



New South Wales

Adoption Amendment Act 2008 No 103

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New South Wales

Adoption Amendment Act 2008 No 103

Act No 103, 2008

An Act to amend the *Adoption Act 2000* to make further provision with respect to the adoption of children and access to adoption information. [Assented to 4 December 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Adoption Amendment Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Adoption Act 2000 No 75

The *Adoption Act 2000* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

- [1] **Section 8 What principles are to be applied by persons making decisions about the adoption of a child?**
Omit “not for adults wishing to acquire the care of the child,” from section 8 (1) (b).
- [2] **Section 8 (1) (e1)**
Insert after section 8 (1) (e):
(e1) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child’s welfare,
- [3] **Section 24 Who can be adopted?**
Omit section 24 (2) (a). Insert instead:
(a) has been cared for by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or her or their child prior to reaching the age of 18 years, or
- [4] **Section 24 (3)**
Omit the subsection.
- [5] **Section 28 Adoption by couple**
Omit “3 years” from section 28 (4). Insert instead “2 years”.
- [6] **Section 29 Adoption by relative**
Omit “5 years” from section 29 (b). Insert instead “2 years”.
- [7] **Section 30 Adoption by step parent**
Omit “3 years” from section 30 (b). Insert instead “2 years”.
- [8] **Section 30**
Insert at the end of the section after the note:
(2) Subsection (1) (b) does not apply to the adoption of a child who is 18 years of age or more at the time of the application for the adoption order.

[9] Section 33 Aboriginal participation in decision making

Insert at the end of the section:

- (2) In addition, the Director-General or appropriate principal officer must ensure that the placement of the child is made in consultation with a local, community-based and relevant Aboriginal organisation.

[10] Section 37 Torres Strait Islander participation in decision making

Insert at the end of the section:

- (2) In addition, the Director-General or appropriate principal officer must ensure that the placement of the child is made in consultation with a local, community-based and relevant Torres Strait Islander organisation.

[11] Section 46 What is an adoption plan?

Insert after section 46 (3):

- (4) If provisions of the kind referred to in subsection (2) (a) are proposed to be included in an adoption plan, those provisions should be made after consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation.

[12] Section 54 When consent of parent or person who has parental responsibility not required

Omit “5 years” from section 54 (2). Insert instead “2 years”.

[13] Section 55 Consent of child

Omit section 55 (1) (b). Insert instead:

- (b) the counsellor has certified that the child understands the effect of signing the instrument of consent (as required by section 61), and

[14] Section 59 Mandatory written information

Insert at the end of the section:

- (2) In the case of the adoption of a child by a step parent or relative of the child:
 - (a) the applicant (and not the Director-General or appropriate principal officer) must ensure that a person whose consent to the adoption is needed before an adoption order can be made is given the mandatory written information before the person consents or refuses consent to the adoption, and

(b) the requirement to give that information is satisfied if the information given is information in a form approved by the Director-General for the purposes of compliance with this subsection.

(3) In the case of an adoption of a child who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, this section does not require the mandatory written information to be given to the Minister or a delegate of the Minister who can consent to the adoption.

[15] Section 60 When is consent to be given?

Insert “(if required)” after “mandatory written information” in section 60 (b).

[16] Section 63 Child or other person consenting must be counselled

Insert at the end of the section:

(3) This section does not require the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* or any delegate of the Minister to be counselled before giving consent to the adoption of a child who is under the parental responsibility of the Minister.

[17] Section 87 Application to be consented to by Director-General

Omit section 87 (c).

[18] Section 87

Insert at the end of the section:

(2) Despite subsection (1) (a), the consent of the Director-General to an application for an adoption order is not required:

- (a) if the applicant is a step parent or relative of the child, or
- (b) if the application relates to an intercountry adoption.

[19] Section 91

Omit the section. Insert instead:

91 Report required before order made for adoption of child

(1) The Court may not make an order for the adoption of a child under 18 years of age unless a report in writing concerning the proposed adoption has been provided to the Court by the applicant.

