

Authorised Version
**Adoption Amendment (Adoption by Same-Sex
Couples) Act 2015**
No. 68 of 2015

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Authorised Version



Victoria

**Adoption Amendment (Adoption by
Same-Sex Couples) Act 2015[†]**

No. 68 of 2015

[Assented to 15 December 2015]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is—

- (a) to amend the **Adoption Act 1984** to enable the adoption of children by same-sex couples; and

- (b) to amend the **Equal Opportunity Act 2010** to remove the exception to the prohibition to discriminate in relation to religious bodies providing adoption services.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 September 2016, it comes into operation on that day.

3 Principal Act

In this Act, the **Adoption Act 1984** is called the Principal Act.

Part 2—Amendments to the Adoption Act 1984

4 Definitions

- (1) In section 4(1) of the Principal Act **insert** the following definitions—

"domestic partner of a person means—

- (a) a person who is in a registered domestic relationship with the person; or
- (b) a person with whom the person is in a domestic relationship;

domestic relationship means a relationship between 2 persons who are living together as a couple on a genuine domestic basis (irrespective of sex or gender) and who are neither married to each other nor in a registered domestic relationship with each other;

registered domestic relationship has the same meaning as in section 3 of the **Relationships Act 2008**;"

- (2) In section 4(1) of the Principal Act—
- (a) the definition of **de facto relationship** is **repealed**;
 - (b) the definition of **de facto spouse** is **repealed**.
- (3) For section 4(5) of the Principal Act **substitute**—
- "(5) If a person living in a domestic relationship is also in a registered domestic relationship, a reference in this Act (except in section 55) to a domestic partner of such a person does not include a reference to the person with whom the first-mentioned person is in the registered domestic relationship."

- (4) In section 4(6) of the Principal Act, for "man or woman" **substitute** "person".
- (5) After section 4(6) of the Principal Act **insert**—
 - "(7) For the purposes of the definition of *domestic partner* in subsection (1), in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.
 - (8) For the purposes of subsection (7), a person is not a domestic partner of another person only because they are co-tenants."

5 Who may be adopted

In section 10(1)(b) of the Principal Act, for "de facto spouse" (where thrice occurring) **substitute** "domestic partner".

6 Application for adoption order

- (1) In section 10A(a) of the Principal Act—
 - (a) for "a man and a woman" **substitute** "2 persons";
 - (b) for "the man and woman" **substitute** "the persons".
- (2) In section 10A(b) of the Principal Act, for "his or her spouse or de facto spouse" (where thrice occurring) **substitute** "the person's spouse or domestic partner".

7 Persons in whose favour adoption orders may be made

- (1) In section 11(1) of the Principal Act, for "a man and a woman" **substitute** "2 persons".

- (2) After section 11(1)(b) of the Principal Act **insert**—
- "(ba) who are in a registered domestic relationship with each other and have been so for not less than 2 years; or".
- (3) In section 11(1)(c) of the Principal Act, for "de facto relationship" **substitute** "domestic relationship".
- (4) For section 11(1A) of the Principal Act **substitute**—
- "(1A) The Court must not make an adoption order under subsection (1) in relation to 2 persons in a domestic relationship unless the Court is satisfied that, at the time that the order is made, neither person—
- (a) is married to another person; or
 - (b) is in a registered domestic relationship with another person."

(5) For section 11(4) of the Principal Act **substitute**—

"(4) The Court shall not make an adoption order in favour of one person if that person—

 - (a) is married or is in a registered domestic relationship unless that person is living separately and apart from that person's spouse or domestic partner (as the case may be); or
 - (b) is married or is in a registered domestic relationship, and is living with that person's spouse or domestic partner (as the case may be), except with the consent of that person's spouse or domestic partner; or

- (c) is living in a domestic relationship and has been so living for not less than 2 years, except with the consent of that person's domestic partner."
- (6) In section 11(5) of the Principal Act, for "de facto spouse" (where twice occurring) **substitute** "domestic partner".
- (7) In section 11(6) of the Principal Act, for "or de facto spouse" (where twice occurring) **substitute** "or domestic partner".
- (8) For section 11(6)(d) of the Principal Act **substitute**—
- "(d) in the case of an order in favour of the domestic partner of a parent or adoptive parent, at the time that the order is made the domestic partner is neither married to, nor in a registered domestic relationship with, a person who is not the parent or adoptive parent of the child."
- (9) In section 11(7) of the Principal Act, for "de facto spouse" (where twice occurring) **substitute** "domestic partner".

8 Orders in favour of relatives

- (1) In section 12 of the Principal Act, for "whose spouse or de facto spouse" **substitute** "whose spouse or domestic partner".
- (2) For section 12(d) and (e) of the Principal Act **substitute**—
- "(d) in the case of an order in favour of 2 persons who are in a domestic relationship with each other, neither of those persons, at the time that the order is made—
- (i) is married to another person; or

- (ii) is in a registered domestic relationship with another person; and
- (e) in the case of an order in favour of a person who is in a domestic relationship and whose domestic partner is a relative of the child, neither that person nor that person's domestic partner, at the time that the order is made—
 - (i) is married to another person; or
 - (ii) is in a registered domestic relationship with another person."

9 Determination by Secretary or approved agency

- (1) In section 20A(a) of the Principal Act—
 - (a) for "a man and a woman" **substitute** "2 persons";
 - (b) for "the man and woman" **substitute** "the persons".
- (2) In section 20A(b) of the Principal Act—
 - (a) for "his or her spouse or de facto spouse" (where first and secondly occurring) **substitute** "that person's spouse or domestic partner";
 - (b) for "his or her spouse or de facto spouse" (where thirdly occurring) **substitute** "the person's spouse or domestic partner".

10 Consents to be construed as general consents

In section 39(2) of the Principal Act, for "de facto spouse" (where twice occurring) **substitute** "domestic partner".

11 Guardianship of child awaiting adoption

In section 46(3)(a) of the Principal Act, for "de facto spouse" (where twice occurring) **substitute** "domestic partner".

12 General effect of adoption orders

In section 53(1)(a)(ii) of the Principal Act **omit** "in lawful wedlock".

13 Bequest by will to unascertained adopted person

(1) In section 55(1)(a) of the Principal Act, for "a de facto spouse" **substitute** "domestic partner, de facto spouse".

(2) After section 55(9) of the Principal Act **insert**—

"(10) In this section—

de facto relationship means the relationship of a man and a woman who are living together as husband and wife on a genuine domestic basis, although not married to each other;

de facto spouse means—

(a) in relation to a man who is living with a woman in a de facto relationship, the woman with whom he is living in that de facto relationship;

(b) in relation to a woman who is living with a man in a de facto relationship, the man with whom she is living in that de facto relationship."

14 Access to birth certificates of adopted persons

(1) In section 92(1) of the Principal Act, for "de facto spouse" (where thrice occurring) **substitute** "domestic partner".

(2) In section 92(3) of the Principal Act, for "de facto spouse" (where thrice occurring) **substitute** "domestic partner".

15 Penalty for making unauthorized arrangements

In section 122(2) of the Principal Act, for "de facto spouse" (where twice occurring) **substitute** "domestic partner".

16 New section 132 inserted

After section 132 of the Principal Act **insert**—

"133 Transitional—Adoption Amendment (Adoption by Same-Sex Couples) Act 2015

An application for an adoption order that is made before the day on which section 7 of the **Adoption Amendment (Adoption by Same-Sex Couples) Act 2015** commences but is not determined by the Court before that day is to be determined in accordance with this Act as in force immediately before that day."

Adoption Amendment (Adoption by Same-Sex Couples) Act 2015
No. 68 of 2015

Part 3—Amendment to the Equal Opportunity Act 2010

Part 3—Amendment to the Equal Opportunity Act 2010

Part 4—Repeal of amending Act

17 Repeal of amending Act

This Act is **repealed** on 1 September 2017.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 7 October 2015

Legislative Council: 29 October 2015

The long title for the Bill for this Act was "A Bill for an Act to amend the **Adoption Act 1984** to enable the adoption of children by same-sex couples and to amend the **Equal Opportunity Act 2010** to remove the exception to the prohibition to discriminate in relation to religious bodies providing adoption services and for other purposes."