

# Adoption Act 2000 No 75

[2000-75]



New South Wales

## Status Information

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### Provisions in force

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### Responsible Minister

- Minister for Families and Communities

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

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# Adoption Act 2000 No 75



New South Wales

## Contents

<b>Long title</b> .....	13
<b>Chapter 1 Preliminary</b> .....	13
Introduction .....	13
1 Name of Act .....	13
2 Commencement .....	13
3 Definitions .....	13
4 Meaning of “Aboriginal” and “Torres Strait Islander” .....	13
5 Notes .....	14
<b>Chapter 2 Objects and adoption principles</b> .....	14
6 What are the roles of the objects and adoption principles of this Act? .....	14
7 What are the objects of this Act? .....	14
8 What principles are to be applied by persons making decisions about the adoption of a child? .....	15
9 Participation of child in decisions .....	16
<b>Chapter 3 Adoption service providers</b> .....	17
Introduction .....	17
<b>Part 1 Authority to provide adoption services</b> .....	17
10 Adoption services to be provided by or on behalf of Secretary .....	17
11 Unauthorised arrangements for adoption .....	18
<b>Part 2 (Repealed)</b> .....	18

<b>Part 3 Principal officer of accredited adoption service provider</b> .....	18
14-21 (Repealed) .....	18
<b>Chapter 4 The adoption process</b> .....	18
<b>Part 1 General</b> .....	18
22 Proceedings .....	18
23 Jurisdiction .....	19
24 Who can be adopted? .....	19
25 Previous adoption or marital status immaterial .....	20
26 Who can adopt? .....	20
27 Adoption by one person .....	20
28 Adoption by couple .....	21
29 Adoption by relative .....	21
30 Adoption by step parent .....	22
31 Adoption of non-citizen child .....	22
<b>Part 2 Placement of children for adoption</b> .....	23
<b>Division 1 Children other than Aboriginal and Torres Strait Islanders</b> .....	23
32 Regard to be had to cultural heritage of child .....	23
<b>Division 2 Aboriginal children</b> .....	23
33 Aboriginal participation in decision making .....	23
34 Application of Aboriginal child placement principles .....	24
35 Aboriginal child placement principles .....	24
36 Alternatives to placement for adoption to be considered .....	25
<b>Division 3 Torres Strait Islanders</b> .....	25
37 Torres Strait Islander participation in decision making .....	25
38 Application of Torres Strait Islander child placement principles .....	26
39 Torres Strait Islander child placement principles .....	26
<b>Division 4 Placement outside Australia</b> .....	27
40 Report on child for intercountry adoption .....	27

### **Part 3 Selection of prospective adoptive parents other than authorised carers**

.....	28
41 Application of Part .....	28
41A Definitions .....	28
42 Expression of interest in adopting a child.....	28
43 Application to adopt .....	28
44 Form of expression of interest or application.....	28
45 Assessment of suitability, and selection, of adoptive parents .....	29
45A Background information about prospective adoptive parents to be made available to birth parents .....	29
45AA Provision of information .....	29
45AB Notification about other residents.....	30
45B Consideration of wishes of parents consenting to adoption .....	30

### **Part 3A Selection of authorised carers as adoptive parents**.....30

45C Application of Part .....	30
45CA Definitions .....	30
45D Application to adopt.....	31
45E Form of application.....	31
45F Assessment of suitability, and selection, of adoptive parents .....	31
45G Background information about prospective adoptive parents to be made available to birth parents .....	31
45GA Provision of information .....	31
45GB Notification about other residents.....	32
45H Consideration of wishes of parents consenting to adoption .....	32

### **Part 4 Adoption plans**.....32

46 What is an adoption plan? .....	32
47 How is an adoption plan made?.....	33
48 Adoption plan to accompany application for adoption order .....	33
49 Notice to be given of adoption plan.....	33
50 Registration of adoption plans.....	34
51 Review of adoption plans.....	34

<b>Part 5 Consents to adoptions</b> .....	35
<b>Division 1 Who must consent to an adoption?</b> .....	35
52 Consent of parents and persons who have parental responsibility generally required.....	35
53 Ways in which parent or person who has parental responsibility can give consent.....	35
54 When consent of parent or person who has parental responsibility not required.....	35
55 Consent of child.....	36
56 Birth father to be given opportunity to consent .....	37
<b>Division 2 When is consent effective?</b> .....	37
57 Definitions .....	37
58 When is consent ineffective? .....	38
59 Mandatory written information .....	39
60 When is consent to be given?.....	39
61 Form of consent.....	39
62 Consent must be witnessed by person independent of counsellor.....	40
63 Child or other person consenting must be counselled.....	40
64 Consent to adoption of Aboriginal child.....	40
65 Consent to adoption of Torres Strait Islander child .....	41
<b>Division 3 Dispensing with consent</b> .....	42
66 How is need for consent dispensed with?.....	42
67 When can Court dispense with consent of person other than the child? .....	42
68 Who may apply for order dispensing with consent of person other than the child? .....	42
69 When can the Court dispense with the child’s consent?.....	43
70 When can consent dispense order be made? .....	43
71 Revocation of consent dispense order.....	43
72 Notice of consent dispense order .....	44
<b>Division 4 Revocation of consent</b> .....	44
73 Revocation of consent .....	44
74 Notification of pending end of revocation period.....	45
<b>Part 6 Parental responsibility for children awaiting adoption</b> .....	45
Note.....	46

75 Parental responsibility for citizen child awaiting adoption .....	46
76 Renunciation of parental responsibility for child present in another State .....	47
77 Parental responsibility for certain non-citizen children awaiting adoption .....	48
78 Parental responsibility reports—citizen and non-citizen children .....	48
79 Duration of parental responsibility .....	49
79A Children under the parental responsibility of Secretary leaving or being removed from care .....	50
79B Power of search for and removal of children in need of care and protection .....	50
<b>Part 7 Preliminary hearings</b> .....	<b>51</b>
Note .....	51
80 Preliminary hearings .....	51
81 When may preliminary hearings be held? .....	51
82 Notice to be given .....	51
83 Rules of court .....	52
<b>Part 8 Interim orders</b> .....	<b>52</b>
84 Making of interim orders .....	52
85 Duration of interim orders .....	52
86 Discharge of interim orders .....	52
<b>Part 9 Adoption orders</b> .....	<b>53</b>
Note .....	53
87 Application to be consented to by Secretary .....	53
88 Notice of application for adoption orders .....	53
89 When can order be made? .....	54
90 Court to be satisfied as to certain matters .....	54
91 Report required before order made for adoption of child .....	55
<b>Part 10 Procedures after application dealt with</b> .....	<b>56</b>
92 Care of child after refusal of an application .....	56
93 Discharge of adoption orders .....	57
94 Investigation of application for discharge .....	58
<b>Part 11 Effect of adoption orders</b> .....	<b>58</b>
Note .....	58
95 General effect of adoption orders .....	58

96 Effect of adoption order on parental responsibility and previous adoption.....	59
97 Effect of orders as regards property .....	59
98 Effect of orders as regards dispositions of property etc .....	59
99 Relationship of adopted child to other children of the adopter.....	60
100 Liability of trustees and personal representatives in relation to adopted persons .....	61
101 Names of adopted children.....	61
<b>Chapter 5 Recognition of adoptions .....</b>	<b>62</b>
Introduction .....	62
<b>Part 1 Australian adoptions .....</b>	<b>62</b>
102 Recognition of Australian adoptions .....	62
<b>Part 2 Intercountry and overseas adoptions .....</b>	<b>62</b>
<b>Division 1 General.....</b>	<b>62</b>
103 Object of Part.....	62
104 Meaning of child .....	63
105 Application of Act .....	63
<b>Division 2 Hague Convention on Intercountry Adoption.....</b>	<b>63</b>
106 Adoption in NSW of child from NSW by parents from Convention country .....	63
107 Adoption in NSW of child from Convention country by parents from NSW .....	63
108 Recognition of adoption of a child from a Convention country in that country.....	64
109 Effect of recognition .....	64
110 Refusal to recognise an adoption .....	65
111 Order terminating legal relationship between child and parents.....	65
112 Evidential value of adoption compliance certificate and Convention country adoption order .....	66
<b>Division 3 Bilateral arrangements .....</b>	<b>66</b>
113 Adoption by NSW parent in prescribed overseas jurisdiction of a child from that overseas jurisdiction .....	66
114 Effect of recognition .....	66
115 Evidential value of adoption compliance certificate .....	67
<b>Division 4 Recognition of other overseas adoptions.....</b>	<b>67</b>

