

Disability Services and Other Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

- Part 1 sets out the purposes of the Act and the commencement of the Act.
- Part 2 amends the **Adoption Act 1984** to make the following changes to the criteria governing the eligibility of persons to adopt a child—
- removes mandatory age restrictions;
 - permits a couple who are in a permanent de facto relationship that has existed for at least two years to adopt a child, if they are assessed as suitable to adopt;
 - provides that the laws that govern spouse adoptions and relative adoptions apply to couples in such de facto relationships;
 - provides that a couple or person may apply to a court to adopt a child, or be assessed to determine suitability to adopt a child by the Department of Human Services or an approved adoption agency, only when the marriage or relationship that forms the basis for the application has existed for at least two years.
- Part 3 contains amendments to the **Children's Services Act 1996** which extend the commencement date of the unproclaimed provisions of that Act.
- Part 4 sets out amendments to the **Community Services Act 1970** which insert a delegation power into that Act.
- Part 5 contains amendments to the **Disability Services Act 1991** which enable the responsible Ministers to approve funding to classes of people, service providers or researchers. This Part also broadens

the existing Ministerial delegation power in the **Disability Services Act 1991**.

- Part 6 set out amendments to the **Intellectually Disabled Persons' Services Act 1986**. These amendments have the following effect:
- removal of the power to use aversive therapy;
 - enables the Secretary to the Department of Human Services to outsource the account keeping functions in respect of the Residents' Trust Fund;
 - removal of the references to regulations in the definitions of "State plan" and "regional plan".

Clause Notes

PART 1

- Clause 1 sets out the purpose of the Act.
- Clause 2 provides for the commencement of the Act.

PART 2

This Part contains amendments to the **Adoption Act 1984**.

- Clause 3 inserts the definitions of "de facto relationship" and "de facto spouse", and clarifies the meaning of "spouse".
- Clause 4 amends section 10(1)(b) of the Act. This provision currently provides that a person aged 18 years or older may be adopted if he or she has been brought up, educated and maintained by the applicants as the child of the applicants under a "de facto adoption". The retention of this wording may cause confusion, given the inclusion in this Bill of amendments to make de facto couples eligible to adopt children. For this reason this provision replaces the phrase "de facto adoption" with other words to reflect the concept of de facto adoptions. The provision will continue to permit an adoption if the person was brought up, maintained and educated as if he or she was the child of the proposed adoptive parents, and as if the proposed adoptive parents were the parents of that person.

This clause also amends the provision to permit such an adoption to be made in relation to an adult if the applicant and his or her deceased de facto spouse brought him or her up as their own child. This is additional to the existing criteria which apply to an adoption order which is sought where a married couple have brought a person up as their own child and where the husband or wife is deceased when the court hears the application.

Clause 5 inserts a new section 10A into the Act which is to apply to adoptions by a couple, and to adoptions by a person who wishes to adopt either a child of his or her spouse or de facto spouse, or a child who is otherwise related to his or her spouse or de facto spouse. In these cases the marriage, de facto relationship, or traditional Aboriginal marriage is the basis for seeking the order. A couple may also have lived in a combination of such relationships on a consecutive basis. For instance, a couple may have lived together in a de facto relationship prior to marrying.

In all such cases, an application may only be made to the Supreme Court or the County Court to adopt a child if the marriage or relationship has existed on a continuous basis for at least two years. If the couple have lived together in a de facto relationship prior to marrying, the time that they have lived together in both states may be added together.

Clause 6 amends section 11 of the Act to—

- enable a man and a woman living in a de facto relationship for at least 2 years to adopt a child together, provided neither of them is married to any other person at the time the order is made;
- allow a couple to adopt if they have, on a continuous basis, lived together for at least two years, in a combination of the following relationships: marriage, a de facto relationship, or a relationship recognised as a traditional Aboriginal marriage;
- enable a de facto spouse of a parent of a child to adopt that child in the limited circumstances outlined in the Act which currently apply to “spouse adoptions” by a husband or wife of a parent of a child. Such an adoption can only occur if the applicant is not married to any other person;

- permit an adoption order (which is not a "spouse adoption") to be made in favour of one person who is in a de facto relationship of at least 2 years standing only if his or her de facto spouse also consents to the adoption.

Clause 7 amends section 12 of the Act, which governs "relative adoptions". It permits a couple or a person living in a de facto relationship to adopt a child who is related to one of the de facto spouses of that relationship, on the same terms that a married person may currently adopt a child related to his or her husband or wife.

A de facto spouse may only adopt a child in such a case if he or she is not married to any other person at the time that the adoption order is made.

