

Adoption Amendment Bill (No. 2) 2002

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Adoption Amendment Bill (No. 2) 2002

A Bill for

An Act to —

- **amend the *Adoption Act 1994*;**
- **validate certain purported adoption orders; and**
- **consequentially amend the *Constitution Acts Amendment Act 1899*.**

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Adoption Amendment Act (No. 2) 2002*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day fixed by proclamation.
- (2) Sections 5(4) and (5), 42(1) and (3), 44, 51, 53,
5 54, 56, 57, 59, 60 and 86(2), (4) and (5) (which relate to information vetoes no longer having effect) come into operation 24 months after the day fixed under subsection (1).

3. The Act amended

The amendments in this Act are to the *Adoption Act 1994** except in section 87.

[* *Reprinted as at 2 January 2001.*]

4. Section 3 replaced

Section 3 is repealed and the following section is inserted instead —

15 “
3. Principles

- (1) The paramount considerations to be taken into account in the administration of this Act are —
- 20 (a) the welfare and best interests of a child who is an adoptee or a prospective adoptee;
- (b) the principle that adoption is a service for a child who is an adoptee or a prospective adoptee; and
- 25 (c) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.
- (2) It is acknowledged that adoption is not part of Aboriginal or Torres Strait Island culture and that therefore the adoption of a child who is an Aboriginal

person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.

”.

5 **5. Section 4 amended**

(1) Section 4(1) is amended in the definition of “adoption applications committee” by deleting “a” and inserting instead —

“ the ”.

10 (2) Section 4(1) is amended in the definition of “carer” by deleting “child;” and inserting instead —

“

child through a placement arranged or approved by the Department for the care of the child by the person or persons;

15

”.

(3) Section 4(1) is amended in the definition of “contact and mediation agency” by deleting “agency” and inserting instead —

“ **licensee** ”.

20

(4) Section 4(1) is amended in the definition of “contact veto” by deleting “registered under section 98(1)” and inserting instead —

“

that was registered under Part 4 Division 4 before the veto cut off day

25

”.

(5) Section 4(1) is amended by deleting the definition of “information veto”.

30 (6) Section 4(1) is amended in the definition of “parental responsibility” by inserting after “the” —

“ duties, ”.

s. 5

- (7) Section 4(1) is amended after the definition of “step-parent” by deleting the full stop and inserting a semicolon instead.
- (8) Section 4(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

5

“

“**Aboriginal person**” means a person who is a descendant of Aboriginal people of Australia;

“**lineal relative**”, in relation to a person, means each of the following people —

10

(a) the person’s parent or remoter lineal ancestor;

(b) the person’s child or remoter lineal descendant;

15

(c) the person’s sibling of the whole or half blood,

whether the relationship is established by, or traced through, marriage, a written law or a natural relationship;

20

“**relative**”, in relation to a person, means each of the following people —

(a) the person’s —

(i) spouse or de facto partner;

(ii) parent or other ancestor;

(iii) child or other descendant;

25

(iv) step-parent or step-child;

(v) sibling;

(vi) uncle or aunt,

30

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

5 (b) in the case of an Aboriginal person, a person regarded under the customary law or tradition of the person's community as the equivalent of a person mentioned in paragraph (a);

10 (c) in the case of a Torres Strait Islander, a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a person mentioned in paragraph (a);

“**Torres Strait Islander**” means a person who is a descendant of the indigenous inhabitants of the Torres Strait Islands;

15 “**veto cut off day**” means the day fixed under section 2(1) of the *Adoption Amendment Act (No. 2) 2002*.

”.

(9) Section 4(2)(c) is amended by inserting after “Aboriginal person” —

20 “ or a Torres Strait Islander ”.

6. Section 4A replaced

Section 4A is repealed and the following section is inserted instead —

“

25 **4A. Presumptions of parentage**

The presumptions of parentage set out in Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997* apply when considering, for the purposes of this Act, who is —

30 (a) a parent of a person who is a prospective adoptee; or

(b) a birth parent of a person who is an adoptee.

”.

s. 7

7. Section 9 amended and a transitional provision

(1) Section 9 is amended by inserting before “The” the subsection designation “(1)”.

(2) At the end of section 9 the following subsections are inserted —

5

“

(2) An application for a licence can only be made during a period of time set by the Minister as a period during which applications for licences can be made.

10

(3) The Minister is to publish the periods of time set under subsection (2) in such manner as the Minister thinks is appropriate.

”.

15

(3) An application for a licence to conduct adoption services and to perform other functions for the purposes of the *Adoption Act 1994* that was made before the day fixed under section 2(1) of the *Adoption Amendment Act (No. 2) 2002* is not affected by the enactment of this section.