116 Recognition of foreign adoptions in countries other than Convention countries and prescribed overseas jurisdictions .....	67
117 Declarations of validity of foreign adoptions .....	68
<b>Chapter 6 Proceedings</b> .....	<b>69</b>
Introduction .....	69
118 Parties .....	69
119 Hearings to be in camera .....	69
120 Secretary may appear at hearings .....	70
121 Court may require attendance.....	70
122 Legal representation.....	70
123 Guardian ad litem—child .....	71
124 Guardian ad litem and amicus curiae—birth parents of child .....	72
124AA Use of Guardian Ad Litem Panel .....	72
124A Guardian ad litem—exclusion of personal liability .....	73
125 Support persons .....	73
126 Matters admissible in evidence .....	73
127 Wishes of child .....	73
128 How wishes of a child are expressed .....	74
129 Children not to be required to express wishes.....	74
<b>Chapter 7 Records of adoptions</b> .....	<b>74</b>
Introduction .....	74
130 Functions of nominated officer in relation to orders under this Act .....	74
130A Functions of Secretary in relation to overseas adoptions .....	74
131 Sending of records of orders to other States and countries.....	75
132 Particulars of orders received from other States .....	75
<b>Chapter 8 Adoption information</b> .....	<b>76</b>
<b>Part 1 Preliminary</b> .....	<b>76</b>
133 Prescribed information .....	76
133A Definition of “presumptive father” .....	76
133AA Information contained in court records .....	76



133AB Single application for information under this Act and Children and Young Persons (Care and Protection) Act 1998	76
<b>Part 2 Access to birth certificates and other information</b>	<b>77</b>
<b>Division 1 Access entitlements (adoptions after 2008 changes)</b>	<b>77</b>
133B Application of Division	77
133C Adopted person's rights	77
133D Adoptive parent's rights	78
133E Birth parent's rights	78
133F Discretion to supply other information to birth parents	79
133G Non-adopted sibling's rights	79
<b>Division 2 Continuation of former access entitlements (adoptions before 2008 changes)</b>	<b>80</b>
133H Application of Division	80
134 Adopted person's rights	80
135 Adoptive parent's rights	81
136 Birth parent's rights	82
136A Discretion to withhold supply or to supply subject to conditions	83
<b>Division 3 Miscellaneous</b>	<b>83</b>
137 Access to adoption information by relatives and others after death of adopted person or birth parent	83
138 Application for supply of adoption information	84
139 Persons designated to deal with applications	85
140 Discretion to supply adoption information	85
141 (Repealed)	86
142 Guidelines for release of prescribed information etc	86
143 Access to court records	86
143A Application of State Records Act 1998	86
<b>Part 3 Advance notice</b>	<b>86</b>
144 Object of Part	86

145 Definitions .....	86
146 Who may lodge an advance notice request? .....	87
147 How advance notice request is lodged .....	87
148 Advance Notice Register .....	87
149 Secretary to delay issue of supply authority or prescribed information .....	88
150 Endorsement of details of advance notice request.....	88
151 Expiration of advance notice registration .....	88
152 Arrangements to waive advance notice period .....	88
153 Notification to person who lodged advance notice request.....	89
<b>Part 4 Contact vetoes .....</b>	<b>89</b>
154 Adopted person or birth parent may lodge contact veto .....	89
155 Contact veto may be lodged only for adoptions before Adoption Information Act 1990 .....	89
156 How contact veto is lodged .....	90
157 Contact Veto Register .....	90
158 Secretary to endorse details of contact veto on authority to supply adoption information .....	90
159 When contact veto takes effect.....	91
160 Expiration of contact veto .....	91
161 Arrangements to confirm, cancel or vary contact veto at request of person seeking contact.....	91
162 Notification to person who lodged contact veto of request for information.....	92
163 Notification to person affected by contact veto of cancellation or variation .....	92
164 Undertakings not to contact person who has lodged contact veto .....	92
<b>Part 5 Reunion and Information Register .....</b>	<b>93</b>
165 Definition .....	93
166 Reunion and Information Register .....	93
167 Persons eligible to have their names entered in the register .....	93
168 Message may be left .....	94
169 Secretary may refuse to enter name or take message.....	94
170 Circumstances in which Secretary may open, inspect and copy message .....	94
171 Secretary may delay delivery of message.....	95
172 Regulations.....	95
173 Arrangements for reunion of registered persons .....	95
174 Location of persons not registered .....	95

<b>Part 6 Miscellaneous</b> .....	96
175 Duties of Secretary and accredited adoption service providers .....	96
175A Disclosure of information for research purposes .....	96
<b>Chapter 9 Offences</b> .....	98
176 Definitions .....	98
177 Payments for NSW adoptions or intercountry adoptions and adoption services.....	98
178 Unauthorised advertising .....	99
179 Making available or supplying prohibited adoption advertising on on-line service.....	100
180 Restriction on publication of material identifying persons affected by adoption application.....	101
180A Court authorisation of publication of identifying material .....	102
181 False statements .....	102
182 Impersonation .....	103
183 Presenting forged consent or other document .....	103
184 Undue influence .....	104
185 Improper witnessing of consent.....	104
186 Unauthorised disclosure of information .....	105
187 Prohibition on contact with birth parents of child .....	105
188 Veto on contact—offences .....	106
<b>Chapter 10 Review of decisions</b> .....	106
Introduction .....	106
189 Reviewable decisions.....	107
190 Duty of relevant decision maker to give reasons in request.....	107
191 Relevant decision maker may refuse reasons in certain cases.....	108
192 Internal review.....	108
193 Decisions that are administratively reviewable by Civil and Administrative Tribunal .....	111
<b>Chapter 11 Miscellaneous</b> .....	111
Introduction .....	111
194 Restriction on inspection of records.....	111
195 Consultation with Aboriginal persons .....	112
196 Consultation with Torres Strait Islanders.....	112
197 Manner of giving notice .....	112

198 Notices and other documents to be written in other languages .....	113
199 Entitlements of disabled persons .....	113
200 Fees and charges.....	114
201 Provision of financial and other assistance to certain children and birth parents.....	114
202 Administration of certain estates.....	115
202A Entry and inspection under search warrant.....	116
203 Authority to prosecute .....	116
204 Proceedings for offences .....	116
205 Exclusion from proceedings.....	117
206 Delegation .....	117
207 Rules of court .....	118
208 Regulations.....	118
209 Repeals.....	118
210 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption .....	119
211 (Repealed) .....	119
212 Savings and transitional provisions .....	119
213 Review of Act.....	119
<b>Schedule 1 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption</b> .....	119
<b>Schedule 2 (Repealed)</b> .....	133
<b>Schedule 3 Savings, transitional and other provisions</b> .....	134
<b>Dictionary</b> .....	140

# 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 Aboriginal person has 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,
  - (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,
  - (e1) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare,
  - (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 adoption service providers accredited in accordance with the *Children's Guardian Act 2019*. It makes it clear that individuals must not make their own adoption arrangements, either personally or through private institutions.

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

### **10 Adoption services to be provided by or on behalf of Secretary**

- (1) Subject to this Act, the Secretary is to provide adoption services.

#### **Note—**

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

- (2) Without limiting subsection (1), the Secretary 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 responsibility for 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 parental responsibility,
- (e) (Repealed)
- (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 Secretary, or
  - (b) an organisation accredited by the Children’s Guardian under the [Children’s Guardian Act 2019](#) as an adoption service provider that may provide the service.
- (2) A person (other than the Secretary) 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 the [Children’s Guardian Act 2019](#) as an adoption service provider 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**

**12, 13 (Repealed)**

**Part 3 Principal officer of accredited adoption service provider**

**14-21 (Repealed)**

**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 2 persons who are married to each other or who are de facto partners of each other (**de facto partner** is defined in section 21C (1) of the [Interpretation Act 1987](#) and refers to persons whether of the same sex or a different sex). 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 cared for by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or her or their child prior to reaching the age of 18 years, 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 responsibility of the applicant or applicants or of the applicant and a deceased spouse of the applicant.

**Note—**

**Spouse** is defined in the Dictionary.

- (3) (Repealed)

**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 of 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 2 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(1)(b), and

- (b) the child has established a relationship of at least 2 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**

- (1) 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 2 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.

- (2) Subsection (1) (b) does not apply to the adoption of a child who is 18 years of age or more at the time of the application for the adoption order.

**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 Secretary or an accredited adoption service provider that may provide intercountry adoption services or the Secretary 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**

- (1) The Secretary or appropriate principal officer must ensure that the following are consulted about the placement of an Aboriginal child—
- (a) a person approved in accordance with section 195, 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.

- (2) In addition, the Secretary or appropriate principal officer must ensure that the placement of the child is made in consultation with a local, community-based and relevant Aboriginal organisation.

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

- (1) The Secretary 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 Secretary 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 Secretary 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**

(1) The Secretary or appropriate principal officer must ensure that the following are consulted about the placement of a Torres Strait Islander child—

(a) a person approved in accordance with section 196, 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.

(2) In addition, the Secretary or appropriate principal officer must ensure that the

placement of the child is made in consultation with a local, community-based and relevant Torres Strait Islander organisation.

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

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary to the appropriate authority in the place outside Australia.

## **Part 3 Selection of prospective adoptive parents other than authorised carers**

### **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 or authorised carers.

**Note—**

Part 3A of this Chapter provides for prospective adoptive parents who are authorised carers.

