

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**CIVIL REGISTRATION AND  
IDENTIFICATION BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Home Affairs, Immigration, Safety and Security)*

**[B. 3 - 2023]**

## BILL

**To provide for compilation and maintenance of a Civil Register; to provide for appointment of Registrar-General and Registrars; to determine age of certain persons recorded in the Civil Register in accordance with this Act; to provide for name changes and other alterations to the Civil Register; to provide for the issue of identity documents to certain persons listed in the Civil Register; to provide for an Appeals Tribunal and incidental matters.**

*(Introduced by the Minister of Home Affairs, Immigration, Safety and Security)*

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**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1  
DEFINITIONS AND OBJECTS OF ACT

**Definitions**

1. In this Act, unless the context indicates otherwise -

“approved health facility” means a health facility which has been approved by the Minister for submission of e-notices in terms of section 80;

“alteration” includes insertion, deletion, cancellation, addition or correction;

“Appeals Tribunal” means a tribunal established by the Minister in terms of section 76;

“asylum-seeker” means a person who has applied for refugee status in terms of section 13(1) of the Namibia Refugees (Recognition and Control) Act, 1999 (Act No. 2 of 1999) or a person who has been in Namibia for less than 30 days and is intending to apply for refugee status in terms of that section;

“birth” means the birth of a child who, after the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy, breathes or shows other evidence of life, including beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;

“birth record” means the information relating to the birth of a specific person which is part of that person’s personal profile;

“Birth Register” means the portion of the Civil Register where information about births is recorded;

“body” means the human remains of a deceased person;

“burial” refers to placing a body in a grave or tomb, cremating a body or any other manner of disposal of a body;

“burial order” means an order given under section 9 or section 33, authorising the burial of a body or the removal of a body;

“capture” means the making of an entry in a manual system or computer system maintained by the Ministry for recording information relating to civil events;

“Child Care and Protection Act” means the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

“civil event” means a birth, stillbirth, adoption, marriage, divorce, death or name change;

“civil event certificate” means an excerpt from the Civil Register in respect of the registration of a birth, stillbirth, adoption, marriage, divorce, death or name change;

“Civil Register” means the Civil Register referred to in section 5;

“civil registration point” means an office managed by the Ministry where civil events are registered and civil event certificates and identity documents are issued;

“commissioner of oaths” means a person appointed as a commissioner of oaths under the provisions of the Justices of the Peace and Commissioners of Oaths Act or a person who is considered to be a commissioner of oaths for the purposes of this Act in terms of section 3(5);

“Committee” means the Age Determination Committee established in terms of section 4;

“days” means weekdays, excluding public holidays, Saturdays and Sundays;

“death” does not include a stillbirth;

“death record” means the information relating to the death of a specific person which is part of that person’s personal profile;

“Death Register” means the portion of the Civil Register where information about deaths is recorded;

“divorce” includes an annulment of marriage, a court declaration that a marriage is void from the beginning and a determination made in terms of section 45 that a marriage is void from the beginning;

“Director of Legal Aid” means the Director of Legal Aid as defined in section 1 of the Legal Aid Act;

“e-notice” means an electronic notice of a certain civil event provided to the Ministry by means of an electronic registration system established by the Ministry for this purpose;

“Executive Director” means the Executive Director of the Ministry;

“family member” means a person who is a spouse, child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law;

“foster parent” means a person who has foster care of the child in terms of an order of the children’s court as contemplated in the Child Care and Protection Act;

“health facility” means a hospital or health facility as defined in section 1 of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994);

“hospital mortuary” means a building, structure or place used by a hospital for purposes of receiving and keeping bodies for hygienic storage or examination prior to their release for burial;

“Identification Act” means the Identification Act, 1996 (Act No. 21 of 1996);

“identity document” means an identity document issued in terms of section 49;

“identity number” means an identity number assigned in terms of section 49(4);

“Identity Register” means the portion of the Civil Register where information about identification documents is recorded;

“infant” means a child under the age of one year;

“informant” means a person who gives information for the registration of a civil event;

“Inquests Act” means the Inquests Act, 1993 (Act No. 6 of 1993);

“Justices of the Peace and Commissioners of Oaths Act” means the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

“Legal Aid Act” means the Legal Aid Act, 1990 (Act No. 29 of 1990);

“local authority area” means the local authority area defined in section 1 of the Local Authority Act, 1992 (Act No. 23 of 1992);

“marriage” means a union between two persons concluded or recognised in terms of the laws governing civil marriages in Namibia;

“marriage record” means information relating to the marriage or divorce of a specific person, which information is part of that person’s personal profile;

“Marriage Register” means the portion of the Civil Register where information about marriages and divorces is recorded;

“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004);

“member of the police” means a member as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

“minimum age” means the age of 14;

“Minister” means the Minister responsible for civil registration and the identification of persons;

“Ministry” means the Ministry responsible for civil registration and the identification of persons;

“name change” means the change of one or more first names, or a surname, or both the first names or surname in terms of this Act;

“Namibian Citizenship Act” means the Namibian Citizenship Act, 1990 (Act No. 14 of 1990);

“Namibian foreign mission” means a Namibian diplomatic mission, if there is one, or in default of that, any Namibian consular mission or office of a trade representative of the Government of Namibia or such other mission, office or place as may be prescribed;

“Nursing Act” means the Nursing Act, 2004 (Act No. 8 of 2004);

“official copy” means a copy of a civil event certificate issued for information purposes only and -

- (a) which is marked “for information purposes only”; and
- (b) contains some security features to verify its authenticity as a true and correct copy of an excerpt from the Civil Register;

“organ of state” means -

- (a) any office, ministry or agency of State or administration in the local or regional sphere of government; or
- (b) any other functionary or institution -
  - (i) exercising a power or performing a function in terms of the Namibian Constitution; or
  - (ii) exercising a public power or performing a public function in terms of any law,

but does not include a court or a judicial officer;

“parent”, in relation to a child, means a person in respect of whom parentage has been acknowledged or otherwise established in terms of a law of Namibia, and includes the adoptive parent of a child, but excludes any person who is biologically related to a child by reason only of being a gamete donor;

“parentage” means paternity or maternity;

“permanent resident” means a person who holds a permanent residence permit issued under section 26 of the Immigration Control Act, 1993 (Act No. 7 of 1993);

“personal profile” means the information in the Civil Register relating to the civil events relating to a specific person, and which is linked to source documents kept on file by the Ministry as evidence of that information;

“place of birth”, in respect of a birth that takes place in Namibia, means the local authority area where a person was born, or, if the birth took place outside the boundaries of a local authority area, the settlement area in the case of a birth which took place in a settlement area and if the birth did not take place in a local authority area or settlement area, the name of the constituency and place at which the birth took place and for purposes of this definition, “settlement area” means a settlement area is defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“police mortuary” means a building, structure or place used by the Namibian Police for receiving and keeping bodies for hygienic storage or examination prior to their release for burial;

“prescribed” means prescribed by regulation;

“proof of registration” means a proof of registration issued in respect of an identity document in terms of section 50;

“protected person” means a protected person as defined in section 1 of the Namibia Refugees (Recognition and Control) Act, 1999 (Act No. 2 of 1999);

“recognised scientific test” means a scientific test carried out by a laboratory approved by the Minister and made known by notice in the *Gazette* in terms of section 80;



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“refugee” means a person who has been granted refugee status in terms of the Namibia Refugees (Recognition and Control) Act, 1999 (Act No. 2 of 1999);

“registered nurse” means a registered nurse as defined in section 1 of the Nursing Act;

“registered midwife” means a registered midwife as defined in section 1 of the Nursing Act;

“registrar” means a person who is designated by the Minister as a registrar in terms of section 3;

“Registrar-General” means a person who is designated by the Minister as the Registrar-General in terms of section 3;

“regulation” means a regulation under this Act;

“social worker” means a social worker registered or deemed to be registered as a social worker in terms of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);

“stillbirth” means the death of a human foetus prior to its complete expulsion or extraction from its mother, as indicated by the fact that -

- (a) after such expulsion or extraction the foetus does not breathe or show any evidence of life, including beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles; and
- (b) the foetus weighs more than 1000 grams or has an apparent gestational age of more than 28 weeks,

and “stillborn” has a corresponding meaning;

“sworn” means sworn under oath or attested to by affirmation before a commissioner of oaths;

“this Act” includes the regulations made and notices issued under it; and

“traditional leader” means a traditional leader as defined in section 1 of the Traditional Authority Act, 2000 (Act No. 25 of 2000).

## **Objects of Act**

2. The objects of this Act are to -
  - (a) provide for a national civil registration system for the notification, registration and certification of births, stillbirths, adoptions, deaths, name changes, marriages and divorces and for the issuing of identity documents;
  - (b) provide for the keeping of registers for recording and preserving information relating to civil events;
  - (c) regulate the issuing of civil event certificates;
  - (d) provide for a system of e-notices relating to certain civil events; and

- (e) provide for access to, authentication, verification and sharing of information contained in the Civil Register or other information kept by the Ministry.

PART 2  
REGISTRAR-GENERAL, REGISTRARS AND  
AGE DETERMINATION COMMITTEE

**Registrar-General and registrars**

3. (1) The Minister must, subject to the Public Service Act, 1995 (Act No. 13 of 1995), designate -

- (a) a staff member in the public service as the Registrar-General to exercise powers conferred on and perform functions assigned to the Registrar-General under this Act or any other law;
- (b) a staff member in the public service as the Acting Registrar-General to exercise powers conferred on and perform functions assigned to the Registrar-General during the temporary absence or incapacity of the Registrar-General; and
- (c) staff members in the public service as registrars to exercise powers conferred on and perform functions assigned to the registrar under this Act or any other law.

(2) The Minister must assign a registrar to every civil registration point.

(3) At the time of the designation of a staff member in terms of subsection (1), the Executive Director must sign and issue to that staff member a certificate stating that the staff member has been so designated.

(4) A staff member to whom a certificate is issued in terms of subsection (3) must on request show the certificate to a person in respect of whom he or she may seek to exercise any power or perform any function under this Act.

(5) Despite the provisions of the Justices of the Peace and Commissioners of Oaths Act, the Registrar-General, Acting Registrar-General and every registrar designated under this section are regarded to be commissioners of oaths for the purpose of exercising powers conferred on and performing functions assigned to them under this Act.

**Age Determination Committee**

4. (1) The Registrar-General must appoint a minimum of three and a maximum of five staff members of the Ministry as an Age Determination Committee to exercise the powers conferred on and perform the functions assigned to that Committee under this Act.

(2) The Registrar-General may -

- (a) change the membership of the Committee; or

(b) establish multiple Age Determination Committees which act concurrently.

(3) The Committee must choose one of its members to preside at meetings of the Committee and may make its own arrangements for procedure and for the recording of its recommendations or decisions.

(4) The Committee must record in writing any recommendation or decision it makes under this Act with the reasons for the recommendation or decision, accompanied by a list of the membership of that Committee at the time of the recommendation or decision.

### PART 3 CIVIL REGISTER

#### **Civil Register**

**5.** (1) The Minister must compile and maintain a Civil Register for Namibia consisting of -

- (a) the Birth Register, which contains details of all births, stillbirths, adoptions and name changes that take place in Namibia and related civil events required to be registered under this Act or any other law;
  - (b) the Marriage Register, which contains details of all marriages and divorces concluded in Namibia and any other marriages and divorces required to be registered under this Act or any other law;
  - (c) the Death Register, which contains details of all deaths that take place in Namibia and any other deaths required to be registered under this Act or any other law; and
  - (d) the Identity Register, which contains details of persons to whom identification documents are issued under this Act.
- (2) The Civil Register must contain particulars of -
- (a) all Namibian citizens;
  - (b) all permanent residents of Namibia;
  - (c) all persons who hold permits or other legal authority authorising them to be present in Namibia for longer than 12 months, including persons who hold multiple permits or other legal authorities which cumulatively have the effect of authorising those persons to be present in Namibia for longer than 12 months;
  - (d) all refugees;
  - (e) all persons born in Namibia, irrespective of citizenship, including persons born to asylum-seekers, protected persons, undocumented persons and stateless persons;

- (f) any civil event that takes place in Namibia, irrespective of the citizenship of the persons involved; and
- (g) any other categories of persons prescribed by the Minister, which may include asylum-seekers, protected persons, undocumented persons and stateless persons.

(3) The particulars required for the compilation and maintenance of the Civil Register must be based on -

- (a) documentary evidence provided to the satisfaction of a registrar or the Registrar-General; or
- (b) in the absence of documentary evidence, other evidence that the Registrar-General considers acceptable.

#### **Particulars to be recorded in Civil Register**

6. The Registrar-General must capture in the Civil Register particulars in respect of every person whose name is included in the Civil Register including -

- (a) the unique identifier assigned to every person who has a personal profile in the Civil Register under section 7;
- (b) particulars required to be provided in an e-notice of birth and an application for registration of birth submitted under this Act;
- (c) particulars required to be provided in an e-notice of death and in an application for registration of death submitted under this Act;
- (d) details contained in a court order in respect of an adoption or rescission of an adoption;
- (e) if the person is a Namibian citizen other than by birth or descent, the date on which the person obtained Namibian citizenship by marriage in terms of Article 4(3) of the Namibian Constitution, citizenship by registration in terms of Article 4(4) of the Namibian Constitution or any other law or citizenship by naturalisation in terms of Article 4(5) of the Namibian Constitution, and the particulars of that citizenship;
- (f) if the person is the holder of a permanent residence permit or a permit or other legal authority to be present in Namibia for any period longer than 12 months, including persons who hold multiple permits or other legal authorities which cumulatively authorise those persons to be present in Namibia for longer than 12 months -
  - (i) the date on which the person obtained permanent residence or acquired the first relevant permit or legal authority and the relevant particulars;
  - (ii) if applicable, the date on which the person loses permanent residence or the date on which the relevant permit or legal authority is cancelled or withdrawn, and the relevant particulars, and

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- (iii) particulars of any additional permits or legal authorities issued in respect of that person;
  - (g) if the person is a refugee, the date on which the person acquired refugee status, his or her country of origin and, if applicable, the date on which the person loses refugee status;
  - (h) the particulars of the person's marriage as contained in the register of marriages maintained by the marriage officer or any other document relating to the concluding of the person's marriage and -
    - (i) other particulars concerning the person's marital status and matrimonial property regime as may be provided or are otherwise available;
    - (ii) if applicable, the details of any related divorce; and
    - (iii) any finding in terms of Namibian law that the marriage was or was not in good faith;
  - (i) if an identity document has been approved by the Registrar-General under section 49 for that person -
    - (i) a photograph of the person;
    - (ii) the person's fingerprints or other biometrics as may be prescribed; and
    - (iii) the person's identity number;
  - (j) after the person's death -
    - (i) the information required to be provided in respect of the death and burial under this Act;
    - (ii) the information from any medical certificate of death provided in respect of that person; and
    - (iii) the details of the findings of any inquest conducted in respect of that person;
  - (k) if the person has a personal profile in the Civil Register and if applicable, the date of the person's permanent departure from Namibia;
  - (l) information concerning any cancellation of the person's identity document under this Act;
  - (m) information on any name changes, sex changes or other alterations to the Civil Register made under this Act;
  - (n) the invalidation of a civil event record under this Act; and
  - (o) such other information as the Minister may prescribe to be recorded in the Civil Register.

**Assignment of unique identifier**

7. The Registrar-General must assign a unique identifying number to every person whose birth is registered in Namibia, and in the case of any other person, at the time of the creation of a personal profile for that person in the Civil Register.

PART 4  
NOTIFICATION AND REGISTRATION OF BIRTHS

**Submission of e-notice of birth**

8. (1) The birth of every infant that takes place in Namibia must be notified in accordance with this section.

(2) Stillbirths that take place in Namibia must be notified and registered in accordance with section 9.

(3) If an infant is born in an approved health facility, a person holding a position approved by the Minister for the purpose of submission of e-notices in terms of section 80 -

- (a) must submit an e-notice of birth within 24 hours of the birth; or
- (b) if an e-notice is not possible, must make a manual notification in the prescribed manner at the nearest civil registration point within three days of the birth.

(4) If a manual notification is made in terms subsection (3)(b), the registrar of the civil registration point at which the notification is made must submit the relevant e-notice of birth within 24 hours of receiving the manual notification.

(5) If an infant is not born in a health facility but the mother of the infant, within seven days of birth of the infant, presents herself and the infant at an approved health facility, a person holding a position approved by the Minister for the submission of e-notices of birth in terms of section 80 must submit the e-notice of birth within seven days after the date of the mother having presented herself and the infant, if there is sufficient medical proof that the mother gave birth to the child so presented.

(6) An e-notice of the birth submitted in terms of subsection (3), (4) or (5) is subject to any prescribed procedures for supervision of such e-notices to ensure that the information submitted is correct.

(7) If a woman gives birth to more than one child during a single confinement, an e-notice of birth referred to in subsection (3), (4) or (5) must be given separately for each child.

(8) The absence of an e-notice of birth in terms of subsection (3), (4) or (5) does not prohibit registration of a person's birth if the registrar is satisfied that -

- (a) there is sufficient information for the issue of a birth certificate; or
- (b) section 18, in relation to abandoned children, applies.

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(9) An error or omission in an e-notice of birth submitted in terms of subsection (3), (4) or (5) may be corrected by -

- (a) the person who made the e-notice; or
- (b) another person who holds an equivalent or higher position than the person who made the e-notice, if that equivalent or higher position has been approved by the Minister for the submission of e-notices of birth in terms of section 80.

