

South Australia

# Adoption Act 1988

An Act to provide for the adoption of children; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Adoption Act 1988*.

### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

***adoptive parent***, of a child, means a person who has adopted the child in accordance with the provisions of this Act or who is recognised under this Act as having adopted the child;

***Australian law*** means a law of the Commonwealth or of a State or Territory of the Commonwealth;

***birth parent***, of a child, means—

- (a) the woman who gave birth to the child; or
- (b) the man who—
  - (i) acknowledges paternity of the child; or

- (ii) where paternity has not been acknowledged by anyone or is in dispute—has been found to be the father by a court (whether of this or any other jurisdiction) or has been adjudged to be the father under the *Family Relationships Act 1975* or any corresponding law of another jurisdiction;

**Chief Executive** means the chief executive of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**child** means a person who has not attained the age of 18 years;

**child born outside lawful marriage** includes a child born to a lawfully married woman of which her husband is not the father;

**the Convention** means the *Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* done at The Hague on 29 May 1993;

**Convention country** means a country outside Australia in respect of which the Convention has entered into force, but does not include any country in respect of which Australia has raised an objection in accordance with Article 44 of the Convention;

**the Court** means the *Youth Court of South Australia*;

**Family Law Act 1975** means the *Family Law Act 1975* (Cwth), as amended from time to time;

**guardian**, of a child, means a person (other than the Chief Executive) who is the legal guardian of the child or has the legal custody of the child or any other person who stands *in loco parentis* to the child and has done so for a significant length of time;

**marriage relationship** means the relationship between two persons cohabiting as husband and wife or *de facto* husband and wife;

**relative**, of a person, means a grandparent, brother, sister, uncle or aunt of the person, whether the relationship is of the whole blood or half blood or by affinity.

- (1a) For the purposes of this Act, the Court must be constituted of the Judge of the Court or a magistrate.
- (2) For the purposes of this Act, a person will be regarded as an Aboriginal if—
  - (a) the person is descended from an Aboriginal or Torres Strait Islander; and
  - (b) the person regards himself or herself as an Aboriginal or Torres Strait Islander or, if the person is a young child, at least one of the parents regards the child as an Aboriginal or Torres Strait Islander; and
  - (c) the person is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Island community.
- (3) If a man and woman are married according to Aboriginal tradition, they will be regarded as husband and wife for the purposes of this Act.
- (4) A reference in this Act to publication in the news media is a reference to publication—
  - (a) by radio or television; or
  - (b) by newspaper or other periodical publication; or
  - (c) by public exhibition.

## **7—General principle**

In all proceedings under this Act, the welfare of the child to whom the proceedings relate must be regarded as the paramount consideration.

### **7A—Minister to ensure consultation undertaken on operation of Act**

The Minister must ensure that regular consultation is undertaken with representatives of organisations with a special interest in the adoption of children and any other interested persons in relation to the operation of this Act.

## **Part 2—Adoption orders**

### **Division 1—Powers of the Court**

#### **8—General power of the Court**

- (1) Subject to any law of the Commonwealth, the Court has power to make orders for the adoption of children.
- (2) The Court cannot make an order for adoption except—
  - (a) in relation to a child who is in the State; and
  - (b) in favour of a person or persons who are resident or domiciled in the State.
- (3) If in proceedings for an adoption order the necessary territorial nexus with the State is established as at the date of commencement of the proceedings or some other date following within 21 days of that date, it will be presumed that the nexus continues in the absence of proof to the contrary.

#### **8A—Court must consider opinion of child**

- (1) Before making an order for the adoption of a child of or over 5 years of age, the Court must interview the child to determine what the child's opinion is in relation to the proposed order (unless satisfied that the child is intellectually incapable of expressing an opinion).
- (2) An interview under this section must not be conducted in the presence of any party to the adoption.
- (3) In determining whether to make an order for adoption of a child the Court must take into account any opinion expressed by the child in an interview under this section.
- (4) The Court may determine the weight to be given to an opinion expressed by a child in an interview under this section, taking into account the age of the child and any other factors the Court considers relevant.

#### **9—Effect of adoption order**

- (1) Subject to this section, where an adoption order is made, the adopted child becomes in contemplation of law the child of the adoptive parents and ceases to be the child of any previous birth or adoptive parents.
- (2) If an adoption order is made in favour of a person who is cohabiting with a birth or adoptive parent of the child in a marriage relationship, the relationship of that parent to the child is not affected by the order.

- (3) Where—
- (a) one of the birth or adoptive parents of a child dies; and
  - (b) the surviving parent cohabits with another person in a marriage relationship; and
  - (c) the child is adopted by that other person,
- the adoption does not exclude rights of inheritance from or through the deceased parent.
- (3a) The making of an adoption order in relation to a child does not affect any vested or contingent proprietary right acquired by the child before the making of the adoption order.
- (4) Where an order for the adoption of a child is made, any previous order for the adoption or guardianship of the child ceases to have effect.

### **10—No adoption order in certain circumstances**

- (1) The Court will not make an adoption order in favour of—
- (a) a person who is cohabiting with a birth or adoptive parent of the child in a marriage relationship; or
  - (b) a relative of the child, either solely or jointly with any other person,
- unless satisfied that adoption is clearly preferable, in the interests of the child, to any alternative order that may be made under the laws of the State or the Commonwealth.
- (2) The Court will not consider an application for adoption made by or on behalf of a person who is cohabiting with a birth or adoptive parent of the child in a marriage relationship unless the Family Court of Australia has given that person leave to proceed with the application for adoption under section 60G of the *Family Law Act 1975*.

