

South Australia

Adoption Act 1988

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

Contents

Part 1—Preliminary

- 1 Short title
- 3 Objects and guiding principles
- 4 Interpretation
- 7A Minister to ensure consultation undertaken on operation of Act

Part 2—Adoption orders

Division 1—Powers of the Court

- 8 General power of Court
- 8A Court must consider opinion of child
- 9 Effect of adoption order
- 10 No adoption order in certain circumstances
- 10A Adoption of child who has turned 18
- 11 Adoption of Aboriginal or Torres Strait Islander child
- 12 Criteria affecting prospective adoptive parents
- 14 Discharge of adoption orders

Division 2—Consent to adoption

- 15 Consent of parent or guardian
- 16 Consent of child
- 17 Consent given under law of another jurisdiction
- 18 Court may dispense with consents
- 19 Order of Court dispensing with or recognising consent

Division 3—Recognition of adoption orders

- 20 Recognition of adoption under Australian law
- 21 Recognition of adoption under foreign law

Division 4—General provisions

- 22 Court to consider report on suitability of adoptive parents
- 23 Name of child
- 24 Proceedings to be private etc
- 24A Voluntary custody agreements
- 25 Guardianship of child awaiting adoption
- 26 Financial support in special cases
- 26A Arrangements between parties to adoption

Part 2A—Open adoptions

- 27 Right to obtain information once adopted person turns 18
- 27A Information may be provided earlier, in the Chief Executive's discretion
- 27B Limitation of right to obtain information relating to adoption prior to commencement of Act in certain cases
- 27C Interviews
- 27D Minister's power to authorise disclosure
- 27E Requirement for consent is waived on death

Part 3—Miscellaneous

- 28 Certain agreements illegal
- 29 Negotiation for adoption
- 30 Enticing child away
- 31 Publication of names etc of persons involved in proceedings
- 32 Publication of certain material related to adoption
- 33 False or misleading statements
- 34 Impersonation
- 35 Presenting forged consent
- 36 Confidentiality
- 37 Offences
- 38 Age
- 39 Intervention in proceedings
- 40 Costs
- 40A Notification of death of party to adoption
- 41 Registration
- 41A Limitation of right to access information on register relating to person adopted prior to commencement of Act in certain cases
- 42 Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Objects and guiding principles

- (1) The objects of this Act are—
 - (a) to emphasise that the best interests, welfare and rights of the child concerned, both in childhood and in later life, must be the paramount consideration in adoption law and practice; and
 - (b) to promote the principle that adoption is to be regarded as a service for the child concerned; and
 - (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage; and

- (d) to recognise the adoption of children from other jurisdictions and to endeavour to ensure that equivalent safeguards and standards to those that apply to children adopted in this State apply to children adopted from overseas; and
 - (e) to endeavour to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements; and
 - (f) to encourage openness in adoption; and
 - (g) to allow access to certain information relating to adoptions.
- (2) The Court, the Minister, the Chief Executive and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the exercise of their powers or functions:
- (a) the best interests, welfare and rights of the child concerned, both in childhood and in later life, must be the paramount consideration;
 - (b) adoption is to be regarded as a service for the child concerned;
 - (c) adoption practices should reflect current community attitudes, best practice and values with respect to adoption;
 - (d) no adult has a right to adopt a child;
 - (e) if a child is able to form views on a matter concerning the child's adoption, the child must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances;
 - (f) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.
- (3) In addition to the principles set out in subsection (2), a person or body exercising a function or power under this Act in relation to an Aboriginal or Torres Strait Islander child must observe the Aboriginal and Torres Strait Islander Child Placement Principle.

