

## Adoption Amendment Bill 2011

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## **Adoption Amendment Bill 2011**

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Western Australia

LEGISLATIVE COUNCIL

*(As amended in Committee)*

## **Adoption Amendment Bill 2011**

**A Bill for**

**An Act to amend the *Adoption Act 1994*.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Adoption Amendment Act 2011*.

3   **2.     Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6                receives the Royal Assent;
- 7           (b) the rest of the Act — on a day fixed by proclamation,  
8                and different days may be fixed for different provisions.

9   **3.     Act amended**

10          This Act amends the *Adoption Act 1994*.

11   **4.     Section 4 amended**

12          (1) In section 4(1) delete the definitions of:

13                *carer*

14                *relative*

15          (2) In section 4(1) insert in alphabetical order:

16

17                *carer*, in relation to a child, means a person with whom  
18                the child lives and who, either alone or jointly with  
19                another person, has the daily care of the child;

20                *Class 1 offence* has the meaning given in the *Working*  
21                *with Children (Criminal Record Checking) Act 2004*  
22                section 7(1);

23                *Class 2 offence* has the meaning given in the *Working*  
24                *with Children (Criminal Record Checking) Act 2004*  
25                section 7(2);

26                *conviction* has the meaning given in the *Working with*  
27                *Children (Criminal Record Checking) Act 2004*  
28                section 8;

1                    *pending charge* has the meaning given in the *Working*  
2                    *with Children (Criminal Record Checking) Act 2004*  
3                    section 4;

4                    *relative*, in relation to a person, means the person's —

5                    (a) grandparent; or

6                    (b) sibling; or

7                    (c) uncle or aunt,

8                    whether the relationship is of the whole or half blood,  
9                    established by, or traced through, marriage, a written  
10                    law or a natural relationship;

11

12                    (3) In section 4(1) in the definition of *Australian citizen* delete  
13                    “*Australian Citizenship Act 1948* of the Commonwealth;” and  
14                    insert:

15

16                    *Australian Citizenship Act 2007* (Commonwealth);

17

18                    (4) In section 4(1) in the definition of *birth parent* delete  
19                    paragraph (b) and insert:

20

21                    (b) the father, or a parent under the *Artificial*  
22                    *Conception Act 1985* section 6A, of the child or  
23                    adoptee;

24

25                    **5. Section 8 amended**

26                    In section 8(1) in the Penalty delete “\$25 000 and 2 years’  
27                    imprisonment.” and insert:

28

29                    a fine of \$25 000 and imprisonment for 2 years.

30

1   **6.       Section 14 amended**

2           Delete section 14(2) and insert:

3

4           (2)   The CEO is to select the members from persons who  
5               the CEO thinks have relevant expertise or experience  
6               but —

7               (a)   a majority of the members are to be  
8               independent of the Department; and

9               (b)   at least one of the members is to be a lawyer.

10          (3)   The CEO is to appoint one of the members who is  
11               independent of the Department to be the chairperson of  
12               the committee.

13

14   **7.       Section 15A inserted**

15           After section 14 insert:

16

17   **15A.     Directions by CEO**

18          (1)   Subject to subsection (2), the CEO may give written  
19               directions to the adoption applications committee with  
20               respect to the performance of its functions and the  
21               committee is to give effect to any such direction.

22          (2)   The CEO must not under subsection (1) direct the  
23               committee with respect to the performance of its  
24               functions in respect of a particular application.

25

26   **8.       Section 15 amended**

27           In section 15(b) delete “may” and insert:

28

29                               may, subject to any direction given by the CEO  
30                               under section 15A,

31



1 **9. Section 16 amended**

2 (1) In section 16(1):

3 (a) in paragraph (a) delete “clause 1(a) of Schedule 1;” and  
4 insert:

5

6 Schedule 1 clause 1(1)(a); and

7

8 (b) after each of paragraphs (b) to (d) insert:

9

10 and

11

12 (2) Delete section 16(2) and insert:

13

14 (2) The CEO is to commence the provision of a service  
15 requested under subsection (1) —

16 (a) in the case of a request by a person who is  
17 thinking about relinquishing her or his child for  
18 adoption by a step-parent, relative or carer of  
19 the child, within 28 days of the request;

20 or

21 (b) in any other case, within 7 days of the request.

