

ADOPTION OF CHILDREN (AMENDMENT) ACT 1987
No. 174

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

ADOPTION OF CHILDREN (AMENDMENT) ACT 1987 No. 174

NEW SOUTH WALES



Act No. 174, 1987

An Act to amend the Adoption of Children Act 1965 with respect to the age at which a child may consent to being adopted, the recognition of foreign adoptions, the imposition of fees in relation to certain services provided in connection with adoption; to amend the Adoption of Children (Amendment) Act 1980 and the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987; and for other purposes. [Assented to 4 December 1987]

See also Registration of Births, Deaths and Marriages (Adoption) Amendment Act 1987.

*Adoption of Children (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Adoption of Children (Amendment) Act 1987.

Commencement

2. Schedule 1 (6) (a) and (b) and (8), and section 4 in its application to those provisions, shall commence 90 days after the date of assent to this Act.

Principal Act

3. The Adoption of Children Act 1965 is referred to in this Act as the Principal Act.

Amendment of Act No. 23, 1965

4. The Adoption of Children Act 1965 is amended as set out in Schedule 1.

Amendment of Act No. 78, 1980

5. The Adoption of Children (Amendment) Act 1980 is amended by omitting Schedules 1 and 2 and Schedule 3 (16), (17), (18) (a), (b) and (d), (19) (a), (26), (27) and (31).

Amendment of Act No. 58, 1987

6. The Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 is amended by omitting section 2 (7) and item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965.

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

(Sec. 4)

(1) Section 6 (Interpretation)—

Section 6, definition of “the former Acts”—

Omit the definition, insert instead:

“the former Acts” means the Child Welfare Act 1923 and the Child Welfare Act 1939 or either of those Acts;

(2) Section 18 (Who may be adopted)—

Section 18 (2)—

After “is made”, insert “by the applicant or applicants with the consent of the Director-General or”.

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(3) Section 19 (Persons in whose favour adoption orders may be made)—

(a) Section 19 (1A) (a), (b), (c)—

Omit the paragraphs, insert instead:

(a) that—

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- (ii) except as provided by subsection (1B), the child in respect of whom the application for the adoption order is made has been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years before the date of the application; and
- (iii) the welfare and interests of the child will be better served by the making of an adoption order than by the making of any other order relating to the guardianship or custody of the child;

(b) that—

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- (ii) the child in respect of whom the application for the adoption order is made is a child of a class or description prescribed for the purposes of section 68A (1); and
- (iii) having regard to the disability or special needs of the child, it is not likely that the welfare and interests of the child will be better served by any other placement of the child; or

(c) that—

- (i) the man and woman are Aborigines (within the meaning of the Aboriginal Land Rights Act 1983) and are recognised as being married according to the traditions of an Aboriginal community or Aboriginal group to which they belong; and
- (ii) the child in respect of whom the application for the adoption order is made is an Aboriginal (within the meaning of that Act).

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(b) Section 19 (1B)—

Omit the subsection, insert instead:

(1B) Where the Court is of the opinion that, having regard to the circumstances of the case, the welfare and interests of the child will be better served by doing so, the Court may make an adoption order referred to in subsection (1A) even though—

(a) the man and woman who are living together on a bona fide domestic basis although not married to each other have so lived together for a period of less than 3 years; or

(b) the child in respect of whom the application for the adoption order is made has not been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years,

before the date of the application, or where the circumstances described in paragraphs (a) and (b) both apply.

(4) Section 21 (**Court to be satisfied as to certain matters**)—

(a) Section 21 (1A) (a)—

Omit “or”.

(b) Section 21 (1A) (b), (c)—

At the end of section 21 (1A) (b), insert:

; or

(c) generally in respect of applications made by or on behalf of an applicant or applicants who is or are the natural parent or parents or relative or relatives of the child.

(5) Section 26 (**Consents of certain persons to adoptions required**)—

(a) Section 26 (1)—

Omit “or (4) or”, insert instead “, (4) or (4A) or (except in a case to which subsection (4A) applies)”.

(b) Section 26 (4A)—

After section 26 (4), insert:

(4A) In the case of a child who, before the making of the adoption order—

(a) has attained the age of 15 years but not the age of 18 years; and

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- (b) has been brought up, maintained and educated as the child of the applicant or applicants for the period of 5 years before the making of the application,
 the only appropriate person is the child.
- (6) **Section 32 (Court may dispense with consents)—**
- (a) Section 32 (1) (f1)—
 After section 32 (1) (f), insert:
 (f1) the child is the subject of an adoption in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which section 46 would, but for the requirements specified in subsection (2) (b) of that section, apply;
- (b) Section 32 (1) (g)—
 Omit “(a)–(f)”, insert instead “(a)–(f1)”.
- (c) Section 32 (1A) (b)—
 Omit “or”.
- (d) Section 32 (1A) (c), (d)—
 At the end of section 32 (1A) (c), insert:
 ; or
 (d) with the consent of the Director-General, the applicant or applicants for the adoption of the child.
- (7) **Section 33 (Consent of child)—**
 Section 33 (2)—
 At the end of section 33, insert:
 (2) Section 26 does not prevent the Court from making an order under this section without the consent of a child who has attained the age of 15 years but not the age of 18 years.
- (8) **Section 46 (Recognition of foreign adoptions)—**
- (a) Section 46 (2) (b)—
 After section 46 (2) (a), insert:
 (b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters—
 (i) had been resident in that country for 12 months or more; or
 (ii) was domiciled in that country;

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(b) Section 46 (7)—

After section 46 (6), insert:

(7) This section, as in force immediately before its amendment by the Adoption of Children (Amendment) Act 1987, applies in relation to the adoption of a person in a country outside the Commonwealth and the Territories of the Commonwealth effected before that amendment.

(9) Section 61 (**Functions of nominated officer in relation to orders under this Act**)—

After “Marriages”, insert “and shall cause a copy of the memorandum to be sent to the Director-General”.

(10) Section 65A—

After section 65, insert:

Report for applicants where child overseas

65A. (1) Where an application is made by a person or persons to the Director-General for a report relating to the suitability of the applicant or applicants for adopting a child from a place outside the Commonwealth and the Territories of the Commonwealth (whether or not the child is identified), the Director-General may—

- (a) assess the applicant or applicants; and
- (b) prepare the report.

(2) A report under this section may contain—

- (a) information about the applicant or applicants concerned which has been obtained from such persons as the Director-General considers appropriate;
- (b) an assessment by the Director-General of any such information; and
- (c) such other information as the Director-General considers appropriate.

(11) Section 73 (**Regulations**)—

(a) Section 73 (1) (b)—

Omit “the fees”, insert instead “the fixing, by or under the regulations, and payment of fees”.

(b) Section 73 (1) (b)—

After “such fees”, insert “or other charges”.

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(c) Section 73 (1) (c1)—

After section 73 (1) (c), insert:

(c1) the form and content of any assessment made for the purposes of this Act;

(d) Section 73 (1) (f2)—

After section 73 (1) (f1), insert:

(f2) the fixing, by or under the regulations, and payment of fees—

(i) for registration in the register referred to in paragraph (f1);

(ii) for assessments made pursuant to this Act; or

(iii) for conducting searches or providing information, reports and other documents pursuant to this Act or the regulations,

and the waiving of any such fees;