4—Interpretation

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

Aboriginal and Torres Strait Islander Child Placement Principle means the Aboriginal and Torres Strait Islander Child Placement Principle as set out in the regulations;

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 includes—

- (a) a person who is less than 18 years of age; and
(b) a person who is aged 18 years or more in respect of whom an order for adoption under this Act is sought or has been made;

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*;

domestic partner—a person is a domestic partner of another if they are in a qualifying relationship with each other;

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

guardian, of a child who is less than 18 years of age, 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;

party to an adoption—each of the following persons is a party to an adoption:

- (a) the adopted person;
(b) the adoptive parents;
(c) the birth parents;

psychologist means a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student);

publish means publish by newspaper, radio or television, or on the internet, or by other similar means of communication to the public;

qualifying relationship means the relationship between 2 persons who are living together in a marriage or marriage-like relationship (irrespective of their sex or gender identity);

Registrar means the Registrar of Births, Deaths and Marriages;

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;

statement of wishes means a written statement given to the Chief Executive by an adopted person, birth parent or adoptive parent in accordance with section 27B setting out the person's wishes in relation to contact by another party to the adoption.

- (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 reference to an *Aboriginal or Torres Strait Islander person or child* is to be taken to be a reference to a person or child (as the case may be)—
 - (a) who is of Aboriginal or Torres Strait Islander descent; and
 - (b) who—
 - (i) identifies as being of Aboriginal or Torres Strait Islander origin; or
 - (ii) in the case of a young child, is regarded by at least 1 of the child's parents as being of Aboriginal or Torres Strait Islander origin,and is accepted as such by the community with which the person or child associates.
- (3) If a man and woman are married according to Aboriginal or Torres Strait Islander tradition, they will be regarded as husband and wife for the purposes of this Act.

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 Court

- (1) Subject to any law of the Commonwealth, the Court has power to make an order for the adoption of a child—
 - (a) who is less than 18 years of age on the date on which the application for the order is made; or
 - (b) who is aged 18 years or more on that date.
- (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 qualifying 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 qualifying 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 relation to a child who is less than 18 years of age unless satisfied that adoption is in the best interests of the child and, taking into account the rights and welfare of the child, clearly preferable 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 a child who is less than 18 years of age in a qualifying 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*.

10A—Adoption of child who has turned 18

- (1) The Court will not make an adoption order in favour of a child who is aged 18 years or more on the date on which the application for the order is made unless the Court is satisfied—
 - (a) that a significant parent to child relationship existed between the prospective adoptive parent or parents and the child before the child attained the age of 18 years; and
 - (b) that the child appears to understand the consequences of adoption on the child's interests, rights and welfare.
- (2) In determining whether a significant parent to child relationship existed for the purposes of subsection (1), the Court may take into account the following:
 - (a) whether the child was cared for by the prospective adoptive parent or parents, or by the prospective adoptive parent and their deceased spouse or domestic partner, as their child prior to reaching the age of 18 years;
 - (b) whether the child was, under the *Children's Protection Act 1993*, placed in the care of the prospective adoptive parent or parents, or the prospective adoptive parent and their deceased spouse or domestic partner, prior to reaching the age of 18 years.
- (3) In proceedings for an adoption order relating to a child who is aged 18 years or more on the date on which the application for the order is made, a parent or guardian of the child, or any other person who has a proper interest in the application, may make submissions to the Court (either personally or through a representative).

11—Adoption of Aboriginal or Torres Strait Islander child

- (1) The Court will not make an adoption order in relation to an Aboriginal or Torres Strait Islander child unless satisfied that adoption is in the best interests of the child and, taking into account the rights and welfare of the child, clearly preferable to any alternative order that may be made under the laws of the State or the Commonwealth.
- (1a) The Court must, before determining whether to make an order for the adoption of an Aboriginal or Torres Strait Islander child, consider—
 - (a) a report from the Chief Executive setting out consultation that has occurred with a recognised Aboriginal organisation or recognised Torres Strait Islander organisation (as the case requires); and
 - (b) any submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child.
- (1b) In making an order for the adoption of an Aboriginal or Torres Strait Islander child, the Court must apply the Aboriginal and Torres Strait Islander Child Placement Principle.
- (2) Subject to subsection (3), an order for the adoption of an Aboriginal or Torres Strait Islander child will not be made except in favour of a member of the child's Aboriginal or Torres Strait Islander community who has the correct relationship with the child in accordance with Aboriginal or Torres Strait Islander customary law or, if there is no such person seeking to adopt the child, some other Aboriginal or Torres Strait Islander person.

