Registration of Deaths Abroad Amendment Bill 2016

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Date introduced: 2 March 2016
House: House of Representatives
Portfolio: Foreign Affairs and Trade
Commencement: Sections 1 to 3 on the day after Royal Assent. Schedule 1 commences on proclamation or six months after Royal Assent, whichever is earlier.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.

All hyperlinks in this Bills Digest are correct as at April 2016.
Purpose of the Bill

The purpose of the Registration of Deaths Abroad Amendment Bill 2016 is to amend the Registration of Deaths Abroad Act 1984 (RDA Act) to:

- provide the Minister for Foreign Affairs with the flexibility to appoint any state or territory registrar of deaths as Registrar of Deaths Abroad
- remove an anomaly in the RDA Act requiring the Registrar of Deaths Abroad to be appointed under the Public Service Act 1999
- allow the Registrar to register a death that could have been registered under the law of a state or territory where the state or territory has notified the Registrar that it will not register the death
- validate the prior appointment of the ACT Registrar-General as the Registrar of Deaths Abroad and any previous registrations of death under the RDA Act
- provide that only the Registrar of Deaths Abroad may now register a death under the RDA Act.

Background

In 2012–13, consular staff provided advice and assistance to the families of 1,247 Australians who died overseas during that year. In 2013–14, advice and assistance was provided to the families of 1,215 Australians who died overseas. Illness was the leading cause of death for Aussies away from home. Accidents are also a common cause. The national medical adviser for the Travel Doctor, Dr Tony Gherardin, has reportedly said:

> People often forget to get the proper vaccinations before going abroad and were putting themselves at risk of diseases such as malaria, dengue fever and typhoid fever.

The registration of deaths occurring within Australia is a state and territory responsibility. It is not compulsory to register a death in Australia that occurs overseas. However, as the Minister for Foreign Affairs noted in the second reading speech to the 1984 Registration of Deaths Abroad Bill, the legislation was intended to assist persons experiencing considerable difficulties in winding up the estates of persons who have died overseas because no death certificate could be issued in Australia.

Currently, the Registrar of Deaths Abroad, the Minister and various consular officials may register a death occurring overseas under the RDA Act. A list of the officials currently able to register a death appears in the Key Provisions part of this Digest, below. The Bill provides that, in future, only the Registrar of Deaths Abroad can register a death occurring overseas under the RDA Act. At present, the Registrar is not authorised to register under the RDA Act, a death:

- of a person whose identity is unknown
- that may be registered under the law of a state or territory or
- of a person, other than a prescribed person, who died on board an aircraft or ship, other than an Australian aircraft or ship, whose death may be registered under the law of a foreign country.

The death of a person who dies within a state or territory must be registered under state or territory law.

Generally, state and territory legislation provides that the state or territory may register a death which occurs in an aircraft during a flight to an airport in the state or on board a ship during a voyage to a port in the state.

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1. Registration of Deaths Abroad Act 1984 (Cth).
7. A ‘prescribed person’ is, broadly, an Australian citizen or resident, or a person in receipt of an Australian social security benefit or pension—subsection 3(1) of the RDA Act.
person is ordinarily resident in the state or territory and dies outside Australia, or a person dies outside Australia leaving property in the state, the death may be registered under the state Act.  

Consular staff in Australia and overseas are able to provide the following services:

- assist family and friends to understand the legal and administrative processes that apply in [the foreign] country
- provide a list of local funeral directors and lawyers
- liaise with the local funeral director so they are aware of Australian quarantine regulations
- provide advice on how family and friends can obtain translations if an English-speaking funeral service company is not available
- advise on the estimated cost of local burial, local cremation or transport of the deceased back to Australia
- advise on how to transfer funds from Australia to meet any costs
- assist, if necessary, to identify the body
- assist with obtaining quarantine clearance for the return of the remains
- provide advice on managing media enquiries.  

Registration of Deaths Abroad Act 1984

The purpose of the Registration of Deaths Abroad Act 1984 is to provide for the registration in Australia of the deaths of Australian citizens, Australian residents and people in receipt of Australian social security benefits who die overseas and whose deaths cannot be registered under existing state and territory legislation. The RDA Act enables Australia to conform to accepted international practice by registering the deaths of these and other persons which occur in international airspace or waters on board Australian registered aircraft or ships, or on board ships or aircraft travelling to and from Australia.

Registrar of Deaths Abroad

The Registrar-General for the ACT presently undertakes the function of Registrar of Deaths Abroad. The ACT Births, Deaths and Marriages Practice Manual notes:

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

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

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

5.4.1 APPLICATIONS FOR REGISTRATION OF A DEATH ABROAD

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

8. Births, Deaths and Marriages Registration Act 1995 (NSW), section 36; Births, Deaths and Marriages Registration Act 1996 (Vic.), section 34; Births, Deaths and Marriages Registration Act 2003 (Qld), section 27; Births, Deaths and Marriages Registration Act 1996 (SA), section 33; Births, Deaths and Marriages Registration Act 1999 (Tas.), section 32; Births, Deaths and Marriages Registration Act 1998 (WA), section 40; Births, Deaths and Marriages Registration Act 1997 (ACT), section 33; Births, Deaths and Marriages Registration Act (NT), section 32. The references in some of these sections to ‘the Commonwealth’ refers to the Commonwealth of Australia. See: Interpretation Act 1987 (NSW), section 11; Interpretation Act 1984 (Vic), section 18; Acts Interpretation Act 1915 (SA), section 4; Acts Interpretation Act 1931 (Tas), section 43; Interpretation Act 1984 (WA), section 5; Interpretation Act (NT), section 17.