22

23 **10. Section 16A replaced**

24 Delete section 16A and insert:

25

26 **16A. Matters relevant to the adoption process for**  
27 **Aboriginal or Torres Strait Islander child**

28 The CEO must consult with —

29 (a) an officer of the department who is an  
30 Aboriginal person or a Torres Strait Islander; or

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---

- 1                   (b) an Aboriginal person or a Torres Strait Islander  
2                   who, in the opinion of the CEO, has relevant  
3                   knowledge of the child, the child’s family or  
4                   the child’s community; or
- 5                   (c) an Aboriginal or Torres Strait Islander agency  
6                   that, in the opinion of the CEO, has relevant  
7                   knowledge of the child, the child’s family or  
8                   the child’s community,
- 9                   regarding the prospective adoption of a child who is an  
10                  Aboriginal person or a Torres Strait Islander.  
11

12 **11. Section 20 amended**

13                  After section 20(a)(i) insert:

- 14
- 15                                 (iiia) relative; or  
16

17 **12. Section 24 amended**

18                  In section 24(2):

- 19                   (a) in paragraph (c) delete “step-parent” and insert:

20

21   step-parent, relative  
22

- 23                   (b) after each of paragraphs (a) to (e) and (e)(i) insert:

24

25   or  
26

27 **13. Section 26G amended**

28                  In section 26G(2) delete the passage that begins with “consent”  
29                  and ends with “development.” and insert:

30

31   consent of a person with parental responsibility for the child.

1    **14.    Section 26H amended**

2           In section 26H(1) delete the passage that begins with “consent”  
3           and ends with “development.” and insert:

4  
5           consent of a person with parental responsibility for the child.  
6

7    **15.    Section 27 amended**

8           (1) In section 27(1) delete “child’s guardian or guardians” and  
9           insert:

10  
11           persons with parental responsibility for the child  
12

13           (2) Delete section 27(2) and (3) and insert:

14  
15           (2) Where the child’s step-parent who is married to, or in a  
16           de facto relationship with, the birth parent who has  
17           parental responsibility for the child has been specified  
18           in the forms of consent as the prospective adoptive  
19           parent, both the birth parent and the step-parent are to  
20           have parental responsibility for the child.

21           (3) Where a relative or a carer of the child has been  
22           specified in the forms of consent as the prospective  
23           adoptive parent, that person is to have parental  
24           responsibility for the child.  
25

26           (3) Delete section 27(4).

27           (4) In section 27(5) delete “be the guardian.” and insert:

28  
29           have parental responsibility for the child.  
30

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---

- 1 (5) Delete section 27(6) and insert:  
2
- 3 (6) Subsections (2), (3) and (5) do not apply where —  
4 (a) the child is the subject of a protection order  
5 (time-limited) or protection order (until 18)  
6 under the *Children and Community Services*  
7 *Act 2004*; or  
8 (b) a person has parental responsibility for the child  
9 by operation of the law of another State or a  
10 Territory corresponding to the provisions of the  
11 *Children and Community Services Act 2004*  
12 Part 4,  
13 in which case the person with parental responsibility  
14 for the child has parental responsibility for the  
15 purposes of this Division.  
16

17 Note: The heading to amended section 27 is to read:

18 **Parental responsibility for children awaiting adoption where all**  
19 **consents accounted for**

20 **16. Section 28 amended**

- 21 In section 28(1):  
22 (a) delete “if the child —” and insert:  
23  
24 if —  
25  
26 (b) in paragraph (a) before “has” insert:  
27  
28 the child  
29

1 (c) in paragraph (b) delete “is in the care and control of a  
2 birth parent who” and insert:

3  
4 a birth parent of the child

5  
6 Note: The heading to amended section 28 is to read:

7 **Parental responsibility for children awaiting adoption where not**  
8 **all consents finalised**

9 **17. Section 29 replaced**

10 Delete section 29 and insert:

11

12 **29. Cessation of parental responsibility for children**  
13 **awaiting adoption**

14 (1) Parental responsibility for a child under this Division  
15 ceases —

16 (a) if a consent to the child’s adoption is revoked,  
17 in which case a person who had parental  
18 responsibility for the child immediately before  
19 the commencement of parental responsibility  
20 for the child under this Division is to have  
21 parental responsibility for the child again; or

22 (b) if a court makes further provision in respect of  
23 parental responsibility for the child; or

24 (c) where the CEO has parental responsibility for  
25 the child —

26 (i) if notice is given under section 30(1); or

27 (ii) if the parental responsibility is  
28 renounced under section 33(1);

29 or

30 (d) when an adoption order is made in relation to  
31 the child.

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- 1           (2) Parental responsibility under this Division is not  
2           affected by any provision of, and cannot be changed  
3           by, any will, deed or agreement.  
4

5   **18.    Section 30 replaced**

6           Delete section 30 and insert:  
7

8           **30.    If not possible or desirable to place child for**  
9           **adoption**

- 10           (1) If the CEO has parental responsibility for a child under  
11           this Division and is of the opinion that it is not possible  
12           or desirable to place the child with a view to the child's  
13           adoption, the CEO is to cause notice of that opinion to  
14           be given to each person who the CEO believes is a  
15           birth parent of the child or who had parental  
16           responsibility for the child before the commencement  
17           of the CEO's parental responsibility under this  
18           Division.
- 19           (2) If the CEO gives a notice under subsection (1) —
- 20               (a) a person who had parental responsibility for the  
21               child before the commencement of the CEO's  
22               parental responsibility under this Division has  
23               parental responsibility for the child; and
- 24               (b) any consents to the child's adoption cease to  
25               have effect.  
26

