

ADOPTION OF CHILDREN.

No. 108 of 1985.

AN ACT to amend the Adoption of Children Act 1896.

[Assented to 13 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Adoption of Children Amendment Act 1985*.

Short title
and principal
Act.

(2) In this Act the Adoption of Children Act 1896 is referred to as the principal Act.

Reprinted as
approved
24 January
1984 and
amended by
Acts Nos. 70
and 121 of
1984 and 14
of 1985.

2. (1) This Act, except for section 25, shall come into operation on a day to be fixed by proclamation.

Commence-
ment.

(2) Section 25 shall come into operation on a day 6 months after the day fixed by proclamation under subsection (1).

Section 3
repealed and
substituted.

3. Section 3 of the principal Act is repealed and the following section substituted—

Jurisdiction.

“ 3. (1) Upon the application in writing, in the prescribed form, to a Judge by a husband and wife jointly, one at least of whom is an eligible person, or by an applicant who is an eligible person, an order of adoption may be made by the Judge in favour of the applicant or applicants in the prescribed form and subject to the provisions of this Act.

(2) A person is an eligible person for the purposes of this section if he or she is—

- (a) a natural parent, the spouse of a natural parent or a relative of the child;
- (b) a person who has had the child placed in his or her care under this Act by the Director-General or by a private adoption agency approved under section 3C for or towards or with a view to adoption; or
- (c) a person who has had the child in his or her care for a period of not less than 3 years. ”.

Sections 3A
to 3E
inserted.

4. After section 3 of the principal Act, the following sections are inserted—

Adoption
may be
arranged by
Director-
General or
by approved
adoption
agency.

“ 3A. (1) For the purposes of this Act, arrangements or negotiations for or towards or with a view to the adoption of a child by any person or persons may be made by or on behalf of the Director-General or by or on behalf of a private adoption agency approved for the time being under this Act by the Minister.

(2) The arrangements or negotiations referred to in subsection (1) may be made by any person authorized in writing for any specified purpose or purposes, either generally or in any particular case, by the Director-General or the principal officer of the agency concerned.

(3) This section shall not be construed as preventing the mother or guardian of a child, or any person on behalf of the mother or guardian of a child, from making arrangements or negotiations for the adoption of the child by a relative of the child.

3B. (1) Any organization carrying on, or desiring to carry on, the activity of conducting negotiations or making arrangements with a view to the adoption of children may apply in writing to the Minister for approval as a private adoption agency.

Application
for approval
of adoption
agency.

(2) An application under this section shall contain such information relating to the organization as is prescribed by the regulations and shall nominate some person to be the principal officer of the agency for the purposes of this Act.

(3) For the purposes of this section "organization" means an organization, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent, philanthropic or welfare purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members.

3C. (1) Subject to subsection (2), the Minister may grant or refuse any application under section 3B and in particular, without in any way limiting the generality of the foregoing, may refuse any application if it appears to him that the applicant is not an

Minister may
grant or
refuse
application.

organization within the meaning of section 3B or is not a suitable organization to carry on the activity of making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character, and number of persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the making of arrangements with a view to the adoption of children.

(2) The Minister shall not grant an application under section 3B unless the applicant undertakes, to the satisfaction of the Minister, to provide persons whose consents are required to adoption with written information about alternatives to adoption and, when requested, to arrange referrals to persons and agencies concerned with those alternatives.

(3) An approval under this section shall be valid for 3 years, or, if a longer period is prescribed, for that longer period, and may be renewed from time to time for a further period of 3 years by the Minister upon consideration of a further application under section 3B.

Revocation
or suspension
of approval.

3D. (1) Subject to subsection (2), the Minister may at any time, by notice in writing served personally or by registered post on the principal officer of a private adoption agency, revoke or suspend any approval of the agency under this Act—

- (a) at the request of the agency concerned;
- (b) on the ground that the agency is no longer a suitable organization to carry on the activity of conducting negotiations or making arrangements

with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in section 3C (1);

or

- (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it.

