

EXPLANATORY MEMORANDUM
ADOPTION AMENDMENT BILL 2011

Overview of the Bill

The *Adoption Amendment Bill 2011* (the “Bill”) amends the *Adoption Act 1994*.

The amendments introduce reforms to update the Act and enhance its operation and transparency. The majority of these reforms arise from a legislative review of the *Adoption Act 1994* tabled in Parliament on 31 May 2007.

The Bill proposes reforms to the adoption applications committee to require greater independence in membership of the committee and increased transparency in its decision-making, including a new capacity for merits-based reviews by the CEO and the State Administrative Tribunal (SAT).

The Bill contains amendments to reintroduce adoption by a relative of a child as currently occurs in other Australian jurisdictions. The process for approval of adoption of a child by his or her carer is clarified and it is proposed the approval provisions also apply to relatives.

Other reforms include: removal of the restriction requiring a maximum age differential between a child to be placed for adoption and the older applicant of a couple wishing to adopt the child; providing siblings with a right of access to identifying information about an adopted biological sibling where both are aged 18 years or over; and requiring a greater number of relatives to be contacted in cases where a birth parent dies before a relinquished child is adopted.

In the course of drafting the Bill, further minor amendments to existing provisions were identified in order to clarify or enhance provisions in the Act without changing their intent or effect.

Clause 1: Short title

The short title is the *Adoption Amendment Act 2011*.

Clause 2: Commencement

Sections 1 and 2 of the *Adoption Amendment Act 2011* (the “Amendment Act”) are to come into operation on the day on which the Amendment Act receives the Royal Assent, and the remainder of the Amendment Act is to come into operation on a day or different days fixed by proclamation.

Clause 3: Act amended

This Bill amends the *Adoption Act 1994* (the “Act”).

Clause 4: Section 4 amended

Clause 4 of the Bill amends section 4 of the Act containing definitions of terms and expressions used in the Act.

Section 4(1) replaces the definitions of “carer” and “relative” with new definitions. A new definition of relative is required for the purposes of the introduction of relative adoption under the Act. The existing definition remains for the purposes of Part 6.

Section 4(2) inserts definitions for a “Class 1 offence”, “Class 2 offence”, “conviction” and “pending charge” consistent with the *Working with Children (Criminal Record Checking) Act 2004*.

Sections 4(3) and 4(4) amend the definitions of “Australian citizen” and “birth parent” respectively with updated references to other legislation.

Clause 5: Section 8 amended

Clause 5 of the Bill amends the penalty under section 8 of the Act to comply with current drafting standards. There is no substantive change to the penalty.

Clause 6: Section 14 amended

Clause 6 of the Bill amends section 14 of the Act which deals with the membership and appointment of the adoption applications committee.

Section 14(2) requires the Chief Executive Officer of the Department (the “CEO”) to select members with relevant expertise or experience, at least one of whom must be independent of the Department. The amendment under section 14(2) provides that a majority of members selected are to be independent of the Department and at least one of the members must be a lawyer.

Section 14(3) is a new provision which requires the CEO to appoint one of the independent members of the committee to be the chairperson.

Clause 7: Section 15A inserted

Clause 7 of the Bill inserts section 15A into the Act.

Proposed section 15A - Directions by CEO

Section 15A(1) enables the CEO to give written directions to the adoption applications committee with respect to the performance of its functions and the committee must give effect to any such direction.

Section 15A(2) qualifies the above power by providing that the CEO must not give direction to the committee in respect of a particular application.

Clause 8: Section 15

Clause 8 of the Bill amends section 15 of the Act. Subject to section 14 of the Act regarding the membership of the adoption applications committee, section 15 enables the constitution and procedures of the adoption applications committee to be prescribed by regulation. If not prescribed, paragraph (b) enables the constitution and procedures to be determined by the committee in respect of the business it conducts.

Paragraph (b) is amended to provide that the adoption applications committee may determine such things subject to any direction given by the CEO under proposed section 15A.

Clause 9: Section 16 amended

Clause 9 of the Bill amends section 16 of the Act. Section 16 sets out the duties of the CEO in respect of a birth parent or prospective birth parent who is considering relinquishing a child for adoption who requests services set out under section 16(1). The CEO's duties include providing birth parents with information on matters set out under Schedule 1 clause 1(1)(a) of the Act. An amendment correcting the clause reference in the Schedule is made.

The substantive amendment to this section provides that the CEO must commence provision of a service requested under this section within 28 days of the request rather than the current 7 day time period.

Clause 10: Section 16A replaced

Clause 10 of the Bill amends section 16A of the Act by replacing it with a new provision. Section 16A(1) currently requires an officer of the Department who is an Aboriginal person or Torres Strait Islander to be involved at all relevant times to assist in the adoption of a child who is an Aboriginal person or Torres Strait Islander.

Section 16A(2) requires the CEO to consult with an approved Aboriginal or Torres Strait Islander agency regarding the prospective adoption of a child who is an Aboriginal person or Torres Strait Islander.

Proposed section 16A - Matters relevant to the adoption process for Aboriginal or Torres Strait Islander child

The Bill replaces section 16A with a requirement that the CEO consult with at least one of the following regarding the prospective adoption of an Aboriginal child or child who is a Torres Strait Islander:

- (a) an officer of the Department who is an Aboriginal person or a Torres Strait Islander; or
- (b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community; or
- (c) an Aboriginal or a Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

This amendment is intended to promote effective consultation and is consistent with a recent change to section 81 of the *Children and Community Services Act 2004*.