1 **19. Section 32 replaced**

2 Delete section 32 and insert:

3

4 **32. Responsibilities in relation to children awaiting**  
5 **adoption**

6 Within 12 months of a person commencing to have  
7 parental responsibility for a child under this Division,  
8 or such further time as the court allows, the person is  
9 to —

- 10 (a) arrange for an application for an adoption order  
11 in relation to the child to be filed in the Court;  
12 or  
13 (b) apply to the Court for an order to make further  
14 provision about parental responsibility for the  
15 child.  
16

17 **20. Section 33 amended**

18 (1) In section 33(1):

19 (a) delete “is the guardian of” and insert:

20

21 has parental responsibility for

22

23 (b) in paragraph (b) delete “guardianship of” and insert:

24

25 parental responsibility for

26

27 (c) delete “guardianship.” and insert:

28

29 parental responsibility.  
30

**s. 20**

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- 1       (2) In section 33(2):  
2           (a) delete “guardianship” and insert:  
3  
4           parental responsibility  
5  
6           (b) in paragraph (c) delete “become the child’s guardian”  
7           and insert:  
8  
9           have parental responsibility for the child  
10  
11          (c) in paragraph (c) delete “guardianship.” and insert:  
12  
13          parental responsibility.  
14  
15          (d) after paragraph (a) insert:  
16  
17          and  
18  
19       (3) In section 33(3):  
20           (a) delete “be the guardian” and insert:  
21  
22           have parental responsibility  
23  
24           (b) delete “guardianship” and insert:  
25  
26           parental responsibility  
27  
28       (4) In section 33(5) delete “the guardianship of” and insert:  
29  
30       parental responsibility for  
31  
32       Note: The heading to amended section 33 is to read:  
33                           **Renunciation and transfer of parental responsibility by the CEO**



1 **21. Section 34 amended**

2 (1) In section 34(1):

3 (a) delete “the child is under the guardianship of a  
4 corresponding officer,” and insert:

5

6 a corresponding officer has parental responsibility for  
7 the child,

8

9 (b) in paragraph (b) delete “guardianship of” and insert:

10

11 parental responsibility for

12

13 (2) In section 34(2):

14 (a) delete “guardianship” and insert:

15

16 parental responsibility

17

18 (b) in paragraph (d) delete “guardianship,” and insert:

19

20 parental responsibility,

21

22 (c) in paragraph (d) delete “be the child’s guardian.” and  
23 insert:

24

25 have parental responsibility for the child.

26

27 (d) after paragraphs (a) and (b) insert:

28

29 and

30

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---

1 (3) Delete section 34(3) and insert:

2

3 (3) The CEO has parental responsibility for the child under  
4 this Division when the corresponding officer signs an  
5 instrument renouncing parental responsibility for the  
6 child.

7

8 Note: The heading to amended section 34 is to read:

9 **Transfer of parental responsibility to the CEO**

10 **22. Section 35 replaced**

11 Delete section 35 and insert:

12

13 **35. Offence**

14 A person must not remove a child from the State  
15 without the written consent of each person who has  
16 parental responsibility for the child under this Division.

17 Penalty: a fine of \$10 000 and imprisonment for  
18 12 months.

19

20 **23. Section 36 amended**

21 (1) In section 36(1):

22 (a) delete “child’s guardian” and insert:

23

24 person with parental responsibility for the child

25

26 (b) delete “the child’s guardianship.” and insert:

27

28 parental responsibility for the child.

29

- 1       (2) In section 36(2):  
2           (a) in paragraph (a) delete “guardianship” and insert:  
3  
4                   parental responsibility  
5  
6           (b) delete paragraph (b) and insert:  
7  
8                   (b) make an order changing the person who has  
9                           parental responsibility for the child for the  
10                           purposes of Division 4; or  
11  
12          (c) after paragraph (a) insert:  
13  
14                   or  
15

16       Note: The heading to amended section 36 is to read:

17                   **Orders as to parental responsibility under Division 4**

18   **24. Section 37 amended**

19       Delete section 37(1) and (2) and insert:

- 20  
21       (1) The CEO is to provide persons contemplating adoptive  
22           parenthood with —  
23           (a) oral and written information about adoption;  
24                   and  
25           (b) counselling in relation to adoption.  
26       (2) Subsection (1)(b) does not apply to a step-parent,  
27           relative or carer of a child who is thinking of adopting  
28           the child, but if requested, the CEO is to provide such a  
29           person with counselling in relation to adoption.  
30

1   **25.     Section 38 amended**

2           In section 38(4) delete “step-parent” and insert:

3

4           step-parent, relative

5

6   **26.     Section 39 amended**

7       (1) In section 39(1):

8           (a) delete “cannot” and insert:

9

10           may only

11

12           (b) delete “unless” and insert:

13

14           if

15

16           (c) delete paragraph (d) and insert:

17

18           (d) has not been convicted of a Class 1 offence  
19               committed after he or she attained 18 years of  
20               age; and

