

ADOPTION AMENDMENT BILL (No 2) 2002

EXPLANATORY MEMORANDUM

When the *Adoption Act 1994* was introduced in January 1995 it included the requirement that the Act would be a review within two years.

An Adoption issues paper was released in May 97 with the opportunity for public comment. The Adoption Legislative Review Adoption Act 1994 - Final Report was tabled in Parliament on the 27 November 1997. A period of public comment followed until the end of April 1998.

The purpose of the *Adoption Act Amendment Bill (No 2) 2002* is to incorporate changes following the Adoption Legislative Review. Since the finalisation of the Review some additional recommendations have been introduced.

The basis for the amendments are grounded in the fundamental and paramount principle that Adoption is a service for children. Each of the clauses are structured to achieve this principle.

The Bill furthers the conceptual change that occurred in 1995, which introduced open adoption amongst the three main parties to an adoption – the adoptee, the adoptive parents and the birth parents. Most of the amendments refine current practice rather than introduce new concepts into the Bill.

PART 1 – PRELIMINARY

Clause 1 Short title

Short title of the Act

Clause 2 Commencement

Subclause (1) provides for the Act to come into operation on a day fixed by proclamation.

Subclause (2) requires the sections that relate to information vetoes to no longer have effect 24 months after commencement.

Clause 3 The Act amended

The amendments proposed are to the *Adoption Act 1994*

Clause 4 Section 3 repealed – Principles

Clause 4 reinforces the notion that adoption is a service for the child acknowledges that adoption is not a part of Aboriginal or Torres Strait Islander culture.

Adoption involves three key parties – the child to be adopted, the adoptive parent and the biological parents. Each of these parties has needs, and occasionally these needs are in conflict. This clause reinforces the principle that it is the best interests of the child that must always be the primary consideration and that adoption is a service for the child not adults who would like to have a family. The Adoption Legislative Review (9:1997) stated that ... "Modern adoption is essentially a process of finding parents for children whose birth parents are, for various reasons, unable or unwilling to care for them. Thus it is about the care and protection of children and as such should be viewed as a service to children"

Clause 5 Section 4 amended – Interpretation

Subclause (1) provides for the establishment of only one Adoption Application Committee (AAC) in the State. The AAC considers reports from assessors concerning the suitability of prospective adoptive parents. Provision has previously existed for more than one AAC although this has not occurred. The legislative review acknowledged the central role of the Adoption Application Committee and the importance of having all applications assessed by the one committee to ensure equity of service to all applicants. This committee has external representation.

Subclause (2) amends the definition of 'carer' to apply only to departmentally arranged or approved placements. The Act currently provides provision for a person or persons who have cared for a child for three or more years to be eligible to adopt that child. Some people are using the current carer provision to by-pass the selection, age and matching requirements of the adoption legislation. Babies have been handed over directly by their birth family to childless couples who then wait three years and then adopt the child. A 'carer' under the Adoption Act 1994 will not include a departmentally arranged placement of a child with a relative, as it is not considered appropriate for relatives to adopt related children. (see also clause 35(2))

Subclause (3) amends the definition of 'contact and mediation agency' to 'contact and mediation licensee'. Contact and mediation licences are granted to individuals, who having been granted a licence can assist people with adoption reunions. Some confusion has been caused by the use of the word "agency" when it is really an individual licence. This clause amends "agency" to "licensee".

Subclause (4) makes provision to remove the registering of contact vetoes. (see clause 42 for a summary of the provisions concerning contact vetoes)

Subclause (5) deletes the definition of information veto. (see clause 42 for a summary of the provisions concerning information vetoes)

Subclause (6) inserts 'duties' in the definition of 'parental responsibility'. This will make the definition consistent with the Family Court Act 1997.

Subclause (7) links the interpretation of 'married person' to 'step parent'.

Subclause (8) provides a definition for 'Aboriginal person', 'lineal relative', 'relative', 'Torres Strait Islander' and 'veto cut off day'.

Subclause (9) includes 'Torres Strait Islander' in the interpretation of 'married person' in section 4(2).

Clause 6 Section 4A repealed - Presumptions of parentage inserted.

Provision has been made to provide for uniformity of presumptions of parentage between adoption and family law legislation.

PART 2 - ADOPTION AGENCIES

Division 2 – Private adoption agencies

Clause 7 Section 9 amended – Private adoption agencies

Subclause (1) renumbers the section.

Subclause (2) enables the Minister to call for expressions of interest from body corporates that wish to be considered for a private adoption agency licence. Currently a body corporate can request an application form from the Minister at any time consistent with the regulations. This amendment will provide an open, fair and transparent process for the awarding of private adoption agency licences by advertising publicly the opportunity to apply for a licence.

