

Western Australia

Adoption Amendment Act 2012

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No. 15 of 2012

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Adoption Amendment Act 2012

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Western Australia

Adoption Amendment Act 2012

No. 15 of 2012

An Act to amend the *Adoption Act 1994*.

[Assented to 3 July 2012]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Adoption Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act amends the *Adoption Act 1994*.

4. Section 4 amended

- (1) In section 4(1) delete the definitions of:

carer

relative

- (2) In section 4(1) insert in alphabetical order:

carer, in relation to a child, means a person with whom the child lives and who, either alone or jointly with another person, has the daily care of the child;

Class 1 offence has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 7(1);

Class 2 offence has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 7(2);

conviction has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 8;

pending charge has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

relative, in relation to a person, means the person's —

- (a) grandparent; or
- (b) sibling; or
- (c) uncle or aunt,

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

- (3) In section 4(1) in the definition of *Australian citizen* delete “*Australian Citizenship Act 1948* of the Commonwealth;” and insert:

Australian Citizenship Act 2007 (Commonwealth);

- (4) In section 4(1) in the definition of *birth parent* delete paragraph (b) and insert:

- (b) the father, or a parent under the *Artificial Conception Act 1985* section 6A, of the child or adoptee;

5. Section 8 amended

In section 8(1) in the Penalty delete “\$25 000 and 2 years’ imprisonment.” and insert:

a fine of \$25 000 and imprisonment for 2 years.

6. Section 14 amended

Delete section 14(2) and insert:

- (2) The CEO is to select the members from persons who the CEO thinks have relevant expertise or experience but —
 - (a) a majority of the members are to be independent of the Department; and
 - (b) at least one of the members is to be a lawyer.
- (3) The CEO is to appoint one of the members who is independent of the Department to be the chairperson of the committee.

7. Section 15A inserted

After section 14 insert:

15A. Directions by CEO

- (1) Subject to subsection (2), the CEO may give written directions to the adoption applications committee with respect to the performance of its functions and the committee is to give effect to any such direction.
- (2) The CEO must not under subsection (1) direct the committee with respect to the performance of its functions in respect of a particular application.

8. Section 15 amended

In section 15(b) delete “may” and insert:

may, subject to any direction given by the CEO under section 15A,

9. Section 16 amended

(1) In section 16(1):

- (a) in paragraph (a) delete “clause 1(a) of Schedule 1;” and insert:

Schedule 1 clause 1(1)(a); and

- (b) after each of paragraphs (b) to (d) insert:

and

(2) Delete section 16(2) and insert:

(2) The CEO is to commence the provision of a service requested under subsection (1) —

- (a) in the case of a request by a person who is thinking about relinquishing her or his child for adoption by a step-parent, relative or carer of the child, within 28 days of the request;

or

- (b) in any other case, within 7 days of the request.

10. Section 16A replaced

Delete section 16A and insert:

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

The CEO must consult with —

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- (a) an officer of the department who is an Aboriginal person or a Torres Strait Islander; or
- (b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community; or
- (c) an Aboriginal or Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community,

regarding the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander.

11. Section 20 amended

After section 20(a)(i) insert:

- (ia) relative; or

12. Section 24 amended

In section 24(2):

- (a) in paragraph (c) delete "step-parent" and insert:

step-parent, relative

- (b) after each of paragraphs (a) to (e) and (e)(i) insert:

or

13. Section 26G amended

In section 26G(2) delete the passage that begins with "consent" and ends with "development." and insert:

consent of a person with parental responsibility for the child.

14. Section 26H amended

In section 26H(1) delete the passage that begins with “consent” and ends with “development.” and insert:

consent of a person with parental responsibility for the child.

15. Section 27 amended

- (1) In section 27(1) delete “child’s guardian or guardians” and insert:

persons with parental responsibility for the child

- (2) Delete section 27(2) and (3) and insert:

(2) Where the child’s step-parent who is married to, or in a de facto relationship with, the birth parent who has parental responsibility for the child has been specified in the forms of consent as the prospective adoptive parent, both the birth parent and the step-parent are to have parental responsibility for the child.

(3) Where a relative or a carer of the child has been specified in the forms of consent as the prospective adoptive parent, that person is to have parental responsibility for the child.

