

## ADOPTION OF CHILDREN (AMENDMENT) BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Registration of Births, Deaths and Marriages (Adoption) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to amend the Adoption of Children Act 1965—

- (a) to allow applications to be made to the Supreme Court for an adoption order with the consent of the Director-General of the Department of Youth and Community Services;
- (b) to expand the range of circumstances in which persons in de facto relationships may adopt children;
- (c) to provide that in certain circumstances the consent of a child who has attained the age of 15 years is the only consent required for the adoption of the child;
- (d) to limit adoptions in foreign countries which will be recognised in the State to adoptions where the adopters were resident in those countries for at least 12 months or were domiciled in those countries; and
- (e) to enable fees to be charged for certain services and instruments provided under that Act,

and to amend that Act in other minor respects.

This Bill also amends the Adoption of Children (Amendment) Act 1980 and the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 as a consequence of the proposed amendments contained in the Bill.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the provisions of the proposed Act relating to foreign adoptions will commence 90 days after the date of assent. The rest of the proposed Act will commence 28 days after the date of assent.

Clause 3 defines the Principal Act.

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Clause 4 is a formal provision giving effect to the Schedule of amendments to the Principal Act.

Clause 5 repeals uncommenced provisions of the Adoption of Children (Amendment) Act 1980 which are no longer to be proceeded with.

Clause 6 amends the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 as a consequence of the repeals to be effected by clause 5.

Schedule 1 (1) amends section 6 of the Principal Act to include the repealed Child Welfare Act 1923 as a "former Act" to which certain provisions of the Principal Act (for example, section 67—Restriction on inspection of records) apply.

Schedule 1 (2) amends section 18 of the Principal Act to enable an applicant for the adoption of a child to make an application, with the consent of the Director-General of the Department of Youth and Community Services, to the Supreme Court.

Schedule 1 (3) amends section 19 of the Principal Act to allow a man and woman in a de facto relationship to adopt a child if—

- (a) the relationship is of at least 3 years' duration and—
  - (i) the child has been brought up as their child for at least 2 years and the interests of the child are best served by the adoption; or
  - (ii) the child is disabled or has special needs and the interests of the child are best served by the adoption; or
- (b) the man, woman and child are Aborigines and the man and woman are recognised as being married according to their traditions.

The Court may dispense with those requirements in appropriate cases.

Schedule 1 (4) amends section 21 of the Principal Act to remove the requirement that the Supreme Court must not make an adoption order in respect of a child, in cases where the applicants are parents or relatives of the child, unless the Director-General of the Department of Youth and Community Services has made a report on the adoption.

Schedule 1 (5) amends section 26 of the Principal Act to enable the Supreme Court to dispense with the need for obtaining certain consents to the making of an adoption order in respect of a child if the child has attained the age of 15 years and has been brought up by the applicants for a period of at least 5 years.

Schedule 1 (6) amends section 32 of the Principal Act to allow the Supreme Court to dispense with certain consents to the making of an adoption order in respect of a child (other than the consent of the child) where the child was adopted in a foreign country.

Schedule 1 (7) amends section 33 of the Principal Act as a consequence of the amendment made by Schedule 1 (5).

Schedule 1 (8) amends section 46 of the Principal Act to provide that an adoption in a foreign country will only be recognised in the State if the adopters were resident in the country for at least 12 months or were domiciled in the country. The recognition of foreign adoptions made before the commencement of the more stringent requirements will not be affected.

Schedule 1 (9) amends section 61 of the Principal Act to require copies of memoranda of orders made under the Principal Act to be forwarded to the Director-General of the Department of Youth and Community Services.

*Adoption of Children (Amendment) 1987*

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Schedule 1 (10) inserts into the Principal Act proposed section 65A which enables the Director-General of the Department of Youth and Community Services to prepare a report as to the suitability of a person who is applying for an adoption order with respect to a child who is outside Australia.

Schedule 1 (11) amends section 73 of the Principal Act to enable regulations to be made by the Governor-in-Council with respect to the form and content of assessments and with respect to the fees for registration in certain registers and for making assessments, conducting searches, providing information etc.

