

Adoption of Children Act 1896, Western Australia

1896 – 1995

URL: https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a3246.html

Details

The *Adoption of Children Act 1896* (1896/006) made it possible to legally adopt a child under the age of 15 years in Western Australia. The Act was amended throughout the twentieth century and was eventually repealed by the *Adoption Act 1994*.

The *Adoption of Children Act 1896* came into operation on 23 September 1896. It enabled children under the age of 15 years to be legally adopted.

In introducing the Adoption of Children Bill to the Legislative Council (*Hansard*, 12 August 1896, pp.334-335), the Minister for Mines, the Hon EH Wittenoom, said that it was not a government Bill. Rather, it had been introduced by a private member, Mr ML Moss MLA the member for North Fremantle, in the Legislative Assembly. The object of the Bill, according to Wittenoom (p.335) was 'to provide for the adoption of children, and to see that when they are adopted they cannot be taken away from those who have adopted them when, perhaps, they are becoming useful'.

The Act said that the Judge needed to be satisfied that:

- the adoption was in the best interests of the child
- the adoptive parents would be able to 'bring up, maintain and educate' the child
- consents were obtained from the child's birth parent(s) or guardian(s).

The Judge was required to ask a child over the age of 12 years to give their own consent. If a child was found to be 'deserted' under the Act, the Judge could make an order for adoption without the consent of the child's guardian(s) or birth parent/s. (Section 2 provided that a judge had the power to classify a child as deserted if, in the Judge's opinion, the child was 'deserted and has ceased to be cared for and maintained by: the child's parents or guardian; the child's sole parent if only one parent was living; or the mother of the child if the child was illegitimate'.)

The Act ordered that the adopted child would thereafter be known by the surname of the adoptive parent as well as retaining their original (or 'proper') surname. At this stage, an adoption did not have any of the 'secrecy' provisions that emerged in the 20th century.

Two types of people were allowed to be considered as adoptive parents:

- A husband and wife, jointly
- A married woman or man, with the written consent of their spouse.

The Act treated the adoption of girls and boys differently but the effects were the same: In order to adopt a boy, a married woman (without the consent of her spouse) had to be at least 18 years older than the boy and an unmarried woman had to be at least 30 years older than him. There had been some debate about this clause in parliament. Initially (*Hansard*, 13 August 1896, p.377), it was thought that a man adopting a female child should be at least 40 years older than the girl. After discussion, it was decided that men of those categories who wanted to adopt a girl should be 30 years older.

The Act put limitations on what the adopted child could inherit from his/her adoptive parents (for example, if they died without making a will). The adopted child did not automatically have the same entitlements as the 'natural' descendants. On the other hand, the adoption did not extinguish the right of the child to be the 'heir or next of kin of his natural parents', even though it terminated all other rights and legal responsibilities between them.

The Supreme Court retained the right to 'vary, reverse or discharge' an order of adoption.

Many amendments to the *Adoption of Children Act 1896* were for administrative purposes. Find & Connect has included information about changes that had an impact on the children and young people who were in out of home 'care'. A full list of amended legislation is available on the State Law Publisher of Western Australia's website.

After amendments made for almost a century, the *Adoption of Children Act 1896* was repealed by the *Adoption Act 1994*.

More info

Chronology

- **Adoption of Children Act 1896, Western Australia (1896 – 1995)**
 - Adoption Act 1994, Western Australia (1994 - current)

Related Entries

Is amended by

- [Adoption of Children Act Amendment Act 1915, Western Australia \(1915 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1916, Western Australia \(1916 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1921, Western Australia \(1921 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1926, Western Australia \(1926 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1945, Western Australia \(1946 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1949, Western Australia \(1949 - 1995\)](#)
- [Adoption of Children Act Amendment Act \(No. 2\) 1953, Western Australia \(1954 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1953, Western Australia \(1954 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1959, Western Australia \(1959 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1962, Western Australia \(1962 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1964, Western Australia \(1970 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1971, Western Australia \(1972 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1973, Western Australia \(1974 - 1995\)](#)
- [Adoption of Children Amendment Act 1976, Western Australia \(1976 - 1995\)](#)
- [Adoption of Children Act Amendment Act 1977, Western Australia \(1977 - 1995\)](#)
- [Adoption of Children Amendment Act 1980, Western Australia \(1981 - 1995\)](#)
- [Adoption of Children Amendment Act 1981, Western Australia \(1982 - 1995\)](#)
- [Adoption of Children Amendment Act 1984, Western Australia \(1984 - 1995\)](#)
- [Adoption of Children Amendment Act 1985, Western Australia \(1986 - 1995\)](#)

Related Concepts

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

Resources

- [Western Australian Government Gazette No. 112](#), Western Australian Government Gazette Online Archive, 5 August 1994
 - [Adopting Children](#), Western Mail, 21 May 1915
 - [Intestacy Problem](#), The West Australian, 24 August 1937
 - Law Reform Commission of Western Australia, [Succession Rights of Adopted Children](#), 30th anniversary reform implementation report : Law Reform Commission of Western Australia, 1972-2002, 2002
 - [Western Australian Government Gazette No. 60](#), Western Australian Government Gazette Online Archive, 19 December 1930. *Relevance*: The Rules published in the WA Government Gazette No. 60 (19 December 1930) amended the Rules in the Adoption of Children Act 1896
 - Department for Community Development, State of Western Australia, [Submission No 55 to the Senate Inquiry into Children in Institutional Care](#), July 2003
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