8. Section 10 amended

(1) After section 10(g) the following paragraph is inserted —

20

“

(ga) the undertaking by the Director-General of reviews of the operations of private adoption agencies;

”.

25

(2) Section 10(h) is amended by deleting “them;” and inserting instead —

“

30

them, whether for the purposes of a review of an agency’s operations under regulations made under paragraph (ga), a review under Part 5 Division 1, or otherwise;

”.

9. Heading to Part 2 Division 3 amended

The heading to Part 2 Division 3 is amended by deleting “committees” and inserting instead —

“ **committee** ”.

5 **10. Section 12 replaced**

Section 12 is repealed and the following section is inserted instead —

“

12. Establishment of adoption applications committee

10

The Director-General is to appoint an adoption applications committee in accordance with this Division.

”.

11. Section 13 amended

15

(1) Section 13 is amended by inserting before “The” the subsection designation “(1)”.

(2) Section 13 is amended by deleting “an” and inserting instead —
“ **the** ”.

(3) Section 13(b) is amended by inserting after “to approve,” —

20

“

either generally or in accordance with subsection (2),

”.

s. 12

(4) At the end of section 13 the following subsection is inserted —

“

(2) The adoption applications committee may approve a person as a prospective adoptive parent for adoptive parenthood of children in one or more of the following categories —

- (a) children who are of an age, origin or ethnic background specified by the committee;
- (b) children who require medical, behavioural or psychological care specified by the committee;
- (c) children who are not of an age, origin or ethnic background specified by the committee;
- (d) children who do not require medical, behavioural or psychological care specified by the committee.

”.

12. Section 14 amended

(1) Section 14(1) is amended by deleting “An” and inserting instead —

“ The ”.

(2) Section 14(3) is repealed.

13. Section 15 amended

(1) Section 15 is amended by deleting “adoption applications committees” and inserting instead —

“ the adoption applications committee ”.

(2) Section 15(b) is amended by deleting “each adoption application” and inserting instead —

“ the adoption applications ”.

14. Part 3 Division 1 heading replaced

The heading to Part 3 Division 1 is deleted and the following heading is inserted instead —

“

5

Division 1 — Preliminary matters

”.

15. Section 16A inserted

After section 16 the following section is inserted in Part 3 Division 1 —

10

“

16A. Matters relevant to the adoption process for Aboriginal or Torres Strait Islander children

15

(1) The Director-General is to ensure that an officer of the department who is an Aboriginal person or a Torres Strait Islander is involved at all relevant times to assist in the adoption process of a child who is an Aboriginal person or a Torres Strait Islander.

20

(2) The Director-General is to consult with an Aboriginal or Torres Strait Islander agency that is approved by the Director-General for the purposes of this section, regarding the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander.

”.

16. Section 18 amended

25

(1) Section 18(1)(c) is amended by deleting “Minister” and inserting instead —

“ Director-General ”.

s. 17

- (2) Section 18(1) is amended after paragraph (d) by deleting “and” and inserting the following —

“

5

- (da) in the case of a proposed adoption by a step-parent of a child, the Director-General has had at least 30 days to comment on the provisions of a proposed adoption plan prepared for the purposes of section 55(1); and

”.

10

- (3) Section 18(7)(b)(i) is amended by deleting “father is also a lineal relative of the birth parent;” and inserting instead —

“ birth parents are lineal relatives; ”.

- (4) Section 18(8) is repealed.

17. Section 19 repealed

15

Section 19 is repealed.

18. Section 21 amended

- (1) Section 21(1)(a) is amended by deleting “clause 4 or 5 of Division 2 of Schedule 2A;” and inserting instead —

“ section 188 or 189 of the *Family Court Act 1997*; ”.

20

- (2) Section 21(1)(b) is amended by deleting “Division 2 of Schedule 2A)” and inserting instead —

“

Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997*)

25

”.

- (3) Section 21(5) is repealed.

19. Section 23 amended

Section 23(1)(a) is amended by deleting “Minister” and inserting instead —

“ Director-General ”.

5 **20. Section 24 amended**

(1) Section 24(2)(b) is amended by deleting “2 years” and inserting instead —

“ one year ”.

10 (2) Section 24(2)(g) is amended by deleting “exceptional” and inserting instead —

“ special ”.

(3) Section 24(3) is repealed.

21. Section 26C amended

15 Section 26C(1)(a) is amended by deleting “Division 2 of Schedule 2A;” and inserting instead —

“

Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997*;

”.

20 **22. Section 37 amended**

After section 37(2) the following subsection is inserted —

“

25 (3) Despite subsection (1), the Director-General does not have to provide a person who is already an adoptive parent and who is contemplating adoptive parenthood for a second or subsequent time with oral information about, and counselling in relation to, adoption unless the person chooses to be provided with such information and counselling.