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# ADOPTION OF CHILDREN (AMENDMENT) BILL 1987

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 23, 1965
5. Amendment of Act No. 78, 1980
6. Amendment of Act No. 58, 1987

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

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# ADOPTION OF CHILDREN (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

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## A BILL FOR

An Act to amend the Adoption of Children Act 1965 with respect to the age at which a child may consent to being adopted, the recognition of foreign adoptions, the imposition of fees in relation to certain services provided in connection with adoption; to amend the Adoption of Children (Amendment) Act 1980 and the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987; and for other purposes.

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See also Registration of Births, Deaths and Marriages (Adoption) Amendment Bill 1987.

*Adoption of Children (Amendment) 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Adoption of Children (Amendment) Act 1987.

**5 Commencement**

2. Schedule 1 (6) (a) and (b) and (8), and section 4 in its application to those provisions, shall commence 90 days after the date of assent to this Act.

**Principal Act**

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

**Amendment of Act No. 23, 1965**

4. The Adoption of Children Act 1965 is amended as set out in Schedule 1.

**15 Amendment of Act No. 78, 1980**

5. The Adoption of Children (Amendment) Act 1980 is amended by omitting Schedules 1 and 2 and Schedule 3 (16), (17), (18) (a), (b) and (d), (19) (a), (26), (27) and (31).

**Amendment of Act No. 58, 1987**

20 6. The Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 is amended by omitting section 2 (7) and item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965.

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**SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT**

(Sec. 4)

25 (1) Section 6 (**Interpretation**)—

Section 6, definition of “the former Acts”—

Omit the definition, insert instead:

“the former Acts” means the Child Welfare Act 1923 and the Child Welfare Act 1939 or either of those Acts;

30 (2) Section 18 (**Who may be adopted**)—

Section 18 (2)—

After “is made”, insert “by the applicant or applicants with the consent of the Director-General or”.



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 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*
(3) Section 19 (**Persons in whose favour adoption orders may be made**)—

## (a) Section 19 (1A) (a), (b), (c)—

Omit the paragraphs, insert instead:

## (a) that—

- 5 (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- 10 (ii) except as provided by subsection (1B), the child in respect of whom the application for the adoption order is made has been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years before the date of the application; and
- 15 (iii) the welfare and interests of the child will be better served by the making of an adoption order than by the making of any other order relating to the guardianship or custody of the child;

## (b) that—

- 20 (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- 25 (ii) the child in respect of whom the application for the adoption order is made is a child of a class or description prescribed for the purposes of section 68A (1); and
- 30 (iii) having regard to the disability or special needs of the child, it is not likely that the welfare and interests of the child will be better served by any other placement of the child; or

## (c) that—

- 35 (i) the man and woman are Aborigines (within the meaning of the Aboriginal Land Rights Act 1983) and are recognised as being married according to the traditions of an Aboriginal community or Aboriginal group to which they belong; and
- (ii) the child in respect of whom the application for the adoption order is made is an Aboriginal (within the meaning of that Act).

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 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (b) Section 19 (1B)—

Omit the subsection, insert instead:

(1B) Where the Court is of the opinion that, having regard to the circumstances of the case, the welfare and interests of the child will be better served by doing so, the Court may make an adoption order referred to in subsection (1A) even though—

(a) the man and woman who are living together on a bona fide domestic basis although not married to each other have so lived together for a period of less than 3 years; or

(b) the child in respect of whom the application for the adoption order is made has not been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years,

before the date of the application, or where the circumstances described in paragraphs (a) and (b) both apply.

(4) Section 21 (**Court to be satisfied as to certain matters**)—

## (a) Section 21 (1A) (a)—

Omit “or”.

## (b) Section 21 (1A) (b), (c)—

At the end of section 21 (1A) (b), insert:

; or

(c) generally in respect of applications made by or on behalf of an applicant or applicants who is or are the natural parent or parents or relative or relatives of the child.

(5) Section 26 (**Consents of certain persons to adoptions required**)—

## (a) Section 26 (1)—

Omit “or (4) or”, insert instead “, (4) or (4A) or (except in a case to which subsection (4A) applies)”.

## (b) Section 26 (4A)—

After section 26 (4), insert:

(4A) In the case of a child who, before the making of the adoption order—

(a) has attained the age of 15 years but not the age of 18 years; and

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 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(b) has been brought up, maintained and educated as the child of the applicant or applicants for the period of 5 years before the making of the application,

the only appropriate person is the child.