- (3) Delete section 27(4).

- (4) In section 27(5) delete “be the guardian.” and insert:

have parental responsibility for the child.

(5) Delete section 27(6) and insert:

(6) Subsections (2), (3) and (5) do not apply where —

(a) the child is the subject of a protection order (time-limited) or protection order (until 18) under the *Children and Community Services Act 2004*; or

(b) a person has parental responsibility for the child by operation of the law of another State or a Territory corresponding to the provisions of the *Children and Community Services Act 2004* Part 4,

in which case the person with parental responsibility for the child has parental responsibility for the purposes of this Division.

Note: The heading to amended section 27 is to read:

Parental responsibility for children awaiting adoption where all consents accounted for

16. Section 28 amended

In section 28(1):

(a) delete “if the child —” and insert:

if —

(b) in paragraph (a) before “has” insert:

the child

- (c) in paragraph (b) delete “is in the care and control of a birth parent who” and insert:

a birth parent of the child

Note: The heading to amended section 28 is to read:

Parental responsibility for children awaiting adoption where not all consents finalised

17. Section 29 replaced

Delete section 29 and insert:

29. Cessation of parental responsibility for children awaiting adoption

- (1) Parental responsibility for a child under this Division ceases —
- (a) if a consent to the child’s adoption is revoked, in which case a person who had parental responsibility for the child immediately before the commencement of parental responsibility for the child under this Division is to have parental responsibility for the child again; or
 - (b) if a court makes further provision in respect of parental responsibility for the child; or
 - (c) where the CEO has parental responsibility for the child —
 - (i) if notice is given under section 30(1); or
 - (ii) if the parental responsibility is renounced under section 33(1);
- or

- (d) when an adoption order is made in relation to the child.
- (2) Parental responsibility under this Division is not affected by any provision of, and cannot be changed by, any will, deed or agreement.

18. Section 30 replaced

Delete section 30 and insert:

30. If not possible or desirable to place child for adoption

- (1) If the CEO has parental responsibility for a child under this Division and is of the opinion that it is not possible or desirable to place the child with a view to the child's adoption, the CEO is to cause notice of that opinion to be given to each person who the CEO believes is a birth parent of the child or who had parental responsibility for the child before the commencement of the CEO's parental responsibility under this Division.
- (2) If the CEO gives a notice under subsection (1) —
 - (a) a person who had parental responsibility for the child before the commencement of the CEO's parental responsibility under this Division has parental responsibility for the child; and
 - (b) any consents to the child's adoption cease to have effect.

19. Section 32 replaced

Delete section 32 and insert:

32. Responsibilities in relation to children awaiting adoption

Within 12 months of a person commencing to have parental responsibility for a child under this Division, or such further time as the court allows, the person is to —

- (a) arrange for an application for an adoption order in relation to the child to be filed in the Court; or
- (b) apply to the Court for an order to make further provision about parental responsibility for the child.

20. Section 33 amended

(1) In section 33(1):

- (a) delete “is the guardian of” and insert:

has parental responsibility for

- (b) in paragraph (b) delete “guardianship of” and insert:

parental responsibility for

- (c) delete “guardianship.” and insert:

parental responsibility.

- (2) In section 33(2):
- (a) delete “guardianship” and insert:

parental responsibility
 - (b) in paragraph (c) delete “become the child’s guardian” and insert:

have parental responsibility for the child
 - (c) in paragraph (c) delete “guardianship.” and insert:

parental responsibility.
 - (d) after paragraph (a) insert:

and
- (3) In section 33(3):
- (a) delete “be the guardian” and insert:

have parental responsibility
 - (b) delete “guardianship” and insert:

parental responsibility
- (4) In section 33(5) delete “the guardianship of” and insert:

parental responsibility for

Note: The heading to amended section 33 is to read:

Renunciation and transfer of parental responsibility by the CEO

21. Section 34 amended

(1) In section 34(1):

- (a) delete “the child is under the guardianship of a corresponding officer,” and insert:

a corresponding officer has parental responsibility for the child,

- (b) in paragraph (b) delete “guardianship of” and insert:

parental responsibility for

(2) In section 34(2):

- (a) delete “guardianship” and insert:

parental responsibility

- (b) in paragraph (d) delete “guardianship,” and insert:

parental responsibility,

- (c) in paragraph (d) delete “be the child’s guardian.” and insert:

have parental responsibility for the child.