### **E-notice and certificate of stillbirth**

**9.** (1) If a stillbirth took place in an approved health facility, a person holding a position approved by the Minister for the submission of e-notices of stillbirth in terms of section 80 -

- (a) must submit an e-notice of stillbirth within 24 hours of the stillbirth; or
- (b) if e-notice is not possible, must make a manual notification in the prescribed manner at the nearest civil registration point within three days of the stillbirth.

(2) If a manual notification is made in terms subsection (1)(b), the registrar of the civil registration point at which the notification is made must submit the relevant e-notice of birth within 24 hours of receiving the manual notification.

(3) If the stillbirth did not take place in a health facility but the mother in question, within three days of the stillbirth, reports the stillbirth to an approved health facility, a person holding a position approved by the Minister for submission of e-notices of stillbirths in terms of section 80 must submit the e-notice of stillbirth within any period up to three days after the mother has presented herself if there is sufficient medical proof that a stillbirth took place.

(4) An e-notice of the stillbirth submitted in terms of subsection (1), (2) or (3) is subject to any prescribed procedures for supervision of such e-notices to ensure that the information submitted is correct.

(5) The Registrar-General, on receiving the e-notice contemplated in subsection (1), (2) or (3), must -

- (a) capture the relevant particulars contained in that e-notice or report in the Civil Register under a heading allocated for the registration of stillbirths;
- (b) issue a certificate of stillbirth in the prescribed form to a parent of the stillborn foetus; and
- (c) on the request of a parent, issue a burial order in the prescribed form in respect of the stillborn foetus.

(6) Despite anything contained in this section, the Registrar-General may issue a burial order for any foetus at the request of the parent of that foetus, regardless of whether the requirements for classifying the event as a stillbirth instead of a miscarriage are satisfied.

(7) If the Registrar-General is not satisfied that a foetus was stillborn but based on the available information is satisfied that a live birth followed by a death took place, the birth and death of the infant in question must be registered as prescribed under this Act.

#### **Application for registration of birth of infant**

**10.** (1) The persons listed in subsection (2) must apply for the registration of the birth of an infant that takes place in Namibia in accordance with this section.

(2) An application for the registration of a birth that takes place in Namibia must be made in person and be submitted in the prescribed form at any civil registration point as soon as practicable but within 60 days after the birth, together with other information or documentation as may be prescribed -

- (a) by both parents of the infant jointly;
- (b) by either parent of the infant in the event that one parent is deceased, unknown or for any other reason does not or is unable to participate in the registration of birth, irrespective of whether the parents are married or not; or
- (c) in the event that both parents are deceased, unknown or for any other reason do not or are unable to participate in the registration of birth, by any person having lawful physical custody or care of the infant or by a social worker, but a staff member of the Ministry designated by the Registrar-General for this purpose may conduct an investigation to verify the -
  - (i) lawful physical custody of the infant;
  - (ii) unavailability, inability or unwillingness of the parents of the infant to participate in the registration of birth; or
  - (iii) factual information regarding the infant's birth.

(3) If the joint application for registration of birth in terms of subsection (2)(a) has been signed by both parents it is permissible for one parent to submit the application in person together with -

- (a) proof of identification of the absent parent; and
- (b) proof of parentage of the absent parent as contemplated in section 13(2).

(4) If an informant other than the parent or parents of an infant submits an application for registration of birth in terms of subsection (2) and that application is signed by either or both parents of the infant, the registrar must, on receipt of that application refer the matter to the Registrar-General for decision in terms of subsection (5).

(5) The Registrar-General may, on good cause shown, accept an application referred to in subsection (4) if the application is accompanied by a sworn statement or other proof confirming parentage as contemplated in section 13(2).



(6) If the Registrar-General is in possession of an e-notice of birth contemplated in section 8 and ascertains that the birth of the infant who is the subject of such notice has remained unregistered beyond the time limit referred to in subsection (2), the Registrar-General -

- (a) must contact either parent or both parents of the infant by any means and call upon either parent or both parents to attend at any civil registration point in person for submission of an application for registration of birth, or
- (b) if the efforts to secure registration of birth by the means in paragraph (a) are not feasible or successful, must take reasonable steps to gather the relevant information about the infant's birth and proceed to register the birth of his or her own accord on the strength of the information supplied in the e-notice of birth and the other evidence gathered.

(7) Despite anything to the contrary contained in any other law or the common law, a parent who is a minor is permitted to apply for registration of the birth of an infant born to the minor without the assistance of a parent or guardian.

(8) The Minister may prescribe other information required for registration of a birth under this section.

(9) If an application for registration of birth is made after the 60 day period referred to in subsection (2), but within 12 months after the birth of the child, the Registrar-General may on good cause shown accept the application, subject to such requirements as may be prescribed.

#### **Application for late registration of birth of child**

**11.** (1) Late registration of birth applies to the registration of the birth of a child after 12 months has passed since the child's birth but before the child in question has reached the minimum age.

(2) An application for the late registration of birth must be made in person and be submitted in the prescribed form at the civil registration point nearest to the place of residence of the person to be registered -

- (a) by both parents of the child whose birth is to be registered;
- (b) by either parent of the child in the event that one parent is deceased, unknown or for any other reason does not or is unable to participate in the late registration of birth; or
- (c) in the event that both parents of the child are deceased, unknown or for any other reason do not or are unable to participate in the registration of birth of the child, by any person having lawful physical custody or care of the child or by a social worker, but a staff member of the Ministry may conduct any reasonable investigation to verify the -
  - (i) lawful physical custody of the child;
  - (ii) unavailability, inability or unwillingness of the parents of the child to participate in the registration of birth; or

(iii) factual information regarding the child's birth.

(3) An application in terms of subsection (2) must be accompanied by -

- (a) a sworn statement specifying the reasons for the late registration of birth; and
- (b) sufficient information and documentation to establish the facts pertaining to the birth.

(4) The Minister may prescribe other information required for registration of a birth under this section.

(5) Registrations of birth in terms of this section may be captured only by registrars approved by the Registrar-General, and such approvals may be based on the age of the person whose birth is being registered.

### **Application for registration of birth of mature person**

**12.** (1) For the purposes of this section, a "mature person" refers to a person who has reached or exceeded the minimum age.

(2) An application for the registration of the birth of a mature person whose birth has not been previously registered must be made in person and be submitted in the prescribed form at the civil registration point nearest to the place of residence of the person to be registered -

- (a) by the person whose birth is to be registered; or
- (b) in the event that the person is for some reason unable to apply in person, by -
  - (i) the parent or parents of that person;
  - (ii) any other informant who is in a position to provide the required information; or
  - (iii) any other prescribed category of persons.

(3) An application in terms of subsection (2) must be accompanied by -

- (a) a sworn statement setting out the reasons why the birth was not previously registered; and
- (b) sufficient information and documentation to establish the facts pertaining to the birth.

(4) The Minister may prescribe other information required for registration of a birth in terms of this section.

(5) Registrations of birth in terms of this section may be captured only by registrars approved by the Registrar-General, and such approvals may be based on the age of the person whose birth is being registered.

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### Particulars relating to parentage and age

**13.** (1) This section applies to any application for registration of birth under section 10, 11 or 12.

(2) If a parent of a person for any reason does not participate in the application for registration of such person's birth, the Registrar-General may capture the required particulars of the absent parent in the birth record of the Ministry on the request of a participating parent or another informant, on being provided with sufficient proof of such absent parent's parentage which may include -

- (a) an undisputed sworn statement from the absent parent confirming parentage and -
  - (i) a certified copy, made not more than three months previously, of the identity document of the absent parent or other sufficient proof of identification of the absent parent; or
  - (ii) verification from a staff member of the Ministry that the absent parent has appeared at any civil registration office in person to confirm his or her identification and parentage;
- (b) the result of a recognised scientific test confirming parentage carried out by a laboratory approved by the Minister for the purpose of carrying out scientific tests and issuing test results establishing parentage in terms of section 80, the reliability of which has not been challenged;
- (c) a court order confirming parentage in terms of any other law;
- (d) a court order premised on parentage including but not limited to an order concerning such parent's rights and obligations regarding access, custody, guardianship or payment of maintenance in respect of the person whose birth is to be registered, if such court order is not the subject of a pending appeal;
- (e) a marriage certificate in respect of a marriage which was existing at the time of the conception or birth of the person, or at any time between, containing details of an absent parent, and -
  - (i) a certified copy made not more than three months previously of the identity document of the absent parent or other sufficient proof of identification of the absent parent; or
  - (ii) verification from a staff member of the Ministry that the absent parent has appeared at any civil registration point in person to confirm his or her identification and parentage; or
- (f) in the event of an absent parent being the mother of the person whose birth is being registered, an e-notice of birth, a medical record or a sworn statement by a medical practitioner, a registered nurse or a registered midwife confirming that the mother gave birth to the person in question.

(3) If one or both parents of a person whose birth is to be registered have died prior to the registration of the birth, the Registrar-General may capture the required particulars of the deceased parent or parents in the Birth Register on the request of a surviving parent or another informant, if no other person is listed in the Birth Register in the place of the deceased, on being provided sufficient proof of the deceased's parentage which may include -

- (a) an undisputed sworn statement made by the deceased prior to the date of death confirming parentage;
- (b) the result of a recognised scientific test confirming parentage carried out by a laboratory approved by the Minister for the purpose of carrying out scientific tests and issuing test results establishing parentage in terms of section 80, the reliability of which has not been challenged;
- (c) a court order confirming parentage in terms of section 93 of the Child Care and Protection Act or any other law;
- (d) a court order premised on parentage including but not limited to an order concerning that parent's rights and obligations regarding access, custody, guardianship or payment of maintenance in respect of the person whose birth is to be registered, if such court order is not the subject of a pending appeal; or
- (e) in the event of the deceased parent being the mother of the person whose birth is being registered, an e-notice of birth, a medical record or a sworn statement by a medical practitioner, a registered nurse or a registered midwife identifying such parent as the parent who gave birth to the person in question.

(4) The Registrar-General, registrar or a staff member of the Ministry may request but not compel a parent or other informant who applies for the registration of a birth to give information about the identity of a parent of the child.

(5) The Registrar-General, if uncertain as to whether parentage in any particular matter has been established, may -

- (a) request the informant to approach a children's court for a decision regarding parentage;
- (b) request the informant to approach the High Court for a decision regarding parentage;
- (c) request the informant to provide the result of a recognised scientific test confirming parentage carried out by a laboratory approved by the Minister for the purpose of carrying out scientific tests and issuing test results establishing parentage in terms of section 80, the reliability of which has not been challenged; or
- (d) if the validity of the result of a recognised scientific test confirming parentage is in doubt, direct the relevant person in writing and on such conditions as the Registrar-General considers necessary, to undergo an additional test on a specified date, at a specified place and subject to specified conditions.

(6) Any costs charged by a laboratory for a recognised scientific test contemplated in subsection (5)(d) may be recovered from the Ministry in the prescribed form and manner, unless a recognised scientific test produces a result that is different from the result of any previous recognised scientific test provided to the registrar by the person in question.

(7) The physical appearance of the child or the parent or parents may not be relied on as evidence that supports or refutes an assertion of parentage.

(8) The Registrar-General, if uncertain as to the age of a person in respect of whom a birth is to be registered, must refer the matter to the Committee for a recommendation on the age to be recorded in the Civil Register by the Registrar-General in respect of that person.

(9) On receiving a referral from the Registrar-General, the Committee may -

- (a) in the case of a person who appears to be a child, approach the children's court for a determination of the age of such person; or
- (b) in the case of any other person, advise the Registrar-General on the probable age of such person and, if appropriate, refer the case to a medical practitioner employed by the State for an estimation of that person's age, in which case the medical practitioner must complete the prescribed form.

(10) The Registrar-General must capture in the birth record the fact that a birth resulted from a medical procedure involving a donor gamete or donor gametes at the request of a parent who provides medical evidence of this fact to the Registrar-General's satisfaction, but the Registrar-General -

- (a) must take reasonable steps to verify the information before recording it; and
- (b) must ensure that this information is kept in a portion of the relevant personal profile to which only staff members holding positions approved by the Registrar-General have access and such staff members may not reveal the information to any other staff member of the Ministry or any other person without good reason.

(11) Despite the provisions of -

- (a) section 93 of the Child Care and Protection Act, an informant may for purposes of subsection (5)(a) approach the children's court for an order referred to in that subsection; and
- (b) section 52 of the Child Care and Protection Act, the Committee may approach the children's court for purposes of a determination referred to in subsection 9(a).

**Provisions relating to names and surnames for purposes of registration of birth**

14. (1) For purposes of this section, “former surname” means the surname which the parent in question bore at the time of his or her birth, or if the parent in question can demonstrate to the Registrar-General that it would be in the child’s best interests, any other surname legally assumed by that parent at any time.

(2) The registrar may not register a birth of a person unless at least one first name has been assigned to the person whose birth is to be registered.

(3) The registrar may not register a birth of a person unless a surname has been assigned to the person whose birth is to be registered.

(4) Despite anything to the contrary in this section, in the case of an infant who died shortly after birth, the registrar may register the birth of such child under the name and surname of the mother if the parents of the infant are not willing to or did not provide a name or surname for the infant.

(5) The registrar may alter the first name or first names of an infant at any time before the infant reaches the age of one year, without payment of any fee and without official publication in the *Gazette* of such an alteration, on request -

- (a) by both parents who signed the application for registration of birth acting jointly;
- (b) if the application for registration of birth was signed by only one parent, by that parent; or
- (c) if the application for registration of birth was signed by both parents, by either of those parents if the other parent -
  - (i) is deceased;
  - (ii) is incapable of giving consent;
  - (iii) cannot be found after the prescribed efforts have been made; or
  - (iv) has been consulted by the Registrar-General and is in the opinion of the Registrar-General unreasonably refusing consent to the proposed alteration.

(6) The surname of a person whose birth is registered, whether that person was born inside or outside of marriage, may be registered as -

- (a) in the event that only one parent is listed in the birth record -
  - (i) the current or former surname of that parent; or
  - (ii) a surname which is consistent with the established cultural traditions of that parent, if evidence of the relevant naming practice is provided to the satisfaction of the Registrar-General;

- (b) in the event that both parents are listed in the birth record -
  - (i) the current or former surname of either parent;
  - (ii) a hyphenated surname of no more than two components formed by combining the current or former surnames of both parents, or if one or both parents have a hyphenated surname, one component of such surname;
  - (iii) a surname which is consistent with the established cultural traditions of either or both parents, if evidence of the relevant naming practice is provided to the satisfaction of the Registrar-General; or
  - (iv) if both parents are participating in the application for birth registration but cannot agree on the child's surname, a hyphenated surname consisting of no more than two components in alphabetical order, comprising the current surnames of both parents, or if one or both parents have a hyphenated surname, the first component of such surname.
- (7) The Minister may prescribe regulations -
  - (a) setting out a procedure in the event of parental conflict regarding the choice of surname of a child; and
  - (b) consistent with the best interests of the child regarding the acceptability of and requirements pertaining to first names of children whose births are to be registered and any subsequent alterations of such first names.

### **Registration of birth and issue of birth certificate**

**15.** (1) On receipt of an application for registration of birth or information given under this Act in respect of a birth required to be registered under this Act, the registrar -

- (a) must consider the application or information and cause any omission, defect or inaccuracy to be supplied, verified or corrected as far as may be possible, and
- (b) may require any informant to attend at a specified date, place and time to give additional information or to answer reasonable questions.

(2) In respect of any application for registration of birth under sections 11 or 12 the registrar, if satisfied that the birth occurred, must -

- (a) create a birth record capturing such particulars in respect of the birth as may be prescribed and which have been demonstrated to the satisfaction of the Registrar-General, including the place of birth;
- (b) register the birth and the particulars of the birth in the Civil Register; and

- (c) record the birth and the particulars of the birth as may be prescribed and which have been demonstrated to the satisfaction of the Registrar-General on a birth certificate and issue that certificate to -
  - (i) the applicant or applicants; or
  - (ii) in the case of a birth which was registered in terms of section 10(6)(b), to the parent or other persons with physical custody of the infant whose birth is being registered.

(3) The fact that any information which would normally be recorded on registration of birth, including but not limited to the identity or citizenship of one or both parents or the place of birth, is unknown or not provided does not prohibit the registration of birth on the basis of the facts which are known or provided, if there is sufficient information to identify and confirm the birth of the person whose birth is to be registered.

### **Birth certificates as evidence of citizenship**

**16.** (1) For purposes of this section, persons who would be stateless include persons who -

- (a) do not meet the legal requirements for the nationality of any country; or
- (b) have been denied the nationality of every other country to which they may be legally entitled by a competent authority of such country, after trying in good faith to satisfy the legal requirements for nationality of that country.

(2) A birth certificate referred to in section 15 must be issued in either of the prescribed forms, to indicate that the person born in Namibia whose birth has been registered is a -

- (a) Namibian citizen; or
- (b) person whose right to Namibian citizenship is undetermined.

(3) The registrar must issue a person contemplated in subsection (2)(a) with a birth certificate if the registrar is satisfied that a parent listed in the application for birth registration is a Namibian citizen or a permanent resident of Namibia.