21           (ea) if married to another person —

22               (i) applies as a joint applicant with that  
23               person; or

24               (ii) has been separated from that person for  
25               at least 12 months and does not intend  
26               to resume cohabitation with that person;

27           and

28           (eb) is, or in the previous 12 months has been, in a  
29               de facto relationship with another person,  
30               applies as a joint applicant with that person;  
31               and

32

- 1 (d) after each of paragraphs (a) to (c) insert:  
2  
3 and  
4
- 5 (2) After section 39(1) insert:  
6
- 7 (2A) Despite subsection (1), a person who applied jointly  
8 with another person under section 38(1) may, in  
9 accordance with the regulations, continue the  
10 application in his or her own name if the joint  
11 applicants commence living separately and apart.  
12
- 13 (3) In section 39(2):  
14 (a) delete “cannot” and insert:  
15  
16 may only  
17  
18 (b) delete “unless” and insert:  
19  
20 if  
21
- 22 **27. Section 40 amended**
- 23 (1) In section 40(2):  
24 (a) delete paragraph (e) and insert:  
25  
26 (e) has not been convicted of a Class 1 or Class 2  
27 offence; and  
28 (fa) does not have a pending charge in respect of a  
29 Class 1 or Class 2 offence; and  
30

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---

- 1                   (b) after each of paragraphs (a) to (da) insert:  
2  
3                   and  
4  
5           (2) After section 40(2) insert:  
6  
7           (3) Despite subsection (2), an applicant who has —  
8                   (a) previously been assessed under the Act as  
9                   suitable to adopt a child; and  
10                   (b) subsequently adopted a child,  
11                   is not required to provide evidence in respect of the  
12                   matters referred to in subsection (2)(b), (c), (d), (da)  
13                   or (f) unless requested to do so by the person appointed  
14                   to prepare the assessment report under subsection (1).  
15

16 **28. Section 41A inserted**

17 After section 40 insert:  
18

19 **41A. CEO may conduct checks**

- 20           (1) The CEO may conduct any check (including a criminal  
21           record check) that the CEO considers appropriate as to  
22           whether an applicant under section 38(1) is suitable to  
23           be an adoptive parent.  
24           (2) The CEO may provide information obtained as a result  
25           of a check referred to in subsection (1) to —  
26                   (a) a person appointed under section 40(1) to  
27                   prepare an assessment report on the applicant;  
28                   or  
29                   (b) the adoption applications committee.  
30

1   **29.   Section 42 amended**

2           Delete section 42(2) and (3).

3   **30.   Section 43 amended**

4           In section 43:

5           (a)   in paragraph (b)(ii) delete “report,” and insert:

6

7                         report.

8

9           (b)   delete “if requested by the applicant.”.

10   **31.   Section 45 amended**

11           In section 45 delete “step-parent” and insert:

12

13                         step-parent, relative

14

15   **32.   Section 46 amended**

16           In section 46(2):

17           (a)   in paragraph (b) delete “child; or” and insert:

18

19                         child;

20

21           (b)   in paragraph (c) delete “child,” and insert:

22

23                         child;

24

25           (c)   after paragraph (c) insert:

26

27                         (d)   a process for reviewing the adoption plan,

28

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---

1   **33.    Section 47 replaced**

2           Delete section 47 and insert:

3

4           **47.    Duty of CEO as to adoption plans**

5           The CEO is to provide assistance and mediation to —

- 6           (a)   persons in the process of negotiating an
- 7                 adoption plan under section 46(1) or (3)(b)
- 8                 or 55; and
- 9           (b)   persons in the process of negotiating the
- 10                variation of an adoption plan referred to in
- 11                paragraph (a); and
- 12           (c)   persons seeking to review an adoption plan
- 13                referred to in paragraph (a).

14

15   **34.    Section 49 amended**

16           In section 49:

- 17           (a)   in paragraph (e) delete “is the child’s guardian” and
- 18                 insert:

19

20                 has parental responsibility for the child

21

- 22           (b)   in paragraph (e) delete “30.” and insert:

23

24                 30(1).

25



1   **35.   Section 50 amended**

2           In section 50(4) delete “step-parent” and insert:

3

4           step-parent, relative

5

6   **36.   Section 52 amended**

7       (1)   Before section 52(1) insert:

8

9           (1A)   In this section —

10                   *place*, in relation to a child who is habitually resident in  
11                   a Convention country or an overseas jurisdiction,  
12                   means to make an offer of the child to a prospective  
13                   adoptive parent following the receipt of advice from  
14                   the competent authority of the Convention country or  
15                   the adoption authority of the overseas jurisdiction that  
16                   the placement of the child with the prospective  
17                   adoptive parent with a view to adoption has been  
18                   approved.

19

20       (2)   In section 52(1):

21           (a)   in paragraph (a)(vb) delete “arrangements; and” and  
22           insert:

23

24                   arrangements;

25

26           (b)   delete paragraph (a)(vi);

27           (c)   delete paragraph (c).