- (d) after paragraphs (a) and (b) insert:

and

(3) Delete section 34(3) and insert:

- (3) The CEO has parental responsibility for the child under this Division when the corresponding officer signs an instrument renouncing parental responsibility for the child.

Note: The heading to amended section 34 is to read:

Transfer of parental responsibility to the CEO

22. Section 35 replaced

Delete section 35 and insert:

35. Offence

A person must not remove a child from the State without the written consent of each person who has parental responsibility for the child under this Division.

Penalty: a fine of \$10 000 and imprisonment for 12 months.

23. Section 36 amended

(1) In section 36(1):

- (a) delete “child’s guardian” and insert:

person with parental responsibility for the child

- (b) delete “the child’s guardianship.” and insert:

parental responsibility for the child.

- (2) In section 36(2):
- (a) in paragraph (a) delete “guardianship” and insert:

parental responsibility
 - (b) delete paragraph (b) and insert:

(b) make an order changing the person who has parental responsibility for the child for the purposes of Division 4; or
 - (c) after paragraph (a) insert:

or

Note: The heading to amended section 36 is to read:

Orders as to parental responsibility under Division 4

24. Section 37 amended

Delete section 37(1) and (2) and insert:

- (1) The CEO is to provide persons contemplating adoptive parenthood with —
 - (a) oral and written information about adoption;
and
 - (b) counselling in relation to adoption.
- (2) Subsection (1)(b) does not apply to a step-parent, relative or carer of a child who is thinking of adopting the child, but if requested, the CEO is to provide such a person with counselling in relation to adoption.

25. Section 38 amended

In section 38(4) delete “step-parent” and insert:

step-parent, relative

26. Section 39 amended

(1) In section 39(1):

(a) delete “cannot” and insert:

may only

(b) delete “unless” and insert:

if

(c) delete paragraph (d) and insert:

(d) has not been convicted of a Class 1 offence committed after he or she attained 18 years of age; and

(ea) if married to another person —

(i) applies as a joint applicant with that person; or

(ii) has been separated from that person for at least 12 months and does not intend to resume cohabitation with that person;

and

(eb) is, or in the previous 12 months has been, in a de facto relationship with another person, applies as a joint applicant with that person; and

(d) after each of paragraphs (a) to (c) insert:

and

(2) After section 39(1) insert:

(2A) Despite subsection (1), a person who applied jointly with another person under section 38(1) may, in accordance with the regulations, continue the application in his or her own name if the joint applicants commence living separately and apart.

(3) In section 39(2):

(a) delete “cannot” and insert:

may only

(b) delete “unless” and insert:

if

27. Section 40 amended

(1) In section 40(2):

(a) delete paragraph (e) and insert:

(e) has not been convicted of a Class 1 or Class 2 offence; and

(fa) does not have a pending charge in respect of a Class 1 or Class 2 offence; and

(b) after each of paragraphs (a) to (da) insert:

and

(2) After section 40(2) insert:

(3) Despite subsection (2), an applicant who has —

- (a) previously been assessed under the Act as suitable to adopt a child; and
- (b) subsequently adopted a child,

is not required to provide evidence in respect of the matters referred to in subsection (2)(b), (c), (d), (da) or (f) unless requested to do so by the person appointed to prepare the assessment report under subsection (1).

28. Section 41A inserted

After section 40 insert:

41A. CEO may conduct checks

- (1) The CEO may conduct any check (including a criminal record check) that the CEO considers appropriate as to whether an applicant under section 38(1) is suitable to be an adoptive parent.
- (2) The CEO may provide information obtained as a result of a check referred to in subsection (1) to —
 - (a) a person appointed under section 40(1) to prepare an assessment report on the applicant;
or
 - (b) the adoption applications committee.

29. Section 42 amended

Delete section 42(2) and (3).

30. Section 43 amended

In section 43:

(a) in paragraph (b)(ii) delete “report,” and insert:

report.

(b) delete “if requested by the applicant.”.

