

# Adoption Act 2000 No 75

[2000-75]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**
  - [Aboriginal Land Rights Amendment Act 2001 No 118](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
  - [Community Services Legislation Amendment Act 2002 No 42](#) (not commenced)
  - [Miscellaneous Acts Amendment \(Relationships\) Act 2002 No 73](#) (not commenced)

### Authorisation

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# Adoption Act 2000 No 75



New South Wales

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# Adoption Act 2000 No 75



New South Wales

An Act with respect to the adoption of children and access of information relating to an adoption; to repeal the *Adoption of Children Act 1965* and the *Adoption Information Act 1990*; to amend the *Births, Deaths and Marriages Registration Act 1995* with respect to registration of adoptions and adopted persons' birth records; to make consequential amendments to other Acts; and for other purposes.

## Chapter 1 Preliminary

### Introduction—

This Chapter contains provisions that are helpful in understanding the Act as a whole. It also contains some machinery provisions.

### 1 Name of Act

This Act is the *Adoption Act 2000*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of the Act have the meanings set out in the Dictionary.

#### Note—

Expressions used in this Act (or in a particular provision of this Act) that are defined in the *Interpretation Act 1987* have the meanings set out in that Act.

### 4 Meaning of “Aboriginal” and “Torres Strait Islander”

(1) In this Act:

**Aboriginal** has the same meaning as in the *Aboriginal Land Rights Act 1983*.

**Aboriginal child** means a child descended from an Aboriginal and includes a child who is the subject of a determination under subsection (2).

**Torres Strait Islander** means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

**Torres Strait Islander child** means a child descended from a Torres Strait Islander and includes a child who is the subject of a determination under subsection (3).

- (2) Despite the definition of **Aboriginal** in subsection (1), the Court may determine that a child is an Aboriginal for the purposes of this Act if the Court is satisfied that the child is of Aboriginal descent.
- (3) Despite the definition of **Torres Strait Islander** in subsection (1), the Court may determine that a child is a Torres Strait Islander for the purposes of this Act if the Court is satisfied that the child is of Torres Strait Islander descent.

## 5 Notes

Introductions to Chapters and other notes in the text of this Act do not form part of this Act.

### Note—

For the purpose of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other laws. Abbreviations in the notes include:

- AC Act: [Adoption of Children Act 1965](#)
- AC Reg: [Adoption of Children Regulation 1995](#)
- AI Act: [Adoption Information Act 1990](#)
- AI Reg: [Adoption Information Regulation 1996](#).

## Chapter 2 Objects and adoption principles

### 6 What are the roles of the objects and adoption principles of this Act?

The provisions of this Chapter are intended to give guidance and direction in the administration of this Act. They do not create, or confer on any person, any right or entitlement enforceable at law.

### 7 What are the objects of this Act? (cf AI Act s 3)

The objects of this Act are as follows:

- (a) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,
- (b) to make it clear that adoption is to be regarded as a service for the child concerned,

- (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- (d) to recognise the changing nature of practices of adoption,
- (e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,
- (f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,
- (g) to encourage openness in adoption,
- (h) to allow access to certain information relating to adoptions,
- (i) to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

**8 What principles are to be applied by persons making decisions about the adoption of a child?** (cf AC Act s 17, AC Reg cl 35)

- (1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:
  - (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,
  - (b) adoption is to be regarded as a service for the child, not for adults wishing to acquire the care of the child,
  - (c) no adult has a right to adopt the child,
  - (d) if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances,
  - (e) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved,
  - (f) if the child is Aboriginal—the Aboriginal child placement principles are to be applied,
  - (g) if the child is a Torres Strait Islander—the Torres Strait Islander child placement principles are to be applied.
- (2) In determining the best interests of the child, the decision maker is to have regard to the following:

- (a) any wishes expressed by the child,
- (b) the child's age, maturity, level of understanding, gender, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant,
- (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity,
- (d) any disability that the child has,
- (e) any wishes expressed by either or both of the parents of the child,
- (f) the relationship that the child has with his or her parents and siblings (if any) and any significant other people (including relatives) in relation to whom the decision maker considers the question to be relevant,
- (g) the attitude of each proposed adoptive parent to the child and to the responsibilities of parenthood,
- (h) the nature of the relationship of the child with each proposed adoptive parent,
- (i) the suitability and capacity of each proposed adoptive parent, or any other person, to provide for the needs of the child, including the emotional and intellectual needs of the child,
- (j) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour,
- (k) the alternatives to the making of an adoption order and the likely effect on the child in both the short and longer term of changes in the child's circumstances caused by an adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child.

## **9 Participation of child in decisions**

- (1) To ensure that a child is able to participate in any decision made under this Act that has a significant impact on his or her life, the decision maker is responsible for providing the child with the following:
  - (a) adequate information, in a manner and language that the child can understand, concerning the decision,
  - (b) the opportunity to express his or her views freely, according to his or her abilities,
  - (c) information about the outcome of the decision and an explanation of the reasons

for the decision,

- (d) any assistance that is necessary for the child to understand the information and to express his or her views,
  - (e) appropriate counselling when the child's consent is required to his or her adoption.
- (2) In the application of this principle, due regard must be had to the age and developmental capacity of the child.
- (3) Decisions about the adoption of a child that have a significant impact on the life of the child include, but are not limited to, decisions relating to the following:
- (a) the placement for adoption of the child,
  - (b) the development of any adoption plan concerning the child and the views of the child's parents about the plan,
  - (c) an application for an order for the adoption of the child,
  - (d) contact with birth parents or others connected with the child.

## **Chapter 3 Adoption service providers**

### **Introduction—**

This Chapter provides for the making of arrangements for the placement of children for adoption through a government department and accredited adoption agencies. It makes it clear that individuals must not make their own adoption arrangements, either personally or through private institutions. The Chapter provides for the accreditation of charitable and non-profit organisations to provide adoption services.

## **Part 1 Authority to provide adoption services**

### **10 Adoption services to be provided by or on behalf of Director-General**

- (1) Subject to this Act, the Director-General is to provide, and may accredit others to provide, adoption services.

#### **Note—**

Under section 206, the Director-General may delegate this and any other function under this Act to any person.

- (2) Without limiting subsection (1), the Director-General is, subject to this Act, responsible for the following:
- (a) the assessment of the suitability of a person or persons to adopt a child,
  - (b) any decision to place a child with a person or persons wishing to adopt the child,
  - (c) the transfer of the care of a child to the person or persons who will adopt the child,



- (d) the giving of consent to the adoption of a child of whom he or she has guardianship,
- (e) the accreditation of adoption service providers,
- (f) the provision in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents,
- (g) the provision of post-adoption services, including the provision of information and arrangements to facilitate post-adoption contact with the parties to an adoption.

**11 Unauthorised arrangements for adoption** (cf AC Act s 51)

- (1) An adoption service in relation to the adoption in New South Wales (including the intercountry adoption) of a child may be provided only by:
  - (a) the Director-General, or
  - (b) an organisation accredited under Part 2 as an adoption agency that may provide the service.
- (2) A person (other than the Director-General) must not provide any adoption service referred to in section 10 (2) (a), (b) or (c) in relation to the adoption in New South Wales (including the intercountry adoption) of a child unless the person is, or is acting on behalf of, an organisation accredited under Part 2 as an adoption agency that may provide the service.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

**Note—**

*Intercountry adoption* is defined in the Dictionary.

## **Part 2 Accreditation of adoption agencies**

### **12 Applications for accreditation**

- (1) A charitable or non-profit organisation may apply to the Director-General for accreditation as an adoption agency that may provide adoption services specified by the Director-General.
- (2) An application must:
  - (a) be in writing, and
  - (b) specify the address of the principal office in New South Wales of the organisation, and
  - (c) specify the person who is to be the principal officer of the organisation if accredited, and

- (d) specify the adoption services the organisation seeks accreditation to provide.
- (3) The Director-General may require the applicant to provide such documents and information as the Director-General considers necessary for the purpose of ascertaining whether the organisation should be accredited.
- (4) An application under this section is taken for the purposes only of any review under Chapter 10 to have been refused if it is not determined within 60 days after the application is made.

**13 Accreditation of adoption agencies** (cf AC Act ss 10, 11 (2), AC Reg Sch 2)

- (1) The Director-General is to determine an application for accreditation:
  - (a) by accrediting the organisation as an adoption agency that may provide any one or more adoption services specified by the Director-General, or
  - (b) by refusing to accredit the organisation.
- (2) The regulations may prescribe:
  - (a) the adoption services or classes of adoption services (including intercountry adoption services) that the Director-General may accredit an adoption agency to provide, and
  - (b) standards with which an applicant for accreditation must comply in order to be accredited to provide an adoption service or class of adoption services.

**14 Refusal of application** (cf AC Act s 11)

- (1) The Director-General must refuse an application for accreditation if it appears to the Director-General that the applicant is not suited to providing the adoption services for which accreditation is sought.
- (2) The matters the Director-General may take into account in determining an application for accreditation include the qualifications, experience, character and number of persons taking part, or proposing to take part, in the management or control of the organisation, or engaged or proposed to be engaged, on behalf of the organisation, in the conduct of the activities of the organisation.
- (3) The Director-General must give notice of the Director-General's decision to refuse accreditation to the person specified in the application for accreditation as the principal officer of the organisation.

**15 Notice of accreditation to be published in Gazette** (cf AC Act s 15)

- (1) The Director-General is to publish in the Gazette notice of the accreditation of an organisation as an adoption agency and the adoption services that may be provided by it.

- (2) The notice is to specify:
  - (a) the address of the principal office of the agency, and
  - (b) the full name of the principal officer of the agency, and
  - (c) the period for which the accreditation is to remain in force.
- (3) The Director-General is to give the principal officer a copy of the accreditation notice as soon as practicable after it is published in the Gazette.
- (4) The accreditation of an agency takes effect when the principal officer of the agency is given the notice.

#### **16 Copy of accreditation notice to be displayed**

The principal officer of an accredited adoption agency must ensure that a copy of the accreditation notice for the agency is displayed in a prominent place at the principal office of the agency at all times when adoption services are provided by the agency.

Maximum penalty: 50 penalty units.

#### **17 Conditions of accreditation** (cf AC Act s 11 (3))

- (1) Accreditation as an adoption agency is subject to the following conditions:
  - (a) conditions prescribed by this Act or the regulations,
  - (b) conditions specified in the accreditation notice,
  - (c) conditions imposed by the Director-General from time to time, under subsection (2) (b),
  - (d) in the case of an adoption agency accredited to provide intercountry adoption services—the condition that the agency must not be involved in fund raising, sponsorship or the sending of aid to any institution with which it has an intercountry adoption program.
- (2) The Director-General may by notice in writing given to the principal officer of an accredited adoption agency:
  - (a) revoke or vary any condition to which an accreditation is subject, or
  - (b) attach new conditions to the accreditation.

#### **Note—**

Chapter 10 provides for review of decisions about conditions.

- (3) Conditions that may be prescribed by the regulations include conditions relating to requirements to be observed, and facilities to be provided, by accredited adoption

agencies, including conditions with respect to the qualifications and experience of persons who may act for or on behalf of such agencies.

### **18 Duration of accreditation**

Accreditation of an adoption agency remains in force (unless sooner revoked or suspended) for the period specified in the accreditation notice.

### **19 Principal officer of accredited adoption agency** (cf AC Act s 12)

- (1) Before making an application for accreditation under this Part, an organisation is to appoint a person to be its principal officer for the purposes of this Act if the application is granted.
- (2) An accredited adoption agency must, within 7 days after the occurrence of a vacancy in the office of principal officer, appoint a person to fill the vacancy and give notice in writing to the Director-General of the appointment.
- (3) A person appointed to be principal officer must be resident in New South Wales.
- (4) For the purposes of and without limiting subsection (2), the office of the principal officer is taken to have become vacant if the person holding the office ceases to be resident in New South Wales.
- (5) Anything done by the principal officer of an accredited adoption agency, or with his or her approval, is, for the purposes of this Act and any regulations relating to accredited adoption agencies but without prejudice to any personal liability of the principal officer, taken to be done by the accredited adoption agency.

### **20 Revocation or suspension of accreditation** (cf AC Act s 13)

- (1) The Director-General may, at any time, revoke or suspend the accreditation of an adoption agency by notice in writing given to the principal officer of the agency.
- (2) Without limitation, the Director-General may revoke or suspend accreditation of an agency:
  - (a) at the request of the agency, or
  - (b) on the ground that the agency is no longer suited to providing the adoption service, having regard to all relevant considerations, including the matters referred to in section 14, or
  - (c) on the ground that the agency has contravened a provision of this Act or the regulations that is applicable to it or any condition to which its accreditation is subject.
- (3) A notice under this section is to state the grounds for revocation or suspension.

**Note—**

Chapter 10 provides for review of decisions to revoke or suspend accreditation.

**21 Notice of revocation or suspension of accreditation to be published in Gazette** (cf AC Act s 15)

- (1) The Director-General must publish notice in the Gazette of any revocation or suspension of the accreditation of an adoption agency.
- (2) The notice is to specify the address of the principal office, and the full name of the principal officer, of the agency.
- (3) The Director-General must give the principal officer of the agency a copy of the notice of revocation or suspension as soon as practicable after it is published in the Gazette.
- (4) The revocation or suspension of accreditation takes effect when the principal officer of the agency is given the notice.

## **Chapter 4 The adoption process**

### **Part 1 General**

#### **22 Proceedings**

Proceedings for the making of adoption orders and other orders under this Act are to be heard and determined by the Supreme Court.

#### **23 Jurisdiction** (cf AC Act ss 8 and 9)

- (1) Subject to this Act, the Court may make an order for the adoption of a child (an **adoption order**) solely in favour of one person or jointly in favour of a couple.

**Note—**

**Couple** is defined in the Dictionary to mean a man and woman who are married or have a de facto relationship. The effect of the making of an adoption order is described in Part 11 of this Chapter.

- (2) The Court must not make an adoption order unless, when the application for the order is filed:
  - (a) the child is present in the State, and
  - (b) the applicant, or if the application is a joint application, each of the applicants, resides, or is domiciled, in the State.
- (3) For the purposes of this section, if the Court is satisfied that the child was present in the State, or that the applicant or each applicant was resident or domiciled in the State, for a period of 3 months immediately before the day on which the application was filed, the Court may, in the absence of evidence to the contrary, presume that:

- (a) the child was present in, or
  - (b) that the applicant or each applicant was resident or domiciled in, the State when the application was filed.
- (4) The Court has jurisdiction under this section to make an adoption order despite any rule of private international law to the contrary.
- (5) Subject to Part 2 of Chapter 5, the Court has jurisdiction, under and in accordance with this Part, to make an adoption order with respect to the intercountry adoption of a child referred to in Part 2.

**Note—**

**Child** is defined in the Dictionary.

**24 Who can be adopted?** (cf AC Act s 18 (1))

- (1) An adoption order may be made in relation to a child who:
- (a) was less than 18 years of age on the date on which the application for the order was made, or
  - (b) was 18 or more years of age on that date and was cared for by the applicant or applicants for the order.
- (2) For the purposes of subsection (1) (b), a child was cared for if the child:
- (a) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or her or their child for a continuous period of at least 5 years before the application was made, or
  - (b) has, as a ward within the meaning of the *Children (Care and Protection) Act 1987* or a person under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, been in the care or custody of the applicant or applicants or of the applicant and a deceased spouse of the applicant.

**Note—**

**Spouse** is defined in the Dictionary.

**25 Previous adoption or marital status immaterial** (cf AC Act s 18 (5))

An adoption order may be made:

- (a) even if the child concerned has, whether before or after the commencement of this section and whether in the State or elsewhere, previously been adopted, and

(b) irrespective of the marital status of the child.

**26 Who can adopt?** (cf AC Act ss 8, 19, 20, 21 (1) (c) (i) (a))

An application for an adoption order may be made in accordance with this Act solely by or on behalf of one person or jointly by or on behalf a couple.

**Note—**

**Couple** is defined in the Dictionary.

**27 Adoption by one person** (cf AC Act ss 8, 19 (2) and (3), 20, 21 (1) (c) (i) (a))

(1) **Basic requirements** One person may, subject to this Act, adopt a child only if the person is:

- (a) resident or domiciled in the State, and
- (b) of good repute and a fit and proper person to fulfil the responsibilities of a parent.

(2) **Age requirements** The Court must not make an adoption order in favour of one person who is not a birth parent or relative of the child unless:

- (a) the person is 21 or more years of age and 18 or more years older than the child, or
- (b) the Court considers that in the particular circumstances of the case it is desirable to make the order even though the person does not fulfil the age requirements.

(3) **Consent of spouse** The Court must not make an adoption order in favour of one person who is living with a spouse unless the person's spouse consents in writing to the application for the adoption order.

**Note—**

**Spouse** is defined in the Dictionary.

**28 Adoption by couple** (cf AC Act ss 8, 19, 20, 21 (1) (c) (i) (a))

(1) **Basic requirements** Two persons who are a couple may, subject to this Act, adopt a child only if:

- (a) both of them are resident or domiciled in the State, and
- (b) both of them are of good repute and are fit and proper persons to fulfil the responsibilities of parents.

(2) **Requirements for step parent** The Court must not make an order in favour of a couple if one of them is a step parent unless section 30 is complied with.

(3) **Age requirements** The Court must not make an adoption order in favour of a couple if neither of them is a birth parent or relative of the child unless:

- (a) each of them is 21 or more years of age and 18 or more years older than the child, or
  - (b) the Court considers that in the particular circumstances of the case it is desirable to make the order even though one or both of them do not fulfil the age requirements.
- (4) **Length of relationship requirement** The Court must not make an adoption order in favour of a couple unless the couple have been living together for a continuous period of not less than 3 years immediately before the application for the adoption order.
- (5) The Court may make an adoption order in favour of a couple jointly even if one of them is a birth parent, or they are the birth parents, of the child.

**Note—**

**Couple** is defined in the Dictionary.

## **29 Adoption by relative**

The Court must not make an adoption order in favour of a relative of a child unless:

- (a) specific consent to the adoption of the child by the relative has been given in accordance with this Act by the appropriate person or persons specified in section 53 (b), and
- (b) the child has established a relationship of at least 5 years' duration with the relative, and
- (c) the Court is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child.

**Note—**

Examples of other action that may be taken by law are the making of a care order under the [Children and Young Persons \(Care and Protection\) Act 1998](#) or a parenting order under the [Family Law Act 1975](#) of the Commonwealth.

## **30 Adoption by step parent**

The Court must not make an adoption order in favour of a step parent of a child unless:

- (a) the child is at least 5 years old, and
- (b) the step parent has lived with the child and the child's birth or adoptive parent for a continuous period of not less than 3 years immediately before the application for the adoption order, and
- (c) specific consent to the adoption of the child by the step parent has been given in



accordance with this Act by the appropriate persons, and

- (d) the Court is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child.

**Note—**

Examples of other action that may be taken by law are the making of a care order under the *Children and Young Persons (Care and Protection) Act 1998* or a parenting order under the *Family Law Act 1975* of the Commonwealth.

### **31 Adoption of non-citizen child**

- (1) The Court must not make an adoption order in relation to a non-citizen child as referred to in Part 2 of Chapter 5 unless:
- (a) arrangements for adoption of the child have been made by the Director-General or an accredited adoption agency that may provide intercountry adoption services or the Director-General applies for the order on the basis that the proposed adoptive parent has intercountry parental responsibility for the child, and
  - (b) the provisions of this Act and the regulations relating to intercountry adoptions have been complied with.
- (2) For the purposes of this section, a person has ***intercountry parental responsibility*** for a child if the child is from a country other than a Convention country or a prescribed overseas jurisdiction and the person, after being resident in that country for 12 months or more or being domiciled in that country, was given parental responsibility for the child under the law of that country.

## **Part 2 Placement of children for adoption**

### **Division 1 Children other than Aboriginal and Torres Strait Islanders**

#### **32 Regard to be had to cultural heritage of child**

- (1) In placing a child (other than an Aboriginal or Torres Strait Islander child) for adoption, the decision maker must take into account the culture, any disability, language and religion of the child and the principle that the child's given name, identity, language and cultural and religious ties should, as far as possible, be preserved.
- (2) Without limiting matters that may be taken into account, the decision maker must take into account whether a prospective adoptive parent of a different cultural heritage to that of the child has demonstrated the following:
- (a) the capacity to assist the child to develop a healthy and positive cultural identity,
  - (b) knowledge of or a willingness to learn about, and teach the child about, the child's

cultural heritage,

- (c) a willingness to foster links with that heritage in the child's upbringing,
- (d) the capacity to help the child if the child encounters racism or discrimination in school or the wider community.