### **11—Adoption of Aboriginal child**

- (1) The Court will not make an order for the adoption of an Aboriginal child unless satisfied that adoption is clearly preferable, in the interests of the child, to any alternative order that may be made under the laws of the State or the Commonwealth.
- (2) Subject to subsection (3), an order for the adoption of an Aboriginal child will not be made except in favour of a member of the child's Aboriginal community who has the correct relationship with the child in accordance with Aboriginal customary law or, if there is no such person seeking to adopt the child, some other Aboriginal person.
- (3) An order for the adoption of an Aboriginal child may be made in favour of a person who is not an Aboriginal person if the Court is satisfied—
- (a) that there are special circumstances justifying the making of the order; and
  - (b) that the child's cultural identity with the Aboriginal people will not be lost in consequence of the adoption.

## 12—Criteria affecting prospective adoptive parents

- (1) Subject to this section, an adoption order will not be made except in favour of two persons who have been cohabiting together in a marriage relationship for a continuous period of at least five years.
- (2) An adoption order may be made in favour of two persons who have been cohabiting together in a marriage relationship for a continuous period of less than five years if the Court is satisfied that there are special circumstances justifying the making of the order.
- (3) An adoption order may be made in favour of one person where—
  - (a) that person has cohabited with a birth or adoptive parent of the child in a marriage relationship for a continuous period of at least five years; or
  - (b) the Court is satisfied that there are special circumstances justifying the making of the order.
- (4) Where two persons are cohabiting in a marriage relationship, an adoption order will not be made except in favour of both or in the circumstances described in subsection (3)(a).
- (5) An adoption order will not be made in favour of a person who is lawfully married but not cohabiting with his or her spouse unless the Court is satisfied, after interviewing the spouse of the person in private, that the spouse consents to the adoption.

## 14—Discharge of adoption orders on ground of fraud

- (1) The Court may discharge an adoption order if it appears that the order was obtained by fraud, duress or other improper means.
- (2) The Court may, on discharging an adoption order, make any consequential orders that may be necessary or desirable in the circumstances of the case.

## Division 2—Consent to adoption

### 15—Consent of parent or guardian

- (1) Subject to this section, an adoption order will not be made unless each person who is a parent or guardian of the child has consented to the adoption (whether the parent or guardian is present in Australia or not).
- (2) The mother of a child cannot consent to the adoption of the child until 5 days after the birth of the child and, subject to subsection (3), a mother's consent given more than 5 but less than 14 days after the birth of the child will not be recognised as a valid consent to the child's adoption.
- (3) The Court may recognise the validity of a consent of a mother given more than 5 but less than 14 days after the birth of the child, if satisfied—
  - (a) that there were special circumstances justifying the giving of consent less than 14 days after the birth of the child; and
  - (b) that the mother was able to exercise a rational judgment on the question of consent.

- (4) The consent of a parent or guardian—
- (a) may be in general terms, authorising the adoption of the child by any persons in whose favour an order may be made; or
  - (b) may be limited, authorising the adoption of the child—
    - (i) by a relative of the child; or
    - (ii) by a person who has been appointed a guardian of the child by a court; or
    - (iii) by a person who is cohabiting with a parent of the child in a marriage relationship; or
    - (iv) by a person in whose care the child has been placed by the Chief Executive, either solely or jointly with any other person.
- (5) The consent of a parent or guardian—
- (a) must be in writing; and
  - (b) must (except where the Minister or the Chief Executive is the guardian)—
    - (i) be witnessed in accordance with the regulations; and
    - (ii) be endorsed by a person authorised by the Chief Executive with a statement to the effect that the parent or guardian has been counselled by that person at least three days before the giving of consent and appears to understand the consequences of adoption and the procedures for revoking the consent.
- (6) The consent of a parent or guardian may be revoked by written notice of revocation served personally or by post on the Chief Executive within 25 days or, with the approval of the Chief Executive given within that period of 25 days, 39 days, of the date of the consent.
- (7) The consent of the father of a child born outside lawful marriage is not required unless his paternity is recognised under the law of this State but if it appears to the Court that a particular person may be able to establish paternity of the child (not being a person whose paternity arises from unlawful sexual intercourse with the mother), the Court will not proceed to make an adoption order without allowing that person a reasonable opportunity to establish paternity.

## **16—Consent of child**

- (1) An adoption order will not be made in relation to a child over the age of 12 years unless—
- (a) the child has consented to the adoption; and
  - (b) 25 days have elapsed since the giving of consent; and
  - (c) the Court is satisfied, after interviewing the child in private, that the child's consent is genuine and the child does not wish to revoke it.
- (2) The consent of a child—
- (a) must be in writing; and
  - (b) must be witnessed in accordance with the regulations; and

- (c) must be endorsed by an officer authorised by the Chief Executive to make such an endorsement with a statement to the effect that the child has been counselled by that person.

### **17—Consent given under law of another jurisdiction**

- (1) A consent to the adoption of a child given by a person in accordance with the law of another State or of a Territory of the Commonwealth will be regarded as a consent given by the person in accordance with this Act.
- (2) Subject to any law of the Commonwealth, the requirements of this Act relating to consent to adoption will be taken to have been complied with in relation to the adoption of a child from a Convention country if the laws of that country relating to consent to such an adoption have been complied with.