30

”.

23. Section 39 amended

(1) Section 39(1) is amended as follows:

- (a) after paragraph (c) by deleting “and”;
- (b) by deleting paragraph (d) and inserting the following instead —

“

(d) if married to, or in a de facto relationship with, another person, applies as a joint applicant with that person; and

(e) if applying as a joint applicant —

- (i) has been married to, or in a de facto relationship with, the other applicant for at least 3 years; and
- (ii) is not married to, or in a de facto relationship with, any other person.

”.

(2) Section 39(3) is amended by deleting “subsection (1)(d)” in both places where it occurs and inserting instead —

“ subsection (1)(e)(i) ”.

24. Section 41 amended

Section 41(1) and (2) are amended by deleting “an” and inserting instead —

“ the ”.

25. Section 42 amended

(1) Section 42(1) is amended by deleting “An” and inserting instead —

“ The ”.

(2) Section 42(2) and (3) are amended by deleting “an” and inserting instead —

“ the ”.

26. Section 44 amended

5 Section 44(1)(b) is amended by deleting “an” and inserting instead —

“ the ”.

27. Section 45 amended

Section 45 is amended by deleting “not less than 18 days”.

10 **28. Section 46 amended**

Section 46(3) is amended by deleting “7” in both places where it occurs and inserting instead —

“ 21 ”.

29. Section 52 amended

15 (1) Section 52(1)(a)(iii) is deleted and the following subparagraphs are inserted instead —

“

20 (iii) is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before;

25 (iiia) is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have not adopted a child before;

s. 29

- 5 (iiib) is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before;
- 10 (iiic) is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before;
- 15 (iiid) is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); or
- 20 (iiie) is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent);

”.

25 (2) Section 52(1)(a)(v) is deleted and the following subparagraphs are inserted instead —

“

- 30 (v) meets, if relevant, the child’s wishes;
- (va) recognises the value of, and need for, cultural and ethnic continuity for the child;
- (vb) shows a desire and ability to continue the child’s established cultural, ethnic, religious or educational arrangements;

”.

(3) After section 52(1)(a) the following paragraphs are inserted —

“

(aa) where the adoption applications committee has approved the prospective adoptive parent in accordance with section 13(2), the child belongs to a category of children in respect of whom the prospective adoptive parent has been approved for prospective adoptive parenthood;

(ab) where the child is an Aboriginal person or a Torres Strait Islander, the placement is in accordance with the Aboriginal or Torres Strait Islander children — placement for adoption principle as set out in Schedule 2A;

”.

15 **30. Section 53 replaced**

Section 53 is repealed and the following section is inserted instead —

“

20 **53. Placing children who cannot be placed under s. 52**

The Director-General may place a child with a prospective adoptive parent with a view to the child's adoption even though the placement does not fulfil some of the requirements of section 52(1) if —

- 25 (a) the child is a sibling of an adoptee who is resident in the State; or
(b) the child cannot otherwise be placed.

”.

30 **31. Section 58 amended**

Section 58(1) is amended by deleting “Department or sent by registered post to the”.

32. Section 59 amended

Section 59(2) is amended as follows:

- (a) by inserting after “applies” —
“ (**“the birth parent”**) ”;
- 5 (b) in paragraph (a) by deleting “parent;” and inserting
instead —
“
10 parent of the birth parent or, if the birth parent’s
birth parent was an adoptee, an adoptive parent
of the birth parent;
”;
- (c) in paragraph (b) by inserting after “sister” —
“ of the birth parent whether ”;
- 15 (d) in paragraph (c) by deleting “aunt;” and inserting
instead —
“ aunt of the birth parent, ”.

33. Section 61 amended

Section 61(1) is amended by deleting “section 58(1),” and
inserting instead —

- 20 “
section 58(1) and on payment of the prescribed fee, if
applicable,
”.

**34. Section 65 amended and validation of certain adoption
orders**

- 25 (1) Section 65(1)(a) and “and” after it are deleted and the following
is inserted instead —
“
30 (a) either —
(i) the person is present in the State and is
permitted under a law of the

Commonwealth to remain permanently
in Australia; or

- (ii) the person, having been born in the
State, is present in the State;

5

and

”.

- (2) An adoption order made or purported to be made by the Court
before the commencement of this Act is, and is taken always to
have been, as valid and effective as it would have been if the
10 amendments made by subsection (1) were in effect at the time
the order was made or purported to be made.

35. Section 66 amended

- (1) Section 66(1)(b) is amended by deleting “for at least 3 years.”.
- (2) After section 66(2) the following subsection is inserted —

15

“

- (3) A person cannot be adopted by a relative of the person,
other than a step-parent.

”.