5 (6) Section 32 (**Court may dispense with consents**)—

(a) Section 32 (1) (f1)—

After section 32 (1) (f), insert:

10 (f1) the child is the subject of an adoption in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which section 46 would, but for the requirements specified in subsection (2) (b) of that section, apply;

(b) Section 32 (1) (g)—

Omit “(a)–(f)”, insert instead “(a)–(f1)”.

15 (c) Section 32 (1A) (b)—

Omit “or”.

(d) Section 32 (1A) (c), (d)—

At the end of section 32 (1A) (c), insert:

; or

20 (d) with the consent of the Director-General, the applicant or applicants for the adoption of the child.

(7) Section 33 (**Consent of child**)—

Section 33 (2)—

At the end of section 33, insert:

25 (2) Section 26 does not prevent the Court from making an order under this section without the consent of a child who has attained the age of 15 years but not the age of 18 years.

(8) Section 46 (**Recognition of foreign adoptions**)—

(a) Section 46 (2) (b)—

30 After section 46 (2) (a), insert:

(b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters—

35 (i) had been resident in that country for 12 months or more; or

(ii) was domiciled in that country;

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 SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (b) Section 46 (7)—

After section 46 (6), insert:

(7) This section, as in force immediately before its amendment by the Adoption of Children (Amendment) Act 1987, applies in relation to the adoption of a person in a country outside the Commonwealth and the Territories of the Commonwealth effected before that amendment.

(9) Section 61 (**Functions of nominated officer in relation to orders under this Act**)—

After “Marriages”, insert “and shall cause a copy of the memorandum to be sent to the Director-General”.

## (10) Section 65A—

After section 65, insert:

**Report for applicants where child overseas**

65A. (1) Where an application is made by a person or persons to the Director-General for a report relating to the suitability of the applicant or applicants for adopting a child from a place outside the Commonwealth and the Territories of the Commonwealth (whether or not the child is identified), the Director-General may—

- (a) assess the applicant or applicants; and
- (b) prepare the report.

(2) A report under this section may contain—

- (a) information about the applicant or applicants concerned which has been obtained from such persons as the Director-General considers appropriate;
- (b) an assessment by the Director-General of any such information; and
- (c) such other information as the Director-General considers appropriate.

(11) Section 73 (**Regulations**)—

## (a) Section 73 (1) (b)—

Omit “the fees”, insert instead “the fixing, by or under the regulations, and payment of fees”.

## (b) Section 73 (1) (b)—

After “such fees”, insert “or other charges”.

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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(c) Section 73 (1) (c1)—

After section 73 (1) (c), insert:

(c1) the form and content of any assessment made for the purposes of this Act;

5 (d) Section 73 (1) (f2)—

After section 73 (1) (f1), insert:

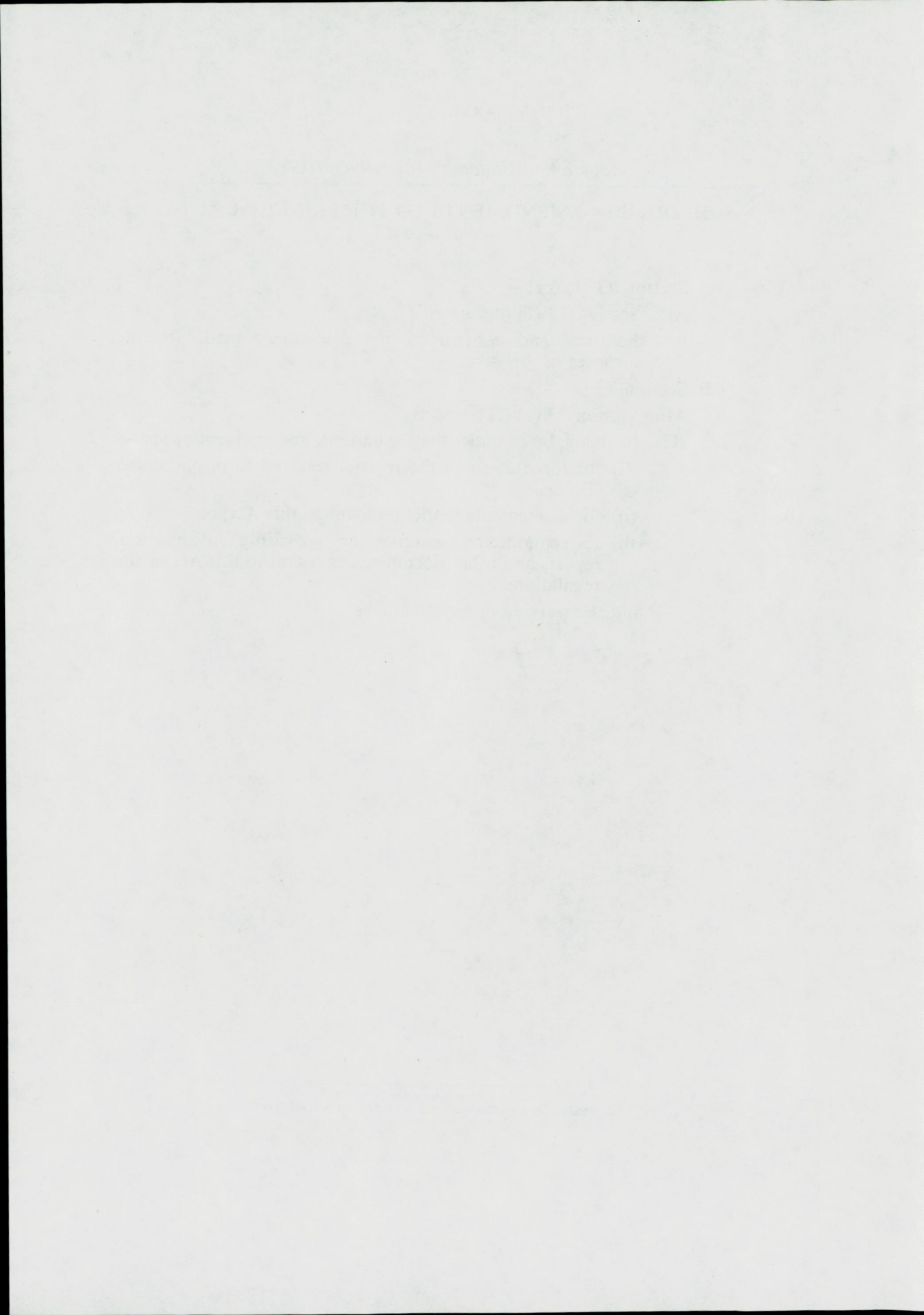
(f2) the fixing, by or under the regulations, and payment of fees—

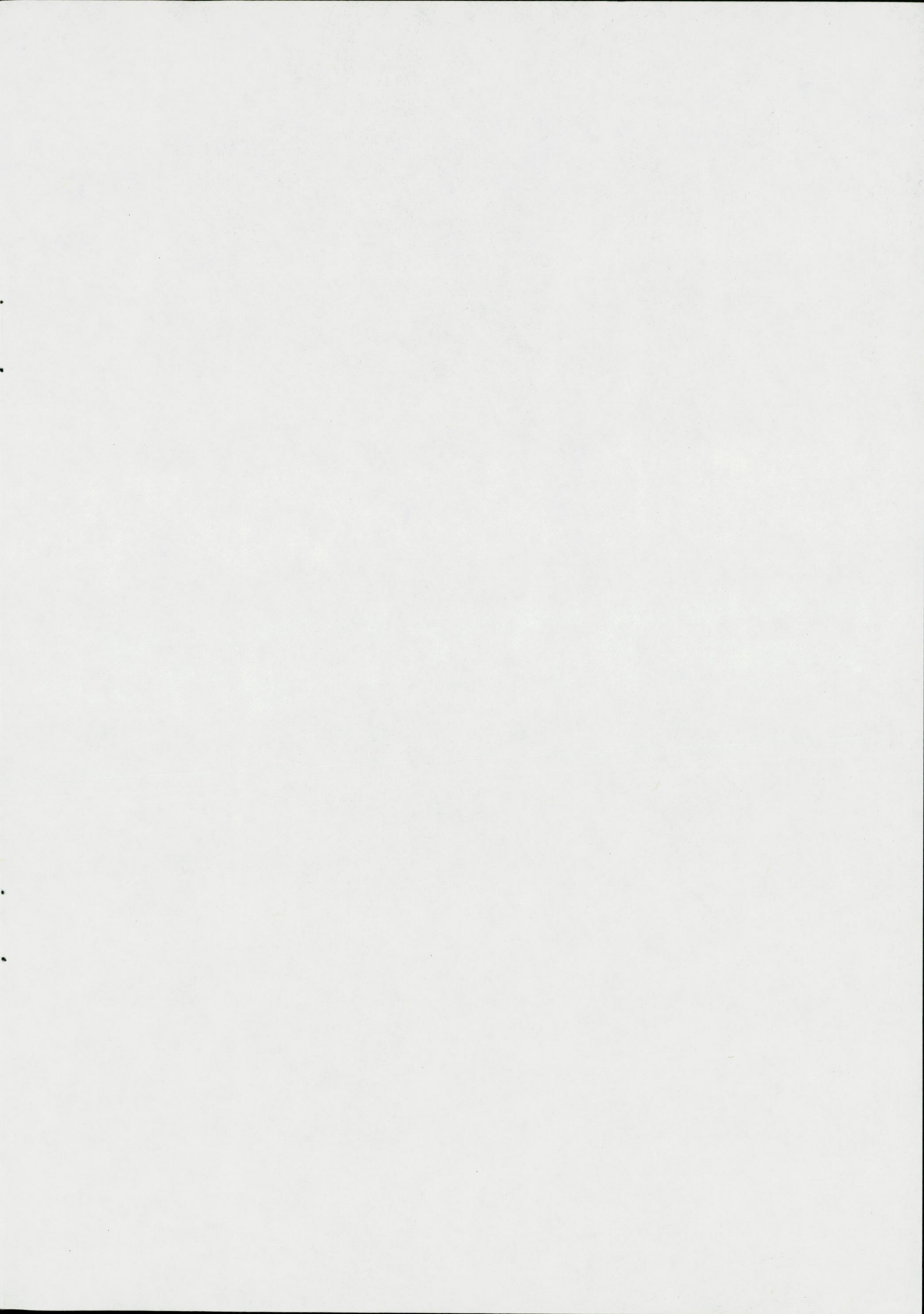
(i) for registration in the register referred to in paragraph (f1);