- (3) An order for the adoption of an Aboriginal or Torres Strait Islander child may be made in favour of a person who is not an Aboriginal or Torres Strait Islander 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 or Torres Strait Islander people will not be lost in consequence of the adoption.
- (4) For the purposes of this section, a recognised Aboriginal or Torres Strait Islander organisation is an organisation that the Minister, after consulting with—
- (a) the Aboriginal community or a section of the Aboriginal community; or
 - (b) the Torres Strait Islander community or a section of the Torres Strait Islander community,
- (as the case requires) declares by notice in the Gazette to be a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation.

12—Criteria affecting prospective adoptive parents

- (1) Subject to this section, an adoption order may only be made in favour of 2 persons if—
- (a) they are in a qualifying relationship and have been living together continuously for at least the prescribed period (irrespective, in the case of married persons, of the date on which the marriage occurred) before the making of the order; or
 - (b) they are in a qualifying relationship and the Court is satisfied that there are special circumstances justifying the making of the order.
- (3) Subject to this section, an adoption order may only be made in favour of 1 person if—
- (a) the person is in a qualifying relationship with a birth or adoptive parent of the child and—
 - (i) has been living together with that parent continuously for at least the prescribed period (irrespective, in the case of married persons, of the date on which the marriage occurred) before the making of the order; or
 - (ii) the Court is satisfied that there are special circumstances justifying the making of the order; or
 - (b) the person is not in a qualifying relationship and the Court is satisfied that there are special circumstances justifying the making of the order.
- (4) Where 2 persons are living together in a qualifying 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.

(6) In this section—

prescribed period means—

- (a) if the regulations prescribe a period—the period so prescribed; or
- (b) if no period is prescribed under paragraph (a)—5 years.

14—Discharge of adoption orders

- (1) An eligible person may apply to the Court for an order discharging an adoption order (a *discharge order*) on the grounds—
 - (a) that the adoption order or a consent for the purposes of the adoption order was obtained by fraud, duress or other improper means; or
 - (b) that it is in the best interests of the adopted person, taking into account the rights and welfare of the adopted person, for the discharge order to be made.
- (2) If an application is made under subsection (1), the Court must, if satisfied that there may be grounds on which a discharge order may be made, direct that an investigation be made into the circumstances relating to the application.
- (3) The Chief Executive and (if the Court so directs) a person nominated by the Attorney-General must conduct an investigation under subsection (2).
- (4) If, after consideration of a report of an investigation carried out under subsection (3), the Court is satisfied that a discharge order should be made, the Court will make the discharge order, unless it appears to the Court that to do so would be prejudicial to the rights, welfare and interests of the adopted person.
- (5) If the Court makes a discharge order under this section, any consent given under this Act for the purposes of the adoption of the person to whom the adoption order relates ceases to have effect, unless the Court otherwise orders.
- (6) The Court may, on making a discharge order relating to an adopted person, make any consequential or ancillary orders considered necessary by the Court, taking into account the rights, welfare and interests of the adopted person, including orders relating to—
 - (a) the name of the person; and
 - (b) the ownership of property; and
 - (c) the care, control, custody or guardianship of the person; and
 - (d) the domicile of the person; and
 - (e) any changes to be made by the Registrar to the entry in the register of births relating to the person.
- (7) Subject to any order under subsection (6), on the making of a discharge order, the rights, privileges, duties, liabilities, and relationships of the person to whom the adoption order relates and of all other persons will be the same as if the adoption order had not been made.
- (8) Nothing in subsection (7) affects—
 - (a) anything lawfully done; or
 - (b) the consequences of anything unlawfully done; or

- (c) a proprietary right or interest that became vested in a person, while the relevant adoption order was in force.
- (9) In addition, nothing in subsection (7) affects the right of an adopted person in respect of whom a discharge order has been made to obtain information in accordance with Part 2A (as if the person were an adopted person).
- (10) In this section—
- adoption order** includes an adoption order made under the *Adoption of Children Act 1966* or any corresponding previous enactment;
- eligible person** means any of the following persons:
- (a) the adopted person to whom an adoption order relates;
 - (b) a birth parent of the adopted person;
 - (c) an adoptive parent of the adopted person;
 - (d) the Chief Executive.