### **41A Definitions**

In this Part—

**applicant** means a person whose application to adopt under this Part—

- (a) has been submitted to the Secretary or a principal officer, and
- (b) has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.

**reside on a property** has the same meaning as in the [Child Protection \(Working with Children\) Act 2012](#).

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

- (1) One person, or a couple, may submit to the Secretary, or principal officer of an adoption service provider 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 Secretary 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 Secretary or principal officer may, in accordance with the regulations and subject to any conditions of the accreditation of the adoption service provider 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 Secretary of a register of persons approved by the Secretary or by principal officers as fit and proper persons to adopt children.
- (2) The Secretary or appropriate principal officer must not assess a person as suitable to be approved to adopt a child unless the person and every adult person who resides on the same property as the person has a working with children check clearance that is in force under the *Child Protection (Working with Children) Act 2012* or is exempted by the regulations under that Act from the requirement to hold such a clearance.

#### **45A Background information about prospective adoptive parents to be made available to birth parents**

- (1) If an application to adopt a child is made by a couple, background information relating to the couple that is obtained by the Secretary or principal officer in connection with the application is, at the request of the birth parents of the child, to be provided to the birth parents before any adoption order may be made in relation to that child.
- (2) In this section, **background information** relating to a couple includes information about the couple's social and cultural background, religious beliefs, domestic relationship and living arrangements, but does not include any information that identifies the couple.

#### **45AA Provision of information**

- (1) Any person (the **provider of information**) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if—
  - (a) the provider of information has been notified by the principal officer or the Secretary that the other person is an applicant or a person who resides on the same property as an applicant, or
  - (b) the provider of information otherwise reasonably believes the other person to be an applicant or a person who resides on the same property as an applicant.
- (2) Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.
- (3) Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.

- (4) A person who, acting in good faith, provides information under this section—
- (a) is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
  - (b) in providing the information, cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

#### **45AB Notification about other residents**

An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted—

- (a) if any person (other than the applicant or a person who submitted an application to adopt jointly with the applicant) resides on the same property as the applicant for 3 weeks or more, or
- (b) if a person residing on the same property as the applicant attains the age of 18 years.

#### **45B Consideration of wishes of parents consenting to adoption**

- (1) A general consent of the parent of a child to the adoption of the child, as referred to in section 53, may express the wishes of the parent as to the preferred background, beliefs or domestic relationship of any prospective adoptive parents of the child.
- (2) Nothing in the [Anti-Discrimination Act 1977](#) prevents the Secretary or a principal officer of an adoption service provider from identifying (consistently with the best interests of the child) prospective adoptive parents who reflect those wishes in the adoption selection process under this Part.

### **Part 3A Selection of authorised carers as adoptive parents**

#### **45C Application of Part**

This Part applies to the assessment of the suitability, and selection, of prospective adoptive parents who are authorised carers (within the meaning of section 137 (1) (b) of the [Children and Young Persons \(Care and Protection\) Act 1998](#)) of a child who is in out-of-home care.

#### **45CA Definitions**

In this Part—

**applicant** means a person whose application to adopt under this Part—

- (a) has been submitted to the Secretary or a principal officer, and
- (b) has not been withdrawn or finally dealt with by the making of, or refusal to make, an adoption order.

**reside on a property** has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

#### **45D Application to adopt**

The Secretary or the principal officer of an accredited adoption service provider may, in accordance with the regulations, invite an authorised carer of a child who is in out-of-home care to submit an application to adopt the child.

#### **45E Form of application**

An application to adopt a child under this Part is to be made in accordance with the regulations.

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

The regulations may make provision for or with respect to the assessment of the suitability of authorised carers of children to be approved and selected to adopt the children under this Act.

#### **45G Background information about prospective adoptive parents to be made available to birth parents**

- (1) If an application to adopt a child is made by an authorised carer, background information relating to the authorised carer that is obtained by the Secretary or principal officer in connection with the application is, at the request of the birth parents of the child, to be provided to the birth parents before any adoption order may be made in relation to that child.
- (2) In this section, **background information** relating to an authorised carer includes information about the carer's social and cultural background, religious beliefs, domestic relationship and living arrangements, but does not include any information that identifies the carer.

#### **45GA Provision of information**

- (1) Any person (the **provider of information**) may provide information to the principal officer of an accredited adoption service provider or the Secretary about another person if—
  - (a) the provider of information has been notified by the principal officer or the Secretary that the other person is an applicant or a person who resides on the same property as an applicant, or
  - (b) the provider of information otherwise reasonably believes the other person to be an applicant or a person who resides on the same property as an applicant.
- (2) Information provided under this section may be used to determine whether the applicant is suitable to adopt a child.

- (3) Information may be provided under this section regardless of whether the provider of information has been requested to provide the information.
- (4) A person who, acting in good faith, provides information under this section—
  - (a) is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
  - (b) in providing the information, cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

#### **45GB Notification about other residents**

An applicant must, as soon as reasonably practicable, notify the Secretary or the principal officer to whom the application was submitted—

- (a) if any person (other than the applicant or a person who submitted an application to adopt jointly with the applicant) resides on the same property as the applicant for 3 weeks or more, or
- (b) if a person residing on the same property as the applicant attains the age of 18 years.

#### **45H Consideration of wishes of parents consenting to adoption**

- (1) A general consent of the parent of a child to the adoption of the child, as referred to in section 53, may express the wishes of the parent as to the preferred background, beliefs or domestic relationship of any prospective adoptive parents of the child.
- (2) Nothing in the [Anti-Discrimination Act 1977](#) prevents the Secretary or a principal officer of an adoption service provider from identifying (consistently with the best interests of the child) prospective adoptive parents who reflect those wishes in the adoption selection process under this Part.

## **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.

(2A) A birth parent who has not consented to the adoption of a child (a **non-consenting birth parent**) is, as far as possible, to be given the opportunity to participate in the development of, and agree to, an adoption plan in relation to the child.

(2B) A non-consenting birth parent who agrees to an adoption plan is, for the purposes of sections 47, 48, 50, 51 and 90, to be treated as if the non-consenting birth parent were a party to the adoption of the child.

(3) An adoption plan for an Aboriginal child or Torres Strait Islander child to be adopted by persons of whom neither is an Aboriginal or Torres Strait Islander, as the case may be, must make provision of the kind referred to in subsection (2) (a).

(4) If provisions of the kind referred to in subsection (2) (a) are proposed to be included in an adoption plan, those provisions should be made after consultation with a local, community-based and relevant Aboriginal or Torres Strait Islander organisation.

#### **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 Secretary or appropriate principal officer is to give notice to any person who has the

care responsibility for 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 persons who have parental responsibility 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 person who has parental responsibility for the child, or
- (b) in the case of a child who has previously been adopted—by each adoptive parent of, or person who has parental responsibility for, the child.

#### 53 Ways in which parent or person who has parental responsibility can give consent (cf AC Act s 27)

- (1) For the purposes of this Act, a parent of, or person who has parental responsibility for, 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 Secretary or principal officer of an accredited adoption service provider, 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 an authorised carer who has had care responsibility for the child for 2 years or more.
- (2) Nothing in this section prevents the Secretary 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 person who has parental responsibility 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), 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 cared for by the proposed adoptive parent or parents for at least 2 years.

(3) However, the Court must not make an adoption order in relation to a child who is less than 18 years of age who gives sole consent to his or her adoption, unless—

(a) the Court is satisfied that at least 14 days' notice of the application for the adoption order has been given by the Secretary or appropriate principal officer to the parent or person who has parental responsibility whose consent would otherwise be required, or

(b) the Court dispenses with the giving of notice.

(4) The regulations may prescribe the particulars to be contained in a notice under this section.

**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) the counsellor has certified that the child understands the effect of signing the instrument of consent (as required by section 61), 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 person who has parental responsibility but not the birth father of the child, and
  - (b) an adoption hearing has not been held, and
  - (c) the Secretary or appropriate principal officer knows, or after reasonable inquiry ascertains, the name and address of the person whom the Secretary 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 Secretary 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 person who has parental responsibility 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 Secretary 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**

- (1) The Secretary 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.
- (2) In the case of the adoption of a child by a step parent or relative of the child—
  - (a) the applicant (and not the Secretary or appropriate principal officer) must ensure that a person whose consent to the 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, and
  - (b) the requirement to give that information is satisfied if the information given is information in a form approved by the Secretary for the purposes of compliance with this subsection.
- (3) In the case of an adoption of a child who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, this section does not require the mandatory written information to be given to the Minister or a delegate of the Minister who can 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 (if required).

**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).
- (3) This section does not require the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* or any delegate of the Minister to be counselled before giving consent to the adoption of a child who is under the parental responsibility of the Minister.