36. Section 67 amended

- (1) Section 67(1)(a) is amended by deleting “child;” and inserting
instead —

20

“

child and has been married to, or in a de facto
relationship with, a parent of the child for at
25 least 3 years;

”.

- (2) After section 67(3) the following subsections are inserted —

30

“

- (4) For the purposes of subsection (1)(a) if the step-parent
is married to a parent of the child and before the
marriage those persons were living as de facto partners,

s. 37

the period of living as de facto partners may be included when calculating the period referred to in subsection (1)(a).

- 5 (5) For the purposes of subsection (2) if the persons referred to in subsection (1)(b) and (c) or the carers referred to in section 66(2) are married and before the marriage those persons or carers were living as de facto partners, the period of living as de facto partners may be included when calculating the period referred to in
10 subsection (2).

”.

37. Section 68 amended

After section 68(1)(f) “and” is deleted and the following is inserted instead —

15

“

- (fa) if a step-parent of a child wishes to adopt the child, the Court has determined that the child’s adoption by the step-parent is preferable to any of the following orders being made under the
20 *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case —

- (i) a parenting order in respect of the child;
25 (ii) an order in respect of the welfare of the child; or
(iii) an order in respect of the appointment or removal of a guardian of the child;
and

”.

30 **38. Section 69 amended**

- (1) After section 69(1)(a) “and” is deleted.

- (2) After section 69(1)(b) the full stop is deleted and the following is inserted instead —

“

; and

- 5 (c) notices required by subsection (4) have been given or the application is in accordance with an order under subsection (6).

”.

- (3) After section 69(3) the following subsections are inserted —

10 “

- (4) A person is not to file an application for an adoption order in relation to an adult unless at least 30 days before the application is filed, the person gives notice of the intention to file the application to each of the prospective adoptee’s birth parents in a written notice delivered personally or by registered post to the respective birth parent’s last known address.

- 15 (5) A person intending to file an application for an adoption order in relation to an adult may apply to the Court for orders in relation to a requirement to give notice under subsection (4).

- 20 (6) On an application under subsection (5) the Court may, on such terms and conditions as it thinks fit —

- (a) vary the time for giving the notice; or
25 (b) dispense wholly or partly with a requirement to give the notice.

”.

39. Section 73 replaced

Section 73 is repealed and the following section is inserted instead —

“

5 **73. Dispensing with adoption plans**

The Court may dispense with the requirement for an adoption plan or that a particular birth parent be a party to the plan —

(a) if a birth parent is —

- 10 (i) unable or unwilling to participate, or incapable of participating, in a plan; or
- (ii) cannot be found or contacted after enquiries which the Court thinks are sufficient;

15 or

(b) in special circumstances.

”.

40. Section 74 amended

Before section 74(2)(a) the following paragraph is inserted —

20 “

- (aa) the principle that a child’s first name should not be changed at the time of adoption except in special circumstances;

”.

25 **41. Section 77 amended**

- (1) Section 77(1) is repealed and the following subsection is inserted instead —

“

- 30 (1) The following persons may apply to the Court for an order to discharge an adoption order —
- (a) the Attorney General;

- (b) the Director-General;
- (c) an adult adoptee who has notified the Director-General of the adoptee's intention to so apply.

5

”.

- (2) Section 77(3) is repealed and the following subsections are inserted instead —

“

- (3) The Court is not to make an order under subsection (2) —
 - (a) if to do so would not be for the welfare and in the best interests of the adoptee; and
 - (b) unless the Court is satisfied that reasonable efforts have been made to notify all the parties to the adoption of the application.
- (3a) Any person may apply for leave to intervene in an application under subsection (1) and the Court may make an order entitling the person to intervene in the application.
- (3b) A person who, under subsection (3a), intervenes in an application under subsection (1), is to be treated as a party to the application with all the rights, duties and liabilities of a party, unless the Court orders otherwise.

10

15

20

”.

25 **42. Section 79 amended**

- (1) Section 79(1)(f)(i) is amended by deleting “or information veto”.
- (2) Section 79(1)(i) is amended by deleting “agencies” and inserting instead —

30

“ licensees ”.

s. 43

(3) Section 79(2)(b) is amended by deleting “veto or an information veto.” and inserting instead —

“ veto. ”.

(4) After section 79(2) the following subsection is inserted —

5

“

(3) The Director-General is not to release identifying information under this Act to a person whose access to the information is the subject of an information veto that will become, or became, ineffective because of the operation of section 59(2) of the *Adoption Amendment Act (No. 2) 2003* unless —

10

(a) the person attends an interview with an officer of the Department; and

15

(b) all the parties to the adoption and their relatives have been provided with the information, counselling and mediation that the Director-General thinks is necessary in the particular case.

”.

