



New South Wales

Adoption Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Adoption Act 2000* so as:

- (a) to clarify the circumstances that must exist before the Supreme Court makes an adoption order in relation to an adult, and
- (b) to require adoption plans for Aboriginal and Torres Strait Islander children to make provision for certain matters, and
- (c) to specify the circumstances that must exist before an adoption order may be made so as to enable a child to be adopted by his or her authorised carers, and
- (d) to facilitate the return of children to the parental responsibility of the Director-General of the Department of Community Services, and
- (e) to ensure that the provision of certain documents to adopted children does not contravene the provisions of the *State Records Act 1998*, and
- (f) to provide for the issue of search warrants to facilitate the investigation of suspected offences under the *Adoption Act 2000* and the regulations under that Act, and

* Amended in committee—see table at end of volume.

- (g) to enable the prescription of adoption services and accreditation standards to be effected by administrative order rather than, as is currently the case, by regulation, and
- (h) to enact savings and transitional provisions, and
- (i) to align certain terminology used in that Act with terminology used in the *Children and Young Persons (Care and Protection) Act 1998*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date on which it is assented to.

Clause 3 is a formal provision that gives effect to the amendments to the *Adoption Act 2000* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* set out in Schedule 3.

Clause 5 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 **Principal amendments to Adoption Act 2000**

Adoption orders for adults

Section 24 (1) specifies who may be the subject of an adoption order. In the case of a child who is over the age of 18 years when the application for the adoption order is made, section 24 (1) requires the child to have been cared for by the applicant. Section 24 (2) (a) states that a child has been cared for if he or she has been brought up, maintained and educated by the applicant for a continuous period of at least 5 years before the application was made. **Schedule 1 [3]** amends section 24 (2) (a) so as to make it clear that the period of 5 years must have occurred before the child reached the age of 18 years. **Schedule 1 [4]** inserts proposed section 24 (3) to make it clear that the Supreme Court may, in exceptional circumstances, make an adoption order even if the child has been brought up, maintained and educated by the applicant for less than that period.

Adoption plans for Aboriginal and Torres Strait Islander children

Section 46 prescribes the matters for which an adoption plan must, and may, make provision. One of the matters for which an adoption plan may make provision in respect of a child is the way in which the child is to be assisted to develop a healthy and positive cultural identity and for the links with his or her heritage to be fostered.

Schedule 1 [5] inserts proposed section 46 (3) which provides that, in the case of an Aboriginal or Torres Strait Islander child to be adopted by persons who are not Aboriginal or Torres Strait Islander persons, that matter is one for which an adoption plan must make provision.

Adoption of children by authorised carers

Section 67 enables the Supreme Court, when considering an application for an adoption order for a child, to dispense with the consent of certain persons (other than the child) in certain circumstances. **Schedule 1 [6]** amends section 67 so as to allow the consent of any person (other than the child) to be dispensed with in the case of an application made by an authorised carer if the Supreme Court is satisfied that the child has established a stable relationship with the authorised carer and the adoption of the child by the authorised carer will promote the child's interests and welfare.

Return of children to parental responsibility of Director-General

Part 6 of Chapter 4 gives guardianship to the Director-General of any child who is awaiting adoption. Section 79 provides for when that guardianship comes to an end. Section 79 (1) (d) provides that guardianship comes to an end if the child is placed in the care of some other person. **Schedule 1 [7]** omits section 79 (1) (d). **Schedule 1 [8]** inserts proposed section 79 (2A) which provides instead that the Director-General's guardianship is merely suspended while the child is so placed. **Schedule 1 [8]** also inserts proposed section 79 (2B) which provides that such a placement may be terminated at any time, and for any reason or no reason. **Schedule 1 [9]** inserts proposed section 79A which enables the Director-General to make an order directing that a child who has left, or been removed from, the care of the Director-General or of any person with whom the child has been placed to be returned to that care.

Provision of documents to adopted persons

Part 2 of Chapter 8 entitles an adopted child to be given certain information (including an original birth certificate and original birth record). In some circumstances, giving such information and documents to the child may contravene the provisions of the *State Records Act 1998*. **Schedule 1 [10]** inserts proposed section 143A so as to ensure that there will be no such contravention.

Search warrants

Schedule 1 [9] inserts proposed section 79B, and **Schedule 1 [11]** inserts proposed section 202A, each of the proposed sections enabling the Director-General or a police officer to apply for a search warrant. A search warrant under proposed section 79B will facilitate the search for missing children for whom the Director-General has parental responsibility. A search warrant under proposed section 202A will facilitate the investigation of alleged offences under the Act or the regulations.

Prescription of adoption services and accreditation standards

Section 13 (2) enables the regulations to prescribe the adoption services for which an adoption service provider may be accredited and standards that an adoption service provider must comply with in order to be accredited in relation to such a service. **Schedule 1 [1]** amends section 13 (2) so as to provide that such matters are to be prescribed by administrative order. **Schedule 1 [2]** inserts proposed section 13 (3) which will provide for the tabling and disallowance of such an order, and proposed section 13 (4) which requires any prescribed accreditation standards to be posted on the Department's internet website.

Savings and transitional provisions

Schedule 1 [13] inserts proposed Part 3 into Schedule 3. The new Part contains savings and transitional provisions consequent on the enactment of the proposed Act. **Schedule 1 [12]** amends clause 1 of Schedule 3 so as to enable further savings and transitional provisions to be made by regulation.

Schedule 2 Amendments to Adoption Act 2000 in relation to changes in terminology

Schedule 2 amends various provisions of the Act so as:

- (a) to substitute the expression "care responsibility" for the expression "care", and
- (b) to substitute the expression "parental responsibility" for the expression "guardianship", and
- (c) to substitute the expression "authorised carer" for the expression "foster parent".

The Schedule also inserts definitions of *authorised carer* and *care responsibility* into the Dictionary to the Act (**Schedule 2 [55]**).

The purpose of these amendments is to align the concepts used in the Act with concepts used in the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 3 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 3 amends Schedule 2 so as to include references to proposed sections 79B and 202A of the *Adoption Act 2000*, to be inserted into that Act by **Schedule 1 [9] and [11]**.