### **18—Court may dispense with consents**

- (1) The Court may dispense with the consent of a person (other than the child) to an adoption where it appears to the Court—
  - (a) that the person cannot, after reasonable inquiry, be found or identified; or
  - (b) that the person is in such a physical or mental condition as not to be capable of properly considering the question of consent; or
  - (c) that the person has abandoned, deserted or persistently neglected or ill-treated the child; or
  - (d) that the person has, for a period of not less than one year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian of the child; or
  - (e) that there are other circumstances by reason of which the consent may properly be dispensed with.
- (2) The Court may dispense with the consent of a child to an adoption where it appears to the Court that the child is intellectually incapable of giving consent.
- (3) An application may be made under this section by the Chief Executive or a party to the adoption (including the child).

### **19—Order of Court dispensing with or recognising consent**

- (1) In order to facilitate arrangements for the adoption of a child, the Court may, on application by or on behalf of the Chief Executive, make an order dispensing with or recognising the validity of a consent under this Division before an application for an adoption order has been made and any such order has effect for the purposes of any application for an adoption order that may subsequently be made under this Act.
- (2) An order made under subsection (1) may, on the application of the Chief Executive or of the person whose consent was in question, be revoked by the Court at any time before the making of an adoption order in respect of the child.



## **Division 3—Recognition of adoption orders**

### **20—Recognition of adoption under Australian law**

An adoption order made (before or after the commencement of this Act) under an Australian law, but not under the law of the State, will be recognised under the law of the State as having the same effect as an adoption order under the law of the State.

### **21—Recognition of adoption under foreign law**

- (a) Subject to any law of the Commonwealth, an adoption order made under the law of a Convention country will be recognised under the law of the State as having the same effect as an adoption order under the law of the State.
- (1) An adoption order made (after the commencement of this Act) under the law of any other country outside Australia will be recognised under the law of the State as having the same effect as an adoption order under the law of the State if—
- (a) the order was made in accordance with the law of that country; and
  - (b) when the order was made, each applicant was domiciled in that country or had been resident in that country for at least 12 months; and
  - (c) the circumstances in which the order was made would, if they had existed in this State, have constituted a sufficient basis for making an adoption order under this Act; and
  - (d) the proceedings in which the order was made involved no denial of natural justice or failure to observe the requirements of substantial justice.
- (2) The Court may, on the application of an interested person, declare that an adoption order made under the law of a country outside Australia is or is not one that is to be recognised under the law of the State.
- (3) The Attorney-General is entitled to intervene in any proceedings under subsection (2).
- (4) Where immediately before the commencement of this Act an adoption order made under the law of a country outside Australia was recognised as having the same effect as an adoption order made in this State, the order continues to be so recognised.

## **Division 4—General provisions**

### **22—Court to consider report on suitability of adoptive parents**

- (1) Before making an order for the adoption of a child, the Court will consider any report prepared by or on behalf of the Chief Executive and submitted to the Court as to—
- (a) where the Chief Executive is the guardian of the child under section 25—the circumstances of the child; and
  - (b) in any case—the suitability of the prospective adoptive parents and their capacity to care adequately for the child.
- (2) Subject to subsection (3), a copy of a report prepared under subsection (1) will be made available to the prospective adoptive parents.

- (3) The Court may order that the contents or part of the contents of a report prepared under subsection (1) be suppressed from disclosure to the prospective adoptive parents or any other person.
- (4) The Court may require prospective adoptive parents to submit evidence, to the satisfaction of the Court, of their good health.

### **23—Name of child**

- (1) Where the Court makes an order for the adoption of a child it may by the same or a subsequent order declare the name by which the child is to be known.
- (2) Before making an order changing the name of a child, the Court should take into account any wishes expressed by the child on the subject.
- (3) The Court will not change the name of a child who is over the age of 12 years unless—
  - (a) the child consents to the change; or
  - (b) the child is intellectually incapable of consenting.
- (4) An order under this section does not prevent a subsequent change of name in accordance with the law of the State.

### **24—Proceedings to be private etc**

- (1) An application for an adoption order will not be heard in an open court.
- (2) Except as authorised by the Court, the records of proceedings for an adoption order will not be open to inspection.

### **25—Guardianship of child awaiting adoption**

- (1) Where—
  - (a) each parent or guardian of a child has consented to the adoption of the child in general terms or such consent has been dispensed with; or
  - (b) it is intended that an order for the adoption of a child be sought under this Act and arrangements are complete for the transfer of guardianship of the child from an officer of another State or a Territory of the Commonwealth whose functions correspond to those of the Chief Executive to the Chief Executive, the Chief Executive is the guardian of the child, for all purposes except the giving of consent to the adoption of the child, to the exclusion of all other persons until—
    - (c) an adoption order is made in respect of the child; or
    - (d) a consent referred to in paragraph (a) is lawfully revoked; or
    - (e) the child is placed in the custody or under the guardianship of a person by order of a court; or
    - (f) the Chief Executive orders, in writing, that the child be placed in the custody of a parent of the child.
- (2) The Chief Executive may, by agreement with some suitable person (including a parent of the child) and on such conditions as the Chief Executive considers appropriate, place a child of whom the Chief Executive is the guardian under this section in the care of that person.

- (3) The fact that the Chief Executive is the guardian of a child under this section does not affect the liability of any person to maintain the child.
- (4) This section does not apply to a child who is under the guardianship of the Minister.

## **26—Financial support in special cases**

Where—

- (a) a child suffers from some physical or mental disability; or
- (b) a child, for some other reason, requires special care,

the Minister may enter into an arrangement with prospective adoptive parents to contribute to the support of the child after the making of an adoption order.

