

# ADOPTION LEGIS- LATION AND PRACTICE IN AUSTRALIA

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*A brief statement of adoption legislation and practice of the eight States and Territories based on a background paper prepared for talks on inter-country adoptions.*

Under the Constitution of the Commonwealth of Australia, adoption is not a matter on which the Commonwealth has power to legislate. <sup>(1)</sup> Accordingly, each State and Territory has its own legislation which is administered by its social welfare department.

## Uniform Legislation.

The States have co-operated to draft "uniform" legislation, and during the period 1964-1970, new legislation was enacted in all States and Territories. A major aim of the uniform Acts was to curtail the practice of private, or independent, adoptions, where the child was placed in the care of a person with a view to his adoption, without any prior approval of the placement by a government department or an approved private adoption agency.<sup>(2)</sup>

The Adoption of Children Acts are uniform only in the sense that major provisions are not changed without the agreement of all States. On other matters and on Adoption of Children Regulations, States and Territories act independently.

Consents given, to adoption and adoption orders granted in one State are valid in any other.

Where a change in legislation is proposed on a uniform basis, interstate conferences may be required, extending over several months or even years.

## States.

There are two internal Australian Territories and six States of varying sizes. The populations of each are:

Australian Capital Territory	201,000
Northern Territory	96,000
New South Wales	4,819,000
Queensland	2,012,000
South Australia	1,239,000
Tasmania	409,000
Victoria	3,687,000
Western Australia	1,137,000

AUSTRALIA 13,600,000

Throughout the remainder of this paper, "States" is used as meaning "States and Territories", unless the context requires another interpretation.

## Recognition of Foreign Adoptions.

The provisions for the recognition of overseas adoptions in the Adoption of Children Acts are comparatively uniform for all States.

For the purposes of the laws of each State, the adoption of a person in another country, has the same effect as if it were an order for the adoption of the person made in that State, providing that:

- \* the adoption was effective according to the law of that country.
- \* the adopters are placed generally in relation to the adopted child in the position of parents.
- \* as a consequence of the adoption the adopters have a right superior to that of any natural parent in respect of the custody of the adopted child.
- \* each of the adopters was resident or domiciled in that country at the time the legal proceedings were commenced.

Changes which are aimed to facilitate the recognition of overseas adoptions are currently being considered by all States.

## Immigration (Guardianship of Children) Act, 1946-1973.

In the terms of the Commonwealth Immigration (Guardianship of Children) Act, an 'immigrant child' is a child under the age of 18 years who enters Australia as an immigrant not in the charge of, or for the purpose of living in Australia under the care of, his parent or an adult relative.

Under the provisions of that Act the Minister of Immigration and Ethnic Affairs is the guardian of every 'immigrant child'. The Minister has delegated most of his powers and responsibilities as guardian to the head of the social welfare department in each State.

An 'immigrant child' is exempted from the provisions of this Act at the time that application is made for an adoption order; if the order is granted he is no longer regarded as an immigrant child.

## Inter-Country Adoption.

Increasing attention continues to be given by the Australian community to continuously raising standards of practice, so that at present, arrangements for adoption of children are now made in a competent manner.

The Australian Department of Immigration and Ethnic Affairs will allow a child to travel to Australia for the purpose of adoption if the prospective adopters have been approved in accordance with State adoption legislation, and if the child meets prescribed health requirements.

It is considered appropriate for approved prospective adopters in Australia to adopt a child of another country only if:

— in the opinion of the adoption authority in the country where the child is resident, adoption by people in another country is the most appropriate choice of care for the child.

the child is legally available for adoption and, for children being brought to Australia for the purpose of adoption, if adequate documentation regarding identity and release for adoption are available.

## Courts.

Adoption orders are made by various Courts, depending on the State. In Queensland the Director of the Department of Children's Services exercises sole authority, including finalisation of the adoption. The Courts which exercise jurisdiction are:

**AUSTRALIAN CAPITAL TERRITORY** — Supreme Court of the Australian Capital Territory.

**NORTHERN TERRITORY** — Supreme Court of the Northern Territory.

**NEW SOUTH WALES** — Supreme Court.

**SOUTH AUSTRALIA** — A Magistrate and two Justices.

**TASMANIA** — A Magistrate.

**VICTORIA** — County Court or Supreme Court.

**WESTERN AUSTRALIA** — Family Court of Western Australia.

## Who may be Adopted.

A child, whose parents have consented to his adoption under specified conditions, may be adopted. Under certain circumstances the Court may dispense with a parent's consent.

In giving consent a parent may state a preference for the religious upbringing of the child by the adoptive parents.

An adult may be adopted, providing specified conditions, which vary from State to State, are met.

## Who may Adopt.

Prospective adopters must be approved by the State social welfare department (EXCEPTION — in Victoria, authorised private adoption agencies may also approve prospective adopters). Generally, adoption orders are made only for a husband and wife jointly, but in certain circumstances a Court may make an adoption order in favour of one person.

## Requirements for Adopters.

A Court (or Department) must be satisfied that applicants for an adoption order are suitable people to adopt, and are suitable for the particular child.

