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09/08/2024

MINISTRY OF JUSTICE

DATE 2024 -08- 09

DIRECTORATE LEGISLATIVE DRAFTING

NAME:

SCRUTINIZED BY

**AMENDMENTS TO THE CIVIL REGISTRATION AND IDENTIFICATION BILL
BILL NO. 3 OF 2023**

THAT:

1. **In clause 1**, substitute the definition of “family member” for the following definition:

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

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2. In clause 1, insert the definition of “Namibian foreign mission”:

““Namibian foreign mission” means a Namibian diplomatic mission, if there is one, or in default thereof, 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;”.

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3. In clause 3, substitute subclause (5) for the following subclause:

“(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 purposes of exercising powers conferred on and the performance of functions imposed on them under this Act.”.

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4. In clause 4, substitute subclause (5) for the following subclause:

“(5) The Committee must, where it could not reach a recommendation or decision based on evidence presented in terms of this Act, refer the matter to the Registrar-General to –

- (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, refer the case to the Executive Director responsible for health who must assign the matter to a medical practitioner employed by the State for a medical estimation or determination of that person’s age, in which case the medical practitioner must complete the prescribed form.”.

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5. In clause 6, substitute paragraph (d) for the following paragraph:

“(d) details contained in a court order in respect of an adoption or rescission of an adoption, and if it is an adoption concluded outside Namibia, a children’s commissioner must confirm in writing to the Registrar-General that such adoption is -

- (i) capable of being concluded under the laws of Namibia; and
- (ii) not manifestly contrary to its public policy,

taking into account the best interest of the child;”.

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6. In clause 6, substitute paragraph (f) for the following paragraph:

“(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 12 months or longer, including persons who hold multiple permits or other legal authorities which cumulatively authorise the persons to be present in Namibia for 12 months or longer -

- (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
- (iii) particulars of any additional permits or legal authorities issued in respect of that person;

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7. **In clause 13**, substitute paragraph (f) of subclause (2) for the following paragraph:

“(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.”.

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8. In clause 18, substitute paragraph (b) of subclause (1) for the following paragraph:

“(b) apply for registration of birth contemplated in section 12 with the Registrar-General reflecting -;”.

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9. In clause 13, substitute subclause (8) for the following subclause:

“(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 in terms of subsection (9) regarding the age to be recorded in the Civil Register by the Registrar-General in respect of that person.”.

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10. In clause 13, substitute subclause (9) for the following subclause:

- “(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, advise the Registrar-General to 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, advise the Registrar-General to refer the case to the Executive Director responsible for health who must assign the matter to a medical practitioner employed by the State for a medical estimation or determination of that person's age, in which case the medical practitioner must complete the prescribed form.”.

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11. In clause 15, substitute subclause (2) for the following subclause:

“(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.”.

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12. In clause 20, substitute subclause (5) for the following subclause:

“(5) details contained in a court order in respect of an adoption or rescission of an adoption, and if it is an adoption concluded outside Namibia, a children’s commissioner must confirm in writing to the Registrar-General that such adoption is -

- (a) capable of being concluded under the laws of Namibia; and
- (b) not manifestly contrary to its public policy,

taking into account the best interest of the child.”

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13. In clause 23, substitute subclause (2) for the following subclause:

“(2) A parent or parents wishing to change the first name or a surname of his or her or their child, if the child is below the minimum age whose particulars appear in the Birth Register, 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.”.

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14. In clause 24, substitute subclause (2) for the following subclause:

“(2) A person who has reached the minimum age and whose particulars appear in the Birth Register may, subject to subsection (3), apply to change his or her first name or names or surname, in the prescribed form together with the prescribed requirements and reason for the change of name, to a registrar at any civil registration point for a decision by the Registrar-General.”.

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15. In clause 27, substitute paragraph (b) of subclause (8) for the following paragraph:

“(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”.

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16. In clause 30, substitute subclause (5) for the following subclause:

“(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.”.

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17. In **clause 33**, substitute the introductory paragraph of subclause (2) for the following paragraph:

“(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 persons in the following order of priority - ”.

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18. In clause 33, delete paragraph (d) of subclause (2).

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19. In clause 33, substitute paragraph (e) for the following paragraph:

“(e) any other family member of the deceased person who has reached the age of majority; or”.

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20. In clause 33, substitute paragraph (f) for the following paragraph:

“(f) in the absence of any such family members, any other person who has reached the age of majority as the Registrar-General considers appropriate which may include 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;”.

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21. In clause 40, substitute paragraph (d) of subclause (3) for the following paragraph:

“(d) the identity numbers of the spouses, or in the case of a foreign national who is not a permanent resident of Namibia, the passport number and expiry date and, if available, the identification number of the spouse who is a foreign national;”.