## **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 a person approved in accordance



with section 195, or

- (b) if he or she is offered, but refuses, adoption counselling by such a person he or she must—
  - (i) be provided by the Secretary or appropriate principal officer with written information on Aboriginal customs and culture and any other matters the Secretary or principal officer considers would have been raised by the person, 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 person approved in accordance with section 196, or
- (b) if he or she has been offered, but has refused, adoption counselling by such a person he or she must—
  - (i) be provided by the Secretary or appropriate principal officer with written information on Torres Strait Islander customs and culture and on any other matters that the Secretary or principal officer considers would have been raised by the person, 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 of, or person who has parental responsibility for, 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 person who has parental responsibility, or
  - (d) if an application has been made to the Court for the adoption of the child by one or more persons who are authorised carers or the guardians for the child—
    - (i) the child has established a stable relationship with those carers or guardians, and
    - (ii) the adoption of the child by those carers or guardians will promote the child's welfare, and
    - (iii) in the case of an Aboriginal child, alternatives to placement for adoption have been considered in accordance with section 36.
- (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.
- (3) In this section—

**guardian** has the same meaning as in section 79A (1) of the *Children and Young Persons (Care and Protection) Act 1998*.

### 68 Who may apply for order dispensing with consent of person other than the child? (cf AC Act s 32 (1A))

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

- (a) the Secretary,

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

**69 When can the Court dispense with the child's consent?** (cf AC Act s 33)

- (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 Secretary unless not less than 14 days' notice of the application has been given to the Secretary.

**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 s 32 (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 Secretary 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 Secretary—to the Secretary, 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 parent (including the mother or 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 Secretary, 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 parent (including the mother or father) or a relative of the child (whether alone or jointly with another person)—to the applicant or applicants.
- (5) If the Secretary ceases to have parental responsibility for 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 Secretary ceases to have parental responsibility for a child under section 79 (1) (d), the Secretary 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 Secretary (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 Parental responsibility for children awaiting adoption**

**Note—**

This Part provides for the parental responsibility for children between the period when consent to adoption is given and an adoption order made. Parental responsibility is given to the Secretary who has power to decide, for example, whether the child should be placed with authorised carers or the proposed adoptive parents, in this period.

**75 Parental responsibility for citizen child awaiting adoption** (cf AC Act s 34 except (3) and (4))

- (1) **Parental responsibility following general consent or dispensing with consent** The Secretary has parental responsibility for 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 Secretary or a person employed in the Department who witnesses a general consent to the adoption of a child must give the Secretary 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 Secretary—
  - (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 Secretary, whichever first occurs.
- (5) Within 21 days after the Secretary is satisfied as referred to in subsection (4), the Secretary may, by instrument in writing, decline parental responsibility for the child.
- (6) As soon as practicable after declining parental responsibility, the Secretary must cause a copy of the instrument to be given to each person who consented to the adoption of the child.
- (7) **Parental responsibility following renunciation of parental responsibility by officer of another State** The Secretary takes parental responsibility for a child in place of a corresponding officer who has parental responsibility for the child under a corresponding law if the corresponding officer executes a parental responsibility 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 Secretary is satisfied the child is present in New South Wales, and
  - (c) the corresponding officer requested the Secretary to accept, and the Secretary by an instrument in writing forwarded to that officer, agreed to accept, parental responsibility for the child before the parental responsibility renunciation instrument was executed.
- (9) The Secretary has parental responsibility 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 Secretary under this Act.

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

## **76 Renunciation of parental responsibility for child present in another State**

- (1) The Secretary may execute a parental responsibility renunciation instrument in relation to a child the Secretary has parental responsibility for 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 Secretary is satisfied that the child is present in another State, and
  - (c) the Secretary has requested a corresponding officer to accept, and that officer has, by an instrument in writing forwarded to the Secretary, agreed to accept, parental responsibility for the child, and
  - (d) under a corresponding law, that officer will, on execution by the Secretary of a parental responsibility renunciation instrument, have parental responsibility for the child.
- (2) The Secretary ceases to have parental responsibility for the child on execution of the

parental responsibility renunciation instrument.

- (3) As soon as practicable after executing the parental responsibility renunciation instrument, the Secretary 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 Secretary under this Act.

**parental responsibility renunciation instrument** means an instrument in writing executed by the Secretary renouncing the Secretary's parental responsibility for a child.

## **77 Parental responsibility for 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 Secretary has parental responsibility for 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 parental responsibility are presently delegated to the Secretary under section 5 of that Act.

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

- (1) The Secretary must make a report to the Court concerning any child of whom the Secretary has parental responsibility under this Part if the Secretary has not, within a period of one year after taking over parental responsibility, ceased to have parental responsibility.
- (2) The Court may make any order concerning the 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 Secretary continue to have parental responsibility for the child for a further period of one year.

## **79 Duration of parental responsibility**

- (1) The Secretary continues to have parental responsibility for 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 parental responsibility for the child, or
- (d) (Repealed)
- (e) the Secretary declines to have parental responsibility for the child, or

**Note—**

See section 75 (5).

- (f) the Secretary renounces parental responsibility for 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 Secretary may, on such terms and conditions as the Secretary thinks fit, place any child for whom the Secretary has parental responsibility under section 75 or 78 in the care responsibility of any suitable person who has agreed to have the child in his or her care.

- (2A) The Secretary's parental responsibility for a child under section 75 or 78 is suspended while the child is placed in some other person's care responsibility pursuant to subsection (2).

- (2B) The Secretary may at any time, and for any reason or no reason, make an order terminating a child's placement under subsection (2) and directing that the child be returned to the parental responsibility of the Secretary.

- (3) The fact that the Secretary has parental responsibility for 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 parental responsibility for a non-citizen child under this section does not

affect any duty imposed on the Secretary 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.

**79A Children under the parental responsibility of Secretary leaving or being removed from care** (cf *Children and Young Persons (Care and Protection) Act 1998*, section 232)

If—

- (a) a child who is under the parental responsibility of the Secretary, or under the care responsibility of a person under section 79 (2), has, without lawful excuse, left, or been removed from, the care of the Secretary or person, as the case may be, and
  - (b) the Secretary is of the opinion that the child should be returned to that care,
- the Secretary may, by order in writing, direct that the child be returned to that care.

**79B Power of search for and removal of children in need of care and protection** (cf *Children and Young Persons (Care and Protection) Act 1998*, section 233)

- (1) The Secretary or a police officer may apply to an authorised officer for a search warrant if the Secretary or police officer has reasonable grounds for believing that—
  - (a) a child whom the Secretary has placed in some other person's care responsibility pursuant to section 79 (2), or
  - (b) a child the subject of an order in force under section 79 (2B) or 79A,may be found in any premises.
- (2) An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant—
  - (a) to enter the premises (if any) specified in the warrant, and
  - (b) to search the premises (if any) or elsewhere, or at large, for the presence of the child referred to in subsection (1) (a) or (b), and
  - (c) to remove the child, and
  - (d) to return the child to, or to place the child in, the custody of the Secretary or the person having care responsibility for the child under section 79 (2), as the case requires.
- (4) An application for a warrant or warrant may specify one or more addresses or other descriptions of premises. However, it is not necessary to specify an address or other description of premises in an application for a warrant or in a warrant.

- (5) It is not necessary in any search warrant issued under this section to name any particular child.
- (6) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (7) In this section, **authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 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 Secretary or a principal officer, the Court may make an interim order for parental responsibility for the child in favour of the Secretary 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 Secretary (cf AC Act s 18 (2) and (3))

- (1) The Court may make an adoption order only on application made by—
  - (a) the prospective adoptive parent or parents with the consent of the Secretary, or
  - (b) the Secretary or by a principal officer on behalf of the prospective adoptive parent or parents, or
  - (c) (Repealed)
  - (d) a child who is 18 or more years of age for his or her adoption.
- (2) Despite subsection (1) (a), the consent of the Secretary to an application for an adoption order is not required—
  - (a) if the applicant is a step parent or relative of the child, or
  - (b) if the application relates to an intercountry 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**

- (1) The Court may not make an order for the adoption of a child under 18 years of age unless a report in writing concerning the proposed adoption has been provided to the Court by the applicant.
- (2) The report is to be accepted by the Court only if it has been prepared by the Secretary or an authorised person.
- (2A) In this section, an **authorised person** means any of the following—
  - (a) an approved assessor,
  - (b) the principal officer of an accredited adoption service provider (or delegate),
  - (c) the principal officer of a designated agency (or delegate),
  - (d) a suitably qualified person employed or nominated by an approved organisation to prepare reports in accordance with this section.
- (3) This section does not prevent the Secretary from making a report to the Court in

relation to the adoption of a child before the Court if the Secretary considers it appropriate to do so.