## **26A—Arrangements between parties to adoption**

- (1) If a party to the adoption or proposed adoption of a child wishes to enter into an arrangement with another party to the adoption for the provision of information, contact or any other matters related to the welfare of the child, or to vary such an arrangement, the Chief Executive will endeavour to facilitate the making of the arrangement or variation.
- (2) For the purposes of this section, the birth parents and the adoptive parents will be taken to be the parties to the adoption.
- (3) The Chief Executive must ensure that the opinions of the child (so far as they are ascertainable) are taken into account in formulating any arrangement or variation under this section.
- (4) An arrangement may not be entered into under this section in relation to an adopted child who has attained the age of 18 years and an arrangement relating to an adopted child will terminate on the child attaining the age of 18 years.
- (5) The Chief Executive must ensure that an arrangement entered into under this section, or any variation to such an arrangement, is reduced to writing and that copies of the arrangement or variation are provided to the parties to the arrangement.
- (6) The Chief Executive will maintain a register of arrangements entered into under this section.
- (7) An arrangement entered into under this section is not enforceable in any court and breach of an arrangement or failure to enter into such an arrangement does not affect the validity of an adoption order or of any consent to an adoption.
- (8) This section applies only in relation to children adopted after the commencement of this Act.

## **Part 2A—Open adoptions**

### **27—Right to obtain information once adopted person turns 18**

- (1) Subject to this Part, an adopted person who has attained the age of 18 years or, if the adopted person consents or is dead or cannot be located, a lineal descendant of the adopted person, may obtain—
  - (a) the names and dates of birth (if known) of the person's birth parents;

- (b) any other information in the possession of the Chief Executive relating to the birth parents and the circumstances of the adoption<sup>1</sup>;
  - (c) any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adopted person;
  - (d) information in the possession of the Chief Executive relating to a sibling (whether of the whole or half blood) of the person who has also been adopted and who has also attained the age of 18 years.
- (2) Subject to this Part, if an adopted person has attained the age of 18 years, a birth parent of the person or, if the birth parents consent or are dead or cannot be located, a person who would have been a relative of the person if the adoption order had not been made, may obtain—
- (a) the names of the adoptive parents and the adopted person;
  - (b) any other information in the possession of the Chief Executive relating to the adoptive parents and the adopted person;
  - (c) any message, information or item given to the Chief Executive by an adopted person or adoptive parent with instructions that it be provided to the birth parent.
- (3) Subject to this Part, if an adopted person has attained the age of 18 years, an adoptive parent of the person may, with the consent of the adopted person, obtain—
- (a) any information in the possession of the Chief Executive relating to the adopted person's birth parents;
  - (b) any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adoptive parents.
- (4) In providing information under this section the Chief Executive must not reveal the name of a person (other than a birth parent and any siblings of the whole or half blood of the adopted person who have attained the age of 18 years) who would have been a relative of the adopted person if the adoption order had not been made.
- (5) Nothing in this section entitles a person to obtain information the disclosure of which the Chief Executive has determined, in his or her absolute discretion, would be an unjustifiable intrusion on the privacy of the person to whom the information relates.
- (6) The Chief Executive must establish and maintain written guidelines regarding the exercise of the Chief Executive's discretion under subsection (5).
- (7) The Chief Executive must give a copy of the guidelines, on request, to any person.

**Note—**

- 1 See also section 41 in relation to birth certificates.

**27A—Information may be provided earlier, in the Chief Executive's discretion**

The Chief Executive will disclose information to an adopted person or a birth parent before an entitlement to the information arises under section 27, if consent to the disclosure is given by—

- (a) in the case of disclosure to an adopted person—
  - (i) the adoptive parents; and

- (ii) if the name of a birth parent is to be disclosed—that parent; or
- (b) in the case of disclosure to a birth parent—
  - (i) the adoptive parents; and
  - (ii) if the adopted person has attained the age of 12 years—the adopted person.

**27B—Limitation of right to obtain information where adoption occurred before commencement of Act**

- (1) A person adopted before the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the person to be traced not be disclosed.
- (2) A birth parent of a person adopted prior to the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the birth parent to be traced not be disclosed.
- (3) An adoptive parent of a person adopted prior to the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the adoptive parent to be traced not be disclosed.
- (4) Subject to subsection (5), where a direction has been lodged under this section, the Chief Executive must not disclose information in contravention of the direction.
- (5) Where—
  - (a) a direction has been lodged by an adoptive parent; but
  - (b) a direction has not been lodged by the adopted person,the adoptive parent's direction does not operate to prevent the disclosure of information that is relevant to the welfare or whereabouts of the adopted person.
- (6) A person lodging a direction under this section may provide the Chief Executive with written reasons for the direction and, if so provided, the reasons must be released by the Chief Executive if a request for information about the person is subsequently made under this Part.
- (7) A direction under this section—
  - (a) may, if the adopted person or adoptive or birth parent is mentally incapacitated within the meaning of the *Guardianship and Administration Act 1993*, be given on behalf of that person or parent by his or her guardian appointed under that Act; and
  - (b) has effect for a period of five years, unless revoked earlier; and
  - (c) may, on the expiration of a period for which it has effect, be renewed; and
  - (d) must be lodged, renewed or revoked in a manner approved by the Chief Executive (but the Chief Executive cannot require that a renewal be lodged in person).
- (8) The Chief Executive will, if necessary, send a person who has lodged a direction under this section a renewal notice approximately 6 months, 3 months and 2 weeks before the date on which the direction will expire, unless the person has requested in writing that no such notices be sent.

