



## **Tab A**

### **ADOPTION ACT 2000 - SECT 7**

**What are the objects of this Act?**

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(cf AI Act s 3)

The objects of this Act are as follows:

- (a) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,
- (b) to make it clear that adoption is to be regarded as a service for the child concerned,
- (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- (d) to recognise the changing nature of practices of adoption,
- (e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,
- (f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,
- (g) to encourage openness in adoption,
- (h) to allow access to certain information relating to adoptions,
- (i) to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

### **ADOPTION ACT 2000 - SECT 8**

**What principles are to be applied by persons making decisions about the adoption of a child?**

**8 What principles are to be applied by persons making decisions about the adoption of a child?**

(cf AC Act s 17, AC Reg cl 35)

- (1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:
- (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,
  - (b) adoption is to be regarded as a service for the child,
  - (c) no adult has a right to adopt the child,
  - (d) if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances,
  - (e) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved,

- (e) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare,
  - (f) if the child is Aboriginal-the Aboriginal child placement principles are to be applied,
  - (g) if the child is a Torres Strait Islander-the Torres Strait Islander child placement principles are to be applied.
- (2) In determining the best interests of the child, the decision maker is to have regard to the following:
- (a) any wishes expressed by the child,
  - (b) the child's age, maturity, level of understanding, gender, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant,
  - (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity,
  - (d) any disability that the child has,
  - (e) any wishes expressed by either or both of the parents of the child,
  - (f) the relationship that the child has with his or her parents and siblings (if any) and any significant other people (including relatives) in relation to whom the decision maker considers the question to be relevant,
  - (g) the attitude of each proposed adoptive parent to the child and to the responsibilities of parenthood,
  - (h) the nature of the relationship of the child with each proposed adoptive parent,
  - (i) the suitability and capacity of each proposed adoptive parent, or any other person, to provide for the needs of the child, including the emotional and intellectual needs of the child,
  - (j) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour,
  - (k) the alternatives to the making of an adoption order and the likely effect on the child in both the short and longer term of changes in the child's circumstances caused by an adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child.

## **ADOPTION ACT 2000 - SECT 90**

### **Court to be satisfied as to certain matters**

#### **90 Court to be satisfied as to certain matters**

(cf AC Act s 21)

- (1) The Court must not make an adoption order in relation to a child unless the Court is satisfied:

- (a) that the best interests of the child will be promoted by the adoption, and
- (b) that, as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them, and

**Note:** Sections 127-129 contain provisions about ascertainment of the wishes of a child by the Court.

- (c) if the prospective adoptive parent or parents are persons other than a step parent or relative of the child-that the prospective adoptive parent or parents have been selected in accordance with this Act, and

**Note:** See Part 3 of this Chapter.

- (d) that consent to the adoption of the child has been given by every person whose consent is required under this Act or that consent has been, or should be, dispensed with, and

- (e) if the child is an Aboriginal child-that the Aboriginal child placement principles have been properly applied, and

- (f) if the child is a Torres Strait Islander child-that the Torres Strait Islander child placement principles have been properly applied, and

- (g) if the child is a non-citizen child from a Convention country or other country outside Australia-that the applicable requirements of this Act and any other relevant law have been satisfied, and

**Note:** See for example, section 31.

- (h) in the case of a child (other than an Aboriginal or Torres Strait Islander child)-that the culture, any disability, language and religion of the child and, as far as possible, that the child's given names, identity, language and cultural and religious ties have been taken into account in the making of any adoption plan in relation to the adoption.

(2) The Court may not make an adoption order if the parties to the adoption have agreed to an adoption plan unless it is satisfied that the arrangements proposed in the plan are in the child's best interests and are proper in the circumstances.

(3) The Court may not make an adoption order unless it considers that the making of the order would be clearly preferable in the best interests of the child than any other action that could be taken by law in relation to the care of the child.

**Note:** Other action that could be taken in relation to a child includes a parenting order under the Family Law Act 1975 of the Commonwealth or a care order under the Children and Young Persons (Care and Protection) Act 1998 . Part 1 of Chapter 4 describes the persons who may be adopted and the persons who may adopt

## **ADOPTION ACT 2000 - SECT 91**

### **Report required before order made for adoption of child**

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- (1) The Court may not make an order for the adoption of a child under 18 years of age unless a report in writing concerning the proposed adoption has been provided to the Court by the applicant.
- (2) The report is to be accepted by the Court only if it has been prepared by the Director-General, an approved assessor or a principal officer.
- (3) This section does not prevent the Director-General from making a report to the Court in relation to the adoption of a child before the Court if the Director-General considers it appropriate to do so.
- (4) The Court may require the Director-General to make a report in relation to an application for an adoption order made by a person other than the Director-General, but only if the child is under 18 years of age.
- (5) However, the Court is not to require the Director-General to make a report unless the Court considers that the Director-General should report on the case because of:
  - (a) particular concerns about the safety, welfare or well-being of the child concerned, or
  - (b) serious concerns about the reliability or independence of a report made by an approved assessor or a principal officer concerning the case, or
  - (c) other exceptional circumstances.
- (6) The Court may require the Director-General to make such a report within a period of 6 months after the date of the making of the application or such other period as the Court may, having regard to the circumstances of the case, specify.
- (7) In this section, an "approved assessor" means a person, or a person of a class, approved by the Director-General from time to time, by order in writing, to provide a report to the Court for the purposes of this section.