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---

- 1           (3) In section 52(3):
- 2                   (a) in paragraph (a) delete “have not adopted a child before;
- 3                               or” and insert:
- 4
- 5                               do not have parental responsibility for another child; or
- 6
- 7                   (b) delete paragraph (b);
- 8                   (c) in paragraph (c) delete “have adopted a child before; or”
- 9                               and insert:
- 10
- 11                               have parental responsibility for another child; or
- 12
- 13                   (d) delete paragraph (d);
- 14                   (e) in paragraph (e) delete “has not adopted a child before
- 15                               (whether as a joint or sole adoptive parent); or” and
- 16                               insert:
- 17
- 18                               does not have parental responsibility for
- 19                               another child; or
- 20
- 21                   (f) in paragraph (f) delete “adopted a child before (whether
- 22                               as a joint or sole adoptive parent).” and insert:
- 23
- 24                               parental responsibility for another child.
- 25

26   **37. Part 3 Division 8 heading amended**

27           In the heading to Part 3 Division 8 delete “**step-parents**” and

28           insert:

29

30           **step-parents, relatives**

31

---

1   **38.     Sections 55A to 55C inserted**

2           At the beginning of Part 3 Division 8 insert:

3

4           **55A.     CEO approval of relative or carer placement**

- 5           (1) A relative or a carer of a child may apply to the CEO  
6           for the approval of the placement of the child with the  
7           person with a view to the person adopting the child.
- 8           (2) An application under subsection (1) may be made by  
9           one person, or by 2 persons jointly.
- 10          (3) An application under subsection (1) is be in a form that  
11          is approved by the CEO.
- 12          (4) On an application under subsection (1) the CEO may  
13          approve the placement of the child if the CEO is  
14          satisfied that each applicant —
- 15               (a) is an Australian citizen or a permanent resident;  
16               and
- 17               (b) is 18 or more years of age; and
- 18               (c) is of good repute; and
- 19               (d) is able to provide care for the child in a way  
20               that —
- 21                     (i) ensures the safety and well being of the  
22                     child; and
- 23                     (ii) recognises the wishes and views of the  
24                     child in a manner that is consistent with  
25                     the age and understanding of the child.
- 26          (5) If the child is the subject of a protection order (time  
27          limited) or protection order (until 18) under the  
28          *Children and Community Services Act 2004* the CEO  
29          must not approve the placement of the child under this  
30          section unless the CEO is satisfied that the child's  
31          adoption would be preferable to the making of a

1 protection order (special guardianship) under the  
2 *Children and Community Services Act 2004* in respect  
3 of the child.

4 **55B. CEO may conduct checks**

5 The CEO may conduct any check (including a criminal  
6 record check) that the CEO considers appropriate as to  
7 whether an applicant under section 55A(1) is suitable  
8 to be an adoptive parent of the child.

9 **55C. When application for relative or carer adoption can  
10 be made**

11 An application for an order for a child to be adopted by  
12 a relative or a carer is not to be filed unless —

- 13 (a) the child has been in the care of the person  
14 making the application for a period of at least  
15 2 years immediately preceding the day on  
16 which the application is made; and  
17 (b) the placement of the child with the relative or  
18 the carer has been approved under section 55A.  
19

20 **39. Section 55 amended**

21 In section 55(1) delete “step-parent” and insert:

22  
23 step-parent, relative  
24

25 Note: The heading to amended section 55 is to read:

26 **Adoption plans in adoptions by step-parents, relatives or carers**

- 
- 1   **40.    Section 59 amended**
- 2       (1)   Before section 59(1) insert:
- 3
- 4       (1A)   In this section —
- 5           *close relative*, in relation to a birth parent, means each
- 6           of the following people —
- 7           (a)   a birth parent or an adoptive parent of the birth
- 8                 parent;
- 9           (b)   a sibling of the birth parent —
- 10               (i)   whether of the whole or half blood; or
- 11               (ii)  whether the relationship is established
- 12                 by this Act or another written law.
- 13
- 14       (2)   Delete section 59(2) and insert:
- 15
- 16       (2)   Written notice of the intention to file an application for
- 17         an adoption order in relation to the child —
- 18           (a)   is to be given to as many close relatives of the
- 19                 birth parents who have attained the age of
- 20                 18 years as is practicable; or
- 21           (b)   if no close relative of a birth parent can
- 22                 reasonably be located, is to be given to an aunt
- 23                 or uncle of the birth parent who has attained the
- 24                 age of 18 years and is reasonably available at
- 25                 the relevant time.
- 26       (3)   For the purposes of subsection (2) notice is given to a
- 27         person if the notice is delivered personally or by
- 28         registered post to that person’s last known address.
- 29       (4)   The CEO may provide assistance to a person who is
- 30         required to give notice of the intention to file an
- 31         application for an adoption order under this section.

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---

1 **41. Section 66 amended**

2 (1) In section 66(2) after “adopted by” insert:

3

4 a relative or

5

6 (2) Delete section 66(3).