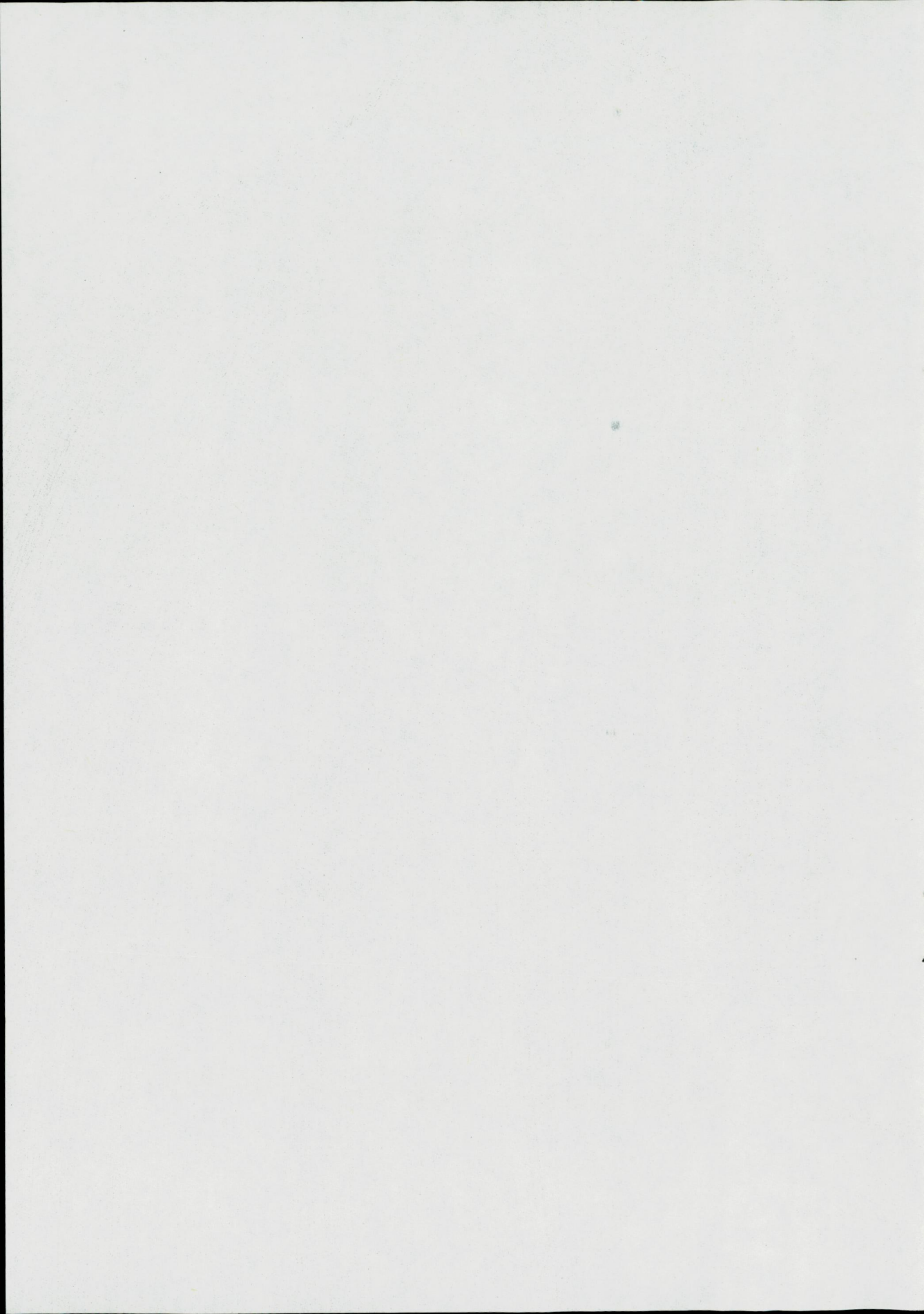
10 (ii) for assessments made pursuant to this Act; or

