

**ADOPTION OF CHILDREN (AMENDMENT)  
ACT, 1980, No. 78**

**New South Wales**



ANNO VICESIMO NONO

**ELIZABETHÆ II REGINÆ**

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**Act No. 78, 1980.**

An Act to amend the Adoption of Children Act, 1965, to constitute the Adoption Tribunal and to specify its functions; and for certain other purposes. [Assented to, 29th April, 1980.]

*Adoption of Children (Amendment).*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Adoption of Children (Amendment) Act, 1980". Short title.

2. (1) Except as provided by subsections (2), (3), (4) and (5), this Act shall commence on the date of assent to this Act. Commencement.

(2) Section 5 (1) shall, in its application to a provision of Schedule 1, 3 or 4, commence on the day on which that provision commences.

(3) Sections 5 (2) and 6 (1), Schedules 1, 2 and 3 (Schedule 3 (7), (8), (11) and (18) (c) excepted) and Part 1 of Schedule 5 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Schedule 3 (7), (8) and (11) shall commence on such day, being not earlier than the day appointed and notified under subsection (3), as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(5) Schedule 3 (18)(c) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Adoption of Children Act, 1965, is referred to in this Act as the Principal Act. Principal Act.

4. This Act contains the following Schedules :— Schedules.

**SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.**

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SCHEDULE 2.—FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 5.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 23, 1965. **5.** (1) The Principal Act is amended in the manner set forth in Schedules 1, 3 and 4.

(2) The Principal Act is further amended—

- (a) by omitting from a provision of the Principal Act specified in Column 1 of Schedule 2 the matter specified opposite the provision in the column headed “Matter to be omitted.” in Column 2 of that Schedule, other than such matter, if any, as appears in brackets and is printed in italics; and
- (b) by inserting instead the matter specified opposite the provision in the column headed “Matter to be inserted.” in Column 2 of that Schedule.

Savings, transitional and other provisions.

- 6.** (1) Part 1 of Schedule 5 has effect.
- (2) Part 2 of Schedule 5 has effect.
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SCHEDULE 1.

Sec. 5 (1).

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

(1) (a) Section 3—

After the matter relating to Part I, insert :—

PART IA.—THE ADOPTION TRIBUNAL—*ss. 6A–6Y.*

DIVISION 1.—*Constitution and Jurisdiction—ss.  
6A–6E.*

DIVISION 2.—*Conduct of Proceedings—ss. 6F–  
6P.*

DIVISION 3.—*Appeals—ss. 6Q–6S.*

DIVISION 4.—*Miscellaneous—ss. 6T–6Y.*

(b) Section 3—

At the end of the section, insert :—

SCHEDULE 1.—PROVISIONS RELATING TO THE  
MEMBERSHIP OF THE TRIBUNAL.

(2) (a) Section 6, definition of “Court”—

Omit the definition.

(b) Section 6, definition of “Deputy President”—

Before the definition of “Director”, insert :—

“Deputy President” means a person appointed, for  
the time being, as a Deputy President of the  
Tribunal.

(c) Section 6, definition of “President”—

Before the definition of “Principal officer”, insert :—

“President” means the person appointed, for the  
time being, as the President of the Tribunal.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
—*continued.*

(d) Section 6, definition of “the nominated officer”—  
Omit the definition.

(e) Section 6, definitions of “Registrar”, “Tribunal”—  
At the end of section 6, insert :—

“Registrar” means the Registrar of the Tribunal.

“Tribunal” means the Adoption Tribunal consti-  
tuted under this Act.

(3) Part IA—

After Part I, insert :—

PART IA.

THE ADOPTION TRIBUNAL.

DIVISION 1.—*Constitution and Jurisdiction.*

Interpre-  
tation:  
Pt. IA.

6A. In this Part, “member” means a person appointed,  
for the time being, as a member of the Tribunal.

The  
Tribunal.

6B. (1) There shall be an Adoption Tribunal.

(2) The Tribunal shall have a seal of which judicial  
notice shall be taken.

Members of  
the Tribunal.

6C. (1) Subject to this section, the members of the  
Tribunal shall be appointed by the Governor.

(2) The members shall comprise—

(a) a qualified person appointed as President of the  
Tribunal; and

*Adoption of Children (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
—*continued.*

(b) persons appointed from one or more of the following classes of persons :—

- (i) legally qualified medical practitioners;
- (ii) persons having knowledge of and experience in social work;
- (iii) persons having, in the opinion of the Governor, other suitable qualifications or experience.

(3) The members may include one or more qualified persons appointed as a Deputy President or Deputy Presidents of the Tribunal.

(4) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

(5) Schedule 1 has effect with respect to the membership of the Tribunal.

6D. The Tribunal shall have the jurisdiction vested in it by or under this or any other Act. Jurisdiction  
of the  
Tribunal.

6E. (1) Except as provided by subsections (5) and (6), the Tribunal shall, for the purposes of hearing and determining all proceedings before the Tribunal and all business arising out of any such proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President. Composition  
of the  
Tribunal  
for the  
purposes  
of hearing,  
etc.,  
proceedings.