(4) The registrar must in every other case issue a person with a birth certificate referred to in subsection (2)(b) which indicates that there is insufficient information to make an immediate determination of the right to Namibian citizenship.

(5) A person issued with a birth certificate contemplated in subsection (2)(b) -

- (a) is considered to have the rights pertaining to full citizenship, except -
  - (i) the right to vote;
  - (ii) the right to run for political office in Namibia; and



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will not be issued with a Namibian identification document unless citizenship has been established according to the criteria specified in the Namibian Constitution and the Namibian Citizenship Act; and

- (b) must hold that certificate until the Registrar-General, after investigation by a staff member of the Ministry designated by the Executive Director and who has received training in the relevant legal issues, determines that the person -
  - (i) meets the conditions for Namibian citizenship or would be stateless if not accorded Namibian citizenship, in which case the Registrar-General must alter the Civil Register accordingly and must withdraw the certificate contemplated in subsection (2)(b) and issue the holder of that certificate with a birth certificate contemplated in subsection (2)(a); or
  - (ii) does not meet the conditions for Namibian citizenship, in which case the Registrar-General must alter the Civil Register accordingly and must withdraw the certificate contemplated in subsection (2)(b) and issue the holder of that certificate with a birth certificate in the prescribed form indicating that the holder is not a Namibian citizen.

(6) The Registrar-General may require reasonable information or documentation from any person, including a parent of the person whose birth is to be registered and an informant, to facilitate an investigation into the citizenship status of a person whose birth is to be registered in accordance with the provisions of this Act.

(7) The person whose citizenship is being investigated in accordance with subsection (6), or the parent or parents or other informant who has applied for the registration of the birth of that person, may not be compelled to give any information about the parents beyond that which is necessary for proof of citizenship status.

(8) If the Registrar-General has reason to believe that, at the time of the birth of the person whose birth is to be registered, neither parent of the child was ordinarily resident in Namibia, or one of the exceptions in Article 4(1)(b) or (d) of the Namibian Constitution applies in relation to the parents of that person, the Registrar-General must provide the -

- (a) reasons for that belief in writing to the parent or parents or informant applying to register the birth and invite the parent or parents or informant to provide information to the contrary within 90 days of receipt of such invitation; and
- (b) parent or parents or informant with an opportunity to demonstrate within a period of 90 days of being notified of the opportunity that the person whose birth is to be registered would otherwise be stateless.

(9) If the Registrar-General has failed to prove that a person does not meet the requirements for Namibian citizenship within six months from the date on which the application for registration of birth was received, he or she must alter the Civil Register or cause it to be altered to indicate that the person in question is a Namibian citizen and must withdraw the certificate contemplated in subsection (2)(b) and issue the holder

of it with a birth certificate contemplated in subsection (2)(a), unless the failure can be attributed, supported by evidence, to the fact that the person is or was not acting in good faith.

(10) The absence of any documentation pertaining to citizenship of the parents of a person whose birth is to be registered does not prohibit registration of that person's birth and issuing of a birth certificate in terms of this Act.

(11) Regardless of anything contained in this section, any determination of citizenship made in terms of sections 14, 15 or 16 of the Namibian Citizenship Act must take precedence over a determination made in terms of this section, and the Registrar-General must alter the Civil Register to reflect any determination made in terms of the Namibian Citizenship Act and issue a corresponding birth certificate.

### **Registration of birth of children of refugees**

**17.** (1) The birth of persons in Namibia whose parents are refugees, asylum-seekers or protected persons must be registered in the same manner as any other person born in Namibia.

(2) Despite subsection (1), the Registrar-General may, on good cause shown, deviate from any prescribed time periods in relation to the registration of birth of a person born to parents who are refugees, asylum-seekers or protected persons.

### **Registration of birth of abandoned child**

**18.** (1) The designated social worker to whom a report is made as contemplated in section 227(2) or (3) of the Child Care and Protection Act, must, within 14 days of being assigned to deal with an abandoned child -

- (a) if the child is not obviously a newborn infant, cause an estimation of age of that child to be made in terms of section 47(3) of the Child Care and Protection Act; and
- (b) on receipt of this estimation of age, lodge an application for registration of birth contemplated in section 12 with the Registrar-General reflecting -
  - (i) a date of birth consistent with the approximate date of birth or the estimation of age;
  - (ii) a proposed first name and surname consistent with the apparent cultural background of such child; and
  - (iii) other particulars as may be available.

(2) The Registrar-General, on receipt of the documentation contemplated in subsection (1)(b) and if satisfied that the child's birth has not been previously registered, must issue a birth certificate in respect of such child reflecting -

- (a) a date of birth assigned on the basis of the approximate date of birth or the estimation of age;

- 
- (b) the local authority area in or nearest to the place where the child was found as the place of birth in the absence of other information on the place of birth;
  - (c) a first name or first names and a surname consistent with the apparent cultural background of the child; and
  - (d) that the child is a Namibian citizen by birth.

(3) The Registrar-General may refuse to register a child referred to in subsection (2) as a Namibian citizen if there is evidence to the satisfaction of the Registrar-General that the child is not entitled to Namibian citizenship by birth unless that child would otherwise be stateless.

(4) The Registrar-General may alter any information contained in a birth record or a birth certificate issued in terms of this section on receipt of information subsequently submitted by the designated social worker in the event of any parent of the child being traced or after an investigation in terms of section 139(1) of the Child Care and Protection Act.

(5) The provisions of this section apply with such changes as may be required by the context to any child of unknown parentage if no birth record can be discovered in respect of such child.

#### **Registration of birth if pregnancy results from rape**

**19.** (1) For the purpose of this section, “rape” refers to the common law crime of rape, the crime of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000) or a violation of section 14 of the Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980) involving sexual intercourse, where the perpetrator has been convicted of the crime in a court of law.

(2) If a birth follows a pregnancy resulting from a rape, nothing in this Act requires the parent who was the victim of the rape or the person born of the rape to disclose the particulars of the person convicted of that rape for listing in the Civil Register.

(3) A person convicted of a rape does not have the right to insist on being listed as the parent of a person born as a result of that rape in that person’s birth record in the Civil Register or to insist that the person will bear his or her surname.

(4) If a birth contemplated in subsection (2) is registered while a criminal trial or a criminal appeal in respect of the rape is still pending, a registrar may not list the person accused of rape as a parent of that child in the Birth Register until the conclusion or final discontinuance of the criminal trial.

(5) In the case of an acquittal in a criminal trial of rape or a criminal appeal or a final discontinuance of a rape case, the Registrar-General may alter the birth record and issue a new birth certificate if necessary, in accordance with this Act, without payment of any fee, on request by a party with a legitimate interest in the birth registration in question.

**Alteration of birth record and birth certificate of adopted child**

**20.** (1) If the Minister receives an adoption order and information in terms of section 181 of the Child Care and Protection Act, the Registrar-General must ensure that -

- (a) the adoption of the child and any alteration of that child's first names or surname is captured in the birth record and in the relevant personal profiles in the Civil Register;
- (b) any birth certificate previously issued to that child is surrendered and filed, unless the Registrar-General is satisfied that the birth certificate is lost, destroyed or otherwise unavailable; and
- (c) a new birth certificate bearing the same birth entry number as any surrendered birth certificate and reflecting the altered parentage of the child is issued.

(2) The Registrar-General may request the adoptive parents or the Adoption Registrar designated in terms of section 183(1) of the Child Care and Protection Act to provide additional information as necessary to ensure that the updated birth record of an adopted child is as accurate and complete as possible.

(3) The Registrar-General must ensure that information pertaining to an adoption relating to the -

- (a) identity of the biological parent or parent whose parental rights are terminated by the adoption; and
- (b) fact that there was an adoption,

is kept in a portion of the relevant personal profile to which only staff members in positions approved by the Registrar-General have access and such staff members may not reveal the information to any other staff member of the Ministry or any other person without good cause.

- (4) Information about an adoption may be accessed only -
  - (a) from the Adoption Register, established in terms of section 183 of the Child Care and Protection Act; and
  - (b) in accordance with the provisions of section 184 of the Child Care and Protection Act.

**Other alterations of birth record and birth certificates**

**21.** (1) For the purpose of this section, "medical practitioner" includes a person registered as a medical practitioner in a country other than Namibia.

(2) Subject to subsection (5), the Registrar-General may, of his or her own accord or on application from any person who can show a legitimate interest in the particulars recorded in the birth record kept by the Ministry or on a birth certificate, alter the particulars captured in respect of any birth registered in the birth record kept by the

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Ministry and must issue a new birth certificate or a new citizenship certificate or cause a new birth or citizenship certificate to be issued, if necessary -

- (a) in order to reflect additional particulars or information received by the Registrar-General subsequent to the registration of a birth, if satisfied that the particulars or information is accurate;
- (b) in order to alter information regarding a parent if proof of parentage is provided subsequent to the registration of a birth;
- (c) in order to correct particulars or information erroneously recorded or omitted or to remedy an oversight;
- (d) in terms of an order of court or the outcome of a statutory review or appeal procedure having a bearing on the particulars or information captured in the Ministry's birth record or recorded on a birth certificate;
- (e) in order to change the marital status of the parents of the child whose birth has been registered if a marriage recognised in terms of Namibian law between such parents has taken place subsequent to the registration of the birth and proof of such marriage is provided;
- (f) in order to reconcile multiple birth records, multiple identification records or multiple civil registration records of any kind which have been erroneously created; or
- (g) in order to change the description of a person's sex, or to add such a description where this was left blank, subsequent to a medical procedure or medical treatment undertaken for the purpose of modifying sexual characteristics if evidence to this effect is provided by the Executive Director of the Ministry responsible for health to the Executive Director of the Ministry, along with a recommendation by a medical practitioner based on the medical evidence that the change will be an appropriate reflection of the person's current sex.

(3) An application for the alteration of particulars or information contained in the Ministry's birth record or a birth certificate must be submitted in the prescribed form and manner together with -

- (a) a sworn statement as to the reasons for the proposed alteration;
- (b) such evidence supporting the veracity of such reasons as may be appropriate; and
- (c) a certified copy of the applicant's Namibian identity document, passport or, in the absence of either of these forms of identification, fingerprints.

(4) The Registrar-General must ensure that any alteration of a birth record is done in a manner that reflects all changes made in order to secure the history of particulars previously captured.

(5) The Registrar-General must, on any alteration of an entry in the Birth Register which requires the issuance of a new birth certificate, ensure that -

- (a) the initial birth certificate is surrendered or destroyed, if possible;
  - (b) a new birth certificate reflecting only the current and accurate information is issued, with the same birth entry number as on the original birth certificate; and
  - (c) the alteration of the birth registration record is properly recorded in the Birth Register and Ministry files for future reference.
- (6) A person's date of birth may not be altered -
- (a) if that person is -
    - (i) above the minimum age;
    - (ii) has been registered with the current date of birth for at least five years; and
    - (iii) has not previously raised any objection to the birth date in question with the Ministry; or
  - (b) in any circumstances, more than one time after the initial registration of birth.
- (7) Subsection (6) does not apply if the alteration of a person's date of birth -
- (a) is mandated by an order of court;
  - (b) is a result of a change of identity in terms of witness protection laws of Namibia; or
  - (c) if denied would, in the opinion of the Minister, result in undue hardship on grounds set out by the Minister in writing.
- (8) If the description of a person's sex is altered in terms of subsection (2)(g) -
- (a) the person in question must be considered for all purposes to be a person of the sex so altered as from the date of the alteration, but the alteration may not adversely affect any rights and obligations that accrued to or have been acquired by such a person before the date of the alteration; and
  - (b) the Registrar-General must ensure that this information is kept in a portion of the relevant personal profile to which only staff members in positions approved by the Registrar-General have access and such staff members may not reveal the information to any other staff member of the Ministry or any other person without good reason.

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PART 5  
NAME CHANGES

**Change of surname of person who is or was married**

22. (1) In this section, “spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia.

- (2) A person who -
- (a) is a spouse wishing to assume -
- (i) the surname of his or her spouse;
- (ii) a hyphenated surname of no more than two components combining the surnames of both spouses; or
- (iii) a hyphenated surname of no more than two components which includes a portion of a hyphenated surname of one or both spouses;
- (b) after the dissolution of that person’s marriage by death or divorce wishes to revert to the surname appearing on his or her birth certificate or to another prior surname; or
- (c) wishes to assume a name or surname attaching to a title to which he or she succeeded by inheritance,

may submit the prescribed form in person to the registrar at any civil registration point and the registrar must without further requirements or payment of a fee, if the documentation is in order, issue to that person a certificate of name change in the prescribed form.

(3) If a person in terms of subsection (2)(b) wishes to assume a prior surname other than the one appearing on his or her birth certificate, the registrar must direct the application to the Registrar-General and the applicant must motivate the application to the Registrar-General, who may grant or refuse the application after investigation, which may include interviews or requests for documentary evidence of any relevant issues.

(4) A spouse who assumes a surname under subsection (2)(a) is entitled to retain that surname after dissolution of the marriage if he or she so wishes, regardless of any objection by the other spouse or the other spouse’s family members.

**Name change in respect of child below minimum age**

23. (1) In this section, “spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia.

(2) A parent or parents wishing to change the first name or surname of his or her or their child, if the child is below the minimum age, may apply in the prescribed form together with any other prescribed information to a registrar at any civil registration point for decision by the Registrar-General.

- (3) If -
- (a) both parents signed the original application for registration of birth;
  - (b) one of the parents signed the original application for registration of birth and the other parent subsequently participated in confirming or altering such registration; or
  - (c) neither parent signed the original application for registration of birth but both subsequently participated in confirming or altering such registration,

the application for change in terms of subsection (2) must be consented to by both parents subject to the exceptions in subsection (4).

(4) The consent of both parents is required for change of a first name or a surname under subsection (3), unless -

- (a) one parent is deceased, incapable of giving consent, cannot be found after the prescribed efforts have been made or has been consulted and is in the opinion of the Registrar-General unreasonably refusing consent to the proposed alteration; or
- (b) the parent making the application can demonstrate that he or she is the child's sole legal guardian by means of a certificate of guardianship, a court order or an agreement registered with a children's court as contemplated in section 99(3) of the Child Care and Protection Act.

(5) An application contemplated in subsection (2) may be lodged by a primary caretaker, a custodian or a guardian of the child other than a parent, if -

- (a) the change of a first name or a surname would not, in the opinion of the Registrar-General, be contrary to the best interests of the child;
- (b) parental consent has been obtained from the parent or parents who participated in the registration of the child's birth;
- (c) the applicant can demonstrate that he or she is the child's sole legal guardian by means of a certificate of guardianship or a court order; or
- (d) the parent or parents who participated in the registration of the child's birth are incapable of giving consent, cannot be found after the prescribed efforts have been made or have been consulted and are in the opinion of the Registrar-General unreasonably refusing consent to the proposed alteration.

(6) The Registrar-General may charge a prescribed fee for first name or surname changes in terms of this section or may dispense with any fee if satisfied that the proposed alteration would be in the best interests of the child.

(7) A change of the surname of a child in terms of this section is limited to -

- (a) a surname which the child could have been given at birth;



- 
- (b) a surname which the child could have been given at birth, if any subsequent alterations to the child's birth certificate had been in place at that time;
  - (c) the surname of the spouse of one of the child's parents, if this spouse has given written consent; or
  - (d) a surname other than those provided for in subparagraphs (a), (b) or (c) if that surname would be in the child's best interest because of some exceptional circumstance.

(8) The reference in subsection (7)(a) and (b) to a surname which a child could have been given at birth must be interpreted as if this Act had been in force at the time, regardless of the date of the child's birth.

(9) If a change of a first name or a surname in terms of this section involves a child who is 10 years of age or older, the Registrar-General must afford the child an opportunity to express his or her views on the proposed change if the Registrar-General considers that the child is of sufficient maturity and development to do so.

(10) The Registrar-General must approve the application for a change of first name or surname under this section if the applicant complies with the requirements of this section and must issue to the applicant a certificate of name change and a new birth certificate.

#### **Name change in respect of person who has reached minimum age**

**24.** (1) In this section -

“spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia or a partner in a customary marriage concluded under customary law in Namibia; and

"name change" refers to a change of first name or surname.

(2) Subject to any prescribed requirements, a person who has reached the minimum age and whose particulars appear in the Civil Register may apply to change his or her first name or names or surname in the prescribed form, together with an explanation of the reason for the proposed name change and any other prescribed information, to a registrar at any civil registration point for a decision by the Registrar-General.

(3) A person who is below the age of majority must be assisted by a parent or guardian to make an application in terms of subsection (2).

(4) An application in terms of subsection (2) may be made on behalf of a person who is incapacitated for any reason by his or her parent or spouse or by any other person who has reached the age of majority and who is responsible for the care of that person.

(5) An application made in terms of this section must be accompanied by the prescribed fee.

(6) The applicant for a name change under this section must publish the proposed name change in the prescribed manner unless such publication would, in the opinion of the Registrar-General, endanger the personal security of the person whose name is proposed to be changed.

(7) The applicant for a name change under this section must provide the registrar with evidence of the publication required in terms of subsection (6).

(8) The publication in terms of subsection (6) must call for objections to the proposed name change to be submitted to the registrar within 30 days of the publication.

(9) The Registrar-General may not approve a name change applied for in terms of this section unless the applicant provides a sworn statement that he or she -

- (a) is not a party to a pending court case, whether civil or criminal;
- (b) is not involved in insolvency proceedings;
- (c) is not wanted for commission of any crime; or
- (d) has no criminal conviction for any crime involving an element of fraud or corruption,

unless a court directs otherwise.