Clause 11: Section 20 amended

This clause amends section 20 of the Act which provides that a person may not be specified as a child's prospective adoptive parent in a form of consent to the child's adoption unless that person is a step-parent or carer of the child. The amendment also allows a relative of a child to be named as the child's prospective adoptive parent in keeping with other amendments in this Bill to enable adoption by a relative of a child.

Clause 12: Section 24 amended

This clause amends section 24 of the Act. Section 24 enables a court, on application, to make an order dispensing with the requirement for a person's consent to a child's adoption if the Court is satisfied of one of a number of matters set out under section 24(2). The application to dispense with consent may be made by the CEO, a prospective adoptive parent or on behalf of a child.

Under section 24(2)(c), one of the circumstances in which a court may make an order dispensing with consent is if the child is 16 years or more and consents to being adopted by a prospective adoptive parent who is a step-parent or carer of the child. This Bill amends that provision by including a relative as a person the child may consent to being adopted by.

Other amendments to section 24 are to comply with current drafting standards.

Clause 13: Section 26G amended

Clause 13 amends section 26G of the Act, which requires the consent of a guardian or person responsible for a child's long term welfare and development before a parentage testing procedure can be carried out on the child. The amendment to this section replaces the terminology of "guardianship" with "parental responsibility" for consistency with terminology used in child protection and family law legislation. The term "parental responsibility" is now used to describe all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

Clause 14: Section 26H amended

Clause 14 amends section 26H, which provides protection from liability for any person conducting a medical procedure under a parentage testing order, provided the procedure is done with the consent required under section 26G. The terminology of "guardianship" is replaced with "parental responsibility" in line with the amendments to section 26G.

Clause 15: Section 27 amended

This clause amends section 27, which deals with the guardianship of children awaiting adoption where all consents are delivered to the CEO (or to the parent in the case of a step-parent adoption) or have been dispensed with.

The amendments change the terminology of "guardianship" to "parental responsibility" consistent with other amendments throughout the Act and do not substantively alter the effect of the provisions.

Section 27(3) provides that where a child's carer is specified in the form of consent as the child's prospective adoptive parent, that carer is to have parental responsibility for the child (until the adoption is finalised).

An amendment is made to ensure subsection (3) also applies in respect of relative adoptions.

Clause 16: Section 28 amended

This clause 16 amends section 28 with the terminology of "parental responsibility" in place of "guardianship" without changing the substantive meaning of the section. Section 28 deals with the guardianship of children awaiting adoption where all consents are not finalised.

Clause 17: Section 29 replaced

Clause 17 replaces section 29 with a new section 29 regarding cessation of parental responsibility for children awaiting adoption. Section 29 currently sets out when guardianship for a child who is a prospective adoptee ceases, which is if consent to the adoption is revoked, if a court makes further provision for the child's guardianship, where the CEO has parental responsibility or when an adoption order is made. Proposed section 29 uses the terminology of "parental responsibility" throughout the section instead of "guardianship". No substantive amendments are made.

Clause 18: Section 30 replaced

Clause 18 replaces section 30 with a new section 30. Section 30 provides for what is to occur if, as the guardian of a child under Part 3 Division 4 of the Act, the CEO believes it is not possible or desirable to place the child for adoption. The CEO is to give notice to each birth parent or guardian of the child before the CEO's guardianship ceases, and the child's guardianship reverts. The "guardianship" terminology in this section is replaced with "parental responsibility" without making substantive changes.

Clause 19: Section 32 replaced

Clause 19 of the Bill replaces section 32 which provides for the responsibilities of guardians of children awaiting adoption. Section 32 requires a person who has guardianship of a child under Part 3 Division 4 of the Act to apply for an adoption order for the child or for further provision about the child's guardianship within 12 months or such other time as the Court allows. Section 32 is replaced with a new section that uses the terminology of "parental responsibility" rather than "guardianship". No substantive amendments are made.

Clause 20: Section 33 amended

Clause 20 amends section 33 of the Act, which provides for the renunciation and transfer of a child's guardianship by the CEO in circumstances where an application for the child's adoption is to be made in another State or Territory. The Bill amends the section with the new terminology of "parental responsibility" instead of "guardianship" without making substantive changes.

Clause 21: Section 34 amended

Clause 21 amends section 34 of the Act, which provides for the transfer of guardianship to the CEO in circumstances where an application for a child's adoption is made under the Act and the child is under the guardianship of a corresponding officer of another State or Territory. The Bill amends the section with the new terminology of "parental responsibility" instead of "guardianship" without making substantive changes.

Clause 22: Section 35 replaced

Clause 22 replaces section 35 which provides that a child must not be removed from the State without the consent of a person or persons who have guardianship of the child under Part 3 Division 4. This amendment replaces section 35 with provisions that uses the terminology of "parental responsibility" instead of "guardianship", without making substantive changes.

Clause 23: Section 36 amended

Clause 23 amends section 36 of the Act. Section 36 allows a person who has guardianship under Part 3 Division 4, or other person on their behalf, to apply to the Court for an order making further provision for the child's guardianship. The Court may extend the period of guardianship for not more than 12 months; change the child's guardian; or make a protection order under the *Children and Community Services Act 2004* if the child is considered to be in need of protection.

The Bill amends the section with the new terminology of "parental responsibility" instead of "guardianship". There are no substantive changes.

