



Australian Capital Territory

Adoption Amendment Act 2020

A2020-39

An Act to amend the *Adoption Act 1993*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Adoption Amendment Act 2020*.

2 Commencement

This Act commences on 1 September 2020.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Adoption Act 1993*.

4 Section 5

substitute

5 Best interests of child or young person paramount consideration

- (1) A person making a decision under this Act in relation to a child or young person must regard the best interests of the child or young person as the paramount consideration.
- (2) In forming a view about the best interests of a child or young person, a person making a decision under this Act must take into account the following:
 - (a) the likely effect of the decision on the life course of the child or young person taking into account the need to preserve their cultural inheritance, personal identity and sense of belonging;
 - (b) the child's or young person's age, level of understanding, level of maturity, gender, personal characteristics and individual circumstances;
 - (c) the child's or young person's cultural, physical, emotional, intellectual, and educational needs;

- (d) the views expressed by the child or young person in relation to the decision (including views expressed with adequate and appropriate support to actively participate, to the best of their ability, in consultation related to the decision);
- (e) taking into account the benefit of maintaining meaningful relationships, the likely effect of the decision on the child's or young person's relationship with the following people:
 - (i) the child's or young person's birth parents;
 - (ii) the child's or young person's siblings (if any);
 - (iii) the child's or young person's other relatives;
 - (iv) carers or other significant people in the child's or young person's life;
- (f) the relationship the child or young person has with the adoptive parents;
- (g) the suitability and capacity of the adoptive parents to meet the child's or young person's needs;
- (h) the alternatives to adoption for the child or young person to secure permanent family arrangements;
- (i) the continuity and sense of belonging that comes from a child or young person having stable emotional and physical living conditions;
- (j) the need to protect the child or young person from physical or psychological harm associated with exposure to abuse, neglect or family violence.

5 Section 10

substitute

10 Adoption of person 18 years old or older

- (1) An adoption order may be made for a person who was 18 years old or older on the day the application was filed in the court if—
 - (a) the applicant or applicants have been in a care-giving relationship with the person; and
 - (b) the person has received physical, emotional, intellectual and educational support from the applicant or applicants; and
 - (c) the person, or at least 1 applicant, is ordinarily resident in the ACT.
- (2) The following provisions of this Act do not apply to the adoption of a person who was 18 years old or older on the day the application was filed in the court:
 - (a) division 3.2 (Who can adopt?);
 - (b) division 3.3 (Consents to adoptions) other than the following:
 - (i) section 28 (Consent of applicant not required);
 - (ii) section 30 (Instrument of consent);
 - (iii) section 34 (1);
 - (c) division 3.4 (Placement of child or young person before adoption);
 - (d) division 3.5 (Guardianship before adoption);
 - (e) division 3.6 (Proceedings for an adoption order) other than the following:
 - (i) section 39A (2);
 - (ii) section 39B (1) (a), (2) and (3);

- (iii) section 39C (Parties to proceeding);
- (iv) section 39I (Deciding application for adoption order for person 18 years old or older);
- (v) section 39L (Discharge of adoption order);
- (f) division 3.7 (Conditional orders);
- (g) section 45 (Names of adopted child or young person);
- (h) section 46 (Effect of order on domicile);
- (i) division 3.9 (Interim orders).

6 Dispensing with consent Section 35 (1) and (2)

substitute

- (1) On application, the court may, by order, dispense with the requirement for consent of a person to the adoption of a child or young person if the court is satisfied that—
 - (a) either—
 - (i) the person cannot, after reasonable inquiry, be identified or located; or
 - (ii) the person's identity cannot be established; or
 - (b) the person is not able to make a fully informed decision in relation to the consent despite receiving adequate and appropriate support to make the decision to the best of their ability; or
 - (c) it is necessary in the best interests of the child or young person to dispense with the requirement for consent of the person.

Note If a form is approved under the [Court Procedures Act 2004](#), s 8 for an application, the form must be used.

- (2) On an application for an order under subsection (1), the court may require the director-general to do one or both of the following:
- (a) investigate a matter;
 - (b) make an assessment of the best interests of the child or young person.

Note See s 5 and s 6 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

- (2A) The director-general must give the court a written report detailing the conclusion of an investigation or assessment made under subsection (2).

7 Names of adopted child or young person Section 45 (4), note

substitute

Note See s 5 and s 6 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

8 New section 122

insert

122 Review of certain amendments made by Adoption Amendment Act 2020

- (1) The Minister must review the operation of the amendments made by the *Adoption Amendment Act 2020* to the following sections of this Act:
- (a) section 5 (Best interests of child or young person paramount consideration);
 - (b) section 35 (Dispensing with consent).

- (2) The Minister must—
 - (a) start the review no later than 1 September 2022; and
 - (b) present a report of the review to the Legislative Assembly within 2 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 23 July 2020.

2 Notification

Notified under the [Legislation Act](#) on 20 August 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Adoption Amendment Bill 2020, which was passed by the Legislative Assembly on 13 August 2020.

Clerk of the Legislative Assembly

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