7 **42. Section 67 amended**

8 (1) In section 67(1):

9 (a) after paragraph (a) insert:

10

11 (ba) is a relative of the child; or

12

13 (b) after paragraph (a) insert:

14

15 or

16

17 (2) In section 67(2):

18 (a) delete “(1)(b) and (c)” and insert:

19

20 (1)(ba), (b) and (c) and relatives

21

22 (b) delete “first-mentioned persons” and insert:

23

24 first-mentioned persons, relatives

25

26 (3) In section 67(5):

27 (a) delete “(1)(b) and (c)” and insert:

28

29 (1)(ba), (b) and (c) or the relatives

30

1 (b) delete “those persons” and insert:

2

3 those persons, relatives

4

5 **43. Section 68 amended**

6 (1) In section 68(1):

7 (a) after paragraph (d) insert:

8

9 (ea) if a relative or carer of a child wishes to adopt  
10 the child, the application is in accordance with  
11 section 55C; and

12

13 (b) delete paragraph (fa) and insert:

14

15 (fa) if a step-parent, relative or carer of a child  
16 wishes to adopt the child, the child’s adoption  
17 by the person is preferable to any of the  
18 following orders being made under the *Family*  
19 *Law Act 1975* (Commonwealth) or the *Family*  
20 *Court Act 1997* as is relevant to the case —

21 (i) a parenting order in respect of the child;

22 (ii) an order in respect of the appointment  
23 or removal of a guardian of the child;

24 and

25 (fb) if a relative of a child wishes to adopt the child,  
26 there are good reasons to redefine relationships  
27 within the child’s family in the way that the  
28 order would do; and

29 (fc) if a relative or carer of a child wishes to adopt  
30 the child and the child is the subject of a  
31 protection order (time limited) or protection  
32 order (until 18) under the *Children and*  
33 *Community Services Act 2004*, the child’s

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---

1 adoption would be preferable to the making of  
2 a protection order (special guardianship) under  
3 the *Children and Community Services Act 2004*  
4 in respect of the child; and  
5

6 (c) after each of paragraphs (a) to (f) and (g)(i) and (ii)  
7 insert:

8  
9 and  
10

11 (2) In section 68(2):

12 (a) in paragraph (b) before “carer” insert:

13  
14 relative or a  
15

16 (b) after paragraphs (a) and (b) insert:

17  
18 and  
19

20 **44. Section 69 amended**

21 In section 69(1):

22 (a) after paragraph (b) insert:

23  
24 (ca) if a prospective adoptive parent is a relative of  
25 the prospective adoptee, there are good reasons  
26 to redefine the relationships within the  
27 prospective adoptee’s family in the way that the  
28 order would do; and  
29



1 (b) after paragraph (a) insert:

2

3 and

4

5 **45. Section 74 amended**

6 In section 74(2):

7 (a) delete paragraph (aa) and insert:

8

9 (aa) the principle that the adoptee's first name  
10 before the making of an adoption order should  
11 be included in the name by which the adoptee is  
12 to be known; and

13

14 (b) delete paragraph (b) and insert:

15

16 (b) any views expressed by the adoptee and any  
17 factors (such as the adoptee's maturity or level  
18 of understanding) that the court thinks are  
19 relevant to the weight it should give to the  
20 adoptee's views; and

21 (ca) the adoptee's relationships with his or her birth  
22 parents or any other person and the extent to  
23 which those relationships should be recognised  
24 in the name by which the adoptee is to be  
25 known; and

26 (cb) the adoptee's cultural background and the  
27 principle that the name by which the adoptee is  
28 to be known should recognise that background;  
29 and

30

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---

1 (c) after paragraph (a) insert:

2

3 and

4

5 **46. Section 76 amended**

6 In section 76(3) delete “step-parent” and insert:

7

8 step-parent, relative

9

10 **47. Section 77 amended**

11 In section 77(5):

12 (a) delete paragraph (c) and insert:

13

14 (c) any matter affecting parental responsibility for  
15 the adoptee; or

16

17 (b) after paragraphs (a) and (b) insert:

18

19 or

20

21 **48. Section 81 amended**

22 In section 81(2) after “party to the plan” insert:

23

24 or a sibling of an adoptee

25

1 **49. Section 82 amended**

2 Delete section 82(4) and insert:

3

4 (4) The CEO's power to authorise the access to  
5 information under this section is subject to —

6 (a) section 79(3); and

7 (b) an order of the Court under section 83(2); and

8 (c) section 103.