- (2) The report is to be accepted by the Court only if it has been prepared by the Director-General, an approved assessor or a principal officer.
- (3) This section does not prevent the Director-General from making a report to the Court in relation to the adoption of a child before the Court if the Director-General considers it appropriate to do so.
- (4) The Court may require the Director-General to make a report in relation to an application for an adoption order made by a person other than the Director-General, but only if the child is under 18 years of age.
- (5) However, the Court is not to require the Director-General to make a report unless the Court considers that the Director-General should report on the case because of:
 - (a) particular concerns about the safety, welfare or well-being of the child concerned, or
 - (b) serious concerns about the reliability or independence of a report made by an approved assessor or a principal officer concerning the case, or
 - (c) other exceptional circumstances.
- (6) The Court may require the Director-General to make such a report within a period of 6 months after the date of the making of the application or such other period as the Court may, having regard to the circumstances of the case, specify.
- (7) In this section, an *approved assessor* means a person, or a person of a class, approved by the Director-General from time to time, by order in writing, to provide a report to the Court for the purposes of this section.

[20] Section 101 Names of adopted children

Omit “unless there are special reasons, related to the best interests of the child, to do so” from section 101 (5).

Insert instead “unless the Court is satisfied that the name change is in the best interests of the child”.

[21] Section 101 (5), note

Insert after section 101 (5):

Note. Section 8 sets out the principles that are to be applied by persons making decisions about the adoption of a child, and includes the principle that a child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.

[22] Section 133A

Insert after section 133:

133A Definition of "presumptive father"

In this Chapter:

presumptive father of an adopted person means a man who claims to be the birth parent of the adopted person and who:

- (a) is shown on the adopted person's original birth certificate as the adopted person's father, or
- (b) is a person whom the Director-General, Registrar or other information source is entitled to presume, under any law (including a law of another State, the Commonwealth or of a country outside Australia), to be the adopted person's father.

[23] Chapter 8, Part 2, Division 1

Insert after the heading to Part 2 of Chapter 8:

Division 1 Access entitlements (adoptions after 2008 changes)

133B Application of Division

This Division applies in respect of an adoption given effect to by an adoption order made on or after the commencement of this Division as a consequence of an application for an adoption order made on or after the commencement of this Division.

Note. Changes to access entitlements were made by the *Adoption Amendment Act 2008* (which inserted this Division into this Act). For access entitlements in relation to adoptions before those changes, see Division 2.

133C Adopted person's rights

- (1) An adopted person is entitled to receive (subject to this Act):
 - (a) the person's original birth certificate, and
 - (b) his or her adopted person's birth record, and

- (c) any prescribed information relating to the adopted person held by an information source.
- (2) Despite subsection (1) (a), an intercountry adopted person is entitled to receive his or her original birth certificate only if such a certificate is held by an information source.
- (3) An adopted person who is less than 18 years of age is not entitled to receive his or her original birth certificate or adopted person's birth record, or prescribed information, except with the consent of:
 - (a) his or her surviving adoptive parents, or
 - (b) the Director-General if there are no surviving adoptive parents or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.

133D Adoptive parent's rights

- (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):
 - (a) the adopted person's original birth certificate, and
 - (b) the adopted person's birth record, and
 - (c) any prescribed information relating to the adopted person held by an information source.
- (2) Despite subsection (1) (a), the adoptive parents of an intercountry adopted person are entitled to receive the adopted person's original birth certificate only if such a certificate is held by an information source.

133E Birth parent's rights

- (1) A birth parent of an adopted person is entitled to receive (subject to this Act):
 - (a) the amended birth certificate of the adopted person if a record of the adoption of the person is registered under the *Births, Deaths and Marriages Registration Act 1995*, and
 - (b) the adopted person's birth record, and
 - (c) any prescribed information relating to the adopted person or adoptive parents held by an information source.
- (2) A birth parent of an adopted person who is less than 18 years of age is not entitled to receive any adoption information held by an information source unless the birth parent produces to the

information source an authority authorising the information source to supply the adoption information issued by the Director-General.

