

South Australia



ADOPTION (MISCELLANEOUS) AMENDMENT ACT 1996

No. 83 of 1996

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Further Amendments of Principal Act



ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 83 of 1996

An Act to amend the Adoption Act 1988.

[Assented to 12 December 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Adoption (Miscellaneous) Amendment Act 1996*.
- (2) The *Adoption Act 1988* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Repeal of heading

3. The heading to Division 1 of Part 1 of the principal Act is repealed.

Amendment of s. 4—Interpretation

4. Section 4 of the principal Act is amended—

- (a) by inserting before the definition of "Australian law" in subsection (1) the following definition:

"adoptive parent", of a child, means a person who has adopted the child in accordance with the provisions of this Act or who is recognised under this Act as having adopted the child;;

- (b) by inserting after the definition of "Australian law" in subsection (1) the following definitions:

"birth parent", of a child, means—

- (a) the woman who gave birth to the child; or

(b) the man who—

(i) acknowledges paternity of the child; or

(ii) where paternity has not been acknowledged by anyone or is in dispute—has been found to be the father by a court (whether of this or any other jurisdiction) or has been adjudged to be the father under the *Family Relationships Act 1975* or any corresponding law of another jurisdiction;

"**Chief Executive**" means the Chief Executive of the Department for Family and Community Services;;

(c) by inserting after the definition of "**child born outside lawful marriage**" in subsection (1) the following definitions:

"**the Convention**" means the *Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* done at The Hague on 29 May 1993;

"**Convention country**" means a country outside Australia in respect of which the Convention has entered into force, but does not include any country in respect of which Australia has raised an objection in accordance with Article 44 of the Convention;;

(d) by striking out from the definition of "**the Court**" in subsection (1) "*Children's Court*" and substituting "*Youth Court*";

(e) by striking out the definition of "**the Director-General**" in subsection (1) and substituting the following definition:

"**Family Law Act 1975**" means the *Family Law Act 1975* (Cwth), as amended from time to time;;

(f) by striking out the definition of "**guardian**" in subsection (1) and substituting the following definition:

"**guardian**", of a child, means a person (other than the Chief Executive) who is the legal guardian of the child or has the legal custody of the child or any other person who stands *in loco parentis* to the child and has done so for a significant length of time;.

Repeal of Division

5. Division 2 of Part 1 of the principal Act (including the heading to that Division) is repealed.

Repeal of heading

6. The heading to Division 3 of Part 1 of the principal Act is repealed.

Insertion of s. 7A

7. The following section is inserted in Part 1 of the principal Act after section 7:

Minister to ensure consultation undertaken on operation of Act

7A. The Minister must ensure that regular consultation is undertaken with representatives of organisations with a special interest in the adoption of children and any other interested persons in relation to the operation of this Act.

Amendment of s. 8—General power of the Court

8. Section 8 of the principal Act is amended by striking out from subsection (1) "The" and substituting "Subject to any law of the Commonwealth, the".

Insertion of s. 8A

9. The following section is inserted in the principal Act after section 8:

Court must consider opinion of child

8A. (1) Before making an order for the adoption of a child of or over 5 years of age, the Court must interview the child to determine what the child's opinion is in relation to the proposed order (unless satisfied that the child is intellectually incapable of expressing an opinion).

(2) An interview under this section must not be conducted in the presence of any party to the adoption.

(3) In determining whether to make an order for adoption of a child the Court must take into account any opinion expressed by the child in an interview under this section.

(4) The Court may determine the weight to be given to an opinion expressed by a child in an interview under this section, taking into account the age of the child and any other factors the Court considers relevant.

Amendment of s. 9—Effect of adoption order

10. Section 9 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) The making of an adoption order in relation to a child does not affect any vested or contingent proprietary right acquired by the child before the making of the adoption order.

Amendment of s. 10—No adoption order in certain circumstances

11. Section 10 of the principal Act is amended—

(a) by striking out "to guardianship in the interests of the child" and substituting ", in the interests of the child, to any alternative order that may be made under the laws of the State or the Commonwealth";

(b) by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) The Court will not consider an application for adoption made by or on behalf of a person who is cohabiting with a birth or adoptive parent of the child in a marriage relationship unless the Family Court of Australia has given that person leave to proceed with the application for adoption under section 60G of the *Family Law Act 1975*.

Amendment of s. 11—Adoption of Aboriginal child

12. Section 11 of the principal Act is amended by striking out from subsection (1) "to guardianship in the interests of the child" and substituting ", in the interests of the child, to any alternative order that may be made under the laws of the State or the Commonwealth".

Amendment of s. 12—Criteria affecting prospective adoptive parents

13. Section 12 of the principal Act is amended—

- (a) by inserting in subsection (1) "a continuous period of" after "for";
- (b) by inserting in subsection (2) "a continuous period of" after "for";
- (c) by inserting in subsection (3)(a) "a continuous period of" after "for".