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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
 CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
 —*continued.*

(2) Of the members nominated by the President for the purposes of subsection (1)—

(a) where the Tribunal is constituted by 3 or 4 members—one member, but not more than one member, shall be the President or a Deputy President; and

(b) where the Tribunal is constituted by 5 members—at least one member shall be the President or a Deputy President, but not more than 2 members shall be the President or Deputy Presidents.

(3) A nomination made for the purposes of subsection (1) may be made generally or in a particular case or class of cases.

(4) The President shall notify a member nominated under subsection (1) (other than the President) of his nomination as soon as practicable after the nomination is made.

(5) In respect of an application for an adoption order which is not opposed, the Tribunal shall, unless the President otherwise determines or the Director, the principal officer of a private adoption agency or an applicant otherwise requests, be constituted by the President or a Deputy President sitting alone.

(6) In respect of—

(a) the exercise of jurisdiction pursuant to section 6J (1) (d); or

(b) an application under section 47 (1), the Tribunal shall, unless the President otherwise determines, be constituted by the President or a Deputy President sitting alone.

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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
 CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
 —*continued.*

(7) A determination of the President under subsection (5) or (6) may be made at any time prior to or during the hearing of proceedings before the Tribunal.

(8) Where a determination of the President under subsection (5) or (6) is made during the hearing of proceedings before the Tribunal, the proceedings shall be heard de novo before the Tribunal constituted as referred to in subsection (1).

 DIVISION 2.—*Conduct of Proceedings.*

6F. Where one or more Deputy Presidents have been appointed, more than one meeting of the Tribunal may be held at the same time. Meetings of the Tribunal.

6G. The procedure for the calling of, and for conduct of business at, any meeting of the Tribunal shall, subject to this Part and any rules of the Tribunal made under section 6N, be as determined by the Tribunal. Procedure at meetings of the Tribunal.

6H. Where, at a meeting of the Tribunal, the Tribunal is constituted as referred to in section 6E (1)— Chairman and votes of members.

- (a) the President or, in the absence of the President, a Deputy President shall preside as chairman of that meeting;
- (b) except as provided by paragraph (c), questions arising at that meeting shall be determined by a majority of votes of the members present and voting;



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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
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 —*continued.*

- (c) the decision of the chairman of that meeting upon any question of law or procedure which may arise at that meeting shall be the decision of the Tribunal; and
- (d) the chairman of that meeting shall have, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

 Adjourn-  
 ment.

6I. The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

 Powers, etc.,  
 of the  
 Tribunal as  
 to the  
 production  
 of evidence.

6J. (1) Subject to the rules of the Tribunal, the Tribunal shall have and may exercise and perform the powers, authorities, duties and functions vested in the Supreme Court in respect of the following matters :—

- (a) compelling the attendance of witnesses and their examination on oath, affirmation or declaration;
- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
- (c) compelling witnesses to answer questions which the Tribunal considers to be relevant in any proceedings before it;
- (d) apprehending, detaining and punishing persons guilty of contempt, or of disobedience of any order made by the Tribunal, or of any process issuing out of the Tribunal; and

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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
 CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
 —*continued.*

(e) directing witnesses to be prosecuted for perjury, and the exercise or performance by the Tribunal of any such power, authority, duty or function has the same effect as it would have if exercised or performed by the Supreme Court.

(2) All process issuing out of the Tribunal shall be in or to the effect of the form prescribed by the rules of the Tribunal and be signed by the President or a Deputy President.

6K. (1) Proceedings before the Tribunal shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the President directs that the record be transcribed or the transcription of those records is otherwise required by law, or on the application of a party to the proceedings.

Records of proceedings before the Tribunal.

(2) Any transcription so made shall, except as to such part, if any, of the transcription as is specified by the Tribunal, be supplied to the Director or any party to the proceedings upon payment of the fee prescribed by the rules of the Tribunal corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

6L. Every decision of the Tribunal in respect of any proceedings before the Tribunal shall be in the form of an instrument in writing signed by—

Record of decision.

- (a) the President or Deputy President before whom the proceedings were heard; or

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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
 CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL  
 —*continued.*

(b) where, in relation to a meeting of the Tribunal, the Tribunal was constituted as referred to in section 6E (1), the chairman of that meeting,

and shall include the reasons for the decision of each member before whom the proceedings were heard.

**Costs.**

6M. The Tribunal may make such order as to costs in respect of any proceedings before the Tribunal as the Tribunal thinks fit and such an order has the same effect as if it had been made by the Supreme Court.

**Rules.**

6N. (1) Five members nominated by the President, who shall include the President or a Deputy President, or both, may make rules of the Tribunal, not inconsistent with this Act or the regulations, for or with respect to the calling of, and conduct of business at, any meeting of the Tribunal and generally to prescribe all matters that by this Act are required or permitted to be prescribed by rules of the Tribunal or are necessary or convenient to be prescribed by rules of the Tribunal for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Tribunal may, by its rules, fix, from time to time, the costs, charges and fees to be paid in respect of proceedings before the Tribunal, including—

- (a) professional costs, charges and fees; and
- (b) the maximum fee, determined having regard to the actual cost incurred, which may be charged by or on behalf of a private adoption agency in respect of the making of an application for an adoption order.