- (3) The Director-General may issue, or refuse to issue, an authority to supply adoption information to the birth parent of an adopted person who is less than 18 years of age.
- (4) The Director-General may refuse to issue the authority only if, in the opinion of the Director-General, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (5) The Director-General is required to comply with any guidelines prescribed by the regulations in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.
- (6) The Director-General may issue an authority to supply adoption information under this section subject to conditions.
- (7) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Director-General.
- (8) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

133F Discretion to supply other information to birth parents

- (1) A designated person may supply a birth parent with prescribed information held by an information source about an adopted person who is less than 18 years of age without production of the amended birth certificate of the adopted person or authority to supply the adoption information if, in the opinion of the designated person, the information could not be used to identify the adopted person or his or her adoptive parents.
- (2) A birth parent of an adopted person may request the Director-General or a principal officer to take such action as is reasonable in the circumstances to ascertain from the adopted person's adoptive parents information of a kind prescribed by the regulations as to the current physical and emotional well-being of the adopted person.
- (3) A birth parent of an adopted person is entitled to receive from the Director-General (or from an information source authorised to supply the information) any information obtained in response to a request made under this section:

- (a) that the Director-General considers does not identify, or could not be used to identify, the adoptive parents, and
 - (b) if, in the opinion of the Director-General, it would promote the welfare and best interests of any of the parties concerned.
- (4) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

133G Non-adopted sibling's rights

- (1) A non-adopted sibling of an adopted person is entitled to receive (subject to this Act) any prescribed information relating to the adopted person.
- (2) A non-adopted sibling who is less than 18 years of age is not entitled to receive any prescribed information relating to an adopted person except with the consent of:
 - (a) the surviving parents of the non-adopted sibling, or
 - (b) the Director-General, if there are no surviving parents or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.
- (3) A non-adopted sibling of an adopted person who is less than 18 years of age is not entitled to receive any prescribed information held by an information source relating to the adopted person unless the non-adopted sibling produces to the information source an authority authorising the information source to supply the prescribed information issued by the Director-General.
- (4) The Director-General may issue, or refuse to issue, an authority to supply adoption information to a non-adopted sibling of an adopted person who is less than 18 years of age.
- (5) The Director-General may refuse to issue the authority only if, in the opinion of the Director-General, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (6) The Director-General is required to comply with any guidelines prescribed by the regulations in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.
- (7) The Director-General may issue an authority to supply adoption information under this section subject to conditions.

- (8) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Director-General.
- (9) In this section, a *non-adopted sibling* of an adopted person means a sibling of an adopted person who is not himself or herself an adopted person.

[24] Chapter 8, Part 2, Division 2

Insert before section 134:

**Division 2 Continuation of former access entitlements
(adoptions before 2008 changes)**

133H Application of Division

This Division does not apply to adoptions to which Division 1 applies.

[25] Section 136 Birth parent's rights

Omit section 136 (2).

[26] Section 136 (7)

Insert after section 136 (6) (before the note):

- (7) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

[27] Section 136A

Insert after section 136:

136A Discretion to withhold supply or to supply subject to conditions
(cf AI Act s 12A)

- (1) The following persons may request the Director-General to act under this section:
 - (a) an adopted person who is 18 or more years old,
 - (b) a birth parent,
 - (c) an adoptive parent of a person who is less than 18 years of age,
 - (d) an adoptive parent of a person who is 18 or more years of age and who has consented to the request being made.

- (2) The Director-General may, at the request of a person referred to in subsection (1):
 - (a) refuse to issue an authority authorising an information source to supply adoption information to which an entitlement arises under this Division, or
 - (b) supply such information subject to conditions specified in writing by the Director-General.
- (3) The Director-General may refuse to issue an authority to supply adoption information under this section only if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned.
- (4) Conditions that may be imposed by the Director-General under this section include conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the Director-General before the adoption information is supplied.
- (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.
- (6) An information source must not supply any adoption information that is the subject of an authority to supply adoption information imposing conditions on its supply unless the conditions are complied with.
- (7) The Director-General may not (despite section 206) delegate to another person the exercise of any function of the Director-General under this section.

[28] Chapter 8, Part 2, Division 3, heading

Insert before section 137:

Division 3 Miscellaneous

[29] Section 137 Access to adoption information by relatives and others after death of adopted person or birth parent

Insert after section 137 (5):

- (5A) This section does not limit the entitlements of a non-adopted sibling of an adopted person under Division 1.

[30] Section 140 Discretion to supply adoption information

Omit section 140 (3). Insert instead:

- (3) The Director-General may supply (or authorise an information source to supply) adoption information or other information to any person who is not entitled under this Part to receive adoption information or other information under this Part if, in the opinion of the Director-General, it is reasonable to do so.

[31] Section 141 Discretion to withhold supply (or authorise the withholding of supply) of information or to supply it subject to conditions

Omit the section.