Subclause (3) is a transitional provision to require existing applications for a licence not to be effected by the enactment of this section.

Clause 8 Section 10 amended – Regulations as to private adoption agencies

Subclause (1) inserts section 10(ga) which provides the ability to review the operations of private adoption agencies.

Subclause (2) amends section 10(h) to provide a provision to monitor private adoption agencies. The regulations stipulate the functions of a licensed private adoption agency but the Act does not provide a provision to monitor those functions. At present Western Australia does not have any private adoption agencies.

Division 3 – Adoption applications committees

Clause 9 Heading to Part 2 Division 3 amended

Clause 9 amends the heading from 'committees' to 'committee'.

Clause 10 Section 12 replaced – Adoption Application Committee

Clause 10 provides for the establishment of only one Adoption Application Committee (AAC) in the State. The AAC considers reports from assessors concerning the suitability of prospective adoptive parents. Provision has previously existed for more than one AAC although this has not occurred. The legislative review acknowledged the central role of the Adoption Application Committee and the importance of having all applications assessed by the one committee to ensure equity of service to all applicants. This committee has external representation.

Clause 11 Section 13 – Functions of the Adoption Application Committee

Subclauses (1) and (2) provides rewording to acknowledge only one Adoption Application Committee.

Subclause (3) provides the ability to take into account the insertion of section 13(2)

Subclause (4) provides for the Adoption Applications Committee to make recommendations to the Department in relation to the age, origins, ethnic background, medical, behavioural or psychological care of a child whom the applicant(s) is / are suitable to adopt. The intention is to ensure that approved applicants have parenting and interpersonal attributes that align with the needs of the child. Presently the AAC can only 'approve' or 'not approve' persons as prospective adoptive parents. Rather than applicants having to be deemed suitable for each and every adoptive circumstance, this provision will enable 'suitability for adoptive parenthood' to be approved in some circumstances but not others. This will enable the committee to be clearer about the capacity of applicants to parent children with different needs.

Clause 12 Section 14 amended – Membership of the Adoption Application Committee

Subclause (1) provides rewording to acknowledge only one Adoption Application Committee.

Subclause (2) repeals reference to a private adoption agency having an Adoption Application Committee

Clause 13 Section 15 amended – Adoption Application Committee

Subclause (1) and (2) provides rewording to acknowledge only one Adoption Application Committee.

PART 3 - THE ADOPTION PROCESS

Clause 14 Part 3 Division 1 – Heading replaced

Clause 14 inserts a new heading to reflect actions to be undertaken that may not be directly related to relinquishment but are considered to be matters that are preliminary to the taking of consents.

Clause 15 Section 16A - Aboriginal and Torres Strait Islander children

Clause 15 inserts section 16A(1)(2), The Aboriginal and Torres Strait Islander community generally does not support adoption of Aboriginal and Torres Strait Islander children. Taking into consideration the implications of the 'stolen generation' the management of Aboriginal adoptions needs to occur sensitively. For Aboriginal adoptions an additional element of complexity occurs and for this reason section 16A(1) has been inserted to require the involvement of an Aboriginal Officer, at all relevant times, to assist with the adoption process is considered important.

Section 16A(2) requires the Director General to consult with an approved Aboriginal or Torres Strait Islander agency regarding the prospective adoption of a child. This provision will ensure that Department staff consult with an approved Aboriginal or Torres Strait Islander agency about the merits of pursuing an adoption. There has only been one Aboriginal adoption in the last several years.

Division 2 – Consent to adoption

Clause 16 Section 18 amended – Effective consents

Subclause (1) makes provision for the Director General, rather than the Minister, to approve the form that is used for the taking of consents to relinquish a child for adoption.

Subclause (2) provides for the Director General to comment on a draft step parent adoption plan prior to it being lodged in the Court. This will ensure that the rights and responsibilities of adoptees, birth parents and adoptive parents, listed in schedule 2 of the Act, are appropriately incorporated into the adoption plan. Usually the Department only becomes aware of a step parent adoption plan once it has been lodged in the Court. This makes it more difficult to suggest amendments to the plan that may be in the best interests of the child.

Subclause (3) amends section 18(7)(b)(i) to provide non gender terminology for 'father'

Subclause (4) repeals section 18(8) as the interpretation of 'lineal relative' has been included in section 4 – interpretation.