(2) Before revoking or suspending the approval of an agency under subsection (1) (b) or (c), the Minister shall—

- (a) by notice in writing served personally or by registered post on the principal officer of the agency, inform the agency of the grounds on which the Minister considers the agency is no longer a suitable organization for the purposes set out in subsection (1) (b) or the manner in which the Minister believes the agency has contravened or failed to comply with a provision of this Act or the regulations, as the case may be; and
- (b) have regard to any action taken by the agency within 21 days of the service on the agency of a notice under paragraph (a) in response to that notice.

3E. Where an organization ceases to be an approved agency or the approval of an organization as an approved agency is suspended—

Effect of
cessation or
suspension of
approved
agency.

- (a) all records and other documents held by it or under its control relating to the arrangement or negotiation of adoptions shall become the property of the Director-General;

- (b) the Minister shall endeavour to arrange with the Director-General and other approved agencies for applicants on the list of the formerly approved agency to be registered in an appropriate manner on one or other of the lists maintained by the Director-General and approved agencies; and
- (c) the Minister shall endeavour to ensure that the arrangements or negotiations being undertaken by the formerly approved agency immediately before the cessation or suspension shall be continued by the Director-General or the principal officer of an approved agency.

Approvals
etc. to be
notified in
the *Gazette*.

3F. (1) Notice of the approval or the renewal of approval of any organization as a private adoption agency under this Act and of the revocation or suspension of any such approval shall be published in the *Gazette*.

(2) Every such notice shall specify the address of the principal office of the agency concerned and the full name of the principal officer of the agency.

Acts of
principal
officer
deemed acts
of agency.

3G. Anything done by the principal officer of a private adoption agency or with his approval shall be deemed for the purposes of this Act to have been done by the agency.

Appeal
against
refusal,
revocation or
suspension.

3H. (1) Where the Minister—

- (a) refuses an application under section 3C;
- or
- (b) revokes or suspends the approval of an organization as an approved agency under section 3D,

the applicant or organization may appeal to the District Court against the decision of the Minister by lodging a written notice of appeal, including the general grounds of the appeal and accompanied by the prescribed fee, not later than 21 days after the decision of the Minister is communicated to the applicant or organization.

(2) The District Court may, on such terms as the Court thinks just, by order extend the period within which an appeal may be instituted under subsection (1) and may do so although the application for extension is not made until after the expiration of that period.

(3) On the hearing of an appeal under this section, the District Court shall review the decision of the Minister and may order that the decision be confirmed, varied or set aside. ”.

5. Section 4E of the principal Act is amended in subsection (2) by deleting “paragraph (8b) of subsection (1) of section five of this Act” and substituting the following—

Section 4E
amended.

“ section 5E ”.

6. Section 4H of the principal Act is amended—

Section 4H
amended.

(a) in subsection (4) by deleting “Two hundred dollars.” and substituting the following—

“ \$2 500 or imprisonment for 6 months. ”; and

(b) in subsection (9) by deleting “Four hundred dollars” and substituting the following—

“ \$2 500 ”.

Section 5
amended.

7. Section 5 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting in paragraph (3), “subject to subsection (1a) of this section, that, in the opinion of the Director-General, the applicant is a proper person to be an adopting parent or that, notwithstanding the opinion of the Director-General to the contrary, the applicant is such a proper person;”;

(ii) by deleting “sought;” at the end of paragraph (4) and substituting the following—

“ sought. ”; and

(iii) by deleting paragraphs (8b), (8c) and (8d); and

(b) by repealing subsections (1a), (1b), (2), (3), (4) and (5) and substituting the following subsections—

“ (2) In the case of an application for the adoption of a child who has not reached the age of 18 years made by an applicant who is an eligible person by reason of section 3 (2) (c), the Judge before making an order of adoption shall be satisfied by a report of a social worker that the social worker has used all reasonable endeavours to re-establish the child with 1 or both of the child’s natural parents.

(3) In this section “social worker” means a person who is eligible for full membership of the Australian Association of Social Workers. ”.