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 living together with a parent of the child in a qualifying 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; and
 - (iii) if the parent or guardian is less than 16 years of age, be endorsed by at least 2 psychologists authorised by the Chief Executive with a statement from each psychologist to the effect that the parent or guardian has been counselled by the psychologist at least 3 days before the giving of consent and the psychologist is of the opinion that the parent or guardian appears to have a sufficient understanding of the consequences of adoption such that the parent or guardian is able to make a responsible decision in relation to 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
 - (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

- (a1) 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—
- (a) in the case of a child who is over the age of 12 years—change the name of the child unless—
 - (i) the child consents to the change; or
 - (ii) the child is intellectually incapable of consenting; and
 - (b) in all cases—change the first name of a child unless—
 - (i) the first name is offensive or unsuitable; or
 - (ii) another child of the adoptive parents has the same first name.
- (3a) If the Court changes the first name of a child in accordance with subsection (3)(b), the Court should, so far as is reasonably practicable, seek to change the first name—
- (a) so that the child's second name becomes the first name of the child; or
 - (b) to another name brought to the attention of the Court that is of significance to the child, taking into account the child's identity, language and cultural and (if relevant) religious ties.
- (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.

24A—Voluntary custody agreements

- (1) The parents or guardians of a child who is less than 18 years of age who are considering having the child adopted and the Chief Executive may enter into an agreement (a *custody agreement*) under which the Chief Executive has custody of the child during the period of the agreement.
- (2) Despite subsection (1)—
 - (a) if the whereabouts of a parent or guardian of a child cannot, after reasonable enquiries, be ascertained; or
 - (b) if a parent or guardian of a child has failed to respond within a reasonable period of time to a request that the parent or guardian enter into a custody agreement; or
 - (c) if it is not, in all the circumstances of the case, reasonably practicable to request a particular parent or guardian of a child to enter into a custody agreement,the remaining parent or guardian, or parents or guardians, may enter into a custody agreement in respect of the child.
- (3) The child may also be a party to a custody agreement if the Chief Executive considers it appropriate, having regard to the child's age and ability to understand the consequences of a custody agreement.

- (4) A custody agreement—
- (a) must be in writing; and
 - (b) may be terminated at any time—
 - (i) by a child, parent or guardian who is a party to the agreement, by notice in writing to the Chief Executive; or
 - (ii) by agreement between the parties to the agreement; and
 - (c) will be taken to have been terminated on—
 - (i) the Chief Executive becoming the guardian of the child under section 25; or
 - (ii) an adoption order being made in relation to the child; or
 - (iii) an order being made under any other Act or law for the guardianship or custody of the child.
- (5) Unless the agreement is terminated under subsection (4), a custody agreement—
- (a) has effect for a period, not exceeding 6 months, specified in the agreement; and
 - (b) may, on its expiration, be extended by the parties to the agreement in accordance with this section, but not so that the agreement will operate for a total period of more than 1 year.

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) a child who is under the guardianship of the Minister; or
 - (b) a child who is aged 18 years or more.

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 adoption¹;
 - (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.
- (3a) Subject to this Part, if an adopted person's birth parent was also an adopted person and is dead or cannot be located, the adopted person may obtain—
- (a) the names of the birth parent's birth parents (if known); and
 - (b) any other information in the possession of the Chief Executive relating to the birth parent's birth 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—
- (a) be an unjustifiable intrusion on the privacy of the person to whom the information relates; or
 - (b) give rise to a serious risk to the life or safety of a person; or
 - (c) in the case of information relating to a person adopted before 17 August 1989—not be in the best interests of the adopted person, taking into account the rights and welfare of the adopted person and any other prescribed matter.
- (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 relating to adoption prior to commencement of Act in certain cases