31. Section 45 amended

In section 45 delete “step-parent” and insert:

step-parent, relative

32. Section 46 amended

In section 46(2):

(a) in paragraph (b) delete “child; or” and insert:

child;

(b) in paragraph (c) delete “child,” and insert:

child;

(c) after paragraph (c) insert:

(d) a process for reviewing the adoption plan,

33. Section 47 replaced

Delete section 47 and insert:

47. Duty of CEO as to adoption plans

The CEO is to provide assistance and mediation to —

- (a) persons in the process of negotiating an adoption plan under section 46(1) or (3)(b) or 55; and
- (b) persons in the process of negotiating the variation of an adoption plan referred to in paragraph (a); and
- (c) persons seeking to review an adoption plan referred to in paragraph (a).

34. Section 49 amended

In section 49:

- (a) in paragraph (e) delete “is the child’s guardian” and insert:

has parental responsibility for the child

- (b) in paragraph (e) delete “30.” and insert:

30(1).

35. Section 50 amended

In section 50(4) delete “step-parent” and insert:

step-parent, relative

36. Section 52 amended

(1) Before section 52(1) insert:

(1A) In this section —

place, in relation to a child who is habitually resident in a Convention country or an overseas jurisdiction, means to make an offer of the child to a prospective adoptive parent following the receipt of advice from the competent authority of the Convention country or the adoption authority of the overseas jurisdiction that the placement of the child with the prospective adoptive parent with a view to adoption has been approved.

(2) In section 52(1):

(a) in paragraph (a)(vb) delete “arrangements; and” and insert:

arrangements;

(b) delete paragraph (a)(vi);

(c) delete paragraph (c).

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(3) In section 52(3):

(a) in paragraph (a) delete “have not adopted a child before; or” and insert:

do not have parental responsibility for another child; or

(b) delete paragraph (b);

(c) in paragraph (c) delete “have adopted a child before; or” and insert:

have parental responsibility for another child; or

(d) delete paragraph (d);

(e) in paragraph (e) delete “has not adopted a child before (whether as a joint or sole adoptive parent); or” and insert:

does not have parental responsibility for another child; or

(f) in paragraph (f) delete “adopted a child before (whether as a joint or sole adoptive parent).” and insert:

parental responsibility for another child.

37. Part 3 Division 8 heading amended

In the heading to Part 3 Division 8 delete “**step-parents**” and insert:

step-parents, relatives

38. Sections 55A to 55C inserted

At the beginning of Part 3 Division 8 insert:

55A. CEO approval of relative or carer placement

- (1) A relative or a carer of a child may apply to the CEO for the approval of the placement of the child with the person with a view to the person adopting the child.
- (2) An application under subsection (1) may be made by one person, or by 2 persons jointly.
- (3) An application under subsection (1) is be in a form that is approved by the CEO.
- (4) On an application under subsection (1) the CEO may approve the placement of the child if the CEO is satisfied that each applicant —
 - (a) is an Australian citizen or a permanent resident; and
 - (b) is 18 or more years of age; and
 - (c) is of good repute; and
 - (d) is able to provide care for the child in a way that —
 - (i) ensures the safety and well being of the child; and
 - (ii) recognises the wishes and views of the child in a manner that is consistent with the age and understanding of the child.
- (5) If the child is the subject of a protection order (time limited) or protection order (until 18) under the *Children and Community Services Act 2004* the CEO must not approve the placement of the child under this section unless the CEO is satisfied that the child's adoption would be preferable to the making of a

protection order (special guardianship) under the *Children and Community Services Act 2004* in respect of the child.

55B. CEO may conduct checks

The CEO may conduct any check (including a criminal record check) that the CEO considers appropriate as to whether an applicant under section 55A(1) is suitable to be an adoptive parent of the child.

55C. When application for relative or carer adoption can be made

An application for an order for a child to be adopted by a relative or a carer is not to be filed unless —

- (a) the child has been in the care of the person making the application for a period of at least 2 years immediately preceding the day on which the application is made; and
- (b) the placement of the child with the relative or the carer has been approved under section 55A.

