

Adoption of Children Act Amendment Act 1964, Western Australia

1970 – 1995

URL:

[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_10413.pdf/\\$FILE/Adoption%20of%20Children%20%5B00-00-00%5D.pdf](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_10413.pdf/$FILE/Adoption%20of%20Children%20%5B00-00-00%5D.pdf)

Details

The *Adoption of Children Act Amendment Act 1964* (1964/100) made a number of changes to 'modernise' the *Adoption of Children Act 1896*, and bring it more into line with adoption legislation in other States. WA was the only jurisdiction to not pass new model legislation in the 1960s, although the amendments in 1964 significantly modernised the law and brought it more into line with other jurisdictions. These amendments were designed in 1964 but didn't come into effect until 1970.

In effect, the changes: ensured that the Child Welfare Department must approve of the adoptive parents before an adoption order could be granted; recognised the mother of an illegitimate child should have sole consent to the adoption, and not the putative father; limited the period for revoking consent to 30 days, so as to decrease the uncertainty for adopting parents; made medical (physical and mental health) checks compulsory for all children being considered for adoption; and allowed the Child Welfare Department to initiate adoption proceedings for children who had been placed in an institution for more than one year and whose parents had 'shown no interest' in their welfare. The Act did not come into operation until 1970. It was repealed by the *Adoption Act 1994*.

Introducing the Adoption of Children Act Amendment Bill to the Legislative Assembly of the Western Australian Parliament, the Hon. JF Craig MLA (*Hansard* 19 November 1964, p.2807) explained why the government believed adoption was 'one of the most important functions' of the Child Welfare Department: 'Adoption benefits in at least two ways: Firstly, it is the means by which married persons to whom nature denies parenthood may become the true parents of a family; and, secondly, and equally as important, it is a means by which those children to whom social conditions deny the natural heritage of mother and father shall have given to them a new mother and father for their lifetime.' The purposes of the amendments, Craig said, were to 'safeguard the welfare' of adopted children and adopting parents, and 'to establish a legal foundation' for the recognition of adoption orders made in all States.

In a continuation of the debate (*Hansard*, 25 November 1964, pp.2999-3004), Parliament discussed many of the provisions but all were passed without amendment. The discussion is notable for two matters that gave a glimpse into the future, even though they did not effect any changes in 1964: payments for single mothers and adoptions into de facto relationships.

The Member for Albany, Jack Hall MLA (p.3001-3002), said that he was sure 'that if unmarried mothers were provided with better conditions and more remuneration there would be less tendency for them to enter into adoption proceedings.' Such a policy would enable the State 'to preserve the truly motherly love and care which a child requires' He argued that this would be affordable, citing statistics to show that 'ex-nuptial' births were only 7 percent of all births. Hall suggested mothers should be able to claim the widow's pension and presented examples to show the inequities that arose between widows with children and mothers who were not married.

The Member for Subiaco, Hugh Guthrie MLA (p.3003), was concerned that a child could not be adopted by a couple living in a de facto relationship, even if the mother was the child's 'natural guardian'. If 'religious difficulties' meant that the mother was unable to divorce and remarry, he said, the law was 'condemning these children to continue their lives as illegitimate'.

Earlier, the Legislative Council had debated the Bill (*Hansard*, 12 November 1964, pp.2527-2529). In his remarks, the Hon. Eric Michael Heenan (p.2529) said that the provision of a 30-day period in which a mother could revoke her consent to have her baby adopted was a good one. It seemed to him that the parliament 'cannot go much further than that to protect the rights of the mother'. He also approved of the amendment to certify the health of children so that adopting parents would know that they were getting a healthy child. When the Hon. Ruby Florence Hutchison pointed out that some people were happy to adopt a child with disabilities, the Hon. Heenan reviewed his remarks, saying: 'I suppose what the honourable Mrs Hutchison says is quite right and laudable – some people will adopt handicapped and physically and mentally disabled little children – but so long as they do it with their eyes open it is all right'. He nonetheless took comfort from the fact that the amendments made the known health of the child clear to the adoptive parents 'and of course to the judge'.

The Legislative Council continued debating the Bill (*Hansard*, 17 November 1964, pp.2625-2631) and the debates give an insight into legislators' views on issues that affected children in out of home care as well as adoption. There is a very long speech by Hon. Ruby Florence Hutchison who was greatly in support of the Bill, particularly those clauses that heightened the authority of the Department and removed the right of putative fathers to consent to the adoption. The Hon. Graham Charles MacKinnon spoke about the 'heartrending' situation of foster parents 'losing the child when the parents take it back' and noting there was 'a very natural emotional connection that grows between a child and the foster parent'. The Hon. George Bennetts was concerned about children who were neglected and/or exploited by their parents and yet neglected and/or exploited when boarded or put out to service by the Child Welfare Department. He urged the Department to employ 'elderly' inspectors to check on these children because their life experience would be useful in the role. The Hon. Dr JG Hislop supported the Bill saying that regardless of any amendments, there would never 'have a Utopia for all adopted children; but this effort goes a long way'.