Repeal of s. 13

14. Section 13 of the principal Act is repealed.

Amendment of s. 14—Discharge of adoption orders on ground of fraud

15. Section 14 of the principal Act is amended—

- (a) by striking out from subsection (1) "Supreme";
- (b) by striking out from subsection (2) "Supreme".

Amendment of s. 15—Consent of parent or guardian

16. Section 15 of the principal Act is amended—

- (a) by inserting in subsection (1) "(whether the parent or guardian is present in Australia or not)" after "adoption" (second occurring);
- (b) by striking out paragraphs (b) and (c) of subsection (5) and substituting the following paragraph:
 - (b) must (except where the Minister or the Chief Executive is the guardian)—
 - (i) be witnessed in accordance with the regulations; and
 - (ii) be endorsed by a person authorised by the Chief Executive with a statement to the effect that the parent or guardian has been counselled by that person at least three days before the giving of consent and appears to understand the consequences of adoption and the procedures for revoking the consent.;

(c) by striking out subsection (8).

Amendment of s. 17—Consent given under law of another jurisdiction

17. Section 17 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection :

(2) Subject to any law of the Commonwealth, the requirements of this Act relating to consent to adoption will be taken to have been complied with in relation to the adoption of a child from a Convention country if the laws of that country relating to consent to such an adoption have been complied with.

Amendment of s. 18—Court may dispense with consents

18. Section 18 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) An application may be made under this section by the Chief Executive or a party to the adoption (including the child).

Amendment of s. 21—Recognition of adoption under foreign law

19. Section 21 of the principal Act is amended—

(a) by inserting before subsection (1) the following subsection:

(a1) Subject to any law of the Commonwealth, an adoption order made under the law of a Convention country will be recognised under the law of the State as having the same effect as an adoption order under the law of the State.;

(b) by striking out from subsection (1) "a country outside Australia" and substituting "any other country outside Australia";

(c) by striking out from subsection (2) "Supreme".

Amendment of s. 22—Court to consider report on suitability of adoptive parents

20. Section 22 of the principal Act is amended—

(a) by inserting in subsection (1)(a) "where the Chief Executive is the guardian of the child under section 25—" before "the circumstances";

(b) by inserting in subsection (1)(b) "in any case—" before "the suitability".

Amendment of s. 25—Guardianship of child awaiting adoption

21. Section 25 of the principal Act is amended—

(a) by striking out paragraphs (e) and (f) of subsection (1) and substituting the following paragraphs:

(e) the child is placed in the custody or under the guardianship of a person by order of a court; or

(f) the Chief Executive orders, in writing, that the child be placed in the custody of a parent of the child.;

(b) by inserting in subsection (2) "(including a parent of the child)" after "suitable person";

(c) by inserting after subsection (3) the following subsection:

(4) This section does not apply to a child who is under the guardianship of the Minister.

Insertion of s. 26A

22. The following section is inserted in the principal Act after section 26:

Arrangements between parties to adoption

26A. (1) If a party to the adoption or proposed adoption of a child wishes to enter into an arrangement with another party to the adoption for the provision of information, contact or any other matters related to the welfare of the child, or to vary such an arrangement, the Chief Executive will endeavour to facilitate the making of the arrangement or variation.

(2) For the purposes of this section, the birth parents and the adoptive parents will be taken to be the parties to the adoption.

(3) The Chief Executive must ensure that the opinions of the child (so far as they are ascertainable) are taken into account in formulating any arrangement or variation under this section.

(4) An arrangement may not be entered into under this section in relation to an adopted child who has attained the age of 18 years and an arrangement relating to an adopted child will terminate on the child attaining the age of 18 years.

(5) The Chief Executive must ensure that an arrangement entered into under this section, or any variation to such an arrangement, is reduced to writing and that copies of the arrangement or variation are provided to the parties to the arrangement.

(6) The Chief Executive will maintain a register of arrangements entered into under this section.

(7) An arrangement entered into under this section is not enforceable in any court and breach of an arrangement or failure to enter into such an arrangement does not affect the validity of an adoption order or of any consent to an adoption.

(8) This section applies only in relation to children adopted after the commencement of this Act.

Substitution of s. 27

23. Section 27 of the principal Act is repealed and the following heading and sections are substituted:

PART 2A OPEN ADOPTIONS

Right to obtain information once adopted person turns 18

27. (1) Subject to this Part, an adopted person who has attained the age of 18 years or, if the adopted person consents or is dead or cannot be located, a lineal descendant of the adopted person, may obtain—

- (a) the names and dates of birth (if known) of the person's birth parents;
- (b) any other information in the possession of the Chief Executive relating to the birth parents and the circumstances of the adoption¹;
- (c) any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adopted person;
- (d) information in the possession of the Chief Executive relating to a sibling (whether of the whole or half blood) of the person who has also been adopted and who has also attained the age of 18 years.

