

# LEGISLATIVE COUNCIL

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Read 1° 18 August 1987

*(Brought in by the Honourable C. J. Hogg)*

## A BILL

to amend the *Adoption Act* 1984 and for other purposes.

### **Adoption (Amendment) Act 1987**

The Parliament of Victoria enacts as follows:

#### **Purpose.**

1. The purpose of this Act is to make miscellaneous amendments to the *Adoption Act* 1984 including amendments relating to—

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- (a) the issue of information about adopted persons by the Registrar of Births, Deaths, Marriages and Names; and
  - (b) the right to obtain information of adopted persons, natural parents, natural relatives and adoptive parents.

#### **Commencement.**

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2. This Act comes into operation on a day or days to be proclaimed.

#### **Principal Act.**

3. In this Act the *Adoption Act* 1984 is called the Principal Act.

Act No. 10150.  
Amended by  
Nos. 10155,  
10244 and 3 of  
1986.

**Persons in whose favour adoption orders may be made.****4. (1) Section 11 of the Principal Act is amended as follows:**

(a) In sub-section (4) (a), for “and is not” substitute “unless that person is”;

(b) For sub-section (6), substitute—

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“(6) Where an application is made under sub-section (5) by the spouse of a parent or of an adoptive parent of a child, the Court must not make an order for the adoption of the child solely by that spouse unless it is satisfied that—

(a) the making of an order in relation to the guardianship or custody of the child under the *Children (Guardianship and Custody) Act 1984* or the *Family Law Act 1975* of the Commonwealth as amended and in force for the time being in relation to the child would not make adequate provision for the welfare and interests of the child; and

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(b) exceptional circumstances exist which warrant the making of an adoption order; and

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(c) an order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a).

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(7) If an order for the adoption of a child is made under sub-section (6), the spouse shall be deemed to be a parent of the child jointly with that parent or adoptive parent as if the spouse and that parent or adoptive parent had been married to each other at the time the child was born but notwithstanding anything in section 53—

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(a) the child is not to be treated in law as if the child were not the child of that parent or adoptive parent; and

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(b) that parent or adoptive parent is not to be treated in law as if the parent or adoptive parent were not a parent of that child; and

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(c) the relationship between the child and that parent or adoptive parent is not terminated; and

(d) if that parent or adoptive parent had been the guardian of the child, the order does not terminate the guardianship; and

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(e) if the child were the adopted child of that adoptive parent, the order does not terminate that adoption.”.

(2) In section 12 of the Principal Act, for the expression commencing “, in the particular” and ending at the end of the section, substitute—

“—

- 5                   (a) the making of an order in relation to the guardianship or custody of the child under the *Children (Guardianship and Custody) Act 1984* or the *Family Law Act 1975* of the Commonwealth as amended and in force for the time being in relation to the child would not make adequate provision for the welfare and interests of the child; and
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- (b) exceptional circumstances exist which warrant the making of an adoption order; and
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**New section 13 substituted.**

5. For section 13 of the Principal Act, substitute—

**20 Age of adoptive parents.**

“13. (1) Unless the Court considers that there are circumstances relating to the needs of a child who is an Australian citizen which make it desirable to make an order for the adoption of the child which does not correspond to the following requirements, the Court may only

25 make an adoption order if the person or persons in favour of whom it is made—

- (a) is or are 18 years or older; and
- (b) is or are at least 18 years older than the child; and
- 30 (c) despite paragraph (b), in the case of a child who has not attained the age of 10 years, is or are not more than 40 years older than the child; and
- (d) despite paragraph (b), in the case of a child who has attained the age of 10 years, is or are not more than 45 years older than the child.

35 (2) Unless the Court considers that there are circumstances relating to the needs of a non-citizen child which make it desirable to make an order for the adoption of the child which does not correspond to the following requirements, the Court may only make an adoption order in favour of one person if the person—

- 40 (a) is 25 years or older; and
- (b) is not more than 40 years older than the child; and
- (c) is at least 18 years older than the child.

(3) Unless the Court considers that there are circumstances relating to the needs of a non-citizen child which make it desirable to make an order for the adoption of the child which does not correspond to the following requirements, the Court may only make an adoption order in favour of two persons if—

- (a) the persons are 25 years or older; and
- (b) in the case of the child being the first child to be adopted by both of those persons together—
  - (i) the younger of those persons is not more than 40 years older than the child; and
  - (ii) the elder of those persons is not more than 47 years older than the child; and
- (c) in the case of the child being the second or subsequent child to be adopted by both of those persons together—
  - (i) the younger of those persons is not more than 43 years older than the child; and
  - (ii) the elder of those persons is not more than 50 years older than the child; and
- (d) despite paragraph (b), in the case of either of the two persons having the custody of a natural-born child of that person—
  - (i) the younger of those persons is not more than 43 years older than the child; and
  - (ii) the elder of those persons is not more than 50 years older than the child; and
- (e) the persons are at least 18 years older than the child.”.

