

# ADOPTION OF CHILDREN ACT AMENDMENT ACT

No. 8 of 1990

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Queensland



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No. 8 of 1990

An Act to amend the Adoption of Children Act 1964-1989  
in certain particulars and for another purpose

[ASSENTED TO 25TH MAY, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title.** This Act may be cited as the *Adoption of Children Act Amendment Act 1990*.

**2. Commencement.** (1) Subject to subsections (2) and (3), this Act commences on the day it is assented to for and on behalf of Her Majesty.

(2) Section 17 commences on 1 September, 1990.

(3) Sections 4, 5, 15, 16, 18, 23, 24 and 25 (a) commence on 1 March, 1991.

**3. Principal Act and citation.** (1) In this Act the *Adoption of Children Act 1964-1989* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Adoption of Children Act 1964-1990*.

**4. Transitional.** (1) Where, pursuant to Part IVA of the Principal Act, prescribed particulars in relation to a person were entered in the Adoption Contact Register before 1 March, 1991—

(a) the Director within the meaning of the Principal Act, if he is satisfied that a reunion could have been arranged immediately before 1 March, 1991, in accordance with that Part, notwithstanding the repeal of sections 39G, 39H and 39I of the Principal Act, may continue to arrange a reunion as provided for in those sections as if those sections had continued in force;

(b) except as provided in paragraph (a), a person whose prescribed particulars are so entered shall, on or after 1 March, 1991, only be entitled to have disclosed to him information of the kind referred to in section 39B as provided for in section 18 of this Act on application made in accordance with that section 39B.

(2) Except as provided in subsection (1), the Director within the meaning of the Principal Act is under no duty to arrange a reunion in accordance with the repealed section 39G of the Principal Act.

(3) Section 20 of the Acts Interpretation Act 1964-1989 is to be read and construed subject to subsections (1) and (2).

**5. Amendment of s. 3. Parts.** Section 3 of the Principal Act is amended by omitting "PART IVA—ADOPTION CONTACT REGISTER (ss. 39A-39K)" and substituting "PART IVA—ACCESS TO IDENTIFYING INFORMATION (ss. 39A-39F)".

**6. Amendment of s. 6. Interpretation.** Section 6 of the Principal Act is amended by—

(a) in the definition "Child" omitting "is sought or";

(b) inserting after the definition “Minister” the following:—

““Non-citizen child”—The same meaning as is ascribed to that term by the Immigration (Guardianship of Children) Act 1946 of the Commonwealth (as amended and in force for the time being);

“Public Trustee”—The Public Trustee of Queensland constituted under the *Public Trustee Act 1978-1989*;”;

(c) in the definition “Special needs child” omitting “a mature person to whom section 14A applies, a non-citizen child to whom section 25A(2) applies” and substituting “a non-citizen child”.

**7. Amendment of s. 11. Who may be adopted.** The Principal Act is amended by omitting section 11 (1) and substituting:—

“(1) Subject to this Act, the Director may make an order for the adoption of a child who has not attained the age of 18 years on the date when the order is made.”.

**8. Repeal of s. 14A. Special assessment for adoption of mature person.** The Principal Act is amended by repealing section 14A.

**9. Amendment of s. 14C. Procedure upon assessments under s. 14 or 14A.** Section 14C of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section omitting “or 14A”;

(b) in subsections (1) and (3) omitting “or 14A”.

**10. Amendment of s. 19. Consents of parents and guardians required to adoptions.** Section 19 of the Principal Act is amended by omitting subsection (6) and substituting:—

“(6) In the case of a child who is a non-citizen child, the appropriate person is the person who, under the Immigration (Guardianship of Children) Act 1946 of the Commonwealth (as amended and in force for the time being), is the guardian of the child or, where the guardian has under that Act delegated his powers and functions as guardian to another person, that other person.”.

**11. Amendment of s. 25A. Consent not required in certain circumstances.** Section 25A of the Principal Act is amended by—

(a) in subsection (1), omitting “(1)”;

(b) omitting subsection (2).

**12. New s. 27C.** The Principal Act is amended by inserting after section 27B:—

“27C. Director may enter into arrangements. When so requested under the Immigration (Guardianship of Children) Act 1946 of the Commonwealth (as amended and in force for the

time being) the Director may enter into arrangements with the appropriate Commonwealth Minister whereby the guardianship of a non-citizen child who arrives in Australia for the purpose of adoption is transferred to the Director.”.