## Effects of Adoption.

When an adoption order is made, the adopted child becomes a child of the adopters and the adopters become the parents of the child, as if the child has been born of their marriage, and the adopted child ceases to be a child of any other person.

## Adoption Records.

If identities are not disclosed when the adoption arrangements are made, information which links the adopted child's name with that of the first parents is sealed, and may not be revealed without a Court order.

(EXCEPTION — in Western Australia the child's original name is on the copy of the adoption order).

New South Wales and South Australia each have an Adopted Persons Contact Register which is a voluntary system for adoptees and first parents to contact each other by mutual agreement.

## Private Adoption Agencies.

In some States, private adoption agencies may be approved by the social welfare department to make adoption arrangements for prospective adopters already approved by the Department. (EXCEPTION — in Victoria, the private adoption agencies may also approve prospective adopters). The Principal Officers of adoption agencies must have appropriate training and experience.

Some States have organisations formed of inter-country adoption parents, which provide information, support and sponsorship and aid programmes, but are not private adoption agencies.

## Availability of Child for Adoption.

Before a child can be adopted, the Court (or in the case of Queensland, the Director) must be satisfied that the parents and guardians of the child have given formal consent to the adoption of a child. For a child born outside marriage only the consent of the mother is required. (EXCEPTION — in South Australia if the paternity of the father is legally recognised, his consent is also required). Parents giving consent may revoke that consent any time within 30 days after signing the consent form.

A mother may not sign a consent to adoption before her baby is born. In addition, the mother may not sign a consent within five, six, or seven days (depending on the State) after the day of birth unless a doctor or registered nurse certifies, or there is other adequate evidence, that the mother was in a fit condition to give consent.

A child who is 12 years or older cannot be adopted unless he/she also consents.

A court may dispense with consents under various circumstances, including those where the person who would normally be required to give consent cannot be found, or has abandoned or persistently ill-treated the child, or is physically or mentally incapable of considering the question of consenting to the adoption.

## Selection of Approved People to Adopt a Child.

Adoption is seen as the means of providing the optimal family for a child, rather than finding a child for prospective adopters.

When a child becomes available for adoption social work staff in the department, or the principal officer of a private adoption agency, are responsible for selecting suitable approved people from the prospective adopters register for that particular child. Two guiding, but not totally binding, considerations are the priority to be given (based on the date of receiving the prospective adopters' application), and any wishes expressed by the original parent(s) in relation to the religious upbringing of the child.

## Payments in Consideration of Adoptions.

Under the uniform adoption legislation it is an offence to make or receive a payment in consideration of the making of adoption arrangements except in the following circumstances:

- payment made by adopters, with the approval of the director of social welfare, for hospital and medical expenses incurred in the birth of the child, or the care and treatment of the mother or of the child.
- any other payment authorised in writing by the director of social welfare, or by an adoption court.
- a payment made in connection with an adoption in another country if the payment is lawful in that country.
- payment of legal expenses (EXCEPTION — Queensland and South Australia).

If the State department is going to be requested to authorise payments made in connection with an adoption, it will need to have accurate and complete information about the final recipients of any such payments and to see adequate documentation of this.

## Adoption by Relatives.

While the number of Australian children becoming available for adoption (where identities are not disclosed) is decreasing each year, the number of "adoptions to the marriage" is increasing. In Britain, the Houghton Committee<sup>(3)</sup> recommended that, in the interests of the long-term welfare of the child, guardianship should be considered more appropriate than adoption by a step-parent. In Australia, this alternative is rarely used.

## Principles and Practice.

All social welfare departments and private adoption agencies in Australia use social workers with professional qualifications in their adoption assessment and counselling, thus achieving competent standards of practice aimed at the best interests of the children being adopted.

In the various Adoption of Children Acts the Part that deals with the adoption of a particular child provides that the welfare and interests of the child shall be the paramount consideration (EXCEPTION — in Western Australia this paramount consideration applies to the whole Act).

From the time a child is placed with the prospective adopters until the adoption order is made (usually 3-6 months; and 12 months (or longer) for older children and inter-country adoptions), the Director of the State social welfare department exercises the responsibilities of guardian. Reports on the family's situation and the child's health and development, are provided for the court.

After the adoption is finalised, social work counselling is available from the departments and private adoption agencies. However, this intervention is not mandatory, and is rarely used.

Counselling is also available to original parents while consent to adoption is being considered, and after the decision is made.

## Conferences

Two Australian Conferences on Adoption have been held (February 1976 and May 1978). A variety of professions and client groups have participated, providing an effective forum for discussion of many related matters.

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Adelaide, S.A.

November, 1978. PETER A. FOPP.

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1. AUSTRALIA. Bureau of Statistics: Official Year Book of Australia, No. 61, 1975 and 1976. (Chapter 1).
  2. DAVID HAMBLY: "Balancing the interests of the child, parents and adopters: a review of Australian Adoption Law" in Proceedings of the First Australian Conference on Adoption, Sydney, University of N.S.W., 15th — 20th February, 1976. (page 78).
  3. GREAT BRITAIN. Home Office, Scottish Education Department. Report of the Departmental Committee on the Adoption of Children. London, HMSO, 1972. (Chapter 5).

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