Clause 17 Section 19 is repealed – non citizen present in the State

Clause 17 repeals section 19 as it is no longer required given the introduction of the Hague amendments in 1999. The Director General retains guardianship powers and functions of non citizen children present in the State for adoption purposes pursuant to a delegation under the *Commonwealth Immigration (Guardianship of Children) Act 1946*

Clause 18 Section 21 amended – Man who may be a prospective adoptee’s father

Subclause (1) and (2) are amended to provide for uniformity of presumptions of parentage between adoption and family law legislation.

Subclause (3) repeals section 21(5) as the interpretation of ‘lineal relative’ has been included in section 4 – interpretation.

Clause 19 Section 23 amended – Notice of revocation

Clause 19 makes provision for the Director General, rather than the Minister, to approve the form used for the revocation of consent to relinquish a child for adoption.

Division 3 – Court applications as to consents to adoption and notices

Clause 20 Section 24 amended – Orders dispensing with consent

Subclause (1) amends section 24(2)(b). Normally each birth parent needs to provide consent to their child being adopted. Section 24 provides the circumstances in which the Family Court can provide a dispensation for the consent of a parent to relinquish their child. One of these circumstances is where one of the birth parents has seriously ill treated or persistently neglected the child or where the parent has failed to establish or maintain an acceptable relationship with the child. Presently the Act provides the parent with a period of two years within which to establish or reestablish a parent / child relationship before a dispensation for their consent can be made. Two years is now seen to be too long in the life of a child. This clause will reduce the period from two years to one year.

Subclause (2) amends section 24(2)(g) to replace ‘exceptional circumstances’ with ‘special circumstances’. ‘Exceptional’ is considered too restrictive. There are circumstances where it is appropriate to dispense with consent where the circumstances are not so unusual as to be ‘exceptional’ but may be ‘special’

Subclause (3) repeals section 24(3) as the interpretation of ‘lineal relative’ has been included in section 4 – interpretation.

Division 3A – Court applications for determinations of parentage

Clause 21 Section 26C amended – Application for determination of parentage

Clause 21 makes provision for uniformity of presumptions of parentage between adoption and family law legislation.

Division 6 - Prospective adoptive parents

Clause 22 Section 37 amended – Information about adoptive parenthood

Clause 22 provides the opportunity for second/subsequent applicants to be sent an information package instead of attending an information session, which will reduce the time for some applicants participating in a subsequent adoption. The provision gives discretion to the Director General not to provide the information. In many cases it will be appropriate for prospective adoptive parents wishing to adopt a subsequent child to participate in information sessions and to receive information.

Clause 23 Section 39 amended – Criteria for application

Subclause (1b) amends section 39(1) to ensure that where two people live in a de facto relationship or are married they must apply and be assessed jointly. When assessing the suitability of an applicant for adoptive parenthood it is important to consider the impact that other partners will have on the lifestyle and upbringing of the child. At the moment a person can apply as a single applicant even though they are living in a partner relationship.

Subclause (1b) also amends section 39(1) by inserting (e)(ii) to ensure that an applicant who is applying jointly is only in one married or defacto relationship.

Subclause (2) amends 39(3) to include any period where applicants lived together in a defacto relationship prior to being married when calculating the three year period of marriage.

Clause 24 Section 41 amended – Adoption Application Committee

Clause 24 provides rewording to acknowledge only one Adoption Application Committee.

Clause 25 Section 42 amended - Adoption Application Committee

Clause 25 provides rewording to acknowledge only one Adoption Application Committee.

Clause 26 Section 44 amended - Adoption Application Committee

Clause 26 provides rewording to acknowledge only one Adoption Application Committee.

Division 7 - Placement of prospective adoptees

Clause 27 Section 45 amended – Selection of prospective adoptive parents

Clause 27 amends section 45. Currently a birth mother cannot sign a consent for relinquishment until 28 days after the birth of the child. Further more the birth parents have to wait another 18 days after signing consents before they can register their wishes in relation to the child's upbringing and the preferred attributes of the adoptive parents and to study anonymous profiles of prospective adoptive parents. The period of time to register their wishes is to be amended to any time after the signing of consent and not more than 14 days after the revocation period. This clause will provide greater flexibility for birth parents to consider their wishes for the child at an earlier time. It retains the time limit as to when the selection must occur which ensures that the placement of the child is not unduly delayed.

Clause 28 Section 28 amended – Negotiation of adoption plans

Clause 28 will provide an extension of the period for negotiating an adoption plan from seven to twenty one days. The adoption plan is a very important agreement as it sets out the extent of information and contact that will be exchanged between the birth parents and the adoptive parents involved in a local adoption (there is no adoption plan for intercountry adoptions). There are currently administrative difficulties in negotiating an adoption plan within the required seven day period, particularly when public holidays or weekends prevent the commencement of negotiations. Extending the period will provide the parties more time to consider what they want in the adoption plan. This extension would not have an adverse effect on the child.