(10) The Registrar-General may approve an application for a name change in terms of this section only after the Inspector-General of Police has verified that there are no -

- (a) outstanding warrants of arrest for the applicant in Namibia or elsewhere; and
- (b) records of criminal convictions of the applicant for any crime involving an element of fraud or corruption.

(11) The Registrar-General must publish all name changes which he or she has approved in terms of this section in the *Gazette* and in such other publication as the Registrar-General considers necessary, unless such publication would, in the opinion of the Registrar-General, endanger the personal security of the person whose name or surname has been changed.

(12) If a name change is approved under this section, the Registrar-General must issue a certificate of name change to the person who made the application.

(13) Name changes in terms of the section are limited to one change in any 12-month period and a maximum of two changes in a lifetime.

(14) A name change made in terms of section 22 or 23 does not count towards the maximum numbers of name changes set out in subsection (13).

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### **Name changes occurring outside Namibia**

**25.** (1) A Namibian citizen or permanent resident or person in any other prescribed category of persons included in the Civil Register who changes his or her first name or surname in a foreign jurisdiction, including a change to his or her surname resulting from a marriage solemnised in a foreign jurisdiction, must notify the Registrar-General or the head of a Namibian foreign mission.

(2) The person giving notice in terms of subsection (1) must do so in person or by registered post to the Registrar-General without delay and within six months of the date of the change, in the prescribed manner.

(3) A person giving a notice in terms of subsection (1) must include -

- (a) a certified copy of the name change certificate, or the relevant marriage certificate;
- (b) a sworn English translation of the name change certificate or marriage certificate if it is in a language other than English; and
- (c) any other relevant documents as the Minister may prescribe.

(4) The head of a Namibian foreign mission who receives a notice in terms of subsection (1) must transmit it without delay to the Registrar-General in the prescribed manner.

### **General provisions applicable to name changes**

**26.** (1) The Registrar-General must capture any name change made in terms of sections 22, 23 or 24 in the Civil Register.

(2) The Registrar-General must capture a name change which has taken place in another country and which must be notified in terms of section 25 in the Civil Register as if it took place in Namibia if the person in question -

- (a) has an entry in the Civil Register; and
- (b) provides proof of that change to the satisfaction of the Registrar-General, who may request additional information from the person in question for this purpose,

and must issue a certificate of name change to that person.

(3) Despite anything contained in sections 22, 23, 24 or 25, if a name change has been ordered by a court -

- (a) the Registrar-General must change any first name or surname of a person without any further requirements and must issue a new birth certificate; and
- (b) where necessary, the Minister must issue, or cause to be issued, a new citizenship certificate in the changed name,

to the person whose first name or surname has been changed or, in the case of a person who has not reached the age of majority, to that person's parent or guardian.

- (4) After a name change has taken effect, it is the duty of -
  - (a) the person whose name has been changed; or
  - (b) in the case of a minor, his or her parent or guardian,

to ensure that any passport, other travel documents or other national documents, relating to that person and bearing any different first name or surname have been aligned with the changed name within 60 days of the change.

(5) The Registrar-General or a registrar must inform the person referred to in subsection (4) of his or her duty to align any passport, other travel documents or other national documents, with the changed name within 60 days as required by subsection (4).

(6) A person who fails to align any passport, other travel documents or other national documents, with the changed name as required by subsection (4) within 60 days, after having been informed of this duty by the Registrar-General or a registrar, commits an offence and is liable on conviction to a fine not exceeding N\$ 5000 or to imprisonment for a period not exceeding three months

## PART 6 NOTIFICATION AND REGISTRATION OF DEATHS

### **E-notice of death**

27. (1) The death of every person which takes place in Namibia must be notified in accordance with this section.

(2) If a death of a person takes place in an approved health facility, a person holding a position approved by the Minister for submission of e-notices of death in terms of section 80 -

- (a) must submit an e-notice of death within 24 hours of the death; or
- (b) if an e-notice is not possible, must make a manual notification in the prescribed manner at the nearest civil registration point within three days of the death.

(3) If a manual notification is made in terms subsection (2)(b), the registrar of the civil registration point at which the notification is made must submit the relevant e-notice of death within 24 hours of receiving the manual notification.

(4) If the death of a person takes place in any place that is not a health facility, a member of the police must transport the body at State expense to the nearest police mortuary.

(5) If the death of a person did not take place in an approved health facility, the person holding a position approved by the Minister for submission of e-notices of death in terms of section 80 at the police mortuary that receives the body must submit an e-notice of death within 24 hours of the receipt of the body.

(6) An e-notice of a death submitted in terms of subsection (2), (3) or (5) is subject to any prescribed procedures for supervision of such e-notices to ensure that the information submitted is correct.

(7) The person in charge of a hospital mortuary or police mortuary may only release a body to be transferred to a private mortuary after -

- (a) an e-notice of death has been submitted in respect of the death;
- (b) an official at a hospital mortuary or police mortuary in a position approved by the Minister for verifying receipt of a body in the e-notice system in terms of section 80 has confirmed receipt of the body in the electronic registration system established by the Ministry for this purpose;
- (c) a medical practitioner has certified that the death was due to natural causes or an inquest in respect of the death has been concluded and found that the death was due to natural causes; and
- (d) the body is no longer necessary for the purpose of investigations where the cause of death was suspected or determined not to be of natural causes.

(8) If the identity of the deceased whose death is to be notified in terms of this section is unknown -

- (a) the person responsible for submitting the e-notice must submit the notice with a unique identifier in the prescribed form rather than with the name of the deceased;
- (b) if the deceased is apparently older than the minimum age, a staff member in the public service falling under a category approved by the Minister who has had training in the taking of fingerprints for the purpose of identification, or a member of the police, must take fingerprints from the body and submit them to the Registrar-General to search the Civil Register for a match; and
- (c) if the deceased is apparently younger than the minimum age or if the search for a fingerprint match is unsuccessful, the Registrar-General or the police regional commander in the region where the death occurred must place an announcement at a public place or in prescribed media with sufficient details as far as these are available to facilitate identification of the deceased and invite members of the public to contact a Registrar or a member of the police with any relevant information.

### **Application for registration of death**

**28.** (1) An application for the registration of the death of a person in Namibia must be made in person and be submitted in the prescribed form to a registrar at any civil registration point as soon as practicable but within seven days after the death, together with other information or documentation as may be prescribed, by -

- (a) a spouse of the deceased person;

- (b) a child of the deceased person;
- (c) a parent or guardian of the deceased person;
- (d) any other family member of the deceased person;
- (e) any friend of the family authorised by a spouse or family member of the deceased person to apply to register the death;
- (f) any person present at the death of the deceased person;
- (g) the occupier, at the time of death of the deceased person, of the premises where the death took place; or
- (h) if there is no such person as is mentioned in paragraphs (a) to (g), any other informant having knowledge of the particulars of the death to be registered.

(2) A person who submits an application for registration of death in terms of this section must present -

- (a) his or her original identification document and a copy of that identification document; and
- (b) the original birth certificate or identification document of the deceased, a copy of that birth certificate or identification document or a sworn statement explaining the reasons why he or she could not provide these documents.

(3) A person who submits an application for registration of death in terms of this section after seven days have lapsed since the death must include in the application a sworn statement detailing the reasons for the delay in submitting the application for registration.

(4) On receipt of an application for registration of death in terms of this section, the registrar must -

- (a) register the death as contemplated in section 30; or
- (b) in the case of a delayed application, investigate any matter relating to the application, before registering the death as contemplated in section 30.

### **Reporting of certain deaths**

**29.** (1) A person who has reached the age of majority and who becomes aware of any death, regardless of where it occurs, in respect of which -

- (a) the cause of death appears to be by unnatural causes; or
- (b) the identity of the deceased is unknown,

must report the matter to a member of the police in terms of section 2 of the Inquests Act.

(2) A person who has reached the age of majority must immediately report to a member of the police the facts and circumstances relating to any death which the person has reason to believe has occurred -

- (a) as a result of violence, accident or negligence;
- (b) as a result of a self-inflicted illness or injury;
- (c) suddenly and unexpectedly, when the person was apparently in good health and not under the care of a medical practitioner or a registered nurse;
- (d) from disease, sickness or unknown cause, for which the person was not treated by a medical practitioner or a registered nurse;
- (e) during pregnancy, or following pregnancy in circumstances that might reasonably be attributable to pregnancy; or
- (f) in any other circumstances that may be prescribed.

(3) At the conclusion of an inquest in terms of the Inquests Act, the clerk of the court, in the case of a magistrate's court, or the Registrar of the High Court, in the case of the High Court, must provide the Registrar-General with a copy of the findings recorded in terms of section 18 of the Inquests Act within seven days of the date on which the findings are recorded.

(4) The Registrar-General must, on receipt of the findings referred to in subsection (3), alter any provisional death registration or death registration where required in the Death Register and capture information from the court findings in the personal profile of the deceased.

### **Registration of death**

**30.** (1) The registrar, on receipt of an application in terms of section 28, must after -

- (a) being satisfied that the death took place;
- (b) confirming the information contained in the application with the information contained in the corresponding e-notice of death, where an e-notice of death is submitted;
- (c) confirming the record of receipt of the body by a hospital mortuary or a police mortuary in the e-notice; and
- (d) being satisfied that any deceased whose identity was initially unknown has been correctly identified;

register the death by capturing the prescribed information relating to the death in the Death Register.

(2) In the case where no application has been received in terms of section 28, the Registrar-General must, after -

- (a) being satisfied that a death took place;
- (b) confirming the record of receipt of the body by a hospital mortuary or a police mortuary in the e-notice; and
- (c) being satisfied that any deceased whose identity was initially unknown has been correctly identified;

register the death by capturing the prescribed information relating to the death in the Death Register.

(3) On receipt of a court order of presumption of death, the registrar must enter the information contained in the court order into the Death Register as contemplated in section 36.

(4) If the identity of the deceased is known or has been determined, the registrar must -

- (a) capture the relevant particulars in the personal profile of the deceased, if such a personal profile exists in the Civil Register; or
- (b) create a personal profile in the Civil Register if a profile referred to in paragraph (a) does not exist.

(5) If the identity of the deceased is unknown, the registrar must, at the direction of the Registrar-General, capture the information in the Death Register in the prescribed manner as a provisional death registration which is not linked to any personal profile, and, if the identity of the deceased is later confirmed, alter the entry to capture it in the same manner as any other death.

### **Issuing of death certificates**

**31.** (1) In this section, -

“spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia and a partner in a customary marriage concluded under customary law in Namibia; and

“previous spouse” means a person to whom the deceased person was married either by civil marriage in terms of the law governing civil marriages in Namibia or customary marriage but such marriage ceased to exist on divorce in terms of the law governing civil marriages in Namibia or in terms of the applicable customary law in respect of customary marriages.

(2) After a death has been registered in terms of section 30, the following persons may apply in the prescribed form to the registrar to receive a death certificate in respect of the deceased -

- (a) a spouse of the deceased person;
- (b) a child of the deceased person;
- (c) a parent or guardian of the deceased person;



- 
- (d) any other family member of the deceased person;
  - (e) a person who shows to the satisfaction of a registrar that he or she was in a relationship with the deceased person similar to that of a spouse; or
  - (f) a previous spouse of the deceased person who can show good cause for applying for the death certificate.
- (3) On receipt of an application in terms of subsection (1), the registrar must issue a death certificate in respect of the deceased in the prescribed form to the applicant.
- (4) The registrar may provide an official copy of the death certificate of a deceased person to any of the following persons on application -
- (a) a beneficiary of the deceased person in terms of a life insurance policy or any other legal instrument; and
  - (b) any person who has a legal obligation or benefit which is affected by the death of the deceased; and
  - (c) any person if the registrar is satisfied that the person has a valid reason for requesting an official copy.
- (5) The registrar may issue multiple identical death certificates or official copies of death certificates in terms of this section.
- (6) A person who applies for a death certificate or an official copy of a death certificate in terms of this section must present proof of identification in the form of an identity document, a passport or a birth certificate, or failing such identification, must provide fingerprints or other prescribed biometrics.
- (7) A registrar who issues a death certificate or an official copy of a death certificate in terms of this section must record the identity of the recipient and the recipient's relationship to the deceased as prescribed.

#### **Death certificate in case of burial without e-notice or registration**

**32.** If it comes to the attention of the Registrar-General that a body has been buried without submission of an e-notice of death or registration of the death, the Registrar-General -

- (a) must refer the matter to a member of the police for identification of the deceased, investigation and other appropriate steps; and
- (b) may issue a death certificate only when the relevant facts, which would have been contained in an e-notice, have been established to the satisfaction of the Registrar-General or in an inquest held in terms of the Inquests Act.

**Burial order**

33. (1) For the purpose of this section -
- (a) “authority” means a written letter -
    - (i) signed; or
    - (ii) marked with a fingerprint or in similar fashion by someone who is unable to provide a signature,  
  
by the person giving the authority, and it must be accompanied by the original identification document, passport or birth certificate of the person giving the authority; and
  - (b) “spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia or a partner in a customary marriage concluded under customary law in Namibia.
- (2) If the registrar is satisfied that the body of the deceased is no longer required for investigation or examination for a legal purpose, the registrar must issue a burial order in the prescribed form to one of the following persons in the following order of priority -
- (a) a current spouse of the deceased person, provided that in the case of a customary marriage with multiple spouses, the spouse requesting the burial order must demonstrate to the satisfaction of the registrar that she is the most senior of the current spouses;
  - (b) a child of the deceased person who has reached the age of majority;
  - (c) a parent or guardian of the deceased person;
  - (d) a person who shows to the satisfaction of a registrar that he or she was in a relationship with the deceased person similar to that of a spouse;
  - (e) any other family member of the deceased person; or
  - (f) in the absence of any family members, any other person as the Registrar-General may consider appropriate.
- (3) A person requesting a burial order must demonstrate to the satisfaction of the registrar that -
- (a) there is no person with a higher degree of priority on the list in subsection (2); or
  - (b) he or she has authority to access the burial order from any person or persons higher in priority on the list in subsection (2).
- (4) A person listed in subsection (2) who fails to apply for a burial order within three days from the date on which the body became available for burial forfeits his or her position of priority.

(5) A person who may apply for a burial order in terms of subsection (2) may delegate someone else by authority to collect the burial order on his or her behalf.

(6) A person who applies for a burial order in terms of this section must present proof of identification in the form of an identity document, a passport or a birth certificate, or failing such identification, must provide fingerprints or other prescribed biometrics.

(7) A registrar may issue only one burial order in respect of a deceased person.

(8) A registrar may issue a burial order authorising the removal of a body from Namibia for burial.

(9) A registrar who issues a burial order in terms of this section must record in the Death Register in the prescribed manner the -

- (a) particulars of the burial order,
- (b) identity of the recipient of the burial order; and
- (c) recipient's relationship to the deceased.

(10) A person who receives a burial order in terms of this section, or the undertaker who attended to that burial, must return the order to a registrar along with a sworn statement confirming that the burial took place, and indicating the place where the burial took place by -

- (a) the person who presided over the burial; or
- (b) if no person presided over the burial, a person who is 18 years or older and who witnessed the burial.

#### **Burial without burial order as emergency measure**

34. (1) If it is necessary to bury a body without a burial order as an emergency measure, the person who carried out the burial must notify a traditional leader, a member of the local authority council, a member of the regional council or a member of the police within 30 days from the date when the body was buried.

(2) Any person other than a member of the police who receives a notification in terms of subsection (1) must notify a member of the police within seven days of receiving the notification.

(3) A member of the police must notify the Registrar-General within seven days of receipt of a notification in terms of subsection (1) or (2).

(4) The member of the police who receives a notification in terms of subsection (1) or (2) must carry out an investigation in terms of section 3 of the Inquests Act to determine if a death took place and if so, the cause of death.

(5) A person who fails to submit a notice as required by subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$ 20 000.

**Cause of death and medical certificate of cause of death**

**35.** (1) The cause of death of a person who died in Namibia must be captured in the prescribed manner in the e-notice system for entry into the Death Register and the relevant personal profile -

- (a) by the medical practitioner who attended to the deceased person or conducted the post-mortem examination; or
- (b) at the conclusion of an inquest in terms of the Inquests Act by the clerk of the magistrate's court, the Registrar of the High Court or the member of the police who dealt with the inquest.

(2) To protect the privacy of the deceased person and his or her family members, the cause of death of the person may not be recorded on the death certificate.

(3) A registrar may issue an official medical certificate that indicates the cause of death of a person as recorded in the Death Register or e-notice system on receiving an application made in the prescribed manner from -

- (a) an immediate family member of the deceased person; or
- (b) any other person or institution which provides a good reason for needing to know the cause of death of a deceased person.

(4) An official medical certificate of cause of death issued by a registrar constitutes proof of the cause of death in the absence of any contrary evidence.

**Presumption of death**

**36.** (1) The clerk of the court, in the case of a magistrate's court, or the Registrar of the High Court, in the case of the High Court, must forward a certified copy of any order of that court regarding the presumption of death of a person to the Registrar-General within seven days of the issuance of the order.

(2) The Registrar-General must, on receipt of an order in terms of subsection (1), capture the relevant information contained in that notice into the Death Register and the personal profile of the deceased, if a personal profile exists for the deceased.