- (1) An old section 27B direction that is in effect immediately before the relevant day will, unless revoked earlier, continue to have effect until the expiry day.
- (2) Subject to this section, the Chief Executive must not disclose information in contravention of an old section 27B direction.
- (3) If an adoptive parent lodged an old section 27B direction but no such direction was lodged by the adopted person before the relevant day, the adoptive parent's old section 27B direction does not operate to prevent the disclosure of information that is relevant to the welfare or whereabouts of the adopted person.
- (4) A person who lodged an old section 27B direction may, at any time before the expiry day, give the Chief Executive a written statement setting out the person's wishes in relation to contact by another party to the adoption.
- (5) The Chief Executive must, as soon as is reasonably practicable after receiving a statement of wishes from a person, give a copy of the statement to the Registrar.
- (6) If the Chief Executive discloses information under section 27 to a person who has given the Chief Executive a statement of wishes, the Chief Executive must ensure that a copy of the statement accompanies the information disclosed.
- (7) In this section—

expiry day means the day that falls 5 years after the relevant day;

old section 27B means section 27B of this Act as in force immediately before the relevant day;

old section 27B direction means a direction lodged under subsection (1), (2) or (3) of old section 27B directing the Chief Executive not to disclose information in the Chief Executive's possession that would enable the person who lodged the direction to be traced continued in effect under this section;

relevant day means the day on which section 20 of the *Adoption (Review) Amendment Act 2016* comes into operation.

27C—Interviews

The Chief Executive may, before providing information to 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: \$20 000 or imprisonment for 2 years.

29—Negotiation 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: \$20 000 or imprisonment for 2 years.
- (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 living together with a parent of the child in a qualifying 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: \$20 000 or imprisonment for 2 years.

31—Publication of names etc of persons involved in proceedings

- (1) A person who publishes or causes to be published—
 - (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: \$40 000 or imprisonment for 4 years.

- (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 aged 18 years or more—that person; or
 - (ii) if the person is less than 18 years of age and is not under the guardianship of the Chief Executive—each parent or guardian of the person; or
 - (iii) if the person is less than 18 years of age 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 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: \$40 000 or imprisonment for 4 years.

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: \$20 000 or imprisonment for 2 years.

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: \$20 000 or imprisonment for 2 years.

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: \$20 000 or imprisonment for 2 years.

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.

40A—Notification of death of party to adoption

- (1) If the Chief Executive is informed by the Registrar that an adopted person has died, the Chief Executive must, if the Chief Executive considers it appropriate to do so, take reasonable steps to inform—
 - (a) the adopted person's birth parents of the death; and
 - (b) each person who would have been a sibling of the adopted person (whether of the whole or half blood) if the adoption order had not been made.
- (2) If the Chief Executive receives information that a birth parent of an adopted person has died, the Chief Executive must, if the Chief Executive considers it appropriate to do so, take reasonable steps to inform the adopted person.
- (3) If the Chief Executive informs—
 - (a) the birth parents of an adopted person of the adopted person's death; or
 - (b) an adopted person of the death of a birth parent of the adopted person,
the fact that a direction lodged under section 27B by the deceased adopted person or birth parent (as the case may be) was in effect at the time of death does not prevent the Chief Executive from—
 - (c) in the case of a deceased adopted person—disclosing to the birth parents information in the Chief Executive's possession relating to the adopted person; or
 - (d) in the case of a deceased birth parent—disclosing to the adopted person information in the Chief Executive's possession relating to the birth parent.

41—Registration

- (1) The Registrar must, on receipt of notice of the adoption of a child—
 - (a) if the child's birth is registered in this State—add a note to the entry in the register relating to the child containing the names of the persons who are in contemplation of law the parents of the child following the adoption; or
 - (b) in any other case—make an entry containing—
 - (i) a statement of the date and place of birth of the child; and
 - (ii) the names of—
 - (A) the birth parents of the child (if known); and
 - (B) the persons who are in contemplation of law the parents of the child following the adoption.
- (2) Subject to this section, the Registrar must not allow any person access to information contained in an entry in the register of births relating to an adopted person who is less than 18 years of age.