## **Division 2 Aboriginal children**

### **33 Aboriginal participation in decision making**

The Director-General or appropriate principal officer must ensure that the following are consulted about the placement of an Aboriginal child:

- (a) an Aboriginal adoption consultative organisation, or
- (b) a person nominated by the child's parents, extended family or kinship group, as recognised by the Aboriginal community to which the child belongs, or by that community with expertise in relation to the adoption or substitute care of Aboriginal children.

### **34 Application of Aboriginal child placement principles**

- (1) The Director-General or appropriate principal officer is to make reasonable inquiries as to whether a child to be placed for adoption is an Aboriginal child.
- (2) The Aboriginal child placement principles are to be applied in placing a child that the Director-General or principal officer is satisfied is an Aboriginal child for adoption.

### **35 Aboriginal child placement principles**

- (1) **General principle** It is a principle to be applied in the administration of this Act that Aboriginal people should be given the opportunity to participate with as much self-determination as possible in decisions relating to the placement for adoption of Aboriginal children (which is a concept that is absent in customary Aboriginal child care arrangements).
- (2) **The general order for placement** The Aboriginal child placement principles are as follows:
  - (a) The first preference for placement of an Aboriginal child is for the child to be placed for adoption with a prospective adoptive parent or parents belonging to the Aboriginal community, or one of the communities, to which the birth parent or birth parents of the child belongs.
  - (b) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), the child is to be placed with a prospective adoptive parent or parents from another Aboriginal community.

(c) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a) or (b), the child is to be placed with a non-Aboriginal prospective adoptive parent or parents.

(3) **Placement of child with person who is not Aboriginal** An Aboriginal child is not to be placed with a non-Aboriginal prospective adoptive parent unless the Court is satisfied that the prospective adoptive parent:

(a) has the capacity to assist the child to develop a healthy and positive cultural identity, and

(b) has knowledge of or is willing to learn about, and teach the child about, the child's Aboriginal heritage and to foster links with that heritage in the child's upbringing, and

(c) has the capacity to help the child if the child encounters racism or discrimination in the wider community,

and that the Aboriginal child placement principles have been properly applied.

**Note—**

Placement with a non-Aboriginal prospective adoptive parent requires an application to the Court for a preliminary hearing—see section 80.

(4) **Child with one Aboriginal parent and one non-Aboriginal parent** If a child has one Aboriginal parent and one non-Aboriginal parent, the child may be placed with the person with whom the best interests of the child will be served having regard to the objects of this Act.

(5) If a child to whom subsection (4) applies:

(a) is placed with a person who is not within an Aboriginal family or community, an adoption plan must provide for the child to have the opportunity to develop an identity with the Aboriginal community to which the child belongs, or

(b) is placed with a person who is within an Aboriginal community, an adoption plan must provide for the child to have the opportunity to develop an identity with the non-Aboriginal community to which the child belongs.

### **36 Alternatives to placement for adoption to be considered**

An Aboriginal child is not to be placed for adoption unless the Director-General is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the care of the child.

**Note—**

Examples of other action that may be taken by law are the making of a care order under the *Children and Young Persons (Care and Protection) Act 1998* or a parenting order under the *Family Law Act 1975* of the Commonwealth.

## **Division 3 Torres Strait Islanders**

### **37 Torres Strait Islander participation in decision making**

The Director-General or appropriate principal officer must ensure that the following are consulted about the placement of a Torres Strait Islander child:

- (a) a Torres Strait Islander adoption consultative organisation, or
- (b) a person nominated by the child's parents, extended family or kinship group, as recognised by the Torres Strait Islander community to which the child belongs, or by that community, with expertise in relation to the adoption or substitute care of Torres Strait Islander children.

### **38 Application of Torres Strait Islander child placement principles**

- (1) The Director-General or appropriate principal officer is to make reasonable inquiries as to whether a child to be placed for adoption is a Torres Strait Islander child.
- (2) The Torres Strait Islander child placement principles are to be applied in placing a child that the Director-General or principal officer is satisfied is a Torres Strait Islander for adoption.

### **39 Torres Strait Islander child placement principles**

- (1) **The general order for placement** The Torres Strait Islander child placement principles are as follows:
  - (a) The first preference for placement of a Torres Strait Islander child is for the child to be placed for adoption with a prospective adoptive parent or parents within the child's extended family.
  - (b) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), the child is to be placed with a prospective adoptive parent or parents within the community, or one of the communities, to which the birth parent or birth parents of the child belongs.
  - (c) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a) or (b), the child is to be placed with a prospective adoptive parent or parents from another Torres Strait Islander community.
  - (d) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), (b) or (c), the child is to be placed with a non-Torres Strait Islander prospective adoptive parent or parents.
- (2) A Torres Strait Islander child is not to be placed with a prospective adoptive parent who is not a Torres Strait Islander unless the Court is satisfied that the prospective

parent:

- (a) has the capacity to assist the child to develop a healthy and positive cultural identity, and
- (b) is willing to learn about, and teach the child about, the child's Torres Strait Islander heritage and foster links with that heritage in the child's upbringing, and
- (c) has the capacity to help the child if the child encounters racism or discrimination in the wider community,

and that the Torres Strait Islander child placement principles have been properly applied.

**Note—**

Placement with a non-Torres Strait Islander prospective adoptive parent requires an application to the Court for a preliminary hearing—see section 80.

- (3) **Child with one Torres Strait Islander parent and one non-Torres Strait Islander parent** If a child has one Torres Strait Islander parent and one non-Torres Strait Islander parent, the child may be placed with the person with whom the best interests of the child will be served having regard to the objects of this Act.
- (4) If a child to whom subsection (3) applies:
  - (a) is placed with a person who is not within a Torres Strait Islander family or community, an adoption plan must provide for the child to have the opportunity to develop an identity with the Torres Strait Islander community to which the child belongs, or
  - (b) is placed with a person who is within a Torres Strait Islander community, an adoption plan must provide for the child to have the opportunity to develop an identity with the non-Torres Strait Islander community to which the child belongs.

## **Division 4 Placement outside Australia**

### **40 Report on child for intercountry adoption**

- (1) A child who is resident or domiciled in the State is not to be adopted in a place outside Australia unless the Director-General has:
  - (a) determined that the consent necessary for the adoption has been given in accordance with this Act (or dispensed with), and
  - (b) determined that a suitable family to adopt or otherwise care for the child cannot be found in Australia, and
  - (c) if satisfied that the child should be adopted outside Australia, prepared a report to that effect.

- (2) The report is to include information about the child's identity, adaptability, background, social environment, family history, medical history of the child and the child's family and any special needs of the child and is to indicate that the consents required under this Act have been obtained.

**Note—**

Under Article 16 of the Hague Convention on Intercountry Adoption the report prepared under this section will be transmitted by the Director-General to the appropriate authority in the place outside Australia.

### **Part 3 Selection of prospective adoptive parents**

#### **41 Application of Part**

This Part applies to the assessment of the suitability, and selection, of prospective adoptive parents of a child other than step parents or relatives.

#### **42 Expression of interest in adopting a child**

- (1) One person, or a couple, may submit to the Director-General, or principal officer of an adoption agency accredited to accept applications to adopt, an expression of interest in:
- (a) being approved as suitable to adopt a child (whether a citizen or non-citizen), and
  - (b) being selected, in a manner determined by the Director-General or principal officer, to adopt a child.
- (2) A submission of an expression of interest may be made only if the person or each person is resident or domiciled in the State.

#### **43 Application to adopt** (cf AC Reg Part 3)

The Director-General or principal officer may, in accordance with the regulations and subject to any conditions of the accreditation of the agency concerned, invite a person or a couple who have submitted an expression of interest to submit an application to adopt a child.

#### **44 Form of expression of interest or application**

A submission of an expression of interest or application to adopt a child under this Part is to be made in accordance with the regulations.

#### **45 Assessment of suitability, and selection, of adoptive parents**

- (1) The regulations may make provision for or with respect to the following:
- (a) the assessment of the suitability of persons to be approved to adopt, and selection of persons to adopt, children under this Act from within New South Wales or elsewhere,

(b) the keeping by the Director-General of a register of persons approved by the Director-General or by principal officers as fit and proper persons to adopt children.

(2) For the purpose of assessing the suitability of a person to adopt a child, the Director-General or appropriate principal officer may require the person to furnish an imprint of his or her fingerprints to enable a check to be made of any criminal record of the person.

## Part 4 Adoption plans

### 46 What is an adoption plan?

(1) An **adoption plan** is a plan agreed to by two or more of the parties to the adoption of a child that includes provisions relating to:

(a) the making of arrangements for the exchange of information between the parties in relation to any one or more of the following:

(i) the child's medical background or condition,

(ii) the child's development and important events in the child's life,

(iii) the means and nature of contact between the parties and the child, and

(b) any other matter relating to the adoption of the child.

#### Note—

**Parties** to an adoption is defined in the Dictionary. The Court is required to take an adoption plan into consideration in making an adoption order. See section 90 (2) and (3).

(2) Without limiting the matters for which an adoption plan may make provision:

(a) it may set out the ways in which the child is to be assisted to develop a healthy and positive cultural identity and for links with that heritage to be fostered, and

(b) it may provide for the giving of certain financial and other assistance as referred to in section 201.

### 47 How is an adoption plan made?

(1) Before the making of an order for the adoption of a child, parties to the adoption may agree on an adoption plan.

#### Note—

The parties must agree to an adoption plan in some circumstances—see sections 35 (5) and 39 (4).

(2) An adoption plan is to be in writing and is to contain the particulars (if any) required by the regulations.

#### **48 Adoption plan to accompany application for adoption order**

If the parties to an adoption agree to an adoption plan, a copy of the plan must (unless registered under section 50) accompany the application for an adoption order.

#### **49 Notice to be given of adoption plan**

The Director-General or appropriate principal officer is to give notice to any person who has the care of the child of the terms of the adoption plan.

#### **50 Registration of adoption plans**

- (1) The parties to an adoption who have agreed to an adoption plan may apply to the Court for registration of the plan.
- (2) The regulations may make provision for or with respect to such an application.
- (3) The Court may register an adoption plan if it is satisfied that:
  - (a) the plan does not contravene the adoption principles, and
  - (b) the parties to the adoption understand the provisions of the plan and have freely entered into it, and
  - (c) the provisions of the plan are in the child's best interests and is proper in the circumstances.
- (4) An adoption plan that is registered has effect, on the making of the relevant adoption order, as if it were part of the order.

#### **51 Review of adoption plans**

- (1) The Court may review an adoption plan on application of one or more of the parties to the plan.
- (2) Unless the Court otherwise determines, the Court is to give each party to the adoption who agreed to the adoption plan an opportunity to make submissions concerning the application.
- (3) Following its review, the Court may, by order:
  - (a) make such changes (if any) to the provisions of the adoption plan as it considers appropriate, or
  - (b) revoke the plan, or
  - (c) confirm the plan.
- (4) The Court may change the provisions, or revoke, an adoption plan only if it is satisfied that it is in the best interests of the child and proper in the circumstances to do so.



- (5) An adoption plan that is changed by an order of the Court has effect as if it were the plan originally agreed to by the parties.

## **Part 5 Consents to adoptions**

### **Division 1 Who must consent to an adoption?**

#### **52 Consent of parents and guardians generally required** (cf AC Act s 26)

The Court must not make an adoption order in relation to a child who is less than 18 years of age unless consent has been given:

- (a) in the case of a child who has not been previously adopted by:
- (i) each parent of the child, and
  - (ii) any guardian of the child, or
- (b) in the case of a child who has previously been adopted—by each adoptive parent or guardian of the child.

#### **53 Ways in which parent or guardian can give consent** (cf AC Act s 27)

- (1) For the purposes of this Act, a parent or guardian of a child may consent to the adoption of the child only by:
- (a) giving **general consent** to the adoption of the child by an adoptive parent or parents selected by the Director-General or principal officer of an accredited adoption agency, or
  - (b) giving **specific consent** to the adoption of the child by:
    - (i) a specified adoptive parent who is a relative of the child, or
    - (ii) 2 specified adoptive persons, one of whom is a parent or relative of the child, or
    - (iii) a specified adoptive parent who is step parent of the child, or
    - (iv) a specified adoptive parent who is a foster parent who has had care of the child for 2 years or more.
- (2) Nothing in this section prevents the Director-General or principal officer from selecting an adoptive parent or parents for the purposes of subsection (1) (a) from one or more of the classes of persons referred to in subsection (1) (b).

#### **54 When consent of parent or guardian not required** (cf AC Act s 26 (4A))

- (1) Consent is not required under section 52 if:

(a) the requirement for the consent has been dispensed with by the Court, or

**Note—**

See Division 3 of Part 5.

(b) the parent whose consent would otherwise be required by section 52 is a proposed adoptive parent, or

(c) the child gives sole consent to his or her adoption in accordance with subsection (2) and the Director-General or appropriate principal officer has given reasonable notice, or used their best endeavours to give reasonable notice, of the application for the adoption order to the parent or guardian whose consent would otherwise be required, or

(d) the child is 18 or more years of age.

(2) A child who is 12 or more years of age and of sufficient maturity to understand the effect of giving consent may give sole consent to his or her adoption by a proposed adoptive parent or parents if the child has been in the care of the proposed adoptive parent or parents for at least 5 years.

**Note—**

**Parental responsibility** is defined in the Dictionary.

**55 Consent of child** (cf AC Act ss 26 (4A), 33, 38 (2A))

(1) The Court must not make an adoption order in relation to a child who is 12 or more but less than 18 years of age and who is capable of giving consent unless:

(a) the child has been counselled as required by section 63, and

(b) if the child is less than 16 years of age, a report prepared by a registered psychologist or other appropriate expert states that, in the opinion of the expert, the child is capable of understanding the effect of giving consent, and

(c) the child consents to his or her adoption by the prospective adoptive parent or parents or the Court dispenses with the requirement for consent.

**Note—**

See Division 3 of Part 5.

(2) The Court may make an adoption order in relation to such a child who is incapable of giving consent if the Court is satisfied that the circumstances are exceptional and that it would be in the best interests of the child to make the order.

**56 Birth father to be given opportunity to consent** (cf AC Act s 31A)

(1) This section applies if:

- (a) consent to the adoption of a child has been given by the child's birth mother or guardian but not the birth father of the child, and
- (b) an adoption hearing has not been held, and
- (c) the Director-General or appropriate principal officer knows, or after reasonable inquiry ascertains, the name and address of the person whom the Director-General or principal officer reasonably believes to be the birth father of the child.

**Note—**

A person may be presumed to be the father of a child under the *Status of Children Act 1996* or may be registered as the father under the *Births, Deaths and Marriages Registration Act 1995*.

- (2) When this section applies, the Director-General or principal officer must give the person known, or reasonably believed, to be the birth father of the child notice:
  - (a) that the child's birth mother or guardian has consented to the adoption of the child, and
  - (b) advise him:
    - (i) of the legal processes by which he can establish paternity in relation to the child or be registered as the father of the child, and
    - (ii) of his rights as a parent in relation to the adoption of the child.

## **Division 2 When is consent effective?**

### **57 Definitions**

In this Act:

**counsellor** means a person of a class or description, and having the qualifications and functions, prescribed by the regulations.

**informed consent** means consent given after a person has been given the mandatory written information.

**mandatory written information**, in relation to the adoption of a child, means written information on the following:

- (a) the alternatives to the adoption,
- (b) financial and other support services available whether or not the child is relinquished for adoption,
- (c) possible emotional effects, both short and long term, of relinquishing the child for adoption,
- (d) the legal process of adoption (including the consents required and effect and way of

revoking consent, the selection procedure, the role of adoption plans, the role of the Court and review and appeals procedure) and the legal consequences of each stage in the process,

- (e) the duties and responsibilities of the Director-General and principal officer in relation to the placement of the child,
- (f) the rights and responsibilities of other parties to the adoption, including access to information about, or contact with, the other parties to the adoption,
- (g) any other matter prescribed by the regulations.

**58 When is consent ineffective?** (cf AC Act ss 29, 30, 31, AC Reg cl 21 (a) and (d), 22, 23, Sch 1 Forms 1, 4)

- (1) Consent to a child's adoption is not effective unless it is:
  - (a) informed consent, and
  - (b) given in accordance with this Act.
- (2) Consent given by a person (other than a child under 18 years of age) is not effective if it appears to the Court that:
  - (a) it was not given in accordance with this Act, or
  - (b) it was obtained by fraud, duress or other improper means, or
  - (c) the instrument of consent has been altered in a material particular without authority, or
  - (d) the person giving or purporting to give the consent was not, at the time the instrument of consent was signed, in a fit condition to give the consent.
- (3) Consent is not effective if it is revoked during the time allowed by section 73.
- (4) Consent given by a birth parent who is less than 18 years of age is not effective if it appears to the Court that the birth parent did not have the benefit of independent legal advice concerning the adoption before the instrument of consent was signed by the birth parent.
- (5) Consent to a child's adoption given in another State under the law of the other State is an effective consent for the purposes of this Act.

**Note—**

Chapter 5 provides for the recognition of certain adoptions if an adoption compliance certificate has been issued by the appropriate authority of a country outside Australia. Such a certificate will only be issued if the appropriate consents have been given to the adoption. See eg Article 4 of the Convention (which is set out in Schedule 1).

### **59 Mandatory written information**

The Director-General or appropriate principal officer must ensure that a person whose consent to an adoption is needed before an adoption order can be made is given the mandatory written information before the person consents or refuses consent to the adoption.

### **60 When is consent to be given?**

Consent to the adoption of a child cannot be given unless it is given:

- (a) at least 30 days after the child is born, and
- (b) at least 14 days after the person giving the consent is given a copy of the instrument of consent and the mandatory written information.

### **61 Form of consent**

- (1) Consent is to be given by an instrument (***an instrument of consent***) that is in a form that contains the information prescribed by the regulations.
- (2) A separate instrument of consent must be signed by the child and by each other person whose consent is required by this Act.
- (3) Before the instrument is signed, a counsellor must sign a statement on it certifying that:
  - (a) the child or other person giving the consent has been counselled by the counsellor, and
  - (b) that the counsellor is of the opinion that the child or other person understands the effect of signing the instrument.

### **62 Consent must be witnessed by person independent of counsellor**

- (1) The signing of the instrument of consent must be witnessed, in accordance with the regulations, by a person other than the counsellor and who is independent of the counsellor.
- (2) Before witnessing the signing of the instrument of consent by a child or other person, the witness is to sign a statement on it certifying that he or she is not aware of any mental, emotional or physical unfitness of that person to give consent.
- (3) The witness must be a person of a class or description prescribed by the regulations.

### **63 Child or other person consenting must be counselled**

- (1) A child or other person giving consent must be counselled in accordance with this section within the period prescribed by the regulations before he or she signs the instrument of consent to an adoption.

- (2) A person is counselled in accordance with this section if a counsellor:
- (a) accurately explains to the person, in a way that the counsellor thinks will be understood by the person:
    - (i) the legal effect of signing the instrument of consent and the procedure for revoking consent, and
    - (ii) the effect of the mandatory written information, and
  - (b) counsels the person on the emotional effects of the adoption and alternatives to adoption (including, in the case of birth parents, the feasibility of keeping the child).

#### **64 Consent to adoption of Aboriginal child**

- (1) Before a person gives consent to the adoption of an Aboriginal child:
- (a) he or she is to be given adoption counselling by an Aboriginal adoption consultative organisation, or
  - (b) if he or she is offered, but refuses, adoption counselling by such an organisation he or she must:
    - (i) be provided by the Director-General or appropriate principal officer with written information on Aboriginal customs and culture and any other matters the Director-General or principal officer considers would have been raised by the organisation, and
    - (ii) sign an acknowledgement that he or she has read (or, if he or she cannot read, had read to) and understood the information.
- (2) A person who refuses adoption counselling cannot consent to the adoption until at least 7 days after being given the information referred to in subsection (1) (b).
- (3) In this section:

***adoption counselling*** means consultation that includes consideration of the possibility of a child being cared for in accordance with Aboriginal customs and culture.

#### **65 Consent to adoption of Torres Strait Islander child**

- (1) Before a person gives consent to the adoption of a Torres Strait Islander child:
- (a) he or she must receive adoption counselling from a Torres Strait Islander adoption consultative organisation, or
  - (b) if he or she has been offered, but has refused, adoption counselling by such an organisation he or she must:

- (i) be provided by the Director-General or appropriate principal officer with written information on Torres Strait Islander customs and culture and on any other matters that the Director-General or principal officer considers would have been raised by the organisation, and
  - (ii) sign an acknowledgement that he or she has read (or, if he or she cannot read, had read to) and understood the information.
- (2) A person who refuses adoption counselling cannot consent to the adoption until at least 7 days after being given the information referred to in subsection (1) (b).
- (3) In this section:

**adoption counselling** means consultation that includes consideration of the possibility of a child being cared for in accordance with Torres Strait Islander customs and culture.