Clause 24: Section 37 amended

Clause 24 amends section 37 of the Act. Section 37(1) currently requires the CEO to provide people contemplating adoptive parenthood with information and counselling about adoption. Section 37(2) states the requirement under section 37(1) does not apply in relation to a step-parent or carer unless the CEO is requested to provide the information or counselling.

The amendments to this section propose that the CEO must provide a step-parent or carer with counselling in relation to adoption only if requested to do so. This provision has been extended to include a relative proposing to adopt a child, in line with the introduction of relative adoptions.

Clause 25: Section 38 amended

Clause 25 amends section 38 of the Act which provides for persons wishing to adopt a child in a Convention country or an overseas jurisdiction to apply to the CEO, in an approved form prescribed by regulation, to be assessed for suitability to adopt. The section does not apply to a step-parent or carer of a child who wishes to adopt the child.

The proposed amendment extends section 38(4) to apply to a relative wishing to adopt a child, consistent with the introduction of relative adoptions.

Clause 26: Section 39 amended

Clause 26 amends section 39 of the Act, which sets out the criteria for making an application to adopt.

Section 39(1) states that a person may only apply to adopt:

- (a) if he or she is an Australian citizen;
- (b) is 18 or more years of age;
- (c) is resident or domiciled in Western Australia or, if applying to adopt from a Convention country, habitually resident in Western Australia;
- (d) if married or in a de facto relationship, the person applies as a joint applicant;
- (e) if applying jointly, has been married to or in a de facto relationship with the other applicant for at least 3 years.

Clause 26(1)(c) of the Bill amends section 39(1) as follows:

- Paragraph (d) is deleted. A new paragraph (d) is insert to provide that persons convicted of a Class 1 offence committed when 18 years or older are not eligible for apply for adoption.
- Paragraphs (ea) and (eb) insert new provisions which deal with married people and people in defacto relationships. Under proposed paragraph (ea), a married person may apply as:
 - (i) as a joint applicant; or
 - (ii) as an individual applicant only if he or she has been separated for at least 12 months prior to the application, and is not intending to resume cohabitation with the person to whom they are married.

Paragraph (eb) places de facto persons on a similar footing. That is, a person who is in a defacto relationship may only apply to adopt as a joint applicant with his or her defacto or, otherwise, may apply as an individual applicant if he or she has not been in the defacto relationship in the previous 12 months.

The intention of these amendments is to ensure that, following the breakdown of a relationship, persons wishing to apply to adopt a child as a single person have sufficient time to overcome this significant event before applying to adopt a child.

Subclause (2) inserts section 39(2A) to allow a person who made a joint application under section 38(1) to continue the application in his or her name if the applicants start living separately and apart. It is intended the *Adoption Regulations 1995* be amended to require the 12 month suspension of a person's application in these circumstances. This is consistent with proposed sections 39(1)(ea) and (eb), which have the effect of ensuring that persons may apply to adopt as individual applicants only if they have not been in a married or defacto relationship for at least 12 months immediately preceding their application.

Subclause (3) changes the wording of section 39(2) according with current drafting standards without changing the substantive provisions of the section.

Clause 27: Section 40 amended

Clause 27 amends section 40 of the Act. Section 40 deals with the assessment of adoption applications. It requires the CEO to appoint a person to assess applications and prepare a report, and requires applicants to provide information as to their suitability to adopt, including evidence of certain matters set out in sections 40(2)(a) to 40(2)(f).

Section 40(2)(e) requires evidence the applicant has not been found guilty of certain offences. Paragraph (e) is replaced with new provisions that align with more current criminal record checking legislation. Proposed paragraph (e) requires evidence the person has not been convicted of a Class 1 or Class 2 offence, and (fa) requires evidence the person does not have a pending charge for a Class 1 or Class 2 offence. Class 1 and Class 2 offences are the offences contained in Schedule 1 and Schedule 2 of the *Working with Children (Criminal Record Checking) Act 2004*.

Proposed section 40(3) is inserted. It provides that applicants previously assessed as suitable to adopt and who have subsequently adopted a child under the Act are, unless requested to provide evidence under the other paragraphs, only required to provide evidence under:

- paragraph (a) that they satisfy the criteria for an application under section 39; and
- proposed paragraphs (e) and (fa) regarding Class 1 and Class 2 offences.

This amendment is intended to streamline the assessment process in respect of subsequent adoptions.

Clause 28: Section 41A inserted

Clause 28 inserts section 41A into the Act. Section 41A(1) allows the CEO to conduct any check, including a criminal record check, considered appropriate as to whether an applicant is suitable to adopt. It also enables the CEO to provide the information obtained as a result of such a check to a person preparing an assessment report on the applicant or to the adoption applications committee.

Clause 29: Section 42 amended

Clause 29 amends section 42, which deals with decisions of the adoption applications committee (“the committee”).

- Section 42(1) enables the committee to review its decision if there is new evidence it should consider.
- Section 42(2) enables the committee to review its decision if, at the direction of the CEO under section 113(2) of the Act, it has completed a review of the procedures by which it made the decision.
- Section 42(3) provides that, subject to subsections (1) and (2) and section 114(2), the decision of the committee cannot be reviewed other than by judicial review.

The amendments remove sections 42(2) and 42(3) as part of amendments to the review powers under Part 5 of the Act. The proposed powers will allow aggrieved parties to apply for a CEO review of the committee’s decisions under proposed section 110(1)(ba), and for subsequent review of the CEO’s decisions by the State Administrative Tribunal under amendments to section 113.