- (4) The Court may require the Secretary to make a report in relation to an application for an adoption order made by a person other than the Secretary, but only if the child is under 18 years of age.
- (5) However, the Court is not to require the Secretary to make a report unless the Court considers that the Secretary should report on the case because of—
  - (a) particular concerns about the safety, welfare or well-being of the child concerned, or
  - (b) serious concerns about the reliability or independence of a report made by an authorised person concerning the case, or
  - (c) other exceptional circumstances.
- (6) The Court may require the Secretary to make such a report 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.
- (6A) A principal officer of an accredited adoption service provider may delegate his or her function under subsection (2) to one or more employees of the accredited adoption service provider or of an affiliated foster care service, whom the principal officer considers to be appropriately qualified to exercise the function.
- (6B) A principal officer of a designated agency may delegate his or her function under subsection (2) to one or more employees of the agency, whom the principal officer considers to be appropriately qualified to exercise the function.
- (7) In this section—

**approved assessor** means a person, or a person of a class, approved by the Secretary from time to time, by order in writing, to provide a report to the Court for the purposes of this section.

**approved organisation** means an organisation approved by the Secretary from time to time, by order in writing, to provide a report to the Court for the purposes of this section.

**designated agency** has the same meaning as in the [Children's Guardian Act 2019](#).

## **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



in relation to the parental responsibility for 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 parental responsibility for 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 Secretary 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.

#### **Note—**

For example, for the purposes of a distribution on intestacy, an adopted child is regarded as a child of the adoptive parent or parents and the child's family relationships are determined accordingly. See section 109 of the [Succession Act 2006](#).

- (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 parental responsibility and previous adoption** (cf AC Act s 35)

(1) (d) and (e)

(1) On the making of an adoption order—

- (a) the existing parental responsibility for 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) (Repealed)

**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 [Succession Act 2006](#) 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 [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 the Court is satisfied that the name change is in the best interests of the child.

**Note—**

Section 8 sets out the principles that are to be applied by persons making decisions about the adoption of a child, and includes the principle that a child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.

- (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 Secretary, 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 Secretary 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 Secretary or the principal officer of an accredited adoption service provider 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Australian legal practitioners

or representatives to be present during the hearing of the proceedings.

**120 Secretary may appear at hearings** (cf AC Act s 68)

The Secretary 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 an Australian legal practitioner 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 an Australian legal practitioner 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 an Australian legal practitioner representing a child, the role of the Australian legal practitioner 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 an Australian legal practitioner representing the child. This presumption is not rebutted only because a child has a disability.

- (5) The Court may, on the application of an Australian legal practitioner 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 Australian legal practitioner representing the child,
- the Australian legal practitioner 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) An Australian legal practitioner 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 Australian legal practitioner.

### **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 Australian legal practitioner representing the child.
- (4) An Australian legal practitioner 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 Australian legal practitioner 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, Australian legal practitioner.
- (2) Circumstances that warrant the appointment of a guardian ad litem or a request for an Australian legal practitioner 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 Australian legal practitioner representing the parent.
- (5) An Australian legal practitioner 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.

#### **124AA Use of Guardian Ad Litem Panel**

- (1) Without limiting section 123(1) or 124(1)(a), the Court may order that a person be represented by a guardian ad litem without naming a particular person to be appointed as guardian ad litem.



- (2) If the Court makes an order under subsection (1), the guardian ad litem is taken to have been appointed when the Court receives a written notice from the administrator of the Guardian Ad Litem Panel naming the person selected to be the guardian ad litem.

**124A Guardian ad litem—exclusion of personal liability**

- (1) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Court as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.
- (2) However, any such liability attaches instead to the Crown.
- (3) (Repealed)

**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 Secretary 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 Secretary.

**Note—**

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

**130A Functions of Secretary in relation to overseas adoptions**

- (1) The Secretary must give the Registrar a record of an adoption that is recognised under section 108 or 113 if the adoption was organised by or under the authority of the Secretary.

- (2) The record given to the Registrar must contain the information and particulars prescribed by the regulations and must be accompanied by a copy of the adoption compliance certificate issued for the adoption.
- (3) The Secretary may require the adoptive parent or adoptive parents of an adopted child, or the adopted child if the child has attained the age of 18 years, to provide the Secretary with such information or documents relating to the adoption or the identification of the adopted child as the Secretary may reasonably require.
- (4) The Secretary is not required to give the Registrar a record of an adoption under this section (and the Registrar is not required to register the adoption under the *Births, Deaths and Marriages Registration Act 1995*) if the Secretary is not able to ascertain the information and particulars that the record is required to contain.

**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.

#### 133A Definition of “presumptive father”

In this Chapter—

**presumptive father** of an adopted person means a man who claims to be the birth parent of the adopted person and who—

- (a) is shown on the adopted person’s original birth certificate as the adopted person’s father, or
- (a1) is shown on the adopted person’s integrated birth certificate as the adopted person’s father at birth, in accordance with the information prescribed under section 17(1) of the *Births, Deaths and Marriages Registration Act 1995*, or
- (b) is a person whom the Secretary, 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 adopted person’s father.

#### 133AA Information contained in court records

A person does not lose an entitlement to receive information under this Chapter, including by operation of section 143, due to the information also being contained in a record of court proceedings.

#### 133AB Single application for information under this Act and [Children and Young Persons](#)

### **(Care and Protection) Act 1998**

- (1) An application by a person for information the person is entitled to receive under this Chapter may include a request for information the person is entitled to access under the *Children and Young Persons (Care and Protection) Act 1998*, Chapter 8, Part 6.
- (2) The information under the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the person despite no request having been made under that Act.

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

### **Division 1 Access entitlements (adoptions after 2008 changes)**

#### **133B Application of Division**

This Division applies in respect of an adoption given effect to by an adoption order made on or after the commencement of this Division as a consequence of an application for an adoption order made on or after the commencement of this Division.

**Note—**

Changes to access entitlements were made by the *Adoption Amendment Act 2008* (which inserted this Division into this Act). For access entitlements in relation to adoptions before those changes, see Division 2.

#### **133C Adopted person's rights**

- (1) An adopted person is entitled to receive (subject to this Act)—
  - (a) the person's original birth certificate, and
    - (a1) the person's integrated birth certificate if a record of the adoption of the person is registered under the *Births, Deaths and Marriages Registration Act 1995*, and
  - (b) his or her adopted person's birth record, and
  - (c) any prescribed information relating to the adopted person held by an information source (including prescribed information relating to the adopted person's birth parents, siblings and adopted brothers and sisters).
- (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, integrated birth certificate or adopted person's birth record, or prescribed information, except with the consent of—
  - (a) his or her surviving adoptive parents, or
  - (b) the Secretary if there are no surviving adoptive parents or if they cannot be found or if there is, in the opinion of the Secretary, any other sufficient reason to dispense with their consent.

### **133D Adoptive parent's rights**

- (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
    - (a1) the adopted person's integrated birth certificate 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 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.

### **133E Birth parent's rights**

- (1) A birth parent of an adopted person 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
    - (a1) the integrated 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 adoptive parents held by an information source.
- (2) A birth parent of an adopted person who is less than 18 years of age is not entitled to receive any adoption information held by an information source unless the birth parent produces to the information source an authority authorising the information source to supply the adoption information issued by the Secretary.
- (3) The Secretary may issue, or refuse to issue, an authority to supply adoption information to the birth parent of an adopted person who is less than 18 years of age.
- (4) The Secretary may refuse to issue the authority only if, in the opinion of the Secretary, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (5) The Secretary is required to comply with any guidelines prescribed by the regulations

in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.

- (6) The Secretary may issue an authority to supply adoption information under this section subject to conditions.
- (7) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Secretary.
- (8) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

### **133F Discretion to supply other information to birth parents**

- (1) A designated person may supply a birth parent with prescribed information held by an information source about an adopted person who is less than 18 years of age without production of the amended birth certificate or the integrated 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.
- (2) A birth parent of an adopted person may request the Secretary or a principal officer to take such action as is reasonable in the circumstances to ascertain from the adopted person's adoptive parents information of a kind prescribed by the regulations as to the current physical and emotional well-being of the adopted person.
- (3) A birth parent of an adopted person is entitled to receive from the Secretary (or from an information source authorised to supply the information) any information obtained in response to a request made under this section—
  - (a) that the Secretary considers does not identify, or could not be used to identify, the adoptive parents, and
  - (b) if, in the opinion of the Secretary, it would promote the welfare and best interests of any of the parties concerned.
- (4) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

### **133G Non-adopted sibling's rights**

- (1) A non-adopted sibling of an adopted person is entitled to receive (subject to this Act) any prescribed information relating to the adopted person.
- (2) A non-adopted sibling who is less than 18 years of age is not entitled to receive any prescribed information relating to an adopted person except with the consent of—
  - (a) the surviving parents of the non-adopted sibling, or

- (b) the Secretary, if there are no surviving parents or if they cannot be found or if there is, in the opinion of the Secretary, any other sufficient reason to dispense with their consent.
- (3) A non-adopted sibling of an adopted person who is less than 18 years of age is not entitled to receive any prescribed information held by an information source relating to the adopted person unless the non-adopted sibling produces to the information source an authority authorising the information source to supply the prescribed information issued by the Secretary.
- (4) The Secretary may issue, or refuse to issue, an authority to supply adoption information to a non-adopted sibling of an adopted person who is less than 18 years of age.
- (5) The Secretary may refuse to issue the authority only if, in the opinion of the Secretary, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (6) The Secretary is required to comply with any guidelines prescribed by the regulations in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.
- (7) The Secretary may issue an authority to supply adoption information under this section subject to conditions.
- (8) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Secretary.
- (9) In this section, a **non-adopted sibling** of an adopted person means a sibling of an adopted person who is not himself or herself an adopted person.