The Bill was passed but lay inoperative for another six years. The Act and its new Rules came into operation on 1 May 1970. The Act:

- Ensured that the Child Welfare Department must approve of the adoptive parents before an adoption order could be granted
- Recognised the mother of an illegitimate child should have sole consent to the adoption, and not the putative father
- Limited the period for revoking consent to 30 days, so as to decrease the uncertainty for adopting parents
- Made medical (physical and mental health) checks compulsory for all children being considered for adoption
- Allowed the Child Welfare Department to initiate adoption proceedings for children who had been placed in an institution for more than one year and whose parents had 'shown no interest' in their welfare.

The amendments also widened the definition of 'parent' to include 'every person who is a parent or guardian of the child' where the child was legitimate (born to married parents). The consent of a mother alone was sufficient if the child was illegitimate. The method of 'revoking' (withdrawing) consent was clarified and the concept of 'defective consent' was introduced. In theory, this allowed the judge to determine if the consent for adoption had been given freely and in full knowledge of the consequences, or if:

- consent had been obtained through 'fraud or duress'
- the person giving consent was not 'in a fit condition' to do so
- the person giving consent 'did not understand the nature of the consent'
- a mother had signed the consent form before the birth of her child

Additionally, a Judge could not make an order of adoption if the consent had been signed within seven days of the birth unless a doctor or registered midwife attested to the fitness of the mother to consent at that time. The WA Parliament acknowledged in 2010 that women were being urged to give up their babies for adoption during this era, so it is likely that certificates of 'fitness' were routinely given.

The amendments also updated occasions where a Judge could make an order without obtaining consent to include time when the parent(s) or guardian(s):

- after 'reasonable inquiry' could not be found
- were not physically or mentally 'capable' of giving consent
- had 'abandoned, deserted or persistently neglected or ill-treated' the child
- had failed for a period of not less than one year and without good reason, to fulfill their parental obligations towards the child

Finally, the Judge retained the discretion to not require consent if there were 'any other special circumstances'.

The Director of Child Welfare became the guardian of any child who was awaiting an adoption order to be granted.

Undue influence was made illegal in the Adoption of Children Amendment Act 1964. It was defined as something done by a person who:

uses or threatens to use any force or restraint, or does or threatens to do any injury, or causes or threatens to cause any detriment of any kind to the mother of a child, with a view to inducing the mother to offer or refrain from offering the child for adoption

The penalty for using undue influence was two hundred pounds or six months' imprisonment at the time the Act was passed. However, this and other amendments in the Act did not come into effect until 1 May 1970. Undue influence remains an offence under the current adoption laws in Western Australia.

The 1964 amendments also recognised 'foreign adoptions' (adoptions that had been granted in countries outside the Commonwealth).

In addition, the amendments expressly made it illegal to require or receive payments for adoptions, including charging a fee to arrange an adoption, with the exception of legal and medical fees.

Advertising a child for adoption or placing an advertisement seeking a child to adopt were also made illegal, except for those advertisements that were approved by the Director of Child Welfare, and it was illegal to publish identifying information about adoption cases.

Any child for whom an adoption order was sought had to have a certificate of physical and mental health signed by a doctor approved by the Child Welfare Department.

A key amendment to the Rules included changes to the application form so that adopting parents could not see the names of the parent(s) who had registered the child's birth. In practice, this information had been 'covered up' by Departmental social workers when the forms were signed, but the new form removed the identifying information completely.

The *Adoption of Children Act Amendment Act 1964* was repealed by the *Adoption Act 1994*.

More info

Related Entries

Related Glossary Terms

- [Closed Adoption](#)

The Adoption of Children Act Amendment Act 1964 in Western Australia further tightened the secrecy provisions around closed adoption.

Related Organisations

- [Child Welfare Department, State of Western Australia \(22 December 1927 - 15 June 1972\)](#)

Amends

- [Adoption of Children Act 1896, Western Australia \(1896 - 1995\)](#)

Related Concepts

- [Adoption in Western Australia \(c. 1896 - current\)](#)
-

You can view this page online by visiting <https://www.findandconnect.gov.au/entity/adoption-of-children-act-amendment-act-1964-2/>