[32] Sections 180 and 180A

Omit section 180. Insert instead:

180 Restriction on publication of material identifying persons affected by adoption application

- (1) A person must not publish material that identifies, or is reasonably likely to identify, a person as a person affected by an adoption application.
Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.
- (2) For the purposes of this section, each of the following persons is a *person affected* by an adopted application:
 - (a) a child in relation to whom an adoption application is made,
 - (b) a person who makes an adoption application,
 - (c) the mother and father of the child in relation to whom an adoption application is made, and any other person who has parental responsibility for the child when the adoption application is made.
- (3) This section does not prohibit:
 - (a) the publication of any material with the authority of the Court under section 180A, or
 - (b) the publication of an official report of proceedings in the Court that includes the name of any person the publication of which would otherwise be prohibited by this section.
- (4) This section does not prohibit the publication of any material after an adoption application and any proceedings in the Court with respect to the application have been finally disposed of:

- (a) if the person identified (or reasonably likely to be identified) as a person affected by the adoption application consents to being identified, and
 - (b) the material does not identify (and is not reasonably likely to identify) any person affected by the adoption application who does not consent to being identified.
- (5) In subsection (4), a reference to the consent of a person affected by an adoption application is, if that person is a child less than 18 years of age, a reference to the consent of the person who has parental responsibility for the child.
- (6) In this section:
adoption application means an application under this Act or under a law of another State for an adoption order.

180A Court authorisation of publication of identifying material

- (1) The Court may, during any proceedings with respect to an adoption application, by order, authorise the publication of material that identifies, or is reasonably likely to identify, a person affected by the adoption application, other than material identifying birth parents, if it is satisfied that:
- (a) each person affected by the adoption application consents to the publication (other than a child in relation to whom the adoption application is made who is under 18 years of age), and
 - (b) it is appropriate in the circumstances of the case to do so.
- (2) If a child in relation to whom the adoption application is made is 12 or more years of age and is capable of giving consent, the Court must not authorise the publication of the material unless the child also consents to the publication.
- (3) The Court may dispense with the consent of a person affected by an adoption application if that person is no longer alive, or cannot, after reasonable inquiry, be found or identified, or if there is, in the opinion of the Court, any other sufficient reason to dispense with their consent.
- (4) The Director-General is entitled to appear and be heard at any proceedings the purpose of which is to determine an application for an order of the Court under this section.
- (5) The Court is not to make an order authorising publication of material under this section unless satisfied that the Director-General has been given reasonable notice of the application for authorisation.

- (6) In this section:
- adoption application* has the meaning given by section 180.
- material identifying birth parents* means any material that identifies, or is reasonably likely to identify, a person as a person who, when an adoption application is made, is the mother or father of the child to whom the adoption application relates or a person who has parental responsibility for the child.
- person affected* by an adoption application has the meaning given by section 180.

[33] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Adoption Amendment Act 2008

[34] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Adoption Amendment Act 2008**

18 Definition

In this Part, the *2008 amending Act* means the *Adoption Amendment Act 2008*.

19 Changes to adoption process

- (1) An amendment to Chapter 4 made by the 2008 amending Act applies in respect of an application for an adoption order made before the commencement of the amendment only if the Court, at the request of the applicant or applicants, directs that the amendment should be applied in respect of the application.
- (2) However, section 59 (2), as inserted by the 2008 amending Act, or an amendment to section 87 or 91 made by the 2008 amending Act does not apply in respect of an application for an adoption order made before that insertion or the commencement of the amendment (as the case requires).

20 Discretion to supply information

The amendment made to section 140 by the 2008 amending Act extends to an adoption given effect to by an adoption order made before the commencement of the amendment.

21 Discretion to withhold supply of information

- (1) A request made under section 141 before the repeal of that section is taken, on that repeal, to have been made under section 136A (as inserted by the 2008 amending Act).
- (2) Any authority issued by the Director-General under section 141 that, immediately before its repeal by the 2008 amending Act, still had effect, continues to have effect under section 136A (as inserted by the 2008 amending Act).

22 Publication of identifying material

Sections 180 and 180A, as inserted by the 2008 amending Act, extend to the publication of material, on or after the commencement of those sections, relating to adoption applications made or disposed of before the insertion of those sections by that Act.

[Agreement in principle speech made in Legislative Assembly on 25 September 2008
Second reading speech made in Legislative Council on 27 November 2008]

BY AUTHORITY