Clause 29 Section 52 amended – Restrictions on placement

Subclause (1) amends the age restrictions. At the time of placing an adoptee with adoptive parents there are placement restrictions that may affect whether a child can be placed with an approved adoptive parent. One of the restrictions relates to the age gap between the child and the oldest applicant. Currently there must be a maximum age gap of 40 years between the age of an adopted child and the oldest applicant. The Adoption Legislative Review recommended increasing the age gap to a maximum of 43 years and did not make reference to a second age gap for subsequent children. This clause will raise the maximum age gap to 45 years for the first child and 50 years for the second and subsequent child. This clause will increase the age of applicants able to have a child placed with them and also increase the likelihood of applicants being able to adopt a second child. Having a second age gap will also increase the likelihood of applicants being able to adoption siblings.

Subclause (2) amends the placement restrictions in relation to an applicant's ability to support a child's established cultural, religious or educational arrangements. Presently applicants must show a 'desire and ability' to continue the adopted child's established cultural, religious or educational arrangements. This amendment will slightly increase weight to this by adding that the applicant 'recognises the value of and need for' cultural and ethnic continuity. Some people commented during the Adoption Legislation Review that placements should be "culturally consistent"¹ For example, requiring Korean children to be adopted by Korean adoptive parents. This was considered too restrictive.

Subclause (3) inserts sections 52(1)(aa) & 52(1)(ab). Section 52(1)(aa) requires the placement of a child with a prospective adoptive parent to be in accordance with the recommendations made by the Adoption Application Committee in section 13(2). Section 52(1)(ab) requires the placement of an Aboriginal or Torres Strait Islander child with a prospective adoptive parent to be in accordance with the 'Aboriginal or Torres Strait Islander children – placement for adoption principle' as set out in Schedule 2A (see clause 83)

Clause 30 Section 53 replaced – Placing children who cannot be placed under section 52

This clause is structured to take into account the rare occasions where a becomes available for adoption and the adoptive parents wish to adopt the child but the parents may not meet all of the placement criterion. It would usually be in the best interests of both children for the siblings to be within the same adoptive family.

Division 9 - Applications for adoptions orders

Clause 31 Section 58 amended – Notice of intention to apply for adoption order.

Clause 31 is amended to enable an application for an adoption order to be lodged by ordinary mail, instead of registered mail.

Clause 32 Section 59 amended – Notice where birth parent deceased or cannot be found

Clause 32 will provide clarity in cases where the birth parent has died before an application for an adoption order is filed. The application cannot be filed unless certain persons are notified in writing. Section 59 is difficult to interpret where the deceased birth parent is also an adoptee. The purpose of this clause is clarify the section in circumstances where the birth parent is also an adoptee.

Clause 33 Section 61 amended – Report for adoption proceedings

¹ Adoption Legislative Review Adoption Act (1994) Final Report (1997: 31)

Clause 33 will require a step parent to pay the fee to prepare a Court report at the time that they provide their notice of intention to apply for an adoption order. Step parents presently pay a fee for this service at a later date.

Division 10 - Adoption orders

Clause 34 Section 65 amended and validation of certain adoption orders

Subclause (1) will amend section 65 to enable any WA born child to be available for adoption regardless of their residency status. When a child is born in Western Australia the child assumes the residency status of the parents. If a child is born to a couple both of whom have temporary residency status, then, under current adoption law, the child is not available for adoption. E.g. overseas students studying in Western Australia.

Subclause (2) will validate certain adoption orders.

Clause 35 Section 66 amended - Who may be adopted.

Subclause (1) provides further clarification following the Lesbian and Gay Law Reform as to who maybe adopted.

Subclause (2) will clarify that relative adoptions are not considered within the scope of the Act. The 1997 Adoption Legislative Review and the 1989 – 91 Review Committee recommended that overseas relative adoptions should not occur as they distort biological relationships. The 1997 Adoption Legislative Review recommended that parenting orders, under family law legislation, are more appropriate for securing the care of relatives. Most other States and Territories only permit relative adoptions in exceptional circumstances.

Clause 36 Section 67 amended – who may adopt.

Clause 36 (1) will require step parent applicants to meet the same requirement for a 'stable marriage' as other applicants. For other applicants the Act currently defines a stable marriage as one that has existed for at least three years. Factors other than duration of marriage are also considered when assessing the stability of the marriage.

Clause 36 (2) will enable any period where the applicants have lived together in a defacto relationship prior to being married to be included when calculating the three year period in subsection 2.