Clause 30: Section 43 amended

Clause 30 amends section 43. This section requires the CEO to give the applicant written advice of the adoption applications committee’s decision and, if requested, written reasons for the decision and a copy of the assessment report. The amendments require the CEO to provide these things in all cases, and no longer only if requested. This includes reasons for any restrictions imposed on an applicant’s approval to adopt a child that vary from the applicant’s wishes.

Clause 31: Section 45 amended

Clause 31 amends section 45. Section 45 deals with the selection of prospective adoptive parents and allows a person who has consented to a child’s adoption to express wishes as to the child’s upbringing and the attributes of the adoptive family. The section does not apply to children being adopted by a step-parent or carer. Under the proposed amendment, the section will also not apply to children being adopted by a relative.

Clause 32: Section 46 amended

Clause 32 amends section 46. Section 46 contains provisions about the negotiation of an adoption plan which is to occur after the revocation period to the adoption expires, if

possible, between the birth parents who consented to the adoption and person/s selected to be the prospective adoptive parent under section 45(a)(ii).

Section 32(2) lists the matters that may be provided for in an adoption plan. The proposed amendment inserts section 32(2)(d) to encourage those negotiating an adoption plan to include in the plan a process for reviewing the adoption plan.

Clause 33: Section 47 replaced

Clause 33 replaces section 47, which describes the CEO's duties to provide assistance and mediation to persons negotiating or varying an adoption plan.

Under section 47(1), the CEO is to provide assistance to persons negotiating an adoption plan under section 46(1) or 46(3)(b). These sections apply to adoption plans negotiated between birth parents who have consented to an adoption and the persons they have selected to be the prospective adoptive parents (not being step-parents or carers).

Under section 47(2), if requested, the CEO is to provide assistance and mediation to people negotiating an adoption plan under section 55 of the Act, which relate to step-parent and carer adoptions.

Under the amendment, the CEO is to provide assistance and mediation to these persons and also to persons seeking to review an adoption plan.

Clause 34: Section 49 amended

Clause 34 amends section 49 of the Act. This section sets out the actions the CEO may take if an adoption plan cannot be agreed upon under section 49(1) or section 46(3)(b). If a plan is not agreed, this prevents the child's placement with prospective adoptive parents under section 48(1).

Under section 49(e), where the CEO has guardianship of the child under Part 3 Division 4 of the Act, the CEO may give notice under section 30(1) to each birth parent or guardian of the child immediately prior to the CEO's guardianship.

Consistent with other amendments, the amendment replaces the term "guardianship" with "parental responsibility" in section 49(e).

Clause 35: Section 50 amended

This clause amends section 50, which enables the CEO or a party to a proposed adoption plan to apply to the Court for an order in relation to a disputed matter in the negotiation of the plan.

Section 50(4) states that the provisions of section 50 do not apply to adoptions by a step-parent or carer.

An amendment is made to add relative adoptions to this exclusion.

Clause 36: Section 52 amended

This clause amends section 52. Section 52 places restrictions on the placement of a child with a view to adoption.

A proposed definition of “*place*” is inserted as new section 52(1A). This aims to clarify the point at which a child from a Convention country or an overseas jurisdiction is considered to have been placed with a prospective adoptive parent for this purposes of this section. Under the new definition, to **place** a child, means to make an offer of the child to the prospective adoptive parent following advice from the relevant competent authority that the placement for adoption is approved.

The amendments to section 52(1) remove each of the following restrictions on placement:

- Section 52(1)(a)(vi) - that a female prospective adoptive parent must not be pregnant at the time of the placement, as evidenced by means prescribed in regulations.
- Section 52(1)(c) - that where there are older children in the prospective adoptive family, the child to be placed must be the youngest, the next oldest must be at least 12 months older and each of the children in the prospective family must have been in the family for least 2 years.

The amendments to s.52(3) alter the existing maximum permitted age differential between the prospective adoptive parent/s and the child at the time of placement. Different restrictions currently apply depending on whether the person is a single or joint prospective adoptive parent; and whether the child is to be placed with a prospective adoptive parent who has adopted before.

Currently, under section 52(3)(a), the younger of prospective joint adoptive parents who have not adopted a child before must not be more than 45 years older than a child placed for adoption and, under section 52(3)(b), the older of the prospective joint adoptive parents is to be not more than 50 years older than the child.

- Clause 36(3)(a) amends section 52(3)(a) by replacing “have not adopted a child before” with “do not have parental responsibility for another child”.
- Clause 36(3)(b) amends section 52(3)(b), removing any restriction on the age difference between the oldest prospective joint adoptive parent and a child being placed.

Section 52(3)(c) deals with joint prospective adoptive parents who have adopted a child before and requires the younger of the couple to be not more than 50 years older than the child placed. Section 52(3)(d) currently requires the older person to be not more than 55 years older than the child.

- Clause 36(3)(c) replaces “have adopted a child before” with “have parental responsibility for another child”.
- Clause 36(3)(d) deletes section 52(3)(d), thereby removing any restriction on the age difference between the oldest prospective joint adoptive parent and the child being placed.

Sections 52(3)(e) and (f) impose age restrictions in relation to single people adopting a child. The amendments to these paragraphs replace the criteria as to whether or not the prospective adoptive parent has already adopted a child, with whether or not the person already has parental responsibility for another child.