- (3) If the parties to an adoption agree (whether at the time of the making of the adoption order or at a later date) that information in an entry in the register of births (including a cancelled entry) relating to an adopted person may be accessed before the adopted person turns 18, the parties may give the Chief Executive a notice indicating such agreement (a *consent notice*).
- (4) The Registrar may—
- (a) if the Chief Executive has given the Registrar a consent notice, allow a party to an adoption access to information contained in the entry in the register of births relating to an adopted person who is less than 18 years of age (including a cancelled entry); or
 - (b) if the Registrar has not been given a consent notice—
 - (i) allow access by the adopted person or the adoptive parents to the information contained in the entry other than—
 - (A) information in a cancelled entry; or
 - (B) without limiting subparagraph (A), information relating to the birth parents or the name of the adopted person before the adoption; and
 - (ii) allow access by the birth parents to the following information contained in the entry (whether or not the information is contained in a cancelled entry):
 - (A) the names of the birth parents;
 - (B) the name of the adopted person before the adoption;
 - (C) the statement of the date and place of birth of the adopted person.
- (5) A consent notice—
- (a) has effect until the adopted person attains the age of 18 years, unless revoked before that date; and
 - (b) may be revoked at any time by any party to the adoption; and
 - (c) must be given or revoked in a manner and form approved by the Chief Executive.
- (6) Subject to section 41A, the Registrar—
- (a) may allow any person access to information relating to an adopted person who is aged 18 years or more contained in an entry (other than a cancelled entry) in the register of births; or
 - (b) in the case of any such information in a cancelled entry—may allow access to the information—
 - (i) by the adopted person or a birth parent of the adopted person; or
 - (ii) by any other person on the authorisation of the Chief Executive.
- (7) The Chief Executive must not give an authorisation under subsection (6)(b)(ii) if the Chief Executive is of the opinion that to do so would give rise to a serious risk to the life or safety of a person.

- (8) If the Registrar—
- (a) receives from the Chief Executive a statement of wishes; and
 - (b) allows access to information relating to the person who gave the statement of wishes to the Chief Executive,

the Registrar must ensure that, at the time of allowing access, the statement of wishes is given to the person to whom access is allowed.

- (9) In this section—

cancelled entry means any entry formerly made in the register of births relating to an adopted person that was cancelled by the Registrar before the relevant day;

relevant day means the day on which section 31 of the *Adoption (Review) Amendment Act 2016* comes into operation.

41A—Limitation of right to access information on register relating to person adopted prior to commencement of Act in certain cases

- (1) An old section 41 direction that is in effect immediately before the relevant day will, unless revoked earlier, continue to have effect until the expiry day.
- (2) The Chief Executive must not, in contravention of an old section 41 direction, authorise the Registrar to allow access to the following information in the register of births by a person who was adopted before 17 August 1989:
- (a) information contained in an entry cancelled under subsection (1) of old section 41;
 - (b) information in an entry relating to a person who was adopted before 17 August 1989.
- (3) The Registrar must not, except on the authorisation of the Chief Executive, allow any person access to the following information contained in the register of births relating to an adopted person:
- (a) information in an entry cancelled under subsection (1) of old section 41;
 - (b) information in an entry relating to a person who was adopted before 17 August 1989.
- (4) Despite subsection (3), the Registrar may, without the authorisation of the Chief Executive, allow access to information contained in an entry in the register of births cancelled under subsection (1) of old section 41 relating to an adopted person—
- (a) if the adopted person is aged 18 years or more—by the adopted person; or
 - (b) by a birth parent of the adopted person.

- (5) In this section—

expiry day means the day that falls 5 years after the relevant day;

old section 41 means section 41 of this Act as in force immediately before the relevant day;

old section 41 direction means a direction under subsection (5) of old section 41 that the Chief Executive must not authorise access to information by a person who was adopted before 17 August 1989 continued in effect under this section;

relevant day means the day on which section 31 of the *Adoption (Review) Amendment Act 2016* comes into operation.

- (6) This section expires on the expiry day.

Note—

The *Adoption Act 1988* came into operation on 17 August 1989.

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 suitable persons to adopt children will be determined; and
 - (i) the—
 - (i) keeping of registers of persons approved by the Chief Executive as suitable 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 vesting of jurisdiction in the South Australian Civil and Administrative Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013* to review—
 - (i) any decision of the Chief Executive refusing to approve a person as being a suitable 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 suitable persons to adopt children; or
 - (iii) any other decision of the Chief Executive under this Act of a kind specified in the regulations; and

- (1) fines not exceeding \$10 000 for contravention of, or non-compliance with, a regulation.
- (3) The regulations may confer discretionary powers.