Clause 37 Section 68 amended – Adoption orders in relation to children

Clause 37 will require a step parent to make an application to the Family Court for a determination that an adoption order is preferable to a parenting order. Adoption is a process to secure a legal and permanent family for a child who does not have a family who is able or willing to care for them. In step parent situations the child already has a

family and is in a permanent care arrangement. The Review Committee expressed concern that the effect of an adoption order in step parent adoptions is the severing, in law, of a child's relationship with his/her non-custodial parent and the distortion this causes to family relationships. Such concerns led to changes in legislation in South Australia, Victoria, the ACT, Queensland and Tasmania where applications for parenting orders are now required, unless adoption can be shown to be more appropriate and in the best interests of the child.

Clause 38 Section 69 amended – Adoption orders in relation to adults

Clause 38 makes provision for the notification of the birth parent prior to the Court making an adoption order in respect of an adult. Section 66(2) and section 69 make provision for the adoption of a person who is over 18 or more years of age. There is no requirement for a birth parent's consent to be given for an adult adoption. As the adoption severs their parental relationship and affects inheritance rights it is considered important for the birth parent to be notified.

Clause 39 Section 73 replaced – Dispensing with adoption plans

Clause 39. The Court may dispense with an adoption plan where a birth parent is unwilling or unable to participate, or cannot be found. Because all circumstances cannot be anticipated, section 73 is amended to include dispensation of an adoption plan in "special circumstances"

Clause 40 Section 74 amended – Name of adoptee

Clause 40 will limit the opportunities for a child's first birth name to be changed except in special circumstances approved by the Family Court. The United Nations Convention on the Rights of the Child includes the right of the child to preserve his or her identity, including nationality, name and family relations.

Clause 41 Section 77 amended – Discharge of adoption order

Clause 41(1) will enable an adult adoptee to make an application for a discharge of an adoption order on condition that the Director General is notified without requiring the Director General or Attorney General to facilitate the discharge, as is the present practice.

Clause 41(2) will ensure that prior to an order to discharge an adoption the Family Court is satisfied that reasonable efforts have been made to notify all the parties to the adoption and that they may apply for leave of the Court to intervene.

PART 4 – ADOPTIONS INFORMATION

Division 1 – Adoption information services

This Bill will remove the provision to register new information and contact vetoes.

It will keep existing contact vetoes but remove existing information vetoes after 24 months from the commencement of the Act. Provision is made for a mandatory interview prior to the release of information (where an information veto was in place) and all parties will be offered information, counselling and mediation services. Where a person receives identifying information the requirement will remain for that person to sign an undertaking not to contact a person who has registered a contact veto. The offence provision of a \$10,000 fine and 12 months imprisonment will remain if a party contacts, or arranges for a third party to contact, a person who has a contact veto. The provision will also remain to enable an application to the Family Court to prevent the access to information where it is likely to place a person at serious risk.

Clause 42 Section 79 amended – Duties of Director General as to adoption information services.

Subclause (1) will delete 'information veto' after 24 months from the day the Act comes into operation

Subclause (2) will amend 'contact and mediation agencies' to 'licensees' (see clause 5, Subclause 3)

Subclause (3) will delete 'information veto' after 24 months from the day the Act comes into operation

Subclause (4) will require the Director General not to release identifying information to a person who was the subject of an information veto unless the person attends an interview with an officer of the Department. In addition all parties will be provided with information, counselling and mediation that the Director General thinks is necessary. The intention of these provisions is to ensure that all parties to an adoption where an information veto has been in place are provided with the necessary supports and assisted to make the transition. To date the Department is not aware of any party that has breached an undertaking not to contact another party. Experience is that parties are extremely sensitive about protecting the privacy of other parties to an adoption and a desire for no contact to be made is respected.

Clause 43 Section 80 amended – Director General to notify certain persons in event of death

Clause 43. Section 80 requires the Director-General to notify certain persons in the event of the death of an adoptee, under certain conditions. There are circumstances that are not covered by these conditions, especially where a person has registered a wish not to be advised of the death of another party to the adoption. Section 80 is to be amended to give the Director-General discretionary powers not to proceed with

notification of the death in "special circumstances" and where such a wish has been registered. It is insensitive to notify someone of the death when they have expressed a wish not to be advised.