8. After section 5A of the principal Act, the following section is inserted—

Section 5AA
inserted.

“ 5AA. A Judge shall not make an order under this Act for the adoption of a child unless, after considering such report, if any, concerning the proposed adoption as may be made under section 5E to the Judge by the Director-General, or some other officer of the Department or officer of a private adoption agency, and any other evidence before the Judge, the Judge is satisfied that—

Judge to be
satisfied as to
certain
matters.

- (a) the applicant, or, in the case of joint applicants, each of the applicants is of good repute and is a fit and proper person to have the custody and guardianship of a child and to fulfil the responsibilities of a parent of a child;
- (b) the applicant, or, in the case of joint applicants, each of the applicants is a suitable person to adopt that child having regard to all relevant matters including—
 - (i) the age of the child and of the applicant or applicants;
 - (ii) the state of health of the child and of the applicant or applicants;
 - (iii) the education of the child and of the applicant or applicants;
 - (iv) the size and stability of the family of the applicant or applicants; and
 - (v) any request that has been made by the mother of the child, in an instrument of consent to the adoption of the

child, with respect to the religious upbringing of the child or the nationality or ethnicity of the adoptive parent or parents; and

- (c) the welfare and interests of the child will be promoted by the adoption. ”.

Section 5B
amended.

9. Section 5B of the principal Act is amended—

- (a) by deleting “subject to subsection (1a) of section five of this Act,”; and
- (b) by deleting “paragraph (8b) of subsection (1) of section five of this Act” and substituting the following—
- “ section 5E ”.

Sections 5E
to 5G
inserted.

10. After section 5D of the principal Act, the following sections are inserted—

Reports to
and
appearance
before
Judge.

“ 5E. (1) The Director-General, or some other officer of the Department or, in the case of a proposed adoption arranged by a private adoption agency, an officer of the private adoption agency shall, before the conclusion of the hearing of any application for an adoption order, make a report in writing to the Judge concerning the proposed adoption.

(2) Notwithstanding subsection (1), in the case of the proposed adoption of a person who has reached the age of 18 years or where the applicant or one of the applicants is the natural parent of the child, a report may, but need not, be made as required by that subsection.

(3) A report made to the Judge under this section may include reference to any of the matters referred to in section 5AA or to any other matter or opinion that the person making the report considers relevant to the proposed adoption.

(4) The Director-General, or some other officer of the Department authorized for the purpose by the Director-General in writing, or the principal officer of an approved adoption agency that has been involved in the proposed adoption, may appear at the hearing of any application made to a Judge under this Act and any proceedings relating to the application and may tender evidence, and may call, examine and cross-examine witnesses and address the Judge before whom the application is heard or the proceedings are held on the whole of the evidence.

5F. Where an application for an order for adoption of a child is contested, the Judge may direct that the child be separately represented by a legal practitioner and in the event of such a direction the Minister shall make arrangements accordingly.

Separate
representa-
tion of
child.

5G. A person who can establish to the satisfaction of the Judge that his paramount interest in the matter of a proposed adoption is the welfare and interest of the child may be given leave to intervene in the proceedings or may be joined as a party to the proceedings and may in either case tender evidence and may call, examine and cross-examine witnesses and address the Judge accordingly. ”.

Intervention
by or
joinder of
interested
person.

11. Section 10 of the principal Act is amended— Section 10
amended.

(a) in subsection (1) by deleting “subsection (1a) of this section” and substituting the following—

“ subsections (1a) and (1b) ”; and

(b) by inserting after subsection (1a) the following subsection—

“ (1b) Notwithstanding subsection (1), the surname to be conferred on an adopted child by an order of adoption may be a surname that might have been entered in a register of births by the Registrar-General under the Registration of Births, Deaths and Marriages Act 1961 if the birth of a child of the adopting parents were to be so registered after the coming into operation of the Registration of Births, Deaths and Marriages Amendment Act 1985. ”.

Section 11
amended.