Clause 37: Part 3 Division 8 heading amended

Clause 37 amends the heading of this Part 3 Division 8, which is “Adoptions by step-parents or carers” to include “relatives” in the title.

Clause 38: Section 55A to 55C inserted

This clause inserts three new sections into the Act relating to the approval process for applicants for relative and carer adoptions.

Proposed section 55A - CEO approval of relative or carer

This section enables a relative or carer to apply to the CEO for approval of the placement of a child with the person with a view to the child's adoption by the relative or carer. It is intended that the CEO may approve the placement of a child with a relative or carer at any stage prior to an application for an adoption order being filed, including if the child is already living with the relative or carer. Applications for approval of a placement under this section must be in a form approved by the CEO and may be made by a single person or joint applicants.

Proposed section 55A(4) enables the CEO to approve the placement if satisfied that each applicant:

- (a) is an Australian citizen or a permanent resident; and
- (b) is 18 or more years of age; and
- (c) is of good repute; and
- (d) is able to provide care for the child in a way that –
 - i. ensures the safety and wellbeing of the child; and
 - ii. recognises the wishes and views of the child in a manner consistent with the age and understanding of the child.

Under proposed section 55A(5), if a child is under a protection order (time limited) or protection order (until 18), the CEO must not approve the child's placement under this section unless satisfied the child's adoption would be preferable to the child being the subject of a protection order (special guardianship) under the *Children and Community Services Act 2004*.

Proposed section 55B - CEO may conduct checks

This proposed section enables the CEO to conduct any checks, including a criminal record check, to consider if an applicant under section 55A is suitable to adopt a child.

Proposed section 55C - When application for relative or carer adoption can be made

Proposed section 55C provides that an application for an order for a child to be adopted by a relative or carer cannot be filed unless:

- (a) the child has been in the care of the applicant for at least 2 years immediately before the application is made; and
- (b) the placement of the child with the relative or carer has been approved by the CEO under section 55A.

Clause 39: Section 55 amended

Clause 39 amends section 55 of the Act. Section 55 currently provides that an application for an order for a step-parent or carer adoption cannot be filed unless an adoption plan has been agreed between the relevant parties before the expiry of the revocation period.

Consistent with the proposed introduction of relative adoptions under the Act, this section is amended to also apply to applications by a relative wishing to adopt a child.

Clause 40: Section 59 amended

Clause 40 amends section 59 of the Act, which requires notices to be given to certain people where a birth parent is deceased or cannot be found.

Section 59(1) currently requires that, where a birth parent has died without signing consent to adoption of his or her child, or has died after signing a consent but before an adoption order is made, the person wishing to adopt the child must not file an application for an adoption order unless he or she gives the notice required under section 59(2) at least 30 days before filing the application.

Section 59(2) currently requires a notice of intention to adopt to be given to a relative of the birth parent who is 18 years or older and reasonably available at the relevant time. In descending order of priority, the notice is to be given to a birth parent or adoptive parent of the birth parent; a brother or sister of the birth parent; or an aunt or uncle of the birth parent.

The amendments under this clause increase the number of relatives who must be given a notice. Instead of notice being given to one relative under the current order of priority, under amended section 59(2)(a) notice must be given to as many “close relatives” of the birth parent aged 18 years and over as is practicable. If no close relative can be located, amended section 59(2)(b) requires a notice to be given to an aunt or uncle of the birth parent who is 18 years or older and reasonably available at the relevant time.

“Close relative” is defined under new section 59(1A) to be:

- (a) a birth parent or adoptive parent of the birth parent (ie. the child’s grandparent); and
- (b) a sibling of the birth parent whether whole or half-blood (ie. the child’s aunt or uncle).

Proposed section 59(4) allows the CEO to assist a person required under section 59 to give notice of the intention to file an application to adopt.

Clause 41: Section 66 amended

Clause 41 amends section 66, which sets out who may be adopted under the Act. Section 66(1) currently states a person may be adopted if he or she is a child and is not and has not been married or in a de facto relationship.

Section 66(2) enables a person of 18 years or more to be adopted by a person who was the person’s carer or step-parent immediately before the person turned 18 years of age. Currently, section 66(3) prevents the adoption of a person by a relative other than a step-parent.

Consistent with amendments allowing adoption by relatives under this Act, section 66(3) is deleted and section 66(2) is amended to also allow the adoption of a person over 18 years by a relative.

Clause 42: Section 67 amended

This clause amends section 67, which sets out who may adopt under this Act.

Section 67(1) currently enables adoption of a child by a step parent or a carer of the child or by a person who has had the child placed with them with a view to the child’s adoption. Consistent with the proposed introduction of relative adoptions, new paragraph (ba) enabling adoption by a relative of the child is inserted into section 67(1).

Section 67(2) currently allows persons under section 67(1) above, or section 66(2) regarding the adoption of a person over 18 years, to jointly adopt another person only if they have been married or in a de facto relationship with the other applicant for at least three years. Under section 67(5), regarding married people wishing to jointly adopt a person, the three year period may include time spent living in a defacto relationship before the marriage.

Amendments are made to section 67(2) and 67(5) to ensure that the provisions under section 67 also apply in respect of adoptions by a relative.