Legislative history

Notes

- 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.

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 (c11 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
2016	32	<i>Statutes Amendment (Youth Court) Act 2016</i>	30.6.2016	Pt 4 (s 19)—1.1.2017 (<i>Gazette 8.12.2016 p4903</i>)

2016	64	<i>Adoption (Review) Amendment Act 2016</i>	15.12.2016	17.2.2017 (<i>Gazette 16.2.2017 p548</i>) except s 3(1), (2) (as inserted by s 4), <i>psychologist, publish</i> (as inserted by s 5(6)), ss 5(7), (10), 6, 9(1), 14(3), 15, 17, 19 to 22, 23(1), 24 to 29—18.12.2017 (<i>Gazette 21.11.2017 p4652</i>) and except ss 3(3) (as inserted by s 4), 5(1), (2), (4), <i>party to an adoption, Registrar</i> (as inserted by s 5(6)), (8), (9), 7, 9(2), 10, 11, 13, 16, 18, 30 & 31—15.12.2018 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2017	51	<i>Statutes Amendment (SACAT No 2) Act 2017</i>	28.11.2017	Pt 2 (ss 4 & 5)—5.7.2018 (<i>Gazette 28.6.2018 p2618</i>)

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		
s 3(1) and (2)	inserted by 64/2016 s 4	18.12.2017
s 3(3)	inserted by 64/2016 s 4	15.12.2018
s 4		
s 4(1)		
Aboriginal and Torres Strait Islander Child Placement Principle	inserted by 64/2016 s 5(1)	15.12.2018
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)	15.12.2018
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)	17.2.2017
Family Law Act 1975	inserted by 83/1996 s 4(e)	5.10.1997

guardian	substituted by 83/1996 s 4(f) amended by 64/2016 s 5(4)	5.10.1997 15.12.2018
<i>marriage relationship</i>	<i>deleted by 64/2016 s 5(5)</i>	17.2.2017
party to an adoption	inserted by 64/2016 s 5(6)	15.12.2018
psychologist	inserted by 64/2016 s 5(6)	18.12.2017
publish	inserted by 64/2016 s 5(6)	18.12.2017
qualifying relationship	inserted by 64/2016 s 5(6)	17.2.2017
Registrar	inserted by 64/2016 s 5(6)	15.12.2018
statement of wishes	inserted by 64/2016 s 5(7)	18.12.2017
s 4(1a)	inserted by 56/2005 Sch 2 cl 5(2) amended by 32/2016 s 19(1)	1.7.2006 1.1.2017
<i>s 4(1b)</i>	<i>inserted by 56/2005 Sch 2 cl 5(2)</i> <i>deleted by 32/2016 s 19(2)</i>	<i>1.7.2006</i> <i>1.1.2017</i>
s 4(2)	substituted by 64/2016 s 5(8)	15.12.2018
s 4(3)	amended by 64/2016 s 5(9)	15.12.2018
<i>s 4(4)</i>	<i>deleted by 64/2016 s 5(10)</i>	<i>18.12.2017</i>
<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>
<i>s 7</i>	<i>deleted by 64/2016 s 6</i>	<i>18.12.2017</i>
s 7A	inserted by 83/1996 s 7	5.10.1997
Pt 2		
s 8		
s 8(1)	amended by 83/1996 s 8 amended by 64/2016 s 7	5.10.1997 15.12.2018
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) amended by 64/2016 s 8	5.10.1997 17.2.2017
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) substituted by 64/2016 s 9(1)	5.10.1997 18.12.2017
s 10(2)	inserted by 83/1996 s 11(b) amended by 64/2016 s 9(3) amended by 64/2016 s 9(2)	5.10.1997 17.2.2017 15.12.2018
s 10A	inserted by 64/2016 s 10	15.12.2018
s 11		
s 11(1)	amended by 83/1996 s 12 substituted by 64/2016 s 11(1)	5.10.1997 15.12.2018