12. Section 11 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) Notwithstanding subsection (1), the Registrar of the Family Court shall give to the Director-General such information from the records under his control as the Director-General, or an officer of the Department authorized by the Director-General for the purpose, certifies in writing is required by the Director-General for the purposes of section 24AB. ”.

Section 12A
amended.

13. Section 12A of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (5a) Notwithstanding subsection (5), the Registrar-General shall give to the Director-General such information from the records under his control as the Director-General, or an officer of the Department authorized by the Director-General for the purpose, certifies in writing is required by the Director-General for the purposes of sections 24AA and 24AB. ”.

14. Section 13 of the principal Act is amended by inserting after subsection (1) the following subsection—

Section 13
amended.

“ (1a) Notwithstanding subsection (1) (c), the Registrar-General shall give to the Director-General such information from the records under his control as the Director-General, or an officer of the Department authorized by the Director-General for the purpose, certifies in writing is required by the Director-General for the purpose of sections 24AA and 24AB. ”.

15. Section 13B of the principal Act is amended by inserting after subsection (2) the following subsection—

Section 13B
amended.

“ (2a) Notwithstanding subsection (2) (b), the Registrar-General shall give to the Director-General such information from the records under his control as the Director-General, or an officer of the Department authorized by the Director-General for the purpose, certifies in writing is required by the Director-General for the purpose of sections 24AA and 24AB. ”.

16. Section 18 of the principal Act is amended in subsection (1) by deleting “Four hundred dollars” and substituting the following—

Section 18
amended.

“ \$2 500 ”.

17. Section 19 of the principal Act is amended in subsection (1) by deleting “Four hundred dollars” and substituting the following—

Section 19
amended.

“ \$2 500 ”.

Section 20
amended.

18. Section 20 of the principal Act is amended in subsection (1) by deleting "Four hundred dollars or imprisonment for twelve months." and substituting the following—

" \$2 500 or imprisonment for 6 months. "

Section 21
amended.

19. Section 21 of the principal Act is amended by deleting "Four hundred dollars" and substituting the following—

" \$2 500 "

Section 22
amended.

20. Section 22 of the principal Act is amended by deleting "One hundred dollars" and substituting the following—

" \$1 000 "

Section 23
repealed and
substituted.

21. Section 23 of the principal Act is repealed and the following section is substituted—

Penalty for
making
unauthorized
arrangements
for
adoptions.

" 23. (1) Subject to subsections (2) and (3), a person who, without being authorized in writing for the purpose by or on behalf of the Director-General—

(a) conducts or attempts to conduct any negotiation, or makes or attempts to make any arrangement, with a parent or guardian of a child for or towards or with a view to the adoption of the child or transfers or causes to be transferred the possession, custody or control of a child to some other person or persons with a view to the adoption of the child by such person or persons; or

(b) receives the possession, custody, or control of a child with a view to the adoption of the child,

is guilty of an offence against this Act.

Penalty: \$2 500 or imprisonment for 6 months.

(2) The provisions of subsection (1) do not apply to—

- (a) any negotiations or arrangements made by or on behalf of the mother or a guardian of a child for the adoption of the child by a parent or relative of the child;
- (b) any negotiations or arrangements made by the principal officer of a private adoption agency approved under section 3C, or a person authorized in writing by such a principal officer to act on his behalf, with a view to the adoption of a child by any other person; or
- (c) the transfer of or receiving the possession, custody or control of a child pursuant to negotiations or arrangements of the kind referred to in paragraph (a) or (b).

(3) Where the Director-General refuses an application by a person to be authorized under subsection (1), the person may appeal against that refusal to a Judge of the Family Court and upon hearing such an appeal the Judge may—

- (a) confirm the refusal of the Director-General; or
- (b) grant any authority that the Director-General might have granted under subsection (1).

(4) In subsection (2), “relative” includes natural parent and spouse of a natural parent. ”.

Section 23A
amended.

22. Section 23A of the principal Act is amended by deleting "\$400" and substituting the following—

“ \$2 500 or imprisonment for 6 months ”.

Section 24
amended.