20

43. Section 80 amended

After section 80(2) the following subsection is inserted —

“

(3) The Director-General does not have to inform a person under subsection (1) or (2) of a death —

25

(a) if the person has, in a manner approved by the Director-General, notified the Director-General that the person does not wish to be so advised; or

(b) in special circumstances.

”.

44. Section 82 amended

Section 82(2) is repealed and the following subsection is inserted instead —

“

- 5 (2) On an application under subsection (1), the Director-General is to give his or her authority for the applicant to have access to the information as requested in the application unless the Director-General thinks that there is a good reason for not doing so and in that case, the Director-General may give the authority on condition that the applicant may or may not have access to the information specified in the authority.
- 10

”.

45. Section 84 amended

- 15 (1) After section 84(2)(b) “and” is deleted.
- (2) After section 84(2)(c) the full stop is deleted and the following is inserted instead —

“

; and

- 20 (d) sections 89 and 90.

”.

- (3) After section 84(3) the following subsections are inserted —

“

- 25 (4) Nothing in subsection (1) or (2) prevents a person referred to in subsection (1)(a) to (d) from applying in writing to the Court for a copy of a report under section 61 or a report from a representative of the child submitted to the Court in relation to the adoption.

- 30 (5) On an application under subsection (4) the Court may, as it thinks fit, release all or part of a report under section 61 or a report from a representative of the child submitted to the Court in relation to the adoption.

”.

46. Section 86 amended

(1) Section 86 is amended by inserting before “At” the subsection designation “(1)”.

(2) At the end of section 86 the following subsection is inserted —

5

“

(2) A certified copy of that portion of the registration of an adoptee’s birth that does not refer to the adoptee’s adoption or birth parents that is issued by the Registrar under subsection (1) is admissible in legal proceedings as evidence of the facts recorded on the document.

10

”.

47. Section 87 repealed

Section 87 is repealed.

48. Section 89 replaced

15

Section 89 is repealed and the following section is inserted instead —

“

89. If party to adoption deceased

(1) If a party to an adoption is deceased, any —

20

- (a) grandparent of the party;
- (b) descendant of the party; or
- (c) sibling of the party,

who is 18 or more years of age has the right to have access to the registration of the adoptee’s birth.

25

(2) Subsection (1) is subject to —

- (a) section 82(2);
- (b) production to the Registrar, of the authority under section 82(2) to allow access to the information; and

-
- (c) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by the Registrar.
- 5 (3) The production to the Registrar of the authority referred to in subsection (2)(b) is to be treated as an adequate reason, for the purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —
- 10 (a) to allow a person access to the Register;
- (b) to provide a person with information extracted from the Register; or
- (c) to search for information in the Register, within the meaning of that Act.
- 15 (4) If a party to an adoption is deceased, any —
- (a) grandparent of the party;
- (b) descendant of the party; or
- (c) sibling of the party,
- 20 who is 18 or more years of age has the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption.
- (5) Subsection (4) is subject to —
- (a) section 82(2);
- 25 (b) the production to the registrar of the court or other similar officer, of the authority under section 82(2) to allow access to the information;
- (c) the requirements of the relevant court under any law or rule of practice relating to inspection of and release of information generally from its
- 30 record of proceedings; and

- (d) any court order in relation to exclusion of persons from the hearing of the proceedings.

”.

49. Section 90 replaced

5 Section 90 is repealed and the following section is inserted instead —

“

90. If adoptee cannot be found

- 10 (1) If an adoptee who is 18 or more years of age, cannot be found or contacted after enquiries which the Director-General thinks are sufficient, any —
 - (a) grandparent of the adoptee;
 - (b) descendant of the adoptee; or
 - (c) sibling of the adoptee,
- 15 who is 18 or more years of age has the right to have access to the registration of the adoptee’s birth.
- (2) Subsection (1) is subject to —
 - (a) section 82(2);
 - 20 (b) production to the Registrar, of the authority under section 82(2) to allow access to the information; and
 - (c) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by
 - 25 the Registrar.
- (3) The production to the Registrar of the authority referred to in subsection (2)(b) is to be treated as an adequate reason, for the purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —
 - 30 (a) to allow a person access to the Register;

- (b) to provide a person with information extracted from the Register; or
- (c) to search for information in the Register, within the meaning of that Act.
- 5 (4) If an adoptee who is 18 or more years of age, cannot be found or contacted after enquiries which the Director-General thinks are sufficient, any —
- (a) grandparent of the adoptee;
- (b) descendant of the adoptee; or
- 10 (c) sibling of the adoptee,
- who is 18 or more years of age has the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption.
- (5) Subsection (4) is subject to —
- 15 (a) section 82(2);
- (b) the production to the registrar of the court or other similar officer, of the authority under section 82(2) to allow access to the information;
- 20 (c) the requirements of the relevant court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings; and
- (d) any court order in relation to exclusion of persons from the hearing of the proceedings.
- 25

”.