(2) Subject to this Part, if an adopted person has attained the age of 18 years, a birth parent of the person or, if the birth parents consent or are dead or cannot be located, a person who would have been a relative of the person if the adoption order had not been made, may obtain—

¹See also section 41 in relation to birth certificates.

- (a) the names of the adoptive parents and the adopted person;
- (b) any other information in the possession of the Chief Executive relating to the adoptive parents and the adopted person;
- (c) any message, information or item given to the Chief Executive by an adopted person or adoptive parent with instructions that it be provided to the birth parent.

(3) Subject to this Part, if an adopted person has attained the age of 18 years, an adoptive parent of the person may, with the consent of the adopted person, obtain—

- (a) any information in the possession of the Chief Executive relating to the adopted person's birth parents;
- (b) any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adoptive parents.

(4) In providing information under this section the Chief Executive must not reveal the name of a person (other than a birth parent and any siblings of the whole or half blood of the adopted person who have attained the age of 18 years) who would have been a relative of the adopted person if the adoption order had not been made.

(5) Nothing in this section entitles a person to obtain information the disclosure of which the Chief Executive has determined, in his or her absolute discretion, would be an unjustifiable intrusion on the privacy of the person to whom the information relates.

(6) The Chief Executive must establish and maintain written guidelines regarding the exercise of the Chief Executive's discretion under subsection (5).

(7) The Chief Executive must give a copy of the guidelines, on request, to any person.

Information may be provided earlier, in the Chief Executive's discretion

27A. The Chief Executive will disclose information to an adopted person or a birth parent before an entitlement to the information arises under section 27, if consent to the disclosure is given by—

- (a) in the case of disclosure to an adopted person—
 - (i) the adoptive parents; and
 - (ii) if the name of a birth parent is to be disclosed—that parent; or
- (b) in the case of disclosure to a birth parent—
 - (i) the adoptive parents; and
 - (ii) if the adopted person has attained the age of 12 years—the adopted person.

Limitation of right to obtain information where adoption occurred before commencement of Act

27B. (1) A person adopted before the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the person to be traced not be disclosed.

(2) A birth parent of a person adopted prior to the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the birth parent to be traced not be disclosed.

(3) An adoptive parent of a person adopted prior to the commencement of this Act may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the adoptive parent to be traced not be disclosed.

(4) Subject to subsection (5), where a direction has been lodged under this section, the Chief Executive must not disclose information in contravention of the direction.

(5) Where—

(a) a direction has been lodged by an adoptive parent; but

(b) a direction has not been lodged by the adopted person,

the adoptive parent's direction does not operate to prevent the disclosure of information that is relevant to the welfare or whereabouts of the adopted person.

(6) A person lodging a direction under this section may provide the Chief Executive with written reasons for the direction and, if so provided, the reasons must be released by the Chief Executive if a request for information about the person is subsequently made under this Part.

(7) A direction under this section—

(a) may, if the adopted person or adoptive or birth parent is mentally incapacitated within the meaning of the *Guardianship and Administration Act 1993*, be given on behalf of that person or parent by his or her guardian appointed under that Act; and

(b) has effect for a period of five years, unless revoked earlier; and

(c) may, on the expiration of a period for which it has effect, be renewed; and

(d) must be lodged, renewed or revoked in a manner approved by the Chief Executive (but the Chief Executive cannot require that a renewal be lodged in person).

(8) The Chief Executive will, if necessary, send a person who has lodged a direction under this section a renewal notice approximately 6 months, 3 months and 2 weeks before the date on which the direction will expire, unless the person has requested in writing that no such notices be sent.

(9) Subject to any written directions of the person to the contrary, a renewal notice will be sent to a person at his or her address last known to the Chief Executive.

Interviews

27C. The Chief Executive may, before providing information to a person or accepting a direction from a person under this Part, invite the person to participate in an interview with a person authorised by the Chief Executive.

Minister's power to authorise disclosure

27D. Despite anything contained in this Part, the Minister may authorise disclosure of any information if the disclosure is necessary in the interests of the welfare of an adopted person.

Requirement for consent is waived on death

27E. A requirement under this Part that the consent of a person be obtained before information may be disclosed is waived on the death of that person.

Amendment of s. 29—Negotiations for adoption

24. Section 29 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (4) and substituting the following paragraph:

(b) acts improperly in the course of or in relation to the adoption or proposed adoption of a child.;

(b) by inserting after subsection (4) the following subsection:

(4a) For the purposes of subsection (4), an organisation will be taken to have acted improperly in the course of or in relation to an adoption or proposed adoption if a servant or agent of the organisation acts improperly in the course of or in relation to the adoption or proposed adoption.

