
FAMILY AND CHILDRENS SERVICES

FA301*

Adoption Act 1994

Adoption Amendment Regulations 1999

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Adoption Amendment Regulations 1999*.

2. Commencement

These regulations come into operation on the day after the day on which Part 3 of the *Adoption Amendment Act 1999* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Adoption Regulations 1995**.

[* Published in Gazette 29 December 1994, pp. 7171-7208.]

4. Regulation 6 amended

After regulation 6(2) the following subregulation is inserted —

“

- (3) If a private adoption agency is also accredited under regulation 23C, the functions that may be performed under a licence also include those functions that the agency may perform under regulation 23J.

”.

5. Regulation 6A inserted

After regulation 6 the following regulation is inserted —

“

6A. Breakdown in placement arrangements

If there is a breakdown in placement arrangements being supervised by a private adoption agency before an adoption order is made, the agency must consult with the Director-General about the placement and care of the child.

”.

6. Regulation 9 amended

Regulation 9 is amended as follows:

- (a) after paragraph (b) the comma is deleted and a semicolon is inserted;
- (b) after paragraph (b) the following paragraphs are inserted —

“

- (c) is, and is likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with a representative of the government of another country;
- (d) has not given an undertaking that while it holds a licence it will not enter into negotiations for the establishment of an adoption agreement with a representative of the government of another country;
- (e) does not have adequate financial resources to carry out the functions the body is authorized to perform under regulation 6;
- (f) does not have a principal officer who is a suitable person to supervise adoption

arrangements undertaken by the body having regard to —

- (i) his or her social science qualifications; and
 - (ii) experience in adoption, substitute care or family services;
- (g) does not employ staff with appropriate qualifications to —
- (i) assess a person who wishes to adopt a child; and
 - (ii) place prospective adoptees;
- and
- (h) does not have accommodation available for its use which —
- (i) is suitable for the conduct of the functions it may perform under regulation 6; and
 - (ii) does not form part of or is not adjacent to premises occupied by an association or body of persons, corporate or unincorporate, of birth parents, adoptive parents, or other participants in the adoption process,

”.

7. Regulation 10A inserted

After regulation 10 the following regulation is inserted —

“

10A. Conduct of private adoption agency

During the period a private adoption agency holds a licence, the agency must —

- (a) comply with the provisions of the *Adoption Act 1994*;
- (b) not collect funds for disbursement as aid to or disburse funds as aid to people living in another country;
- (c) not give money or other benefits to or receive money or other benefits from a person who collects funds for disbursement as aid to or disburses funds as aid to people living in another country;
- (d) not perform any functions other than functions that may be performed under a licence;
- (e) not provide an adoption service in respect of —
 - (i) a child domiciled in a Convention country unless the agency is accredited under regulation 23C; or

- (ii) a child domiciled in any other country that is not specified in the licence;
- (f) not issue publications promoting the adoption of children or offer preparation courses for individuals who wish to adopt a child from another country unless the publication or the content of the course has been approved by the Director-General; and
- (g) comply with, and ensure that its staff comply with, the Code of Conduct set out in Schedule 1 as if the Code applied, with all necessary modifications to, and in relation to a private adoption agency and, without limiting this, the Code applies as if a reference to an accredited body were a reference to a private adoption agency and a reference to the State Central Authority were a reference to the Director-General.

”.

8. Regulation 17 amended

Regulation 17(3) is amended as follows:

- (a) by deleting “the *District Court (Appeal) Rules 1977*” and inserting instead —
“ Order 8 of the *District Court Rules 1996* ”;
- (b) by deleting “rule 30 of those rules” and inserting instead —
“ rule 29 of that Order ”;
- (c) in paragraph (a) by deleting “30” and inserting instead —
“ 29 ”;
- (d) in paragraph (b) by deleting “those rules” and inserting instead —
“ that Order ”;
- (e) in paragraph (c) by deleting “those rules to clerk of a Local Court” and inserting instead —
“ that Order to a Clerk of the Local Court ”.

9. Part 2A inserted

After regulation 23 the following Part is inserted —

“

Part 2A — Hague Convention accreditation

23A. Interpretation

In this Part, unless the contrary intention appears —

“**accredited body**” means a person accredited under regulation 23C;

“authorized function” means a function that an accredited body is authorized to perform under regulation 23J;

“principal officer”, in relation to an accredited body, includes a person who is acting in the office of principal officer of the body.