50. Section 94 amended

Section 94(3) is amended as follows:

- (a) by deleting “an association” and inserting instead —
- 30 “ a hospital or hostel or any other association ”;

s. 51

(b) by deleting “75” and inserting instead —
“ 100 ”.

51. Part 4 Division 4 heading amended

5 The heading to Part 4 Division 4 is amended by deleting “and information”.

52. Section 95 repealed

Section 95 is repealed.

53. Section 96 repealed

Section 96 is repealed.

10 **54. Section 97 repealed**

Section 97 is repealed.

55. Section 98 amended

(1) Section 98(1) is amended by deleting “veto.” and inserting instead —

15 “
veto,
but a statement cannot be registered on or after the veto cut off day.”

20 (2) Section 98(2) is amended by deleting “plan.” and inserting instead —

“
plan,
25 but a request cannot be registered on or after the veto cut off day.”

56. Section 98 repealed

Section 98, as amended by section 55 of this Act, is repealed.

57. Section 99 replaced

Section 99 is repealed and the following section is inserted
5 instead —

“

99. Register of contact vetoes

The Director-General is to maintain a register of —

- 10 (a) the statements of wishes that were registered
under this Division before the veto cut off day;
and
(b) any cancellation or variation under
section 102(1).

”.

15 **58. Section 100 amended**

(1) Section 100(1)(d) is amended as follows:

- (a) inserting before “where” —
“ subject to subsection (3), ”;
(b) deleting “18” in the second place where it occurs and
20 inserting instead —
“ 19 ”.

(2) After section 100(2) the following subsection is inserted —

“

- 25 (3) An adoptee on behalf of whom a statement of wishes
for a contact veto was lodged before the veto cut off
day may —
(a) within 12 months after attaining the age of
18 years; and
(b) in writing given to the Director-General,

s. 59

5 continue the effect of the statement of wishes and, in
that case, subsections (1)(a), (b) and (c) and (2) and
sections 102, 103 and 104 apply in relation to the
adoptee as if the adoptee were the person who lodged
the statement of wishes or sought the registration of the
relevant contact veto.

”.

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

10 (1) Section 101 is repealed.

(2) An information veto —

(a) that was registered under Part 4 Division 4 of the
Adoption Act 1994 before the veto cut off day; and

15 (b) that has effect immediately before the day on which
subsection (1) comes into operation,

has no effect on and from the day on which subsection (1)
comes into operation.

60. Section 102 amended

20 (1) Section 102(1) is repealed and the following subsection is
inserted instead —

“

25 (1) A person whose statement of wishes was registered
under this Division before the veto cut off day may, in
a form approved by the Director-General, cancel or
apply to vary the statement.

”.

(2) Section 102(2) is amended as follows:

(a) by deleting “or an information veto”;

30 (b) in paragraph (c) by deleting “, or information in relation
to,”.

(3) Section 102(3) is amended by deleting “or an information veto”.

61. Heading to Part 4 Division 5 amended

The heading to Part 4 Division 5 is amended by deleting “agencies” and inserting instead —

“ **licensees** ”.

5 **62. Section 105 amended**

Section 105(2) is amended by deleting “agency” in both places where it occurs and inserting instead —

“ licensee ”.

63. Section 106 amended

10 Section 106 is amended as follows:

(a) by deleting “Minister” and inserting instead —

“ Director-General ”;

(b) by deleting “a person” and inserting instead —

“ an individual ”.

15 **64. Section 107 amended**

(1) Section 107(c) is amended as follows:

(a) by deleting “Minister” and inserting instead —

“ Director-General ”;

(b) by deleting “agency” and inserting instead —

20 “ licensee ”.

(2) Section 107(d) is amended by deleting “Minister’s” and inserting instead —

“ Director-General’s ”.

(3) Section 107(f) is amended by deleting “agencies” and inserting instead —

25 “ licensees ”.

65. Section 108 amended

(1) Section 108(1) is amended as follows:

(a) by deleting “agency that” and inserting instead —
“ licensee who ”;

5 (b) by deleting “it” and inserting instead —
“ the licensee ”.

(2) Section 108(2) is amended by deleting “agency” in both places
where it occurs and inserting instead —
“ licensee ”.

10 (3) Section 108(3) is amended as follows:

(a) by deleting “agency” in the 3 places where it occurs and
inserting instead —
“ licensee ”;

15 (b) by deleting “Minister” and inserting instead —
“ Director-General ”;

(c) by deleting “agency’s” and inserting instead —
“ licensee’s ”.