39. Section 55 amended

In section 55(1) delete “step-parent” and insert:

step-parent, relative

Note: The heading to amended section 55 is to read:

Adoption plans in adoptions by step-parents, relatives or carers

40. Section 59 amended

- (1) Before section 59(1) insert:
 - (1A) In this section —
close relative, in relation to a birth parent, means each of the following people —
 - (a) a birth parent or an adoptive parent of the birth parent;
 - (b) a sibling of the birth parent —
 - (i) whether of the whole or half blood; or
 - (ii) whether the relationship is established by this Act or another written law.
- (2) Delete section 59(2) and insert:
 - (2) Written notice of the intention to file an application for an adoption order in relation to the child —
 - (a) is to be given to as many close relatives of the birth parents who have attained the age of 18 years as is practicable; or
 - (b) if no close relative of a birth parent can reasonably be located, is to be given to an aunt or uncle of the birth parent who has attained the age of 18 years and is reasonably available at the relevant time.
 - (3) For the purposes of subsection (2) notice is given to a person if the notice is delivered personally or by registered post to that person's last known address.
 - (4) The CEO may provide assistance to a person who is required to give notice of the intention to file an application for an adoption order under this section.

41. Section 66 amended

- (1) In section 66(2) after “adopted by” insert:

a relative or

- (2) Delete section 66(3).

42. Section 67 amended

- (1) In section 67(1):

- (a) after paragraph (a) insert:

(ba) is a relative of the child; or

- (b) after paragraph (a) insert:

or

- (2) In section 67(2):

- (a) delete “(1)(b) and (c)” and insert:

(1)(ba), (b) and (c) and relatives

- (b) delete “first-mentioned persons” and insert:

first-mentioned persons, relatives

- (3) In section 67(5):

- (a) delete “(1)(b) and (c)” and insert:

(1)(ba), (b) and (c) or the relatives

- (b) delete “those persons” and insert:

those persons, relatives

43. Section 68 amended

- (1) In section 68(1):

- (a) after paragraph (d) insert:

- (ea) if a relative or carer of a child wishes to adopt the child, the application is in accordance with section 55C; and

- (b) delete paragraph (fa) and insert:

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

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

and

- (fb) if a relative of a child wishes to adopt the child, there are good reasons to redefine relationships within the child’s family in the way that the order would do; and

- (fc) if a relative or carer of a child wishes to adopt the child and the child is the subject of a protection order (time limited) or protection order (until 18) under the *Children and Community Services Act 2004*, the child’s

adoption would be preferable to the making of a protection order (special guardianship) under the *Children and Community Services Act 2004* in respect of the child; and

- (c) after each of paragraphs (a) to (f) and (g)(i) and (ii) insert:

and

- (2) In section 68(2):

- (a) in paragraph (b) before “carer” insert:

relative or a

- (b) after paragraphs (a) and (b) insert:

and

44. Section 69 amended

In section 69(1):

- (a) after paragraph (b) insert:

- (ca) if a prospective adoptive parent is a relative of the prospective adoptee, there are good reasons to redefine the relationships within the prospective adoptee’s family in the way that the order would do; and

(b) after paragraph (a) insert:

and

45. Section 74 amended

In section 74(2):

(a) delete paragraph (aa) and insert:

(aa) the principle that the adoptee's first name before the making of an adoption order should be included in the name by which the adoptee is to be known; and

(b) delete paragraph (b) and insert:

(b) any views expressed by the adoptee and any factors (such as the adoptee's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the adoptee's views; and

(ca) the adoptee's relationships with his or her birth parents or any other person and the extent to which those relationships should be recognised in the name by which the adoptee is to be known; and

(cb) the adoptee's cultural background and the principle that the name by which the adoptee is to be known should recognise that background; and

(c) after paragraph (a) insert:

and

46. Section 76 amended

In section 76(3) delete “step-parent” and insert:

step-parent, relative

47. Section 77 amended

In section 77(5):

(a) delete paragraph (c) and insert:

(c) any matter affecting parental responsibility for the adoptee; or

(b) after paragraphs (a) and (b) insert:

or

48. Section 81 amended

In section 81(2) after “party to the plan” insert:

or a sibling of an adoptee

49. Section 82 amended

Delete section 82(4) and insert:

- (4) The CEO's power to authorise the access to information under this section is subject to —
 - (a) section 79(3); and
 - (b) an order of the Court under section 83(2); and
 - (c) section 103.