23B. Application for accreditation or renewal of accreditation

An application for accreditation for the purposes of Article 9 of the Hague Convention or for a renewal of that accreditation must —

- (a) be in writing;
- (b) be in a form approved by the State Central Authority;
- (c) state the address of —
 - (i) the principal office of the applicant; and
 - (ii) the premises at which will be kept the records and documents relating to the functions the body is authorized to perform under regulation 23J;
- (d) nominate a person to be the principal officer of the proposed accredited body and the persons who would act as the principal officer of the body when the principal officer is unavailable; and
- (e) provide information relating to the applicant that is required by the State Central Authority for making a decision in relation to the application.

23C. Requirements to be satisfied by the applicant

The State Central Authority may accredit a person for the purposes of Article 9 of the Hague Convention or renew that accreditation but is not to do so if it appears to the Authority that the applicant —

- (a) is not a body corporate;
- (b) does not carry on activities or is not formed for purposes consistent with the welfare and best interests of children;
- (c) carries on activities or was formed for the purpose of trading or securing a pecuniary profit to its members;
- (d) is, and is likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with a representative of the government of another country;

- (e) has not given an undertaking that while it is an accredited body it will not enter into negotiations for the establishment of an adoption agreement with a representative of the government of another country;
- (f) does not have adequate financial resources to carry out the functions the body is authorized to perform under regulation 23J;
- (g) does not have a principal officer who is a suitable person to supervise adoption arrangements undertaken by the body having regard to —
 - (i) his or her social science qualifications; and
 - (ii) experience in adoption, substitute care or family services;
- (h) does not employ staff with appropriate qualifications to —
 - (i) assess a person who wishes to adopt a child; and
 - (ii) place prospective adoptees;and
- (i) does not have accommodation available for its use which —
 - (i) is suitable for the conduct of the functions it is authorized to perform under regulation 23J; and
 - (ii) does not form part of or is not adjacent to premises occupied by an association or body of persons, corporate or unincorporate, of birth parents, adoptive parents, or other participants in the adoption process,

or on the ground of any other relevant consideration.

23D. Conditions etc. of accreditation

The State Central Authority may issue or renew an accreditation subject to conditions and restrictions set out in, or provided with, the accreditation.

23E. Notification of application results

The State Central Authority must cause each body which applies for accreditation or renewal of accreditation to receive written notice of the result of the application.

23F. Notices to be given to Commonwealth Central Authority

- (1) As soon as practicable after the State Central Authority accredits a body under or renews the accreditation of a body under regulation 23C, the State Central Authority must give the Commonwealth Central Authority written notice of —
 - (a) the name, address, duties and powers of the accredited body; and
 - (b) the conditions or restrictions of the accreditation or renewal of accreditation, as the case may be.
- (2) As soon as practicable after a change to —
 - (a) the name, address, duties and powers of the accredited body; or
 - (b) the conditions or restrictions of accreditation,the State Central Authority must give the Commonwealth Central Authority notice of the change.
- (3) As soon as practicable after the State Central Authority revokes or suspends the accreditation of a body, the State Central Authority must give the Commonwealth Central Authority written notice of the revocation or suspension.
- (4) If an appeal under regulation 23M by an accredited body against the revocation or suspension of its accreditation is successful, the State Central Authority must give the Commonwealth Central Authority written notice of the decision of the District Court.

23G. Duration of accreditation

Accreditation has effect for one year from the day specified in the accreditation as the commencement date.

23H. Renewal of accreditation

- (1) An accredited body that wishes to have its accreditation renewed must apply for the renewal before the expiration of the accreditation.
- (2) An accreditation that is renewed has effect for one year from the expiration of the previous accreditation.