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

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

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

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

All original documents will be returned to the person applying for the death to be registered.11

Committee consideration

**Senate Standing Committee for the Selection of Bills**
The Senate Standing Committee on the Selection of Bills decided that the Bill should not be referred to a Committee for inquiry.12

**Senate Standing Committee for the Scrutiny of Bills**
The Senate Standing for the Scrutiny of Bills had no comment on the Bill.13

Financial implications

The Explanatory Memorandum notes that the Bill will not result in any additional cost to the community or to the Commonwealth.14

Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.15

**Parliamentary Joint Committee on Human Rights**
The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.16

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15. The Statement of Compatibility with Human Rights can be found at page 11 of the Explanatory Memorandum to the Bill.
Key issues and provisions

**Schedule 1—amendments of Registration of Deaths Abroad Act 1984**

**Item 2** amends subsection 3(1) of the *RDA Act* by repealing the definition of registering officer. Registering officer currently refers to the Registrar of Deaths Abroad and a number of other persons who may register deaths abroad. Those other persons include an Ambassador, High Commissioner, Minister, Head of a Mission and other consular staff or representatives. **Item 2** of the Bill and related amendments at **items 9 to 26, 29, 35 and 37**, which remove references to ‘registering officer’, ensure that only the Registrar can register deaths under the *RDA Act*. The Explanatory Memorandum notes that the Department of Foreign Affairs and Trade no longer performs the function of registering deaths under the *RDA Act*.17

**Item 6** repeals and substitutes sections 5 and 6 with **proposed sections 5 and 6**. Under subsection 5(1) the Minister must appoint a Registrar of Deaths Abroad. At present section 5(3) provides that if there is a vacancy in the office of the Registrar of Deaths Abroad, the Minister must appoint the ACT Registrar of Births Deaths and Marriages. Subsection 5(2) requires that the Registrar of Deaths Abroad be employed under the Commonwealth *Public Service Act 1999*. In fact, the ACT Registrar has not been employed under the Commonwealth *Public Service Act* since 1994, an anomaly that is removed by the Bill.18 **(Item 39)** of the Bill, discussed below, seeks to validate actions previously taken under the *RDA Act* that may otherwise be invalid due to the failure to comply with current legislative requirements, including the requirement in subsection 5(2). **Proposed section 5** provides for a Registrar of Deaths Abroad to be appointed by the Minister as is currently the case. The Minister must not appoint a person unless that person is a state or territory registrar and the state or territory concerned has given written notice to the Minister agreeing to the appointment (**proposed subsection 5(3)**).19 The Registrar no longer needs to be employed under the Commonwealth *Public Service Act* as this requirement would clearly not be met by state or territory registrars.

**Proposed subsection 5(5)** reproduces current subsection 5(4) by providing that the Minister may terminate the appointment of the Registrar of Deaths Abroad at any time, while **proposed subsection 5(6)** provides that the Minister must terminate the appointment if the person who is the Registrar ceases to be a state or territory registrar.

**Proposed section 6** provides that the Minister may appoint a person to act as the Registrar of Deaths Abroad if there is a vacancy, or the Registrar is absent or unable to perform the duties of the office. The same qualifications and conditions apply to the Acting Registrar as to the Registrar.

The proposed changes create greater flexibility by enabling the Minister to appoint any state or territory registrar as the Registrar/Acting Registrar of Deaths Abroad.

**Item 8** repeals paragraph 8(2)(b) and substitutes it with **proposed paragraph 8(2)(b)**. Subsection 8(1) lists the deaths that are registrable under the *RDA Act*, while subsection 8(2) lists those deaths that are not registrable. Paragraph 8(2)(b) provides that a death is not registrable under the *RDA Act* if it may be registered under the law of a state or territory. **Proposed paragraph 8(2)(b)** will allow the registration of a death that could be registered under a state or territory law, provided that the relevant state or territory registrar has notified the Registrar of Deaths Abroad that it will not register the death. The Explanatory Memorandum notes:

> 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.20

Section 15 sets out how a death is registered under the *RDA Act*. Current subsection 15(1) provides that where a registering officer is required to register a death under the Act he or she must do so by completing a written Certificate of Death Abroad. Current subsection 15(2) provides that such a Certificate is not regarded as complete until the registering office has signed the certificate and:

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18. Ibid., p. 5.
19. **Item 3** of the Bill inserts a definition of ‘State or Territory registrar’ into subsection 3(1) of the *RDA Act*. A State or Territory registrar is ‘a person who holds office or position that has the function of keeping a register of deaths under a law of a State or Territory’.
20. Ibid., p. 6.
• if the registering officer is the Registrar of Deaths Abroad, he or she has stamped the Certificate with the ‘official stamp’ mentioned in subsection 17(1) of the RDA Act (see below) or

• if the registering officer holds a consular position that has an official seal, he or she has sealed the Certificate.