### **Division 3 Dispensing with consent**

#### **66 How is need for consent dispensed with?**

A requirement for the consent of a child or any other person to the child's adoption under this Act can be dispensed with if the Court makes an order under this Division dispensing with the requirement (a **consent dispense order**).

#### **67 When can Court dispense with consent of person other than the child?** (cf AC s 32 (1))

- (1) The Court may make a consent dispense order dispensing with the requirement for consent of a person to a child's adoption (other than the child) if the Court is satisfied that:
- (a) the person cannot, after reasonable inquiry, be found or identified, or
  - (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether he or she should give consent, or
  - (c) if the person is a parent or guardian of the child—there is serious cause for concern for the welfare of the child and it is in the best interests of the child to override the wishes of the parent or guardian.
- (2) The Court must not make such a consent dispense order unless satisfied that to do so is in the best interests of the child.

#### **68 Who may apply for order dispensing with consent of person other than the child?** (cf AC Act s32 (1A))

Any of the following persons may apply to the Court for a consent dispense order:

- (a) the Director-General,

- (b) the appropriate principal officer,
- (c) if an application has been made to the Court for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person)—the applicant or applicants,
- (d) with the consent of the Director-General—the applicant or applicants for the adoption of the child.

**69 When can the Court dispense with the child's consent?** (cf AC Act s33)

- (1) **Child 12 or more but less than 18 years of age** The Court may make a consent dispense order dispensing with the requirement for consent to his or her adoption to be given by a child who is 12 or more but less than 18 years of age if the Court is satisfied that the child is in such a physical or mental condition as not to be capable of properly considering the question of whether he or she should give consent.
- (2) An order under subsection (1) may be made on the Court's own initiative or on application by any person.
- (3) **Child 18 or more years of age** The Court must not make a consent dispense order dispensing with the requirement for consent of a child who is 18 or more years of age in any circumstances.
- (4) The Court must not make a consent dispense order under this section on application of a person other than the Director-General unless not less than 14 days' notice of the application has been given to the Director-General.

**70 When can consent dispense order be made?** (cf AC Act s 32 (2) and (3))

- (1) A consent dispense order may be made:
  - (a) before an application for an adoption order has been made in relation to a child, or
  - (b) in conjunction with an adoption order in relation to a child.
- (2) Despite subsection (1) (a), a consent dispense order must not be made on the application of a person referred to in section 68 (c) except in conjunction with an adoption order in favour of that person or of that person and another person.
- (3) A consent dispense order relating to the adoption of a child made before an application for an adoption order has been made in relation to the child has effect for the purposes of any application for an adoption order that is subsequently made in relation to the child.

**71 Revocation of consent dispense order** (cf AC Act s32 (4))

- (1) A consent dispense order in relation to the adoption of a child made before an application for an adoption order has been made may be revoked by the Court at any



time before the making of the adoption order.

- (2) The consent dispense order may be revoked on the Court's own initiative or on the application of:
  - (a) the Director-General or of the person whose consent was dispensed with, or
  - (b) if the order was made on the application of a principal officer—the principal officer.

**72 Notice of consent dispense order** (cf AC Act s 32 (5))

- (1) The Court must not make a consent dispense order on the application of any person unless notice of the application has been given to the person whose consent is sought to be dispensed with at least 14 days before the order is made.
- (2) Subsection (1) does not apply if:
  - (a) the person cannot, after reasonable inquiry, be found or identified, or
  - (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether he or she should give consent and his or her physical or mental health would, in the opinion of the Court, be detrimentally affected if he or she were to receive notice of the application, or
  - (c) the Court considers that in the particular circumstances of the case it is desirable to make an order without notice of the application having been given.
- (3) The Court must not revoke any consent dispense order on application of a person unless not less than 14 days' notice of the application has been given:
  - (a) in the case of an application for revocation made by a person other than the Director-General—to the Director-General, and
  - (b) in the case of an application for revocation made by a person other than the principal officer who applied for the consent dispense order—to the principal officer, or
  - (c) if an application has been made to the Court for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person)—to the applicant or applicants.

**Division 4 Revocation of consent**

**73 Revocation of consent** (cf AC Act s 28)

- (1) **Revocation by child** A child who has consented to his or her adoption may revoke his or her consent by notice in writing given to the nominated officer at any time before the adoption order is made.

- (2) **Revocation by person other than child** A person other than a child who has consented to a child's adoption may revoke his or her consent by notice in writing given to the nominated officer before the end of the period of 30 days beginning on the day on which the instrument of consent to the adoption was signed (***the revocation period***).

**Note—**

***Nominated officer*** is defined in the Dictionary.

- (3) Consent cannot be revoked under subsection (2) after the end of the revocation period.
- (4) As soon as practicable after receiving a notice under this section, the nominated officer is to give notice of the revocation:
- (a) to the Director-General, and
  - (b) if it appears to the nominated officer that the consent concerned was given to a principal officer—to the principal officer, and
  - (c) if an application has been made to the Court for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person)—to the applicant or applicants.
- (5) If the Director-General ceases to have guardianship of a child under section 79 (1) (d), any consent to the adoption of the child given for the purposes of this Act is taken to be revoked.
- (6) If the Director-General ceases to have guardianship of a child under section 79 (1) (d), the Director-General is to give notice to:
- (a) the nominated officer, and
  - (b) if the consent was given to a principal officer—the principal officer.

**74 Notification of pending end of revocation period**

- (1) The Director-General (or, if the consent was given to a principal officer, the principal officer) must give notice to each person (other than the child) who consented to an adoption before the end of the revocation period that on the end of the revocation period the consent cannot be revoked and that an adoption order may be made.
- (2) The notice is to be given not less than 7 days before the revocation period ends.

**Note—**

See section 73 (2).

## Part 6 Guardianship of children awaiting adoption

### Note—

This Part provides for the guardianship of children between the period when consent to adoption is given and an adoption order made. Guardianship is given to the Director-General who has power to decide, for example, whether the child should be placed with temporary foster parents or the proposed adoptive parents, in this period.

### 75 Guardianship of citizen child awaiting adoption (cf AC Act s 34 except (3) and (4))

- (1) **Guardianship following general consent or dispensing with consent** The Director-General is guardian of a child (for purposes other than the purposes of section 52) to the exclusion of all other persons after:
  - (a) general consent to the adoption of the child has been given by every person whose consent to the adoption of the child is required under this Act, or
  - (b) the requirement for consent has been dispensed with by the Court.
- (2) A person other than the Director-General or an officer of the Department who witnesses a general consent to the adoption of a child must give the Director-General written notice that it has been given.
- (3) The notice is to be given within 7 days after the person witnesses the consent.
- (4) Subsection (1) does not apply to a child unless and until the Director-General:
  - (a) is satisfied that each person who is required to give general consent to the adoption of the child under this Act has given consent or that the Court has dispensed with the requirement for that person to consent, or

### Note—

Grounds on which the Court may dispense with consent include that, after reasonable inquiry, the person whose consent is required cannot be found or identified—see section 67.

- (b) the Court makes an interim order under section 84 in favour of the Director-General,

whichever first occurs.
- (5) Within 21 days after the Director-General is satisfied as referred to in subsection (4), the Director-General may, by instrument in writing, decline guardianship of the child.
- (6) As soon as practicable after declining guardianship, the Director-General must cause a copy of the instrument to be given to each person who consented to the adoption of the child.
- (7) **Guardianship following renunciation of guardianship by officer of another State** The Director-General becomes the guardian of a child in place of a corresponding officer who is the child's guardian under a corresponding law if the corresponding officer

executes a guardianship renunciation instrument.

(8) Subsection (7) applies only if:

- (a) any consent to the adoption of the child held by the corresponding officer cannot be lawfully revoked by the person or persons by whom it was given, and
- (b) the Director-General is satisfied the child is present in New South Wales, and
- (c) the corresponding officer requested the Director-General to accept, and the Director-General by an instrument in writing forwarded to that officer, agreed to accept, guardianship of the child before the guardianship renunciation instrument was executed.

(9) The Director-General is guardian for purposes other than section 52.

(10) Subsections (1) and (5) do not apply to a child who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

(11) In this section:

**corresponding law** means a law of another State that corresponds to this section.

**corresponding officer** means an officer of another State whose functions correspond to those of the Director-General under this Act.

**guardianship renunciation instrument** means an instrument in writing executed by a corresponding officer renouncing the officer's guardianship of a child under a corresponding law and on execution of which the officer ceases, under that law, to be guardian of the child.

## **76 Renunciation of guardianship of child present in another State**

(1) The Director-General may execute a guardianship renunciation instrument in relation to a child the Director-General is the guardian of under section 75 if:

- (a) consent to the adoption of the child cannot be lawfully revoked by the person or persons by whom it was given, and
- (b) the Director-General is satisfied that the child is present in another State, and
- (c) the Director-General has requested a corresponding officer to accept, and that officer has, by an instrument in writing forwarded to the Director-General, agreed to accept, guardianship of the child, and
- (d) under a corresponding law, that officer will, on execution by the Director-General of a guardianship renunciation instrument, have guardianship of the child.

- (2) The Director-General ceases to be guardian of the child on execution of the guardianship renunciation instrument.
- (3) As soon as practicable after executing the guardianship renunciation instrument, the Director-General must forward the instrument to that officer.
- (4) In this section:

**corresponding law** means a law of another State that corresponds to this section.

**corresponding officer** means an officer of another State whose functions correspond to those of the Director-General under this Act.

**guardianship renunciation instrument** means an instrument in writing executed by the Director-General renouncing the Director-General's guardianship of a child.

### **77 Guardianship of certain non-citizen children awaiting adoption**

- (1) This section applies to a non-citizen child who is subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth on entry to Australia and in relation to whom an adoption order has not been made under any law.
- (2) The Director-General is the guardian of a child to whom this section applies and section 75 is, to the extent necessary, to apply to that child as if he or she were born in a State of the Commonwealth for so long as New South Wales is the normal place of residence of the child.

#### **Note—**

The Minister for Immigration of the Commonwealth is the guardian of a child arriving in Australia and who is subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth until an adoption order is made. The functions of guardianship are presently delegated to the Director-General under section 5 of that Act.

### **78 Guardianship reports—citizen and non-citizen children** (cf AC Act s 34 (3) and (4))

- (1) The Director-General must make a report to the Court concerning any child of whom the Director-General is guardian under this Part if the Director-General has not, within a period of one year after becoming guardian, ceased to be guardian.
- (2) The Court may make any order concerning the guardianship or other parental responsibility for the child that it thinks fit.
- (3) Without limitation, an order under subsection (2) may, if the child is less than 18 years of age:
  - (a) declare the child to be under the parental responsibility of the Minister under the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (b) order that the Director-General remain guardian of the child for a further period of one year.

## 79 Duration of guardianship

- (1) The Director-General continues to be guardian of a child under section 75 or 78 until:
  - (a) an adoption order is made in relation to the child, or
  - (b) if consent has been given, the instrument of consent is lawfully revoked, or
  - (c) the Court, by order, makes other provision for guardianship of the child, or
  - (d) the Director-General places the child in the care of a parent (or one of the parents) of the child or in the care of some other person under subsection (2), or
  - (e) the Director-General declines to be guardian of the child, or

**Note—**

See section 75 (5).

- (f) the Director-General renounces guardianship of the child, or

**Note—**

See section 76.

- (g) the child is declared to be, or is placed, under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.
- (2) The Director-General may, on such terms and conditions as the Director-General thinks fit, place any child of whom the Director-General is guardian under section 75 or 78 in the care of any suitable person who has agreed to have the child in his or her care.
  - (3) The fact that the Director-General is guardian of a child under this section does not affect the liability of any person to provide adequate means of support for the child.
  - (4) The loss of guardianship of a non-citizen child under this section does not affect any duty imposed on the Director-General by any law with respect to the on-going supervision, and reports concerning, the child to be made to the appropriate authority in a Convention country or other place outside Australia, after the adoption of the child.

## Part 7 Preliminary hearings

**Note—**

This Part enables a preliminary hearing to be held before a full adoption hearing. At such a hearing the Court may examine certain prescribed matters. Matters that might be prescribed are for example, that a child may have indicated he or she does not want to be placed with the proposed family or that continued access of relatives significant to an older child has not been provided for.

## **80 Preliminary hearings**

- (1) The Court may hold a preliminary hearing in relation to any matter concerning or arising out of an application to adopt a child that is prescribed by the regulations.
- (2) The Court must hold a preliminary hearing before the placement for adoption of:
  - (a) an Aboriginal child with a prospective adoptive parent other than an Aboriginal, or
  - (b) a Torres Strait Islander child with a prospective adoptive parent other than a Torres Strait Islander.
- (3) The Court may hold a preliminary hearing on its own motion or on application of a person of a class prescribed by the regulations.
- (4) The Court may give such directions and make any order it thinks fit at a preliminary hearing.
- (5) Without limiting subsection (4), the Court may make an order as to parental responsibility for the child (including an interim order) and any order that it may make at an adoption hearing.

## **81 When may preliminary hearings be held?**

A preliminary hearing may be held at any time before the making of an adoption order.

## **82 Notice to be given**

Unless the Court dispenses with notice, notice of the preliminary hearing is to be given to the child, the prospective adoptive parent or parents and any other person to whom the Court directs the notice be given.

## **83 Rules of court**

Rules of court may be made for and with respect to preliminary hearings.

## **Part 8 Interim orders**

### **84 Making of interim orders** (cf AC Act s 41)

- (1) The Court may postpone the determination of any application to the Court for an order for the adoption of a child and make an interim order for parental responsibility for the child in favour of the prospective adoptive parent or parents.
- (2) On application to the Court by the Director-General or a principal officer, the Court may make an interim order for parental responsibility for the child in favour of the Director-General or principal officer.
- (3) An interim order is subject to such terms and conditions as the Court thinks fit.

- (4) The Court must not make an interim order in relation to a child in favour of any person unless the Court could lawfully make an order for the adoption of that child by that person.
- (5) While an interim order remains in force in relation to a child, the person or persons in whose favour the order is made have parental responsibility for the child.

**85 Duration of interim orders** (cf AC Act s 42)

- (1) Subject to this Part, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order and for such further periods, if any, as the Court may from time to time order.
- (2) An interim order must not be in force for periods exceeding in total 2 years.

**86 Discharge of interim orders** (cf AC Act s 43)

- (1) The Court may, at any time, make an order discharging an interim order made under this Part.
- (2) If the Court discharges an interim order the Court may make any order concerning parental responsibility for the child that it thinks fit, including, if the child is less than 18 years of age, an order declaring the child to be under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.
- (3) An interim order in relation to a child ceases to have effect on the making of an order for the adoption of that child, whether made in New South Wales or in another State or in a country outside Australia.

## Part 9 Adoption orders

**Note—**

The power to make adoption orders is conferred by section 23.

**87 Application to be consented to by Director-General** (cf AC Act s 18 (2) and (3))

The Court may make an adoption order only on application made by:

- (a) the prospective adoptive parent or parents with the consent of the Director-General, or
- (b) the Director-General or by a principal officer on behalf of the prospective adoptive parent or parents, or
- (c) a step parent or relative of the child, or
- (d) a child who is 18 or more years of age for his or her adoption.



**88 Notice of application for adoption orders** (cf AC Act s 22)

- (1) The Court may not make an adoption order unless at least 14 days' notice of the application for the order (containing the particulars, if any, prescribed by the regulations) has been given:
  - (a) to any person whose consent to the adoption of the child concerned is required under this Act and has not been given (or the requirement for which has been dispensed with by the Court), and
  - (b) to any person (not being a person whose consent is so required) with whom the child resides or who has parental responsibility for the child.
- (2) Except as the Court may otherwise determine, nothing in subsection (1) requires a notice referred to in that subsection to be given to a person referred to in subsection (1) (b) if that person is:
  - (a) an applicant for the adoption order, or
  - (b) a person with whom the child resides only as a patient or inmate of a hospital of which that person is in charge or a person who has parental responsibility for a child only as the person in charge of a hospital.
- (3) The notice must not specify the name of, or identify, any applicant.
- (4) The Court may dispense with the giving of the notice.
- (5) If it appears to the Court to be necessary in the interests of justice so to do, the Court may direct that notice of an application for an adoption order be given to any specified person.

**89 When can order be made?**

The Court must not make an adoption order until:

- (a) the revocation period for each consent given by an adult to the adoption has expired, and
- (b) if the child to be adopted has consented to the adoption—a period of 30 days, beginning on the day on which the instrument of consent to the adoption was signed, has expired.

**Note—**

**Revocation period** is defined in the Dictionary.

**90 Court to be satisfied as to certain matters** (cf AC Act s 21)

- (1) The Court must not make an adoption order in relation to a child unless the Court is satisfied:

- (a) that the best interests of the child will be promoted by the adoption, and
- (b) that, as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them, and

**Note—**

Sections 127–129 contain provisions about ascertainment of the wishes of a child by the Court.

- (c) if the prospective adoptive parent or parents are persons other than a step parent or relative of the child—that the prospective adoptive parent or parents have been selected in accordance with this Act, and

**Note—**

See Part 3 of this Chapter.

- (d) that consent to the adoption of the child has been given by every person whose consent is required under this Act or that consent has been, or should be, dispensed with, and
- (e) if the child is an Aboriginal child—that the Aboriginal child placement principles have been properly applied, and
- (f) if the child is a Torres Strait Islander child—that the Torres Strait Islander child placement principles have been properly applied, and
- (g) if the child is a non-citizen child from a Convention country or other country outside Australia—that the applicable requirements of this Act and any other relevant law have been satisfied, and

**Note—**

See for example, section 31.

- (h) in the case of a child (other than an Aboriginal or Torres Strait Islander child)—that the culture, any disability, language and religion of the child and, as far as possible, that the child's given names, identity, language and cultural and religious ties have been taken into account in the making of any adoption plan in relation to the adoption.

- (2) The Court may not make an adoption order if the parties to the adoption have agreed to an adoption plan unless it is satisfied that the arrangements proposed in the plan are in the child's best interests and are proper in the circumstances.
- (3) The Court may not make an adoption order unless it considers that the making of the order would be clearly preferable in the best interests of the child than any other action that could be taken by law in relation to the care of the child.

**Note—**

Other action that could be taken in relation to a child includes a parenting order under the *Family Law Act 1975* of the Commonwealth or a care order under the *Children and Young Persons (Care and Protection) Act 1998*. Part 1 of Chapter 4 describes the persons who may be adopted and the persons who may adopt.

### **91 Report required before order made for adoption of child** (cf AC Act s 21)

- (1) The Court may not make an order for the adoption of a child under 18 years of age unless a report in writing to the Court concerning the proposed adoption has been made by:
  - (a) the Director-General, or
  - (b) if the application for the order is made on behalf of the applicant by a principal officer—the principal officer.
- (2) Subsection (1) does not prevent the Director-General from making a report to the Court in relation to any application for an order for the adoption of any child before the Court if the Director-General considers it appropriate to do so.
- (3) The Court may require the Director-General to make a report in relation to an application for an adoption order made by a person other than the Director-General within a period of 6 months after the date of the making of the application or such other period as the Court may, having regard to the circumstances of the case, specify.

## **Part 10 Procedures after application dealt with**

### **92 Care of child after refusal of an application** (cf AC Act s 24)

If the Court refuses an application for an adoption order, the Court may make such orders for the care and custody of the child concerned as it thinks fit, including, if the child is less than 18 years of age, an order declaring the child to be under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

### **93 Discharge of adoption orders** (cf AC Act s 25)

- (1) In this section:

**concerned person** means the Attorney General, or any party to an adoption.
- (2) A concerned person may apply to the Court for an order discharging an adoption order (a **discharge order**).
- (3) The Court is to give each concerned person (other than the applicant for the discharge order) notice of the application.
- (4) The Court may make a discharge order if it is satisfied that:
  - (a) the adoption order, or any consent to adoption, was obtained by fraud, duress or

other improper means, or

(b) there is some other exceptional reason why the adoption order should be discharged.

- (5) The Court must not make a discharge order if it appears to the Court that:
- (a) the making of the order would be prejudicial to the best interests of the child, or
  - (b) if the application for the order is made by the child—the application is motivated by emotional or other considerations that do not affect the welfare of the child arising out of a relationship formed because of the child’s access to information or contact with a person under Chapter 8 (Adoption information).
- (6) If the Court makes a discharge order respecting a general consent, that consent remains effective for the purpose of a further application for an adoption order in relation to the same child, unless the Court orders otherwise.
- (7) If the Court makes a discharge order, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or to promote the best interests of the child, including orders relating to the following:
- (a) the name of the child,
  - (b) the ownership of property,
  - (c) the custody or guardianship of the child,
  - (d) the domicile of the child.
- (8) On the making of a discharge order, but subject to any order made under subsection (6) and to section 95 (4), the rights, privileges, duties, liabilities and relationships under the law of New South Wales of the child and of all other persons are to be the same as if the adoption order had not been made, but without prejudice to:
- (a) anything lawfully done, or
  - (b) the consequences of anything unlawfully done, or
  - (c) any proprietary right or interest that became vested in any person,
- while the adoption order was in force.