23I. Conduct of accredited body

During the period an accredited body performs the functions it has been authorized to perform under regulation 23J, the body must —

- (a) comply with the provisions of the *Adoption Act 1994*;

- (b) comply with the requirements of the Hague Convention relating to those functions;
- (c) not collect funds for disbursement as aid to or disburse funds as aid to people living in another country;
- (d) not give money or other benefits to or receive money or other benefits from a person who collects funds for disbursement as aid to or disburses funds as aid to people living in another country;
- (e) protect the confidentiality of any records held by it in relation to authorized functions;
- (f) keep and not destroy any records held by it in relation to authorized functions;
- (g) not perform any functions other than authorized functions;
- (h) not provide an adoption service in respect of a child domiciled in a country other than a Convention country unless the service is provided in accordance with a licence provided for by section 9 of the Act;
- (i) not issue publications promoting the adoption of children from Convention countries or offer preparation courses for individuals who wish to adopt a child from a Convention country unless the publication or the content of the course has been approved by the State Central Authority;
- (j) not, unless approved by the State Central Authority in writing, perform any authorized functions in any place other than Western Australia;
- (k) continue to comply with the requirements that the accredited body was required to satisfy under regulation 23C; and
- (l) comply with, and ensure that its staff comply with, the Code of Conduct set out in Schedule 1.

23J. Authorization of accredited body to perform certain functions

- (1) The State Central Authority may authorize an accredited body to perform any one or more of the following functions in relation to the adoption process —
 - (a) provide information to prospective adoptive parents who request information about intercountry adoptions;

- (b) conduct information sessions for prospective adoptive parents about intercountry adoptions;
- (c) perform the functions that would otherwise be performed by the Director-General under section 12 of the Act;
- (d) perform the functions that would otherwise be performed by the Director-General under section 37 of the Act;
- (e) perform the functions that would otherwise be performed by the Director-General under sections 38 and 39 of the Act;
- (f) perform the functions that would otherwise be performed by the Director-General under section 40 of the Act;
- (g) perform the functions that would otherwise be performed by the Director-General under section 43 of the Act;
- (h) perform the functions that would otherwise be performed by the Director-General under section 44 of the Act;
- (i) perform the functions that would otherwise be performed by the State Central Authority under Article 15 of the Hague Convention;
- (j) perform the functions that would otherwise be performed by the Director-General under sections 46 and 50 of the Act;
- (k) perform the functions that would otherwise be performed by the Director-General under sections 51 and 52 of the Act;
- (l) perform the functions that would otherwise be performed by the State Central Authority under Article 17, 18 or 19 of the Hague Convention;
- (m) perform the functions that would otherwise be performed by the Director-General under section 54 of the Act;
- (n) provide support and advice to a prospective adoptive parent following placement of a child with the person;
- (o) if there is a breakdown in placement arrangements before an adoption order is made, consult with the Director-General about the placement and care of the child;
- (p) perform the functions that would otherwise be performed by the Director-General under section 55 of the Act;
- (q) perform the functions that would otherwise be performed by the Director-General under sections 58 and 61 of the Act;

- (r) perform the functions that would otherwise be performed by the Director-General under section 134 of the Act;
 - (s) perform the functions that would otherwise be performed by the State Central Authority under Article 9a of the Hague Convention to provide adoption information until the child is 18 years of age;
 - (t) perform the functions that would otherwise be performed by the State Central Authority under Article 9d of the Hague Convention;
 - (u) provide a referral and support service for a party to an adoption following the making of an adoption order;
 - (v) perform administrative arrangements in relation to established programmes.
- (2) The functions that may be performed by an accredited body also include those referred to in the provisions of Parts 4 and 5 of the regulations as are relevant to the sections of the Act set out in subregulation (1) where those functions would otherwise be performed by the Director-General.

23K. Offences in relation to accreditation or renewal of accreditation applications

A person must not, in relation to an application for accreditation or renewal of accreditation, provide information in written or oral form that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$2 000.

23L. Revocation or suspension of accreditation

- (1) The State Central Authority may revoke or suspend an accreditation if the accredited body —
- (a) is no longer a suitable body to perform authorized functions, having regard to all relevant considerations including the matters referred to in regulation 23C;
 - (b) has contravened, or failed to comply with —
 - (i) a provision of the Act or these regulations; or
 - (ii) a condition or restriction attaching to an accreditation;

or

- (c) has, in relation to its application for accreditation or renewal of accreditation, provided information in written or oral form that the body knew to be —
 - (i) false or misleading in a material particular; or
 - (ii) likely to deceive in a material way.
- (2) A revocation or suspension of an accreditation is not effective unless the State Central Authority has —
 - (a) caused written notice of the intention to revoke or suspend the accreditation to be served personally or by registered post on the body's principal officer, stating the grounds on which the revocation or suspension is to be made and allowing the body 21 days within which to respond to the notice;
 - (b) considered the response of the body made within that time; and
 - (c) caused written notice of the revocation or suspension to be served personally or by registered post on the body's principal officer, stating the grounds on which the revocation or suspension is made.
- (3) Despite subregulation (2), if it appears to the State Central Authority that circumstances are of sufficient gravity to warrant the immediate suspension of an accreditation, the State Central Authority may suspend the accreditation without complying with paragraphs (a) and (b) of that subregulation.