23. Section 24 of the principal Act is amended—

(a) by inserting after “24” the subsection designation “(1)”; and

(b) by inserting the following subsections—

“ (2) Proceedings for an offence against this Act may be commenced within 6 months after the day on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to his knowledge.

(3) For the purposes of this section, a certificate of the Attorney General as to the day on which such evidence as is referred to in subsection (2) came to his knowledge shall be conclusive evidence. ”.

Section 24A
amended.

24. Section 24A of the principal Act is amended in subsection (1) by inserting after “Department,” the following—

“ or principal officer of an approved private adoption agency, ”.

Section 24AA
inserted.

25. After section 24A of the principal Act the following section is inserted—

Access by
adopted
person to
adoption
information.

“ 24AA. (1) A person in respect of whom an order for adoption has been made or registered in this State and who has attained the age of 18 years (in this section referred to as the adopted person) may apply in writing to the Director-General for an extract from, or

certified copy of, the original entry of the birth of the adopted person in a register of births maintained under the Registration of Births, Deaths and Marriages Act 1961.

(2) Upon receipt of an application under subsection (1), the Director-General—

- (a) shall inform the adopted person in writing—
 - (i) of the place or places at which counselling services are available;
 - (ii) that information cannot be supplied under this section unless the adopted person has received counselling by an approved counsellor; and
 - (iii) that identifying information cannot be supplied under this section if there is any entry in the Adoption Contact Register to the effect that a natural parent of the adopted person does not wish to have contact with the adopted person;
- (b) shall inform the approved counsellor chosen by the adopted person of—
 - (i) any information relevant to the adoption known to the Director-General that is potentially distressing to the adopted person; and
 - (ii) any entry in the Adoption Contact Register to the effect that a natural parent of the adopted person does not wish to have contact with the adopted person;

- (c) shall not supply an extract from, or certified copy of, the original entry of the birth of the adopted person in the register of births under this section unless the applicant has received counselling by an approved counsellor; and
- (d) shall not supply an extract from, or certified copy of, the original entry of the birth of the adopted person in the register of births under this section if there is any entry in the Adoption Contact Register to the effect that a natural parent of the adopted person does not wish to have contact with the adopted person.

(3) The counselling of an adopted person that is required for the purposes of this section shall include informing the adopted person of all information given to the approved counsellor in respect of that adopted person by the Director-General under subsection (2) (b).

(4) Where the Director-General has received an application under subsection (1) and is satisfied that—

- (i) the adopted person has received counselling by an approved counsellor; and
- (ii) there is no entry in the Adoption Contact Register to the effect that a natural parent of the adopted person does not wish to have contact with the adopted person,

the Director-General shall apply to the Registrar-General for the issue to the Director-General or to the adopted person of an extract from, or certified copy of, the original entry of the birth in the register of births relating to the adopted person.

(5) Upon receipt of an application under subsection (4) and upon payment of any fees that may be payable, the Registrar-General shall issue in accordance with the application an extract from, or certified copy of, the original entry of the birth in the register of births relating to the person named in the application and any such extract or certified copy shall be marked with the word "adopted".

(6) In this section "approved counsellor" means a person who is approved by the Minister for the purposes of this section by notice published in the *Gazette*.

(7) Notwithstanding any other provisions of this Act, where the Director-General has received an application for information from any person having a sufficient interest relating to an adopted person or the natural parents, adopting parents or relatives of an adopted person and considers that by reason of special circumstances, relating to health or otherwise, it is desirable to release any information he has to the applicant he may, subject to the approval of the Minister and subject to such conditions as the Director-General or the Minister may stipulate, release such information.

(8) Any person who breaches a condition imposed under subsection (7) commits an offence.

Penalty: \$2 500 or imprisonment for six (6) months. "

26. Before section 24B of the principal Act the following sections are inserted—

Sections 24AB
to 24AD
inserted.

" 24AB. (1) The Director-General shall establish and maintain an Adoption Contact Register.

Adoption
Contact
Register.