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22. **In clause 44, substitute subclause (1) for the following subclause:**

“(1) In this section, references to marriage, divorce or marital severance do not include same sex marriage or divorce by spouses in a same sex marriage or marital severance relating to spouses in a same sex marriage.”.

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23. In clause 44, substitute subclause (4) for the following subclause:

“(4) Subsection (2) applies equally to a person who is granted another marital severance outside Namibia.”.

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24. In clause 54, substitute subclause (1) for the following subclause:

“(1) A registrar must act in accordance with subsection (2) if, due to an error, submission of incorrect information or passage of time -

- (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.”.

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25. In clause 55, substitute subclause (2) for the following subclause:

“(2) A person who is in possession of a proof of registration or an uncanceled identity document as contemplated in subsection (1) 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.”.

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26. In clause 59, substitute subclause (1) for the following subclause:

“(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.”.

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27. In clause 69, substitute the introductory paragraph for the following introductory paragraph:

“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 relevant data subject or a court order - ”.

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28. In clause 74, substitute subclause (1) for the following subclause:

“(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.”

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29. In clause 74, substitute subclause (2) for the following subclause:

“(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.”.

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30. In clause 83 substitute paragraph (a) of subclause (2) for the following subparagraph:

“(a) reported as soon as possible, but within a period not exceeding one year, to the nearest Namibian foreign mission, the head office of the Ministry, any registrar in person, by courier or by registered post for transmission to the Registrar-General;”.

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31. In clause 83, substitute subclause (3) for the following subclause:

“(3) The Registrar-General may condone reporting in terms of subsection (2) after one year on good cause shown, including the fact that timeous reporting was not possible due to any form of hardship an application by the person whose birth was not reported in terms of subsection (2) after that person has reached the minimum age.”.

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32. In clause 83, substitute subclause (4) for the following subclause:

“(4) 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 infant or child;

(ii) a legal representative, social worker or any 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.”.

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33. In clause 83, substitute subclause (5) for the following subclause:

“(5) 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.”.

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34. In clause 83, substitute subclause (6) for the following subclause:

“(6) 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 person registering the birth or death 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.”

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35. In clause 86, substitute subclause (2) for the following subclause:

“(2) A person who, upon request, refuses to deliver a document referred to in 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.”.

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36. In clause 88, substitute the introductory paragraph of subclause (1) for the following introductory paragraph:

“(1) A person who intentionally or unreasonably -”.

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37. In clause 88, substitute paragraph (f) of subclause (1) for the following paragraph:

“(f) for the purpose of deceiving, allows a civil event certificate, identity document or proof of registration issued to him or her to come into the possession of another person;”.

38. In clause 91, substitute subclause (4) for the following subclause:

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

(a) the insertion of the following subheading immediately after the heading PART II, NAMIBIAN CITIZENSHIP:

“CITIZENSHIP BY BIRTH”

(b) the insertion of section 2A:

“Children born in Namibia who are adopted

2A. (1) A child who -

(a) is born in Namibia; and

(b) is adopted in terms of any law by a Namibian citizen or, in the case of a joint adoption, by at least one adoptive parent who is a Namibian citizen,

is deemed to be a Namibian citizen by birth regardless of his or her citizenship status prior to the adoption: Provided that in the case of an adoption that takes place outside Namibia, the adoption has been recorded in the Civil Register in terms of the Civil Registration and Identification Act, 2024.

(2) Namibian citizenship by birth obtained through adoption in terms of subsection (1) shall not be lost if the adoption is rescinded.

(3) No Namibian citizen by birth who is adopted by a non-Namibian citizen in terms of any law shall lose his or her Namibian citizenship by virtue of that adoption.”;

(c) by the deletion of paragraph (b) of subsection (2) of section 2;

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

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“(c) Namibian citizenship obtained through adoption 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.”;

(e) by the insertion of section 2B:

“Children born outside Namibia who are adopted

2B. (1) 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 providing for the adoption of children by a Namibian citizen or, in the case of a joint adoption, if either adoptive parent is a Namibian citizen, is be deemed to be registered as a Namibian citizen by descent from the date of the child’s birth under subsection (1): Provided that in the case of an adoption that takes place outside Namibia, the adoption has been recorded in the Civil Register in terms of the Civil Registration and Identification Act, 2024.

(2) Namibian citizenship by descent obtained through adoption as referred to in subsection (1) is not lost if the adoption is rescinded.

(3) No Namibian citizen by descent who is adopted by a non-Namibian citizen in terms of any law shall lose his or her Namibian citizenship by virtue of that adoption.

(4) A person who is a Namibian citizen by descent by virtue of adoption, or in the case of a minor someone acting on his or her behalf, may apply for a certificate of citizenship by descent in terms of section 2.”.