13. New s. 29A. The Principal Act is amended by inserting after section 29:—

“29A. **Bequest by will to unascertained adopted person.** (1) Where, under a will made after the commencement of this section—

- (a) a disposition of property is expressed to be made by the testator to a person who is not named but who is described as a child of the testator or of a spouse, parent, child, brother or sister of the testator;
- (b) the child was described in the will as having been adopted by another person;
- and
- (c) the personal representative of the testator is unable to ascertain the name and address of the adopted person,

the personal representative shall give to the Public Trustee a copy of the will and a statement that he is unable to ascertain the name and address of the adopted person.

(2) Where the Public Trustee is given a copy of a will under subsection (1), he shall, by notice in writing given to the Director, request the Director to make arrangements for ascertaining, and giving to the Public Trustee, the name and address of the adopted person.

(3) Where the Director receives a request under subsection (2), he shall cause such reasonable inquiries to be made of records in his possession as will show the name and enable the address or, if the adopted person has died, the date of the death, of the adopted person to be ascertained or, if it appears that the information cannot be obtained from inquiries of those records, seek to obtain the information from the Registrar-General.

(4) If the Director ascertains the name of the adopted person, he shall take such steps as are reasonably practicable to ascertain the address or, if the adopted person has died, the date of death of the adopted person and shall inform the Public Trustee of that name and address or date.

(5) If the Director is unable to ascertain the name of the adopted person, he shall so inform the Public Trustee.

(6) After receiving information from the Director under this section, the Public Trustee shall give notice in writing to the personal representative of the testator stating whether or not the name and address of the adopted person has been ascertained or, if the adopted person has died, the date of death of the adopted person.

(7) Unless the adopted person predeceased the testator or, for any other reason known to the personal representative, is not entitled to an interest under the will, the Public Trustee is hereby declared to be a trustee for the adopted person on the trusts specified in, or arising under, the will and, if the personal representative transfers the property to the Public Trustee as trustee for the adopted person, the personal representative shall be deemed to have transferred the property to the adopted person.

(8) Where the Public Trustee—

(a) is, under subsection (7), a trustee for an adopted person who is a beneficiary under a will;

and

(b) gives the personal representative of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the property to which the adopted person was entitled under that will,

that statement is, for the purposes of the administration of the estate by the personal representative, conclusive evidence that the adopted person has disclaimed the property.”

**14. Amendment of s. 38. Recognition of foreign adoptions.** Section 38 (2) of the Principal Act is amended by after paragraph (a) inserting:—

“(b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters, was resident or domiciled in that country and had been so resident or domiciled for not less than 12 months;”.

**15. New heading Part IVA. Adoption Contact Register.** The Principal Act is amended by omitting the heading to Part IVA and substituting “PART IVA—ACCESS TO IDENTIFYING INFORMATION”.

**16. Amendment of s. 39A. Interpretation.** Section 39A of the Principal Act is amended by—

(a) omitting the definition “register”;

(b) in the definition “adopted person” inserting after “occurred” the words “and who has attained the age of 18 years”;

(c) omitting the definition “relative” and substituting:—

““relative”, in relation to an adopted person, means a person who—

(a) but for the adoption would be—

(i) a brother or sister, whether of the whole or half blood;

(ii) an uncle or aunt by consanguinity or affinity;

or

(iii) a grandparent,

of the adopted person;

(b) is a son or daughter of the adopted person, whether natural or adoptive.”.

**17. New section 39AA.** The Principal Act is amended by inserting after section 39A:—

“**39AA. Objections.** (1) This section does not apply in relation to an adopted person and the birth parent of the adopted person where the adoption of the adopted person occurs on or after 1 March, 1991.

(2) An adopted person who has attained the age of 17 years and 6 months or a birth parent may notify the Director in the prescribed form, that he objects to contact being made with him by a person or any class of person referred to in the notification and for such period as is specified in the notification.

(3) Subject to this section, a notification takes effect from the date it is received by the Director and continues in force for such period, not exceeding 5 years, as is specified in the notification.

(4) A notification received by the Director between 1 September, 1990, and 28 February, 1991, takes effect from 1 March, 1991.

(5) If a notification is lodged by an adopted person who has not attained 18 years of age the notification takes effect from the date on which the adopted person attains 18 years of age.

(6) A notification expires at the expiration of the period specified in the notification unless the person who lodged the notification—

(a) lodges a further notification;

or

(b) sooner revokes the notification in writing.

(7) A further notification may be lodged not more than 3 months before the expiration of a notification that is in force.