Clause 43: Section 68 amended

Clause 43 of the Bill amends section 68 of the Act. Section 68 contains matters the Court must be satisfied of before it will grant certain adoption orders, including those relating to a step parent or carer adoption. The proposed amendments to section 68 will require the Court to be is satisfied of relevant criteria in relation to adoptions by a relative.

Under section 68(1) an adoption order must not be made unless the Court is satisfied of a number of criteria. The following amendments to these criteria are proposed:

- A new criterion is inserted as paragraph (ea): if a relative or carer wishes to adopt a child, before making an adoption order the Court must be satisfied the application for the order is made in accordance with proposed section 55C. (Under section 55C the child must have been in the care of the applicant for at least 2 years immediately preceding the application, and the child's placement must have been approved by the CEO under proposed section 55A.)
- Section 68(1)(fa) is amended so the provisions also apply in relation to relative or carer adoptions. The current criteria under section 68(1)(fa) is that the Court must be satisfied, in the case of a step-parent adoption, that the child's adoption is preferable to certain orders being made under the Commonwealth *Family Law Act 1975* or the *Family Court Act 1997*.
- A new criteria under paragraph (fb) is inserted regarding relative adoptions. The Court must be satisfied that, if a relative wishes to adopt a child, there are good reasons to redefine the relationship within the child's family in the way that an adoption order would.
- Another new criteria is inserted as paragraph (fc): if a relative or carer wishes to adopt a child who is the subject of a protection order (time limited) or protection order (until 18) under the *Children and Community Services Act 2004*, the Court must first be satisfied the child's adoption would be preferable to making a protection order (special guardianship) under that Act.

Section 68(2) currently enables the Court to make an adoption order if, subject to certain other matters, the Court is satisfied under section 68(2)(b) that a carer wishing to adopt a child is:

- (i) of good repute and a fit and proper person to adopt; and
- (ii) a suitable person to adopt the child having regard to all relevant matters including the ages of the child and the prospective adoptive parent, their states of health; the carer's ability to satisfy the educational needs of the child; and the size and stability of the prospective adoptive family.

Section 68(2)(b) is amended to also apply these criteria to an adoption by a child's relative.

Clause 44: Section 69 amended

Clause 44 amends section 69 of the Act. Section 69 sets out the criteria the Court must be satisfied of before making an adoption order in relation to an adult. The amendment provides an additional criteria that, if a prospective adoptive parent is a relative of the person to be adopted, the Court may make an adoption order if satisfied there are good reasons to redefine the relationships within the person's family the way in which an adoption order would.

Clause 45: Section 74 amended

Clause 45 amends section 74 which sets out the Court's power to declare a child's name in the making of an adoption order.

Currently, before making an order changing an adoptee's name, the Court is to have regard to a number of matters, including:

- section 74(2)(aa) - the principle that an adoptee's first name should only be changed in special circumstances;
- section 74(2)(b) – the wishes expressed by the adoptee on the subject.

It is proposed the principle in section 74(2)(aa) is replaced with a new one that the adoptee's first name should be included in the name by which the adoptee is to be known once adopted.

The Bill amends section 74(2)(b) to require the Court to have regard to any views expressed by the adoptee and any factors (such as the adoptee's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the adoptee's views.

The amendments under this clause provide for additional matters to be considered by the Court before making an order to change the adoptee's name, which are:

- section 74(ca) – the adoptee's relationships with his or her birth parents or any other person and the extent to which those relationships should be recognised in the name by which the adoptee is to be known; and
- section 74 (cb) the adoptee's cultural background and the principle that the name by which the adoptee is to be known should recognise that background.

Clause 46: Section 76 amended

Clause 43 amends section 76 of the Act. Section 76 enables adoption plans to be varied on application to the Court, provided a mediation process has first been conducted by the CEO. Mediation is not required before such an application can be made in respect of a step-parent or carer adoption. The proposed amendment to section 76(3) adds relative adoptions to this exclusion.

Clause 47: Section 77 amended

Clause 47 amends section 77 of the Act, which contains provisions about the discharge of an adoption order. Section 77(2) enables the Court to make an order to discharge an adoption order if satisfied of certain matters. Where a discharge order is made under section 77(2), section 77(5) enables the Court to make other orders as it think fit in the interests of justice or the welfare and best interests of the adoptee.

One of the orders a court may make under 77(5)(c) relates to “*guardianship of the adoptee or any other matter affecting the adoptee in relation to the duties, powers, responsibilities and authority which, by law, parents have in relation to children*”.

Paragraph (c) is replaced to refer to orders relating to any matter affecting parental responsibility for the adoptee.

Clause 48: Section 81 amended

Clause 48 amends section 81 of the Act. Section 81 sets out the terms used and application of Part 4 Division 2 of the Act regarding access to adoptions information. Section 81(2) states that Division 2 has effect subject to the provisions of an adoption plan that give a party to the plan greater or earlier access to information about an adoptee or adoptee’s adoptive family or birth parent than otherwise allowed under Division 2.

It is proposed section 81(2) be amended to refer to a sibling of an adoptee who, in addition to a party to an adoption plan, may also be allowed earlier or greater access to information under the terms of the plan. This amendment is consistent with amendments to sections 84 and 85 which propose to give siblings the right to access adoption information under certain circumstances.

Clause 49 Section 82 amended

Clause 49 of the Bill amends section 82 of the Act. Section 82 sets out the CEO’s authority to allow certain persons access to information about an adoption under certain circumstances. The CEO is to give authority unless there are good reasons for not doing so.

