relationship.

Section 21(3) requires that any birth certificate issued by the Registrar-General for the person must show the person's name as changed if a change of name has occurred.

Example of Birth Certificate
14.1.2 DEATH CERTIFICATES

On a Death Certificate the following information is considered relevant by the Registrar-General in accordance with section 42(2) of the BDM Act:

- the name of the deceased;
- the date and place of death of the deceased;
- sex of the deceased;
- age and date of birth of the deceased;
- place of birth of the deceased;
- occupation of the deceased;
- length of the period during which the deceased was a resident of Australia;
- marital status;
- marriage details if applicable;
- name of each child/ren of the deceased;
- details of the deceased parents;
- cause of death;
- date of the burial/cremation;
- name of the funeral director or other person who arranged burial/cremation;
- witnesses name at the burial/cremation; and
- registration details.

Example of Death certificate
14.1.3 MARRIAGE CERTIFICATES

On a Marriage Certificate the following information is considered relevant by the Registrar-General in accordance with section 42(2) of the BDMU Act:

- date of marriage
- place of marriage
- how the couple were married (e.g., civil rites, rites of church; law)
- details of the bride and groom, including:
  - name,
  - occupation,
  - place of residence,
  - conjugal status,
  - place of birth,
  - name of parent/s;
- witnesses;
- name of the celebrant; and
- registration details.

Example of Marriage Certificate

14.1.4 CHANGE OF NAME CERTIFICATE
On a Change of Name certificate the following information is considered relevant by the Registrar-General in accordance with section 42(2) of the BDMU Act:

- name of person after the change has occurred;
- name of person before the change occurred;
- sex of the person;
- date of birth of the person;
- place of birth;
- name of person at the time of birth; and
- registration details.

**Example of Change of Name Certificate**
14.2 COMMEMORATIVE CERTIFICATES

Commemorate certificates are available for sale to customers to commemorate the birth of a child, or the celebration of a marriage. Certificates are A4 and A3 sized and may be framed. The certificates are official legal documents.

Commemorative Certificates are available in a variety of designs, including:
- the Canberra;
- the Capital;
- the Bluebell;
- Federation (Through Time);
- Federation (Floral);
- Teddy Bears;
- Clowns;
- Ducks;
- Bunny (Pink);
- Bunny (Blue);
- Year 2000; and
- Marriage Rings.

The certificates may be purchased individually however they are also sold as part of a package that includes a standard birth certificate.
CHAPTER 15 – COMPLAINTS POLICY

15.1 HOW TO MAKE A COMPLAINT ABOUT AN ORS OFFICER

The ORS is committed to providing customer service in a professional, efficient and respectful manner. All people have the right to raise concerns and make legitimate complaints and expect that the issues raised will be handled in a fair, confidential and responsive manner and free from repercussion or prejudice.

The ORS Complaints Policy is available at the ORS shopfront and at www.ors.act.gov.au. The policy sets out the responsibility of the ORS to:

- recognise, promote and protect the customer’s right to complain about their dealings with the ORS;
- ensure an accessible and well publicised complaints procedure is in place;
- recognise the need to be fair to both the complainant and the organisation or person complained about;
- provide a mechanism for responding to complaints in a timely and courteous manner;
- determine and implement remedies;
- provide adequate resources to support the complaints management process;
- record, assess and review complaints on a regular basis to ensure responsive and on-going commitment to service improvement.

15.2 FREEDOM OF INFORMATION REQUESTS

ORS is subject to the provisions of the Freedom of Information Act 1989. Any requests under the Act concerning information held by ORS should be addressed to:

Freedom of Information Officer  
Office of Regulatory Services  
Department of Justice and Community Safety  
GPO Box 158, CANBERRA ACT 2601

15.3 COMMITMENT TO PRIVACY

ORS is subject to the provisions of the Privacy Act 1988 (C’wth) and manages personal information in accordance with the eleven Information Privacy Principles listed in section 14 of the Act. These principles aim to ensure protection of personal information from unreasonable disclosure.
ORS Officers endeavour to act in accordance with the Privacy Principles. If you have any concerns with how ORS manages personal information please contact the Manager, Births Deaths and Marriages in the first instance. If you are still not satisfied, you may contact the ORS Privacy Contact officer on (02) 6205 3738 or:

- Privacy Contact Officer
- Office of Regulatory Services
- Department of Justice and Community Safety
- GPO Box 158, CANBERRA ACT 2601

If your concern cannot be resolved you can contact the Privacy Commissioner by phone on (02) 6247 3658, by writing to The Privacy Commissioner, GPO Box 2999, CANBERRA CITY ACT 2601, by calling in person to 1st Floor, AMP Building, 1 Hobart Place, Canberra City, or by accessing the website www.privacy.gov.au.