23M. Appeal against refusal, revocation or suspension of accreditation

- (1) If the State Central Authority —
 - (a) refuses an application for accreditation or renewal of accreditation;
 - (b) revokes or suspends an accreditation; or
 - (c) attaches to an accreditation any condition or restriction that is not acceptable to the accredited body,

the body affected by the State Central Authority's decision may appeal to the District Court on the ground that the State Central Authority made an error of law or of fact in making the decision.
- (2) An appeal must be made within 21 days of the day of service of the notice of the State Central Authority's decision or such further period as the District Court

allows, but an appeal cannot be instituted after 4 months from the day of service of the notice.

- (3) Subject to subregulation (2), an appeal must be made and determined in accordance with Order 8 of the *District Court Rules 1996*, and for the purposes of rule 29 of that Order —
 - (a) a reference in rule 29 to an authority is to be taken to be a reference to the State Central Authority;
 - (b) a reference in that Order to a magistrate is to be taken to be a reference to the State Central Authority; and
 - (c) a reference in that Order to a Clerk of the Local Court is to be taken to be a reference to the Director-General.
- (4) Effect is to be given to the decision of the District Court on an appeal.

23N. Status of State Central Authority's decision pending appeal

- (1) If an appeal is instituted under this Part in relation to a decision of the State Central Authority, the decision continues to have effect pending the appeal unless the District Court otherwise orders.
- (2) The District Court may, at any time before the completion of the appeal, make an order as to the operation or otherwise of the decision and may revoke or amend an order made under subregulation (1).

23O. Accreditation to be published in *Gazette*

- (1) The State Central Authority is to cause to be published in the *Gazette* notice of the following —
 - (a) an accreditation under these regulations;
 - (b) a renewal of an accreditation;
 - (c) the revocation or suspension of an accreditation; and
 - (d) the variation or quashing of a decision of the State Central Authority, on appeal to the District Court.
- (2) A notice under subregulation (1) must specify —
 - (a) the name of the accredited body;
 - (b) the address of the principal office of the accredited body; and
 - (c) any conditions and restrictions attaching to the accreditation.

23P. Acts of principal officer deemed acts of accredited body

Acts or omissions of —

- (a) the principal officer;
- (b) a person acting with the authority or approval of the principal officer; or
- (c) a person acting on behalf of an accredited body,

are to be treated, for the purposes of these regulations, as the acts or omissions of the accredited body.

23Q. Effect of winding up, or expiry or revocation of accreditation

If an accredited body is wound up or its accreditation expires or is revoked —

- (a) all records and documents held by or under the control of the body or former body and which relate to the conduct of authorized functions become, by force of this regulation, the property of the Director-General on the winding up, expiry or revocation;
- (b) the Director-General may arrange for the names of persons listed in a register under regulation 23J(1)(h) that was held by the body or former body to be transferred to the register of the Director-General or another accredited body; and
- (c) the Director-General may arrange for the Director-General or another accredited body to perform the functions that the body or former body was authorized to perform under regulation 23J and may give the records and documents to the body for that purpose.

23R. Effect of suspension of accreditation

If the accreditation of an accredited body is suspended —

- (a) then for the period of the suspension, the Director-General may take possession of all records and documents held by or under the control of the body whose accreditation is suspended and which relate to the conduct of authorized functions; and
- (b) the Director-General may arrange for the Director-General or another accredited body to conduct, during the period of the suspension, the authorized functions.

23S. Powers of entry and offence

- (1) The Director-General or a person authorized by the Director-General may, during business hours, enter premises at which are kept records and documents relating to the conduct of authorized functions by an accredited body and may inspect and take copies, notes or extracts of, and take possession of, the records or documents.
- (2) A person must not hinder or obstruct the Director-General or an authorized person in the exercise of a power conferred by this regulation.

Penalty: \$2 000.