#### **94 Investigation of application for discharge**

The Court may require the Director-General to investigate the circumstances of any application for a discharge order and report to it.

### **Part 11 Effect of adoption orders**

**Note—**

This Part describes the effect of the adoption order. It recognises the change in the legal status of the child and his or her transfer from one family to another but also recognises the benefit of maintaining a relationship with birth parents.

**95 General effect of adoption orders** (cf AC Act s 35 (1) and (4))

- (1) An adoption order made by the Court gives sole parental responsibility for a child to the person or persons named in the order (***the adoptive parent or adoptive parents***).
- (2) For the purposes of the law of New South Wales, if an adoption order is made:
  - (a) the adopted child has the same rights in relation to the adoptive parent, or adoptive parents, as a child born to the adoptive parent or adoptive parents,
  - (b) the adoptive parent or adoptive parents have the same parental responsibility as the parent or parents of a child born to the adoptive parent or adoptive parents,
  - (c) the adopted child is regarded in law as the child of the adoptive parent or adoptive parents and the adoptive parent or adoptive parents are regarded in law as the parents of the adopted child,
  - (d) the adopted child ceases to be regarded in law as the child of the birth parents and the birth parents cease to be regarded in law as the parents of the adopted child.
- (3) Despite subsection (1), an adopted child does not cease to be regarded in law as the child of a birth parent or adoptive parent, and the birth parent or adoptive parent does not cease to be regarded in law as the parent of the child, if an adoption order is made in relation to a step parent with whom the birth parent or adoptive parent is living.
- (4) For the purposes of any law of New South Wales relating to a sexual offence (being a law for which the relationship between persons is relevant), any relationship that would have existed if an adoption order or discharge order had not been made continues to exist for the purposes of that law in addition to any relationship that exists under this section by virtue of the order.

**96 Effect of adoption order on guardianship and previous adoption** (cf AC Act s 35 (1) (d) and (e))

- (1) On the making of an adoption order:
  - (a) the existing guardianship of the adopted child (including the Minister's parental responsibility under the [Children and Young Persons \(Care and Protection\) Act 1998](#)) ceases to have effect, and
  - (b) any previous adoption of the child (whether effected under the law of New South Wales or otherwise) ceases to have effect.
- (2) This section does not apply in relation to an agreement or instrument (not being a

disposition of property) made or executed before 7 February 1967.

**Note—**

7 February 1967 was the date of commencement of the *Adoption of Children Act 1965*.

**97 Effect of orders as regards property** (cf AC Act ss 35 (2) and (3) and 36)

- (1) Section 95 does not have effect so as to deprive an adopted child of any vested or contingent property right acquired by the child before the making of the adoption order.
- (2) If:
  - (a) one of the birth parents of a child, or one of 2 adoptive parents of an adopted child, has died, and
  - (b) the surviving parent remarries or, if not previously married, marries, and
  - (c) the child is adopted by the surviving parent and that parent's spouse,any property of any collateral or lineal next-of-kin of the deceased parent who dies intestate is, despite section 95, to devolve in all respects as if the child had not been so adopted.

**Note—**

**Spouse** is defined in the Dictionary. This section ensures that if an adoption order is made in favour of the spouse of a deceased birth or adoptive parent of a child, it does not exclude any rights of inheritance that the child might have from or through the deceased parent.

**98 Effect of orders as regards dispositions of property etc** (cf AC Act s 36)

- (1) Subject to section 97 (1), section 95 has effect in relation to a disposition of property, whether by will or otherwise, and whether made before or after the commencement of this section, and to a devolution of property in relation to which a person dies intestate after 7 February 1967. However, those provisions do not affect a disposition of property:
  - (a) by a person who, or by persons any of whom, died before 7 February 1967, and
  - (b) that has taken effect in possession before that date.
- (2) If:
  - (a) before 7 February 1967, a person made, by an instrument other than a will, a disposition of property (a **disposition instrument**), and
  - (b) the disposition had not taken effect in possession before that date, and
  - (c) it did not appear from the disposition instrument that it was the intention of that

person to include adopted children as objects of the disposition,

that person may, even though the disposition instrument could not, apart from this subsection, be revoked or varied, by another instrument other than a will, vary the disposition instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the disposition instrument.

- (3) In relation to a disposition of property by a person who, or by persons any of whom, died before 7 February 1967, and in relation to a devolution of property in relation to which a person died intestate before that date, an adoption order made under this Act has the same effect as if the former Acts had continued in force and the adoption order had been made under those Acts.

**Note—**

**Former Act** is defined in the Dictionary.

- (4) Nothing in section 95 or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this section) distinguishing between adopted children and children other than adopted children.

**99 Relationship of adopted child to other children of the adopter** (cf AC Act s 37)

- (1) This section has effect for the purposes of:
- (a) the application of the *Wills, Probate and Administration Act 1898* to the devolution of any property in relation to which a person dies intestate, and
  - (b) the construction of any disposition of any property.
- (2) An adopted child is taken to be related to another person, being the child or adopted child of his or her adoptive parent or parents:
- (a) if he or she was adopted by 2 persons who are the spouses of each other jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood, and
  - (b) in any other case, as brother or sister of the half blood.

**Note—**

**Spouse** is defined in the Dictionary. For the purposes of a devolution of property on intestacy, if a child is adopted by a couple, the adopted child is treated as a whole blood sibling of any other child (whether or not adopted) of the couple.

**100 Liability of trustees and personal representatives in relation to adopted persons** (cf AC Act s 40)

- (1) If, before conveying, transferring or distributing any property among the persons

appearing to be entitled to the property, a trustee or personal representative gives a claims notice and the time fixed by the notice has expired, the trustee or personal representative is not liable to any person:

- (a) who claims directly or indirectly an interest in the property by virtue of an adoption, and
- (b) of whose claim the trustee or personal representative does not have notice at the time of the conveyance, transfer or distribution.

(2) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a bona fide purchaser for value, who has received it.

(3) In this section:

**claims notice** means notice referred to in section 60 of the *Trustee Act 1925* or section 92 of the *Wills, Probate and Administration Act 1898*.

#### **101 Names of adopted children** (cf AC Act s 38)

(1) On the making of an adoption order:

- (a) an adopted child who is 18 or more years old is (unless he or she decides otherwise) to have the same surname and given name or names as he or she used immediately before the order is made, and
- (b) an adopted child who is less than 18 years of age is to have as his or her surname and given name or names such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or parents.

(2) Before changing the surname or given name or names of a child, the Court must consider any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the child's wishes.

(3) If, before the making of the adoption order, the adopted child has been generally known by a particular surname, the Court may, in the adoption order, order that the child is to have that name as his or her surname.

(4) An approval of a change in the given name or names of a child who is over the age of 12 years must not be given by the Court unless the child has, in a consent given under section 55, consented to the change.

(5) The Court must not approve a change in the given name or names of a child who is more than one year old, or a non-citizen child, unless there are special reasons, related to the best interests of the child, to do so.

(6) Nothing in this section prevents the changing of any name of an adopted child, after



the making of the adoption order, under the law of New South Wales.

## Chapter 5 Recognition of adoptions

### Introduction—

This Chapter provides for the recognition of adoptions in other States and Territories (Part 1). It also provides 3 ways of recognising intercountry adoptions. Part 2 provides for the recognition of adoptions made in accordance with the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and adoptions granted in certain prescribed overseas jurisdictions and adoption in other overseas jurisdictions.

## Part 1 Australian adoptions

### 102 Recognition of Australian adoptions (cf AC Act s 45)

An order for the adoption of a person that was made in another State (whether before or after the commencement of this section) that:

- (a) is in accordance with, and
- (b) has not been rescinded under,

a law of that State is to be treated as having the same effect as an adoption order made under this Act.

## Part 2 Intercountry and overseas adoptions

### Division 1 General

#### 103 Object of Part

The object of Divisions 1–3 is to provide for the application of provisions of State law that have effect, or comparable effect, to certain provisions of Commonwealth law.

#### Note—

For the effect of doing this, see regulation 34 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* and regulation 8 of the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*, of the Commonwealth.

#### 104 Meaning of child

In this Part:

**child** means a person who is less than 18 years of age.

#### 105 Application of Act

Except as provided by this Act, the adoption of a person (whether before or after the commencement of this section) in a country outside Australia does not have effect for the purposes of the law of the State.

## **Division 2 Hague Convention on Intercountry Adoption**

### **106 Adoption in NSW of child from NSW by parents from Convention country**

- (1) The Court may, on application by the Director-General, make an order for the adoption of a child who is habitually resident in New South Wales by a prospective adoptive parent or parents who are habitually resident in a Convention country.
- (2) The Court may make the order only if satisfied that:
  - (a) the Central Authority of the Convention country has agreed to the adoption of the child, and
  - (b) the Director-General or principal officer has considered the possibility of placing the child for adoption within Australia and any other action that could be taken by law to care for the child, and
  - (c) the adoption is in the best interests of the child.
- (3) The Court must not make the order if the child is not allowed to leave Australia:
  - (a) under a law of the Commonwealth or a State, or
  - (b) because of an order of a court of the Commonwealth or a State.
- (4) The best interests of the child are to be determined in accordance with the adoption principles.

### **107 Adoption in NSW of child from Convention country by parents from NSW**

- (1) The Court may, on application by the Director-General or the principal officer of an accredited adoption agency that may provide intercountry adoption services, make an order for the adoption of a child who is habitually resident in a Convention country by a prospective adoptive parent or parents who are habitually resident in the State.

**Note—**

Part 3 of Chapter 4 provides for assessment of the suitability, and selection, of persons to adopt by the Director-General or principal officer.

- (2) The Court may make the order only if satisfied that:
  - (a) the Central Authority of the Convention country has agreed to the adoption of the child, and
  - (b) the child is allowed to reside permanently in Australia.
- (3) The Court must not make the order if the child is not in Australia.
- (4) For the purposes of subsection (2) (b), a child is not allowed to reside permanently in Australia if the child is affected by a law of the Commonwealth or the State, or by an

order of a Commonwealth or State court, the effect of which is to prevent the child so residing.

**Note—**

If a child enters Australia before the order is made, the child may be subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth. See section 77 of this Act.

**108 Recognition of adoption of a child from a Convention country in that country**

(1) This section applies if:

- (a) an adoption (whether before or after the commencement of this section) by a person who is habitually resident in the State, of a child who is habitually resident in a Convention country, is granted in that country, and
- (b) an adoption compliance certificate issued (whether before or after the commencement of this section) in the Convention country in which the adoption is granted is in force for the adoption.

(2) Subject to section 110, the adoption is recognised and effective, for the law of the State, on and from the day the certificate becomes effective.

**109 Effect of recognition**

For the purposes of the law of the State, an adoption of a child that is recognised and effective under section 108:

- (a) is to be treated as having the same effect as an adoption order made under this Act, and

**Note—**

See Part 11 of Chapter 4, especially section 95 (General effect of adoption orders) and cf Articles 26 and 27 of the Convention.

- (b) if the law of the Convention country where the adoption was granted provide that the adoption of the child terminates the legal relationship between the child and the individuals who were immediately before the adoption, the child's parents—the relationship is terminated.

**110 Refusal to recognise an adoption**

- (1) The Director-General may apply to the Court for a declaration that an adoption or decision made in accordance with article 27 of the Convention is not recognised.
- (2) The Court may make such a declaration if the Court is satisfied that the adoption or decision is manifestly contrary to public policy, taking into account the best interests of the child concerned.
- (3) If the Court declares that it does not recognise the adoption or decision, the adoption

or decision (as the case requires) has no effect for the law of the State.

### **111 Order terminating legal relationship between child and parents**

(1) This section applies if:

- (a) an adoption, by an adoptive parent who is habitually resident in the State, of a child who is habitually resident in a Convention country is granted in that country, and
- (b) the law of the Convention country does not provide that the adoption of the child terminates the legal relationship between the child and the individual or individuals who were, immediately before the adoption, the child's parent or parents (the ***pre-adoption parents***).

(2) The Director-General may, on behalf of an adoptive parent, apply to the Court for an order that the adoption of the child terminates the legal relationship between the child and the pre-adoption parents.

**Note—**

See articles 26 and 27 of the Convention.

(3) The Director-General must give written notice of the application to the Central Authority of the Convention country concerned.

(4) The Court may make the order only if satisfied that:

- (a) an adoption compliance certificate issued in the Convention country is in force for the adoption, and
- (b) the law of the Convention country does not provide that the adoption of the child terminates the legal relationship between the child and the pre-adoption parents, and
- (c) the child is allowed:
  - (i) to enter Australia, and
  - (ii) to reside permanently in Australia, and
- (d) notice has been given as required by subsection (3).

(5) For the purposes of subsection (4) (c), a child is not allowed to enter, or reside permanently in Australia if the child is affected by a law of the Commonwealth, or of a State, or by an order of a Commonwealth or State court, the effect of which is to prevent the child from so entering or residing.

### **112 Evidential value of adoption compliance certificate and Convention country adoption**

**order**

Subject to section 110, an adoption compliance certificate issued in a Convention country, or adoption order certified by the Central Authority of a Convention country as having been made in accordance with the law of that country, is evidence for the law of the State, that the adoption to which the certificate or order relates:

- (a) was agreed to by the Central Authorities of the countries mentioned in the certificate, and
- (b) was carried out in accordance with the Convention and the law of that country.

**Note—**

**Adoption compliance certificate** is defined in the Dictionary.

### **Division 3 Bilateral arrangements**

#### **113 Adoption by NSW parent in prescribed overseas jurisdiction of a child from that overseas jurisdiction**

(1) This section applies if:

- (a) an adoption, by a person who is habitually resident in the State, of a child who is habitually resident in a prescribed overseas jurisdiction, is granted under the law of that overseas jurisdiction, and
- (b) an adoption compliance certificate issued by a competent authority of that overseas jurisdiction is in force in relation to the adoption.

(2) The adoption is recognised and effective, for the law of the State, on and after the adoption takes effect in the overseas jurisdiction.

#### **114 Effect of recognition**

For the purposes of the law of the State, an adoption of a child that is recognised and effective under section 113 is to be treated as having the same effect as an adoption order made under this Act.

**Note—**

See Part 11 of Chapter 4, especially section 95 (General effect of adoption orders) and regulation 6 of the Commonwealth Bilateral Arrangements Regulations.

#### **115 Evidential value of adoption compliance certificate**

An adoption compliance certificate issued in a prescribed overseas jurisdiction, or adoption order certified by the competent authority of such a country as having been made in accordance with the law of that country, is evidence, for the purposes of the law of the State, that the adoption to which the certificate or order relates was carried out under the law of the overseas jurisdiction whose competent authority issued the

certificate or certified the order.

**Note—**

**Adoption compliance certificate** is defined in the Dictionary.

## **Division 4 Recognition of other overseas adoptions**

### **116 Recognition of foreign adoptions in countries other than Convention countries and prescribed overseas jurisdictions** (cf AC Act s 46)

- (1) This section applies to an order for the adoption of a person:
  - (a) that was made (whether before or after the commencement of this section) in a country other than Australia that is not a Convention country or a prescribed overseas jurisdiction, and
  - (b) if, at the time at which the legal steps that resulted in the adoption were commenced, the adoptive parent or parents:
    - (i) had been resident in that country for 12 months or more, or
    - (ii) were domiciled in that country.
- (2) An order for the adoption of a person to which this section applies is to have the same effect as an adoption order made under this Act if:
  - (a) the adoption is in accordance with and has not been rescinded under the law of that country, and
  - (b) in consequence of the adoption, the adoptive parent or parents, under the law of that country, have a right superior to that of the adopted person's birth parents in relation to the custody of the adopted person, and
  - (c) under the law of that country the adoptive parent or parents were, because of the adoption, placed generally in relation to the adopted person in the position of a parent or parents.
- (3) Despite subsection (2), a court (including a court dealing with an application under section 117) may refuse to recognise an adoption under this section if it appears to the court that the procedure followed, or the law applied, in connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.
- (4) A court that refuses to recognise an adoption may, at the time of refusing or at a later time, give leave to the applicant to seek an order for the adoption of the child concerned.

**Note—**

See section 31.

- (5) In any proceedings before a court (including proceedings under section 117), it is to be presumed unless the contrary appears from the evidence, that an order for the adoption of a person that was made in a country outside Australia that is not a Convention country or a prescribed overseas jurisdiction complies with subsection (1).
- (6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this section.

**117 Declarations of validity of foreign adoptions** (cf AC Act s 47)

- (1) Any of the parties to an adoption under an order made outside Australia may apply to the Court for a declaration that the order complies with section 116.
- (2) On an application under this section, the Court may:
  - (a) direct that notice of the application be given to such persons (including the Attorney General) as the Court thinks fit, or
  - (b) direct that a person be made a party to the application, or
  - (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.
- (3) If the Court makes a declaration under this section, it may include in the declaration such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the Court finds to be established.
- (4) For the purposes of the law of New South Wales, a declaration under this section binds the Crown in right of New South Wales, whether or not notice was given to the Attorney General, and any person who was:
  - (a) a party to the proceedings for the declaration or a person claiming through such a party, or
  - (b) a person to whom notice of the application for the declaration was given or a person claiming through such a person,but does not affect:
  - (c) the rights of any other person, or
  - (d) an earlier judgment, order or decree of a court or other body of competent jurisdiction.
- (5) In proceedings in a court of New South Wales, the production of a copy of a declaration under this section, certified by the nominated officer to be a true copy:
  - (a) if the proceedings relate to a person referred to in paragraph (a) or (b) of subsection (4), is conclusive evidence, and

- (b) if the proceedings relate to the rights of any other person, is evidence, that an adoption was effected in accordance with the particulars contained in the declaration and that it complies with section 116.

## Chapter 6 Proceedings

### Introduction—

This Chapter specifies the procedures that are to be followed in proceedings before the Supreme Court under the Act.

### 118 Parties (cf AC Act s 23)

- (1) The Court may permit such persons as the Court thinks fit to appear in or be joined as parties to the proceedings for an adoption order.
- (2) The Court must, on application by a person who is the father of a child who has not:
  - (a) given his consent to the adoption of the child, and
  - (b) been given a notice referred to in section 56 (Birth father to be given opportunity to consent),

permit the person to appear in, or join the person as a party to, the proceedings for an adoption order in relation to the child for the purpose of opposing the application for the order.

### Note—

The Court may require the attendance of any party. See section 121.

### 119 Hearings to be in camera (cf AC Act s 64)

- (1) Any proceedings heard by the Court under this Act or the regulations must be heard in closed court.
- (2) Despite subsection (1), the Court may, if it considers it to be appropriate, permit persons who are not parties to the proceedings or their barristers, solicitors or representatives to be present during the hearing of the proceedings.

### 120 Director-General may appear at hearings (cf AC Act s 68)

The Director-General may appear at the hearing of any application under this Act, and may address the Court, and call, examine and cross-examine witnesses.

### 121 Court may require attendance

- (1) The Court may require any party to the proceedings for an adoption order to attend personally before the Court.
- (2) The Court may require the party to attend at such time during the hearing of the



application as the Court directs.

## **122 Legal representation**

(1) In this section:

**child** means a person (including a birth parent) who is less than 18 years of age.

(2) The Court:

(a) must appoint a lawyer to represent a child if a guardian ad litem is appointed for the child, and

(b) may (whether or not a guardian ad litem is appointed) appoint a lawyer to represent a child if it appears to the Court that the child needs to be represented in any proceedings before it under this Act.

(3) Without limiting the role of a lawyer representing a child, the role of the lawyer representing a child in proceedings includes:

(a) ensuring that the views of the child are placed before the Court, and

(b) ensuring that all relevant evidence is adduced and, where necessary, tested, and

(c) acting on the instructions of the child or, if the child is incapable of giving instructions:

(i) acting as a separate representative for the child, or

(ii) acting on the instructions of the guardian ad litem.

(4) There is a rebuttable presumption that a child who is not less than 10 years of age is capable of giving proper instructions to a lawyer representing the child. This presumption is not rebutted only because a child has a disability.

(5) The Court may, on the application of a lawyer representing a child, make a declaration:

(a) that a child who is less than 10 years of age is capable of giving instructions, or

(b) that a child who is not less than 10 years of age is not capable of giving instructions and that the legal representative is to act as a separate representative of the child.

(6) If:

(a) a child is less than 10 years of age, or

(b) a child who is not less than 10 years of age is incapable of giving proper instructions to the lawyer representing the child,

the lawyer representing the child is to act as a separate representative.