9

10 **50. Section 84 amended**

11 In section 84(1):

12 (a) in paragraph (c) delete “adoptee; and” and insert:

13

14 adoptee;

15

16 (b) after paragraph (c) insert:

17

18 (da) a sibling of the adoptee, if both the sibling and  
19 the adoptee are 18 or more years of age;

20

21 **51. Section 85 amended**

22 In section 85(1):

23 (a) in paragraph (b) delete “adoptee; and” and insert:

24

25 adoptee;

26

27 (b) in paragraph (c) delete “adoptee.” and insert:

28

29 adoptee;

30

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---

- 1 (c) after paragraph (c) insert:  
2  
3 (d) a sibling of the adoptee, if both the sibling and  
4 the adoptee are 18 or more years of age.  
5

6 **52. Section 90 amended**

- 7 (1) In section 90(1):  
8 (a) in paragraph (b) delete “adoptee; or” and insert:  
9  
10 adoptee,  
11  
12 (b) delete paragraph (c);  
13 (c) after paragraph (a) insert:  
14  
15 or  
16  
17 (2) In section 90(4):  
18 (a) in paragraph (b) delete “adoptee; or” and insert:  
19  
20 adoptee,  
21  
22 (b) delete paragraph (c);  
23 (c) after paragraph (a) insert:  
24  
25 or  
26

1 **53. Section 100 amended**

2 In section 100(1):

3 (a) delete paragraph (d) and insert:

4

5 (d) subject to subsection (3), where the statement  
6 of wishes was lodged on behalf of an adoptee  
7 who was less than 18 years of age at the time of  
8 the lodgment by a person with parental  
9 responsibility for the adoptee, until the adoptee  
10 attains 19 years of age,  
11

12 (b) after paragraphs (a) and (b) insert:

13

14 or

15

16 **54. Section 104 deleted**

17 Delete section 104.

18 **55. Section 105 amended**

19 At the end of section 105(1) insert:

20

21 Penalty: a fine of \$10 000 and imprisonment for  
22 12 months.  
23

24 **56. Section 110 amended**

25 (1) In section 110(1) after paragraph (a) insert:

26

27 (ba) the adoption applications committee; or

28

29 (2) Delete section 110(2).

1     **57.     Section 112 amended**

2           (1) In section 112(1):

3                   (a) in paragraph (b) delete “reviewed.” and insert:

4

5                                 reviewed; or

6

7                   (b) after paragraph (b) insert:

8

9                                 (c) if the decision being reviewed is a decision of  
10   the adoption applications committee, refer the  
11   decision back to the adoption applications  
12   committee for further consideration.

13

14           (2) Delete section 112(2) and insert:

15

16                   (2) The CEO must give the applicant written notice of the  
17                                 decision under subsection (1), the reasons for the  
18                                 decision and the person’s right of review under  
19                                 section 113.

20

21     **58.     Part 5 Division 2 replaced**

22           Delete Part 5 Division 2 and insert:

23

24           **Division 2 — Review by State Administrative Tribunal**

25     **113.    Review by State Administrative Tribunal**

26           (1) Except as provided in subsection (4), a person who is  
27                                 aggrieved by a decision of the CEO under  
28                                 section 112(1)(a) or (b) may apply to the State  
29                                 Administrative Tribunal for a review of the CEO’s  
30                                 decision.



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- 1 (b) in the case of an Aboriginal person, a person  
2 regarded under the customary law or tradition  
3 of the person's community as the equivalent of  
4 a person mentioned in paragraph (a);  
5 (c) in the case of a Torres Strait Islander, a person  
6 regarded under the customary law or tradition  
7 of the Torres Strait Islands as the equivalent of  
8 a person mentioned in paragraph (a).  
9

10 (2) In section 120(1) in the definition of *publish* delete "public."  
11 and insert:  
12

13 public;  
14

15 **61. Section 122 amended**

16 In section 122(1) in the Penalty delete "\$25 000 and 2 years'  
17 imprisonment." and insert:  
18

19 a fine of \$25 000 and imprisonment for 2 years.  
20

21 **62. Section 124 amended**

22 In section 124(3):

23 (a) in paragraph (b) delete "the person's guardian; or" and  
24 insert:  
25

26 a person with parental responsibility for the  
27 adoptee or the prospective adoptee; or  
28

29 (b) after paragraph (a) insert:  
30

31 or  
32



---

1   **63.     Sections 127A and 127B inserted**

2           After section 126 insert:

3

4           **127A.   False information**

5           A person must not give information orally or in writing  
6           in, or in relation to, an application, report or other  
7           document prepared for the purposes of this Act that the  
8           person knows to be false or misleading in a material  
9           respect.

10          Penalty: a fine of \$6 000.

11          **127B.   Notification of changes in circumstances**

12          (1) In this section —

13           *register* means the register referred to in section 44.

14          (2) A person who is a party to a proposed adoption must  
15          notify the CEO within 28 days of becoming aware  
16          of —

17           (a) information that may be relevant to the  
18           identification of a person who may be required  
19           to give effective consent to the adoption; or

20           (b) circumstances that may affect whether a  
21           consent to the adoption is effective.

22          Penalty: a fine of \$10 000 and imprisonment for  
23          12 months.

24          (3) A person whose name is on the register must notify the  
25          CEO within 28 days of becoming aware of any change  
26          in the person's circumstances that may affect his or her  
27          suitability for adoptive parenthood in accordance with  
28          the criteria referred to in section 40(2).

