

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**REGISTRATION OF DEATHS ABROAD
AMENDMENT BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs,
the Hon Julie Bishop MP)

REGISTRATION OF DEATHS ABROAD AMENDMENT BILL 2016

GENERAL OUTLINE

The primary purpose of the Registration of Deaths Abroad Amendment Bill 2016 is to correct an anomaly in the Registration of Deaths Abroad Act 1984 (the RDA Act). The correction will allow the 'Registrar of Deaths Abroad' (the Registrar) to register deaths in prescribed circumstances. Further, this Bill seeks to simplify the process for registering an overseas death.

The principal amendments of the Bill are to:

- provide the Foreign Minister with the flexibility to appoint any State or Territory Registrar as the Registrar;
- validate the prior appointment of the ACT Registrar-General as the Registrar and any previous registrations of deaths under the RDA Act;
- allow the Registrar to register deaths that could have been registered under the law of a State or Territory, where the State or Territory concerned has provided notice that it will not register a death; and
- remove any references to 'registering officers' from the RDA Act, to ensure that only the Registrar can register deaths under the RDA Act.

Financial impact statement

Passage of this legislation will not result in any additional cost to the community or to the Commonwealth.

REGISTRATION OF DEATHS ABROAD AMENDMENT BILL 2016**NOTES ON CLAUSES****Clause 1—Short title**

1. Clause 1 is a formal provision specifying the short title of the Bill which, when enacted, is to be cited as the *Registration of Deaths Abroad Amendment Act 2016*.

Clause 2—Commencement

2. Clause 2 provides for the commencement of the Bill.
3. Subsection 2(1) provides that each provision of this Bill specified in column 1 of the table, when enacted, commences or is taken to have commenced in accordance with column 2 of the table, and that any other statement in column 2 is to have effect according to its terms.
4. Table Item 1 specifies that sections 1–3 (and anything in the Act not elsewhere covered by the table) will commence on the day after this Act receives the Royal Assent.
5. Table Item 2 provides that Schedule 1 Part 1 (Amendments) and Schedule 1 Part 2 (Application and transitional provisions) will commence on a single day to be fixed by Proclamation.
6. Subsection 2(2) provides that any information in column 3 of the table is not part of this Bill but may be inserted in this column, or information in it may be edited, in any published version of this Act.

Clause 3—Schedules

7. Clause 3 provides that legislation specified in a Schedule to the Act is to be amended or repealed as set out in the applicable items in the Schedule concerned, and stipulates that any other item in a Schedule to the Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Registration of Deaths Abroad Act 1984

Item 1—Subsection 3(1)

8. Item 1 repeals the definition of *appoint* in the RDA Act, which is unnecessary. Subsection 3(1) of the RDA Act simply notes that '*appoint* includes reappoint'.

Item 2—Subsection 3(1)

9. Item 2 repeals the definition of *registering officer* in the RDA Act. In conjunction with other items that remove references to 'registering officers' from the RDA Act, this amendment is intended to ensure that only the Registrar can register deaths under the RDA Act. The Department of Foreign Affairs and Trade no longer performs the function of registering deaths under the RDA Act.

Item 3—Subsection 3(1)

10. Item 3 inserts two new definitions into the RDA Act: *relevant State or Territory seal* and *State or Territory registrar*.
11. *Relevant State or Territory seal* has the meaning given by the new section 3A. These amendments, in conjunction with item 27, are intended to allow a State and Territory registrar that is appointed as Registrar (in a permanent, acting or delegated capacity) to continue using the seal used by that person in their capacity as a State or Territory registrar.
12. *State or Territory registrar* is defined to mean a person who holds an office or position that has the function of keeping a register of deaths under a law of a State or Territory. Each Australian State and Territory currently has a governmental authority that can register deaths upon application, including some overseas deaths. The amended section 5 of the RDA Act provides that the Minister must not appoint a person unless, *inter alia*, the person is a State or Territory registrar.

Item 4—Subsection 3A

13. Item 4 defines *relevant State or Territory seal*. In conjunction with item 27, this amendment is intended to allow a State or Territory registrar which has been appointed as Registrar (in a permanent, acting or delegated capacity) to continue using the seal used by that person in their capacity as a State or Territory registrar. These items are intended to reduce the administrative burden for any State or Territory registrar performing functions under the RDA Act.

Item 5—Section 4A

14. Item 5 repeals section 4A of the RDA Act because the *Criminal Code* is a law of general application that applies regardless of section 4A.

