

Passed by both Houses



New South Wales

Adoption Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Adoption Amendment Bill 2006

Act No , 2006

An Act to amend the *Adoption Act 2000* in relation to the adoption of adults, the adoption of Aboriginal and Torres Strait Islander children and certain other matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Adoption Amendment Act 2006*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Adoption Act 2000 No 75

The *Adoption Act 2000* is amended as set out in Schedules 1 and 2.

4 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The *Law Enforcement (Powers and Responsibilities) Act 2002* is amended as set out Schedule 3.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (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 Principal amendments to Adoption Act 2000

(Section 3)

[1] Section 13 Accreditation of adoption service providers

Omit “The regulations may prescribe” from section 13 (2).

Insert instead “The Director-General may, by order published in the Gazette, establish”.

[2] Section 13 (3) and (4)

Insert after section 13 (2):

(3) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order referred to in subsection (2) in the same way as they apply to a statutory rule within the meaning of that Act.

(4) A copy of any standards in force under subsection (2) (b) must be kept posted on the Department’s internet website.

[3] Section 24 Who can be adopted?

Omit “before the application was made” from section 24 (2) (a).

Insert instead “prior to the child reaching the age of 18 years”.

[4] Section 24 (3)

Insert after section 24 (2) (after the note):

(3) An adoption order may also be made in relation to a child who was 18 or more years of age when the application for the order was made, but was brought up, maintained and educated by the applicant for less than the period referred to in subsection (2) (a), if the Court is satisfied that there are exceptional circumstances that justify making the order.

[5] Section 46 What is an adoption plan?

Insert after section 46 (2):

(3) An adoption plan for an Aboriginal child or Torres Strait Islander child to be adopted by persons of whom neither is an Aboriginal or Torres Strait Islander, as the case may be, must make provision of the kind referred to in subsection (2) (a).

[6] Section 67 When can Court dispense with consent of person other than the child?

Insert at the end of section 67 (1) (c):

, or

- (d) if an application has been made to the Court for the adoption of the child by one or more persons who are authorised carers for the child:
 - (i) the child has established a stable relationship with those carers, and
 - (ii) the adoption of the child by those carers will promote the child's welfare, and
 - (iii) in the case of an Aboriginal child, alternatives to placement for adoption have been considered in accordance with section 36.

[7] Section 79 Duration of parental responsibility

Omit section 79 (1) (d).

[8] Section 79 (2A) and (2B)

Insert after section 79 (2):

- (2A) The Director-General's parental responsibility for a child under section 75 or 78 is suspended while the child is placed in some other person's care pursuant to subsection (2).
- (2B) The Director-General may at any time, and for any reason or no reason, make an order terminating a child's placement under subsection (2) and directing that the child be returned to the parental responsibility of the Director-General.

[9] Sections 79A and 79B

Insert after section 79:

79A Children under the parental responsibility of Director-General leaving or being removed from care (cf Children and Young Persons (Care and Protection) Act 1998, section 232)

If:

- (a) a child who is under the parental responsibility of the Director-General, or under the care responsibility of a person under section 79 (2), has, without lawful excuse, left, or been removed from, the care of the Director-General or person, as the case may be, and

(b) the Director-General is of the opinion that the child should be returned to that care,
the Director-General may, by order in writing, direct that the child be returned to that care.

79B Power of search for and removal of children in need of care and protection (cf Children and Young Persons (Care and Protection) Act 1998, section 233)

- (1) The Director-General or a police officer may apply to an authorised officer for a search warrant if the Director-General or police officer has reasonable grounds for believing that:
 - (a) a child whom the Director-General has placed in some other person's care responsibility pursuant to section 79 (2), or
 - (b) a child the subject of an order in force under section 79 (2B) or 79A,
may be found in any premises.
- (2) An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant:
 - (a) to enter the premises (if any) specified in the warrant, and
 - (b) to search the premises (if any) or elsewhere, or at large, for the presence of the child referred to in subsection (1) (a) or (b), and
 - (c) to remove the child, and
 - (d) to return the child to, or to place the child in, the custody of the Director-General or the person having care responsibility for the child under section 79 (2), as the case requires.
- (4) An application for a warrant or warrant may specify one or more addresses or other descriptions of premises. However, it is not necessary to specify an address or other description of premises in an application for a warrant or in a warrant.
- (5) It is not necessary in any search warrant issued under this section to name any particular child.
- (6) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

- (7) In this section, *authorised officer* has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[10] Section 143A

Insert after section 143:

143A Application of State Records Act 1998

- (1) This Part has effect despite the provisions of the *State Records Act 1998*.
- (2) Accordingly, the provision of information or documents in accordance with this Part does not constitute an offence under that Act.