50. Section 84 amended

In section 84(1):

- (a) in paragraph (c) delete “adoptee; and” and insert:

adoptee;
- (b) after paragraph (c) insert:
 - (da) a sibling of the adoptee, if both the sibling and the adoptee are 18 or more years of age;

51. Section 85 amended

In section 85(1):

- (a) in paragraph (b) delete “adoptee; and” and insert:

adoptee;
- (b) in paragraph (c) delete “adoptee.” and insert:

adoptee;

(c) after paragraph (c) insert:

(d) a sibling of the adoptee, if both the sibling and the adoptee are 18 or more years of age.

52. Section 90 amended

(1) In section 90(1):

(a) in paragraph (b) delete “adoptee; or” and insert:

adoptee,

(b) delete paragraph (c);

(c) after paragraph (a) insert:

or

(2) In section 90(4):

(a) in paragraph (b) delete “adoptee; or” and insert:

adoptee,

(b) delete paragraph (c);

(c) after paragraph (a) insert:

or

53. Section 100 amended

In section 100(1):

(a) delete paragraph (d) and insert:

(d) subject to subsection (3), where the statement of wishes was lodged on behalf of an adoptee who was less than 18 years of age at the time of the lodgment by a person with parental responsibility for the adoptee, until the adoptee attains 19 years of age,

(b) after paragraphs (a) and (b) insert:

or

54. Section 104 deleted

Delete section 104.

55. Section 105 amended

At the end of section 105(1) insert:

Penalty: a fine of \$10 000 and imprisonment for 12 months.

56. Section 110 amended

(1) In section 110(1) after paragraph (a) insert:

(ba) the adoption applications committee; or

(2) Delete section 110(2).

57. Section 112 amended

- (1) In section 112(1):
 - (a) in paragraph (b) delete “reviewed.” and insert:

reviewed; or
 - (b) after paragraph (b) insert:

 - (c) if the decision being reviewed is a decision of the adoption applications committee, refer the decision back to the adoption applications committee for further consideration.
- (2) Delete section 112(2) and insert:

 - (2) The CEO must give the applicant written notice of the decision under subsection (1), the reasons for the decision and the person’s right of review under section 113.

58. Part 5 Division 2 replaced

Delete Part 5 Division 2 and insert:

Division 2 — Review by State Administrative Tribunal

113. Review by State Administrative Tribunal

- (1) Except as provided in subsection (4), a person who is aggrieved by a decision of the CEO under section 112(1)(a) or (b) may apply to the State Administrative Tribunal for a review of the CEO’s decision.

- (2) The application must be made within 28 days after the day on which the CEO gives the applicant notice in accordance with section 112(2).
- (3) A decision that is the subject of an application under subsection (1) continues to have effect pending the outcome of the review, unless the State Administrative Tribunal orders otherwise.
- (4) This section does not apply if the decision that was reviewed by the CEO under Division 1 was a decision to place a child with a view to the child's adoption and the child has already been placed in accordance with that decision.

59. Part 5 Divisions 3 and 4 deleted

Delete Part 5 Divisions 3 and 4.

60. Section 120 amended

- (1) In section 120(1) insert in alphabetical order:

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;
 - (iv) step-parent or step-child;
 - (v) sibling;
 - (vi) uncle or aunt,

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

s. 61

- (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);
- (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).

- (2) In section 120(1) in the definition of *publish* delete "public." and insert:

public;

61. Section 122 amended

In section 122(1) in the Penalty delete "\$25 000 and 2 years' imprisonment." and insert:

a fine of \$25 000 and imprisonment for 2 years.

62. Section 124 amended

In section 124(3):

- (a) in paragraph (b) delete "the person's guardian; or" and insert:

a person with parental responsibility for the adoptee or the prospective adoptee; or

- (b) after paragraph (a) insert:

or

63. Sections 127A and 127B inserted

After section 126 insert:

127A. False information

A person must not give information orally or in writing in, or in relation to, an application, report or other document prepared for the purposes of this Act that the person knows to be false or misleading in a material respect.

Penalty: a fine of \$6 000.

127B. Notification of changes in circumstances

(1) In this section —

register means the register referred to in section 44.

(2) A person who is a party to a proposed adoption must notify the CEO within 28 days of becoming aware of —

- (a) information that may be relevant to the identification of a person who may be required to give effective consent to the adoption; or
- (b) circumstances that may affect whether a consent to the adoption is effective.