Adoption Act 1988—15.12.2018

Legislative history

s 11(1a) and (1b)	inserted by 64/2016 s 11(1)	15.12.2018
s 11(2) and (3)	amended by 64/2016 s 11(2)	15.12.2018
s 11(4)	inserted by 64/2016 s 11(3)	15.12.2018
s 12		
s 12(1)	amended by 83/1996 s 13(a) substituted by 64/2016 s 12(1)	5.10.1997 17.2.2017
s 12(2)	<i>amended by 83/1996 s 13(b)</i> <i>deleted by 64/2016 s 12(1)</i>	5.10.1997 17.2.2017
s 12(3)	amended by 83/1996 ss 13(c), 27 (Sch) substituted by 64/2016 s 12(2)	5.10.1997 17.2.2017
s 12(4)	amended by 64/2016 s 12(3)	17.2.2017
s 12(6)	inserted by 64/2016 s 12(4)	17.2.2017
s 13	<i>deleted by 83/1996 s 14</i>	5.10.1997
s 14 before substitution by 64/2016		
s 14(1)	<i>amended by 83/1996 s 15(a)</i>	5.10.1997
s 14(2)	<i>amended by 83/1996 s 15(b)</i>	5.10.1997
s 14	substituted by 64/2016 s 13	15.12.2018
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) amended by 64/2016 s 14(1), (2)	5.10.1997 17.2.2017
s 15(5)	amended by 83/1996 s 16(b) (c) deleted by 83/1996 s 16(b) amended by 64/2016 s 14(3)	5.10.1997 5.10.1997 18.12.2017
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	18.12.2017
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	15.12.2018
s 23(3a)	inserted by 64/2016 s 16	15.12.2018
s 24A	inserted by 64/2016 s 17	18.12.2017
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	15.12.2018
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)	18.12.2017
s 27(5)	amended by 64/2016 s 19(2)	18.12.2017
s 27B	substituted by 64/2016 s 20	18.12.2017
s 27C	amended by 64/2016 s 21	18.12.2017
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	18.12.2017
s 29		
s 29(1)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 23(1)	18.12.2017
s 29(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 23(2), (3)	17.2.2017
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	18.12.2017
s 31		
s 31(1)	amended by 83/1996 ss 25, 27 (Sch)	5.10.1997
	amended by 64/2016 s 25(1), (2)	18.12.2017
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)	18.12.2017
s 32	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 26(1), (2)	18.12.2017

s 33	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 27	18.12.2017
s 34	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 28	18.12.2017
s 35	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 29	18.12.2017
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	15.12.2018
<i>s 41 before substitution by 64/2016</i>		
s 41(1)—(7)	<i>amended by 83/1996 s 27 (Sch)</i>	5.10.1997
s 41	substituted by 64/2016 s 31	15.12.2018
s 41A	inserted by 64/2016 s 31	15.12.2018
	will expire: s 41A(6)	(15.12.2023)
s 42		
s 42(2)	amended by 83/1996 s 27 (Sch)	5.10.1997
	amended by 64/2016 s 32(1), (2)	17.2.2017
	amended by 51/2017 s 4(1)	5.7.2018
	(k) deleted by 51/2017 s 4(2)	5.7.2018
<i>Sch</i>	<i>deleted by 83/1996 s 27 (Sch)</i>	5.10.1997

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).

Statutes Amendment (SACAT No 2) Act 2017, Pt 2

5—Transitional provisions

- (1) Any review of a decision of the Chief Executive under a scheme established by the regulations under section 42(2)(j) and (k) of the principal Act (as in existence immediately before the relevant day) initiated under those regulations before the relevant day will continue (including so as to provide for the constitution of an adoption board) and be completed as if this Act had not been enacted.

(2) In this section—

principal Act means the *Adoption Act 1988*;

relevant day means the day on which this Part comes into operation.

Historical versions

Reprint No 1—6.3.1995

Reprint No 2—5.10.1997

1.7.2006

1.2.2010

11.7.2013

1.1.2017

17.2.2017

18.12.2017

5.7.2018