Currently section 82(4) states the CEO’s power to authorise access to information under sections 84(1), 85(1), 88, 89 or 90 is subject to an order of the Court under section 83(2) and to section 103.

To correct an oversight in the Act, it is proposed the CEO’s authorization under this section also be subject to the provisions of section 79(3). Under section 79(3) the CEO must not release identifying information to certain persons unless they attend an interview and all the parties to the adoption and their relatives receive information, counselling and mediation. Section 79(3) applies to people who are the subject of an information veto that became ineffective following 1 June 2005 when amendments repealing information vetos became effective.

Clause 50: Section 84 amended

Clause 50 amends section 84 of the Act regarding access to records of Court proceedings in relation to an adoption or proposed adoption. The proposed amendment to section 84(1) also enables a right of access to these records by a sibling of an adoptee, provided both the adoptee and his/her sibling are 18 years or older. Currently, only the adoptee, a birth parent, an adoptive parent and a party to the proceedings are able to access court records regarding an adoption.

The definition of sibling in section 81(1)(c) applies for the purposes of this clause ie. a brother or a sister of the whole or half blood.

Clause 51: Section 85 amended

Clause 51 amends section 85 of the Act, which enables an adoptee, a birth parent or an adoptive parent to access registration of birth records. Consistent with the amendment to section 84, it is proposed that a sibling of an adoptee also have a right of access such records, provided the sibling and adoptee are both aged 18 years or more.

The definition of sibling in section 81(1)(c) applies for the purposes of this clause ie. a brother or a sister of the whole or half blood.

Clause 52: Section 90 amended

Clause 52 amends section 90 of the Act which deals with access to birth registration when an adoptee cannot be found. Currently, siblings of the adoptee are included among those with the right to access records in these circumstances. Siblings will have the right to access adoption information under amended sections 84 and 85, making the inclusion of siblings in this section redundant.

Clause 53: Section 100 amended

This clause amends section 100 of the Act regarding the duration of contact vetoes. The terminology of “guardianship” used in section 100(1)(d) is replaced with that of “parental responsibility”, consistent with other proposed amendments throughout the Act.

Clause 54: Section 104 deleted

Clause 54 deletes section 104 of the Act, which contains offences relating to the breach of an undertaking under section 103.

Removal of this offence is in the spirit of decriminalising contact between parties to adoptions. The offence under section 126 of harassment, embarrassment or ridicule of a person by reason of that person being a party or relative of a party to an adoption remains.

Clause 55: Section 105 amended

Clause 55 amends the penalty provisions under section 105 in line with current drafting standards. There are no substantive amendments to this section.

Clause 56: Section 110 amended

Clause 56 amends section 110 of the Act which provides for review of certain decisions by the CEO on application by a person aggrieved by the decision. Currently, decisions made by the adoption applications committee are excluded from being subject to CEO review under this section. The proposed amendments remove this exclusion and insert section 110(1)(ba) to allow CEO review of adoption applications committee decisions.

Clause 57: Section 112 amended

Clause 57 amends section 112 of the Act regarding the powers of the CEO on review. Currently, the CEO may confirm, set aside or vary the decision being reviewed or may

substitute another decision. Under section 112(2), the CEO must give written reasons for the decision on review only if requested to do so.

Consistent with the amendments to section 110, if the CEO reviews a decision of the adoption applications committee, it is proposed the CEO (as one of the available options) be enabled to refer the decision back to the committee for further consideration under new section 112(1)(c).

Section 112(2) is amended to require the CEO to give written notice of and reasons for his or her decision under section 112(1), and written notice of the person's right of review by the State Administrative Tribunal.

Clause 58: Part 5 Division 2 replaced

Clause 58 deletes Part 5 Division 2 replacing it with new provisions. Currently, section 113 in this Division enables a person aggrieved by a decision of the adoption applications committee to apply to the CEO, requesting the CEO to direct the committee to review the procedure by which the decision was made.

In line with amendments to section 112, which enable the CEO to review all aspects of an adoption applications committee decision (not just procedural elements), it is proposed section 113 be replaced. New section 113 enables a person aggrieved by a decision of the CEO on review to apply to the State Administrative Tribunal (SAT) for a review of that decision.

The CEO's decision under section 112(1)(c) to refer a decision of the adoption applications committee back to the committee for further consideration is not reviewable by the SAT.

Under proposed section 113(4), an aggrieved person is not able to apply to SAT for review of the CEO's decision if the decision reviewed by the CEO was a decision to place a child with a view to the child's adoption and the child has already been placed.

Clause 59: Part 5 Divisions 3 and 4 deleted

Clause 59 deletes Part 5 Divisions 3 and 4 of the Act which provide for appeals to the Family Court and appeals to the Court of Appeal respectively. The removal of these provisions is consistent with the proposal to transfer reviews of adoption matters to the jurisdiction of the State Administrative Tribunal.

Clause 60: Section 120 amended

Clause 60 amends section 120, which sets out the terms used under Part 6 of the Act dealing with offences. A definition of "relative" is inserted into section 120(1). The definition is the same as the current definition under section 4 of the Act.

Clause 61: Section 122 amended

Clause 61 amends the penalty provisions under section 122 in line with current drafting standards. There are no substantive amendments to this section.

Clause 62: Section 124 amended

Clause 62 amends section 124 by replacing the terminology of “guardianship” with that of “parental responsibility”, consistent with proposed changes throughout the rest of the Act.