66. Section 110 amended

(1) Section 110(1) is repealed and the following subsection is
20 inserted instead —

“

(1) A person who is aggrieved by a decision made for the
purposes of this Act by —

25 (a) a person to whom the Director-General had
delegated a function under section 6(1); or

(b) a private adoption agency,

may apply to the Director-General to review the
decision.

”.

(2) Section 110(2) is amended by deleting “an” and inserting instead —

“ the ”.

67. Heading to Part 5 Division 2 replaced

5 The heading to Part 5 Division 2 is deleted and the following heading is inserted instead —

“

**Division 2 — Decisions of the adoption
applications committee**

10

”.

68. Section 113 amended

(1) Section 113(1) is amended by deleting “an” and inserting instead —

“ the ”.

15 (2) Section 113(3) is repealed and the following subsection is inserted instead —

“

(3) The committee must comply with a direction given under subsection (2).

20

”.

69. Section 114 amended

Section 114(2) is amended by deleting “an” and inserting instead —

“ the ”.

25 **70. Section 116 amended**

Section 116 is amended by deleting “an adoption” and inserting instead —

“ the adoption ”.

s. 71

71. Section 120 amended

Section 120(1) is amended as follows:

- (a) after the definition of “publish” by deleting the semicolon and inserting a full stop instead;
- 5 (b) by deleting the definition of “relative”.

72. Section 124 amended

- (1) Section 124(1)(a) is amended by inserting after “is” —
“ , or was but is no longer, ”.
- (2) Section 124(1)(b) is amended by deleting “or proposed
10 adoption,” and inserting instead —
“
 , a proposed adoption or the discharge of an
adoption order,
”.
- 15 (3) After section 124(3) the following subsection is inserted —
“
(4) In subsection (3) —
“**adoptee**” includes a person who was but is no longer
an adoptee.
20 ”.

73. Section 127 amended

Section 127(2) is amended as follows:

- (a) after paragraph (b) by inserting the following
paragraph —
25 “
(ba) an Aboriginal or Torres Strait Islander agency,
approved by the Director-General for the
purposes of section 16A(2);
”;

(b) in paragraph (d) by deleting “agency” and inserting instead —

“ licensee ”;

(c) by deleting “adoption.” and inserting instead —

5 “ adoption, or the discharge of an adoption order. ”.

74. Section 128 replaced

Section 128 is repealed and the following section is inserted instead —

“

10 **128. Authority, and time in which, to prosecute**

(1) All proceedings for offences against this Act are to be —

(a) instituted by a person who —

(i) is the Attorney General;

(ii) is the Director-General;

15 (iii) is the Commissioner of Police; or

(iv) has the written consent of a person referred to in subparagraph (i), (ii) or (iii) to do so;

and

20 (b) commenced within 12 months after the day on which evidence, sufficient in the person’s opinion to justify the proceedings, comes to the person’s knowledge.

25 (2) A certificate of the person referred to in subsection (1) that evidence referred to in subsection (1)(b) came to the person’s knowledge on a particular day, is conclusive evidence of that fact.

s. 75

(3) Judicial notice is to be taken, for the purposes of this section, of the signature of a person referred to in subsection (1) on a complaint and on a certificate purporting to be issued under subsection (2).

5

”.

75. Section 129 amended

Section 129(1)(a) is amended by deleting “mediation agency” and inserting instead —

“ mediation licensee ”.

10

76. Section 130A amended

Section 130A is amended by inserting after “to” —

“ the Director-General or ”.

77. Section 131 amended

15

(1) Section 131(1)(e) is deleted and the following paragraph is inserted instead —

“

(e) the adoption applications committee or a member of that committee;

”.

20

(2) Section 131(2) is amended by deleting “agency” and inserting instead —

“ licensee ”.

78. Section 134 amended

25

(1) Section 134(1) is repealed and the following subsections are inserted instead —

“

(1) The Director-General may, at any time, appoint a person who, in the Director-General’s opinion, is

suitably qualified to represent a child who is a prospective adoptee or adoptee.

- 5 (1a) The Director-General must, as soon as practicable after the Department has been contacted in relation to the matter, appoint a person who, in the Director-General's opinion, is suitably qualified to represent a child who —
- 10 (a) is a prospective adoptee or adoptee; and
(b) has a disability of a kind that is likely to affect the placement of the child.
- 15 (1b) The Director-General must, as soon as practicable after the Department has been contacted in relation to the matter, appoint a person who, in the Director-General's opinion, is suitably qualified to represent a child who is a birth parent and who is considering the adoption of her or his child.

”.

- (2) Section 134(2) is amended by inserting after “subsection (1)” —
“ , (1a) or (1b) ”.
- 20 (3) After section 134(4) the following subsections are inserted —
“
- 25 (5) A lawyer who represents a child under a direction under subsection (3) must act on the instructions of the child if the child —
- (a) has sufficient maturity and understanding to give instructions; and
(b) wishes to give instructions,
- and in any other case must act in the best interests of the child.

s. 79

(6) Any question as to whether a child has sufficient maturity and understanding to give instructions is to be determined by the court.