Clause 8 repeals section 13. This will remove the restrictions in the Act regarding the age of proposed adoptive parents.

Clause 9 inserts a new section 20A into the Act. This provision will apply whenever a couple or a person applies to either the Secretary to the Department of Human Services or to the principal officer of an approved adoption agency for consideration as to whether they are suitable to adopt a child.

The amendments will apply to an application by:

- a couple who wish to adopt a child together, and they are either married, in a de facto relationship, or in a relationship recognised as a traditional Aboriginal marriage; and
- a person who wishes to adopt a child who is the child of his or her spouse or de facto spouse, or who is otherwise related to his or her spouse or de facto spouse.

The Secretary or principal officer must not consider an application as to a couple's or a person's suitability to adopt unless the applicants have been married, in a de facto relationship, in a relationship recognised as a traditional Aboriginal marriage, or in a combination of any of these relationships on a continuous basis, for a period of at least two years.

This provision, together with the new section 10A, ensures that a marriage or relationship must have existed for at least two years before the process of seeking to adopt can commence.

Clause 10 inserts a new section 129A(3) into the Act. It applies to a couple or a person who apply for approval to adopt a child.

If the Secretary to the Department of Human Services or a principal officer of an approved adoption agency refuses to consider, or defers consideration of an application, on the ground that the applicants have not been married, in a de facto relationship or in a traditional Aboriginal marriage for at least two years, an appeal cannot be made to the Administrative Appeals Tribunal ("AAT") against that decision.

Clause 11 inserts a new section 131 into the Act. This transitional provision makes it clear that the requirement in new section 10A, which provides that an application may only be made to the Supreme Court or the County Court to adopt a child when the marriage or relationship which is the basis for the application has continued for at least two years, does not apply to applications made prior to the commencement of new section 10A.

This provision preserves the entitlements of applicants in relation to proceedings initiated prior to commencement which will not be dealt with until after commencement.

Clause 12 makes various amendments to the Act that are consequential upon the amendments in relation to de facto relationships.

The amendment to section 53 clarifies the law regarding the effect of an adoption order. The effect of the amendment is to continue to provide that, upon adoption, a child is to be treated as the child of an adoptive parent. When a couple adopt a child, whether the couple are married, in a de facto relationship, or in a relationship recognised as a traditional marriage by an Aboriginal community, the couple are to be treated in law as the parents of the child as if the child was born to both of them within marriage.

Clause 13 contains statute law revision amendments. The references in the Act to the **Children (Guardianship and Custody) Act 1984** are no longer necessary as that Act has been repealed.

PART 3

This Part contains amendments to the **Children's Services Act 1996**.

Clause 14 amends section 2 of the Act, which is the commencement provision. Section 2 currently provides that the Act will commence in December 1997 if it is not proclaimed to commence sooner. This clause amends section 2 to provide that the Act will commence automatically on 1 July 1998, if it has not been proclaimed to commence on an earlier date.

Clause 15 contains a statute law revision amendment to rectify a numbering omission in section 45 of the Act.

PART 4

This Part contains amendments to the **Community Services Act 1970**.

Clause 16 is a statute law revision to amend the definition of the Department to reflect that it is now created under the **Public Sector Management Act 1992**.

Clause 17 inserts section 6A into the Act which gives a general delegation power to the Minister for Youth and Community Services in respect of acts within the Community Services portfolio.

PART 5

This Part contains amendments to the **Disability Services Act 1991**.

Clause 18 amends section 4 of the Act by inserting a new section 4(3). This new section enables the responsible Ministers to approve funding to classes of people with disabilities, service providers or researchers.

Clause 19 amends section 6 of the Act by widening the Ministerial delegation power to enable the responsible Minister to delegate functions or powers to Departmental officers as well as to the Secretary to the Department of Human Services.

PART 6

This Part contains amendments to the **Intellectually Disabled Persons' Services Act 1986**.

- Clause 20 amends section 3 of the Act by deleting the reference to regulations in the definitions of "State plan" and "regional plan".
- Clause 21 removes references to aversive therapy from section 44 of the Act.
- Clause 22 amends section 49 of the Act to make it the responsibility of the Secretary to the Department of Human Services to ensure that a financial management information system is maintained. This amendment also inserts section 49(3) into the Act empowering the Secretary to the Department to enter into contracts in respect of the maintenance of the financial management information system.
- Clause 23 a statute law revision which substitutes the term "municipal council" for the "municipality" in the definitions of certain services in sections 3 of the Act and in sections 22 and 23 of the Act.