Penalty: a fine of \$10 000 and imprisonment for 12 months.

(3) A person whose name is on the register must notify the CEO within 28 days of becoming aware of any change in the person's circumstances that may affect his or her suitability for adoptive parenthood in accordance with the criteria referred to in section 40(2).

Penalty: a fine of \$10 000 and imprisonment for 12 months.

64. Section 133 amended

- (1) In section 133(1):
- (a) after “court” (first occurrence) insert:

or tribunal
 - (b) delete “court.” and insert:

court or tribunal.

- (2) In section 133(2) after “court” insert:

or tribunal

65. Section 138 amended

In section 138(1):

- (a) delete paragraph (b)(i) and insert:
 - (i) when the adoption order was made the adoptive parent —
 - (I) was domiciled in a country other than Australia; or
 - (II) had been resident for the preceding 12 months in a country or countries other than Australia;

or

- (b) after paragraphs (a) and (b) insert:

and

66. Section 138A amended

In section 138A(1):

- (a) in paragraph (d) delete “the adoption.” and insert:

the adoption; and
- (b) after paragraph (d) insert:

(e) the child is permitted —
 - (i) to enter Australia; and
 - (ii) to reside permanently in Australia.

67. Section 145 replaced

Delete section 145 and insert:

145. Adoption Amendment Act 2012 — transitional provisions

- (1) In this section —
commencement day means the day on which the *Adoption Amendment Act 2012* section 59 comes into operation.
- (2) Part 5 as in force immediately before commencement day applies to —
 - (a) an appeal to the Family Court made under section 114 before commencement day that has not been finalised; or
 - (b) an appeal to the Court of Appeal made under section 118 before commencement day that has not been finalised.

68. Section 146 amended

(1) Before section 146(1) insert:

(1A) In this section —

commencement day means the day on which the *Adoption Amendment Act 2012* section 68 comes into operation.

(2) In section 146(1) and (3) delete “3 years” and insert:

5 years

(3) Delete section 146(4).

69. Various references to “guardian” and “guardianship” amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 17(1)(c)(i)	of the child’s guardians; and	person with parental responsibility for the child; and
s. 18(3)	is a guardian of	has parental responsibility for
s. 18(7)(a)	a parent or guardian of	a person with parental responsibility for

Provision	Delete	Insert
s. 18(7)(b)(ii)	his or her parent or guardian,	the person with parental responsibility for him or her,
Pt. 3 Div. 4 heading	Guardianship of	Parental responsibility for
s. 31	is the guardian of	has parental responsibility for
Pt. 3 Div. 5 heading	guardianship of	parental responsibility for

70. Various penalties amended

In the provisions listed in the Table in the Penalty delete “\$10 000 and 12 months’ imprisonment.” and insert:

a fine of \$10 000 and imprisonment for 12 months.

Table

s. 11	s. 93(2)
s. 94(3) and (4)	s. 105(2)
s. 123(1)	s. 124(1)
s. 125	s. 126
s. 127(1)	

71. Schedule 3 amended

- (1) Delete Schedule 3 clauses 4, 5, 6 and 7.
- (2) In Schedule 3 clause 9(1) in paragraphs (a)(ii) and (b)(ii) of the paragraphs to be substituted delete “an adoptive parent or guardian of” and insert:

a person with parental responsibility for

- (3) In Schedule 3 clause 9(4) in paragraph (a)(ii) of the paragraphs to be substituted delete “an adoptive parent or guardian of” and insert:

a person with parental responsibility for

- (4) In Schedule 3 clause 9(5) in paragraph (b)(ii) of the paragraph to be substituted delete “an adoptive parent or guardian of” and insert:

a person with parental responsibility for

- (5) In Schedule 3 clause 9(6) in paragraph (a)(ii) of the paragraph to be substituted delete “an adoptive parent or guardian of” and insert:

a person with parental responsibility for

- (6) In Schedule 3 clause 11 delete “the adoptee’s parent or guardian.” and insert:

a person with parental responsibility for the adoptee.

- (7) In Schedule 3 clause 13(2)(a) delete “an adoptive parent or guardian of” and insert:

a person with parental responsibility for

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