”.

5 **79. Section 136F amended**

After section 136F(5) the following subsection is inserted —

“

10 (6) A declaration made by a court of another State or a Territory under a law corresponding to subsection (2) is to be treated as having the same effect as a declaration made under that subsection.

”.

80. Section 136H amended

15 Section 136H(b) is amended by deleting “an” and inserting instead —

“ the ”.

81. Section 138D amended

Section 138D(b) is amended by deleting “an” and inserting instead —

20 “ the ”.

82. Section 143 amended

Section 143(4)(g) is amended by deleting “the Minister’s”.

83. Section 146 replaced

25 Section 146 is repealed and the following section is inserted instead —

“

146. Review

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable

after the expiration of 3 years from the commencement day, and in the course of that review the Minister is to consider and have regard to —

- 5 (a) the implementation and administration of the Act;
- (b) the extent to which members of the public are aware of the effects of the Act;
- 10 (c) the effect of the Act on birth parents, adoptees and prospective adoptive parents and the relatives of parties to adoptions; and
- (d) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- 15 (2) The Minister is to prepare a report based on the review under subsection (1).
- (3) The Minister is to cause the report to be laid before each House of Parliament not later than 12 months after the expiration of 3 years from the commencement day.
- 20 (4) In this section —
- “**commencement day**” means the day fixed under section 2(1) of the *Adoption Amendment Act (No. 2) 2003*.

”.

the matters referred to in paragraph (a), has received the counselling; and

- (e) has considered the alternatives to the child's adoption.

5 (2) In this clause —

“**independent counsellor**” means a person, other than an officer or employee of the Department, who has been approved by the Director-General as a person who has such qualifications and experience as are appropriate for the person to provide counselling for the purposes of this Schedule.

”.

(2) Schedule 1 clause 3 is repealed and the following clause is inserted instead —

15 “

3. Certificate of witness

A person referred to in clause 2(1) is not to witness the signing of a form of consent to adoption unless the person certifies, in a form approved by the Director-General, that he or she has seen affidavit evidence sworn by or on behalf of the person who provided the information or counselling under clause 1 to the effect that the person who has signed the form of consent —

- 25 (a) has been provided with written and oral information on the matters referred to in clause 1(1)(a) by the Director-General;
- (b) has been offered counselling to be given on behalf of the Director-General on the matters referred to in clause 1(1)(a);
- 30 (c) has received from the Director-General a list of independent counsellors from whom the person may seek further counselling if the person so wishes;
- 35 (d) if he or she has sought counselling from the Director-General or an independent counsellor on the matters referred to in clause 1(1)(a), has received the counselling; and

s. 85

- (e) has considered the alternatives to the child's adoption.

”.

85. Schedule 2A replaced

5 Schedule 2A is repealed and the following Schedule is inserted instead —

“

**Schedule 2A — Aboriginal and Torres Strait
Islander children — placement for
adoption principle**

10

[s. 52(1)(ab)]

15 The objective of this principle is to maintain a connection with family and culture for children who are Aboriginal persons or Torres Strait Islanders and who are to be placed with a person or persons with a view to adoption by the person or persons.

If there is no appropriate alternative to adoption for the child, the placement of the child for adoption is to be considered in the following order of priority.

- 20 1. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practice.
2. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander.
- 25 3. The child be placed with a person who is not an Aboriginal person or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, family.

”.

86. Schedule 3 amended

- (1) Schedule 3 clause 8(2) is amended by deleting “father, within the meaning of section 4(3),” and inserting instead —
 “ person presumed under section 4A to be the father ”.
- 5 (2) Schedule 3 clause 9(7) is repealed.
- (3) Schedule 3 clause 9(8) is amended by deleting “exchange.” and inserting instead —
 “
 exchange,
 10 but a request cannot be registered on or after the veto cut off day.
 ”.
- (4) Schedule 3 clause 9(8), as amended by subsection (3), is repealed.
- 15 (5) Schedule 3 clause 9(9) is repealed.

87. Consequential amendment to *Constitution Acts Amendment Act 1899*

- (1) The amendments to this section are to the *Constitution Acts Amendment Act 1899**.
- 20 [* Reprinted as at 8 June 2001.
 For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 72, and Acts Nos. 24 and 25 of 2001 and 5 of 2002.]
- (2) Schedule 5 Part 3 to the *Constitution Acts Amendment Act 1899*
 25 is amended in the item commencing “Any adoption applications committee” by deleting “Any” and inserting instead —
 “ The ”.