## **Division 2 Continuation of former access entitlements (adoptions before 2008 changes)**

### **133H Application of Division**

This Division does not apply to adoptions to which Division 1 applies.

### **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
    - (a1) the person's integrated birth certificate if a record of the adoption of the person is registered under the *Births, Deaths and Marriages Registration Act 1995*, 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, integrated 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, integrated birth certificate or adopted person's birth record), or
  - (b) the Secretary 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 Secretary, 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 Secretary.

**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
  - (a1) the adopted person's integrated birth certificate 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 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, integrated 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
  - (a1) the integrated 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) (Repealed)
- (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 Secretary, 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 or integrated 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 Secretary 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 Secretary (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 Secretary considers does not identify, or could not be used to identify, the adoptive parents, and
  - (b) if, in the opinion of the Secretary, it would promote the welfare and best interests of either or both of the parties concerned.
- (7) In this section, a reference to a birth parent of an adopted person includes a reference

to a presumptive father of an adopted person.

**Note—**

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

**136A Discretion to withhold supply or to supply subject to conditions** (cf AI Act s 12A)

- (1) The following persons may request the Secretary 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 Secretary 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 Division, or
  - (b) supply such information subject to conditions specified in writing by the Secretary.
- (3) The Secretary may refuse to issue an authority to supply adoption information under this section only if, in the opinion of the Secretary, 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 Secretary under this section include conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the Secretary before the adoption information is supplied.
- (5) The Secretary 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 Secretary cannot delegate his or her functions under this section to any person other than a person employed in the Department.

## **Division 3 Miscellaneous**

### **137 Access to adoption information by relatives and others after death of adopted person**

**or birth parent** (cf AI Act s 9)

- (1) The Secretary 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 birth certificate, amended birth certificate or integrated 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 Secretary 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 Secretary.
- (2) The Secretary 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 close personal relationship with the deceased person.
- (3) The Secretary must not supply adoption information to any person (or authorise such action to be taken by an information source) unless the Secretary 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 Secretary to supply adoption information must supply that adoption information to the person nominated by the Secretary.
- (5) This section does not apply to prescribed information held by the Court.
- (5A) This section does not limit the entitlements of a non-adopted sibling of an adopted person under Division 1.
- (6) (Repealed)

**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 Secretary, 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.

(3A) An application for the supply of an adopted person's integrated birth certificate under this Part is to be made in writing to 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 Secretary 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 Secretary, it would promote the welfare and best interests of either or both of the parties concerned.

(2) The Secretary 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 Secretary may supply (or authorise an information source to supply) adoption information or other information to any person who is not entitled under this Part to receive adoption information or other information under this Part if, in the opinion of the Secretary, it is reasonable to do so.

**141 (Repealed)**

**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.

**143A Application of [State Records Act 1998](#)**

- (1) This Part has effect despite the provisions of the [State Records Act 1998](#).
- (2) Accordingly, the provision of information or documents in accordance with this Part does not constitute an offence under that Act.

### **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 Secretary 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 Secretary.

***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, integrated 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 Secretary 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 Secretary.
- (3) An advance notice request is not duly lodged unless the person provides the Secretary with proof (to the satisfaction of the Secretary) 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 Secretary.

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

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary of any change in his or her nominated contact address.

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

The Secretary 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 Secretary 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 Secretary, 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 Secretary 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 Secretary 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 Secretary is not to do so unless the Secretary—
  - (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 Secretary believes may be of assistance in assessing the merits of the request.
- (3) The Secretary may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Secretary believes is necessary to assist them and the Secretary in the matter.
- (4) The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary.
- (3) A contact veto is not duly lodged unless the person provides the Secretary with proof (to the satisfaction of the Secretary) 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 Secretary.

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

- (1) The Secretary 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 Secretary 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 Secretary to endorse details of contact veto on authority to supply adoption information** (cf AI Act s 21)

- (1) The Secretary must endorse details of any relevant contact veto on any authority to supply adoption information issued by the Secretary under this Act.
- (2) An information source (other than the Secretary) that is requested to supply an original birth certificate under this Act is required—
  - (a) to ascertain from the Secretary 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 Secretary 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 Secretary.

**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 earlier of—

(a) if details of the contact veto are endorsed on the authority to supply adoption information—when the details are endorsed on the authority, or

(b) if details of the contact veto are endorsed on the original birth certificate or amended birth certificate—when the details are endorsed on the certificate, or

(c) the expiration of the relevant period.

**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 Secretary, 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 Secretary may, on the Secretary'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 Secretary is not to approach the person who lodged the contact veto unless the Secretary 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 Secretary may consult any person or body that the Secretary believes may be of

assistance in assessing the merits of the request.

- (4) The Secretary may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Secretary believes is necessary to assist them and the Secretary in the matter.
- (5) The Secretary 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 Secretary 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 Secretary 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 Civil and Administrative 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 Secretary 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 Secretary is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Secretary 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 Secretary or other information source is not to supply an original birth certificate, amended birth certificate or integrated birth certificate if there is 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 Secretary 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 Secretary 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 Civil and Administrative 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 Secretary 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 Secretary.

### **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 Secretary, 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 Secretary, special circumstances exist which make it desirable that his or her name should be entered in the register.
- (4) However, the Secretary is not to enter in the register the name of an adopted person who is less than 18 years of age unless the Secretary 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 Secretary, 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 Secretary may refuse to enter name or take message** (cf AI Act s 31B)

The Secretary 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 Secretary, 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 Secretary may open, inspect and copy message** (cf AI Act s

31C)

- (1) The Secretary 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 Secretary 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 Secretary may delay delivery of message** (cf AI Act s 31D)

The Secretary may delay giving a person a message that the Secretary has been requested to open and inspect if the Secretary 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 Secretary 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 Secretary may make arrangements for a reunion between the persons so registered.
- (3) The Secretary 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 Secretary gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.
- (4) The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary may take action to locate a person under this section only if the Secretary is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so.
- (5) The Secretary 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 Secretary and accredited adoption service providers**

The Secretary, or an accredited adoption service provider, must ensure that information held by the Secretary 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.

#### **175A Disclosure of information for research purposes**

- (1) The Secretary may enter into arrangements with a research organisation for the purposes of permitting the disclosure to the research organisation of information



(including health information and personal information) that is held by the Department or an accredited adoption service provider about any of the following persons (an **affected person**)—

- (a) a person involved in an adoption or prospective adoption as a birth parent, adoptive parent or child,
  - (b) a person involved in out-of-home care as an authorised carer or child.
- (2) The Secretary is not to enter into arrangements under this section unless satisfied that those arrangements will ensure that—
- (a) reasonable steps will be taken to de-identify information disclosed under the arrangements, and
  - (b) information disclosed under the arrangements will be treated by the research organisation as confidential, and
  - (c) as far as is reasonably practicable, no publication that uses or is based on information disclosed under the arrangements will enable the identity of an affected person to be ascertained, and
  - (d) as far as is reasonably practicable, any personal information disclosed under the arrangements will be used or dealt with in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the research organisation were a public sector agency.

**Note—**

The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.

- (3) Before entering into arrangements for the disclosure of information under this section, the Secretary must consult with the Privacy Commissioner in relation to those arrangements.
- (4) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.
- (5) The provisions of the *Health Records and Information Privacy Act 2002* apply to health information disclosed under the arrangements as if the research organisation were a private sector person (within the meaning of that Act).

**Note—**

The *Health Records and Information Privacy Act 2002* requires a private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.

(6) In this section—

**health information** has the same meaning as in the *Health Records and Information Privacy Act 2002*.

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

## 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 of, or person who has parental responsibility for, 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 Secretary or an accredited adoption service provider 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 Secretary.

### **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, downloading, 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 material identifying persons affected by adoption application**

(1) A person must not publish material that identifies, or is reasonably likely to identify, a person as a person affected by an adoption application.

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

(2) For the purposes of this section, each of the following persons is a **person affected** by an adopted application—

(a) a child in relation to whom an adoption application is made,

(b) a person who makes an adoption application,

(c) the mother and father of the child in relation to whom an adoption application is made, and any other person who has parental responsibility for the child when the adoption application is made.

(3) This section does not prohibit—

(a) the publication of any material with the authority of the Court under section 180A, or

(b) the publication of an official report of proceedings in the Court that includes the name of any person the publication of which would otherwise be prohibited by this section.

(4) This section does not prohibit the publication of any material after an adoption application and any proceedings in the Court with respect to the application have been finally disposed of—

(a) if the person identified (or reasonably likely to be identified) as a person affected by the adoption application consents to being identified, and

(b) the material does not identify (and is not reasonably likely to identify) any person affected by the adoption application who does not consent to being identified.