(3) Despite anything contained in the Legal Aid Act, a person is entitled to legal aid for the purpose of seeking a presumption of death order, if the Director of Legal Aid is of the opinion that the person -

- (a) would have a reasonable chance of success in obtaining a presumption of death order; and
- (b) does not have the means to procure legal representation.

(4) Section 30 applies with the changes required by the context to a death captured in terms of this section.

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**Special provision for death of persons in military or police service**

**37.** (1) The Minister may, despite anything to the contrary contained in this Act, after consultation with the Chief of the Namibian Defence Force or Inspector-General of the Namibian Police Force, direct that the death of -

- (a) a person listed in the Civil Register; or
- (b) any other citizen of Namibia

that occurs while that person is performing military or police service at a place or in circumstances prescribed by the Minister, be registered in the Civil Register in a manner prescribed by the Minister.

(2) The particulars related to the death of a person referred to in subsection (1) must be given to the Registrar-General as soon as possible by -

- (a) the Chief of the Namibian Defence Force or Inspector-General of the Namibian Police Force;
- (b) the officer commanding the Namibian Defence Force service branch or Namibian Police Force unit to which the deceased belonged at the time of his or her death; or
- (c) any other person designated by the Chief of the Namibian Defence Force or Inspector-General of the Namibian Police Force.

(3) The Minister may authorise the removal and burial of the body of a person who dies while he or she is performing military or police service and such an authorisation, despite anything contained in this Act, constitutes sufficient authority for any person to bury such body or to allow such body to be buried.

(4) Section 28 and 30, if relevant, apply with the changes required by the context to a death captured in terms of this section.

**Unauthorised receipt of bodies**

**38.** (1) It is an offence for -

- (a) a funeral home;
- (b) a funeral undertaker;
- (c) a person having charge of a burial place;
- (d) any other service provider dealing with burial of a body or preparation of a body for burial; or
- (e) a person or business providing transport of a body for burial,

to receive a body from any person or institution other than from a hospital mortuary or police mortuary.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 10 000 or to imprisonment for a period not exceeding two years.

### **Burial register**

**39.** (1) For the purpose of this section, “burial place” means any burial ground, whether public or private, or any place where one or more bodies are buried, cremated or otherwise disposed of or intended to be buried, cremated or otherwise disposed of.

(2) A person in control of the management of a burial place must -

- (a) maintain a burial register and enter in the register the prescribed information in respect of every burial in the burial place; and
- (b) on request from a staff member of the Ministry or any person with a legitimate interest in an entry in that register, provide the information pertaining to the register as may be required.

(3) A person having control of the management of a burial place who fails to comply with the requirements in this section commits an offence and is liable on conviction to a fine not exceeding N\$ 5000 or to imprisonment for a period not exceeding one year.

## PART 7 REGISTRATION OF MARRIAGES AND DIVORCES

### **Registration of marriages solemnised in Namibia**

**40.** (1) In this section, “spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia.

(2) The Registrar-General must, within 21 days after receiving a marriage record from a marriage officer in terms of the laws regarding solemnisation of civil marriages in Namibia, capture or cause a record of that marriage to be captured in the Marriage Register.

(3) The record of a marriage in the Marriage Register must contain -

- (a) the first names and surnames of the spouses and their dates of birth;
- (b) each spouse’s place of birth, country of birth and nationality;
- (c) the place where each spouse normally resided at the time of the marriage;
- (d) the identity numbers of the spouses, or in the case of a foreign national who is not a permanent resident of Namibia, the person’s passport number and expiry date and, if available, the person’s identification number;
- (e) the place where the marriage was solemnised;

- (f) the constituency and region where the marriage was solemnised;
- (g) the date on which the marriage was solemnised;
- (h) the matrimonial property regime chosen by the spouses;
- (i) the name, surname and designation number or authorisation number of the marriage officer who solemnised the marriage;
- (j) the names, surnames, identity numbers and birth dates of the witnesses to the marriage;
- (k) the number of the applicable marriage permit;
- (l) a copy of the marriage record received from the marriage officer; and
- (m) any other information as may be prescribed.

(4) After a marriage is entered into the Marriage Register, the Registrar-General must -

- (a) capture the relevant information in the personal profile of each spouse in the prescribed manner, if such profile exists in the Civil Register; or
- (b) create a personal profile in the Civil Register for each spouse if none exists and capture the prescribed information in that personal profile.

#### **Late registration of marriage**

**41.** (1) In this section, “spouse” means a partner in a civil marriage concluded under the laws governing civil marriages in Namibia.

(2) If a marriage solemnised in Namibia by a marriage officer under a law relating to civil marriage in Namibia has not been registered with the Ministry within 21 days after the date of solemnisation of the marriage, any of the following persons may apply to a registrar for late registration of the marriage -

- (a) either of the spouses, or both spouses acting jointly;
- (b) if both spouses are deceased -
  - (i) a child of either or both spouses, who has attained the age of majority;
  - (ii) a family member of either deceased spouse; or
  - (iii) an executor of the estate of either deceased spouse.
- (3) The application in terms of subsection (2) must include -
  - (a) the first names and surnames of the spouses and their dates of birth;

- (b) the identity numbers of both spouses, or in the case of a spouse who is a foreign national who is not a permanent resident of Namibia, the person's passport number and expiry date and, if available, the person's identification number;
- (c) the date or approximate date of the marriage;
- (d) the place where the marriage was solemnised, identified with as much specificity as possible;
- (e) the name of the marriage officer who solemnised the marriage, if known, and the relevant religious denomination or organisation, if any;
- (f) the names of the witnesses to the marriage and their contact details, if known;
- (g) sworn statements, if possible, from the spouse or spouses, the marriage officer, the official witnesses to the marriage or anyone else who was present at the marriage;
- (h) any supporting documentation, including -
  - (i) an original or a copy of the relevant marriage certificate;
  - (ii) a copy of the marriage register maintained by the marriage officer confirming that the marriage took place;
  - (iii) relevant documentation from the religious denomination or organisation, if any;
  - (iv) a certified copy of an antenuptial contract, if applicable; and
  - (v) wedding photographs or other evidence;
- (i) evidence of the matrimonial property regime which applied to the marriage; and
- (j) any other information that the Minister may prescribe.

(4) The registrar must, within ten days after receipt of the application in terms of subsection (2), forward the application to the Registrar-General with such supporting information as may be relevant.

(5) On receipt of an application in terms of subsection (4), if the original marriage record cannot be located, the Registrar-General must publish a public notice as contemplated in subsection (6) containing -

- (a) the full names and surnames of the spouses and their dates of birth;
- (b) the date or approximate date of the marriage;
- (c) the place where the marriage was solemnised, identified with as much specificity as possible;



- 
- (d) any other information that the Minister may prescribe; and
- (e) an invitation to provide the Registrar-General with any information as to whether the marriage in question should or should not be registered.
- (6) The notice to be published by the Registrar-General referred to in subsection (5) must be -
- (a) published in the *Gazette*;
- (b) posted on the Ministry's online notice board;
- (c) published in at least one daily newspaper circulating widely in Namibia; and
- (d) posted at a publicly visible place at the regional office of the Ministry in the district or districts in which the spouses reside or resided.
- (7) After ten days have lapsed since the notice referred to in subsection (5) was published and posted in terms of subsection (6), the Registrar-General must -
- (a) evaluate the application and the supporting evidence submitted;
- (b) consider any information or objections received in response to the public notice; and
- (c) conduct any investigation which the Registrar-General may consider necessary to determine whether the marriage should be registered, including questioning the spouses, the witnesses to the marriage and the marriage officer.
- (8) If the Registrar-General, after locating the original marriage record or after complying with subsection (7) where the original marriage record cannot be located, is satisfied that a valid marriage took place within Namibia and that it has not been registered in terms of this section, the Registrar-General must register the marriage under this Act, with a notation indicating that registration of the marriage was late and must issue -
- (a) an original marriage certificate to the parties if it appears that no such certificate was previously issued, without payment of the prescribed fee; or
- (b) a duplicate marriage certificate if the original marriage certificate has been lost, stolen or destroyed, on payment of the prescribed fee.
- (9) In any case of late registration of a marriage, if there is insufficient evidence to determine the matrimonial property regime of the marriage, the Registrar-General must register -
- (a) the matrimonial property regime agreed to by the spouses at the time of registration; or

- (b) if no agreement on the matrimonial property regime can be reached or if one or both spouses are deceased, the one determined by the Registrar-General after an enquiry into the matter to be the one which most closely accords with the way the parties conducted their financial affairs.

(10) A person aggrieved by a decision of the Registrar-General under this section may appeal in the prescribed form to the Minister within 60 days after the decision of the Registrar-General.

(11) A person aggrieved by a decision of the Minister under this section may appeal the Minister's decision in the prescribed form to a magistrate's court contemplated in subsection (14) within 60 days after the Minister's decision.

(12) If an investigation conducted in terms of this section indicates that a marriage officer has committed misconduct in terms of this Act, the Minister must take appropriate action in terms of the marriage laws of Namibia.

(13) If an investigation conducted in terms of this section indicates that any offence has been committed in terms of this Act, the Registrar-General must refer the matter to the Prosecutor General for possible prosecution.

(14) Despite the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a magistrates' court designated in writing for this purpose by the Magistrates Commission referred to in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003) has the power to hear and determine an appeal contemplated in subsection (11).

### **Registration of marriages concluded under the Recognition of Certain Marriages Act**

**42.** The Registrar-General must register the details of a marriage recognised under the Recognition of Certain Marriages Act, 1991 (Act No. 18 of 1991) in the Marriage Register as if the marriage took place under the law relating to civil marriage in force in Namibia at the relevant date.

### **Registration of divorces which take place in Namibia**

**43.** (1) The registrar of any court which is authorised to issue divorce orders must, within 21 days of the order and in the prescribed manner, provide the prescribed information on the divorces ordered by that court to the Registrar-General for entry into the Marriage Register.

(2) The Registrar-General must cause copies of divorce orders or information regarding divorce orders provided in terms of subsection (1) to be filed and documented in the prescribed manner and must cause a record of each divorce to be captured in the Marriage Register.

(3) The record of a divorce in the Marriage Register must contain -

- (a) the full names and surnames of the spouses and their dates of birth;
- (b) both spouses' identity numbers, or in the case of a foreign national who is not a permanent resident of Namibia, the person's passport number and expiry date, and, if available, the person's identification number;

- (c) the date of the divorce;
- (d) the court which issued the divorce order;
- (e) a copy of the divorce order, or a record of the information in the divorce order documented in the prescribed manner; and
- (f) any other information as may be prescribed.

(4) If a divorce is captured into the Marriage Register, the Registrar-General must capture the relevant information about the divorce in the corresponding personal profiles of the spouses.

(5) If the Registrar-General receives verified information in respect of a divorce from a source other than the court that granted the divorce, he or she must proceed as provided in subsection (2), after conducting any investigation as he or she considers necessary.

(6) If a divorce is captured in the Marriage Register, the registrar must, on request from either party to the former marriage, issue a certificate of divorce in the prescribed form.

#### **Registration of foreign marriages and divorces of Namibian citizens and permanent residents**

44. (1) A Namibian citizen or permanent resident of Namibia who marries or divorces outside Namibia, whether he or she marries or divorces a person who is a Namibian citizen or a foreign national, must, within six months after his or her return to Namibia or entry into Namibia for residence purposes, submit to the Registrar-General or to the registrar at any civil registration point -

- (a) a certified copy of the marriage certificate or divorce order;
- (b) an official translation of the marriage certificate or divorce order if the certificate or order is in a language other than English; and
- (c) any other documents that the Minister may prescribe.

(2) If the documents referred to in subsection (1) are submitted to a registrar, the registrar must forward the documents to the Registrar-General for registration of the marriage or divorce in the Marriage Register.

#### **Void marriages**

45. (1) The Registrar-General may in the prescribed form and manner, after giving both spouses an opportunity to be heard, make a determination that a civil marriage is void from the beginning if satisfied that -

- (a) the person who conducted the marriage was not actually a marriage officer and section 28 of the Marriage Act is not applicable;
- (b) key formalities were not observed during the solemnisation of the marriage and section 27 of the Marriage Act is not applicable;

- (c) the parties may not lawfully marry because they are related within the prohibited degrees of relationship for a civil marriage under section 10 of the Marriage Act;
  - (d) one or both parties is married to someone else in a subsisting civil marriage;
  - (e) one or both parties is below 18 years of age; or
  - (f) one or both parties did not or could not give consent in terms of applicable laws relating to civil marriages in Namibia.
- (2) Regardless of whether or not the Registrar-General has made a determination under subsection (1), nothing in subsection (1) prevents a spouse from approaching a competent court for -
- (a) a declaration of whether or not the marriage is void on any common law grounds, which declaration must take precedence over any determination that may have been made by the Registrar-General;
  - (b) an order that the marriage in question is a voidable marriage, with any results that may flow from such a ruling at common law; or
  - (c) an order that the void marriage will be treated as a putative marriage, with any results that may flow from such a ruling at common law.
- (3) The Registrar-General must alter the Marriage Register and the relevant personal profiles in the Civil Register in the prescribed manner if -
- (a) a determination is made in terms of subsection (1); or
  - (b) any ruling regarding a void or voidable marriage is made by a competent court.

## PART 8 CIVIL EVENT RECORDS AND CERTIFICATES

### **Correction of errors in civil event records and certificates and reconstruction of missing records**

**46.** (1) A registrar or other staff member of the Ministry who becomes aware of an error in the registration of a civil event or a civil event certificate, including -

- (a) a false or erroneous report of a civil event; or
- (b) a clerical error in a civil event certificate,

must in a timely manner report this to the Registrar-General.

(2) On receipt of a report of an error in terms of subsection (1), or when becoming aware of such an error in any other manner, the Registrar-General must conduct any investigation necessary to determine the correct particulars, and may call on -

- 
- (a) any person whose name appears on the civil event certificate; or
  - (b) the informant in respect of the civil event,

to appear at a specified date, place and time for questioning.

(3) If the Registrar-General concludes, after having conducted any necessary investigation, that a civil event record or certificate contains an error, the Registrar-General may call on the relevant person or persons to surrender the civil event certificate within a specified time and must make the necessary correction in the civil events record and issue a replacement certificate with the correct particulars.

(4) If a civil event certificate is not surrendered in accordance with subsection (3), and there is no sworn statement that the certificate has been lost, stolen or destroyed and no other evidence of such an event, the Registrar-General may -

- (a) obtain an order from a competent court in the prescribed manner directing the person to surrender the civil event certificate; and
- (b) cause the civil event certificate to be confiscated by a member of the Namibian Police in terms of the court order referred to in paragraph (a).

(5) The Registrar-General must destroy a document surrendered to him or her in terms of this section within one year after the document is surrendered, if the person in question is not at that stage subject to litigation or an ongoing criminal investigation.

(6) Despite anything to the contrary contained in any other law, the Registrar-General may -

- (a) on application from any interested person, reconstruct any lost or missing civil event record in the Civil Register by means of any process which in his or her opinion is sufficient to establish the facts necessary to reconstruct that record; and
- (b) issue civil event certificates based on that reconstructed record.

(7) The Minister may prescribe a process for the reconstruction of civil event records in terms of subsection (6), including requirements for -

- (a) documents and other information which must be submitted by the applicant; and
- (b) the publication of details relating to such proposed civil event record for public comment.

(8) A reconstruction in terms of in subsection (6) must be considered to be the original document or record, and a certified copy of such reconstructed document or record must be considered conclusive proof of the contents of the original document or record.

**Withdrawal of civil event certificates**

47. (1) If the Registrar-General has reason to believe that a civil event certificate related to a civil event registered under this Act is deficient, is not an accurate reflection of a validly recorded civil event in the Civil Register or has been issued or obtained -

- (a) on the basis of fraudulent representations by any person; or
- (b) in a fraudulent manner,

the Registrar-General must notify the holder of the corresponding certificate in writing to surrender the certificate at a civil registration point or by dispatching it by registered mail to the Ministry within a period of 14 days from receipt of the notification for purposes of investigation.

(2) The notification referred to in subsection (1) must -

- (a) set out the reasons for the notice and inform the holder of the certificate that the Registrar-General may on conclusion of the investigation referred to in that subsection, correct, withdraw or invalidate the certificate in terms of this Act; and
- (b) provide the holder of the relevant civil event certificate with an opportunity to make written representations within 14 days from receipt of the notification on why the certificate should not be withdrawn or invalidated.

(3) If a civil event certificate is not surrendered in accordance with subsection (1), the Registrar-General may -

- (a) obtain an order from a competent court in the prescribed manner directing the person to surrender the civil event certificate; and
- (b) cause such civil event certificate to be confiscated by the Namibian Police in terms of the court order referred to in paragraph (a).

(4) Any representation made in terms of subsection (2) does not relieve the holder of the certificate of the duty to surrender the relevant certificate.

(5) The Registrar-General must, on receipt of a civil event certificate as contemplated in subsection (1) and any written representations made in terms of subsection (2), investigate the circumstances surrounding the relevant civil event which may include calling on any person to appear at a specified date, place and time for purposes of questioning.

(6) If the circumstances warrant, the Registrar-General must -

- (a) correct or invalidate the underlying record of the civil event in question, and
- (b) withdraw the certificate.

(7) Where appropriate, the provisions of section 82 apply in the event that the Registrar-General finds that a civil event certificate must be withdrawn.