Item 6—Sections 5 and 6

15. Item 6 repeals section 5 of the RDA Act and replaces it with a new section 5. This amendment is intended to provide the Foreign Minister with the power to appoint, by written instrument, any State or Territory registrar as the Registrar.
16. Subsection 5(2) of the RDA Act currently requires the Registrar to be a ‘person engaged under the *Public Service Act 1999*’. This requirement created an anomaly whereby the ACT Registrar-General had been appointed as the Registrar but beyond 1994 was not employed under that Act. Accordingly, item 6 is intended to remove this requirement and allow any State or Territory registrar to be appointed to the position.
17. For purposes of constitutional validity, the appointment of a State or Territory registrar as the Registrar is subject to the written notice of the State or Territory concerned in paragraph 5(3)(b). This written notice may be provided on behalf of a State or Territory by a Minister of the State or Territory.
18. The new subsections 5(5)-(8) of the RDA Act clarify the termination and resignation processes for a Registrar.
19. Item 5 also repeals and replaces section 6 of the RDA Act, regarding acting Registrars. The new subsection 6(1) reflects the language of the RDA Act prior to these amendments, identifying the circumstances in which a Minister may appoint an acting Registrar. In addition to the matters stipulated in subsection 6(1), subsections 6(2)-(3) are intended to impose the same conditions on the appointment of an acting Registrar as are imposed on the appointment of a Registrar.
20. Again, for the purposes of constitutional validity, the appointment of a State or Territory registrar as the acting Registrar is subject to the written notice of the State or Territory concerned in paragraph 6(2)(b). This written notice may be provided on behalf of a State or Territory by a Minister of the State or Territory.

Item 7—Subsection 7(1)

21. Item 7 removes the requirement that the Register of Deaths Abroad be kept ‘at a place in the Australian Capital Territory approved by the Minister’. This requirement serves no policy purpose. It is also too prescriptive and would not be practical where a State or Territory registrar other than the ACT Registrar-General was appointed as Registrar.

Item 8—Paragraph 8(2)(b)

22. Item 8 repeals and replaces paragraph 8(2)(b) of the RDA Act regarding the registration of overseas deaths by State and Territory registrars in their capacity as State or Territory registrars.
23. All State and Territory registrars have the capacity to register deaths that occur overseas in circumstances prescribed by the relevant governing legislation.
24. Currently, paragraph 8(2)(b) provides that the Registrar is not authorised to register ‘a death that may be registered under the law of a State or of a Territory’. However, the new paragraph 8(2)(b) permits the registration of such deaths on the condition that the State or Territory registrar concerned notifies the Registrar of its decision not to register the death.
25. Under current arrangements, applicants can remain in a procedural ‘limbo’ as they negotiate with State or Territory Registrars to register an overseas death. This amendment is intended to simplify the process by providing clear authority for the Registrar’s discretion where the appropriate notification has been provided.

Items 9-22

26. These items amend (omit or in some cases replace with ‘the Registrar’) references to ‘registering officers’ in the named provisions. These amendments are intended to ensure that only the Registrar can register deaths under the RDA Act. The Department of Foreign Affairs and Trade no longer performs the function of registering deaths under the RDA Act.

Item 23—Subsection 15(2)

27. Item 23 amends subsection 15(2) to accord with the new process for the electronic sealing of documents described in section 17 of the amended RDA Act.

Items 24 and 25—Subsections 15(3) and (4)

28. Items 24 and 25 amend subsections 15(3) and (4), respectively, to remove references to ‘a registering officer’, to ensure that only the Registrar can register deaths under the RDA Act.

Item 26—Section 16

29. Item 26 repeals and replaces section 16 in the RDA Act. This amendment is intended to reflect the removal of the concept of ‘registering officers’ from the RDA Act. It is also intended to simplify the section.

Item 27—Section 17

30. Item 27 repeals and replaces section 17 in the RDA Act. The current text of the provision does not reflect the modern practice of signing and sealing

documents by electronic means, as practised by all State and Territory registrars, including the ACT Registrar-General. Accordingly, the new section 17 adopts the language used in relevant model State and Territory legislation.

31. The new section 17 also refers to ‘the relevant State or Territory seal’, which refers to the capacity for the Registrar to use the seal ordinarily used in that person’s capacity as State or Territory registrar. This reflects amendments elsewhere in the Bill (in particular, refer item 4).

Item 28—After subsection 19(3)

32. Item 28 inserts a new subsection 19(3A), which requires the Registrar to sign and seal, or cause to be sealed, with the relevant State or Territory seal each certified copy or extract of the Register of Deaths Abroad. This amendment is considered necessary because copies and extracts of the Register of Deaths Aboard have legal consequences under subsection 23(2) of the RDA Act. This also accords with State and Territory model legislation for the registration of births, deaths and marriages.

Item 29—Subsection 21(8)

33. Item 29 amends subsection 21(8) to remove the reference to ‘a registering officer’, to ensure that only the Registrar can register deaths under the RDA Act.

Item 30—Subsection 22(2)

34. Item 30 repeals subsection 22(2) of the RDA Act. With the use of electronic registers, it is no longer the practice of State or Territory registrars to write in the margin of a register to cancel a registration. This amendment leaves open the manner in which the Registrar would record a cancellation under subsection 22(1) of the RDA Act.

Items 31 and 32—Subsection 23(1)

35. Items 31 and 32 amend subsection 23(1) to accord with the new process for the electronic sealing of documents described in section 17 of the amended RDA Act.