- (7) The role of a separate representative includes the following:
- (a) to interview the child after becoming the separate representative,
  - (b) to explain to the child the role of a separate representative,
  - (c) to present direct evidence to the Court about the child and matters relevant to his or her safety, welfare and well-being,
  - (d) to present evidence of the child's wishes (and in doing so the separate representative is not bound by the child's wishes),
  - (e) to cross-examine the parties and their witnesses,
  - (f) to make applications and submissions to the Court for orders (whether final or interim) considered appropriate in the interests of the child,
  - (g) to lodge an appeal against an order of the Court if considered appropriate.
- (8) A lawyer representing, or acting as separate representative of, a child who has not been appointed by the Court may appear only with its leave.
- (9) The Court may withdraw its leave at any time if the child informs the Court that he or she does not wish to be represented by the lawyer.

### **123 Guardian ad litem—child**

- (1) The Court may appoint a guardian ad litem for a child if it is of the opinion that:
- (a) there are special circumstances that warrant the appointment, and
  - (b) the child will benefit from the appointment.
- (2) Special circumstances that warrant the appointment of a guardian ad litem may include that the child has special needs because of age, disability or illness.
- (3) The functions of a guardian ad litem of a child are:
- (a) to safeguard and represent the interests of the child, and
  - (b) to instruct the lawyer representing the child.
- (4) A lawyer representing a child for whom a guardian ad litem has been appointed is to act on the instructions of the guardian ad litem.

### **124 Guardian ad litem and amicus curiae—birth parents of child**

- (1) The Court may:

(a) appoint a guardian ad litem for either or both of the birth parents or adoptive parents of a child, or

(b) request the lawyer representing a parent or the parents of a child to act as *amicus curiae*,

if it is of the opinion that the parent is, or the parents are, incapable of giving proper instructions to his or her, or their, lawyer.

(2) Circumstances that warrant the appointment of a guardian ad litem or a request for a lawyer to act as *amicus curiae* may include that the parent of a child has an intellectual disability or is mentally ill.

(3) If the Court requires the attendance of a birth mother under section 121, the Court must appoint a guardian ad litem for the birth mother if she is less than 18 years of age.

(4) The functions of a guardian ad litem of a parent of a child are:

(a) to safeguard and represent the interests of the parent, and

(b) to instruct the lawyer representing the parent.

(5) A lawyer representing a parent for whom a guardian ad litem has been appointed is to act on the instructions of the guardian ad litem.

**Note—**

***Amicus curiae*** is defined in the Macquarie Dictionary (3rd ed) as a person not a party to the litigation who volunteers or is invited by the court to give advice to the court upon some matter before it.

## **125 Support persons**

(1) A participant in proceedings under this Act before the Court may, with the leave of the Court, be accompanied by a support person.

(2) The leave of the Court must be granted unless:

(a) the support person is a witness in the proceedings, or

(b) the Court, having regard to the wishes of the child with respect to whom the proceedings are brought, is of the opinion that leave should not be granted, or

(c) there is some other substantial reason to deny the application.

(3) The Court may withdraw its leave at any time if a support person does not comply with any directions given to the support person by the Court.

(4) A support person cannot give instructions on behalf of the participant or act as an interpreter for the participant in the proceedings.

**126 Matters admissible in evidence** (cf AC Act s 65)

Except as otherwise provided by this Act or the regulations, the Court, in the hearing of any proceedings or in determining any application or matter under this Act or the regulations, may act on any statement, document, information, or matter that may, in its opinion, assist it to deal with the matter of the proceedings or before it for determination whether or not the statement, document, information or matter would be admissible in evidence.

**127 Wishes of child** (cf AC Act ss 33, 38, AC Reg cl 28)

- (1) In proceedings before it, the Court is to take into account any wishes and feelings of the child (considered in the light of the child's age and understanding) that are expressed by the child.

**Note—**

On participation generally of the child in decisions about his or her adoption see section 9.

- (2) The Court may direct that a child be provided with such counselling as the Court considers appropriate.

**128 How wishes of a child are expressed**

The Court may inform itself of wishes expressed by the child:

- (a) by having regard to anything contained in a report made to the Court by the Director-General or the appropriate principal officer, or
- (b) subject to rules of court, by such other means as the Court considers appropriate.

**129 Children not to be required to express wishes**

Nothing in this Act requires the Court or any person to require a child to express his or her wishes in relation to any matter.

## **Chapter 7 Records of adoptions**

**Introduction—**

Documents referred to in this Chapter may be produced and recorded and transmitted electronically. The [Electronic Transactions Act 2000](#) contains provisions that state that a requirement or permission under law for a person to provide information in writing, to sign a document, to produce a document or to retain information or a document may be satisfied by an electronic communication, subject to certain minimum criteria.

**130 Functions of nominated officer in relation to orders under this Act** (cf AC Act s 61)

The nominated officer must:

- (a) give a record, containing the information prescribed by the regulations, of every adoption order, declaration under section 117 (Declaration of validity of foreign adoptions), order under Part 2 of Chapter 5 and discharge order, to the Registrar, and

(b) give a copy of that record to the Director-General.

**Note—**

**Nominated officer** and **record** are defined in the Dictionary.

**131 Sending of records of orders to other States and countries** (cf AC Act s 62)

- (1) The nominated officer must give a certified record of an adoption order, or a discharge order, made by the Court in relation to a child (whose birth or previous adoption the nominated officer has reason to believe is registered in another State) to the appropriate authority of the other State.
- (2) The nominated officer must give a certified record of an adoption order, or a declaration, made by the Court under Chapter 5 in relation to a child from a country outside Australia to the appropriate authority of the country.
- (3) The record is to be sent as soon as practicable after the order or declaration concerned is made.
- (4) A record required to be sent by this section is to contain such information as is prescribed by the regulations.
- (5) In this section:

**appropriate authority** means the person or body in another State or a country outside Australia having the functions prescribed by the regulations.

**certified record** means a record certified by a nominated officer in writing, or in any other manner permitted by law, to be a true record.

**132 Particulars of orders received from other States** (cf AC Act s 63)

- (1) The nominated officer must give the Registrar a summary of any certified record of an adoption order or discharge order made (whether by a court or not) under the law in force in another State received by the officer and that relates to a child whose birth or previous adoption is registered in New South Wales.
- (2) The summary is to contain such information as is prescribed by the regulations.
- (3) In this section:

**certified record** means a record certified in writing to be a true record by a person authorised so to certify under the law of another State.

## Chapter 8 Adoption information

### Part 1 Preliminary

#### 133 Prescribed information (cf AI Act s 5)

- (1) For the purposes of this Act, **prescribed information** is information of a kind prescribed by the regulations.
- (2) Different kinds of information may be prescribed:
  - (a) for different classes of persons to whom the information relates, or
  - (b) for different classes of persons to whom the information is supplied under this Act.
- (3) Subsection (2) does not limit the different kinds of information that may be prescribed.

### Part 2 Access to birth certificates and other information

#### 134 Adopted person's rights (cf AI Act s 6)

- (1) An adopted person is entitled to receive (subject to this Act):
  - (a) the person's original birth certificate, and
  - (b) the person's adopted person's birth record, and
  - (c) any prescribed information relating to the person's birth parents held by an information source, and
  - (d) any prescribed information relating to a sibling or an adopted brother or sister of the person held by an information source.
- (2) Despite subsection (1) (a), an intercountry adopted person is entitled to receive his or her original birth certificate only if such a certificate is held by an information source.
- (3) An adopted person who is less than 18 years of age is not entitled to receive his or her original birth certificate, adopted person's birth record or prescribed information except with the consent of:
  - (a) his or her surviving adoptive parents and surviving birth parents (as shown on the original birth certificate or adopted person's birth record), or
  - (b) the Director-General if there are no surviving adoptive parents or birth parents (as so shown) or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.
- (4) An adopted person is not entitled to receive any prescribed information held by an information source unless the adopted person produces to the information source an

authority authorising the information source to supply the prescribed information issued by the Director-General.

**135 Adoptive parent's rights** (cf AI Act s 7)

- (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):
  - (a) the adopted person's original birth certificate, and
  - (b) the adopted person's adopted person's birth record, and
  - (c) any prescribed information relating to the adopted person held by an information source.
- (2) Despite subsection (1) (a), the adoptive parents of an intercountry adopted person are entitled to receive the adopted person's original birth certificate only if such a certificate is held by an information source.
- (3) The adoptive parent is not entitled to receive the original birth certificate or adopted person's birth record unless the adopted person is 18 or more years old and consents to the adoptive parent receiving it.

**136 Birth parent's rights** (cf AI Act s 8)

- (1) A birth parent of an adopted person who is 18 or more years of age is entitled to receive (subject to this Act):
  - (a) the amended birth certificate of the adopted person if a record of the adoption of the person is registered under the [Births, Deaths and Marriages Registration Act 1995](#), and
  - (b) the adopted person's birth record, and
  - (c) any prescribed information relating to the adopted person or the adoptive parents held by an information source.
- (2) A man who claims to be the birth parent of an adopted person is entitled to receive an amended birth certificate, the adopted person's birth record or prescribed information if:
  - (a) he is shown on the adopted person's original birth certificate as the person's father, or
  - (b) he is a person whom the Director-General, Registrar or other information source is entitled to presume, under any law (including a law of another State, the Commonwealth or of a country outside Australia), to be the person's father.
- (3) A birth parent is not entitled to receive any prescribed information held by an information source unless the birth parent produces to the information source an

authority authorising the information source to supply the prescribed information issued by the Director-General, except as provided by subsection (6).

- (4) A designated person may supply a birth parent with prescribed information held by an information source about an adopted child who is less than 18 years of age without production of the amended birth certificate of the adopted person or authority to supply the adoption information if, in the opinion of the designated person, the information could not be used to identify the adopted person or his or her adoptive parents.
- (5) A birth parent of an adopted person may request the Director-General or a principal officer to take such action as is reasonable in the circumstances to ascertain from the child's adoptive parents information of a kind prescribed by the regulations as to the current physical and emotional well-being of the child.
- (6) A birth parent of an adopted person is entitled to receive from the Director-General (or from an information source authorised to supply the information) any information obtained in response to a request made under subsection (5):
  - (a) that the Director-General considers does not identify, or could not be used to identify, the adoptive parents, and
  - (b) if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.

**Note—**

**Designated person** is defined in the Dictionary.

**137 Access to adoption information by relatives and others after death of adopted person or birth parent** (cf AI Act s 9)

- (1) The Director-General may:
  - (a) supply (or authorise an information source to supply) to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, the original or amended birth certificate or adopted person's birth record of the adopted person or birth parent, or
  - (b) supply to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, prescribed information relating to the adopted person or birth parent, or
  - (c) after such consultation with the Registrar or other information source concerned as the Director-General considers necessary, authorise the Registrar or other information source to supply such a birth certificate or record or such information to a person nominated by the Director-General.



**Note—**

**Spouse** is defined in the Dictionary.

- (2) The Director-General must not supply adoption information to a person other than a relative or spouse (or authorise such action to be taken by an information source) unless the person had a de facto or other close personal relationship with the deceased person.
- (3) The Director-General must not supply adoption information to any person (or authorise such action to be taken by an information source) unless the Director-General has taken into account any likely detriment to the welfare and best interests of any adopted person, birth parent, relative or spouse of the deceased person or the other person if the adoption information is supplied.
- (4) An information source so authorised by the Director-General to supply adoption information must supply that adoption information to the person nominated by the Director-General.
- (5) This section does not apply to prescribed information held by the Court.

**138 Application for supply of adoption information** (cf AI Act s 10)

- (1) An application for authority to supply adoption information under this Part is to be made in writing to the Director-General, except as provided by this section.
- (2) An application for the supply of an original birth certificate under this Part may be made in writing:
  - (a) if the person's birth is registered under the *Births, Deaths and Marriages Registration Act 1995*—to the Registrar, or
  - (b) if the person's birth is not so registered but his or her original birth certificate is held by an information source—to that information source,if the certificate is held by the Registrar or the information source.
- (3) An application for the supply of an adopted person's birth record or an amended birth certificate under this Part may be made to the Registrar if the birth record or certificate is held by the Registrar.
- (4) An application for the supply of prescribed information held by an information source is to be made in writing to the information source.
- (5) The regulations may make provision for or with respect to the making of applications under this Part.

**139 Persons designated to deal with applications** (cf AI Act s 11)

- (1) An application for the supply of adoption information under this Part is to be dealt with by the designated person.
- (2) The designated person is required to supply the adoption information if satisfied that the applicant is entitled under this Act to receive it.
- (3) This section does not apply to the Court.

**Note—**

**Designated person** is defined in the Dictionary.

**140 Discretion to supply adoption information** (cf AI Act s 12)

- (1) The Director-General may supply (or authorise an information source to supply) adoption information before an entitlement to it arises under this Part if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.
- (2) The Director-General may act under subsection (1) in any case in which an entitlement to prescribed information has not arisen because of the failure to obtain a birth certificate, adopted person's birth record or authority to supply adoption information under this Part.
- (3) The Director-General may supply (or authorise an information source to supply) adoption information or other information to a sibling of an adopted person or any other person who is not entitled under this Part to receive the adoption information or other information under this Part if, in the opinion of the Director-General, it is appropriate to do so because of exceptional circumstances affecting the interests or welfare of any person.

**141 Discretion to withhold supply (or authorise the withholding of supply) of information or to supply it subject to conditions** (cf AI Act s 12A)

- (1) The following persons may request the Director-General to act under this section:
  - (a) an adopted person who is 18 or more years old,
  - (b) a birth parent,
  - (c) an adoptive parent of a person who is less than 18 years of age,
  - (d) an adoptive parent of a person who is 18 or more years of age and who has consented to the request being made.
- (2) The Director-General may, at the request of a person referred to in subsection (1):
  - (a) refuse to issue an authority authorising an information source to supply adoption

information to which an entitlement arises under this Part, or

(b) supply such information subject to conditions specified in writing by the Director-General.

- (3) The Director-General may refuse to issue an authority to supply adoption information under this section only if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned.
- (4) Conditions that may be imposed by the Director-General under this section include conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the Director-General before the adoption information is supplied.
- (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.
- (6) An information source must not supply any adoption information that is the subject of an authority to supply adoption information imposing conditions on its supply unless the conditions are complied with.
- (7) The Director-General may not (despite section 206) delegate to another person the exercise of any function of the Director-General under this section.

**142 Guidelines for release of prescribed information etc** (cf AI Act s 13)

An information source that supplies any adoption information pursuant to an application under this Act is required to comply with any relevant guidelines prescribed by the regulations.

**143 Access to court records** (cf AI Act s 14)

- (1) A person is not entitled to receive prescribed information under this Act from records of proceedings in the Court relating to the adoption of a person, except as provided by this section.
- (2) A person may apply to the Court for the supply of the information.
- (3) The Court or a proper officer of the Court may supply the information to the person.
- (4) Rules of court may be made for or with respect to orders under this section.

### **Part 3 Advance notice**

**144 Object of Part** (cf AI Act s 15A)

The object of this Part is to provide for an advance notice system that enables the release of personal information under this Chapter to be delayed for a fixed period to give the

person requesting the delay the opportunity to prepare for the release and any impact this might have on the person or the person's family or associates.

**145 Definitions** (cf AI Act s 15B)

In this Part:

**advance notice period** means:

- (a) the period after an application for personal information relating to a person is made (not being greater than 3 months) prescribed by the regulations for the purposes of this paragraph, or
- (b) if the Director-General so directs in relation to a particular advance notice request, such longer period (not being greater than the period (if any) prescribed by the regulations for the purposes of this paragraph) after an application for personal information relating to a person is made as is specified by the Director-General.

**nominated contact address** means the address entered on the Advance Notice Register under section 148 (2) (b).

**personal information** relating to a person means:

- (a) the person's original birth certificate, amended birth certificate or adopted person's birth record, or
- (b) prescribed information relating to the person, or
- (c) if the regulations authorise supply of adoption information relating to the person on issue of authority to supply the adoption information—the authority.

**146 Who may lodge an advance notice request?** (cf AI Act s 15C)

A person is entitled to lodge a request to be given advance notice before personal information relating to the person is given to another person if the person seeking to lodge the request is:

- (a) an adopted person who has reached the age of 17 years and 6 months, or
- (b) a birth parent, or
- (c) an adoptive parent.

**147 How advance notice request is lodged** (cf AI Act s 15D)

- (1) A person entitled to lodge an advance notice request may do so by advising the Director-General in writing that he or she wishes to be notified if a particular person, or a person within a class of persons, entitled to receive the personal information concerned specified in the advice makes an application for personal information relating to the person lodging the advance notice request.

- (2) The advice is to be in a form approved by the Director-General.
- (3) An advance notice request is not duly lodged unless the person provides the Director-General with proof (to the satisfaction of the Director-General) of his or her identity.
- (4) A person lodging an advance notice request may also leave a message for a person concerned in or affected by an adoption with the Director-General.

**148 Advance Notice Register** (cf AI Act s 15E)

- (1) The Director-General is to establish and maintain an Advance Notice Register.
- (2) There is to be entered in the Advance Notice Register:
  - (a) the name of each person who has duly lodged an advance notice request, and
  - (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made, and
  - (c) the date and place of birth of the person, and
  - (d) the persons or class of persons affected by the request, and
  - (e) the advance notice period.
- (3) The Director-General is to advise the relevant information source of each entry made in the Advance Notice Register.
- (4) A person whose name is entered in the Advance Notice Register must advise the Director-General of any change in his or her nominated contact address.

**149 Director-General to delay issue of supply authority or prescribed information** (cf AI Act s 15F)

The Director-General is to delay the supply of personal information affected by an advance notice registration until the expiration of the advance notice period unless the registration is waived or cancelled under section 152.

**150 Endorsement of details of advance notice request** (cf AI Act s 15G)

The Director-General is to advise the applicant for the supply of the personal information that it will not be supplied until the expiration of the advance notice period and of the reasons for the delay.

**151 Expiration of advance notice registration** (cf AI Act s 15H)

An advance notice registration expires:

- (a) on expiration of the advance notice period, or
- (b) if the person who lodged the request for registration cancels it by notification in

writing to the Director-General, or

- (c) if the person who lodged the request dies, or
- (d) if a contact veto is lodged by the person who lodged the request, or
- (e) if the person who lodged the request fails to notify the Director-General in writing of any change in his or her nominated contact address,

whichever first occurs.

**152 Arrangements to waive advance notice period** (cf AI Act s 15I)

- (1) The Director-General may, at the request of a person seeking supply of personal information that is affected by an advance notice registration, ask the person who lodged the advance notice request whether he or she wishes to waive or cancel the registration.
- (2) The Director-General is not to do so unless the Director-General:
  - (a) is of the opinion that the personal information is required urgently and that circumstances exist that justify asking the person to waive or cancel the registration in order to promote the welfare and best interests of either or both of the parties concerned, and
  - (b) has consulted any person or body that the Director-General believes may be of assistance in assessing the merits of the request.
- (3) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.
- (4) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

**153 Notification to person who lodged advance notice request** (cf AI Act s 15J)

- (1) The Director-General is to notify a person who has lodged an advance notice request at the person's nominated contact address of an application under this Part for the supply of personal information affected by the registration, unless it is not reasonably practicable to notify the person.
- (2) The Director-General is entitled to rely on the address shown in the Advance Notice Register for this purpose and is not subject to any action, liability, claim or demand in relation to any notification given in good faith at that address.

## Part 4 Contact vetoes

### 154 Adopted person or birth parent may lodge contact veto (cf AI Act s 16)

The following persons may lodge a contact veto:

- (a) an adopted person who has reached the age of 17 years and 6 months,
- (b) a birth parent.

### 155 Contact veto may be lodged only for adoptions before [Adoption Information Act 1990](#) (cf AI Act s 17)

A person may lodge a contact veto only if:

- (a) the order for adoption of the adopted person was made under the [Adoption of Children Act 1965](#) (or a former Act within the meaning of that Act) before the date of assent to the [Adoption Information Act 1990](#), or
- (b) the adoption of the adopted person in another State or in a country outside Australia was recognised under the [Adoption of Children Act 1965](#) as having been effected before the date of assent to the [Adoption Information Act 1990](#).

#### Note—

The date of assent to the [Adoption Information Act 1990](#) was 26 October 1990.

### 156 How contact veto is lodged (cf AI Act s 18)

- (1) A person entitled to lodge a contact veto may do so by notifying the Director-General in writing that he or she objects to contact being made with him or her by a person or any class of persons referred to in the notification.
- (2) The notification is to be in a form approved by the Director-General.
- (3) A contact veto is not duly lodged unless the person provides the Director-General with proof (to the satisfaction of the Director-General) of his or her identity.
- (4) A person lodging a contact veto may also leave a message for a person concerned in or affected by an adoption with the Director-General.