(5) In subsection (4), a reference to the consent of a person affected by an adoption application is, if that person is a child less than 18 years of age, a reference to the consent of the person who has parental responsibility for the child.

(6) In this section—

**adoption application** means an application under this Act or under a law of another

State for an adoption order.

**180A Court authorisation of publication of identifying material**

- (1) The Court may, during any proceedings with respect to an adoption application, by order, authorise the publication of material that identifies, or is reasonably likely to identify, a person affected by the adoption application, other than material identifying birth parents, if it is satisfied that—
  - (a) each person affected by the adoption application consents to the publication (other than a child in relation to whom the adoption application is made who is under 18 years of age), and
  - (b) it is appropriate in the circumstances of the case to do so.
- (2) If a child in relation to whom the adoption application is made is 12 or more years of age and is capable of giving consent, the Court must not authorise the publication of the material unless the child also consents to the publication.
- (3) The Court may dispense with the consent of a person affected by an adoption application if that person is no longer alive, or cannot, after reasonable inquiry, be found or identified, or if there is, in the opinion of the Court, any other sufficient reason to dispense with their consent.
- (4) The Secretary is entitled to appear and be heard at any proceedings the purpose of which is to determine an application for an order of the Court under this section.
- (5) The Court is not to make an order authorising publication of material under this section unless satisfied that the Secretary has been given reasonable notice of the application for authorisation.
- (6) In this section—

***adoption application*** has the meaning given by section 180.

***material identifying birth parents*** means any material that identifies, or is reasonably likely to identify, a person as a person who, when an adoption application is made, is the mother or father of the child to whom the adoption application relates or a person who has parental responsibility for the child.

***person affected*** by an adoption application has the meaning given by section 180.

**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 of, or person who has parental responsibility for, a child with a view—
- (a) to inducing that parent or person who has parental responsibility to offer or refrain from offering the child for adoption under this Act, or
  - (b) to influencing the parent or person who has parental responsibility 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 person who has parental responsibility to revoke a consent to the adoption of the child given by that parent or person who has parental responsibility,

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 of, or person who has parental responsibility for, 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 this Act or the regulations, except—
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act or the regulations, or
  - (c) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.
- (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 Secretary.

**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, an original birth certificate, an amended birth certificate or an integrated birth certificate, if there is a contact veto against contact by the person 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 Secretary and other relevant decision makers under the Act. The Chapter also enables the Civil and Administrative 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 Secretary, 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 Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) for the purposes of section 28 of the [Community Services \(Complaints, Reviews and Monitoring\) Act 1993](#), or

**Note—**

Section 193 sets out the decisions of the Secretary and other relevant decision makers under this Act that are administratively reviewable by the Civil and Administrative Tribunal for the purposes of section 28 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 3 of the *Administrative Decisions Review 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 administratively reviewed by the Civil and Administrative 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 Review 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 administratively reviewable by Civil and Administrative Tribunal** (cf AC Act ss 14, 67A, AI Act s 36)

- (1) Each of the following decisions when made by the relevant decision maker is an administratively reviewable decision for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*—
  - (a)–(d) (Repealed)
  - (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 28 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.

(3) This section does not prevent a record from being produced to the following if required by a subpoena or other compulsory process—

(a) a court,

(b) a tribunal,

(c) an authority or person having power to require the production of documents or the answering of questions.

(4) In this section—

**produce** includes permit access to.

#### **195 Consultation with Aboriginal persons**

(1) The Secretary may approve an Aboriginal person as a person who 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 Secretary must not approve a person under this section unless the Secretary is satisfied that the person has relevant experience in working with Aboriginal children, whether or not in connection with their families or kinship groups.

#### **196 Consultation with Torres Strait Islanders**

(1) The Secretary may approve a Torres Strait Islander as a person who may provide advice and assistance to Torres Strait Islander families or kinship groups in relation to care options for Torres Strait Islander children for the purposes of this Act.

(2) The Secretary must not approve a person under this section unless the Secretary is satisfied that the person has relevant experience in working with Torres Strait Islander children, whether or not in connection with their families or kinship groups.

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

(1) Any notice required to be given to a person under this Act may be given—

(a) personally or by post, or



- (b) by email to an email address specified by the person for the service of documents of that kind, or
  - (c) by any other method authorised by the regulations for the service of documents of that kind.
- (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 Secretary may give notice at another address known to the Secretary if after duly attempting to give the notice at the nominated address the Secretary has been unable to notify the person.

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

- (1) If—
- (a) the Secretary 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 Secretary that the person is not literate in the English language but is literate in another language,
- the Secretary 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 Civil and Administrative Tribunal under Part 4A of the *Guardianship Act 1987*, do any such act on behalf of the person with the disability.

(3) The Secretary may—

- (a) refuse to supply any birth certificate to a person acting on behalf of a person with a disability, if there is a contact veto against contact by the person with the disability that remains in force, or
  - (b) direct an information source not to supply any such birth certificate,
- if the Secretary 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 Secretary 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 Secretary is to notify, in the Gazette, the fees or charges payable under this Act to the Secretary and (if the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary certifies, in writing, to the executor or administrator that the Secretary 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 NSW Trustee and Guardian, transfer to the NSW Trustee and Guardian, 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 NSW Trustee and Guardian is to apply any property transferred to the NSW Trustee and Guardian 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 NSW Trustee and Guardian 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.

#### **202A Entry and inspection under search warrant**

- (1) The Secretary or a police officer may apply to an authorised officer for a search warrant if the Secretary or police officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.
- (2) An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (3) A search warrant authorises the person named in the warrant—
  - (a) to enter the premises, and
  - (b) to inspect the premises for evidence of a contravention of this Act or the regulations.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section, **authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **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 the Local Court.
- (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 court attendance notice 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 court attendance notice, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* 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 Secretary, 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 Secretary may delegate to any person the exercise of—
  - (a) any of the functions delegated to the Secretary by the Minister, or
  - (b) any of the other functions of the Secretary 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 Secretary under this Act,
  - (c) money paid in relation to adoption services provided by the Secretary or accredited intercountry adoption service providers in relation to intercountry adoptions and accounting for the expenditure of such money,
  - (d), (e) (Repealed)
  - (f) the disclosure of information under the arrangements referred to in section 175A, including any procedures or requirements in relation to that disclosure and any requirements on any organisation to which the information is disclosed.
- (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 (Repealed)**

## **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**

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### **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 (Repealed)**

## 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 this Act or any Act that amends 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 service provider 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.

## **Part 3 Provisions consequent on enactment of [Adoption Amendment Act 2006](#)**

### **13 Definition**

In this Part—

***the 2006 amending Act*** means the [Adoption Amendment Act 2006](#).

### **14 Accreditation standards**

The accreditation standards prescribed by the regulations under section 13, as in force immediately before that section was amended by the 2006 amending Act, are taken to have been established by the Director-General under that section, as amended by that Act, and may accordingly be varied or revoked under that section as so amended.

### **15 Who can be adopted?**

Section 24, as amended by the 2006 amending Act, does not apply to any adoption order arising from an application for adoption made before the commencement of the amendments made to that section by that Act.

### **16 What is an adoption plan?**

Section 46, as amended by the 2006 amending Act, does not apply to any adoption plan that accompanied an application for an adoption order that was made before the commencement of the amendment made to that section by that Act.

### **17 When can Court dispense with consent of person other than the child?**

Section 67, as amended by the 2006 amending Act, does not apply to proceedings on an



application for an adoption order that was made before the commencement of the amendment to that section made by Schedule 1 [6] to that Act.

## **Part 4 Provisions consequent on enactment of [Adoption Amendment Act 2008](#)**

### **18 Definition**

In this Part, the **2008 amending Act** means the [Adoption Amendment Act 2008](#).

### **19 Changes to adoption process**

- (1) An amendment to Chapter 4 made by the 2008 amending Act applies in respect of an application for an adoption order made before the commencement of the amendment only if the Court, at the request of the applicant or applicants, directs that the amendment should be applied in respect of the application.
- (2) However, section 59 (2), as inserted by the 2008 amending Act, or an amendment to section 87 or 91 made by the 2008 amending Act does not apply in respect of an application for an adoption order made before that insertion or the commencement of the amendment (as the case requires).

### **20 Discretion to supply information**

The amendment made to section 140 by the 2008 amending Act extends to an adoption given effect to by an adoption order made before the commencement of the amendment.

### **21 Discretion to withhold supply of information**

- (1) A request made under section 141 before the repeal of that section is taken, on that repeal, to have been made under section 136A (as inserted by the 2008 amending Act).
- (2) Any authority issued by the Director-General under section 141 that, immediately before its repeal by the 2008 amending Act, still had effect, continues to have effect under section 136A (as inserted by the 2008 amending Act).

### **22 Publication of identifying material**

Sections 180 and 180A, as inserted by the 2008 amending Act, extend to the publication of material, on or after the commencement of those sections, relating to adoption applications made or disposed of before the insertion of those sections by that Act.