(iii) for conducting searches or providing information, reports and other documents pursuant to this Act or the regulations,

and the waiving of any such fees;









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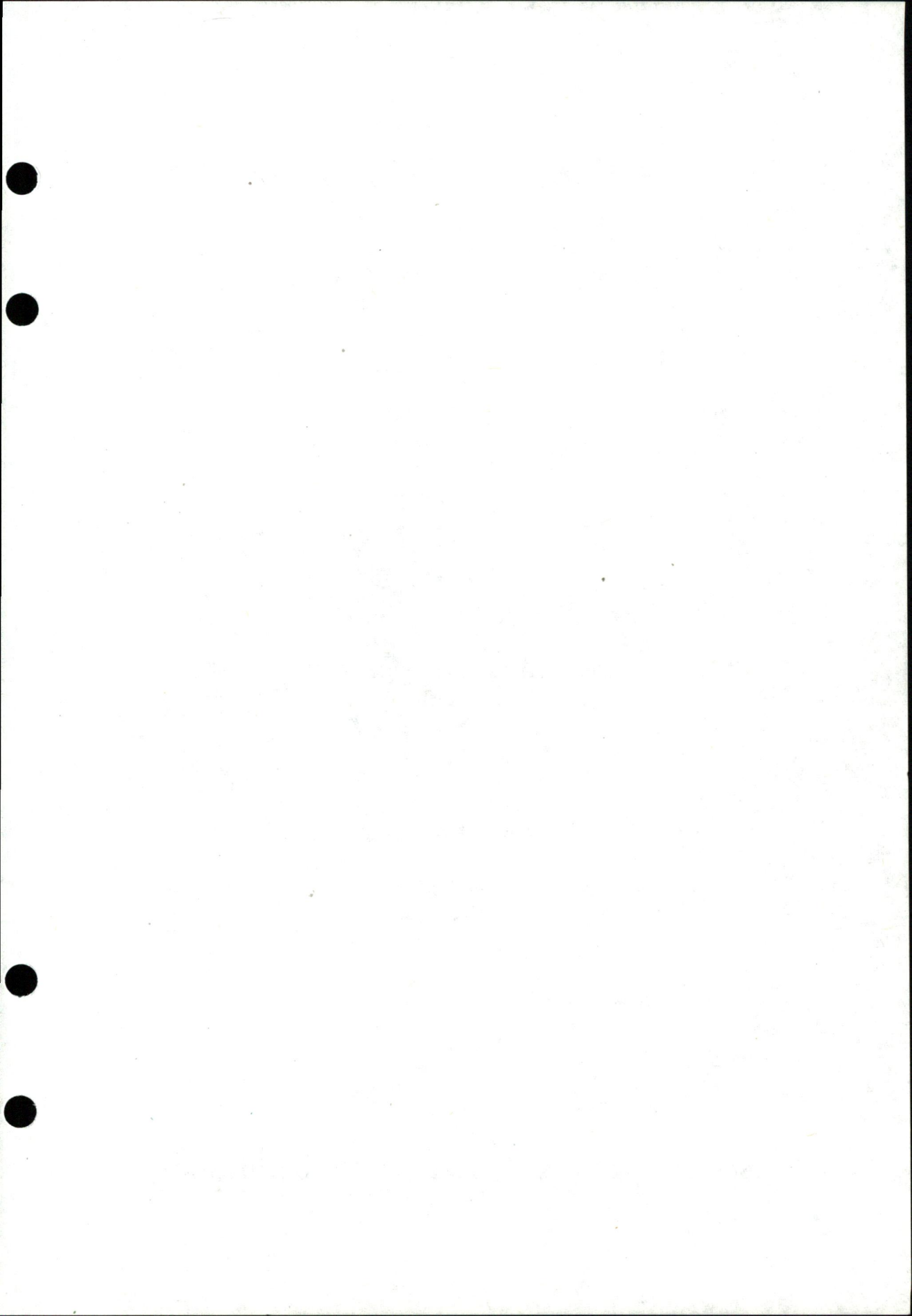