(8) A person shall not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, the name of any adopted person or birth parent who has lodged a notification under this section or any other information likely to identify the adopted person or birth parent.”.

**18. Repeal of ss. 39B-39K and new ss. 39B-39F.** The Principal Act is amended by repealing sections 39B to 39K (both inclusive) and substituting:--

“**39B. Disclosure of certain information.** (1) An adopted person is entitled to have the Director disclose to the adopted person—

(a) the name of the adopted person’s birth parent as at the date consent to the adoption of the adopted person was given or dispensed with;

(b) the date of birth of the adopted person’s birth parent;

(c) the name and date of birth of any other adopted person who has or had at least one parent (whether

natural or adoptive) who is or was a birth parent of the adopted person and if—

(i) the other adopted person has not lodged a notification under section 39AA;

and

(ii) the other adopted person has so requested in writing,

the name and the address of the other adopted person last known to the Director;

(d) if the birth parent has not lodged a notification under section 39AA and the birth parent has so requested in writing, the name and the address of the birth parent last known to the Director.

(2) A birth parent is entitled to have the Director disclose to the birth parent in respect of an adopted person of whom he is a birth parent—

(a) the name, at the date of adoption, of the adopted person;

(b) the name, at the date of adoption, of the adoptive parent of the adopted person;

(c) if the adopted person has not lodged a notification under section 39AA and the adopted person has so requested in writing, the name and the address of the adopted person last known to the Director.

(3) The Director may disclose to a relative, who has attained the age of 18 years, of an adopted person—

(a) the name, at the date of adoption, of the adopted person;

(b) the name, at the date of adoption, of the adoptive parent of the adopted person;

(c) if the adopted person has not lodged a notification under section 39AA and the adopted person has so requested in writing, the name and the address of the adopted person last known to the Director.

(4) The Director may disclose to an adoptive parent of an adopted person—

(a) the name of the adopted person's birth parent as at the date consent to the adoption of the adopted person was given or dispensed with;

(b) the date of birth of the adopted person's birth parent;

(c) if the birth parent has not lodged a notification under section 39AA and the birth parent has so requested in writing, the name and the address of the adopted person's birth parent last known to the Director.



(5) The Director shall not disclose information referred to in subsection (3) or (4) unless he is satisfied that—

- (a) in the case of subsection (3), the birth parent is dead or is in such a condition as to be permanently incapable of applying to have the information referred to in subsection (2) disclosed;
- (b) in the case of subsection (4), the adopted person is dead or is in such a condition as to be permanently incapable of applying to have the information referred to in subsection (1) disclosed.

(6) Application for disclosure of information under this section shall be made to the Director in the prescribed form.

**39C. Entitlement to certain records, etc.** An adopted person, adoptive parent, birth parent, or relative who has received information in respect of a person under section 39B, or has participated in a reunion pursuant to section 39G (being section 39G repealed by the *Adoption of Children Act Amendment Act 1990*), shall be entitled to receive from the Registrar-General, upon presentation to the Registrar-General of an authorization in the prescribed form and payment of the fees prescribed under the *Registration of Births, Deaths and Marriages Act 1962-1989*—

- (a) if he is an adopted person or an adoptive parent, a certified copy of the entry related to the adopted person as recorded in the Register of Births, endorsed “Not to be used for official purposes”;
- (b) if he is a birth parent or a relative—
  - (i) a certified copy of the amended birth entry of the adopted person;  
and
  - (ii) a certified copy of the entry related to the adopted person as recorded in the Register of Births, endorsed “Not to be used for official purposes”.

**39D. Offence to contact, etc.** (1) Any adopted person, adoptive parent, birth parent or relative who has received information in respect of a person under section 39B shall not—

- (a) contact or attempt to contact that person;
- (b) arrange or attempt to arrange contact with that person;  
or
- (c) procure another person to contact, attempt to contact, or attempt to arrange contact with, that person,

if that person has, to the knowledge of the adopted person, adoptive parent, birth parent or relative lodged a notification under section 39AA.

(2) Any adopted person, adoptive parent, birth parent or relative who has received information in respect of a person under section 39B shall not intimidate or harass that person or procure any other person to intimidate or harass that person.

(3) A person shall not claim to act on behalf of or hold himself out as being willing to act on behalf of another person with a view to contravening subsection (1) or (2).

Penalty: 100 penalty units or imprisonment for 2 years.