[11] Section 202A

Insert after section 202:

202A Entry and inspection under search warrant

- (1) The Director-General or a police officer may apply to an authorised officer for a search warrant if the Director-General or police officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.
- (2) An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant:
- (a) to enter the premises, and
- (b) to inspect the premises for evidence of a contravention of this Act or the regulations.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section, *authorised officer* has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[12] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Adoption Amendment Act 2006

[13] **Schedule 3, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Adoption Amendment Act 2006**

13 Definition

In this Part:

the 2006 amending Act means the *Adoption Amendment Act 2006*.

14 Accreditation standards

The accreditation standards prescribed by the regulations under section 13, as in force immediately before that section was amended by the 2006 amending Act, are taken to have been established by the Director-General under that section, as amended by that Act, and may accordingly be varied or revoked under that section as so amended.

15 Who can be adopted?

Section 24, as amended by the 2006 amending Act, does not apply to any adoption order arising from an application for adoption made before the commencement of the amendments made to that section by that Act.

16 What is an adoption plan?

Section 46, as amended by the 2006 amending Act, does not apply to any adoption plan that accompanied an application for an adoption order that was made before the commencement of the amendment made to that section by that Act.

17 When can Court dispense with consent of person other than the child?

Section 67, as amended by the 2006 amending Act, does not apply to proceedings on an application for an adoption order that was made before the commencement of the amendment to that section made by Schedule 1 [6] to that Act.

Schedule 2 Amendments to Adoption Act 2000 in relation to changes in terminology

(Section 3)

- [1] **Section 10 Adoption services to be provided by or on behalf of Director-General**
Omit “care of” from section 10 (2) (c).
Insert instead “care responsibility for”.
- [2] **Section 10 (2) (d)**
Omit “guardianship”. Insert instead “parental responsibility”.
- [3] **Section 24 Who can be adopted?**
Omit “or custody” from section 24 (2) (b).
Insert instead “responsibility”.
- [4] **Section 49 Notice to be given of adoption plan**
Omit “care of”. Insert instead “care responsibility for”.
- [5] **Section 52 Consent of parents and persons who have parental responsibility generally required**
Omit “guardian of” from section 52 (a) (ii).
Insert instead “person who has parental responsibility for”.
- [6] **Section 52 (b)**
Omit “parent or guardian of”.
Insert instead “parent of, or person who has parental responsibility for,”.
- [7] **Section 53 Ways in which parent or person who has parental responsibility can give consent**
Omit “parent or guardian of” from section 53 (1).
Insert instead “parent of, or person who has parental responsibility for,”.
- [8] **Section 53 (1) (b) (iv)**
Omit “a foster parent who has had care of”.
Insert instead “an authorised carer who has had care responsibility for”.

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- [9] **Section 54 When consent of parent or person who has parental responsibility not required**
Omit “guardian” from section 54 (1) (c).
Insert instead “person who has parental responsibility”.
- [10] **Section 54 (2)**
Omit “in the care of”. Insert instead “cared for by”.
- [11] **Section 56 Birth father to be given opportunity to consent**
Omit “guardian” wherever occurring in section 56 (1) (a) and (2) (a).
Insert instead “person who has parental responsibility”.
- [12] **Section 67 When can Court dispense with consent of person other than the child?**
Omit “a parent or guardian of” from section 67 (1) (c).
Insert instead “a parent of, or person who has parental responsibility for,”.
- [13] **Section 67 (1) (c)**
Omit “the parent or guardian”.
Insert instead “the parent or person who has parental responsibility”.
- [14] **Section 73 Revocation of consent**
Omit “guardianship of” wherever occurring in section 73 (5) and (6).
Insert instead “parental responsibility for”.
- [15] **Part 6, heading**
Omit “Guardianship of”. Insert instead “Parental responsibility for”.
- [16] **Part 6, note to Part**
Omit “guardianship of”. Insert instead “parental responsibility for”.
- [17] **Part 6, note to Part**
Omit “Guardianship”. Insert instead “Parental responsibility”.
- [18] **Part 6, note to Part**
Omit “foster parents”. Insert instead “authorised carers”.

- [19] Section 75 Parental responsibility for citizen child awaiting adoption**
Omit “**Guardianship**” and “**guardianship**” wherever occurring in section 75 (1) and (7).
Insert instead “**Parental responsibility**” and “**parental responsibility**”, respectively.
- [20] Section 75 (1)**
Omit “is guardian of”. Insert instead “has parental responsibility for”.
- [21] Section 75 (5), (8) (c) and (11)**
Omit “guardianship of” wherever occurring.
Insert instead “parental responsibility for”.
- [22] Section 75 (6)**
Omit “guardianship”. Insert instead “parental responsibility”.
- [23] Section 75 (7)**
Omit “becomes the guardian of”.
Insert instead “takes parental responsibility for”.
- [24] Section 75 (7)**
Omit “is the child’s guardian”.
Insert instead “has parental responsibility for the child”.
- [25] Section 75 (7) and (8) (c)**
Omit “guardianship renunciation” wherever occurring.
Insert instead “parental responsibility renunciation”.
- [26] Section 75 (9)**
Omit “is guardian”. Insert instead “has parental responsibility”.
- [27] Section 75 (11)**
Omit “*guardianship*” from the definition of *guardianship renunciation instrument*.
Insert instead “*parental responsibility*”.

