

## 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 (the Act) following a statutory review of the Act:

- (a) to simplify the process for intercountry, step parent, relative and adult adoptions, and
- (b) to allow reports to the Supreme Court (the Court) about adoptions to be made by assessors approved by the Director-General of the Department of Community Services, and to remove any requirement to make a report in respect of an adult adoption, and
- (c) to provide for greater access to adoption information (such as birth certificates and birth records) for adopted children, adoptive parents, birth parents and siblings (in respect of future adoptions), and
- (d) to allow the identity of parties to adoption proceedings (other than birth parents) to be published during the proceedings with the consent of the Court and of all the parties, and to allow the identity of a party to an adoption proceeding to be published after the proceedings are disposed of with consent of the party identified, and
- (e) to reduce the period that a couple must have been living together before they can adopt a child from 3 years to 2 years, and
- (f) to provide for greater involvement of Aboriginal and Torres Strait Islander organisations in the placement of, and adoption plans for, Aboriginal and Torres Strait Islander children, and
- (g) to change some of the principles to be applied by decision makers in the adoption process, and
- (h) to remove certain restrictions on the Court approving a name change for a child, and
- (i) to change the procedure for obtaining the consent of a child 12 years or over to his or her adoption, and
- (j) to make other minor and miscellaneous changes to the Act.

### 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 a day or days to be appointed by proclamation.

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

Clause 4 provides for the repeal of the proposed Act after all 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 Amendments

#### Step parent, relative, adult and intercountry adoptions

The proposed Act makes various amendments which simplify the adoption process in relation to the adoption of children by a step parent or relative, in relation to the adoption of a person aged over 18, and in relation to intercountry adoptions.

Schedule 1 [17] and [18] provide that applications for these types of adoptions may be made directly to the Supreme Court without the consent of the Director-General of the Department of Community Services (the Director-General).

Schedule 1 [6] and [7] reduce the length of the relationship that must be established between a child and a relative of the child or a step parent before that relative or step parent may adopt the child from 5 years and 3 years to 2 years. Schedule 1 [8] provides that in the case of an adoption by a step parent of a child who is aged over 18, the requirement that the child and step parent have lived together for 2 years does

not apply.

Schedule 1 [3] removes the current requirement, for adult adoptions, that the person to be adopted must have been cared for by the applicant for at least 5 years prior to turning 18 years old. Instead, it will only be necessary to establish that the prospective adoptive parent cared for the person, as his or her child, before the person turned 18. Schedule 1 [4] is a consequential amendment.

Schedule 1 [14] removes the requirement, in the case of a step parent or relative adoption, for the Department of Community Services to provide information (about adoption alternatives, support services, legal rights, role of the Department of Community Services, etc) to those people whose consent is required before an adoption order can be made. In such a case, it will be the responsibility of the step parent or relative to provide that information to the people whose consent is required (generally, the birth parents).

The amendment also clarifies that in the case of an adoption of a child who is under the parental responsibility of the Minister, this information does not need to be given to the Minister or his or her delegate. Schedule 1 [15] is a consequential amendment.

Reports to the Court about adoptions

Schedule 1 [19] changes the requirements with respect to reports to the Court about adoptions. Currently, the Court may not make an adoption order for a child under 18 years of age without a written report from the Director-General or a principal officer of an accredited adoption service provider. The amendment allows these reports to also be prepared by an assessor who is approved by the Director-General in writing. It also clarifies that reports can only be required for children under 18.

In adoption applications made by someone other than the Director-General (for example, an application by a step parent, a private adoption service or an intercountry adoption), the Court may require the Director-General to provide a report only if there are concerns about the welfare of the child or about the independence or reliability of a report made by an assessor or adoption service provider or in other exceptional circumstances.

Access to adoption information

The amendments establish a new open scheme in relation to the entitlements of adopted children, birth parents, adoptive parents and siblings to access adoption information (that is, birth certificates, birth records and other identifying information). The new scheme will only apply to future adoptions. The existing scheme will continue to apply to all other adoptions.

Under the new scheme (inserted by Schedule 1 [23]), an adopted person under the age of 18 will be entitled to receive his or her birth certificate, birth record and other prescribed information with the consent of his or her adoptive parents (or the Director-General in certain circumstances). The consent of the surviving birth parents will no longer be required. An adopted person who is 18 or over continues to be entitled to receive this information. However, it will no longer be necessary to obtain the consent of the Director-General to receive prescribed information.

The existing scheme provides that adoptive parents may only receive their adopted child's birth certificate and birth record if the child is over 18 and consents to the adoptive parents receiving it. Adoptive parents will now be able to access this information about their adopted child at any age and without the consent of the adopted child.