Amendment of s. 31—Publication of names, etc., of persons involved in proceedings

25. Section 31 of the principal Act is amended—

(a) by inserting in subsection (1)(a) "or any other Australian law that substantially corresponds to this Act" after "Act";

(b) by inserting in subsection (1)(b) "or any other Australian law that substantially corresponds to this Act" after "Act";

(c) by inserting in subsection (1)(c) "or any other Australian law that substantially corresponds to this Act" after "Act".

Amendment of s. 36—Confidentiality

26. Section 36 of the principal Act is amended by inserting after paragraph (b) the following paragraph:

(c) with the consent of the person to whom the information relates.

Further amendments

27. The principal Act is further amended in the manner set out in the schedule.

SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Long Title	Strike out "to repeal the Adoption of Children Act 1967; to amend the Children's Protection and Young Offenders Act 1979;".
Section 2	This section is repealed.
Section 3	This section is repealed.
Section 9(1)	Strike out "natural" and substitute "birth".
Section 9(2)	Strike out "natural" and substitute "birth".
Section 9(3)(a)	Strike out "natural" and substitute "birth".
Section 10(a)	Strike out "natural" and substitute "birth".
Section 12(3)(a)	Strike out "natural" and substitute "birth".
Section 15(4)(b)(iv)	Strike out "Director-General" and substitute "Chief Executive".
Section 15(6)	Strike out "Director-General" (twice occurring) and substitute, in each case, "Chief Executive".
Section 16(2)(c)	Strike out "Director-General" and substitute "Chief Executive".
Section 19(1)	Strike out "Director-General" and substitute "Chief Executive".
Section 19(2)	Strike out "Director-General" and substitute "Chief Executive".
Section 22(1)	Strike out "Director-General" and substitute "Chief Executive".
Section 25(1)	Strike out "Director-General" (wherever occurring) and substitute, in each case, "Chief Executive".
Section 25(2)	Strike out "Director-General" (wherever occurring) and substitute, in each case, "Chief Executive".
Section 25(3)	Strike out "Director-General" and substitute "Chief Executive".
Section 28(1)	Strike out "Director-General" and substitute "Chief Executive".
Section 28(2)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000 or two years imprisonment.
Section 29(1)	Strike out the penalty provision at the foot of this subsection and substitute the following: Maximum penalty: \$10 000 or two years imprisonment.

- Section 29(2)(b) Strike out "Director-General" and substitute "Chief Executive".
- Section 29(3) Strike out "Director-General" and substitute "Chief Executive".
- Section 29(4) Strike out "Director-General" and substitute "Chief Executive".
- Section 30 Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$10 000 or two years imprisonment.
- Section 31(1) Strike out the penalty provision at the foot of this subsection and substitute the following:
- Maximum penalty: \$20 000.
- Section 31(2) Strike out "Director-General" and substitute "Chief Executive".
- Section 32 Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$20 000.
- Section 33 Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$5 000 or one years imprisonment.
- Section 34 Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$5 000 or one years imprisonment.
- Section 35 Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$5 000 or one years imprisonment.
- Section 36 Strike out "natural" and substitute "birth".
- Strike out the penalty provision at the foot of this section and substitute the following:
- Maximum penalty: \$10 000.
- Section 37 Strike out subsections (1) and (2).
- Section 39(1) Strike out "Director-General" and substitute "Chief Executive".
- Section 41(1) Strike out "Principal".

Section 41(2)	Strike out "Director-General" and substitute "Chief Executive". Strike out "Principal".
Section 41(3)	Strike out "natural" (wherever occurring) and substitute, in each case, "birth".
Section 41(4)	Strike out "Principal". Strike out "Director-General" and substitute "Chief Executive".
Section 41(5)	Strike out "Director-General" (twice occurring) and substitute, in each case, "Chief Executive". Strike out "natural" and substitute "birth".
Section 41(6)(c)	Strike out "Director-General" and substitute "Chief Executive".
Section 41(7)	Strike out "Principal". Strike out "Director-General" and substitute "Chief Executive".
Section 41(7)(b)	Strike out "natural" and substitute "birth".
Section 42(2)(h)	Strike out "Director-General" and substitute "Chief Executive".
Section 42(2)(i)(i)	Strike out "Director-General" and substitute "Chief Executive".
Section 42(2)(j)	Strike out "Director-General" (wherever occurring) and substitute, in each case, "Chief Executive".
Section 42(2)(k)	Strike out "Director-General" (twice occurring) and substitute, in each case, "Chief Executive".
Section 42(2)(l)	Strike out "a division 8 fine" and substitute "\$1 250".
Schedule	The schedule is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor