

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, 25 July 1991

BIRTHS, DEATHS, AND MARRIAGES REGISTRATION BILL

Proposed Amendments

Hon. D. A. M. GRAHAM, in Committee, to move the following amendments:

Clause 2: To omit from the definitions of the terms "birth", "death", and "delivery" the words "a foetal", and substitute, in each case, the words "an intermediate foetal".

To omit the definitions of the terms "foetal death", "miscarriage", and "still-born child", and insert, in their appropriate alphabetical order, the following definitions:

"Intermediate foetal death" means the issue of a dead foetus from its mother in circumstances that constitute neither a miscarriage nor a still-birth:

"Medical" includes surgical:

"Miscarriage" means the issue from its mother, before the 20th week of pregnancy, of a dead foetus weighing less than 400g:

"Still-born child" means a dead foetus that—

(a) Weighed 500g or more when it issued from its mother; or

(b) Issued from its mother after the 23rd week of pregnancy:

To omit from the definition of the term "registration" the words "has a corresponding meaning", and substitute the words "and 'registered' have corresponding meanings".

Clause 4: To omit lines 5 and 6, and substitute the following:

4. Notice of births, still-births, and intermediate foetal deaths—(1) Within 5 working days of a delivery in New Zealand that

To insert in *subclause (3)*, before the word "foetal", the word "intermediate".

Clause 14: To omit from *subclause (4)* the words "may apply to the Family Court nearest the office of the Registrar-General to have the matter determined", and substitute the words "may, within 28 days of receiving written notice that the Registrar-General has so decided,

appeal against the decision to the Family Court nearest the Registrar-General's office".

To omit *subclause (5)*, and substitute the following subclause:

(5) On an appeal under **subsection (4)** of this section, the Family Court shall, after—

(a) Giving every person it thinks has an interest in the matter an opportunity to be heard; and

(b) Receiving any evidence it thinks fit,—

make whatever decision it thinks the Registrar-General should have made and, where necessary, direct the Registrar-General to cause to be included in or deleted from the information recorded under this Act or a former Act in respect of the birth concerned the information in dispute.

Clause 16: To omit from *subclause (1) (b) (ii)* the words "dead, of unsound mind, or unable by reason of any disability so to request", and substitute the word "unavailable".

To omit from *subclause (2)* the words "may apply to the Family Court nearest the office of the Registrar-General to have the matter determined", and substitute the words "may, within 28 days of receiving written notice that the Registrar-General has so decided, appeal against the decision to the Family Court nearest the Registrar-General's office".

To omit lines 4 and 5 on page 13, and substitute the words "make whatever decision it thinks the Registrar-General should have made and, where necessary, direct the Registrar-General to cause to be included in the information recorded under this Act or a former Act in respect of the birth concerned the information in dispute".

Clause 20: To omit *subclause (4)*, and substitute the following subclauses:

(4) Any person affected by a decision of the Registrar-General to decline to include any name or combination of names in the information recorded under this Act or a former Act relating to a birth, or to decline to direct a Registrar to do so, may, within 28 days of receiving written notice that the Registrar-General has so declined, appeal against the decision to the Family Court nearest the Registrar-General's office.

(5) On an appeal under **subsection (4)** of this section, the Family Court shall, unless satisfied that it is undesirable in the public interest for the person concerned to bear the name or combination of names concerned, direct the Registrar concerned to include it in the information recorded under this Act or a former Act in respect of the person's birth.

(6) In determining an appeal under **subclause (4)** of this section, the Family Court—

(a) Shall give every person it thinks has an interest in the matter an opportunity to be heard; and

(b) May receive any evidence it thinks fit.

(7) For the purposes of this section, it is undesirable in the public interest for a person to bear a name or combination of names if, and only if,—

(a) It might cause offence to a reasonable person; or

(b) It is unreasonably long; or

(c) Without adequate justification, it is, includes, or resembles, an official title or rank.

Clause 20A: To omit from *subclause (1)* the words "the Registrar", and substitute the words "a Registrar".

To add the following subclause:

- (3) Where—
 (a) Either—
 (i) The Registrar-General has declined to include any name or names in the information recorded under this Act relating to a birth; or
 (ii) A Registrar has declined to include any name or names in the information recorded under this Act relating to a birth, and the Registrar-General has declined to direct the Registrar to do so; and
 (b) A Family Court has not determined that the name or names whose inclusion has been declined should be included,—

the question of whether or not the person has complied with subsection (1) of this section shall be determined as if the name or names whose inclusion has been declined had not been specified.

Clause 21 (1): To omit the words “registration of the child’s birth”, and substitute the words “information relating to the birth recorded under the Act concerned”.

Clause 23: To omit the words “registration of a”, and substitute the words “information recorded under this Act or a former Act relating to”.

Clause 29: To omit clause 29, and substitute the following clauses:

29. Adult may apply for registration of sexual assignment or reassignment—(1) Any person who has attained the age of 18 years may, on payment of the prescribed fee (if any), deposit with the Registrar-General a statutory declaration declaring—

- (a) That a Family Court has issued a declaration that it is appropriate that birth certificates provided in respect of the person should contain the information that the person is a person of a particular sex; and
 (b) That the person intends to live as a person of that sex, and wishes that sex to appear on birth certificates issued in respect of the person; and
 (c) That there is included in the registration of the person’s birth—
 (i) Information that the person is a person of the opposite sex; or
 (ii) Information that the person is a person of indeterminate sex; or
 (iii) No information at all as to the person’s sex.

(2) The statutory declaration shall be accompanied by a copy of the declaration of the Family Court referred to in it.

(3) A Family Court shall not issue a declaration that it is appropriate that birth certificates provided in respect of a person should contain the information that the person is a person of a particular sex (in this subsection referred to as the nominated sex) unless the person was not at birth a person of the nominated sex; and either—

- (a) The Court is satisfied, on the basis of expert medical evidence, that—
 (i) The person has undergone all medical procedures usually regarded by medical experts as necessary to enable persons with the person’s former

physical conformation to assume the gender identity of a person of the nominated sex; and

- (ii) The person has in fact assumed the gender identity of a person of the nominated sex; or
- (b) The Court is satisfied that the person has had the person's sexual assignment or reassignment as a person of the nominated sex recorded or recognised in accordance with the laws of a State for the time being approved for the purposes of this section by the Minister of Justice by notice in the *Gazette*.

29A. Guardian of child may apply for registration of sexual assignment or reassignment—(1) A child's guardian may, on payment of the prescribed fee (if any), deposit with the Registrar-General a statutory declaration declaring—

- (a) That a Family Court has issued a declaration that it is in the child's best interests to be brought up as a member of a particular sex; and
 - (b) That the guardian intends to bring the child up as a member of that sex, and wishes that sex to appear on birth certificates issued in respect of the child; and
 - (c) Either that the child's birth is registerable under this Act but has not yet been registered, or that there is included in the registration of the child's birth—
 - (i) Information to the effect that the child is a person of the opposite sex; or
 - (ii) Information that the child is a person of indeterminate sex; or
 - (iii) No information at all as to the child's sex.
- (2) The statutory declaration shall be accompanied by—
- (a) A copy of the declaration of the Family Court referred to in it; and
 - (b) Where the child concerned has attained the age of 16 years, the child's written consent to being brought up as a member of the sex concerned.
- (3) A Family Court shall not issue a declaration that it is in the best interests of a child to be brought up as a member of a particular sex (in this subsection referred to as the nominated sex) unless—
- (a) The child was not at birth a person of the nominated sex; and
 - (b) The Court is satisfied, on the basis of expert medical evidence, that medical procedures, the child either—
 - (i) Has already undergone; or
 - (ii) If the Court issues the declaration, is likely to undergo,—
 will so modify the child's physical conformation as to enable the child to be brought up as a member of the nominated sex; and
 - (c) The Court is satisfied, on the basis of expert medical evidence, that the child's physical conformation, and gonadal and genital development, are such that it is more likely that the child will be able to assume the gender identity of a member of the nominated sex after undergoing the procedures than it is that the child will be able to assume the gender identity of a member of the opposite sex (with or without medical intervention); and

(d) The declaration specifies (with as much particularity as is possible in all the circumstances) all medical procedures (if any) the child has not yet undergone that are, in the Court's opinion (reached in the light of the expert medical evidence), reasonably necessary to enable the child's successful upbringing as a member of the nominated sex.

(4) In this section, "child" means a person who has not attained the age of 18 years or earlier married.

29B. Registrar-General may add information to registration of birth—(1) Subject to subsection (2) of this section, where there are deposited with the Registrar-General documents complying with section 29 or section 29A of this Act that relate to a person whose birth has been registered or is later registered, the Registrar-General shall include in the information relating to the birth recorded under this Act or a former Act information that the person is a person of the nominated sex concerned.

(2) The Registrar-General shall not at any time act under subsection (1) of this section if the person concerned is then lawfully married.

29c. Registrar-General may delete information where procedures not completed—If satisfied that—

- (a) Information that a person is a person of a particular sex has under section 29B of this Act been included in the information relating to the person's birth recorded under this Act or a former Act; and
- (b) The information was included after the deposit with the Registrar-General of documents complying with section 29A of this Act; and
- (c) The declaration of the Family Court included with the documents specified a medical procedure that was, in the Court's opinion, reasonably necessary to enable the person's successful upbringing as a member of that sex; and
- (d) There has been produced to the Registrar-General expert medical evidence to the effect that the person has not undergone the procedure, or another procedure having the same effect,—

the Registrar-General may delete from the information recorded the information that was included.

29D. Other powers not affected—Nothing in sections 29 to 29c of this Act limits or affects—

- (a) The power of the Registrar-General under section 74 (2) of this Act to substitute for—
 - (i) Incorrect information relating to a person's sex; or
 - (ii) Information that a person is of indeterminate sex,—
 correct information relating to the person's sex; or
- (b) The power of the Registrar-General under section 74 (3) of this Act to cause correct information relating to a person's sex to be recorded where previously no information at all as to the person's sex was recorded.

Clause 30: To omit the expression “section 29”, and substitute the words “this Part”.

Clause 43: To omit *subclause (1)*, and substitute the following subclause:

(1) Where—

(a) A person required by any of **sections 39 to 42** of this Act to notify a death has signed and given to some other person written authority to notify it; or

(b) Every person required by any of those sections to notify a death has failed or refused to do so, and the Registrar-General has authorised some other person to notify it,—

the other person may do so.

Clause 58: To omit from *subclause (1)* the words “has been recorded under **section 29(4)**”, and substitute the words “is for the time being recorded under **section 29B**”.

To omit *subclause (2)*, and substitute the following subclause:

(2) Notwithstanding **subsection (1)** of this section, a birth certificate provided in respect of a person while under **section 29B** of this Act there is included in the information relating to the person’s birth recorded under this Act or a former Act information that the person is a person of a particular sex may, by virtue of the serial number it bears, be capable of indicating that the information has been recorded.

Clause 58A: To insert, after *clause 58*, the following clause:

58A. Protection of certain witnesses, etc.—(1) This section applies to a person if the Minister of Justice,—

(a) Has received a written request from the Minister of Police to protect a new identity adopted by the person on a specified day; and

(b) Being satisfied that it is in the interests of justice that the identity should not be available by reference to a former name, has given the Registrar-General a written direction to protect the identity adopted by the person on that day; and

(c) Has not later revoked the direction.

(2) Subject to **subsection (4)** of this section, while this section applies to any person, a birth certificate provided in respect of the person by reference to the names included before the day specified in the direction under **subsection (1)(b)** of this section in the information relating to the person’s birth recorded under this Act or a former Act—

(a) Shall contain the information that such a certificate would contain if the names for the person included in that information before that day were the only names for the person ever included in the information; and

(b) Shall contain no other information.

(3) Subject to **subsection (4)** of this section, while this section applies to any person, a birth certificate provided in respect of the person by reference to names included on or after the day specified in the direction under **subsection (1)(b)** of this section in the information relating to the person’s birth recorded under this Act or a former Act—

(a) Shall not contain any information relating to the adoption of the names constituting the identity to protect

which the direction was given, or the abandonment of the names used before that adoption; but

- (b) Shall otherwise contain all the information that such a certificate would contain if this section did not apply to the person.

(4) While this section applies to any person, any birth certificate provided in respect of the person shall contain all the information that such a certificate would contain if this section did not apply to the person, if the Registrar-General is satisfied—

- (a) That the person has requested the certificate; or
 (b) That some other person has requested the certificate, and the person has given the Registrar-General written consent to the issue of a full birth certificate to the other person; or
 (c) That the person is dead; or
 (d) That 100 years has passed since the person's birth.

Clause 60 (3): To omit the expression "58 (c), and 59 (1) (b)", and substitute the expression "58 (c), 58A (2) (b), 58A (3) (b), and 59 (1) (b)".

New clause 60A: To insert, after *clause 60*, the following clause:

60A. Surnames on certain birth certificates—Section 60 of this Act shall have effect in relation to births registered under a former Act before the 1st day of January 1972—

- (a) In the case of a birth in respect of which there was recorded the information that the parents of the person concerned were married to each other, as if there had been recorded the information that the person had the surname of the person's father; and
 (b) In every other case, as if there had been recorded the information that the person had the surname of the person's mother.

New clause 63A: To insert, after *clause 63*, the following clause:

63A. Fees for certificates—No birth certificate, death certificate, or marriage certificate shall be provided to any person unless the prescribed fee has been paid.

Clause 64: To omit the words "sections 66 to 68", and substitute the words "sections 66 to 68A".

Clause 65: To omit lines 37 and 38 on page 38, and substitute the following:

65. Registrar-General's indexes—The Registrar-General shall

To omit line 8 on page 39, and substitute the following:

- (2) Upon request and

Clause 66: To omit from *subclause (1)* the word "No", and substitute the words "Except when acting under section 65 (2) of this Act, no".

To insert in *subclause (2) (a)*, after the word "undertaking", the words "the gathering of statistics, or".

To add the following subclause:

(3) If satisfied that a search is desirable to verify (for the purposes of section 67 (3) (d) of this Act) the death of any person,—

- (a) A Registrar may, on payment of the prescribed fee, cause it to be made in respect of that person's status as the

adoptive or natural parent of a named adopted person; but

- (b) The Registrar shall not permit the inspection of any document relating to the person, or provide a print-out of any information or copy of any document, except in accordance with subsection (1) of this section.

Clause 67 (3) (d): To insert, before the word “had”, the word “as”.

Clause 68: To omit from *subclause (4)* the expression “section 29”, wherever it occurs, and substitute, in each case, the expression “Part V”.

To insert in *subclause (6)*, before *paragraph (a)*, the following paragraph:

- (aa) That the person is the person to whom the information relates; or

New clause 68A: To insert, after *clause 68*, the following clause:

68A. Restrictions on searches relating to new names of certain witnesses, etc.—(1) While section 58A of this Act applies to a person, no person other than the Registrar-General shall permit any person to inspect, or obtain a copy or print-out of any information contained in, any document relating to the acquisition of the new identity the Registrar-General has been directed to protect.

(2) The Registrar-General may permit a person (in this subsection referred to as the applicant) to inspect, or obtain a copy of or print-out of any information contained in, the document if satisfied that the person to whom it relates—

- (a) Is the applicant; or
 (b) Has given the Registrar-General written consent to the applicant’s inspecting it; or
 (c) Is dead; or
 (d) Was born more than 100 years ago.

(3) Except as provided in subsection (2) of this section, the Registrar-General shall not permit any person to inspect, or obtain a copy of or print-out of any information contained in, the document, except on the order of a Family Court, a District Court, or the High Court, made—

- (a) For the purposes of a prosecution for making a false statement; or
 (b) In the event of any question as to the validity of a marriage; or
 (c) On any other special ground.

(4) Notwithstanding anything in this section, the Registrar-General may, with the written approval of the Commissioner of Police, notify any Government agency that has an interest in ensuring that people do not have more than one identity of—

- (a) The fact that the Minister of Justice has given a direction under this section to protect an identity adopted by any person; and
 (b) The person’s former and new name.

Clause 76: To omit *clause 76*.

Clause 82: To omit lines 20 and 21, and substitute the following:

Registrar-General to do so, the Registrar may—

- (a) Dispense with the payment of all or any part of any fee payable under this Act; or
 (b) Refund all or any part of any fee paid under this Act.

First Schedule: To omit from the item relating to the Adult Adoption Information Act 1985 the word “removed”, where it secondly occurs, and substitute the word “omitted”.

To insert the following item:

1969, No. 18—The Status of Children Act 1969 (R.S. Vol. 4, p. 893)	By omitting from section 8 (1) (a) (as substituted by section 2 (1) of the Status of Children Amendment Act 1990) the words “and Deaths Registration Act 1951 or the corresponding provision of any former enactment”, and substituting the words “, Deaths, and Marriages Registration Act 1991 or the corresponding provision of any former enactment (within the meaning of that Act)”. By repealing section 9 (4), and substituting the following subsection: “(4) For the purposes of this section, “Registrar-General” has the same meaning as in section 2 of the Births, Deaths, and Marriages Registration Act 1991.”
1985, No. 127—The Adult Adoption Information Act 1985	By omitting from section 11 (4) the words “section 21 (7) of the Births and Deaths Registration Act 1951”, and substituting the words “section 57 of the Births, Deaths, and Marriages Registration Act 1991”.

Second Schedule: To insert, after the item relating to the Births and Deaths Registration Amendment Act 1976, the following item:

1977, No. 61—The Citizenship Act 1977: Section 28 (j).