Item 33—Subsection 24(3)

36. Item 33 amends subsection 24(3) to accord with the new process for the electronic sealing of documents described in section 17 of the amended RDA Act.

Item 34—Section 26

37. This item repeals and replaces section 26 of the RDA Act.

38. The new subsection 26(1) empowers the Registrar to delegate by writing all or any of its powers and functions under the RDA Act. The Registrar may delegate to an employee in the same office or body as the Registrar or another State or Territory registrar (defined in section 3(1) of the amended RDA Act).
39. The capacity to delegate is not confined to senior employees (for example, positions equivalent to SES positions in the Australian Public Service). State and Territory registrars advised that employees in their offices were not employed at levels equivalent to SES in almost all cases. Even limiting the Registrar's delegation capacity to employees in positions equivalent to Executive Level 1 in the Australian Public Service would have meant that some State and Territory registrars could not delegate to an employee in their office. Accordingly, it was not feasible to place a condition of seniority on the capacity to exercise delegated powers and functions under the RDA Act.
40. In subsection 26(2), for purposes of constitutional validity, the Registrar's capacity to delegate to another State or Territory registrar under paragraph 26(1)(b) is subject to the written consent of the State or Territory concerned.
41. Subsection 26(2) does not apply to delegations under paragraph 26(1)(a) because these delegations are made within a State or Territory (that has already consented to its officers or bodies performing functions or duties, or exercising powers, under Commonwealth legislation) and not to another State or Territory. Accordingly, the same constitutional issues do not apply.
42. A delegation under section 26 of the RDA Act does not require Ministerial approval and is most appropriate to cover short-term absences.

Item 35—Paragraphs 27(1)(a) and (b)

43. This item removes references to 'a registering officer', to ensure that only the Registrar can register deaths under the RDA Act.

Item 36—Paragraph 27(1)(f)

44. Item 36 amends paragraph 27(1)(f) to refer to a decision to cancel the registration of a death under subsection 22(1). Subsection 22(2) is repealed by item 29. In any case, subsection 22(1) refers to the decision to cancel a registration, while subsection 22(2) refers to the manner in which the cancellation is recorded.

Item 37—Subsection 27(2)

45. This item removes the reference to 'a registering officer', to ensure that only the Registrar can register deaths under the RDA Act.

Schedule 1—Amendments

Part 2—Application and transitional provisions

46. This Part establishes transitional provisions that are intended to ensure the proper continuation of functions under the RDA Act, as well as to validate any appointments and any consequent registrations made under the RDA Act prior to the commencement of this Part.

Item 38—Principal Act

47. Item 38 defines *Principal Act*, referred to in this Part.

Item 39—Validation of things purportedly done under the Principal Act

48. Item 39 validates things purportedly done under the Principal Act prior to the commencement of this item, namely the appointment of a Registrar under the Principal Act and accordingly any registrations made by that Registrar that would otherwise have been valid and effective.
49. In particular, item 39 removes the requirement for the Registrar to be ‘engaged under the *Public Service Act 1999*’. This requirement affected the prior appointment of the ACT Registrar-General as the Registrar and may have affected registrations made by the ACT Registrar-General in its capacity as the Registrar.
50. Item 39 also validates registrations that may otherwise have been invalidated by the operation of subsection 8(2) of the Principal Act, which disallows the registration of a death where it could have been registered under the law of a State or Territory.

Item 40— Pending applications for the registration of a death

51. Item 40 permits a Registrar appointed after the commencement of this item to consider pending applications for the registration of a death (where the application was made prior to the commencement of this item and a decision to accept or refuse the registration has not been made).

Item 41— Notification that State or Territory registrar will not register death

52. In conjunction with item 8, item 41 allows the Registrar to rely on a notification that a State or Territory registrar will not register a death even where it was provided at or before the commencement of this item.

Item 42— Judicial notice of the mark of a stamp etc.

53. Item 42 is intended to ensure that the stamps etc. referred to in subsection 17(5) and used on documents, copies or extracts prior to the commencement of

this item continue to have the same legal consequence, despite the repeal of that subsection.

REGISTRATION OF DEATHS ABROAD AMENDMENT BILL 2016

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)

Registration of Deaths Abroad Amendment Bill 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The principal amendments of the Bill are to:

- provide the Foreign Minister with the flexibility to appoint any State or Territory Registrar as the ‘Registrar of Deaths Abroad’ (the Registrar);
- validate the prior appointment of the ACT Registrar-General as the Registrar and any previous registrations of deaths under the *Registration of Deaths Abroad Act 1984* (the RDA Act);
- allow the Registrar to register deaths that could have been registered under the law of a State or Territory, where the State or Territory concerned has provided notice that it will not register a death; and
- remove any references to ‘registering officers’ from the RDA Act, to ensure that only the Registrar can register deaths under the RDA Act.

Human rights implications

This Bill does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in Section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. For clarity, the registration of deaths under the RDA is a non-mandatory regime.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.