- (9) Subject to any written directions of the person to the contrary, a renewal notice will be sent to a person at his or her address last known to the Chief Executive.

### **27C—Interviews**

The Chief Executive may, before providing information to a person or accepting a direction from a person under this Part, invite the person to participate in an interview with a person authorised by the Chief Executive.

### **27D—Minister's power to authorise disclosure**

Despite anything contained in this Part, the Minister may authorise disclosure of any information if the disclosure is necessary in the interests of the welfare of an adopted person.

### **27E—Requirement for consent is waived on death**

A requirement under this Part that the consent of a person be obtained before information may be disclosed is waived on the death of that person.

## **Part 3—Miscellaneous**

### **28—Certain agreements illegal**

- (1) An agreement under which a parent or guardian of a child receives any consideration (other than a consideration of a kind authorised by the Chief Executive) for a consent to the adoption of the child, is illegal and void.
- (2) A person who is a party to an agreement of a kind referred to in subsection (1) is guilty of an offence.

Maximum penalty: \$10 000 or two years imprisonment.

### **29—Negotiations for adoption**

- (1) Subject to this section, a person or organisation that conducts negotiations leading, or intended to lead, to the making of an adoption order is guilty of an offence.
- Maximum penalty: \$10 000 or two years imprisonment.
- (2) Subsection (1) does not apply—
- (a) to negotiations conducted for no fee by, or on behalf of, a parent, guardian or relative of a child for an adoption order in favour of a relative of the child or a person who is cohabiting with a parent of the child in a marriage relationship; or
  - (b) to negotiations conducted by a person or organisation approved by the Chief Executive.
- (3) An approval under this section is subject to any prescribed conditions and any other conditions imposed by the Chief Executive.
- (4) The Chief Executive may withdraw such an approval if the person or organisation—
- (a) breaches a condition of the approval; or
  - (b) acts improperly in the course of or in relation to the adoption or proposed adoption of a child.

- (4a) For the purposes of subsection (4), an organisation will be taken to have acted improperly in the course of or in relation to an adoption or proposed adoption if a servant or agent of the organisation acts improperly in the course of or in relation to the adoption or proposed adoption.
- (5) Any fee paid for negotiations conducted in contravention of this section may be recovered as a debt.

### **30—Enticing child away**

A person must not take or entice a child away from a person who is entitled to custody of the child in pursuance of an adoption order with intent to deprive that person of the child.

Maximum penalty: \$10 000 or two years imprisonment.

### **31—Publication of names etc of persons involved in proceedings**

- (1) A person who publishes or causes to be published in the news media—
  - (a) the name of a child, or material tending to identify a child, in relation to whom proceedings have been taken under this Act or any other Australian law that substantially corresponds to this Act;
  - (b) the name of a parent or guardian, or material tending to identify a parent or guardian, of a child in relation to whom proceedings have been taken under this Act or any other Australian law that substantially corresponds to this Act;
  - (c) the name of a party, or material tending to identify a party, to proceedings under this Act or any other Australian law that substantially corresponds to this Act,

is guilty of an offence.

Maximum penalty: \$20 000.

- (2) This section does not apply to the publication of a person's name or other material tending to identify a person if—
  - (a) written consent to the publication has been given by—
    - (i) if the person is an adult—that person; or
    - (ii) if the person is a child and is not under the guardianship of the Chief Executive—each parent or guardian of the child; or
    - (iii) if the person is a child and under the guardianship of the Chief Executive—the Chief Executive; or
  - (b) the publication has been authorised by the Court.

### **32—Publication of certain material related to adoption**

A person who publishes or causes to be published in the news media material to the following effect—

- (a) that a person desires to enter into negotiations with the parents or guardians of a child with a view to adoption of the child;
- (b) that a person has a child that he or she desires to place with adoptive parents,

is guilty of an offence.

Maximum penalty: \$20 000.

### **33—False or misleading statements**

A person must not make a statement knowing it to be false or misleading in a material respect for the purposes of, or in connection with, a proposed adoption under this Act.

Maximum penalty: \$5 000 or one years imprisonment.

### **34—Impersonation**

A person must not falsely represent himself or herself to be a person whose consent to the adoption of a child is required by this Act.

Maximum penalty: \$5 000 or one years imprisonment.

### **35—Presenting forged consent**

A person must not present, or cause to be presented, in connection with an application for an adoption order a document purporting to be an instrument of consent to the adoption knowing that the signature to the document is or was forged or obtained by fraud, duress or other improper means.

Maximum penalty: \$5 000 or one years imprisonment.

### **36—Confidentiality**

A person who is, or has been, engaged in duties related to the administration of this Act must not disclose information relating to an adopted person or the birth or adoptive parents of an adopted person obtained in the course of those duties except—

- (a) in the administration of this Act; or
- (b) as authorised or required by law; or
- (c) with the consent of the person to whom the information relates.

Maximum penalty: \$10 000.

### **37—Offences**

- (3) A prosecution for an offence against this Act will not be commenced without the consent of the Minister.
- (4) In proceedings for an offence against this Act a document apparently signed by the Minister stating that the Minister consents to a particular prosecution will be accepted, in the absence of proof to the contrary, as proof of that consent.

### **38—Age**

Where the age of a person is material to proceedings under this Act and there is no certain evidence of age, a court may act on its own estimate of the age of that person.

