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GENERAL NOTICE

This notice supersedes Notice 1776 published in *Government Gazette* No. 22528 of 30 July 2001:
NOTICE 1819 OF 2001

REPUBLIC OF SOUTH AFRICA
BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL, 2001

.....
(To be introduced by the Minister of Home Affairs)

[B-2001]

REPUBLIEK VAN SUID-AFRIKA

.....
.....
.....
(MINISTER VAN BINNELANDSE SAKE)

[w-2001]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Births and Deaths Registration Act, 1992, so as to lower the age of majority, provide for the registration of a child in the surname of both parents and to provide for matters connected therewith

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 51 of 1992

1. Section 1: Definitions

Section 1 of the principal Act is hereby amended by the addition of the following definition:

"Competent Court" shall include any magistrate court or any children's court established in terms of the Child Care Act, 74 of 1983.

Section 1 of the principal Act is hereby amended as follows:

"Major" or **"person of age"** means any person who has attained the age of **[21]** 18 years or who has under the provisions of section 2 of the Age of Majority Act, 1972 (Act No. 57 of 1972), been declared to be a major, and includes a person under the age of 18 years, who has contracted a legal marriage.

Amendment of section 9 of Act 51 of 1992

2. Section 9 of the principal Act is hereby amended by the insertion of the following words in subsection (2):

"9 (2) subject to the provisions of section 10, the notice of birth referred to in subsection (1) of this section shall be given under the surname of either the father **[of the child concerned]** or the mother or the surnames of both parents joined together as a double barrel surname".

Amendment of section 25 (1) (b) and (c)

3. Section 25 (1) (b) and (c) of the principal Act is hereby amended by addition of the following subsection:

"Section 25 (1) (e) notwithstanding the provisions of section 25 (1) (b) and (c) the requirements of the natural father's written consent in instances where the mother has sole guardianship of the child concerned will not be applicable".

Amendment of section 26 (1) (c)

4. Section 26 of the principal Act is hereby amended by insertion of the following word in subsection 1 (c).
26 (1) (c) a woman, whether married or divorced [] or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.

Short title

5. This Bill is called the Births and Deaths Registration Amendment Bill, 2001.

MEMORANDUM ON THE OBJECTS OF THE BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL, 2001**PART 1****1. BACKGROUND**

In terms of section 28 (3) of the Republic of South Africa, Constitution Act 108 of 1996, a child is defined as a person under the age of 18 years. The definition of a major as provided for in terms of the Births and Deaths Registration Act 51 of 1992 has to be amended to be in line with the Constitution. Competent court as referred to in section 25 (1) (b) and (c) is not defined in the Act and the omission thereof has presented some difficulties in the interpretation of the section by the courts.

In line with section 9 of the Constitution of the Republic of South Africa Act 108 of 1996, it is deemed expedient that parents of children born during the subsistence of the marriage should be allowed to jointly decide to register their children under the surname of either the father or the mother or under both their surnames joined together as a double barrel surname.

It is a well known common law principle that where the mother or father has sole guardianship of the child, the consent of the natural father is not required in dealing with the affairs of the child.

PART 2**1. CLAUSE BY CLAUSE ANALYSIS****CLAUSE 1**

This clause amends the definition of a "major" to be in line with the Constitution. The definition of a "Competent Court" is also included in the principal Act.

CLAUSE 2

This clause seeks to entrench the equality principle enshrined in the Constitution by allowing parents to jointly decide on the surname of their children.

CLAUSE 3

This clause seeks to entrench the common law principle that sole guardianship by one parent of the child empowers him or her to deal with all the affairs affecting the child.

CLAUSE 4

This clause seeks to allow a widow to also add to the surname which she assumed after the marriage, any surname which she bore at any prior time. This is necessary to harmonise subsections (1) (c) with (1) (b) of section 26 of the principal Act.

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