At present, a birth parent is entitled to access information about their child once the child has turned 18. This entitlement continues under the new scheme. However, it will no longer be necessary to obtain the consent of the Director-General to receive the prescribed information. Under the new scheme, if the adopted person is under 18, a birth parent will be entitled to receive adoption information about their child, unless the Director-General is of the opinion that supplying the information would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.

The new scheme will also enable non-adopted siblings to access information about their adopted siblings (with the consent of their parents if the sibling is under 18 years of age). If the adopted sibling is under 18, the Director-General may refuse to supply the information if in the Director-General's opinion, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.

Schedule 1 [24] continues the existing access arrangements for existing adoptions.

Schedule 1 [27] re-enacts an existing provision relating to the Director-General's discretion to withhold adoption information so that the provision applies to existing adoptions only. It will not apply to future adoptions under the new scheme, because the Director-General's power to withhold information under the new scheme is more limited. Schedule 1 [31] makes a consequential amendment.

Schedule 1 [30] expands the Director-General's discretion to supply adoption information to people who are not entitled under the Act to receive such information. This will apply to existing and future adoptions. The Director-General will be able to supply such information if, in the opinion of the Director-General, it is reasonable to do so.

Schedule 1 [28] and [29] are consequential amendments.

Schedule 1 [22] inserts a definition of presumptive father into the Act and Schedule 1 [25] and [26] make related amendments that clarify that a presumptive father (a man who claims to be the birth parent of an adopted person and who is shown on the original birth certificate as the father of the adopted person) has the same entitlements to access adoption information as a birth mother.

#### Restriction on publication of identities

Currently, the Act prohibits the publication of any material which identifies, or is reasonably likely to identify, parties to an adoption application (generally, the child, the birth parents and the adoptive parents). Schedule 1 [32] changes the offence. It continues to be an offence to publish identifying material and the maximum penalty remains the same. However, the publication of material which identifies parties to an adoption application will now be permitted once the Court proceedings are finalised, if each person who is to be identified consents, and if the material does not identify any person who does not consent to being identified. In the case of a child who is less than 18 years, the consent of the child's adoptive parents is required.

The changes will also allow the Court to authorise publication of identifying material (other than material identifying birth parents) during proceedings if it is satisfied that all adult parties consent to the publication and it is appropriate to do so. The Court must also be satisfied that a child aged between 12 and 18 consents to the publication. The Director-General is entitled to be heard in relation to an application for authority to publish identifying material during proceedings.

#### Adoption by couple

Schedule 1 [5] reduces the period that a couple must have been living together before they can adopt a child from 3 years to 2 years.

#### Aboriginal and Torres Strait Islander children

Schedule 1 [9] and [10] require the Director-General or a principal officer of an accredited adoption service provider to consult with a local, community-based Aboriginal or Torres Strait Islander organisation in relation to the placement of an Aboriginal or Torres Strait Islander child. Schedule 1 [11] requires such an organisation to be consulted in relation to provisions in an adoption plan that set out how the child's Aboriginal or Torres Strait Islander cultural identity and heritage are to be developed.

#### Principles for adoption decisions

Section 8 of the Act requires a person making a decision about the adoption of a child to have regard to certain principles. Schedule 1 [2] inserts a new principle that undue delay in making a decision about the adoption of a child is likely to prejudice the child's welfare. Schedule 1 [1] amends an existing principle that adoption is to be

regarded as a service for a child to recognise the contribution of adoptive parents.

#### Changing a child's name

Currently, the Court must not approve a change in the given name of a child who is more than 1 year old or a non-citizen child unless there are special reasons, related to the best interests of the child, to do so. Schedule 1 [20] removes the requirement for special reasons and instead provides that the Court must not approve such a name change unless it is satisfied that the name change is in the best interests of the child. Schedule 1 [21] inserts a note that refers to the principles that are to be applied in decisions about adoptions, including the principle that a child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.

#### Consent of children

Currently, a child aged 12 or over can consent to his or her own adoption if the child has been cared for by the proposed adoptive parent or parents for at least 5 years.

Schedule 1 [12] reduces that period to 2 years.

A child aged between 12 and 18 must be counselled in relation to giving consent to being adopted. Schedule 1 [13] removes an additional requirement for a child aged between 12 and 16 to see a registered psychologist in relation to his or her capacity to understand the effect of giving consent.

#### Miscellaneous

Schedule 1 [16] clarifies that in the case of an adoption of a child who is under the parental responsibility of the Minister, the requirement for a person giving consent to be counselled does not apply to the Minister or his or her delegate.

#### Savings and transitional provisions

Schedule 1 [33] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [34] inserts savings and transitional provisions consequent on the amendments.