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**Civil event certificate as proof of information contained in it**

**48.** An original civil event certificate, replacement civil event certificate or official copy of a civil event certificate issued by a registrar or the Registrar-General in respect of any civil event referred to in this Act constitutes proof of the information contained in the certificate for legal purposes in the absence of any contrary evidence.

PART 9  
IDENTITY DOCUMENTS

**Identity documents**

**49.** (1) Every person who satisfies the following criteria must apply to the Minister for an identity document within the prescribed period -

- (a) the person has attained the minimum age;
- (b) the person has a personal profile in the Civil Register; and
- (c) the person falls into any one of the following categories -
  - (i) Namibian citizen;
  - (ii) permanent resident;
  - (iii) holder of permits or other legal authority authorising him or her to be present in Namibia for longer than one year, including a person who holds multiple permits or other legal authorities which cumulatively have this effect;
  - (iv) refugee or protected person; or
  - (v) any other category prescribed by the Minister for this purpose.

(2) The Minister must issue a person with an identity document in the prescribed form and manner and within the prescribed timeframe if the Minister is satisfied on the basis of an application made in terms of subsection (1) and any verification carried out in terms of section 58 that the applicant -

- (a) fulfils the criteria in subsection (1); and
- (b) has provided the photograph and biometrics required in terms of sections 51 and 52.

(3) An identity document must contain the prescribed particulars in relation to the person to whom it was issued.

(4) Each identity document must contain a unique identity number which may be -

- (a) a person's unique identifier assigned in terms of section 7; or

- (b) an identity number consisting of a prescribed number of digits which is linked by means of a confidential system to that person's unique identifier assigned in terms of section 7.

(5) The Minister may prescribe the form of the identity documents issued in terms of this section, and may prescribe different types of identity documents for different categories of persons listed in subsection (1)(c).

(6) The period of validity of an identity document issued in terms of this section must be as prescribed, and applications for the renewal of an identity document must take place in the prescribed manner.

### **Proof of registration**

**50.** (1) If a person applies for an identity document in terms of section 49(1), or for official purposes lodges his or her identity document with the Minister, the Minister must issue a proof of registration to the person concerned in the prescribed form and manner.

(2) A proof of registration issued in terms of subsection (1) is proof for the purposes of this Act that the person concerned has applied for an identity document or has lodged his or her identity document with the Minister.

### **Photographs**

**51.** A person -

- (a) who applies for an identity document in terms of section 49(1); or
- (b) whose document is required to be replaced in terms of section 54,

must present himself or herself to a registrar or any staff member authorised by a registrar to have a photograph taken in accordance with any prescribed requirements regarding photographs.

### **Biometrics**

**52.** A person who applies for an identity document in terms of section 49(1) must have his or her fingerprints and other biometrics as may be prescribed taken in the prescribed manner to be included in the Civil Register.

### **Proof of identity**

**53.** (1) For the purposes of this section "authorised officer" means -

- (a) a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) an immigration officer as defined in section 1 of the Immigration Control Act, 1993 (Act No. 7 of 1993); or



- (c) a person named by the Minister by notice in the *Gazette*, or a member of a category of persons contained in a list of categories set out by the Minister by notice in the *Gazette*.

(2) An authorised officer may request any person reasonably presumed to have attained the minimum age to prove his or her identity within a reasonable time to that officer by presenting -

- (a) his or her identity document;
- (b) his or her passport, proof of identity or other document as the Minister may prescribe; or
- (c) any other proof of identity issued by the State on which the name and a photograph of the person appear.

(3) The Minister may prescribe steps to be taken by a staff member of the Ministry as may be necessary if it comes to the attention of that staff member that a person has attained the minimum age for being issued with an identity document and falls into one of the categories listed in section 49(1)(c), but has failed to apply for an identity document in terms of section 49(1), to ensure as far as possible that the person applies for an identity document.

#### **Correction of errors in identity documents**

**54.** (1) If, due to an error or the submission of incorrect information -

- (a) an identity document does not accurately reflect the particulars of the person to whom it was issued;
- (b) an identity document contains a photograph which is no longer a recognisable image of the person to whom it was issued; or
- (c) a proof of registration in terms of section 50 does not accurately reflect the particulars of the person to whom it was issued,

a registrar must act in accordance with subsection (2).

(2) A registrar must for the purposes of subsection (1) -

- (a) request the person concerned in the prescribed form and manner to deliver the identity document or proof of registration to the nearest civil registration point for cancellation within a specified time period;
- (b) institute any investigation necessary to confirm the correct particulars; and
- (c) make any adjustments required to correct the Civil Register, including the personal profile of the person concerned.

(3) If the identity document or proof of registration referred to in subsection (1) is -

- (a) not delivered in accordance with subsection (2); and
- (b) there is no sworn statement attesting to the fact that the certificate has been lost, stolen or destroyed and no other evidence of such an event,

the Registrar-General must act in accordance with subsection (4).

(4) For purposes of subsection (3), the Registrar-General may -

- (a) obtain an order from a competent court in the prescribed manner directing the person to deliver such identity document or proof of registration to the nearest civil registration point; and
- (b) cause such identity document or proof of registration to be confiscated by a member of the police in terms of that court order.

(5) If a registrar by application of this section obtained possession of -

- (a) an identity document, the registrar must cancel it in the prescribed manner and replace it with a correct identity document in the prescribed manner; or
- (b) a proof of registration, the registrar must -
  - (i) effect the necessary corrections on the proof of registration, if in the opinion of the registrar, this can be done; or
  - (ii) in the prescribed manner cancel the proof of registration and replace it with a correct proof of registration.

(6) If it comes to the attention of the Registrar-General that an identity document or a proof of registration has been issued to a person who is not listed in the Civil Register, the Registrar-General must -

- (a) request that person in the prescribed form and manner to deliver the identity document or proof of registration to the nearest civil registration point for cancellation;
- (b) institute any investigation necessary to ascertain whether the person in question should be included in the Civil Register and register that person accordingly if appropriate; and
- (c) if the person in question is subsequently registered in the Civil Register in accordance with this Act, issue a new identity document or proof of registration to that person.

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### **Cancellation and delivery or seizure of identity document or proof of registration of deceased person**

**55.** (1) On registration of the death of a person who is listed in the Civil Register and who has been issued with an identity document, the registrar must without delay mark the identity number of the deceased as cancelled in the Civil Register in the prescribed manner while retaining the identity number of the deceased in the Civil Register for information purposes.

(2) A person who is in possession of a proof of registration or an uncanceled identity document of a person who has died, must surrender such document to the nearest civil registration point for cancellation -

- (a) if such document came into his or her possession before that person's death, within 30 days after such death has come to his or her knowledge; or
- (b) if such document came into his or her possession after that person's death, within 30 days after the document came into his or her possession.

(3) If it comes to the attention of the Registrar-General that any person is in possession of a proof of registration or an uncanceled identity document as contemplated in subsection (1) of a person who has died, the Registrar-General must without delay request that person to surrender the identity document or proof of registration to the nearest civil registration point within a specified time period for cancellation in the prescribed manner.

(4) If the proof of registration or identity document referred to in subsection (3) is not surrendered in accordance with that subsection, the Registrar-General must without delay -

- (a) obtain an order from a competent court directing the person to surrender the proof of registration or identity document; and
- (b) cause such proof of registration or identity document to be confiscated by a member of the police in terms of that court order.

(5) A document surrendered to a civil registration point in terms of this section must be forwarded to the Registrar-General in the prescribed manner.

(6) The registrar or Registrar-General must destroy a document cancelled in terms of this section.

### **Evidence regarding identity documents**

**56.** If, in any legal proceedings, the question arises as to whether a particular identity document was issued to any person, a sworn statement by a person alleging -

- (a) that he or she is officially concerned with any biometrics recorded in the Civil Register, and that he or she is proficient in the identification of such biometrics;

- (b) that he or she has received biometrics certified by the person who took the biometrics to be the biometrics of the person in question; and
- (c) that he or she has compared the biometrics referred to in paragraph (b) with the biometrics in the Civil Register and by virtue of his or her proficiency has reached a conclusion in relation to the question of whether a specific identity document was issued to the person in question,

must on the production of the document be proof of the conclusion mentioned in the document in the absence of evidence to the contrary.

## PART 10 VERIFICATION OF INFORMATION AND AUTHENTICATION FOR IDENTIFICATION PURPOSES AND ACCESS TO INFORMATION

### **Definitions for this Part**

**57.** In this Part, unless the context indicates otherwise -

“authentication” is the process of using biometrics or other means to confirm that the person presenting an identity document is the person represented by that document;

“data subject” means the person who is the subject of information in the Civil Register, a civil event certificate, an identity document or related Ministry files; and

“verification” is the process of confirming information on an identity document or a civil event certificate.

### **Verification and authentication of identity**

**58.** (1) The Registrar-General may on a written request verify or authenticate the information in an identity document which has been presented by a data subject to any other person, or to any public or private entity.

(2) The Registrar-General may only verify or authenticate information contemplated in subsection (1) after payment of the prescribed fee by the person or entity requesting verification or authentication.

(3) The Minister may establish automated systems for performing verification of identity and may prescribe requirements for the automated systems, including fees for their use.

### **Access to own information in Civil Register**

**59.** (1) Subject to subsections (2) and (3), a person is entitled to information regarding an entry in the Civil Register pertaining to himself or herself, including -

- (a) whether he or she is listed as the parent of a child in the Civil Register; and
- (b) any information pertaining to an entry about himself or herself.

(2) A person is not entitled to information regarding an entry in the Civil Register pertaining to himself or herself if the information relates to -

- (a) information in a birth record about the fact that the birth resulted from a medical procedure involving a donor gamete or donor gametes if the person wants to access the information before reaching the age of majority; or
- (b) an adoption, in which case the procedures for access to information about the adoption contained in the Adoption Register in terms of section 184 of the Child Care and Protection Act apply.

(3) A person below the age of 18 years who requests access to information in the Civil Register pertaining to himself or herself must be assisted by a parent, guardian or *curator ad litem*.

(4) A patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973) requiring access to information in the Civil Register pertaining to himself or herself must be assisted by a family member who has attained the age of majority or a *curator ad litem*.

(5) On payment of the prescribed fee, a person who requests access to information in terms of this section is entitled to copies of any information accessed in terms of this section, including official copies of civil event certificates of which he or she is the data subject.

(6) A person may request the Registrar-General, by providing a motivation in writing, to -

- (a) rectify data about himself or herself which is incorrectly reflected in the Civil Register or the Ministry's files; or
- (b) delete any data about himself or herself which data was obtained unlawfully or processed unlawfully.

**Access to official copies of civil event certificates and verification of information on such certificates by persons other than the data subject**

**60.** (1) A person who seeks an official copy of an identity document or civil event certificate in respect of which he or she is not the data subject, or verification of information from such an identity document or a civil event certificate, must satisfy the registrar that -

- (a) there is a sufficient reason for requesting the information;
- (b) that the person is unable to obtain the requested information from the data subject;
- (c) the request is not being made for a fraudulent, illegal or improper purpose; and
- (d) the provision of the official copy or the verification of information will not constitute an unwarranted invasion of the privacy of the data subject when balanced against the reason for requesting the information.

(2) A person seeking an official copy of an identity document or civil event certificate or verification of information in terms of subsection (1) must -

- (a) make an application to the registrar at any civil registration point in the prescribed manner, stating the reasons for the request;
- (b) provide a certified copy of his or her identity document or other proof of identification; and
- (c) pay the prescribed fee.

(3) If the data subject is alive at the time of the application in terms of subsection (2), the registrar must make the prescribed efforts to notify the data subject of the request and invite the data subject to consent to the sharing of information or to present objections if the data subject wishes.

(4) A registrar, on receipt of the application for an official copy or verification of information referred to in subsection (2), may -

- (a) call on the person making the application to appear at a specified date, place and time for questioning in order to ensure that the application is made in good faith and not for a fraudulent, illegal or improper purpose;
- (b) verify information on an identity document; or
- (c) verify information which appears on a civil event certificate without providing an official copy of that certificate to the person who made the application.

(5) The registrar must issue an official copy of a civil event certificate if satisfied -

- (a) that the application is reasonable and satisfies the criteria in subsection (1);
- (b) that -
  - (i) no certified copy can reasonably be obtained from the data subject;
  - (ii) a certified copy is inadequate for the purposes of the request; or
  - (iii) there is reasonable doubt as to the validity of the information contained in a certified copy of the certificate which has been obtained by the applicant;
- (c) that verification of information without provision of an official copy is insufficient or inappropriate to serve the purpose in question; and
- (d) that the person is not acting as a proxy for a public or private entity to circumvent section 62 or 63.

(6) If a registrar is in doubt as to whether the criteria in this section have been satisfied, he or she must refer the request to the Registrar-General for a decision.

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### Access to information in files pertaining to Civil Register

**61.** (1) A person who seeks information pertaining to another data subject that is not contained in any civil event certificate but is likely to be contained in the files kept by the Ministry in respect of the Civil Register must -

- (a) make an application to the Registrar-General in the prescribed manner, stating the reasons for the request;
- (b) provide a certified copy of his or her identity document or other proof of identification; and
- (c) pay the prescribed fee.

(2) A person making an application in terms of subsection (1) must show that the request for information -

- (a) is -
  - (i) in the public interest;
  - (ii) in the interest of the data subject; or
  - (iii) reasonably necessary for the assertion of a legal claim by the person making the request;
- (b) is not being made for a fraudulent, illegal or improper purpose; and
- (c) will not constitute an unwarranted invasion of the privacy of the data subject when balanced against the reason for requesting the information.

(3) The Registrar-General, on receipt of the application referred to in subsection (1), may call on the person making the application to appear at a specified date, place and time for questioning in order to ensure that the application is made in good faith and not for a fraudulent, illegal or improper purpose.

(4) The Registrar-General, on receipt of the application referred to in subsection (1), may provide the applicant with the required information -

- (a) after considering the information specified in subsection (5); and
- (b) if satisfied that the person is not acting as a proxy for a public or private entity to circumvent section 62 or 63.

(5) The Registrar-General must consider the following information for purposes of subsection (4)(a) -

- (a) the relationship between the applicant and the person to whom the information relates;
- (b) the date of the entry in the Civil Register;
- (c) the reasons for the applicant's interest in the information;

- (d) the sensitivity of the information;
- (e) the balance between the applicant's need for the information and the privacy interests of the person to whom the information relates; and
- (f) any other relevant factor.

(6) The Registrar-General must provide the minimal amount of information which is necessary for the purposes of an application made in terms of this section.

#### **Disclosure of information from Civil Register or related files to organs of state**

**62.** (1) The Minister may enter into a written agreement with an organ of state for the provision and accessing of information in the Civil Register, other registers or files kept in terms of this Act by that organ of state, for purposes of ensuring compliance by that organ of state with a requirement of a law.

(2) Before an organ of state can access information in the Civil Register or related files for the purpose stated in subsection (1) the Registrar-General must publish a notice in the *Gazette* listing the -

- (a) organ of state with which it has entered into an agreement for disclosure of information;
- (b) designation of the positions of the staff members to whom the information will be disclosed;
- (c) specific types of information which may be disclosed; and
- (d) purpose of the disclosure.

(3) An agreement made in terms of this section must specify -

- (a) the identity and address of the recipient;
- (b) the purpose of the disclosure;
- (c) the method of disclosure, including information about any system interlinkages;
- (d) the personal data which will be disclosed;
- (e) the permissible period of retention of the disclosed data;
- (f) the recipient's duty of confidentiality, and measures that will be taken for this purpose;
- (g) the recipient's duty to store the data securely, and measures that will be taken for this purpose; and
- (h) details of any envisaged sharing of personal information in terms of section 68.



(4) An organ of state to which information is disclosed in terms of an agreement in terms of this section must keep the information confidential and must only use it for the purposes for which it was disclosed.

#### **Disclosure of information from Civil Register or related files to private entities**

**63.** (1) At the initiative of the Minister or at the written request of a private entity, the Minister may enter into an agreement with the private entity for the disclosure of information, in the Civil Register or other registers or files kept in terms of this Act to the private entity if the disclosure relates to -

- (a) compliance by the private entity with a requirement of a law;
- (b) compliance by the private entity with a contractual obligation between the private entity and the affected data subjects; or
- (c) a benefit due to the affected data subjects.

(2) Section 62(2), (3) and (4) apply to any agreement entered into in terms of subsection (1).

#### **Medical certificate of cause of death**

**64.** Any registrar, health official or member of the police with authorised access to the electronic death notification system may issue a medical certificate of cause of death in the prescribed form on the basis of the information in the Civil Register to a person or entity that can show that the information is reasonably necessary in connection with a legal claim or a contractual obligation relating to the data subject.

#### **Historical or genealogical research**

**65.** The Registrar-General may, on payment of the prescribed fee, provide any person with an official copy of any civil event certificate for purposes of historical or genealogical research in respect of a data subject who has died at least 30 years prior to the date of the request.

#### **Access to information by law enforcement or intelligence authorities**

**66.** (1) If disclosure of information pertaining to the Civil Register or other files kept in terms of this Act is sought by -

- (a) the Namibian Police; or
- (b) any other law enforcement agency or intelligence agency established by law other than those referred to in subsection (3),

the provisions on searches and seizures in the Criminal Procedure Act apply with the necessary changes required by the context.