### 157 Contact Veto Register (cf AI Act s 19)

- (1) The Director-General is to establish and maintain a Contact Veto Register.
- (2) There is to be entered in the Contact Veto Register:
  - (a) the name of each person who has duly lodged a contact veto, and
  - (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made, and

- (c) the date and place of birth of the person, and
- (d) the persons or class of persons with whom the person objects to contact, and
- (e) the name and address for notification of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

**158 Director-General to endorse details of contact veto on authority to supply adoption information** (cf AI Act s 21)

- (1) The Director-General must endorse details of any relevant contact veto on any authority to supply adoption information issued by the Director-General under this Act.
- (2) An information source (other than the Director-General) that is requested to supply an original birth certificate under this Act is required:
  - (a) to ascertain from the Director-General whether there is a contact veto relating to the adopted person concerned, and
  - (b) if so, to endorse details of the contact veto on the original birth certificate before it is supplied under this Act.
- (3) The regulations may require the Director-General to endorse details of each contact veto on any record of adoption of a person or other document concerning an adopted person to whom the contact veto relates that is supplied by the Director-General.

**159 When contact veto takes effect** (cf AI Act s 22)

- (1) In this section, **relevant period** means the period of 5 working days or, if a different period is prescribed by the regulations, that period.
- (2) A contact veto takes effect on the expiration of the relevant period or after details of the contact veto are endorsed on the original birth certificate, amended birth certificate or authority to supply adoption information concerned, whichever occurs sooner.

**160 Expiration of contact veto** (cf AI Act s 23)

A contact veto expires if:

- (a) the person who lodged the contact veto cancels it by notification in writing to the Director-General, or
- (b) the person who lodged the contact veto dies.

**161 Arrangements to confirm, cancel or vary contact veto at request of person seeking contact** (cf AI Act s 24)

- (1) The Director-General may, on the Director-General's own initiative or at the request of



a person who has been refused contact under a contact veto, approach the person who lodged the contact veto and ask the person whether he or she:

- (a) wishes to confirm the contact veto, or
  - (b) wishes to cancel the contact veto, or
  - (c) wishes to vary the contact veto in so far as it relates to contact with the person who has made the request.
- (2) The Director-General is not to approach the person who lodged the contact veto unless the Director-General is of the opinion that circumstances exist that justify the approach in order to promote the welfare and best interests of either or both of the parties concerned.
  - (3) The Director-General may consult any person or body that the Director-General believes may be of assistance in assessing the merits of the request.
  - (4) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.
  - (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

**162 Notification to person who lodged contact veto of request for information** (cf AI Act s 25)

- (1) The Director-General is required to notify a person who has lodged a contact veto of an application under this Act for the supply of adoption information made by any person with whom contact is refused, unless the Director-General is unaware of the application or it is not reasonably practicable to notify the person.
- (2) This subsection applies where a person is directed by the Guardianship Tribunal under Part 4A of the *Guardianship Act 1987* to make an application for supply of adoption information on behalf of a person with a disability with whom contact is refused. The Director-General is required to notify the person who lodged the contact veto if such an application is made.

**163 Notification to person affected by contact veto of cancellation or variation** (cf AI Act s 26)

The Director-General is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Director-General to do so at the time the person receives adoption information subject to the contact veto.

**164 Undertakings not to contact person who has lodged contact veto** (cf AI Act s 27)

- (1) The Director-General or other information source is not to supply an original birth certificate or amended birth certificate endorsed with a contact veto against contact by the applicant unless the applicant has signed an undertaking that the applicant will not (while the contact veto remains in force):
  - (a) contact or attempt to contact the person who has lodged the contact veto, or
  - (b) procure another person to contact or attempt to contact the person.
- (2) An information source is not to supply any prescribed information to an adopted person relating to an adopted brother or sister unless the Director-General is notified of the application for the information and is given an opportunity to ascertain whether a contact veto has been lodged in relation to contact with the adopted person.
- (3) If such a contact veto has been lodged, an information source is not to supply the information unless the applicant has signed an undertaking of the kind referred to in subsection (1).
- (4) The Director-General may, as a condition of the supply to a person of any adoption information under section 140 (Discretion to supply adoption information) which is subject to a contact veto, require the person to sign an undertaking of the kind referred to in subsection (1).
- (5) This section does not apply to an applicant who has been directed by the Guardianship Tribunal under Part 4A of the [Guardianship Act 1987](#) to make the application on behalf of a person with a disability.

## **Part 5 Reunion and Information Register**

**165 Definition** (cf AI Act s 30)

In this Part:

**register** means the Reunion and Information Register established under this Part.

**166 Reunion and Information Register** (cf AI Act s 31)

- (1) The Director-General is to establish and maintain a Reunion and Information Register.
- (2) There is to be entered in the register the name of every person who is eligible to have his or her name entered in the register and who:
  - (a) has duly applied for entry of his or her name with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption, and
  - (b) has duly applied for entry of his or her name with a view to leaving a message for

a person concerned in or affected by an adoption, and

(c) has duly applied for entry of his or her name with a view to obtaining information about the health and welfare of a person from whom he or she has been separated as a consequence of an adoption.

(3) Application for entry in the register is to be made in a form approved by the Director-General.

**167 Persons eligible to have their names entered in the register** (cf AI Act s 32)

(1) The following persons are eligible to have their names entered in the register:

(a) an adopted person,

(b) a birth parent,

(c) an adoptive parent,

(d) any other person having an interest in an adopted person or birth parent (including a relative) who, in the opinion of the Director-General, ought to have his or her name entered in the register.

(2) A person who is less than 18 years of age is not eligible to have his or her name entered in the register, except as provided by this section.

(3) An adopted person who is less than 18 years of age is eligible to have his or her name entered in the register if:

(a) the adopted person is 12 or more years of age and the person's adoptive parents have consented in writing to his or her name being entered in the register, or

(b) the adopted person is 16 or more years of age and is living separately and apart from his or her adoptive parents, or

(c) the adopted person is 12 or more years of age and, in the opinion of the Director-General, special circumstances exist which make it desirable that his or her name should be entered in the register.

(4) However, the Director-General is not to enter in the register the name of an adopted person who is less than 18 years of age unless the Director-General is of the opinion that to do so will promote the welfare and best interests of the adopted person.

(5) The consent of an adoptive parent is not required under subsection (3) (a) for the entry in the register of the name of an adopted person who is less than 18 years of age if the adoptive parent:

(a) is dead, or

(b) cannot, after due search and inquiry, be found, or

(c) is, in the opinion of the Director-General, incapable of giving consent.

(6) The name of a person may not be entered in the register by another person on his or her behalf.

**168 Message may be left** (cf AI Act s 31A)

Any person whose name is entered on the register may leave a message for any other person entitled (subject to this Act) to have his or her name entered in the register.

**169 Director-General may refuse to enter name or take message** (cf AI Act s 31B)

The Director-General may refuse to enter the name of a person in the register or to accept a message from any person if, in the opinion of the Director-General, the person is not eligible to have the person's name entered in the register or has not duly applied for entry of his or her name in the register.

**170 Circumstances in which Director-General may open, inspect and copy message** (cf AI Act s 31C)

- (1) The Director-General may open, inspect and copy any message left under this Part for an adopted person who is less than 18 years of age.
- (2) The Director-General may, at the request of a person whose name is entered in the register or of the person for whom a message has been left under this Part, open and inspect the message.

**171 Director-General may delay delivery of message** (cf AI Act s 31D)

The Director-General may delay giving a person a message that the Director-General has been requested to open and inspect if the Director-General is of the opinion that the content of the message is likely to be so distressing for the person that it should be made available to the person only in the presence of appropriate counsellors or other persons able to assist the person.

**172 Regulations** (cf AI Act s 31E)

The regulations may make provision for or with respect to the leaving and delivery of messages under this Part.

**173 Arrangements for reunion of registered persons** (cf AI Act s 33)

- (1) If the names of an adopted person and of a birth parent have been entered in the register under section 166 (2) (a), the Director-General may make arrangements for a reunion between the persons so registered.
- (2) If the names of an adopted person or birth parent and of a relative or other person

having an interest in the adopted person or birth parent have been entered in the register under section 166 (2) (a), the Director-General may make arrangements for a reunion between the persons so registered.

- (3) The Director-General is not to arrange a reunion involving an adopted person who is less than 18 years of age if an adoptive parent refused to consent to the entry of the name of the adopted person in the register under section 166 (2) (a), unless:
  - (a) the adoptive parent consents in writing to the reunion, or
  - (b) the Director-General gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.
- (4) The Director-General must notify any person whose name is entered in the register under section 166 (2) (a) of the entry in the register of the name of any other person from whom that person has been separated as a consequence of adoption.

**174 Location of persons not registered** (cf AI Act s 34)

- (1) If the name of an adopted person has been entered in the register under section 166 (2) (a), the Director-General may take such action as is reasonable in the circumstances to locate, or authorise an information source to locate, a birth parent or relative of the adopted person or any other person:
  - (a) with whom the adopted person wishes to be reunited, or
  - (b) whom the adopted person wishes to have contacted so that information may be obtained about his or her health and welfare,so as to ascertain whether the person wishes to be reunited with the adopted person or to be so contacted.
- (2) If the name of a birth parent has been entered in the register under section 166 (2) (a), the Director-General may take such action as is reasonable in the circumstances to locate the adopted person, so as to ascertain whether the adopted person wishes to be reunited with the birth parent or to be contacted so information may be obtained about his or her health and welfare.
- (3) If the name of a relative or other person having an interest in an adopted person or birth parent has been entered in the register under section 166 (2) (a), the Director-General may take such action as is reasonable in the circumstances to locate the adopted person or birth parent, so as to ascertain whether the adopted person or birth parent wishes to be reunited with the relative or other person or to be contacted so information may be obtained about his or her health and welfare.
- (4) The Director-General may take action to locate a person under this section only if the Director-General is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so.

- (5) The Director-General may take action to locate a person under this section even though the person has not, by entering his or her name in the register, expressed a desire to be reunited with the person whose name is entered in the register or to be contacted so that information may be obtained about his or her health and welfare.

## Part 6 Miscellaneous

### 175 Duties of Director-General and accredited adoption agencies

The Director-General, or an accredited adoption agency, must ensure that information held by the Director-General or it, concerning a child's origin, identity of birth parent and medical history is preserved and that access to such information is given to a person only in accordance with this Chapter.

## Chapter 9 Offences

### 176 Definitions

In this Chapter:

***prohibited adoption advertising*** means an advertisement, news item or other matter indicating (whether or not in relation to a particular child, born or unborn, and whether the child is from Australia or a country outside Australia) that:

- (a) a parent or guardian of a child wishes to have the child adopted, or
- (b) a person wishes to adopt a child, or
- (c) a person is willing to make arrangements with a view to the adoption of a child, or
- (d) a child or children are available for adoption.

***publish*** means disseminate, exhibit, provide or communicate by oral, visual, written, electronic or other means (for example, by way of newspaper, radio, television or through the use of the Internet, subscription TV or other on-line communications system), and includes cause to be published.

### 177 Payments for NSW adoptions or intercountry adoptions and adoption services (cf AC Act s 50)

- (1) A person who (whether before or after the birth of the child concerned) makes, gives or receives, or agrees to make, give or receive, a payment or reward for or in consideration of or in relation to:
- (a) the adoption or proposed adoption of a child, or
  - (b) the giving of consent, or the signing of an instrument of consent, to the adoption of a child, or

(c) conducting an adoption service in relation to a child,  
is guilty of an offence against this Act.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

(2) A person who is resident or domiciled in this State who:

(a) makes any payment or gives any reward of any kind to a birth parent for relinquishing a child adopted from outside Australia or for consenting to an adoption under this Act, or

(b) gives or takes any improper financial gain in relation to an adoption,  
is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

(3) This section does not apply to or in relation to:

(a) any charge made by the Director-General or an accredited adoption agency for providing adoption services under this Act, or

(b) a payment or reward in connection with an adoption or proposed adoption under the law of another State if the making of the payment or the giving of the reward, or the agreeing to make the payment or give the reward, would have been lawful if it had taken place in that other State, or

(c) any payment or reward, or class of payment or reward, prescribed by the regulations.

(4) For the purposes of this section, the giving or taking of any thing in relation to an adoption is not for improper financial gain if the transactions concerned relate to expenses (including legal expenses) reasonably incurred or for reasonable remuneration for work done or for care of the child in the period between the appropriate authorities agreeing that the adoption should proceed and adoption of the child.

### **178 Unauthorised advertising** (cf AC Act s 52)

(1) A person must not publish any prohibited adoption advertising.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

#### **Note—**

***Prohibited adoption advertising*** is defined in section 176.

(2) A person must not publish any photograph of a child (whether from Australia or a country outside Australia) together with any prohibited adoption advertising relating

to the child.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

- (3) This section extends to the publication of matter in a country outside Australia, by a person resident or domiciled in the State, of the person's wish to adopt, or willingness to make arrangements for the adoption, of a child from that country in the State.
- (4) This section does not apply in relation to publication of any advertisement, news item or other matter approved by the Director-General.

### **179 Making available or supplying prohibited adoption advertising on on-line service**

- (1) In this section:

**access** has the same meaning as it has in the Commonwealth Act.

**Commonwealth Act** means the *Broadcasting Services Act 1992* of the Commonwealth.

**Internet content** has the same meaning as it has in the Commonwealth Act.

**on-line service** means an Internet carriage service within the meaning of the Commonwealth Act and includes a bulletin board.

- (2) A person must not, by means of an on-line service, make available, or supply, to another person prohibited adoption advertising:
  - (a) knowing that it is prohibited adoption advertising, or
  - (b) being reckless as to whether or not it is prohibited adoption advertising.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

**Note—**

**Prohibited adoption advertising** is defined in section 176.

- (3) This section applies to an on-line service other than an on-line service, or on-line service of a class, prescribed by the regulations.
- (4) Nothing in this section makes it an offence to supply prohibited adoption advertising by means of an on-line service to any person, or class of persons, prescribed by the regulations.
- (5) A person is not guilty of an offence under this section by reason only of the person:
  - (a) owning, or having the control and management of the operation of, an on-line service, or
  - (b) facilitating access to or from an on-line service by means of transmission, down



loading, intermediate storage, access software or similar capabilities.

- (6) A person is reckless as to whether matter is prohibited adoption advertising:
- (a) if the person is aware of a substantial risk that the matter is prohibited adoption advertising, and
  - (b) that having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (7) The question of whether taking a risk is unjustifiable is one of fact.

**180 Restriction on publication of identity of parties** (cf AC Act s 53)

- (1) A person must not publish in relation to an application under this Act or under a law of another State for the adoption of a child or in relation to the proceedings on such an application:
- (a) the name of an applicant, the child, or the father or mother or a guardian of the child, or
  - (b) any matter reasonably likely to enable any of those persons to be identified.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

- (2) This section does not apply in relation to the publication of any matter with the authority of the Court to which the application was made.

**Note—**

**Publish** is defined in section 176.

**181 False statements** (cf AC Act s 54, AI Act s 38)

A person who makes any statement (whether orally or in writing) that the person knows to be false for the purposes of or in connection with:

- (a) a proposed adoption or any other matter under this Act, or
  - (b) an application for the supply of adoption information or an authority to supply adoption information under Chapter 8, or
  - (c) the lodging of a contact veto under Chapter 8, or
  - (d) an application for entry of the person's name in the Reunion and Information Register under Chapter 8, or
  - (e) any other request under this Act,
- is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

**182 Impersonation** (cf AC Act s 55, AI Act s 39)

- (1) A person who impersonates an adopted person, birth parent, adoptive parent, relative or other person having an interest in an adopted person in connection with any matter under this Act is guilty of an offence.
- (2) Without limiting subsection (1), a person who impersonates or falsely represents himself or herself to be a person whose consent to the adoption of a child is required by this Act or by the law of another State is guilty of an offence.
- (3) A person who impersonates a person engaged in the administration or execution of this Act is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

**183 Presenting forged consent or other document** (cf AC Act s 56)

- (1) A person is guilty of an offence if he or she presents, or causes to be presented, to the Court in connection with an application for an order for the adoption, or recognition of the adoption, of a child under this Act a document:
  - (a) purporting to be an adoption document that the person knows is forged, or
  - (b) that bears any signature or certification that was obtained by fraud or duress.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

- (2) In this section:

***adoption document*** means:

- (a) an instrument of consent, or revocation of consent, to an adoption, or
- (b) an adoption compliance certificate, or
- (c) an order for the adoption of a child made outside Australia.

**184 Undue influence** (cf AC Act s 57)

- (1) 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, or exerts any other undue influence on, a parent or guardian of a child with a view:
  - (a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act, or
  - (b) to influencing the parent or guardian in the expression of any wishes contained in an instrument of consent to the adoption of a child, or

(c) to inducing the parent or guardian to revoke a consent to the adoption of the child given by that parent or guardian,

is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

(2) 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 a child with a view:

(a) to influencing the child in the expression of any wishes concerning his or her adoption, or

(b) to inducing the child to consent to his or her adoption, or

(c) to inducing the child to revoke consent to his or her adoption,

is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

**185 Improper witnessing of consent** (cf AC Act s 58)

A person who subscribes his or her name as a witness to the signature of a person to an instrument of consent to the adoption of a child without:

(a) being satisfied that the person signing the instrument is a parent or guardian of the child, and

(b) being satisfied that the person signing the instrument is doing so free from any threat, inducement or influence of a kind referred to in section 184, and

(c) taking such steps as are prescribed by the regulations to satisfy himself or herself that the person signing the instrument understands the effect of the consent, and

(d) being satisfied that the instrument bears the date on which it is signed by the person giving the consent,

is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

**186 Unauthorised disclosure of information** (cf AI Act s 15)

(1) A person must not disclose any information relating to an adopted person, birth parent or adoptive parent obtained in connection with the administration or execution of Chapter 8, except:

(a) in connection with the administration or execution of Chapter 8, or

(b) as authorised or required by law.

(2) In any proceedings concerning Chapter 8 before any court or tribunal, the court or tribunal may make an order forbidding publication of all or any of the information mentioned in the proceedings relating to an adopted person, birth parent, adoptive parent, relative or other person.

(3) A person must not publish information in breach of an order made under this section.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

### **187 Prohibition on contact with birth parents of child**

(1) A prospective adoptive parent of a child must not:

(a) contact or attempt to contact a birth parent of the child, or

(b) procure another person to contact or attempt to contact a birth parent,

(whether in or outside New South Wales) before the child has been allocated to the adoptive parent in accordance with this Act and the allocation has been accepted.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

(2) It is not an offence to contact or attempt to contact a birth parent or procure another person to contact or attempt to contact a birth parent if :

(a) the prospective adoptive parent is a relative or a step parent, or

(b) the contact has been approved by the Director-General.

### **188 Veto on contact—offences** (cf AI Act s 28)

(1) An information recipient must not:

(a) contact or attempt to contact the person who lodged a contact veto against contact by the information recipient, or

(b) procure another person to contact or attempt to contact that person.

(2) An information recipient must not:

(a) use information obtained under this Act after the lodgement of a contact veto to intimidate or harass the person who lodged the contact veto against contact by the information recipient, or

(b) procure any other person to intimidate or harass that person by the use of that information.

(3) A person is not to claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to contravening this section.

(4) In this section:

**information recipient** means an adopted person, adoptive parent, birth parent, relative or other person:

- (a) who has received an authority to supply adoption information, original birth certificate or amended birth certificate endorsed with a contact veto against contact by him or her (being a contact veto that remains in force), or
- (b) who has had disclosed to him or her prescribed information under this Act and who has knowledge that a contact veto against contact by him or her is then in force.

(5) This section extends to an act contravening this section done outside Australia by a person resident or domiciled in the State.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

## Chapter 10 Review of decisions

### Introduction—

This Chapter contains various provisions relating to the internal review of certain decisions of the Director-General and other relevant decision makers under the Act. The Chapter also enables the Administrative Decisions Tribunal to review some of those decisions following such an internal review.

### 189 Reviewable decisions

In this Chapter:

**interested person** means a person entitled under this Chapter to apply to the relevant decision maker or Tribunal for a review of a decision.

**relevant decision maker** means:

- (a) the Director-General, or
- (b) in the case of a decision made under or for the purposes of this Act by another person—that person.

**reviewable decision** means:

- (a) a decision of the relevant decision maker that may be the subject of an application to the Administrative Decisions Tribunal for a review of the decision under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, or

### Note—

Section 193 sets out the decisions of the Director-General and other relevant decision makers under this Act that are reviewable by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

- (b) any decision made under or for the purposes of this Act by the relevant decision

maker that is a decision within a class of decisions prescribed by the regulations for the purposes of this definition.

**190 Duty of relevant decision maker to give reasons in request**

- (1) If the relevant decision maker makes a reviewable decision, an interested person may make a written request to the relevant decision maker for the reasons for the decision.
- (2) As soon as practicable (and in any event within 28 days) after receiving such a request, the relevant decision maker is to prepare a written statement of the reasons for the decision and provide it to the person who requested the reasons.
- (3) The statement of reasons is to set out the following:
  - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the relevant decision maker's understanding of the applicable law,
  - (c) the reasoning processes that led the relevant decision maker to the conclusions the relevant decision maker made.
- (4) Unless the regulations otherwise provide, this section applies to the exclusion of the provisions of Division 2 of Part 2 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (5) The regulations may:
  - (a) exclude any class of reviewable decisions from the application of this section, or
  - (b) alter the period within which a statement of reasons under this section must be given.

**191 Relevant decision maker may refuse reasons in certain cases**

- (1) The relevant decision maker may refuse to prepare and provide a statement of reasons requested by a person under section 190:
  - (a) if the relevant decision maker is of the opinion that the person is not entitled to be given the statement, or
  - (b) in the case of a decision the terms of which were recorded in writing and set out in a document that was provided to the person—if the request was not made within 28 days after the person was provided with the document, or
  - (c) in any other case—if the request was not made within a reasonable time after the decision was made.
- (2) If the relevant decision maker refuses to prepare and provide a statement of reasons

the relevant decision maker must notify the person requesting the statement, in writing, of the refusal and the reasons for the refusal as soon as practicable (and in any event within 28 days) after the request.

**192 Internal review** (cf AI Act s 35A)

- (1) **Who may apply for an internal review?** If the relevant decision maker makes a reviewable decision, an interested person may apply for an internal review of that decision under this section.
- (2) **Requirements for an application** An application for an internal review is:
  - (a) to be in writing, and
  - (b) to be addressed to the relevant decision maker, and
  - (c) to specify an address in Australia to which a notice under subsection (8) may be sent, and
  - (d) to be lodged at the office (or an office) of the relevant decision maker within 28 days (or such later date as the relevant decision maker may allow) after the person:
    - (i) if the person has requested reasons under section 190—was provided with a statement of reasons under section 190 or notified under section 191 of a refusal to provide reasons, or
    - (ii) if the person has not requested reasons under section 190—was notified of the making of the reviewable decision, and
  - (e) to comply with such other requirements as may be prescribed by the regulations in relation to the making of applications for internal reviews.
- (3) **Who is to deal with an application?** An application for an internal review of a decision is to be dealt with by an individual (other than the relevant decision maker) who is directed to do so by the relevant decision maker (the **internal reviewer**). The internal reviewer directed to deal with an application must be, as far as is practicable, an individual:
  - (a) who was not substantially involved in the process of making the decision under review, and
  - (b) who is an officer or employee of the Department or of another body (if any) prescribed by the regulations, and
  - (c) who is otherwise suitably qualified to deal with the issues raised by the application.
- (4) **Material to be considered** In reviewing a decision, the internal reviewer dealing with the

application is to consider any relevant material submitted by the applicant.

- (5) **Review of the application** Following the internal review of the decision, the internal reviewer may:
- (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision that is set aside.
- (6) **Reviewer has functions of relevant decision maker** In exercising a function under subsection (5), an internal reviewer is taken for all purposes to have the right to exercise the same functions in law that the relevant decision maker had in making the decision being reviewed.
- (7) **Reviewer to notify relevant decision maker of decision** An internal reviewer must notify the relevant decision maker of the result of, and the reasons for, his or her decision under subsection (5) as soon as is practicable after making the decision.
- (8) **Notice of result of review and appeal rights** As soon as practicable (or in any event within 21 days) after the completion of an internal review of a decision, the relevant decision maker must notify the applicant in writing of:
- (a) the outcome of the internal review, and the reasons for the decision in the internal review, and
  - (b) the right (if any) of the person to have the decision reviewed by the Administrative Decisions Tribunal as referred to in section 193.
- (9) **Statement of reasons** For the purposes of subsection (8), an applicant is notified of the reasons for a decision in an internal review only if the applicant is given a statement of reasons setting out the following:
- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the understanding of the internal reviewer of the applicable law,
  - (c) the reasoning processes that led the internal reviewer to the conclusions the reviewer made.
- (10) **Status of decisions made on internal review** For the purposes of this Act, a reviewable decision that is affirmed, varied or set aside and substituted under subsection (5) is:
- (a) taken to have been made by the relevant decision maker (as affirmed, varied or substituted by the internal reviewer), and



(b) taken to have been made on the date under which the applicant is given a notice under subsection (8).

(11) **When an internal review is finalised** An internal review is taken to be finalised if:

- (a) the applicant is notified of the outcome of the review under subsection (8), or
- (b) the applicant is not notified of the outcome of the review within 28 days after the application for the review is lodged (or such other period as the relevant decision maker and person agree on).

(12) **No internal reviews of decisions previously reviewed under this section** A person is not entitled to a review under this section of any decision previously reviewed under this section or a decision made under subsection (5).

(13) This section applies to the exclusion of section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997*. For the purposes of the application of that Act to the review of any decisions made under this section, any reference to an internal review of the decision under that Act is taken to be a reference to an internal review under this section.

(14) **Regulation-making powers** The regulations may:

- (a) prescribe requirements to be observed in relation to the conduct of an internal review under this section, or
- (b) exclude any class of reviewable decisions from the application of this section, or
- (c) alter the period within which an internal review must be conducted or a notice given under this section.

**193 Decisions that are reviewable by Administrative Decisions Tribunal** (cf AC Act ss 14, 67A, AI Act s 36)

(1) For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions made by the relevant decision maker are reviewable by the Administrative Decisions Tribunal:

- (a) a decision to refuse an application for accreditation under section 13,
- (b) a decision in relation to the adoption services that may be provided by an adoption agency accredited under section 13,
- (c) a decision to impose a condition on the accreditation of an adoption agency under section 17,
- (d) a decision to revoke or suspend the accreditation of an adoption agency, other than a decision to revoke or suspend requested by the agency,

- (e) a failure or refusal to supply any adoption information to a person, or to authorise the Registrar or another information source to do so under Chapter 8,
  - (f) a failure or refusal to enter the name of any person in a register under Chapter 8,
  - (g) a failure or refusal to arrange a reunion or to take any action to locate a person under Part 5 of Chapter 8,
  - (h) a failure or refusal to approach a person who has lodged a contact veto in accordance with a request made under section 161,
  - (i) a decision made under or for the purposes of this Act by the relevant decision maker that is a decision within a class of decisions prescribed by the regulations for the purposes of this section.
- (2) Despite section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, an application cannot be made to the Tribunal under that section until the decision concerned has been reviewed under section 192 (Internal review) of this Act.

## Chapter 11 Miscellaneous

### Introduction—

This Chapter contains various provisions relating to the general operation of the Act. The Chapter also repeals the *Adoption of Children Act 1965* and the *Adoption Information Act 1990* and the regulations made under those Acts.

### **194 Restriction on inspection of records** (cf AC Act ss 66, 67)

- (1) Except as provided by this Act (in particular Chapter 8) or the regulations, the following records are not to be open to inspection by, or made available to, any person, including any party to proceedings before the Court under this Act:
- (a) records made in connection with the administration or execution of this Act or the former Acts,
  - (b) without limiting paragraph (a):
    - (i) records of any proceedings under this Act or the former Acts, and
    - (ii) any reports made under section 40, 78 or 91 of this Act or comparable provisions of the former Acts.
- (2) Subsection (1) (b) does not apply to any record or report if so ordered by the Court.

### **195 Aboriginal adoption consultative organisation**

- (1) The Director-General may approve an organisation as an organisation that may provide advice and assistance to Aboriginal families or kinship groups in relation to care options for Aboriginal children for the purposes of this Act.

- (2) The Director-General must not approve an organisation under this section unless the Director-General is satisfied that:
  - (a) the organisation is managed solely or partly by Aboriginals, and
  - (b) its activities are carried on for the benefit of Aboriginals, and
  - (c) it has experience in child and family welfare matters.

**196 Torres Strait Islander adoption consultative organisation**

- (1) The Director-General may approve an organisation as an organisation that may provide advice and assistance to Torres Strait Islander families in relation to care options for Torres Strait Islander children for the purposes of this Act.
- (2) The Director-General is not to approve an organisation under this section unless the Director-General is satisfied that:
  - (a) the organisation is managed solely or partly by Torres Strait Islanders, and
  - (b) its activities are carried on for the benefit of Torres Strait Islanders, and
  - (c) it has experience in child and family welfare matters.

**197 Manner of giving notice** (cf AI Act s 37)

- (1) Any notice required to be given under this Act may be given personally or by post.
- (2) If a person required to be given notice has duly nominated an address at which the person is to be notified, the notice may be given to the person only at that address.
- (3) Despite subsection (2), the Director-General may give notice at another address known to the Director-General if after duly attempting to give the notice at the nominated address the Director-General has been unable to notify the person.

**198 Notices and other documents to be written in other languages**

- (1) If:
  - (a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be given to a person, and
  - (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,the Director-General must, in so far as it is reasonably practicable, cause the notice or other instrument to be written in the other language.
- (2) The notice or other instrument must be written in such a form that there is a reasonable expectation that its contents will be understood by the person to whom it

is given.

- (3) Failure to comply with subsection (1) does not invalidate any thing done under any other provision of this Act.

**199 Entitlements of disabled persons** (cf AI Act s 36A)

- (1) In this section, a reference to a person with a disability is a reference to a person:

- (a) who is intellectually, physically, psychologically or sensorily disabled, or
- (b) who is of advanced age, or
- (c) who is a mentally incapacitated person, or
- (d) who is otherwise disabled,

and who, because of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social rehabilitation.

- (2) If a person with a disability:

- (a) has an entitlement to receive adoption information, or may lodge a contact veto or advance notice request, under this Act, and
- (b) is unable, because of the disability, to do anything required by this Act that must be done if the person is to receive the adoption information or lodge the contact veto or advance notice request,

another person may, if so directed by the Guardianship Tribunal under Part 4A of the [Guardianship Act 1987](#), do any such act on behalf of the person with the disability.

- (3) The Director-General may:

- (a) refuse to supply any birth certificate endorsed with a contact veto to a person acting on behalf of a person with a disability, or
- (b) direct an information source not to supply any such birth certificate,

if the Director-General is of the opinion that the person will be unable to ensure that the person with the disability will not contact or attempt to contact the person who lodged the contact veto.

**200 Fees and charges** (cf AI Act s 35)

- (1) The Director-General or other information source may demand fees or charges in relation to the supply of documents or information, or the provision of services, under this Act.
- (2) The Director-General is to notify, in the Gazette, the fees or charges payable under

this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

- (3) A notice under subsection (2) may specify the minimum fees or charges payable in relation to the supply of any documents or information, or provision of any service, under this Act.
- (4) The Director-General or other information source may waive or reduce any fees or charges (other than a minimum fee or charge referred to in subsection (3)) payable under this Act.
- (5) The regulations may make provision for or with respect to fees and charges payable under this Act.

**201 Provision of financial and other assistance to certain children and birth parents** (cf AC Act s 68A)

- (1) The Director-General may, with respect to a child of a class or description prescribed by the regulations, enter into an agreement with:
  - (a) a person or persons with whom the child has been placed for the purposes of adoption, or
  - (b) the applicant, or applicants, for an adoption order in relation to the child, or
  - (c) the adoptive parent, or adoptive parents, of the child,for the provision of such financial or other assistance, on such terms and conditions as may be agreed, in order to assist or promote the best interests of the child.
- (2) The Director-General may agree to inclusion in an adoption plan of provision for financial and other assistance to be given to a birth parent or the birth parents of a child who has been placed for adoption, on such terms and conditions as are agreed.
- (3) Nothing in this section prevents the Director-General from entering into an agreement in relation to a child so as to provide financial or other assistance both before and after an adoption order in relation to the child is made.

**202 Administration of certain estates** (cf AC Act s 68B)

- (1) In this section, a reference to the executor or administrator of the estate of a deceased person includes a reference to a person who is a trustee of the whole or any part of the property comprised in the estate.
- (2) If:
  - (a) an adopted person is a beneficiary under the estate of a deceased person, and
  - (b) the executor or administrator of the estate does not know the name or

whereabouts of the adopted person, and

- (c) the Director-General certifies, in writing, to the executor or administrator that the Director-General knows the name and whereabouts of the adopted person and that the adopted person is alive,

the executor or administrator may, with the approval of the Public Trustee, transfer to the Public Trustee, on behalf of the adopted person, any property to which the adopted person may be entitled under the estate or which may be otherwise applied for the adopted person's benefit.

- (3) A transfer made under this section is valid against all persons and the executor or administrator is absolutely discharged from all liability in relation to a transfer so made by the executor or administrator.
- (4) The Public Trustee is to apply any property transferred to the Public Trustee under this section on behalf of the adopted person in relation to whom it was transferred in accordance with the trusts on which the property was held immediately before it was transferred as if the Public Trustee were the executor or administrator of the estate of the deceased person in relation to which the transfer was made.
- (5) Nothing in this section affects any right of a person to claim or recover any property transferred under this section from a person other than the executor or administrator who transferred the property.

**203 Authority to prosecute** (cf AC Act s 59, AI Act s 40)

Proceedings for an offence against this Act or the regulations must not be commenced except with the written consent of the Minister.

**204 Proceedings for offences** (cf AC Act s 60, AI Act s 40)

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against this Act or the regulations may be commenced:
- (a) within but not later than 12 months after the date on which the offence is alleged to have been committed, or
- (b) within but not later than 6 months after the date on which evidence of the offence first came to the attention of any relevant authorised officer,
- whichever is the later time.
- (3) If subsection (2) (b) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer

and need not contain particulars of the date on which the offence was committed. The date on which evidence of the offence first came to the attention of any relevant authorised officer is the date specified in the information or application, unless the contrary is established.

(4) This section applies despite anything in the *Justices Act 1902* or any other Act.

(5) In this section:

**evidence** of an offence means evidence of any act or omission constituting the offence.

**relevant authorised officer** means a person prescribed by the regulations as an authorised officer for the purposes of this definition.

## **205 Exclusion from proceedings** (cf AC Act s 60)

(1) At the hearing of any proceedings in relation to an offence against this Act or the regulations, any person not directly interested in the proceedings is to be excluded from the court, unless the court otherwise directs.

(2) A court may:

(a) direct a child to leave the court at any time during the hearing of any proceedings in relation to an offence against this Act or the regulations, or

(b) direct any person to leave the court during the examination of any witness in any such proceedings,

if the court is of the opinion that, in the interests of a child, such a direction should be given.

(3) The powers of the court under subsection (2) may be exercised even though the child or person directed to leave the court may be directly interested in the proceedings.

(4) This section applies to and in relation to the hearing of any appeal against the decision of a court in the same way as it applies to and in relation to the hearing of proceedings before the court.

## **206 Delegation**

(1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's powers under this Act or the regulations, other than this power of delegation.

(2) The Director-General may delegate to any person the exercise of:

(a) any of the functions delegated to the Director-General by the Minister, or

- (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.

**207 Rules of court** (cf AC Act s 72)

- (1) Rules of court may be made under the *Supreme Court Act 1970* regulating practice and procedure in relation to proceedings under this Act.
- (2) Subsection (1) does not limit the rule-making powers conferred by the *Supreme Court Act 1970*.

**208 Regulations** (cf AC Act s 73, AI Act s 41)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for or with respect to the following:
- (a) the exercise of any function conferred under Chapter 8 of this Act (including, but not limited to, the supply of adoption information and the issue of authorities to supply such information),
  - (b) internal review of decisions made by the Director-General under this Act,
  - (c) money paid in relation to adoption services provided by the Director-General or accredited intercountry adoption agencies in relation to intercountry adoptions and accounting for the expenditure of such money.
- (3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

**209 Repeals**

- (1) The following are repealed:
- (a) the *Adoption of Children Act 1965*,
  - (b) the *Adoption Information Act 1990*,
  - (c) the *Adoption of Children Regulation 1995*,
  - (d) the *Adoption Information Regulation 1996*.
- (2) Different days may be appointed for the commencement of the provisions of subsection (1) for the purpose of repealing, on different days, different provisions of the instruments referred to in the subsection.

**210 Convention on Protection of Children and Cooperation in Respect of Intercountry**



## **Adoption**

Schedule 1 has effect.

### **211 Amendment of other laws**

Each law specified in Schedule 2 is amended as set out in that Schedule.

### **212 Savings and transitional provisions**

Schedule 3 has effect.

### **213 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption**

(Section 210 and Dictionary)

### **Schedule 1 The Convention**

#### **CONVENTION ON PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally

and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

## **CHAPTER I SCOPE OF THE CONVENTION**

### **Article 1**

The objects of the present Convention are—

- a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law,
- b* to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children,
- c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

### **Article 2**

#### **1**

The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

#### **2**

The Convention covers only adoptions which create a permanent parent-child relationship.

### **Article 3**

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

## **CHAPTER II REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

### **Article 4**

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- a* have established that the child is adoptable,
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests,
- c* have ensured that
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in

particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

- (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
- (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
- (4) the consent of the mother, where required, has been given only after the birth of the child, and

*d* have ensured, having regard to the age and degree of maturity of the child, that

- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
- (2) consideration has been given to the child's wishes and opinions,
- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
- (4) such consent has not been induced by payment or compensation of any kind.

#### **Article 5**

An adoption within the scope of the convention shall take place only if the competent authorities of the receiving State—

- a* have determined that the prospective adoptive parents are eligible and suited to adopt,
- b* have ensured that the prospective adoptive parents have been counselled as may be necessary, and
- c* have determined that the child is or will be authorised to enter and reside permanently in that State.

### **CHAPTER III CENTRAL AUTHORITIES AND ACCREDITED BODIES**

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#### **Article 6**

##### **1**

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

##### **2**

Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

### **Article 7**

#### **1**

Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

#### **2**

They shall take directly all appropriate measures to—

- a* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms,
- b* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

### **Article 8**

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

### **Article 9**

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption,
- b* facilitate, follow and expedite proceedings with a view to obtaining the adoption,
- c* promote the development of adoption counselling and post-adoption services in their States,
- d* provide each other with general evaluation reports about experience with intercountry adoption,
- e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

### **Article 10**

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

### **Article 11**

An accredited body shall—

- a* pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation,
- b* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption, and

- c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

**Article 12**

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

**Article 13**

The designation of the Central Authorities and where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

**CHAPTER IV PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

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**Article 14**

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

**Article 15**

**1**

If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

**2**

It shall transmit the report to the Central Authority of the State of origin.

**Article 16**

**1**

If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

- a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child,
- b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background,
- c ensure that consents have been obtained in accordance with Article 4, and
- d determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

**2**

It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

#### **Article 17**

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- a the Central Authority of that State has ensured that the prospective adoptive parents agree,
- b the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin,
- c the Central Authorities of both States have agreed that the adoption may proceed, and
- d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

#### **Article 18**

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

#### **Article 19**

##### **1**

The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

##### **2**

The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

##### **3**

If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

#### **Article 20**

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

#### **Article 21**

##### **1**

Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the

prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—

- a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care,
- b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care, an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents,
- c as a last resort, to arrange the return of the child, if his or her interests so require.

## **2**

Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

### **Article 22**

#### **1**

The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

#### **2**

Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or person who—

- a meet the requirements of integrity, professional competence, experience and accountability of that State, and
- b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

#### **3**

A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

#### **4**

Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

#### **5**

Notwithstanding any declaration made under paragraph 2, the reports provide for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other

authorities or bodies in accordance with paragraph 1.

## **CHAPTER V RECOGNITION AND EFFECTS OF THE ADOPTION**

### **Article 23**

#### **1**

An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

#### **2**

Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

### **Article 24**

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

### **Article 25**

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

### **Article 26**

#### **1**

The recognition of an adoption includes recognition of—

- a the legal parent-child relationship between the child and his or her adoptive parents,
- b parental responsibility of the adoptive parents for the child,
- c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

#### **2**

In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

#### **3**

The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.



### **Article 27**

#### **1**

Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect—

- a* if the law of the receiving State so permits, and
- b* if the consent referred to in Article 4, sub-paragraphs *c* and *d* have been or are given for the purpose of such an adoption.

#### **2**

Article 23 applies to the decision converting the adoption.

## **CHAPTER VI GENERAL PROVISIONS**

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### **Article 28**

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

### **Article 29**

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a* to *c*, and Article 5, sub-paragraph *a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

### **Article 30**

#### **1**

The competent Authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

#### **2**

They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

### **Article 31**

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

### **Article 32**

#### **1**

No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

**2**

Only costs and expenses, including reasonable professional fees of person involved in the adoption, may be charged or paid.