(2) There shall be entered in the Adoption Contact Register—

(a) the names and addresses of persons, including—

(i) adopted persons;

(ii) relatives of adopted persons;

(iii) natural parents of adopted persons; and

(iv) adopting parents of adopted persons—

who have in writing requested the Director-General to enter their names and addresses in the Adoption Contact Register; and

(b) in relation to each person whose name is so entered, the wishes of the person in relation to—

(i) obtaining information about, or meeting or providing information to;

(ii) whether or not to release the name, address or any information about the person to; and

(iii) any information that the person may wish to be released to—

another person whose name is, or may in the future be, entered in the Adoption Contact Register.

(3) The name and address of an adopted person who is under the age of 18 years shall not be entered in the Adoption Contact Register except with the consent in writing of the adopting parents of that person.

(4) The name and address of a person whose name is entered in the Adoption Contact Register shall not be disclosed to any person (except in accordance with this Act) unless the person has given consent in writing to the disclosure of the name and address.

(5) The Director-General shall from time to time, by advertising in such manner as he considers appropriate, publicize the establishment of the Adoption Contact Register and invite adopted persons and natural parents to record their wishes in relation to obtaining information about, or meeting or providing information to, another person whose name is, or may in the future be, entered in the Adoption Contact Register.

(6) The Director-General shall, upon the request of a person whose name is entered in the Adoption Contact Register, amend or cancel the entry relating to that person and in the event of the death of the person whose name is so entered cancel the entry relating to such person.

24AC. A person who, except for the purposes of this Act or as may be permitted by this Act or the regulations directly or indirectly—

Confidentiality.

(a) makes a record of any information;

or

(b) divulges or communicates to any person any information,

being information contained in records, books, documents or files of or in the possession or under the control of the Department or an approved adoption agency and relating to the

adoption of a child or arrangements or negotiations for or towards or with a view to the adoption of a child is guilty of an offence against this Act.

Penalty: \$2 500 or imprisonment for 6 months.

24AD. (1) A person who does any act calculated or likely to intimidate, embarrass, ridicule or harass another person by virtue of that other person being or having been—

- (a) an adopted person;
- (b) a natural parent of an adopted person;
- (c) an adopting parent of an adopted person;

or a relative of any of the foregoing persons is guilty of an offence against this Act.

(2) For the purposes of subsection (1) "relative" means any of the mother, father, brothers, sisters, spouses, *de facto* spouses or children of the relevant person.

Penalty: \$2 500 or imprisonment for six months. "

Section 26
added.

27. After section 25 of the principal Act, the following section is added—

Power to
make
regulations.

" 26. The Governor may make regulations prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the purposes of this Act and, in particular, making provision for or in relation to—

- (a) requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children;

- (b) the qualifications and experience of persons engaged in making arrangements with a view to the adoption of children and standards and procedures to be observed in providing any service to the public in relation thereto;
- (c) notifying any change in the address or in the management or control of private adoption agencies and making returns in relation to the conduct of the business of private adoption agencies concerning adoptions or proposed adoptions;
- (d) factors to be considered in the placement of children for the purposes of adoption under this Act and the keeping of lists of applicants;
- (e) the authorization of the Governor to direct by order published in the *Gazette* that lists of applicants be closed for a period specified in the order;
- (f) criteria in accordance with which a person will or will not be approved by the Director-General or an approved adoption agency as a fit and proper person to receive custody and control of a child for the purposes of adoption, but enabling the Director-General to depart from the criteria to allow placement of children with special needs;
- (g) criteria for the approval of persons as approved counsellors for the purposes of section 24AA;
- (h) the constitution of offences for contravention of or failure to comply with a regulation and provision for penalties not exceeding a fine of \$1 000 for offences against the regulations. ”.

Transitional.

28. Where immediately before the coming into operation of this Act—

- (a) an application has been made under the principal Act for an order of adoption and the application has not been finally determined; or
- (b) a child has been placed in the custody of a person or persons for the purpose of adoption, the consents to adoption required under the principal Act have been given and any necessary consent of the Director-General under section 23 of the principal Act has been given,

the application for an order of adoption in respect of that child shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been enacted.