(2) A law enforcement agency may, without a search warrant, search fingerprints or other biometric data in the Civil Register for the purpose of identifying the body of a deceased person.

- (3) If information pertaining to the Civil Register is sought by -
- (a) the Namibia Central Intelligence Service, it may be made available only after a direction given by a judge as contemplated in terms of section 24(2) of the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997) and the provisions of section 24(2) of that Act apply with changes required by the context to a request for information pertaining to the Civil Register; or
  - (b) the Anti-Corruption Commission, it may be made available only in response to a search warrant as contemplated under section 22 of the Anti-Corruption Act, 2003 (Act No. 8 of 2003) and the provisions of section 22 of that Act apply with changes required by the context to a request for information pertaining to the Civil Register.

(4) At the initiative of the Minister or at the written request of the Financial Intelligence Centre established in terms of the Financial Intelligence Act, 2012 (Act No. 13 of 2012), the Minister may enter into an agreement with the Financial Intelligence Centre for the disclosure of information in the Civil Register or other files kept in terms of this Act, to enable the Financial Intelligence Centre to perform its functions in terms of that Act and to comply with a requirement of any law.

(5) The provisions of section 62(2), (3) and (4) apply to an agreement referred to in subsection (4), but if at the time of request for disclosure of information, no such agreement exists, the Ministry must on request by the Centre referred to in subsection (4) disclose information if such information is necessary to enable the Centre to comply with a requirement contained in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) and for the purpose of exercising its powers and performing its functions under that Act.

(6) The Ombudsman or a staff member of the Ombudsman designated in writing by the Ombudsman may access information in the Civil Register in terms of section 4(1) of the Ombudsman Act, 1990 (Act No. 7 of 1990) without a search warrant.

(7) Information accessed in terms of this section includes copies of the access register maintained in terms of section 72.

#### **Access to information in terms of court order**

**67.** The Registrar-General must provide any information kept in terms of this Act as required by a court order, subject to any conditions in the court order.

#### **Sharing of information with other countries**

**68.** (1) The Registrar-General may share information from the Civil Register pertaining to a person with a personal profile in the Civil Register with a government of another country at the written request of the affected data subject or -

- (a) on request made on behalf of the government of another country to the Registrar-General by a person authorised to request such information by the government in another country; and

- (b) if the Registrar-General is satisfied that the country in question has comparable protection for the privacy of personal data as would apply to such data in Namibia.

(2) The Registrar-General may only share information from the Civil Register in terms of subsection (1) if the Registrar-General is satisfied that the government of another country has a good reason for the request, having regard to the -

- (a) nature of the request from the government of another country;
- (b) sensitivity of the information requested;
- (c) intended use of the requested information; and
- (d) other relevant factors.

(3) In deciding whether to share information from the Civil Register in terms of this section the Registrar-General must, as far as practicable, protect the persons to whom the entries in the Civil Register relate from unjustified intrusion on their privacy.

#### **Exclusion of certain data from access by persons other than data subject**

**69.** Despite other provisions of this Act providing for disclosure of information and sharing of information, a person is not entitled to access the following information about another person in terms of this Part, unless access to the information is authorised by consent from the data subject or a court order -

- (a) information about an adoption, provided that the information in the Adoption Register established in terms of section 183 of the Child Care and Protection Act must be in accordance with the provisions of section 184 of the Child Care and Protection Act;
- (b) information about the previous identities of persons who have received new identities for the purposes of witness protection in terms of the witness protection laws of Namibia;
- (c) information which reveals that a person had a change of sex; or
- (d) information in a birth record about the fact that the birth resulted from a medical procedure involving a donor gamete.

#### **General statistical information**

**70.** (1) The Registrar-General may compile statistical information from the data contained in the Civil Register and related files.

(2) The Registrar-General may avail statistical information referred to in subsection (1) to members of the public by any means as long as -

- (a) that data does not reveal the identity of any data subject directly; or
- (b) it is not possible to ascertain the identity of a data subject indirectly by merging, combining or triangulating different data.

(3) Any person seeking statistical data compiled in terms of subsection (1) must -

- (a) make an application to the Registrar-General in the prescribed manner which identifies the statistical data requested and states the reasons for requesting the data;
- (b) provide a certified copy of his or her identity document or other proof of identification; and
- (c) pay any prescribed fee,

and the Registrar-General may authorise the release of such statistical data if satisfied that the request is made in good faith.

### **General measures on privacy**

**71.** (1) The Executive Director must archive copies of documents referred to in this Act in terms of the Archives Act, 1992 (Act No. 12 of 1992) in secure premises.

(2) Any person is entitled to reasonable information regarding the security of the Civil Register and the Ministry's records, but only to an extent that will not compromise that security.

(3) A staff member of the Ministry must alert any person who registers a civil event in terms of this Act to the -

- (a) fact that certain information may be accessed and disclosed under this Act;
- (b) right of a data subject to access his or her personal data;
- (c) right of a data subject to correct his or her own personal data in terms of section 54(7); and
- (d) period that information collected in terms of the Act will be retained.

### **Access register**

**72.** The Registrar-General must maintain an access register to serve as a record of all instances of access to the Civil Register in terms of this Part, containing the -

- (a) identity of each person or entity that accessed the Civil Register;
- (b) date of each instance of access;
- (c) outcome of each instance of access;
- (d) information provided; and
- (e) relevant data subjects.

### **Prohibition of unauthorised disclosure of information**

- 73.** A person -
- (a) who has access to information in the Civil Register or related files or any information submitted to the Ministry in connection with this Act, who intentionally and knowingly discloses such information except as authorised under this Act;
  - (b) to whom information is disclosed in terms of this Part, who intentionally and without lawful authority discloses such information to any other person; or
  - (c) to whom information has, to his or her knowledge, been disclosed in contravention of the provisions of this section, who intentionally discloses any such information to any other person,

commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or imprisonment for a term not exceeding four years or to both such fine and such imprisonment.

## PART 11 APPEALS AND REVIEWS

### **Appeals to Registrar-General**

**74.** (1) A person who is aggrieved by a decision of a registrar or another staff member of the Ministry in terms of this Act may appeal against that decision by submitting an appeal to the Registrar-General in writing within 30 days of the date on which that person has been notified of the decision, unless a longer time is indicated as being applicable elsewhere in this Act.

(2) A person who is aggrieved by the failure of a registrar or another staff member of the Ministry to make a decision in terms of this Act within the time stipulated for the making of a decision or within a reasonable time may appeal against that failure by submitting such appeal to the Registrar-General in writing at any time after it has become evident that there has been a failure to make a decision within a reasonable time.

- (3) An appeal contemplated in subsections (1) and (2) must -
  - (a) include the appellant's contact details, including postal address, telephone number, and, if possible, email address;
  - (b) set out the reasons as to why the appellant is aggrieved by the decision and a motivation for why there should have been a different outcome;
  - (c) include any relevant supporting documentation; and
  - (d) if relevant, include a motivation as to why the appeal should be decided on an urgent basis, with any applicable supporting documentation.

(4) The Registrar-General must acknowledge receipt of an appeal contemplated in subsection (1) or (2) within seven days and must give a decision, together with the reasons for that decision, to the appellant -

- (a) within 60 days of the submission of the appeal; or
- (b) within 10 days of the submission of the appeal if the appeal contains a motivation for urgency which the Registrar-General finds satisfactory.

### **Appeals Tribunal**

**75.** (1) The Minister must annually compile a list of persons who may be considered for appointment to an Appeals Tribunal to consider specific appeals in terms of this Act.

(2) Persons to be appointed as members of an Appeals Tribunal must have the necessary experience to hear and determine appeals in terms of this Act and may be –

- (a) staff members of the Ministry;
- (b) legal practitioners employed by the State;
- (c) legal practitioners not employed by the State who have indicated their willingness to serve in this capacity; or
- (d) other persons who have experience in the matters relevant to the functions of an Appeals Tribunal.

### **Establishment of Appeals Tribunal**

**76.** (1) The Minister must from time to time establish an Appeals Tribunal to hear and decide appeals against decisions of the Registrar-General referred to in section 77.

(2) An Appeals Tribunal must consist of three members appointed by the Minister chosen from the list referred to in section 75(1), but if at the time of establishment of an Appeals Tribunal a list referred to in section 75(1) has not been compiled, the Minister may appoint three persons with the necessary experience and falling within the categories specified in section 75(2) as members of an Appeals Tribunal.

(3) If before or during the consideration of any appeal it transpires that any member of the Appeals Tribunal has any direct or indirect personal or financial interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person.

(4) A person appointed as a member of an Appeals Tribunal in terms of subsection (1) who is not in the full-time employment of the State must be paid such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(5) The Minister must appoint as chairperson of Appeals Tribunal a member who is a legal practitioner with specific knowledge or experience of the law relating to civil registration or administrative law.

(6) The Executive Director must appoint staff members of the Ministry to perform administrative functions for an Appeals Tribunal.

(7) The Minister must determine a venue for the work of an Appeals Tribunal.

(8) The Minister, after consultation with the Minister responsible for justice, may prescribe rules and procedures for the operation of an Appeals Tribunal.

(9) An Appeals Tribunal must conduct its activities fairly, reasonably and in accordance with the principles of administrative law.

### **Appeals to Appeals Tribunal**

77. (1) A person who is aggrieved by a decision of the Registrar-General on a matter referred to in section 74(1) or section 77(2) may submit an appeal containing the information set out in section 74(3) to the Executive Director for consideration by an Appeals Tribunal -

- (a) within 30 days of the date on which such person has been notified of the decision; or
- (b) in the case of failure to act or to make a decision, within a reasonable time after the matter arose.

(2) The powers and functions of an Appeals Tribunal are to consider appeals against decisions of the Registrar-General regarding -

- (a) the refusal to register a civil event or to rectify or delete information in terms of section 59(6);
- (b) the type of birth certificate issued in terms of section 16(2);
- (c) the decision to list or to refuse to list a person as a parent on a birth certificate;
- (d) the acceptance of or refusal to accept a proposed first name or surname at the time of a registration of birth;
- (e) the refusal to accept a subsequent change of a first name or surname;
- (f) the refusal to alter a birth record or birth certificate in terms of section 20 or 21;
- (g) the refusal to issue an identity document or civil event certificate, or a replacement identity document or civil event certificate;
- (h) the disclosure or sharing of, or refusal to disclose or share, information from the Civil Register in terms of Part 10;
- (i) the withdrawal of an identity document or a civil event certificate; or
- (j) the failure to decide or to act on a decision within a reasonable time.

(3) The Appeals Tribunal must consider and determine the appeal referred to in subsection (1) -

- (a) within 60 days of the submission of the appeal to the Executive Director; or
- (b) within 10 days of the submission of the appeal to the Executive Director if the appeal contains a motivation for urgency which the Appeals Tribunal finds satisfactory.

(4) The decision of the Appeals Tribunal must be in writing and contain the reasons for the decision and a copy of the decision must be made available to the appellant and the Registrar-General.

(5) An Appeals Tribunal must keep records of all appeal proceedings and of all decisions which it takes with the reasons for its decisions.

#### **Administrative review and court orders**

**78.** (1) An application for review of a decision made in terms of this Act, must -

- (a) be made after exhaustion of the remedies contemplated in sections 74 and 77; and
- (b) be lodged with the High Court within 12 months of the date on which the applicant has been notified of the decision.

(2) An application for review of the failure to make a decision within a reasonable time in terms of this Act, must -

- (a) be made after exhaustion of the remedies contemplated in sections 74 and 77; and
- (b) be lodged with the High Court within 24 months of the date on which the application or request for decision was made.

(3) Nothing contained in this Act may be construed as preventing the High Court or, where authorised by law, a magistrate's court from making an order, on application, regarding -

- (a) the registration of a civil event;
- (b) the issue of a civil event certificate or identity document;
- (c) the cancellation or withdrawal of the registration of a civil event;
- (d) a correction to a civil event certificate or any record pertaining to it;
- (e) the withdrawal of a civil event certificate;
- (f) the issue of a replacement civil event certificate or identity document; or



- 
- (g) access to information from the Civil Register or any background information pertaining to the Civil Register.

PART 12  
GENERAL PROVISIONS

**Verification of particulars**

79. The Registrar-General may -
- (a) request any person providing any particulars in terms of this Act to provide such documentary or other proof of the correctness of the particulars as is within the power of that person to provide; and
  - (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the Civil Register.

**Approvals by Minister**

80. The Minister must give notice in the *Gazette* of -
- (a) health facilities approved for the purpose of submission of e-notices of births, stillbirths and deaths;
  - (b) positions in health facilities approved for the purpose of submission of e-notices of births, stillbirths and deaths, which includes capturing the submission on the system and making notations on physical documents;
  - (c) positions at police mortuaries approved for the purpose of submission of e-notices of deaths, which includes capturing the submission on the system and making notations on physical documents;
  - (d) positions at a hospital mortuaries and police mortuaries approved to verify receipt of a body in the e-notice system, which includes capturing the submission on the system and making notations on physical documents; and
  - (e) laboratories approved for carrying out scientific tests and issuing test results establishing parentage.

**Replacement of civil event certificate or identity document**

81. (1) A person who requires the issuance of a replacement of a civil event certificate or an identity document pertaining to himself or herself because the original has been lost, stolen, destroyed or damaged must apply in person for such replacement at any civil registration office where the relevant service is available and must -

- (a) complete the prescribed sworn form stating that the document in question has been lost, stolen, destroyed or damaged, with details of the incident;
- (b) attach supporting documents as may be prescribed;

- (c) present a copy of his or her identity document, birth certificate, passport or travel document or provide a sworn statement explaining the reasons why no identity document, birth certificate, passport or travel document can be submitted; and
  - (d) pay the prescribed fee, unless the Registrar-General decides to waive or reimburse the fee in terms of subsection (4)(c).
- (2) If a person contemplated in subsection (1) is -
- (a) a person who has not reached the age of majority; or
  - (b) unable to apply in terms of subsection (1) in person due to illness, old age or any other form of incapacity,

a person who has attained the age of majority, including a parent, guardian or curator, may act on behalf of that person.

(3) A person acting on behalf of a person under subsection (2) must provide -

- (a) a signed authorisation to act on behalf of such person, if such person has attained age of majority and is mentally competent;
- (b) if the relevant person has reached the minimum age, a certified copy of that person's identity document or if the relevant person has not reached the minimum age, that person's birth certificate, or a sworn statement by a person explaining the reasons why an identity document or birth certificate cannot be submitted; and
- (c) his or her own identity document or other identifying information.

(4) The Registrar-General, on receipt of an application referred to in subsection (1) or (2) -

- (a) may call on the person making the application to appear at a specified date, place and time for questioning in order to ensure that the application is made in good faith;
- (b) may require any reasonable additional information or documentation;
- (c) may waive or reimburse any prescribed fee for the issue of a replacement civil event certificate or identity document if the Registrar-General is satisfied that payment of the fee would cause undue hardship, on grounds set out by the Registrar-General in writing;
- (d) must issue a replacement civil event certificate or identity document if satisfied that the request is genuine and reasonable; and
- (e) must note the issue of the civil event replacement certificate or identity document in the Civil Register.

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- (5) The Minister may, by regulation -
- (a) limit the number of replacement civil event certificates or identity documents which may be issued to any one person;
  - (b) limit the number of replacement civil event certificates or identity documents which may be issued to any one person within a prescribed time period; and
  - (c) provide for escalating fees for multiple requests for replacements in terms of this section to a maximum of double the original fee.

**Powers in relation to forged, falsified, withdrawn or cancelled civil event certificates or identity documents**

**82.** The Registrar-General may, in relation to an identity document or civil event certificate cancelled or withdrawn in terms of this Act or a forged or falsified identity document or civil event certificate -

- (a) register or re-register a civil event contemplated in this Act that requires registration or re-registration as a result of the existence or use of such document or certificate;
- (b) request the holder of the document or certificate to surrender it within a specified time period, failing which the Registrar-General may -
  - (i) obtain an order from a competent court in the prescribed manner directing the person to hand over that identity document or proof of registration; and
  - (ii) cause that identity document or proof of registration to be confiscated by a member of the police in terms of that court order;
- (c) confiscate that document or certificate if it is presented to the Ministry and the registrar has a reasonable belief that it has been cancelled, withdrawn, forged or falsified; and
- (d) if applicable, issue a new identity document or civil event certificate.

**Births or deaths occurring outside Namibia**

- 83.** (1) In the event of a -
- (a) birth outside Namibia of a person whose parent is a Namibian citizen or a permanent resident of Namibia; or
  - (b) death outside Namibia of a Namibian citizen, a permanent resident of Namibia, or any other person for whom a record exists in the Civil Register,

that birth or death must be reported and registered in terms of subsection (2).