**TABLE OF PROVISIONS**

1. Short title
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6. Amendment of Act No. 58, 1987

**SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT**

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# ADOPTION OF CHILDREN (AMENDMENT) ACT 1987 No. 174

NEW SOUTH WALES



## Act No. 174, 1987

An Act to amend the Adoption of Children Act 1965 with respect to the age at which a child may consent to being adopted, the recognition of foreign adoptions, the imposition of fees in relation to certain services provided in connection with adoption; to amend the Adoption of Children (Amendment) Act 1980 and the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987; and for other purposes. [Assented to 4 December 1987]

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See also Registration of Births, Deaths and Marriages (Adoption) Amendment Act 1987.

*Adoption of Children (Amendment) 1987*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Adoption of Children (Amendment) Act 1987.

**Commencement**

2. Schedule 1 (6) (a) and (b) and (8), and section 4 in its application to those provisions, shall commence 90 days after the date of assent to this Act.

**Principal Act**

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

**Amendment of Act No. 23, 1965**

4. The Adoption of Children Act 1965 is amended as set out in Schedule 1.

**Amendment of Act No. 78, 1980**

5. The Adoption of Children (Amendment) Act 1980 is amended by omitting Schedules 1 and 2 and Schedule 3 (16), (17), (18) (a), (b) and (d), (19) (a), (26), (27) and (31).

**Amendment of Act No. 58, 1987**

6. The Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 is amended by omitting section 2 (7) and item (5) of the provisions of Schedule 4 relating to the Adoption of Children Act 1965.

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**SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT**

(Sec. 4)

(1) Section 6 (**Interpretation**)—

Section 6, definition of “the former Acts”—

Omit the definition, insert instead:

“the former Acts” means the Child Welfare Act 1923 and the Child Welfare Act 1939 or either of those Acts;

(2) Section 18 (**Who may be adopted**)—

Section 18 (2)—

After “is made”, insert “by the applicant or applicants with the consent of the Director-General or”.

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**SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—**  
*continued***(3) Section 19 (Persons in whose favour adoption orders may be made)—****(a) Section 19 (1A) (a), (b), (c)—**

Omit the paragraphs, insert instead:

**(a) that—**

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- (ii) except as provided by subsection (1B), the child in respect of whom the application for the adoption order is made has been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years before the date of the application; and
- (iii) the welfare and interests of the child will be better served by the making of an adoption order than by the making of any other order relating to the guardianship or custody of the child;

**(b) that—**

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made;
- (ii) the child in respect of whom the application for the adoption order is made is a child of a class or description prescribed for the purposes of section 68A (1); and
- (iii) having regard to the disability or special needs of the child, it is not likely that the welfare and interests of the child will be better served by any other placement of the child; or

**(c) that—**

- (i) the man and woman are Aborigines (within the meaning of the Aboriginal Land Rights Act 1983) and are recognised as being married according to the traditions of an Aboriginal community or Aboriginal group to which they belong; and
- (ii) the child in respect of whom the application for the adoption order is made is an Aboriginal (within the meaning of that Act).