**3**

The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

**Article 33**

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

**Article 34**

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

**Article 35**

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

**Article 36**

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State,
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit,
- c* any reference to the competent authorities or to be public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit,
- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

**Article 37**

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of person, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

**Article 38**

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

**Article 39**

**1**

The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

**2**

Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Article 40**

No reservation to the Convention shall be permitted.

**Article 41**

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

**Article 42**

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

**CHAPTER VII FINAL CLAUSES**

—  
**Article 43**

**1**

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

**2**

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

**Article 44**

**1**

Any other State may accede to the Convention after it has entered into force in accordance with

Article 46, paragraph 1.

**2**

The instrument of accession shall be deposited with the depositary.

**3**

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### **Article 45**

**1**

If a State has two or more territorial units in which different systems of law are applicable in relation to matter dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

**2**

Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

**3**

If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

#### **Article 46**

**1**

The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

**2**

Thereafter the Convention shall enter into force—

- a* for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession,
- b* for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### **Article 47**

**1**

A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

**2**

The denunciation takes effect on the first day of the month following the expirations of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

**Article 48**

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- a the signatures, ratifications, acceptances and approvals referred to in Article 43,
- b the accessions and objections raised to accessions referred to in Article 44,
- c the date on which the Convention enters into force in accordance with Article 46,
- d the declarations and designations referred to in Articles 22, 23, 25 and 45,
- e the agreements referred to in Article 39,
- f the denunciations referred to in Article 47.

In whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the twenty-ninth day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

**Note—**

On the introduction of the Bill for this Act into Parliament, Schedule 2 to the [Family Law \(Hague Convention on Intercountry Adoption\) Regulations 1998](#) listed the following as Convention countries:

Andorra

Austria

Brazil

Burkina Faso

Canada (extending only to the provinces Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island,

Saskatchewan and the Yukon Territory)

Republic of Burundi

Chile

Colombia

Costa Rica

Cyprus

Denmark

Ecuador

Republic of El Salvador

Finland

France

Georgia

Israel

Republic of Lithuania

Republic of Mauritius

Mexico

Republic of Moldova

The Netherlands

New Zealand

Norway

Republic of Paraguay

Peru

Philippines

Poland

Romania

Spain

Sri Lanka

Sweden

Venezuela

## Schedule 2 Amendment of other laws

(Section 211)

### 2.1 Births, Deaths and Marriages Registration Act 1995 No 62

#### [1] Section 23 Duty to register adoptions

Omit the definition of **State adoption order** from section 23 (3).

Insert instead:

**State adoption order** means an adoption order or order under section 117 (Declaration of validity of foreign adoptions) under the [Adoption Act 2000](#).

#### [2] Section 24

Omit the section. Insert instead:

#### **24 How adoptions are registered**

- (1) The Registrar is to register an adoption or discharge of an adoption by registering the record of the adoption or discharge sent to the Registrar under Chapter 7 of the [Adoption Act 2000](#).
- (2) The Registrar registers the record by making an entry about it in the Register including the information required by the regulations.
- (3) If the record relates to a person in relation to whom such a record has previously been registered under this Act, the Registrar is also to note a reference to the later record in the entry in the Register relating to the previous record.

#### [3] Section 24A

Insert after section 24:

#### **24A Registration of deceased person's former intention to adopt**

- (1) The adoptive parent of a person in relation to whom a record is registered under this Part may apply to the Registrar, in a form approved by the Registrar, for registration of the intention of a deceased person before his or her death to adopt the person jointly with the adoptive parent.
- (2) The Registrar registers an intention of a deceased person to adopt by making an entry about the intention to adopt in the Register including the information required by the regulations.

- (3) An application to the Registrar under this section must, if the Registrar requires verification of the information contained in the application, be accompanied by a statutory declaration obtained from the Director-General of the Department of Community Services or an appropriate principal officer (within the meaning of the *Adoption Act 2000*) verifying the information contained in the application and any other evidence that the Registrar may require.

**[4] Section 25 Adoption record to be noted in birth registration**

Omit “section 61 or 63 of the *Adoption of Children Act 1965*” from section 25 (2).

Insert instead “section 130 or 132 of the *Adoption Act 2000*”.

**[5] Section 49 Issue of certificate**

Insert after section 49 (3):

- (4) If requested to do so by an applicant, the Registrar must issue a single certificate (an **adopted person’s birth record**) certifying particulars contained in an entry relating to the birth of a person and particulars relating to a record sent to the Registrar under section 130 or 132 of the *Adoption Act 2000* (or a memorandum under the former Acts) and registered under this Act.
- (5) The Registrar-General must not issue a certificate under subsection (4) unless:
- (a) the certificate relates to a person who is 18 or more years of age, or
  - (b) the Director-General of the Department of Community Services has consented to its issue.

**Note—**

The power of the Registrar to issue such a certificate is also subject to the provisions of Chapter 8 of the *Adoption Act 2000*.

**[6] Section 52 Access to information to be given in accordance with *Adoption Act 2000***

Omit “*Adoption Information Act 1990*”. Insert instead “*Adoption Act 2000*”.

**[7] Section 52, note**

Omit “*Adoption Information Act 1990*”. Insert instead “*Adoption Act 2000*”.

## **2.2 Births, Deaths and Marriages Registration Regulation 1996**

### **Clause 7 Registration of adoptions**

Insert at the end of the clause:



(2) For the purposes of section 24A of the Act (Registration of deceased person's former intention to adopt), the following particulars are required:

- (a) the full name and last residential address of the deceased person,
- (b) the date and place of death of the deceased person.

## 2.3 Freedom of Information Act 1989 No 5

### [1] Schedule 1 Exempt documents

Omit "*Adoption of Children Act 1965*" from clause 20 (a).

Insert instead "*Adoption Act 2000*".

### [2] Schedule 1, clause 20 (c)

Omit "*Adoption Information Act 1990*".

Insert instead "*Adoption Act 2000*".

## 2.4 Privacy and Personal Information Protection Act 1998 No 133

### Section 4 Definition of "personal information"

Insert after section 4 (3) (j):

(ja) information about an individual that is obtained about an individual under Chapter 8 (Adoption information) of the *Adoption Act 2000*,

## 2.5 Status of Children Act 1996 No 76

### [1] Section 4 Application of Act

Omit "sections 35 and 36 of the *Adoption of Children Act 1965*" from section 4 (2).

Insert instead "sections 95-99 of the *Adoption Act 2000*".

### [2] Section 8 Rights of exnuptial children and their relatives on intestacy

Omit "*Adoption of Children Act 1965* or under an adoption recognised in the State under Part 5" from section 8 (4).

Insert instead "*Adoption Act 2000* or under an adoption recognised in the State under Chapter 5".

### [3] Sections 11 and 12

Omit "section 46 (recognition of foreign adoptions) of the *Adoption of Children Act 1965*" wherever occurring.

Insert instead “Chapter 5 (Recognition of adoptions) of the *Adoption Act 2000*” .

## 2.6 Youth and Community Services Act 1973 No 90

### Section 3 Definitions

Omit “*Adoption of Children Act 1965*” from the definition of **relative**.

Insert instead “*Adoption Act 2000*”.

## Schedule 3 Savings, transitional and other provisions

(Section 212)

### Part 1 Preliminary

#### 1 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on the enactment of this Act

#### 2 Definitions

In this Part:

**repealed adoption Act** means the *Adoption of Children Act 1965* as in force immediately before its repeal by this Act.

**repealed information Act** means the *Adoption Information Act 1990* as in force immediately before its repeal by this Act.

### **3 Saving of existing private adoption agencies**

- (1) An existing agency is taken, for 12 months after an accreditation order made by the Director-General is published in the Gazette (or after such later date as is specified in the order), to have been accredited as an adoption agency under this Act.
- (2) An agency referred to in subclause (1) may provide the adoption services specified in the order.
- (3) In this clause:

**accreditation order** means an order specifying:

- (a) the adoption services provided by an existing agency immediately before the repeal of the repealed adoption Act, and
- (b) any other adoption services that may be provided by the agency.

**existing agency** means a charitable organisation approved as a private adoption agency under the repealed adoption Act immediately before its repeal by this Act.

### **4 Saving of orders for adoption and interim orders**

Except to the extent (if any) otherwise provided by the regulations or this Schedule, an adoption order or interim order made under the repealed adoption Act and in force immediately before the repeal of that Act continues in force under this Act as if the order was made under this Act and the parties to the adoption were parties to an adoption under this Act.

### **5 Dispositions of property**

In relation to a disposition of property by will or otherwise by any person who died before the commencement of this clause or to a devolution of property arising on the death of any person who in respect of that property died intestate before that commencement, an adoption order made under this Act has the same effect as if made under repealed adoption Act.

### **6 Saving of consents**

A valid consent to the adoption of a child given under the repealed adoption Act and that had not, immediately before the repeal of that Act, been revoked is taken to be a consent given in accordance with this Act.

### **7 Applications for orders**

An application for an adoption order pending before the commencement of this clause is to continue to be dealt with under the repealed adoption Act, despite the repeal of that Act.

## **8 Child placed for adoption**

If immediately before the commencement of this clause a child was placed with a view to adoption by a prospective adoptive parent or parents, an application to adopt the child by that parent or those parents is to continue to be dealt with under the repealed adoption Act, despite its repeal.

## **9 Saving of Advance Notice Register and Reunion and Information Register**

The Advance Notice Register and Reunion and Information Register established under the repealed information Act is to form part of the Advance Notice Register and Reunion and Information Register established under this Act.

## **10 Saving of regulations**

The regulations made under the repealed adoption Act or repealed information Act and in force immediately before the commencement of this clause are, until repealed, replaced or amended by Regulations under this Act, to continue in force and to be taken to have been made under this Act.

## **11 Saving of contact vetoes**

A contact veto that is entered in the Contact Veto Register under the repealed information Act immediately before its repeal by this Act is taken to be a contact veto entered in the Contact Veto Register under this Act.

## **12 References to repealed Acts**

In any other Act or instrument, a reference to the repealed adoption Act or the repealed information Act extends to a reference to the corresponding provision of this Act.

## **Dictionary**

**Aboriginal**—see section 4.

**Aboriginal adoption consultative organisation**—see section 195.

**Aboriginal child placement principles** means the principles set out in section 35.

**accreditation notice** means notice given under section 15.

**accredited adoption agency** means an organisation for the time being accredited to provide adoption services under Chapter 3.

**adopted brother or sister** of an adopted person means another adopted person who has or had at least one parent (whether biological or adoptive) who is or was a birth parent of the adopted person.

**adopted person** means a person:

- (a) an order for whose adoption was made under a former Act before the commencement of section 95 of this Act, or

- (b) whose adoption in another State or in a country outside Australia was recognised under the *Adoption of Children Act 1965* as having the same effect as if an order for adoption had been made under that Act, or
- (c) an order for whose adoption was made under this Act, or
- (d) whose adoption in another State is recognised under this Act as having the same effect as if an order for adoption had been made under this Act, or
- (e) whose adoption in, or in a country outside, Australia is recognised and effective for the laws of this State under a law of this State or the Commonwealth.

**adopted person's birth record** means a record certifying both particulars relating to the birth of a person and particulars relating to the adoption of a person as referred to in section 49 (4) of the *Births, Deaths and Marriages Registration Act 1995*.

**adoption compliance certificate:**

- (a) in Division 2 of Part 2 of Chapter 5—means a certificate issued in accordance with article 23 of the Convention, and
- (b) in Division 3 of Part 2 of Chapter 5—means a document issued in accordance with the Commonwealth Bilateral Arrangements Regulations.

**adoption information** means a birth certificate, adopted person's birth record or prescribed information.

**adoption order** means an order for adoption of a child made or recognised under this Act or a former Act.

**adoption plan** means an adoption plan agreed to by two or more of the parties to an adoption under Part 4 of Chapter 4.

**adoption principles** means the principles set out in sections 8 and 9.

**adoption service** means:

- (a) arrangements for or towards or with a view to the adoption of a child (whether citizen or non-citizen), or
- (b) negotiations for or towards or with a view to the adoption of a child (whether citizen or non-citizen), or
- (c) arranging or assisting in the transfer of the care and custody of a child (whether citizen or non-citizen), or
- (d) arrangements for the provision of post-adoption information and for contact between adult parties to an adoption.

**adoptive parent** means a person who becomes the parent of an adopted person by adoption.

**advance notice registration** means an advance notice request registered under Chapter 8 and in force.

**advance notice request** means an advance notice request lodged under Chapter 8.

**amended birth certificate**, in relation to an adopted person, means a certificate certifying the particulars relating to the birth of the person based on the registered record relating to the adoption of the person kept under the *Births, Deaths and Marriages Registration Act 1995*.

**amicus curiae**—see the note to section 124.

**appropriate principal officer**, in relation to an adoption, means the principal officer of the accredited adoption agency concerned with the adoption.

**birth parent**, in or in relation to Chapter 8, means a biological parent of an adopted person.

**Central Authority** means a person or office designated for a Convention country under article 6 of the Convention.

**charitable organisation** means:

- (a) a non-profit organisation carried on primarily or principally for religious, charitable, benevolent or philanthropic purposes, or
- (b) a hospital (other than a statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*) carried on by an organisation otherwise than for the purpose of trading or pecuniary profit or gain to its members, or
- (c) an organisation or association that holds an authority under Part 2 of the *Charitable Fundraising Act 1991*, or
- (d) any other organisation or organisation of a class prescribed by the regulations for the purposes of this definition.

**child** means:

- (a) a person who is less than 18 years of age, or
- (b) a person who is 18 or more years of age and in relation to whom an adoption is sought or has been made.

**Commonwealth Bilateral Arrangements Regulations** means the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* of the Commonwealth.

**Commonwealth Convention Regulations** means the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth.

**competent authority** means:

- (a) for a prescribed overseas jurisdiction—a person, body or office in the jurisdiction responsible for approving the adoption of children, and
- (b) for New South Wales—the Director-General.

**contact veto** means a veto against contact registered under Chapter 8 and in force.

**Convention** means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at the Hague on 29 May 1993 and a copy of the English text of which as contained in the Commonwealth Convention Regulations is set out in Schedule 1.

**Convention country** has the meaning given by regulation 4 of the Commonwealth Convention Regulations.

**counsellor**—see section 57.

**couple** means a man and a woman who:

- (a) are married, or
- (b) have a de facto relationship.

**Court** means the Supreme Court of New South Wales.

**de facto relationship** means the relationship between a man and a woman who live together as husband and wife on a bona fide domestic basis although not married to one another.

**decision**, in relation to the adoption of a child, includes a decision concerning the following:

- (a) the assessment of the suitability of a person or persons to adopt a child,
- (b) the arrangements for or in relation to the allocation of a child to a person or persons who will adopt the child,
- (c) the transfer of the care and custody of a child to a person or persons willing to adopt the child,
- (d) the giving of consent to the adoption of a child of whom the decision maker has guardianship or other parental responsibility.

**decision maker**, in relation to a decision about the adoption of a child, means the Court, the Director-General, an accredited adoption agency or a principal officer of an accredited adoption agency.

**Department** means the Department of Community Services.

**designated person** means:

- (a) in relation to the Department of Community Services—the Director-General, or
- (b) in relation to a hospital controlled, or health service provided, by an area health service within the meaning of the [Health Services Act 1997](#)—the chief executive officer of the service, or
- (c) in relation to a statutory health corporation or affiliated health organisation within the meaning of the [Health Services Act 1997](#)—the chief executive officer of the corporation or organisation, or
- (d) in relation to the Department of Health—the Director-General of the Department, or
- (e) in relation to an accredited adoption agency—the principal officer of the accredited adoption agency, or
- (f) in relation to a private hospital (within the meaning of the [Private Hospitals and Day Procedure Centres Act 1988](#))—the licensee of the private hospital, or

- (g) in relation to the Office of the Registrar—the Registrar, or
- (h) in relation to any other institution, body or person prescribed as an information source for the purposes of this Act—the person prescribed as the designated person for that institution, body or person,

and includes a person to whom a function has been duly delegated by the designated person and a person authorised by the designated person in accordance with the guidelines prescribed by the regulations.

**Director-General** means the Director-General of the Department of Community Services.

**discharge order** means an order for the discharge of an adoption order.

**disposition of property** includes the grant or exercise of a power of appointment in respect of property.

**exercise** a function includes perform a duty.

**former Act** means:

- (a) the [Child Welfare Act 1923](#) and the [Child Welfare Act 1939](#) or either of those Acts, or
- (b) the [Adoption of Children Act 1965](#), or
- (c) the [Adoption Information Act 1990](#).

**foster parent** means any person who:

- (a) has the daily care and control of a child under out-of-home care arrangements made under the [Children and Young Persons \(Care and Protection\) Act 1998](#), or
- (b) has the daily care and parental responsibility for the child under the [Family Law Act 1975](#) of the Commonwealth.

**function** includes a power, authority or duty.

**general consent** is defined in section 53.

**guardian** of a child includes:

- (a) a person having the custody of the child under a court order, and
- (b) a person who is or is taken to be the guardian of a child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of another State, and
- (c) a person acting on behalf of a person with a disability in accordance with a direction of the Guardianship Tribunal under Part 4A of the [Guardianship Act 1987](#).

**guardian ad litem**—see sections 123 (3) and 124 (3) for the functions of such a guardian.

**hospital** means:

- (a) a public hospital under the control of an area health service within the meaning of the [Health](#)



*Services Act 1997*, or

- (b) a statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*, or
- (c) a private hospital within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*.

**information source** means:

- (a) the Department of Community Services, or
- (b) the Department of Health, or
- (c) an accredited adoption agency, or
- (d) a hospital, or
- (e) the Office of the Registrar, or
- (f) the Supreme Court, or
- (g) any other institution, body or person prescribed as an information source for the purposes of this Act.

**intercountry adopted person** means a non-citizen child adopted from a country outside Australia by a person resident or domiciled in New South Wales.

**intercountry adoption** means the adoption by a person resident or domiciled in New South Wales of a non-citizen child from a country outside Australia.

**interim order** means an order under Part 8 of Chapter 4.

**lawyer** means legal practitioner.

**married** means:

- (a) a man and woman who are actually married, or
- (b) an Aboriginal or Torres Strait Islander man and woman who are living together in a relationship that is recognised as a marriage according to the traditions of an Aboriginal community or Aboriginal or Torres Strait Islander group to which they belong.

**nominated officer** means the Registrar of the Equity Division of the Court and includes any other officer of the Court specified by rules of Court as the nominated officer for the purposes of this Act.

**non-citizen child** has the same meaning as in the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth.

**original birth certificate**, in relation to an adopted person, means:

- (a) if the person's birth is registered under the *Births, Deaths and Marriages Registration Act 1995*—a certificate certifying the particulars relating to the birth of the person registered under section 17 of that Act, or

- (b) if the person's birth is not so registered—a copy of any similar document relating to the adopted person identifying the birth parents of the person and contained in records relating to the adoption of the person that are held by an information source.

**parental responsibility**, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

**parties** to an adoption means the following:

- (a) the child,
- (b) birth parent or birth parents who have consented to the child's adoption,
- (c) person or persons selected to be the prospective adoptive parent of the child,
- (d) the Director-General,
- (e) the appropriate principal officer.

**prescribed information** has the meaning given by section 133.

**prescribed overseas jurisdiction** means an overseas jurisdiction mentioned in Schedule 1 to the Commonwealth Bilateral Arrangements Regulations.

**Note—**

On introduction of the Bill for this Act into Parliament, Schedule 1 referred to the People's Republic of China.

**principal officer** means person specified as the principal officer of an accredited adoption agency under section 19.

**prohibited adoption advertising** is defined in section 176.

**record** means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

**Registrar** means the Registrar of Births, Deaths and Marriages.

**relative** means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person:

- (a) whether the relationship is of the whole blood or half blood or by marriage, and
- (b) whether or not the relationship depends on the adoption of a person.

**revocation period** means the period within which consent to an adoption may be revoked under section 73 (2).

**separate representative**—see section 122 (7) for some of the functions of a separate representative.

**sibling** of an adopted person means a brother or sister of the person, whether the relationship is of the whole blood or half blood.

**specific consent** is defined in section 53.

**spouse** of a person means:

- (a) a person to whom the person is married, or
- (b) a person of the opposite sex with whom the person has a de facto relationship of at least 3 years' duration.

**Note—**

**Married** is defined elsewhere in this Dictionary.

**State** includes a Territory.

**step parent** means, in relation to a particular person, another person who:

- (a) is not a birth parent or adoptive parent of the particular person, and
- (b) is married to the particular person's birth parent or adoptive parent or has had a de facto relationship of 3 or more years duration with the birth parent or adoptive parent.

**Note—**

**Married** is defined elsewhere in this Dictionary.

**Torres Strait Islander**—see section 4.

**Torres Strait Islander adoption consultative organisation** means an organisation approved as a Torres Strait Islander adoption consultative organisation under section 196.

**Torres Strait Islander child placement principles** means the principles set out in section 39.