#### **Recognition of foreign adoptions.**

6. After section 67 (2) (a) of the Principal Act, insert—

“(aa) either—

- (i) that country was the usual place of abode of the adoptive parent or parents for a continuous period of at least twelve months immediately before the commencement of the legal proceedings which resulted in the adoption; or
- (ii) the Director-General or the principal officer of an approved agency has, before the adoption in that other country, agreed to the placement of that child with that proposed adoptive parent or those proposed adoptive parents and the child is placed in accordance with the conditions of approval of the proposed adoptive parent or parents;”.

**Entries in the Register of Births.**

7. After section 74 (3), insert—

- 5 (4) On application by a natural parent (within the meaning of section 82), the Registrar may issue to the natural parent an extract from, or copy of, an entry in the Register of Births relating to the child of that parent and which is marked with the word “adopted”.’

**New sections 78 and 79 substituted and sections 79A and 79B inserted.**

8. For sections 78 and 79 of the Principal Act, substitute—

**Application for information about birth of adopted person.**

10 “78. (1) If a person who is—

(a) an adopted person; or

(b) an adoptive parent of an adopted person—

15 makes application under the *Registration of Births Deaths and Marriages Act 1959* to the Registrar for an extract from or copy of an entry in the Register of Births relating to the birth of the adopted person, sub-section (2) applies.

20 (2) Unless sub-section (3) or (4) applies, the Registrar must issue an extract or copy in the relevant form prescribed under the *Registration of Births Deaths and Marriages Act 1959* which, as far as is practicable, contains all of the items of information which are required to be included in an extract or copy issued to a person who is not an adopted person.

(3) If the Registrar—

25 (a) does not have available all the information referred to in sub-section (2) which is required for the items; or

(b) considers that the information may be available only after a considerable delay—

the Registrar must advise the applicant accordingly.

30 (4) On being advised under sub-section (3), the applicant may agree with the Registrar to the issue of either—

(a) an extract or copy in the form prescribed under the *Registration of Births Deaths and Marriages Act 1959*, which contains as much as possible of the information referred to in sub-section (2); or

35 (b) a certificate in the form prescribed under the *Registration of Births Deaths and Marriages Act 1959*.

40 (5) If the Registrar and the applicant cannot reach agreement under sub-section (4) and the applicant wishes to continue with the application, the Registrar must issue whichever of the documents referred to in sub-section (4) (a) or (4) (b) the Registrar considers appropriate.

(6) If within six months from the date of the application under sub-section (1), the Registrar considers that it is possible for the Registrar to issue to the applicant—

(a) an extract or copy under sub-section (4) (a) or a certificate under sub-section (4) (b), if such an extract, copy or certificate has not been previously issued to the applicant; or

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(b) an extract or copy under sub-section (4) (a) or a certificate under sub-section (4) (b), if the extract, copy or certificate would contain more information than that previously issued to the applicant under sub-section (4) (a) or (4) (b); or

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(c) an extract or copy under sub-section (2)—

the Registrar must as soon as is practicable advise the applicant about which (if any) of the documents referred to in paragraph (a),(b) or (c) is then available for the applicant and if the applicant requires, must issue the available document to the applicant (without any further fee being payable by the applicant).

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(7) If, after six months from the date of the application under sub-section (1), the Registrar considers that it is not possible at that time for the Registrar to issue to the applicant any of the documents referred to in sub-section (6) (a), (b) or (c), the Registrar must, as soon as is practicable, advise the applicant accordingly.

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(8) The fee for an application under this section must not exceed the relevant fee prescribed under the *Registration of Births Deaths and Marriages Act 1959*.”

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**Place of birth.**

“79. (1) If an adopted person or an adoptive parent of an adopted person applies to the Registrar to add the place of birth of the adopted person—

(a) to the face of a certificate referred to in section 78 (4) (b); or

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(b) to the face of a copy previously issued by the Registrar of an entry from the Adopted Children Register—

which relates to the birth of the adopted person and is in the applicant’s possession, sub-section (2) applies.

(2) If the information about the place of birth of the adopted person is available to the satisfaction of the Registrar, the Registrar must (without charging any fee) add the place of birth of the adopted person to the face of the certificate or copy of the entry and must certify as to the accuracy of that information.

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(3) If an adopted person or an adoptive parent of an adopted person applies to the Registrar to add the place of birth of the adopted person to the face of an extract from the Adopted Children Register which relates to the birth of the adopted person and is in the applicant’s possession and the information about the place of birth of the adopted

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person is available to the satisfaction of the Registrar, the Registrar must re-issue (without charging any fee) the extract in a form which includes the place of birth of the adopted person.”.