**39E. Counsellors.** (1) The Director may approve of such number of persons as he thinks necessary who have appropriate qualifications and experience to be counsellors for the purposes of this Part.

(2) Any fees payable to a counsellor for such services are to be arranged between the counsellor and the person concerned.

**39F. Crown, etc., not liable.** Neither—

(a) the provision of information under this Part in good faith and without negligence;

nor

(b) the failure of any person to notify any adopted person, adoptive parent, birth parent or relative who has received information in respect of a person under section 39B, that the lastmentioned person since the giving of the information has notified the Director under section 39AA that he objects to contact being made with him contrary to the terms of that notification,

shall subject the Crown, the Director, any officer of the Department or other person engaged in giving effect to this Part to any action, liability, claim or demand.”.

**19. Amendment of s. 40. Territorial application of Part.** Section 40 of the Principal Act is amended by omitting “This Part does not apply in respect of acts occurring outside Queensland, but, unless otherwise expressly provided, does apply” and substituting “This Part, unless otherwise expressly provided, applies”.

**20. Amendment of s. 41. Interference relating to adopted child by natural parent.** Section 41 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting “**Communication, etc., by natural parent with adopted child.**”;

(b) in subsection (1), omitting paragraph (c) and substituting:—

“(c) shall not communicate with the child or with any other person who, to the knowledge of the person, is the adopter or one of the adopters of the child, except—

(i) with the approval of the Director first had and obtained;

(ii) where the adopter or one of the adopters is a relative of the child;

or

(iii) in accordance with Part IVA.”;

(c) in subsection (3), omitting “by a person referred to in subsection

(1) with” and substituting “between a person referred to in subsection (1) and”.

**21. Amendment of s. 45. Restrictions on publication of identity of parties.** Section 45 of the Principal Act is amended by omitting subsection (1) and substituting:—

“(1) Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, in relation to—

(a) an application under this Act (whether to the Director or to any court or the tribunal);

(b) an application under a law of another State or of a Territory of the Commonwealth for the adoption of a child or for the discharge of an order for the adoption of a child;

or

(c) the proceedings on an application referred to in paragraph (a) or (b),

the name of the applicant, the child, the father or mother or a guardian of the child, or, where applicable, the name of an adopter of the child, or any matter reasonably likely to enable any of those persons to be identified.”.

**22. Amendment of s. 53. General penalty.** Section 53 of the Principal Act is amended by, in the second paragraph, omitting “\$2 000” and substituting “40 penalty units”.

**23. Amendment of s. 62A. Engagement of agents.** Section 62A of the Principal Act is amended by omitting subsection (1) and substituting:—

“(1) The Director may enter into contracts for services with such persons having qualifications and experience appropriate to the proper discharge of the contracts as he thinks fit with a view to those persons acting as his agents in preparing reports in connection with the making of assessments.”.

**24. Amendment of s. 63. Parties to applications under Act.** Section 63 of the Principal Act is amended by—

(a) in subsection (1), omitting “, 26, 39J(2) or 39K(1)” and substituting “or 26”;

(b) in subsection (3), omitting “, 26 or 39J(2)” and substituting “or 26”.

**25. Amendment of s. 65. Regulations.** Section 65 (1) of the Principal Act is amended by—

(a) in paragraph (i) omitting all words from and including “access by” to and including “those prescribed classes of adopted persons;”;

(b) in paragraph (j) omitting “\$1 000” and substituting “20 penalty units”.

**26. Amendment of Second Schedule. Provisions concerning the Adoptions Appeals Tribunal.** The Principal Act is amended by, in the Second Schedule—

(a) in clause 6, inserting after subclause (2) the following subclause:—

“(3) If, after the commencement of a sitting of the Tribunal but before the sitting is concluded by the giving of a decision—

(a) the office of the chairman or a member constituting the Tribunal becomes vacant under clause 1 or 3, the chairman or member is to be taken to have continued in office for the purpose only of the completion of the sitting and the giving of a decision;

(b) the chairman or a member is unable, by reason of illness, to continue as a member of the Tribunal, the remaining members of the Tribunal, notwithstanding section 8 (2), may continue to sit in that proceeding if they are satisfied that—

(i) not continuing to sit in that proceeding will put the parties, or one of them, to unnecessary expense; and

(ii) a decision in the proceeding can be reached.”;

(b) in clause 12, inserting after subclause (2) the following subclause:—

“(2A) The Minister may appoint a person to act as registrar during the absence, incapacity or unavailability of the registrar.”.