Clause 63: Section 127A and 127B inserted

Clause 63 proposes to insert two new offences into the Act.

Proposed section 127A – False information

This section creates a new offence for persons who knowingly provide information orally or in writing in an application, report or other document prepared for the purposes of the Act that is false or misleading in a material respect. The penalty for breach of this section is a fine of \$6,000.

Proposed section 127B - Notification of changes in circumstances

Section 127B(2) requires a party to a proposed adoption to notify the CEO with 28 days of becoming aware of:

- (a) information that may be relevant to identification of a person who may be required to give effective consent to the adoption; or
- (b) circumstances that may affect whether a consent to the adoption is effective.

Section 127B(3) requires a person on the “register” to notify the CEO within 28 days of becoming aware of a change in circumstances his or her that may affect the person’s suitability to adopt in accordance with the criteria under section 40(2). Under section 127B(1), “register” means the register kept by the CEO under section 44 of people who apply to adopt under section 38(1).

A breach of either of these subsections carries a penalty of \$10,000 and 12 months imprisonment.

Clause 64: Section 133 amended

Clause 64 amends section 133 of the Act, which currently requires all proceedings in any court under or in relation to this Act to be private, except as otherwise directed by the Court. It also allows a court to order any person to leave the room or place during the examination of a witness. Consistent with proposed amendments enabling review of certain CEO decisions under this Act by the State Administrative Tribunal, this section is amended to also apply to proceedings in a tribunal.

Clause 65: Section 138 amended

Clause 65 amends section 138 of the Act. Section 138 provides for the recognition in Western Australia of adoption orders made in an overseas country if certain circumstances apply.

Currently, under section 138(1)(b) one of the circumstances must be that either:

- (i) when the order was made the adoptive parent -
 - (I) was either domiciled; or
 - (II) had been resident for at least 12 months, in that country; or

- (ii) before the order the adoptee had been placed with the adoptive parent with the agreement of the CEO or CEO with corresponding functions in another State or Territory.

Section 138(1)(b)(i) is being amended to enable recognition under this Act of an adoption order made when the adoptive parent:

- (I) was domiciled in a country other than Australia; or
- (II) had been resident for the preceding 12 months in a country or countries other than Australia.

This amendment proposes to correct an oversight in the Act regarding the recognition in Western Australia of certain adoptions conducted in overseas jurisdictions, which are not covered by the provisions relating to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption or section or current section 138A.

Currently, section 138 only recognises a non-Hague overseas adoption where the adoptive parents were domiciled or resident for at least 12 months in the same country in which the child's adoption order was made. However, it does not recognise cases where the adoptive parents living overseas adopted a child from one country but were domiciled or resident in another country during that time.

The amendment enables recognition of these cases by providing greater flexibility in respect of the adoptive parents domicile or residence.

Clause 66: Section 138A amended

Clause 66 amends section 138A. Section 138A(1) enables the recognition in Western Australia of an adoption in an overseas jurisdiction of a child from that jurisdiction by a person who resides in Australia if the adoption is granted in accordance with the laws of the jurisdiction and an adoption certificate is in force.

The proposed amendment inserts an additional pre-requisite for the recognition of such adoptions, which is that the child is permitted to enter and reside permanently in Australia.

Clause 67: Section 145 replaced

Clause 67 replaces section 145, which is currently omitted from the Act under section 7(4)(e) of the *Reprints Act 1984*.

Proposed section 145 - *Adoption Amendment Act 2011*

This proposed section inserts transitional provisions to provide for the continuation under Part 5 of the Act of an appeal to the Family Court under current section 114, or an appeal to the Court of Appeal under current section 118, if the appeal has not been finalised immediately before the amendments under section 60 of the *Adoption Amendment Act 2011* come into operation. Clause 59 of this Bill proposes to repeal Part 5 of the Act.

Clause 68: Section 146 amended

Clause 68 amends section 146 regarding review of the Act. Currently section 146(1) requires that the Act be reviewed 3 years from commencement day, which under current section 146(4) was the day the *Adoption Amendment Act (No. 2) 2003* came into operation. A legislative review of the Act was tabled in Parliament on 31 May 2007.

The amendments to this section propose a review of the Act 5 years from the day on which section 68 of the *Adoption Amendment Act 2011* comes into operation.

Clause 69: *Various references to “guardian” and “guardianship” amended*

Clause 69 amends various references to “guardian” and “guardianship” to be consistent with Western Australia’s child protection and family law legislation. The sections amended are sections 17(1)(c)(i), 18(3), 18(7)(a), 18(7)(b)(ii), the Part 3 Division 4 heading, section 31 and the Part 3 Division 5 heading. The amendments do not alter the substantive provisions under these sections.

Clause 70: *Various penalties amended*

This clause amends various sections of the Act in line with current drafting standards for penalty provisions. The sections amended are sections 11, 93(2), 94(3) and (4), 105(2), 123(1), 124(1), 125, 126 and 127(1).

Clause 71: *Schedule 3 amended*

This clause amends Schedule 3 of the Act which contains transitional and savings provisions. Amendments replace the terms an adoptive parent or guardian” with “a person with parental responsibility for” throughout clause 9 of Schedule 3.

Clauses 5, 4, 6 and 7 of Schedule 3 provide transitional arrangements for adoptions that were underway upon the commencement of Part 3 of the Act. As these provisions are no longer necessary, the amendments under clause 71(1) remove them from the Act.