



AUSTRALIAN CAPITAL TERRITORY

# Adoption Act 1993

No. 20 of 1993

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AUSTRALIAN CAPITAL TERRITORY

## Adoption Act 1993

No. 20 of 1993

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### An Act relating to the adoption of children

[Notified in ACT Gazette S46: 2 April 1993]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### PART I—PRELIMINARY

##### Short title

1. This Act may be cited as the *Adoption Act 1993*.

##### Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

##### Repeal

3. The following Acts are repealed:

*Adoption of Children Act 1965*

*Adoption of Children Act 1974*

*Adoption of Children (Amendment) Act 1979*

*Adoption of Children (Amendment) Act 1983*

*Adoption of Children (Amendment) Act 1988*

*Adoption of Children (Amendment) Act 1991.*

## **Interpretation**

**4. (1)** In this Act, unless the contrary intention appears—

“Aboriginal child” means a child at least 1 of whose parents is an  
**Aborigine;**

“Aborigine” means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander;
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an  
Aboriginal or Torres Strait Island community;

“adoption order” means an order for the adoption of a child made under  
section 9 or under the corresponding provisions of the repealed  
laws;

“Australia” includes an external Territory;

“charitable organisation” means an organisation, whether incorporated  
or not, formed or carried on primarily for charitable, benevolent,  
philanthropic or religious purposes, but does not include an  
organisation formed or carried on for the purpose of trading or  
securing a pecuniary profit to its members;

“child” means a person—

- (a) who has not attained the age of 18 years; or
- (b) who has attained that age but in respect of whom an  
adoption order is sought or has been made;

“Community Advocate” means the Community Advocate appointed  
under section 4 of the *Community Advocate Act 1991* and includes  
a person appointed to act as Community Advocate under section  
10 of that Act;

“Contact Veto Register” means the register established under section 79;

“Court” means the Supreme Court;

- “determined fee” means a fee determined under section 118 for the purposes of the provision in which the expression occurs;
- “Director” means the Director of Family Services appointed under section 7 of the *Children's Services Act 1986* and includes a person appointed to act as Director under section 10 of that Act;
- “disposition of property” includes the grant or exercise of a power of appointment in respect of property;
- “file”, in relation to a document in proceedings in the Court, means file in the office of the Registrar of the Court;
- “general consent” means a consent referred to in subsection 29 (2);
- “guardian”, in relation to a child, includes—
- (a) a person having the custody of the child under an order of a court; and
  - (b) a person who is the guardian of the child (whether to the exclusion of, or in addition to, a parent or other guardian) under a law of the Territory, the Commonwealth, a State or another Territory;
- “instrument of consent” means an instrument referred to in section 30;
- “interim order” means an order under section 50 or under the corresponding provisions of the repealed laws;
- “limited consent” means a consent referred to in subsection 29 (3);
- “principal officer”, in relation to a private adoption agency, means the person specified as its principal officer in its application for approval under section 81 or the person specified as its principal officer in its latest notification to the Director under section 83;
- “private adoption agency” means a charitable organisation approved as a private adoption agency under section 82;
- “relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child;
- “relevant administrative unit” means, the administrative unit of the Public Service that is the responsibility of the Minister for the time being administering this Act;
- “repealed laws” means the Acts repealed by section 3 or the Ordinances repealed by any of those Acts;
- “responsible person”, in relation to an Aboriginal child, means—

- (a) a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Island community of which the child is a member, has responsibility for, or an interest in, the welfare of the child; or
- (b) if the child is not in the custody of any person or is in the custody of a person who is not a parent of the child or a member of an Aboriginal or Torres Strait Island community—a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Island community of which a parent of the child is or was a member, has responsibility for, or an interest in, the welfare of the child;

“Reunion Information Register” means the Register established under section 80;

“Service” means the Adoption Information Service maintained under section 77.

(2) For the purpose of the definition of “relative” in subsection (1), it is immaterial—

- (a) that the relationship is traced through birth or depends upon adoption; or
- (b) in the case of a brother or sister—whether the relationship is of the whole blood or half-blood.

(3) In this Act, a reference to the birth or adoptive parents of a child, or to applicants, shall, unless the contrary intention appears, if there is only 1 birth or adoptive parent, or 1 applicant, be read as a reference to that birth or adoptive parent, or that applicant, as the case requires, and any reference to each birth or adoptive parent, or each applicant, shall be construed accordingly.

### **Position of Crown**

5. This Act binds the Crown.

### **Welfare and interests of child to be paramount**

6. For the purposes of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

## **PART II—JURISDICTION**

### **Proceedings**

7. Jurisdiction is conferred on the Court to hear and determine proceedings on applications for the making of adoption orders and other orders under this Act.