**Adoption records.**

- 5 “79A. (1) The Registrar has the management and control of any records concerning adoptions which are in the possession of the County Court, Supreme Court and Magistrates’ Courts at the date of coming into operation of section 8 of the *Adoption (Amendment) Act 1987*.
- 10 (2) For the purposes of sections 78 and 79, the Registrar may request from the Prothonotary of the Supreme Court, Registrar of the County Court and clerks of Magistrates’ Courts that all records of those Courts concerning adoptions are given to the Registrar and those persons must ensure that that following records are given to the Registrar:
- 15 (a) In the case of any court file relating to any time before the date of coming into operation of section 3 (1), the entire file;
- (b) In the case of any court file relating to any time after that date, the memorandum of the adoption order which must be sent to the Registrar in accordance with section 70.
- 20 (3) Despite sub-sections (1) and (2), the Prothonotary of the Supreme Court, Registrar of the County Court and clerks of Magistrates’ Courts may—
- (a) have access to or obtain possession of the records in the Registrar’s custody; and
- 25 (b) keep in their possession any records concerning adoptions for as long as they require them for the purposes of any matter before that Court.
- (4) If the Registrar requires any information for the purposes of section 78 or 79 and the records containing the information are not in the Registrar’s possession, the Registrar may request the Prothonotary
- 30 of the Supreme Court, Registrar of the County Court or clerk of any Magistrates’ Court to conduct a reasonable search to locate any records held by that Court which may contain that information.
- (5) If the Registrar obtains under this section any records of the Supreme Court, County Court or any Magistrates’ Court or any other relevant information from any other source, the Registrar must ensure
- 35 on an application under section 78 or 79 which is relevant to those records—
- (a) that the records are added to the Register of Adoptions together with any other relevant documents which contain information which the Registrar considers to be evidence; and
- 40 (b) that the prescribed particulars obtained from those records or documents are entered in the Adopted Children Register

in the prescribed form and the necessary entries are placed in the appropriate indexes.”.

**Director-General may obtain information from Registrar.**

“79B. (1) For the purposes of Part VI, the Director-General may apply to the Registrar for copies of or information contained in any records of the County Court, Supreme Court or any Magistrates’ Court which are in the custody of the Registrar.

(2) The Registrar must give to the Director-General information in the possession or under the control of the Registrar to which an application under sub-section (1) relates.”.

**Records of adoptions.**

9. After section 85 (2) of the Principal Act, insert—

“(2A) In sub-section (2) (b), the parties to the application include the adopted person, the natural parents of that person, the adoptive parent or parents and the person who made the report referred to in section 15.”.

**Counselling services.**

10. After section 87 (2) of the Principal Act, insert—

“(3) This section does not apply if the relevant authority is satisfied that the adopted person and another person referred to in the original birth certificate relating to the adopted person have already exchanged information which may identify that natural parent or a relative of the adopted person.”.

**Adopted person’s right to information.**

11. The Principal Act is amended as follows:

(a) For section 93, substitute—

**Adopted person’s right to information at age eighteen.**

“93. (1) An adopted person who has attained the age of eighteen years may make application to a relevant authority for information about the adopted person, whether or not a natural parent or a natural relative (within the meaning of section 97) of the adopted person may be identified from that information.

(2) If the information to which the application relates—

(a) is not contained in records that are in the possession or under the control of a relevant authority; and

(b) is information from which whether directly or indirectly the whereabouts of a natural parent or a



natural relative (within the meaning of section 97) of the adopted person may be ascertained—

5 the relevant authority must not give any information referred to in sub-section (2) (b) to the applicant unless the relevant authority has obtained the agreement in writing of the natural parent or natural relative (within the meaning of section 97).

10 (3) The agreement in writing may be given subject to any conditions imposed by the natural parent or natural relative.

15 (4) The agreement in writing is not required if the relevant authority has evidence that the natural parent or natural relative (within the meaning of section 97) is dead or cannot be located after the Director-General has made such reasonable enquiries as in all the circumstances of the case ought reasonably to be made.”;

(b) In section 94 (2), after “person” insert “or the agreement in writing of the guardian of the adopted person (if the guardian is not an adoptive parent)”.

## 20 **Natural parent’s and natural relative’s rights to information.**

12. The Principal Act is amended as follows:

(a) In section 95 (2) (a) (ii), after “person” insert “or of the guardian of the adopted person (if the guardian is not an adoptive parent of the adopted person)”;

25 (b) In section 97 (3) (a) (iii) (B), after “person” insert “or of the guardian of the adopted person (if the guardian is not an adoptive parent of the adopted person)”.

## **Adoptive parent’s right to information.**

13. After section 98 (2) (a) of the Principal Act, insert—

30 “(aa) If the adopted person has attained the age of 18 years, any information to which paragraph (b) of that sub-section applies, unless the relevant authority—

(i) has notified the adopted person in writing of the relevant authority’s intention to give the information; or

35 (ii) has evidence of the death of the adopted person; or”.