23T. Biannual report

An accredited body must —

- (a) by 28 July 1999; and
- (b) by 28 January and 28 July 2000, and 28 January and 28 July in each subsequent year,

cause to be prepared and submitted to the State Central Authority a report containing information on the operations of the body in relation to the performance of authorized functions by the body and any other information as the State Central Authority may direct in writing —

- (c) for the period between the commencement of its accreditation and 30 June or 31 December of the year of its accreditation, whichever is the shorter period; and
- (d) for each period of 6 months after 30 June or 31 December of the year in which it is required to make its first report under paragraph (c).

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10. Regulation 77 amended

Regulation 77(3) is amended as follows:

- (a) by deleting “the *District Court (Appeal) Rules 1977*” and inserting instead —
“ Order 8 of the *District Court Rules 1996* ”;
- (b) by deleting “rule 30 of those rules” and inserting instead —
“ rule 29 of that Order ”;
- (c) in paragraph (a) by deleting “30” and inserting instead —
“ 29 ”;

- (d) in paragraph (b) by deleting “those rules” and inserting instead —
“ that Order ”;
- (e) in paragraph (c) by deleting “those rules to a clerk of a Local Court” and inserting instead —
“ that Order to a Clerk of the Local Court ”.

11. Division 3 inserted in Part 8

After regulation 86 the following Division is inserted —

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Division 3 — Prescribed overseas jurisdiction

86A. Prescribed overseas jurisdiction

For the purposes of the definition of “overseas jurisdiction” in section 4(1) of the Act, a jurisdiction listed in Schedule 2 is a prescribed overseas jurisdiction.

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12. Schedules 1 and 2 inserted

After regulation 89 the following Schedules are inserted —

“

Schedule 1 — Code of conduct for an accredited body

[rr. 10A(g), 23I(l)]

1. Conflict of interest

A member of staff of an accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of his or her functions. Conflict of interest must be assessed by taking into account, amongst other things, the likelihood that a member of staff possessing a particular interest could be influenced, or might appear to be influenced, in the performance of his or her responsibilities on a particular matter. A member of staff must notify the State Central Authority that accredited the body if a potential or actual conflict of interest arises.

2. Acceptance of gifts or benefits

An accredited body or member of staff must not accept a gift, donation or benefit if it could be seen by a client as intended or likely to cause the member to undertake his or her responsibilities in a particular way, or deviate from the proper course of action.

3. Personal and professional behaviour

A member of staff of an accredited body must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of his or her ability.

4. Duties of staff of an accredited body

In the performance of duties, a member of staff of an accredited body —

- (a) must keep up to date with any changes in practice or procedure relating to intercountry adoption;
- (b) must comply with the laws, and any relevant administrative requirements of the Commonwealth and the State or internal Territory of accreditation;
- (c) must maintain and preserve record information systems in accordance with the requirements of the State Central Authority that accredited the body;
- (d) must treat all clients with courtesy, sensitivity and in confidence;
- (e) must not take any improper advantage of any information gained in the carrying out of his or her duties; and
- (f) must report to the State Central Authority that accredited the body any unethical behaviour or wrong doing by other members of staff of which he or she is aware.

5. Fairness and equity

The manner in which an accredited body deals with issues or clients must be consistent, prompt and fair. This includes —

- (a) dealing with matters in accordance with approved procedures;
- (b) dealing with matters without discrimination on any grounds; and
- (c) providing appropriate review and appeal mechanisms.

6. Exercise of discretionary power

If an accredited body proposes to exercise a discretionary power in relation to a particular case, the body must ensure that all relevant considerations are taken into account in regard to the particular merits of the case.

7. Public comment and the use of information

While staff members of an accredited body have the right to make public comment and to enter into public debate on political and social issues, the accredited body must refrain from public comment where that comment is sufficiently strong to undermine the accredited body, the State Central Authority that accredited the body or the Commonwealth Central Authority.

8. Confidentiality

An accredited body or a member of staff must not disclose official information or documents acquired in the course of performing the functions of an accredited body unless the proper authority has been sought and given.

Schedule 2 — Prescribed overseas jurisdiction

[r. 86A]

People's Republic of China

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13. Transitional

If an application for a licence provided for by section 9 of the Act is made before the commencement of these regulations, the application is to be dealt with as if these regulations had not come into operation.

By Command of the Governor,

ROD SPENCER, Clerk of the Executive Council.