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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(b) Section 19 (1B)—

Omit the subsection, insert instead:

(1B) Where the Court is of the opinion that, having regard to the circumstances of the case, the welfare and interests of the child will be better served by doing so, the Court may make an adoption order referred to in subsection (1A) even though—

- (a) the man and woman who are living together on a bona fide domestic basis although not married to each other have so lived together for a period of less than 3 years; or
- (b) the child in respect of whom the application for the adoption order is made has not been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years,

before the date of the application, or where the circumstances described in paragraphs (a) and (b) both apply.

(4) Section 21 (**Court to be satisfied as to certain matters**)—

(a) Section 21 (1A) (a)—

Omit “or”.

(b) Section 21 (1A) (b), (c)—

At the end of section 21 (1A) (b), insert:

; or

- (c) generally in respect of applications made by or on behalf of an applicant or applicants who is or are the natural parent or parents or relative or relatives of the child.

(5) Section 26 (**Consents of certain persons to adoptions required**)—

(a) Section 26 (1)—

Omit “or (4) or”, insert instead “, (4) or (4A) or (except in a case to which subsection (4A) applies)”.

(b) Section 26 (4A)—

After section 26 (4), insert:

(4A) In the case of a child who, before the making of the adoption order—

- (a) has attained the age of 15 years but not the age of 18 years; and

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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

- (b) has been brought up, maintained and educated as the child of the applicant or applicants for the period of 5 years before the making of the application,  
the only appropriate person is the child.
- (6) Section 32 (**Court may dispense with consents**)—
- (a) Section 32 (1) (f1)—  
After section 32 (1) (f), insert:  
(f1) the child is the subject of an adoption in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which section 46 would, but for the requirements specified in subsection (2) (b) of that section, apply;
- (b) Section 32 (1) (g)—  
Omit “(a)–(f)”, insert instead “(a)–(f1)”.
- (c) Section 32 (1A) (b)—  
Omit “or”.
- (d) Section 32 (1A) (c), (d)—  
At the end of section 32 (1A) (c), insert:  
; or  
(d) with the consent of the Director-General, the applicant or applicants for the adoption of the child.
- (7) Section 33 (**Consent of child**)—  
Section 33 (2)—  
At the end of section 33, insert:  
(2) Section 26 does not prevent the Court from making an order under this section without the consent of a child who has attained the age of 15 years but not the age of 18 years.
- (8) Section 46 (**Recognition of foreign adoptions**)—
- (a) Section 46 (2) (b)—  
After section 46 (2) (a), insert:  
(b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters—  
(i) had been resident in that country for 12 months or more; or  
(ii) was domiciled in that country;

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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(b) Section 46 (7)—

After section 46 (6), insert:

(7) This section, as in force immediately before its amendment by the Adoption of Children (Amendment) Act 1987, applies in relation to the adoption of a person in a country outside the Commonwealth and the Territories of the Commonwealth effected before that amendment.

(9) Section 61 (**Functions of nominated officer in relation to orders under this Act**)—

After “Marriages”, insert “and shall cause a copy of the memorandum to be sent to the Director-General”.

(10) Section 65A—

After section 65, insert:

**Report for applicants where child overseas**

65A. (1) Where an application is made by a person or persons to the Director-General for a report relating to the suitability of the applicant or applicants for adopting a child from a place outside the Commonwealth and the Territories of the Commonwealth (whether or not the child is identified), the Director-General may—

- (a) assess the applicant or applicants; and
- (b) prepare the report.

(2) A report under this section may contain—

- (a) information about the applicant or applicants concerned which has been obtained from such persons as the Director-General considers appropriate;
- (b) an assessment by the Director-General of any such information; and
- (c) such other information as the Director-General considers appropriate.

(11) Section 73 (**Regulations**)—

(a) Section 73 (1) (b)—

Omit “the fees”, insert instead “the fixing, by or under the regulations, and payment of fees”.

(b) Section 73 (1) (b)—

After “such fees”, insert “or other charges”.



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SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(c) Section 73 (1) (c1)—

After section 73 (1) (c), insert:

(c1) the form and content of any assessment made for the purposes of this Act;

(d) Section 73 (1) (f2)—

After section 73 (1) (f1), insert:

(f2) the fixing, by or under the regulations, and payment of fees—

(i) for registration in the register referred to in paragraph (f1);

(ii) for assessments made pursuant to this Act; or

(iii) for conducting searches or providing information, reports and other documents pursuant to this Act or the regulations,

and the waiving of any such fees;