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- [28] **Section 75 (11)**
Omit “be guardian of” from the definition of *guardianship renunciation instrument*.
Insert instead “have parental responsibility for”.
- [29] **Section 76 Renunciation of parental responsibility for child present in another State**
Omit “guardianship renunciation” wherever occurring in section 76 (1), (2) and (3).
Insert instead “parental responsibility renunciation”.
- [30] **Section 76 (1)**
Omit “is the guardian of”. Insert instead “has parental responsibility for”.
- [31] **Section 76 (1) (c) and (d) and (4)**
Omit “guardianship of” wherever occurring.
Insert instead “parental responsibility for”.
- [32] **Section 76 (2)**
Omit “be guardian of”. Insert instead “have parental responsibility for”.
- [33] **Section 76 (4), definition of “guardianship renunciation instrument”**
Omit “*guardianship*”. Insert instead “*parental responsibility*”.
- [34] **Section 77 Parental responsibility for certain non-citizen children awaiting adoption**
Omit “is the guardian of” from section 77 (2).
Insert instead “has parental responsibility for”.
- [35] **Section 77, note**
Omit “guardianship”. Insert instead “parental responsibility”.
- [36] **Section 78 Parental responsibility reports—citizen and non-citizen children**
Omit “is guardian” from section 78 (1).
Insert instead “has parental responsibility”.

[37] Section 78 (1)

Omit “becoming guardian”.

Insert instead “taking over parental responsibility”.

[38] Section 78 (1)

Omit “be guardian”. Insert instead “have parental responsibility”.

[39] Section 78 (2)

Omit “guardianship or other”.

[40] Section 78 (3) (b)

Omit “remain guardian of”.

Insert instead “continue to have parental responsibility for”.

[41] Section 79 Duration of parental responsibility

Omit “be guardian of” wherever occurring in section 79 (1).

Insert instead “have parental responsibility for”.

[42] Section 79 (1) (c) and (f) and (4)

Omit “guardianship of” wherever occurring.

Insert instead “parental responsibility for”.

[43] Section 79 (2)

Omit “of whom the Director-General is guardian”.

Insert instead “for whom the Director-General has parental responsibility”.

[44] Section 79 (2)

Insert “responsibility” after “in the care”.

[45] Section 79 (3)

Omit “is guardian of”. Insert instead “has parental responsibility for”.

[46] Section 92 Care of child after refusal of an application

Omit “for the care and custody of”.

Insert instead “in relation to the parental responsibility for”.

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- [47] **Section 93 Discharge of adoption orders**
Omit “custody or guardianship of” from section 93 (7) (c).
Insert instead “parental responsibility for”.
- [48] **Section 96 Effect of adoption order on parental responsibility and previous adoption**
Omit “guardianship of” from section 96 (1) (a).
Insert instead “parental responsibility for”.
- [49] **Section 176 Definitions**
Omit “parent or guardian of” from paragraph (a) of the definition of *prohibited adoption advertising*.
Insert instead “parent of, or person who has parental responsibility for,”.
- [50] **Section 180 Restriction on publication of identity of parties**
Omit “guardian of” from section 180 (1) (a).
Insert instead “person who has parental responsibility for”.
- [51] **Section 184 Undue influence**
Omit “parent or guardian of” from section 184 (1).
Insert instead “parent of, or person who has parental responsibility for,”.
- [52] **Section 184 (1) (a)–(c)**
Omit “guardian” wherever occurring.
Insert instead “person who has parental responsibility”.
- [53] **Section 185 Improper witnessing of consent**
Omit “parent or guardian of” from section 185 (a).
Insert instead “parent of, or person who has parental responsibility for,”.
- [54] **Dictionary**
Omit “care and custody of” from paragraph (c) of the definition of *adoption service*.
Insert instead “care responsibility of or parental responsibility for”.

[55] Dictionary

Insert in alphabetical order:

authorised carer means any person who:

- (a) has care and responsibility for a child under out-of-home care arrangements made under the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) has responsibility for the day-to-day care, welfare and development of a child under the *Family Law Act 1975* of the Commonwealth.

care responsibility has the same meaning as in section 157 of the *Children and Young Persons (Care and Protection) Act 1998*.

[56] Dictionary, definition of “decision”

Omit “care and custody of” from paragraph (c).

Insert instead “care responsibility of or parental responsibility for”.

[57] Dictionary, definition of “decision”

Omit “guardianship or other” from paragraph (d).

[58] Dictionary, definitions of “foster parent” and “guardian”

Omit the definitions.

Adoption Amendment Bill 2006

Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 3

**Schedule 3 Consequential amendment of Law
Enforcement (Powers and
Responsibilities) Act 2002**

(Section 4)

Schedule 2 Search warrants under other Acts

Insert in alphabetical order of Acts:

Adoption Act 2000, sections 79B and 202A