## **Part 5 Provision consequent on enactment of [Succession Amendment \(Intestacy\) Act 2009](#)**

### **23 Persons dying wholly or partially intestate before commencement of [Succession](#)**

### **Amendment (Intestacy) Act 2009**

The repeal of section 97 (2) by the *Succession Amendment (Intestacy) Act 2009* does not apply to or in respect of the estate of a person who died wholly or partially intestate before that repeal, and any such estate is to be distributed in accordance with the enactments and rules of law in force at the date of death of that person.

## **Part 6 Provision consequent on enactment of Adoption Legislation Amendment (Overseas Adoption) Act 2013**

### **24 Birth certificates for recognised foreign country adoptions**

- (1) Section 130A extends to an adoption granted before the commencement of that section (so as to require the giving of a record in respect of such an adoption to the Registrar) but only if a written request for the record to be given is made to the Director-General by—
  - (a) the adoptive parent or adoptive parents of the child, or
  - (b) if the child has attained the age of 18 years—the child.
- (2) The amendments made by the *Adoption Legislation Amendment (Overseas Adoption) Act 2013* to the *Births, Deaths and Marriages Registration Act 1995* extend to an adoption that was granted before the commencement of section 130A of this Act if the Director-General gives a record under that section to the Registrar in respect of the adoption.

## **Part 7 Provisions consequent on enactment of Child Protection Legislation Amendment Act 2014**

### **25 Definition**

In this Part—

**amending Act** means the *Child Protection Legislation Amendment Act 2014*.

### **26 Existing accreditation and applications for accreditation**

- (1) An organisation that, immediately before the substitution of Part 2 of Chapter 3 by the amending Act, was accredited as an adoption service provider under that Part is taken on that substitution to have been accredited under that Part as substituted for the period and subject to the conditions to which it was subject before the substitution.
- (2) An application for accreditation made by an organisation under Part 2 of Chapter 3 before its substitution by the amending Act and not finally dealt with before that substitution is to continue to be dealt with as if the Part had not been substituted unless the applicant elects to have the application dealt with under the Part as substituted.

## **Part 8 Provisions consequent on enactment of [Child Protection Legislation Amendment Act 2015](#)**

### **27 Principal officer of accredited adoption service provider**

Section 14, as inserted by the [Child Protection Legislation Amendment Act 2015](#), extends to things done by, or with the approval of, a principal officer before the commencement of that section in the same way as it applies to things done by, or with the approval of, a principal officer after that commencement.

### **28 Notification about other residents**

Sections 45AB and 45GB extend to any person residing on the same property as an applicant who has not been notified to the Secretary or a principal officer even if that person commenced residing on the same property as the applicant, or attained the age of 18 years, before the commencement of the relevant section.

## **Part 9 Provisions consequent on enactment of [Children and Young Persons \(Care and Protection\) Amendment Act 2018](#)**

### **29 Definition**

In this Part—

**amending Act** means the [Children and Young Persons \(Care and Protection\) Amendment Act 2018](#).

### **30 When can Court dispense with consent of person other than the child?**

Section 67, as amended by the amending Act, extends to proceedings on an application for an adoption order, that was made but not finally determined before the commencement of the amendments.

## **Part 10 Provisions consequent on enactment of [Stronger Communities Legislation Amendment \(Children\) Act 2021](#)**

### **31 Appointment of guardian ad litem**

- (1) A person selected before the commencement date by the relevant administrator to be a guardian ad litem in proceedings in the Court is taken to have been validly appointed as a guardian ad litem if—
  - (a) a request was made to the administrator by or on behalf of the Court for a person to be selected as a guardian ad litem for—
    - (i) a child the subject of adoption proceedings, or
    - (ii) an adoptive parent of a child the subject of adoption proceedings, or

- (iii) a birth parent of a child the subject of adoption proceedings, and
- (b) the administrator notified the Court of the name of the person selected.

(2) In this clause—

**commencement date** means the date on which section 124AA commenced.

**relevant administrator**, in relation to the selection of a guardian ad litem, means the person responsible at the time of the selection for administering the body known as the Guardian Ad Litem Panel, as constituted from time to time, before this Part commenced.

## Dictionary

### Note—

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

**Aboriginal**—see section 4.

**Aboriginal child placement principles** means the principles set out in section 35.

**accredited adoption service provider** has the same meaning as in the [Children's Guardian Act 2019](#).

**administrator**, of the Guardian Ad Litem Panel, means the person responsible for the constitution of the Guardian Ad Litem Panel under the [Children and Young Persons \(Care and Protection\) Act 1998](#).

**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 responsibility of or parental responsibility for 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 service provider concerned with the adoption.

**authorised carer** means any person who—

- (a) has care and responsibility for a child under out-of-home care arrangements made under the *Children and Young Persons (Care and Protection) Act 1998*, or

(b) has responsibility for the day-to-day care, welfare and development of a child under the *Family Law Act 1975* of the Commonwealth.

**birth parent**, in or in relation to Chapter 8, means a biological parent of an adopted person.

**care responsibility** has the same meaning as in section 157 of the *Children and Young Persons (Care and Protection) Act 1998*.

**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.

**Children's Guardian** means the Children's Guardian appointed under section 115 of the *Children's Guardian Act 2019*.

**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 Secretary.

**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 2 persons who—

- (a) are married to each other, or
- (b) are de facto partners of each other.

**Note—**

**Married** is defined elsewhere in this Dictionary and **de facto partner** is defined in section 21C (1) of the [Interpretation Act 1987](#) as follows—

For the purposes of any Act or instrument, a person is the **de facto partner** of another person (whether of the same sex or a different sex) if—

- (a) the person is in a registered relationship or interstate registered relationship with the other person within the meaning of the [Relationships Register Act 2010](#), or
- (b) the person is in a de facto relationship with the other person.

**Court** means the Supreme Court of New South Wales.

**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 responsibility of or parental responsibility for 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 parental responsibility.

**decision maker**, in relation to a decision about the adoption of a child, means the Court, the Secretary, an accredited adoption service provider or a principal officer of an accredited adoption service provider.

**Department** means the Department of Communities and Justice.

**designated person** means—

- (a) in relation to the Department of Communities and Justice—the Secretary, or
- (b) in relation to a hospital controlled, or health service provided, by a local health district within the meaning of the [Health Services Act 1997](#)—the chief executive officer of the district, 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 Ministry of Health—the Secretary of the Ministry, or
- (e) in relation to an accredited adoption service provider—the principal officer of the accredited adoption service provider, or
- (f) in relation to a private health facility within the meaning of the *Private Health Facilities Act 2007*—the licensee of the facility, 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.

**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*.

**function** includes a power, authority or duty.

**general consent** is defined in section 53.

**guardian ad litem**—see sections 123 (3) and 124 (3) for the functions of such a guardian.

**Guardian Ad Litem Panel** has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

**hospital** means—

- (a) a public hospital under the control of a local health district 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 health facility (within the meaning of the *Private Health Facilities Act 2007*).

**information source** means—



- (a) the Department of Communities and Justice, or
- (b) the Ministry of Health, or
- (c) an accredited adoption service provider, 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.

**integrated birth certificate**, in relation to an adopted person, means a certificate certifying the following—

- (a) the particulars relating to the adoption of the person based on the registered record kept under the *Births, Deaths and Marriages Registration Act 1995*,
- (b) if the person's birth is registered under the *Births, Deaths and Marriages Registration Act 1995*—the particulars relating to the birth of the person registered under section 17 of that Act,
- (c) if the person's birth is not registered under the *Births, Deaths and Marriages Registration Act 1995*—the information, if any, recorded on the Register pursuant to section 43(2)(b) of that Act that the Registrar considers appropriate for inclusion in the certificate in relation to the birth of the person.

**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.

**married** means—

- (a) two persons who are legally married to one another, or
- (b) two Aboriginal or Torres Strait Islander persons 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.

**out-of-home care** has the same meaning as it has in the [Children and Young Persons \(Care and Protection\) Act 1998](#).

**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 Secretary,
- (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** has the same meaning as in the [Children's Guardian Act 2019](#).

**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.

**research organisation** means an organisation prescribed by the regulations.

**revocation period** means the period within which consent to an adoption may be revoked under section 73 (2).

**Secretary** means the Secretary of the Department.

**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) the person's de facto partner.

**Note—**

**Married** is defined elsewhere in this Dictionary and **de facto partner** is defined in section 21C (1) of the [Interpretation Act 1987](#).

**State** includes a Territory.

**step parent** means, in relation to a particular person, another person who—

- (a) is not a birth parent, parent or adoptive parent of the particular person, and
- (b) is married to the particular person's birth parent or adoptive parent or is the de facto partner of the birth parent or adoptive parent.

**Note—**

**Married** is defined elsewhere in this Dictionary and **de facto partner** is defined in section 21C (1) of the [Interpretation Act 1987](#).

**Torres Strait Islander**—see section 4.

**Torres Strait Islander child placement principles** means the principles set out in section 39.