### **39—Intervention in proceedings**

- (1) The Chief Executive is entitled to intervene in any proceedings under this Act.
- (2) A court may order that any person who has, in the opinion of the court, a proper interest in proceedings under this Act be joined as a party to the proceedings.



#### **40—Costs**

In proceedings under this Act, the Court may, subject to the regulations, make such orders as to costs and security for costs as it considers appropriate.

#### **41—Registration**

- (1) Subject to a direction under subsection (2), the Registrar of Births, Deaths and Marriages must, on receipt of notice of the adoption of a child, cancel any entry formerly made in the register of births relating to the child and make a fresh entry containing—
  - (a) a statement of the date and place of birth of the child; and
  - (b) the names of the persons who are in contemplation of law the parents of the child following the adoption.
- (2) Subject to subsection (3), the Court may, on the application of the adoptive parents or the Chief Executive, direct the Registrar of Births, Deaths and Marriages not to cancel any entry formerly made in the register of births relating to the child but instead to add to that entry a note of the names of the adoptive parents.
- (3) Where either or both of the birth parents of the child are alive, the Court must not give a direction under subsection (2) unless satisfied that the information relating to the birth parents of the child contained in the entry is known to the child or that the birth parents approve of the child having access to that information.
- (4) Subject to subsection (7), the Registrar of Births, Deaths and Marriages must not allow any person access to information contained in an entry cancelled under subsection (1) or in an entry in the register of births relating to a person who was adopted before the commencement of this Act except on the authorisation of the Chief Executive.
- (5) The Chief Executive must not authorise access to information by a person who was adopted before the commencement of this Act if a birth parent of the person directs the Chief Executive not to do so.
- (6) A direction under subsection (5)—
  - (a) has effect for a period of five years, unless revoked earlier;
  - (b) may, on the expiration of a period for which it has effect, be renewed;
  - (c) must be lodged, renewed or revoked in a manner approved by the Chief Executive.
- (7) The Registrar of Births, Deaths and Marriages may, without the authorisation of the Chief Executive, allow access to information contained in an entry cancelled under subsection (1)—
  - (a) if the person to whom the entry relates has attained the age of 18 years, to that person;
  - (b) to a birth parent of the person to whom the entry relates.

#### **42—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

- (2) In particular, the regulations may prescribe or make provision for—
- (a) matters of practice, procedure or evidence in or in connection with proceedings under this Act; and
  - (b) the forms to be used for the purposes of this Act; and
  - (c) fees to be paid in respect of any matter under this Act, and the waiving of any such fees; and
  - (d) the keeping of registers of adoptions and the regulation of access to those registers; and
  - (e) the practice and procedure to be followed in obtaining and giving notice of any consent required for the purposes of this Act; and
  - (f) counselling in relation to adoption; and
  - (g) the payment of witnesses' expenses in connection with proceedings under this Act; and
  - (h) the criteria on which the eligibility of persons for approval by the Chief Executive as fit and proper persons to adopt children will be determined; and
  - (i) the—
    - (i) keeping of registers of persons approved by the Chief Executive as fit and proper persons to adopt children; and
    - (ii) order in which persons whose names are included in a register may be selected to be applicants for adoption orders; and
    - (iii) removal of names from a register; and
  - (j) the institution, hearing and determination of proceedings to review—
    - (i) any decision of the Chief Executive refusing to approve a person as being a fit and proper person to adopt children; or
    - (ii) any decision by the Chief Executive to remove the name of a person from the register of persons whom he or she has approved as fit and proper persons to adopt children; or
    - (iii) any other decision of the Chief Executive under this Act of a kind specified in the regulations; and
  - (k) constituting adoption boards for the purpose of hearing and determining those proceedings, prescribing the practice and procedure of those boards and conferring on those boards—
    - (i) power to vary or reverse any decision of the Chief Executive in respect of which proceedings for review have been brought; and
    - (ii) power to remit any matter arising in the proceedings to the Chief Executive for further consideration; and
    - (iii) any incidental or ancillary powers; and
  - (l) fines not exceeding \$1 250 for contravention of, or non-compliance with, a regulation.
- (3) The regulations may confer discretionary powers.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Adoption Act 1988* repealed the following:

*Adoption of Children Act 1967*

### Legislation amended by principal Act

The *Adoption Act 1988* amended the following:

*Children's Protection and Young Offenders Act 1979*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	90	<i>Adoption Act 1988</i>	1.12.1988	17.8.1989 ( <i>Gazette 17.8.1989 p566</i> )
1993	59	<i>Mental Health Act 1993</i>	27.5.1993	6.3.1995 ( <i>Gazette 2.3.1995 p734</i> )
1996	83	<i>Adoption (Miscellaneous) Amendment Act 1996</i>	12.12.1996	5.10.1997 ( <i>Gazette 11.9.1997 p702</i> )
2005	56	<i>Justices of the Peace Act 2005</i>	17.11.2005	Sch 2 (cll 5 & 6)—1.7.2006 ( <i>Gazette 22.6.2006 p2012</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 10 (s 21)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2013	28	<i>Adoption (Consent to Publication) Amendment Act 2013</i>	11.7.2013	11.7.2013
<b>2016</b>	<b>32</b>	<b><i>Statutes Amendment (Youth Court) Act 2016</i></b>	<b>30.6.2016</b>	<b>Pt 4 (s 19)—1.1.2017 (<i>Gazette 8.12.2016 p4903</i>)</b>
2016	64	<i>Adoption (Review) Amendment Act 2016</i>	15.12.2016	17.2.2017 ( <i>Gazette 16.2.2017 p548</i> ) except ss 4, 5(1), (2), (4), <b>party to an adoption, psychologist, publish, Registrar</b> (as inserted by s 5(6)), (7)—(10), 6, 7, 9(1) & (2), 10, 11, 13, 14(3), 15—22, 23(1) & 24—31—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 83/1996 s 27 (Sch)	5.10.1997
Pt 1		
<i>Pt 1 Div 1 heading</i>	<i>deleted by 83/1996 s 3</i>	<i>5.10.1997</i>
<i>ss 2 and 3</i>	<i>deleted by 83/1996 s 27 (Sch)</i>	<i>5.10.1997</i>
s 3	inserted by 64/2016 s 4	uncommenced—not incorporated
s 4		
s 4(1)		
Aboriginal and Torres Strait Islander Child Placement Principle	inserted by 64/2016 s 5(1)	uncommenced—not incorporated
adoptive parent	inserted by 83/1996 s 4(a)	5.10.1997
birth parent	inserted by 83/1996 s 4(b)	5.10.1997
Chief Executive	inserted by 83/1996 s 4(b)	5.10.1997
	substituted by 84/2009 s 21	1.2.2010
child	substituted by 64/2016 s 5(2)	uncommenced—not incorporated
the Convention	inserted by 83/1996 s 4(c)	5.10.1997
Convention country	inserted by 83/1996 s 4(c)	5.10.1997
the Court	amended by 83/1996 s 4(d)	5.10.1997
	amended by 56/2005 Sch 2 cl 5(1)	1.7.2006
<i>the Director-General</i>	<i>deleted by 83/1996 s 4(e)</i>	<i>5.10.1997</i>
domestic partner	inserted by 64/2016 s 5(3)	uncommenced—not incorporated
Family Law Act 1975	inserted by 83/1996 s 4(e)	5.10.1997
guardian	substituted by 83/1996 s 4(f)	5.10.1997
	amended by 64/2016 s 5(4)	uncommenced—not incorporated
marriage relationship	deleted by 64/2016 s 5(5)	uncommenced—not incorporated
party to an adoption	inserted by 64/2016 s 5(6)	uncommenced—not incorporated
psychologist	inserted by 64/2016 s 5(6)	uncommenced—not incorporated
publish	inserted by 64/2016 s 5(6)	uncommenced—not incorporated
qualifying relationship	inserted by 64/2016 s 5(6)	uncommenced—not incorporated
Registrar	inserted by 64/2016 s 5(6)	uncommenced—not incorporated
statement of wishes	inserted by 64/2016 s 5(7)	uncommenced—not incorporated
s 4(1a)	inserted by 56/2005 Sch 2 cl 5(2)	1.7.2006
	<b>amended by 32/2016 s 19(1)</b>	<b>1.1.2017</b>
s 4(1b)	<i>inserted by 56/2005 Sch 2 cl 5(2)</i>	<i>1.7.2006</i>
	<b><i>deleted by 32/2016 s 19(2)</i></b>	<b><i>1.1.2017</i></b>

s 4(2)	substituted by 64/2016 s 5(8)	uncommenced—not incorporated
s 4(3)	amended by 64/2016 s 5(9)	uncommenced—not incorporated
s 4(4)	deleted by 64/2016 s 5(10)	uncommenced—not incorporated
<i>Pt 1 Div 2</i>	<i>deleted by 83/1996 s 5</i>	<i>5.10.1997</i>
<i>Pt 1 Div 3</i>	<i>heading deleted by 83/1996 s 6</i>	<i>5.10.1997</i>
s 7	deleted by 64/2016 s 6	uncommenced—not incorporated
s 7A	inserted by 83/1996 s 7	5.10.1997
Pt 2		
s 8		
s 8(1)	amended by 83/1996 s 8	5.10.1997
	amended by 64/2016 s 7	uncommenced—not incorporated
s 8A	inserted by 83/1996 s 9	5.10.1997
s 9		
s 9(1)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 9(2) and (3)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 8	uncommenced—not incorporated
s 9(3a)	inserted by 83/1996 s 10	5.10.1997
s 10		
s 10(1)	s 10 amended and redesignated as s 10(1) by 83/1996 ss 11, 27 (Sch)	5.10.1997
	substituted by 64/2016 s 9(1)	uncommenced—not incorporated
s 10(2)	inserted by 83/1996 s 11(b)	5.10.1997
	amended by 64/2016 s 9(2), (3)	uncommenced—not incorporated
s 10A	inserted by 64/2016 s 10	uncommenced—not incorporated
s 11		
s 11(1)	amended by 83/1996 s 12	5.10.1997
	substituted by 64/2016 s 11(1)	uncommenced—not incorporated
s 11(1a) and (1b)	inserted by 64/2016 s 11(1)	uncommenced—not incorporated
s 11(2) and (3)	amended by 64/2016 s 11(2)	uncommenced—not incorporated
s 11(4)	inserted by 64/2016 s 11(3)	uncommenced—not incorporated
s 12		
s 12(1)	amended by 83/1996 s 13(a)	5.10.1997
	substituted by 64/2016 s 12(1)	uncommenced—not incorporated
s 12(2)	amended by 83/1996 s 13(b)	5.10.1997
	deleted by 64/2016 s 12(1)	uncommenced—not incorporated
s 12(3)	amended by 83/1996 ss 13(c), 27 (Sch)	5.10.1997
	substituted by 64/2016 s 12(2)	uncommenced—not incorporated
s 12(4)	amended by 64/2016 s 12(3)	uncommenced—not incorporated
s 12(6)	inserted by 64/2016 s 12(4)	uncommenced—not incorporated
s 13	<i>deleted by 83/1996 s 14</i>	<i>5.10.1997</i>
s 14		
s 14(1)	amended by 83/1996 s 15(a)	5.10.1997
s 14(2)	amended by 83/1996 s 15(b)	5.10.1997