29          Penalty: a fine of \$10 000 and imprisonment for  
30          12 months.

31

1   **64.    Section 133 amended**

2       (1) In section 133(1):

3           (a) after “court” (first occurrence) insert:

4

5                   or tribunal

6

7           (b) delete “court.” and insert:

8

9                   court or tribunal.

10

11       (2) In section 133(2) after “court” insert:

12

13                   or tribunal

14

15   **65.    Section 138 amended**

16       In section 138(1):

17           (a) delete paragraph (b)(i) and insert:

18

19                           (i) when the adoption order was made the  
20                                   adoptive parent —

21   (I) was domiciled in a country  
22   other than Australia; or

23   (II) had been resident for the  
24   preceding 12 months in a  
25   country or countries other than  
26   Australia;

27   or

28

29           (b) after paragraphs (a) and (b) insert:

30

31                           and

32

1   **66.   Section 138A amended**

2       In section 138A(1):

3           (a)   in paragraph (d) delete “the adoption.” and insert:

4

5                   the adoption; and

6

7           (b)   after paragraph (d) insert:

8

9                   (e)   the child is permitted —

10                           (i)   to enter Australia; and

11                           (ii)  to reside permanently in Australia.

12

13   **67.   Section 145 replaced**

14       Delete section 145 and insert:

15

16   **145.   Adoption Amendment Act 2011 — transitional**  
17   **provisions**

18       (1)   In this section —

19           *commencement day* means the day on which the  
20           *Adoption Amendment Act 2011* section 59 comes into  
21           operation.

22       (2)   Part 5 as in force immediately before commencement  
23       day applies to —

24           (a)   an appeal to the Family Court made under  
25                   section 114 before commencement day that has  
26                   not been finalised; or

27           (b)   an appeal to the Court of Appeal made under  
28                   section 118 before commencement day that has  
29                   not been finalised.

30

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---

1 **68. Section 146 amended**

2 (1) Before section 146(1) insert:

3

4 (1A) In this section —

5 *commencement day* means the day on which the  
6 *Adoption Amendment Act 2011* section 68 comes into  
7 operation.  
8

9 (2) In section 146(1) and (3) delete “3 years” and insert:

10

11 5 years

12

13 (3) Delete section 146(4).

14 **69. Various references to “guardian” and “guardianship”**  
15 **amended**

16 Amend the provisions listed in the Table as set out in the Table.

17

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 17(1)(c)(i)	of the child’s guardians; and	person with parental responsibility for the child; and
s. 18(3)	is a guardian of	has parental responsibility for
s. 18(7)(a)	a parent or guardian of	a person with parental responsibility for

Provision	Delete	Insert
s. 18(7)(b)(ii)	his or her parent or guardian,	the person with parental responsibility for him or her,
Pt. 3 Div. 4 heading	<b>Guardianship of</b>	<b>Parental responsibility for</b>
s. 31	is the guardian of	has parental responsibility for
Pt. 3 Div. 5 heading	<b>guardianship of</b>	<b>parental responsibility for</b>

1 **70. Various penalties amended**

2 In the provisions listed in the Table in the Penalty delete  
3 “\$10 000 and 12 months’ imprisonment.” and insert:

4

5 a fine of \$10 000 and imprisonment for 12 months.

6

7

**Table**

s. 11	s. 93(2)
s. 94(3) and (4)	s. 105(2)
s. 123(1)	s. 124(1)
s. 125	s. 126
s. 127(1)	

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1 **71. Schedule 3 amended**

2 (1) Delete Schedule 3 clauses 4, 5, 6 and 7.

3 (2) In Schedule 3 clause 9(1) in paragraphs (a)(ii) and (b)(ii) of the  
4 paragraphs to be substituted delete “an adoptive parent or guardian  
5 of” and insert:

6

7 a person with parental responsibility for

8

9 (3) In Schedule 3 clause 9(4) in paragraph (a)(ii) of the paragraphs  
10 to be substituted delete “an adoptive parent or guardian of” and  
11 insert:

12

13 a person with parental responsibility for

14

15 (4) In Schedule 3 clause 9(5) in paragraph (b)(ii) of the paragraph  
16 to be substituted delete “an adoptive parent or guardian of” and  
17 insert:

18

19 a person with parental responsibility for

20

21 (5) In Schedule 3 clause 9(6) in paragraph (a)(ii) of the paragraph to  
22 be substituted delete “an adoptive parent or guardian of” and  
23 insert:

24

25 a person with parental responsibility for

26

27 (6) In Schedule 3 clause 11 delete “the adoptee’s parent or guardian.”  
28 and insert:

29

30 a person with parental responsibility for the adoptee.

31

1       (7) In Schedule 3 clause 13(2)(a) delete “an adoptive parent or  
2       guardian of” and insert:

3

4       a person with parental responsibility for

5

=====