**Rules of private international law not to apply**

8. (1) The jurisdiction of the Supreme Court under this Act is not dependent on any fact or circumstance not specified in this Act.

(2) Without limiting the generality of subsection (1), the common law rules of private international law do not apply in relation to matters arising under this Act.

**PART III—ADOPTIONS UNDER THIS ACT**

*Division 1—General*

**Power of Court**

9. Subject to this Act, the Court may, on application, make an order for the adoption of a child who—

- (a) had not attained the age of 18 years before the date on which the application was filed; or
- (b) has been reared, maintained and educated by the applicants or either of the applicants, or by the applicant and a deceased spouse of the applicant, as his, her or their child under a *de facto* adoption.

**Child over 18**

10. An adoption order shall not be made if the child has attained the age of 18 years unless the Court is of the opinion that—

- (a) the applicants are persons of good repute; and
- (b) there are exceptional circumstances that justify the order.

**Previous adoption immaterial**

11. An adoption order may be made notwithstanding that the child has, whether before or after the commencement of this Act and whether in the Territory or elsewhere, previously been adopted.

**Residence or domicile**

12. (1) An adoption order shall not be made unless, when the application for the order was filed—

- (a) the applicants were resident or domiciled in the Territory; and
- (b) the child was present in the Territory.

(2) For the purposes of subsection (1), where the Court is satisfied that the applicants were resident or domiciled in the Territory, or that a child was present in the Territory, within 21 days before the date on which an application was filed, the Court may, in the absence of evidence to the contrary, presume that the applicants were resident or domiciled in the

Territory, or that the child was present in the Territory, as the case may be, when the application was filed.

### **Married child**

**13.** An adoption order shall not be made if the child is, or has been, married.

### **Frustration of immigration law**

**14.** An adoption order shall not be made if the Court is of the opinion that it is being sought primarily as a means of evading the operation of a law of the Commonwealth relating to immigration.

### **Register and records of persons who apply to adopt**

**15.** The Director shall—

- (a) keep a register of persons whose application for the placement of a child for the purposes of adoption has been approved; and
- (b) keep records of persons whose application for the placement of a child for the purposes of adoption—
  - (i) has been refused; or
  - (ii) has been approved, but for which the approval has been withdrawn.

### **Placement of child pending adoption**

**16. (1)** On receiving a request in writing from the applicants for an adoption order, the Director may, if he or she considers that they are suitable persons with whom to place a child for the purpose of adoption—

- (a) include the names of the applicants on the register of persons seeking the placement of a child for the purpose of adoption; and
- (b) place a child of whom he or she is the guardian in the custody of those applicants pending the determination of the application.

**(2)** The Director shall not—

- (a) include the names of applicants on the register under subsection (1) unless he or she considers them to be suitable persons with whom to place a child for the purpose of adoption; or
- (b) place a child in the custody of persons under subsection (1) unless he or she considers that the child would be suitable, having regard to the criteria specified in paragraph 19 (1) (c) for adoption by those applicants.

### **Review of Director's decision**

**17. (1)** Where—

- (a) the Director refuses to include the names of applicants on the register; and
- (b) the applicants have, in writing, requested that he or she reconsider that decision;

the Minister shall convene a committee, consisting of not more than 3 persons appointed by him or her, to review the decision.

**(2)** A person is not eligible to be appointed as a member of a review committee unless the Minister is satisfied that—

- (a) the person is not an officer of the Housing and Community Services Bureau; and
- (b) the person has appropriate qualifications or experience.

**(3)** Having reviewed a decision, a committee may recommend to the Director that he or she confirm or vary the decision.

**(4)** On receiving a recommendation from a committee, the Director shall reconsider the decision and may confirm or vary it.

**(5)** Where the Director confirms or varies a decision he or she shall cause notice in writing of the decision to be given to the applicants.

### **Persons in whose favour adoption orders may be made**

**18. (1)** Except as provided in this section, an adoption order shall not be made otherwise than in favour of a man and woman jointly, being a couple—

- (a) neither of whom is a parent of the child;
- (b) who, whether married or not, have lived together in a heterosexual relationship for a period of not less than 3 years; and
- (c) who, in the opinion of the Court, have demonstrated the stability of, and a commitment to, that relationship.

**(2)** An adoption order shall not be made in favour of a person who is not a parent of the child but has a relationship of the kind described in subsection (1) with a parent of the child unless—

- (a) the instrument of consent discloses consent to adoption by that particular person; and
- (b) the Court considers that it would not be preferable to make an order relating to guardianship or custody of the child.

**(3)** Subject to subsection (2), the Court may make an adoption order in favour of 1 person only after having regard to the wishes of the birth parents of the child.