**Adoption Act 1988—1.1.2017 to 16.2.2017**

## Legislative history

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s 14	substituted by 64/2016 s 13	uncommenced—not incorporated
s 15		
s 15(1)	amended by 83/1996 s 16(a)	5.10.1997
s 15(4)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 14(1), (2)	uncommenced—not incorporated
s 15(5)	amended by 83/1996 s 16(b)	5.10.1997
	(c) deleted by 83/1996 s 16(b)	5.10.1997
	amended by 64/2016 s 14(3)	uncommenced—not incorporated
s 15(6)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 15(8)	<i>deleted by 83/1996 s 16(c)</i>	5.10.1997
s 16		
s 16(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 17		
s 17(1)	s 17 redesignated as s 17(1) by 83/1996 s 17	5.10.1997
s 17(2)	inserted by 83/1996 s 17	5.10.1997
s 18		
s 18(1)	(d) deleted by 64/2016 s 15	uncommenced—not incorporated
s 18(3)	inserted by 83/1996 s 18	5.10.1997
s 19		
s 19(1) and (2)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 21		
s 21(a1)	inserted by 83/1996 s 19(a)	5.10.1997
s 21(1)	amended by 83/1996 s 19(b)	5.10.1997
s 21(2)	amended by 83/1996 s 19(c)	5.10.1997
s 22		
s 22(1)	amended by 83/1996 ss 20, 27 (Sch)	5.10.1997
s 23		
s 23(3)	substituted by 64/2016 s 16	uncommenced—not incorporated
s 23(3a)	inserted by 64/2016 s 16	uncommenced—not incorporated
s 24A	inserted by 64/2016 s 17	uncommenced—not incorporated
s 25		
s 25(1)	amended by 83/1996 ss 21(a), 27 (Sch)	5.10.1997
s 25(2)	amended by 83/1996 ss 21(b), 27 (Sch)	5.10.1997
s 25(3)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 25(4)	inserted by 83/1996 s 21(c)	5.10.1997
	substituted by 64/2016 s 18	uncommenced—not incorporated
s 26A	inserted by 83/1996 s 22	5.10.1997
s 27	<i>amended by 59/1993 Sch cl 2</i>	6.3.1995
	<i>deleted by 83/1996 s 23</i>	5.10.1997
Pt 2A	inserted by 83/1996 s 23	5.10.1997
s 27		
s 27(3a)	inserted by 64/2016 s 19(1)	uncommenced—not incorporated
s 27(5)	amended by 64/2016 s 19(2)	uncommenced—not incorporated

s 27B	substituted by 64/2016 s 20	uncommenced—not incorporated
s 27C	amended by 64/2016 s 21	uncommenced—not incorporated
Pt 3		
s 28		
s 28(1)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 28(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 22	uncommenced—not incorporated
s 29		
s 29(1)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 23(1)	uncommenced—not incorporated
s 29(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 23(2), (3)	uncommenced—not incorporated
s 29(3)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 29(4)	amended by 83/1996 ss 24(a), 27 (Sch)	5.10.1997
s 29(4a)	inserted by 83/1996 s 24(b)	5.10.1997
s 30	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 24	uncommenced—not incorporated
s 31		
s 31(1)	amended by 83/1996 ss 25, 27 (Sch)	5.10.1997
	amended by 64/2016 s 25(1), (2)	uncommenced—not incorporated
s 31(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
	substituted by 28/2013 s 3	11.7.2013
	amended by 64/2016 s 25(3)—(6)	uncommenced—not incorporated
s 32	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 26(1), (2)	uncommenced—not incorporated
s 33	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 27	uncommenced—not incorporated
s 34	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 28	uncommenced—not incorporated
s 35	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 29	uncommenced—not incorporated
s 36	amended by 83/1996 ss 26, 27 (Sch)	5.10.1997
s 37		
s 37(1) and (2)	<i>deleted by 83/1996 s 27 (Sch)</i>	5.10.1997
s 39		
s 39(1)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 40A	inserted by 64/2016 s 30	uncommenced—not incorporated
s 41		
s 41(1)—(7)	amended by 83/1996 s 27 (Sch)	5.10.1997
s 41	substituted by 64/2016 s 31	uncommenced—not incorporated
s 41A	inserted by 64/2016 s 31	uncommenced—not incorporated
s 42		
s 42(2)	amended by 83/1996 s 27 (Sch)	5.10.1997

	amended by 64/2016 s 32(1), (2)	uncommenced—not incorporated
<i>Sch</i>	<i>deleted by 83/1996 s 27 (Sch)</i>	<i>5.10.1997</i>

## **Transitional etc provisions associated with Act or amendments**

### ***Justices of the Peace Act 2005, Sch 2***

#### **6—Transitional provision**

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Adoption Act 1988* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

## **Historical versions**

Reprint No 1—6.3.1995

Reprint No 2—5.10.1997

1.7.2006

1.2.2010

11.7.2013