- (2) A birth or death contemplated in subsection (1) must be -
- (a) reported as soon as possible to the nearest Namibian foreign mission, the head office of the Ministry, or any Registrar, in person, by courier by registered post or online, for transmission to the Register-General; and
  - (b) registered by the Registrar-General in accordance with the provisions of this Act on the strength of a birth or death certificate or other similar document issued by the relevant authority in the country in which the birth or death occurred.
- (3) The reporting of a birth or death contemplated in subsection (1) must be done -
- (a) in the event of a birth, by -
    - (i) any parent or other family member of the child;
    - (ii) a legal representative, social worker or other person acting in the best interests of the child; or
    - (iii) the person whose birth is to be registered himself or herself, if the person is at least 14 years of age and of sufficient maturity and stage of development to make a report of birth; and
  - (b) in the event of a death, by -
    - (i) any family member of the deceased person; or
    - (ii) any other adult who becomes aware of the death.
- (4) A person who is reporting a birth or death in terms of this Act must present the original birth or death certificate or document contemplated in subsection (2)(b), if possible, and provide the Registrar-General or the head of a Namibian foreign mission with a certified copy of that original certificate or document.
- (5) In the event that -
- (a) the birth or death was not required to be registered with the authorities in the country where it occurred; or
  - (b) the birth or death was registered with the authorities in the country where it occurred but an original certificate or document cannot be provided,

the persons required to register the death or birth in terms of subsection (1) must provide a sworn statement that indicates the reasons for the -

- (i) non-registration; or
- (ii) absence of the original certificate or document,

together with documentation proving that the birth or death occurred.

(6) If a birth or a death is reported in terms of this section to the head of a foreign mission, he or she must take appropriate steps to confirm the information provided.

(7) The Registrar-General may require additional documentation from the person contemplated in subsection (5) and may investigate as he or she considers necessary.

(8) If the Registrar-General is satisfied as to the accuracy of the facts reported by the person contemplated in subsection (4), the Registrar-General must -

- (a) register the event in the Civil Register;
- (b) in the case of a death, issue a Namibian death certificate, which may include or omit particulars omitted from the corresponding original foreign death certificate; and
- (c) if requested, issue a burial order authorising a burial in Namibia in respect of a death that occurred outside Namibia.

#### **Registration of births and deaths occurring on board ships or aircraft**

**84.** (1) Within 48 hours after arrival of a ship or aircraft in Namibia, the master of that ship or the captain in command of that aircraft, as the case may be, must transmit to the officer in charge of the passport control office of the area in which the port or airport in question is situated, a return in the prescribed form -

- (a) in the case of a Namibian-registered ship or aircraft, of every birth and every death on the ship or aircraft which occurred after the last preceding occasion on which the ship or aircraft left any port or airport in Namibia; and
- (b) in the case of any ship or aircraft other than a Namibian-registered ship or aircraft, of every birth of a child on the ship or aircraft, and of every death of a person on the ship or aircraft, which occurred during the journey.

(2) The officer referred to in subsection (1) must transmit every return received by him or her to the registrar within whose area the port or airport is situated.

(3) A registrar who receives a return in terms of subsection (2) must transmit the return to the Registrar-General, who must -

- (a) in the case of a birth or death referred to in subsection (1)(a), notify and register the birth or death as if it occurred in Namibia; and
- (b) in the case of a birth or death referred to in subsection (1)(b), report and register that birth or death as required by section 83.

**Proof of status as spouse**

**85.** If any person seeks to assert rights as a spouse under this Act, he or she must provide a marriage certificate or other evidence of marriage to the satisfaction of the staff member or other official who is responsible for the matter in question in terms of this Act.

**Finding official documents belonging to another person**

**86.** (1) Any person who comes into possession of an original civil event certificate, identity document or proof of registration issued under this Act which does not belong to that person or a member of his or her family must deliver that certificate, document or proof of registration to a member of the police or a staff member of the Ministry who must deal with the document or certificate in the prescribed manner.

(2) A person who fails to deliver a document referred to in subsection (1) as required by subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 1000 or to imprisonment for a period not exceeding three months.

**Increased fees relating to failure to collect documents requested under Act**

**87.** (1) If a person applies for any document in terms of this Act and, without any good reason to the satisfaction of a registrar, fails to collect that document -

- (a) before its period of validity expires; or
- (b) if the document in question has no period of validity, after one year from the date when the applicant was notified that the document was ready for collection,

the fee for any subsequent applications for the same type of document in terms of this Act is double the prescribed fee.

(2) The Registrar-General may make an exception to the increased fee required by subsection (1) in cases where imposing the increased fee would cause undue hardship on grounds set out by the Registrar-General in writing.

(3) For the purposes of subsection (2), the Registrar-General must take into consideration -

- (a) the person's current financial position; and
- (b) representations by the person as to the reasons for the failure to collect the document within the time period referred to in subsection (1).

**Offences and penalties**

**88.** (1) A person who -

- (a) fails or refuses to provide any information or documentation as required in terms of this Act or fails or refuses to comply with any duty assigned in terms of this Act;

- (b) provides false or misleading information or documentation relating to the registration of any particulars as required in terms of this Act, or who instigates or encourages another person to provide such false or misleading information or documentation;
- (c) re-registers a civil event or attempts to do so otherwise than as authorised by this Act;
- (d) uses a civil event certificate or identity document which he or she knows to have been withdrawn or cancelled;
- (e) represents a civil event certificate, identity document, proof of registration or other document issued to another person as his or her own;
- (f) with purpose to deceive, allows a civil event certificate, identity document or proof of registration issued to him or her to come into the possession of another person;
- (g) represents that any incorrect particulars in a civil event certificate, identity document or proof of registration are correct;
- (h) fails or refuses to submit, surrender or deliver any civil event certificate or identity document which does not correctly reflect the particulars of the person to whom it was issued or which is required for purposes of withdrawal or cancellation or which has been withdrawn or cancelled;
- (i) for any fraudulent purpose assumes, uses or associates himself or herself with a first name or surname which has not been recorded or changed in accordance with the provisions of this Act, or attempts to change his or her first name or surname for such a purpose;
- (j) fails to register a change to his or her first name or surname carried out in a foreign jurisdiction, including a change to his or her surname resulting from a marriage solemnised in a foreign jurisdiction, as required under this Act;
- (k) fails to register a marriage or divorce which took place in a foreign jurisdiction, as required under this Act;
- (l) without reasonable cause buries or otherwise disposes of a body without a burial order;
- (m) removes a body from Namibia without the authorisation of the Registrar-General;
- (n) fails to appear for questioning when notified to do so by a registrar, the Registrar-General or the Minister under this Act;
- (o) signs a form or performs a function under this Act which must be signed or performed by a medical practitioner or registered nurse when not registered as a medical practitioner; or

- (p) at any time after a new identity document was issued to that person under this Act, possesses or regains possession of an identity document previously issued to him or her under this Act or under the provisions of any law repealed by this Act and without good cause fails to return that previously-issued document to the Minister for cancellation within 14 days after the new identity document was issued to him or her, or after he or she regained possession of the previous document,

commits an offence and is liable on conviction to a fine not exceeding N\$ 5000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- (2) A medical practitioner or registered nurse who intentionally -
  - (a) makes a false statement in connection with a birth or a cause of death;
  - (b) represents himself or herself as having attended the birth or death of a person when this was not the case; or
  - (c) fails to notify the registrar or Registrar-General of a birth, death or cause of death when obligated to do so under this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$ 20 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment in addition to any other disciplinary measures to which such medical practitioner or registered nurse may be subject under any other law.

- (3) A person, including a staff member of the Ministry, who -
  - (a) charges or receives a fee or other benefit for an act performed or to be performed under this Act which does not require the payment of a fee or which exceeds the relevant fee payable under this Act;
  - (b) charges or receives a fee or other benefit for an act performed or to be performed under this Act without following the required procedures under this Act;
  - (c) forges or falsifies a signature, seal, impression or stamp of a person during a registration process under this Act;
  - (d) does any of the following acts in connection with any document -
    - (i) forges, falsifies or makes an unauthorised alteration to a certificate, document or proof of registration;
    - (ii) submits a forged, falsified or altered certificate, document or proof of registration to another person or entity; or
    - (iii) with intent to deceive, imitates, alters, defaces, destroys or mutilates a certificate, document or proof of registration;



- 
- (e) without authorisation -
    - (i) accesses information contained in the Civil Register or any other register referred to in this Act, or makes that information available to be accessed by another person who does not have the authority to access such information;
    - (ii) captures, alters or interferes with information contained in the Civil Register or any other register other than in accordance with this Act, or allows such information to be captured, altered or interfered with;
    - (iii) for any fraudulent purpose fails to register a civil event as required by this Act;
    - (iv) uses a credential belonging to another person, or directs another person to use his or her own credential, to gain access to the Civil Register for fraudulent or wrongful purposes;
    - (v) without lawful reason has in his or her possession -
      - (aa) any stamp or other instrument which is used or capable of being used for the purposes of this Act;
      - (ab) any form used for purposes of issuing a civil event certificate, identity document or proof of registration or other document contemplated in this Act, or any reproduction or imitation of such a form; or
  - (f) offers or attempts to offer a benefit to a staff member of the Ministry or to a third party in order to persuade or induce a staff member to act in a way which is not permissible under this Act;
  - (g) destroys, defaces or renders unreadable the Civil Register or any other register referred to in this Act or any certified copy of it or any source document or who causes such destruction, defacement or illegibility; or
  - (h) attempts to commit any of the acts contemplated in subparagraphs (a) to (g),

commits an offence and is liable on conviction to a fine not exceeding N\$ 20 000 or to imprisonment for a period not exceeding four years or to both such fine and imprisonment.

(4) If during a prosecution in terms of this section it is proved that a civil event certificate, identity document or proof of registration was imitated, changed, defaced, destroyed or mutilated, it must be considered evidence that the relevant act was done with intent to deceive.

- (5) A person who -
  - (a) creates and maintains a register identical to, or purporting to be, a Civil Register;

- (b) duplicates, mirrors or copies the Civil Register; or
- (c) issues a civil event certificate, identity document or proof of registration that resembles, mimics or purports to be a certificate, document or proof of registration referred to in this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$ 20 000 or imprisonment for a period not exceeding four years or to both such fine and imprisonment.

### **Delegation of powers and assignment of functions**

- 89.** (1) The Minister may -
- (a) delegate a power conferred on him or her under this Act, except the power to make designations and appointments of the Registrar-General and registrars, to appoint members of Appeals Tribunal, to appoint members of the Age Determination Committee and to make regulations or issue notices in the *Gazette*; and
  - (b) assign the performance of any function assigned to him or her by this Act,

to the Executive Director or any other staff member in the Ministry.

(2) The Registrar-General may delegate a power conferred on him or her or assign a function assigned to him or her in terms of this Act to a registrar or any other staff member of the Ministry, with the exception of the power to determine appeals under section 74.

- (3) A delegation or assignment in terms of subsection (1) or (2) -
- (a) is subject to any limitations, conditions and directions assigned by the Minister or Registrar-General;
  - (b) must be in writing; and
  - (c) does not divest the Minister or Registrar-General of the responsibility concerning the exercise of the power or the performance of the function.

(4) The Minister or Registrar-General may confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(5) The Minister or Registrar-General who makes a delegation or assignment in terms of this section may withdraw it at any time.

### **Regulations**

- 90.** (1) The Minister may make regulations, not inconsistent with this Act, relating to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed by regulation;

- (b) the procedure for disabling the personal profile of a person who is deceased in the Civil Register;
- (c) the procedure for the withdrawal of a personal profile where a duplication or a false profile has been identified;
- (d) other categories of persons referred to in section 5(2)(g) whose information must be included in the Civil Register;
- (e) the biometrics of a person that must be included on civil event certificate, identity document or proof of registration;
- (f) the procedure for manual notification when an e-notice for a birth or a death is not possible;
- (g) the forms necessary for the implementation and administration of this Act;
- (h) additional information required for the registration of a civil event;
- (i) procedures and regulations related to names for the purposes of registration of birth;
- (j) the fees related to the issuing of a replacement civil event certificate, identity document or proofs of registration; and
- (k) rules and procedures for the operation of an Appeals Tribunal.

(2) Any regulation made under subsection (1) may prescribe penalties for any contravention or failure to comply with it not exceeding a fine of N\$ 5000 or imprisonment for a period of one year or both such fine and such imprisonment.

### **Repeal and amendment of laws**

**91.** (1) The laws specified in Columns 1 and 2 of the Schedule are repealed to the extent specified in Column 3 of the Schedule.

(2) The Commonwealth Relations Act, 1962 (Act No. 69 of 1962) is amended by the repeal of sections 6, 7, 8, 9, 10, 11 and 12.

(3) The Child Care and Protection Act is amended by -

(a) the substitution for subsection (1) of section 181 of the following subsection -

“(1) After an adoption order has been made by a children’s court in respect of a child whose birth has been registered in Namibia, the clerk of the children’s court must transmit a notice in the prescribed form containing details of the adoption to the Minister responsible for civil registration and the identification of persons, who must alter the Birth Register accordingly.”

- (b) the substitution for subsection (2) of section 181 of the following subsection -

“(2) A notice in terms of subsection (1) must be accompanied by -

(a) a copy of the relevant adoption order; and

(b) the birth certificate of the child.”;

- (c) by the insertion of the following subsection after subsection (2) -

“(3) If the adoption of a child whose birth has been registered in Namibia is rescinded in terms of section 179, the clerk of the children’s court must transmit a notice in the prescribed form accompanied by a copy of the court order for rescission to the Minister responsible for civil registration and the identification of persons, who must alter the Birth Register accordingly.”.

- (d) by the substitution for section 182 of the following section -

**“Registration of birth and recording of adoption of child whose birth is registered outside Namibia**

**182. (1) After an adoption order has been made by a children’s court in respect of a child whose birth has been registered outside Namibia, the clerk of the children’s court must transmit a notice containing details of the adoption to the minister responsible for civil registration and the identification of persons for the purpose of making an appropriate record of the adoption of the child in the Civil Register.**

(2) A notice in terms of subsection (1) must be accompanied by -

(a) a copy of the relevant adoption order; and

(b) a copy of the birth certificate of the adopted child or if the birth certificate is not available, other documentary evidence relating to the identity and date of birth of the child.

(3) If the adoption of a child whose birth has been registered outside Namibia is rescinded in terms of section 179, the clerk of the children’s court must transmit a notice in the prescribed form accompanied by a copy of the court order for rescission to the minister responsible for civil registration and the identification of persons, who must alter the Civil Register accordingly.

(4) The clerk of the court must transmit a copy of any notice referred to in this section, and its accompanying documentation, to the Central Authority of Namibia for onward transmission to the appropriate authority in the child’s country of origin for the purposes of altering that country’s birth registration records as appropriate.”.

- (4) The Namibia Citizenship Act, 1990 (Act No. 14 of 1990) is amended by -

- (a) by the substitution for paragraph (b) of section 2 of the following paragraph:

“(b) Any person born outside Namibia on or after the date of Independence shall, if such person was adopted in terms of the provisions of any law regulating the adoption of children in Namibia, including the Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption, by a Namibian citizen or, in the case of a joint adoption, if the adoptive father or mother is a Namibian citizen, be deemed to be registered as a Namibian citizen by descent under subsection (1), and a certificate of registration may, on application made in terms of that subsection, be issued to such person.”; and

- (b) by the addition of the following paragraphs after paragraph (b) of section 2:

“(c) Namibian citizenship obtained through adoption as referred to in paragraph (b) shall not be lost if the adoption is rescinded.

(d) No Namibian citizen by birth or descent who is adopted by a non-Namibian citizen in terms of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption or any other law shall lose his or her citizenship under Part III of this Act.”.

### **Transitional provisions**

92. (1) A certificate or document issued and records of civil events compiled under the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963) are considered to have been issued or compiled under this Act.

(2) An identity document issued under the Identification Act is considered to have been issued under this Act.

(3) Any identity document or other related document issued by the Ministry responsible for civil registration and the identification of persons on or after 1 July 1994 and before the commencement of the Identification Act is considered to have been issued under this Act.

(4) Any other identity document issued under any provision of any law repealed by the Identification Act must, despite the repeal of such law, remain in force and be considered to be an identity document issued under this Act until a date as determined by the Minister by notice in the *Gazette* and such an identity document ceases to be a valid identity document with effect from that date.

(5) Any directive or authority made or given under any provision of the Identification Act must, in so far as it is not inconsistent with this Act, be considered to have been made or given under a corresponding provision of this Act.

(6) The population register compiled and maintained under the Identification Act is considered to have been compiled and maintained under this Act.

**Short title and commencement**

**93.** (1) This Act is called the Civil Registration and Identification Act, 2023 and commences on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

**SCHEDULE**

## LAWS REPEALED

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
No. and Year of law	Title of Law	Extent of repeal
Act No. 1 of 1937	Aliens Act, 1937	The repeal of the whole
Act No. 57 of 1951	Merchant Shipping Act, 1951	The repeal of section 189
Act No. 59 of 1961	Aliens Amendment Act, 1961	The repeal of the whole
Act No. 7 of 1967	Aliens Amendment Act, 1967	The repeal of the whole
AG 15 of 1989	Aliens and Immigration Laws Amendment Proclamation, 1989	The repeal of the whole
Act No. 81 of 1963	Births, Marriages and Deaths Registration Act, 1963	The repeal of the whole
Act No. 17 of 1967	Births, Marriages and Deaths Registration Amendment, 1967	The repeal of the whole
Act No. 18 of 1968	Births, Marriages and Deaths Registration Amendment, 1968	The repeal of the whole
Act No. 58 of 1970	Births, Marriages and Deaths Registration Amendment, 1970	The repeal of the whole
Act No. 51 of 1974	Births, Marriages and Deaths Registration Amendment, 1974	The repeal of the whole
Act No. 5 of 1987	Marriages, Births and Deaths Amendment Act, 1987	The repeal of the whole
Act No. 21 of 1996	Identification Act, 1996	The repeal of the whole