

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children, Youth and Families)

Adoption Amendment Bill 2020

A Bill for

An Act to amend the *Adoption Act 1993*

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

1 **1 Name of Act**

2 This Act is the *Adoption Amendment Act 2020*.

3 **2 Commencement**

4 This Act commences on 1 September 2020.

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

7 **3 Legislation amended**

8 This Act amends the *Adoption Act 1993*.

9 **4 Section 5**

10 *substitute*

11 **5 Best interests of child or young person paramount**
12 **consideration**

13 (1) A person making a decision under this Act in relation to a child or
14 young person must regard the best interests of the child or young
15 person as the paramount consideration.

16 (2) In forming a view about the best interests of a child or young person,
17 a person making a decision under this Act must take into account the
18 following:

19 (a) the likely effect of the decision on the life course of the child or
20 young person taking into account the need to preserve their
21 cultural inheritance, personal identity and sense of belonging;

22 (b) the child's or young person's age, level of understanding, level
23 of maturity, gender, personal characteristics and individual
24 circumstances;

25 (c) the child's or young person's cultural, physical, emotional,
26 intellectual, and educational needs;

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

1 **5 Section 10**

2 *substitute*

3 **10 Adoption of person 18 years old or older**

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

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

9 **6 Dispensing with consent**
10 **Section 35 (1) and (2)**

11 *substitute*

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

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

- 1 (2) On an application for an order under subsection (1), the court may
2 require the director-general to do one or both of the following:
- 3 (a) investigate a matter;
- 4 (b) make an assessment of the best interests of the child or young
5 person.
- 6 *Note* See s 5 and s 6 for the matters that must be taken into account by a
7 decision-maker in forming a view about the best interests of a child or
8 young person.
- 9 (2A) The director-general must give the court a written report detailing the
10 conclusion of an investigation or assessment made under
11 subsection (2).

12 **7 Names of adopted child or young person**
13 **Section 45 (4), note**

14 *substitute*

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

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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