EXPLANATORY NOTE

The amendments relating to the definitions in *clause 2* of the terms “intermediate foetal death”, “miscarriage”, and “still-born child” are designed to reflect current medical thinking; and the amendments to *clause 4* are consequential. The other amendments to *clause 2* are minor drafting adjustments.

The amendments to *clauses 14 and 16* are drafting amendments.

The amendments to *clause 20* have 2 effects. They specify the only grounds on which a Registrar may decline to register a name (offensiveness, unreasonable length, and use of a name that is, includes, or resembles an official title or rank), and require any appeal against a Registrar’s declining to register a name to be made within 28 days of receiving notice that registration has been declined.

The main amendment to *clause 20A* makes it clear that where a person registering the birth of a child specifies a name that a Registrar declines to register, the person still has an obligation to specify an acceptable name for the child. In addition, a minor drafting error is corrected.

The amendments to *clauses 21 and 23* correct a minor drafting anomaly.

The proposed *new sections 29 to 29D* arise out of the fact that *Part V* of the Bill as introduced related only to adult transsexuals, and adults whose physical conformation at birth was sexually ambiguous. No provision was made to help parents of a child whose physical conformation is ambiguous, deficient, or marred to follow expert medical advice and bring the child up as a member of a sex to which it did not belong at birth. The effect of the new clauses is to enable the parents of such a child to ask the Registrar-General to ensure that birth certificates for the child show the sex of upbringing. The Registrar-General will not do so unless a Family Court has declared that it is in the child’s best interests to be brought up as a member of that sex; and the Family Court will not make such a declaration unless satisfied (on expert medical advice) that it is more likely that the child will be able to assume the gender identity of a member of that sex after undergoing the appropriate medical procedures than it is that the child will be able to assume the gender identity of a member of the opposite sex (with or without medical intervention). *Clause 29* is amended so as to have an equivalent effect. The amendment to *clause 30* is consequential.

The amendment to *clause 43* enables the Registrar-General to authorise a particular person to notify a death if the person or people required by the Bill to notify it have failed or refused to do so.

The amendments to *clause 58* are consequential on the amendments to *Part V*.

Proposed *new clause 58A* relates to the issue of birth certificates in circumstances where the Minister of Police and Minister of Justice are agreed that it is in the interests of justice that a person's new identity should be protected. The clause provides for birth certificates requested by reference to the person's former name to contain no information about the person's new name, and certificates requested by reference to the person's new name to contain no information about the person's change of name.

Proposed *new clause 60A* deals with the consequences of the fact that before 1972 parents were not required to designate a surname for a child when registering its birth. As a consequence, a full birth certificate issued under existing legislation for a person whose birth was registered before 1972 (which includes the names of the person's parents) does not show any surname for the person; and a short birth certificate for such a person shows (without any obvious statutory authority) a surname arrived at by applying the old common law presumption that legitimate children took their father's surname, and illegitimate children took their mother's. In its present form, the Bill has the effect that all forms of birth certificate for a person whose birth was registered after 1971 will show the surname designated when the birth was registered. The new clause provides that birth certificates for a person whose birth was registered before 1972 will show the father's surname if the information recorded when the birth was registered includes the information that the parents were married, and will show the mother's surname if it does not.

Proposed *new clause 63A* makes clear that birth, death, and marriage certificates will not be provided unless the appropriate fee is paid.

The amendments to *clauses 64 and 65* are drafting amendments.

The amendments to *clause 66* make 2 exceptions to the general rule that searches, inspections, and the provision of print-outs and copies of information, must occur only in respect of named persons. First, the provision of print-outs and copies of information derived from the Registrar-General's indexes is allowed. Secondly, where a search is undertaken for the purpose of finding out if an adoptive person and the person's adoptive and birth parents are all dead (and so enabling a search of information relating to the adoption), the searches in respect of the adoptive and birth parents may be made by reference to their relationship with the adopted person rather than by reference to their names (which the applicant will probably not know).

The amendment to *clause 67* corrects a drafting error.

The first amendment to *clause 68* is consequential on the amendments to *Part V*. The second allows a person to inspect certain information (relating to sexual assignment or reassignment, or the recording of information relating to a person's sex) if the information relates to that person.

Proposed *new clause 68A* restricts searches of documents relating to the adoption of identities protected under proposed *new clause 58A*.

The omission of *clause 76* enables the matter of the application of the Archives Act 1957 to birth, death, and marriage information to be governed entirely by that Act.

The amendment to *clause 82* empowers Registrars to give refunds of fees paid.

The amendments to the Schedules are minor drafting adjustments.