Section 15 will be amended in two ways. Firstly, items 21 to 24 will amend section 15 to remove references to ‘registering officers’. As discussed in relation to Item 2, above, the RDA Act will no longer refer to registering officers and instead only the Registrar of Deaths Abroad will be able to register deaths under the Act.

Secondly, item 23 repeals and replaces subsection 15(2) to provide that a Certificate of Death Abroad is not complete until the Registrar of Deaths Abroad has signed and sealed the certificate, or has caused the certificate to be sealed, with the relevant state or territory seal. ‘Relevant state or territory seal’ is defined in proposed section 3A, inserted by item 4 of the Bill, as the seal used by the Registrar of Deaths Abroad in his or her capacity as a state or territory registrar. Item 27 of the Bill amends section 17 to remove the requirement for the Registrar to have an ‘official stamp’. The combined effect of the amendments made by items 4, 23 and 27 is that a Certificate will not be complete until the Registrar (who, under proposed subsection 5(3), at item 6, must be a state or territory registrar) has signed and sealed the Certificate (or caused it to be sealed) with the seal that he or she uses in his or her capacity as a state or territory registrar. The removal of the requirement for a separate stamp should simplify administrative processes for the state or territory registrar who is acting as the Registrar of Deaths Abroad, by allowing them to authenticate documents in the same way under both the relevant state or territory legislation and the Commonwealth legislation.

In addition to removing the requirement for the Registrar to have an official stamp, proposed section 17 also updates the provision to recognise electronic signing and sealing of documents. Proposed subsection 17(1) provides that, if the Registrar causes, by any method, a facsimile of the Registrar’s signature and the relevant state or territory seal to appear on a document, extract or copy, then the Registrar is taken to have signed the document and sealed it with the relevant state or territory seal. Under proposed subsection 17(2), all courts, judges and persons acting judicially must take judicial notice of the relevant state or territory seal on a document, copy or extract made under the Act and to presume the document, copy or extract was duly sealed with the relevant state or territory seal (unless there is proof to the contrary).

Section 19 deals with applications for searches and the making of copies of register entries. Subsection 19(3) requires the Registrar, on receipt of such an application (and the payment of any required fee) to advise the applicant of the result of the search and a copy or extract of an entry in the register, if that has been requested. Item 28 inserts proposed subsection 19(3A) which provides that the Registrar must sign and seal (with the relevant state or territory seal, as discussed above) each certified copy or extract issued under subsection 19(3). The Explanatory Memorandum notes that it is necessary to sign and seal the certified copy or extract as these documents have legal consequences under subsection 23(2) of the RDA Act and this approach is consistent with state and territory model legislation for the registration of births, deaths and marriages.21

Part 2—Application and transitional provisions

Item 39 validates matters that were purportedly done under the RDA Act prior to the commencement of Schedule 1 to the Bill, such as the appointment of the Registrar of Deaths Abroad and any registrations made under the Act by the Registrar that may not have been valid or effective.

Item 39 of the Bill applies to a thing purportedly done under the Act prior to the commencement of Schedule 1 to the Bill, to the extent that it would otherwise be invalid because:

1. a person was not validly appointed as Registrar of Deaths Abroad under subsection 5(1) of the Act or acting Registrar under section 6 of the Act or
2. paragraph 8(2)(b) of the RDA Act was not complied with.

These actions (or ‘things’) are validated by subitem 39(2).

The validation of things done by a person who may not have been validly appointed as Registrar or acting Registrar is required as (as discussed in relation to item 6, above) the RDA Act currently requires such a person to be engaged under the Commonwealth Public Service Act, but this requirement has not been met since 1994

(and will be removed by the Bill). As a result, there is concern to ensure the validity of registrations made by the Registrar since 1994.

As discussed above in relation to item 8 of the Bill, current paragraph 8(2)(b) of the RDA Act provides that the Registrar is not authorised to register the death of a person if that death may be registered under the law of a state or territory. This situation could affect applicants by letting them remain in a procedural ‘limbo’ as they negotiate with state or territory registrars to register an overseas death. Item 39 will ensure that any deaths previously registered by the Registrar of Deaths Abroad in non-compliance with paragraph 8(2)(b) will be regarded as validly registered. In addition, item 41 extends the application of paragraph 8(2)(b) as amended to deaths occurring before or after the commencement of Schedule 1 to the Bill.

Item 40 allows pending applications to be dealt with under the RDA Act as amended.

**Concluding comments**

The Bill will correct the anomaly which has resulted in uncertainty as to the validity of the appointment of the Registrar of Deaths Abroad since 1994 and, consequently, the registrations made during that time. The provisions of the Bill validate the previous appointments of the Registrar as well as previous registrations of death made under the Act. They also insert greater flexibility into the operation of the registration process for deaths abroad.

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