Division 2 – Access to adoptions information

Clause 44 Section 82 amended – Director General's authority to allow access to information

Clause 44 will remove reference to an 'information veto' 24 months after the Act has commenced. The effect of this will mean that the Director General will give his or her authority for the applicant to have access to the information unless there is a good reason for not doing so. For example, in the course of arranging an adoption a party may have made a threat of physical violence and the Department has good reason to believe that it would be prudent not to release the information. These decisions are referred to the Director General

The Adoption Legislation Review provided detailed discussion on the matter of information and contact vetoes over two thirds of the submissions received by the Review stated that they did not think that vetoes should exist.² There was strong support in the submissions for the right of adoptees to have information about their origins. None of the birth parents who responded to the market survey had placed an information veto and all felt that if vetoes exist they should be for a limited time. The Adoption Legislative Review Committee concluded that information vetoes should no longer exist because the basic right for all people to access information about themselves and know of their origins should take precedence over the continuance of secrecy. It is acknowledged that the removal of information vetoes may cause distress for some people. Therefore the implementation of the changes will occur over a 24 month transition period. Provision has been made for mandatory interviewing prior to the release of information and the provision of counselling, information and mediation in clause 42.

Clause 45 Section 84 amended – Court records

Clause 45 will provide a provision for the Family Court to have discretion, upon receiving a written application from a party to an adoption, to release all or part of the Court report and the Child's Representative's report where one has been completed. This provision relates to all the 'parties to the proceedings'

Clause 46 Section 86 amended – Portion of registration of birth not referring to adoption

Clause 46 makes provision for an adoptee to have access to a certified copy of a portion of the registration of an adoptees birth that does not refer to the adoptee's adoption and is admissible in legal proceedings

² Adoption Legislative Review (Adoption Act 1994) Final Report (1997:83)

Clause 47 Section 87 repealed – Certified copies of registration of birth or portions of registration as evidence

Clause 47 repeals section 87 and clause 46 has been extended to provide a certified copy of a portion of the adoptee's registration of birth that is admissible in legal proceedings

Clause 48 Section 89 replaced – If party to adoption deceased

Clause 48 will replace section 89. Where a party to an adoption has died, relatives can access the birth registration. In a small number of cases birth registration records do not exist or do not provide full information about the birth father. This clause will extend the information to include court records on application. The relative and the adoptee must be over eighteen years. The Adoption Legislative Review commented that this amendment enables relatives to establish their genealogical history.

Clause 49 Section 90 replaced – If adoptee cannot be found

Clause 49 will extend the information available to relatives to include court reports in circumstances where an adoptee cannot be found.

Division 3 – Exchange and preservation of adoptions information

Clause 50 Section 94(3) amended – Preservation of records as to adoption information.

Clause 50. In the past hospitals and hostels were involved in arranging adoptions and they may hold records that would assist adoption parties in establishing their identity. They may not consider their records to be classed as adoption records. To ensure preservation of such documents this clause will amend section 94(3) to clearly include any hospital or hostel, associated with arrangements in relation to an adoption. The Department for Community Development has conducted a project that involved working with identified hospitals and hostels where such records are held. This amendment will provide the legislation to support this work into the future. This clause also provides for the preservation of adoption records for 100 years. Currently it is 75 years.

Division 4 - Contact and information vetoes

Clause 51 Part 4 Division 4 heading amended

Clause 51 deletes reference to 'information vetoes' from the heading

Clause 52 Section 95 repealed - Interpretation

Clause 52 removes the interpretation of 'relative' from section 95. The interpretation of 'relative' has been inserted into section 4.

Clause 53 Section 96 repealed – Wishes as to contact to be lodged with Director - General

Clause 53 will remove the ability for adoptive parents to record their wishes as to contact after 24 months of the Act commencing.

Clause 54 Section 97 repealed – Request to prevent release of information to be lodged with Director General

Clause 54 will remove the ability for adoptive parents to register an information veto after 24 months of the Act commencing by repealing section 97. The Act currently has only a very limited capacity to permit an adoptive parent to lodge an information veto and these provisions are outlined in section 98(2).

Clause 55 Section 98 amended – Registration of statements and requests

Subclause (1) will no longer enable a person from registering a statement requesting a contact veto from the day the Act comes into operation.

Subclause (2) will no longer enable a person to register a statement requesting an information veto from the day the Act comes into operation.

Clause 56 Section 98 repealed – Registration of statements and requests.

Clause 56 will repeal section 98 24 months after proclamation which will remove the ability to register a statement requesting an information or contact veto.

Clause 57 Section 99 replaced – Register of contact and information vetoes

Clause 57 will reflect the removal of information vetoes. Section 99 will not make reference to a register of information vetoes. Section 99 will continue to maintain a register of contact vetoes existing prior to the day the Act comes into operation and those cancelled or varied subsequently.

Clause 58 Section 100 amended – Duration of contact vetoes

Clause 58 will enable a person who is presently under 18 years of age, whose adoptive parents registered a contact veto, to extend the effect of the veto once they turn 18

years. The adoptee must apply in writing to the Director General within 12 months after attaining the age of 18 years.

Clause 59 Section 101 repealed and a provision declaring information vetoes to be ineffective from the time of the repeal.

Subclause (1) repeals section 101. Section 101 specifies the duration of information vetoes

Subclause (2) establishes that any existing registered information veto has no effect from the day on which subclause (1) comes into operation.

Clause 60 Section 102 amended – Confirmation, cancellation or variation of vetoes.

Clause 60 contains provisions to enable a person to continue to cancel or vary contact vetoes and after 24 months from the day on which the Act comes into effect reference to confirming, cancelling or varying information vetoes will be removed.

Division 5 – Private contact and mediation agencies

Clause 61 Heading to Part 4 Division 5 amended – Private contact and mediation licensees

Clause 61 amends 'contact and mediation agency' to 'contact and mediation licensee'. (see clause 5, Subclause (3))

Clause 62 Section 105 amended – Contact and mediation licences to be licensed

Clause 62 amends 'contact and mediation agency' to 'contact and mediation licensee'. (see clause 5, Subclause (3))

Clause 63 Section 106 amended – Licences to conduct contact and mediation services

Clause 63 makes provision for the Director General, rather than the Minister, to grant a contact and mediation licence.

Clause 64 Section 107 amended – Regulations as to contact and mediation agencies

Clause 64 makes provision for the Director General, rather than the Minister, to provide for the publishing of the code of practice for Contact and Mediation licensees.

Clause 65 Section 108 amended – Contact and mediation agencies bound by contact veto.

Clause 65 amends 'contact and mediation agency' to 'contact and mediation licensee'. (see clause 5, Subclause (3)). It also makes provision for the Director General, rather than the Minister, to provide cancel the licensee's licence

PART 5 – REVIEW OF DECISIONS AND APPEALS

Division 1 – Review by Director General

Clause 66 Section 110 amended – Review by Director General

Clause 66 will amend section 110 to extend the review provisions to allow clients of private adoption agencies to seek a review by the Director General. This would mean that such persons, if aggrieved by the Director General on the review could further appeal to the Court (section 114)

Clause 67 Heading to Part 5 Division 2 replaced – Adoption Application Committee

Clause 67 amends the heading to refer to only one Adoption Application Committee

Clause 68 Section 113 amended – Director General may direct the committee to review its own procedures

Clause 68 amends section 113 to refer to only one Adoption Application Committee

Division 3 – Appeals to Family Court

Clause 69 Section 114 amended – Matters that may be appealed to the Family Court

Clause 69 amends section 114 to refer to only one Adoption Application Committee

Clause 70 Section 116 amended – Role of Director General in appeals from decisions of committee

Clause 70 amends section 116 to refer to only one Adoption Application Committee.

PART 6 - OFFENCES

Clause 71 Section 120 amended – Interpretation

Clause 71 deletes the definition of 'relative'. The definition of 'relative' will now be in section 4.

Clause 72 Section 124 amended – Restriction on publication of identity of parties

Subclause (1) & (2) amends section 124 to restrict the publication of the identity of a party to a discharge of an adoption. The Act currently provides for restrictions on the publication of the identity of parties to an adoption but does not make specific reference to discharges of adoptions.

Subclause (3) inserts section 124 (3) to include an interpretation of 'adoptee' to include a person who has had their adoption discharged.

Clause 73 Section 127 amended - Confidentiality

Clause 73. Section 127 restricts a person from recording, using, disclosing or communicating information specified in section 127. This section is a broad confidentiality section and covers most of the processes and activities associated with adoption. Section 16A(2) has included the requirement to consult with an approved Aboriginal or Torres Strait Islander agency. Clause 73 includes the approved agency under the confidentiality provisions. This clause also inserts information related to the discharge of an adoption order.

Clause 74 Section 128 replaced – Authority to prosecute

Clause 74. Section 128 provides for all proceedings for offences under the Act to be instituted by the Attorney General. This clause will extend the section to also include the Director General and/or the Commissioner of Police. There is a time limit of 12 months within which proceedings must commence. The extension of persons who may institute proceedings may assist instituting prosecutions where the need arises.

Clause 75 Section 129 amended – Other evidentiary matters

Clause 75 amends 'contact and mediation agency' to 'contact and mediation licensee'

PART 7 - MISCELLANEOUS

Division 1 – Delegation and protection

Clause 76 Section 130A amended – Delegation by State Central Authority

Clause 76 provides the ability to delegate functions of the State Central Authority to the Director General. The State Central Authority is the term used within Schedule 2B – The Hague Convention.

Clause 77 Section 131 amended – Protection from liability

Clause 77 amends section 131 to reflect only one Adoption Application Committee and the amendment from 'contact and mediation agency' to contact and mediation licensee.

Division 2 – Proceedings

Clause 78 Section 134 amended – Representation of children

Subclause (1) provides for the Director-General to be given the discretionary powers to appoint a child's representative at any stage of the adoption process. This clause also requires the Director General to appoint a child representative in cases where the prospective adoptee has a disability that is likely to effect placement and in circumstances where the birth mother is a child and is considering the adoption of her child.

Subclause (2) clarifies that a child representative may instruct a lawyer to provide legal representation for the child.

Subclause (3) inserts section 134(5) and clarifies that a lawyer who represents the child must act on the instructions of the child in certain circumstances.

Division 3 – Non Western Australian adoptions

Clause 79 Section 136F amended - Refusal to recognise an adoption or a decision to convert a simple adoption

Clause 79 will provide an amendment to recognise in WA those interstate Court Orders that have determined that a particular adoption is held to be contrary to the public interest. The intent is to enable WA to recognise such an order from another State or Territory rather than seek an additional Court order in WA.

Clause 80 Section 136H amended – Report on person who wishes to adopt a child in a Convention country

Clause 80 amends section 136H to reflect only one Adoption Application Committee

Clause 81 Section 138D amended – Report on person who wishes to adopt a child in an overseas jurisdiction

Clause 81 amends section 138D to reflect only one Adoption Application Committee

Division 5 – Rules and Regulations

Clause 82 Section 143 amended – Regulations

Clause 82 is a consequence of amending the ability to delegate the functions of the State Central Authority to the Director General as detailed in clause 76.

Division 6 – Repeal, transitional and savings, consequential amendments and review

Clause 83 Section 146 replaced – Review of the Act

Clause 83 replaces section 146 to enable a review the operations of the Act 3 years from the commencement of this Act

Schedule 1 – Effective consent

Clause 84 Schedule 1 amended – Effective consent

Clause 84. Currently birth parents are required to receive written and oral information on a range of matters associated with relinquishing a child such as alternatives, implications, community supports, the social implications, the legal process and, rights and responsibilities. This is contained within schedule one. In some circumstances this is being provided by people who may not have adequate information on the psychosocial implications. For example, in step parent adoptions solicitors provide the information and some may not have a comprehensive understanding of adoption issues. This clause will amend schedule one to provide for only the Director General to provide this information.

Clause 84 also requires the Department to provide to the person whose consent is required a list of independent counsellors from whom the person may seek further counselling. (Schedule 1 (1)(1)(c))

Clause 84 inserts schedule 1 (1)(1)(e) which requires the person whose consent is required to consider the alternatives to the child's adoption.

Clause 84 inserts schedule 1 (1)(2) which provides a definition of an 'independent counsellor' to ensure that counselling is provided by a counsellor with appropriate qualifications and experience.

Schedule 2A

Clause 85 Schedule 2A replaced

Clause 85 replaces the 'presumptions of paternity' schedule with the 'Aboriginal and Torres Strait Islander children – placement for adoption principle

The 'presumptions of paternity' are no longer required as a schedule as they have been amended to be consistent with the Family Court Act and can be referenced through the Family Court Act 1997

Clause 85 provides cultural guidance for the placement of an Aboriginal or Torres Strait Islander child that has been relinquished for adoption. The Act will require adoption processes to be consistent with Department for Community Development Aboriginal and Torres Strait Islander Child Placement Principles. The objective of these principles is to maintain a connection with family and culture for Aboriginal and Torres Strait Islander children who require a placement away from home. This does not extend to 'requiring' a connection where it is against the birth parents wishes.

Schedule 3 – Transitional and savings

Clause 86 Schedule 3 amended Transitional and savings

Subclause (1) is a consequential amendment as a result of creating the presumptions of parentage in section 4A.

Subclause (2) repeals 9(7) to remove information vetos 24 months after the day on which the Act becomes operational.

Subclause (3) amends 9(8) to remove the ability to register an information veto after 'veto cut off day'

Subclause (4) repeals 9(8) 24 months after the day on which the Act becomes operational.

Subclause (5) repeals 9(9) 24 months after the day on which the Act becomes operational.

Clause 87 Consequential amendment to Constitution Acts Amendment Act 1899

Clause 87 reflects the change to have only one Adoption Application Committee.