



Western Australia

## **Adoption Act 1994**

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Western Australia

## Adoption Act 1994

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### CONTENTS

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<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Principles	2
4.	Interpretation	2
4A.	Presumptions of parentage	8
5.	Act binds Crown	9
<b>Part 2 — Adoption agencies</b>		
<b>Division 1 — Authority to conduct adoption services</b>		
6.	Adoption services to be conducted by or on behalf of CEO	10
7.	Adoption services as to step-parent adoptions	10
8.	Offence	10
<b>Division 2 — Private adoption agencies</b>		
9.	Private adoption agencies	11
10.	Regulations as to private adoption agencies	11
11.	Offence of holding out, etc.	12
<b>Division 3 — Adoption applications committee</b>		
12.	Establishment of adoption applications committee	13
13.	Functions of adoption applications committee	13

14.	Membership of adoption applications committee	14
15.	Procedures etc. of adoption applications committee	14
<b>Part 3 — The adoption process</b>		
<b>Division 1 — Preliminary matters</b>		
16.	Duties of CEO as to birth parents	15
16A.	Matters relevant to the adoption process for Aboriginal or Torres Strait Islander children	16
<b>Division 2 — Consent to adoption</b>		
17.	Persons to give consent	16
18.	Effective consent	17
20.	Specification of prospective adoptive parent	19
21.	Man who may be a prospective adoptee's father to be notified	19
22.	Revocation of consent	21
23.	Notice of revocation	21
<b>Division 3 — Court applications as to consents to adoption and notices</b>		
24.	Orders dispensing with consent	22
25.	Orders as to service of notice	23
26.	Application for parenting order	24
<b>Division 3A — Court applications for determinations of parentage</b>		
26A.	Definitions	25
26B.	Application of this Division	25
26C.	Application for determination of parentage	25
26D.	Orders on application for determination of parentage	26
26E.	Orders associated with parentage testing orders	27
26F.	Orders directed to persons 18 or over	28
26G.	Orders directed to children under 18	28
26H.	No liability if parent etc. consents	29
26I.	Reports of information obtained may be received in evidence	29
26J.	Revocation of consent	29
<b>Division 4 — Guardianship of prospective adoptees</b>		
27.	Guardians of children awaiting adoption where all consents accounted for	30

28.	Guardianship of children awaiting adoption where not all consents finalised	31
29.	Cessation of guardianship of children awaiting adoption	32
30.	If not possible or desirable to place a child for adoption	32
31.	Care of child pending placement for adoption	33
32.	Responsibilities of guardians of children awaiting adoption	33
33.	Renunciation and transfer of guardianship by CEO	33
34.	Transfer of guardianship to CEO	34
35.	Offence	35
	<b>Division 5 — Court applications as to guardianship of children awaiting adoption</b>	
36.	Orders as to guardianship under Division 4	35
	<b>Division 6 — Prospective adoptive parents</b>	
37.	Duty of CEO as to information about adoptive parenthood	36
38.	Application to be a prospective adoptive parent	36
39.	Criteria for application	37
40.	Assessment of applicants for adoptive parenthood	38
41.	Adoption applications committee	39
42.	Decisions of adoption applications committee	39
43.	Reasons for decision	40
44.	CEO to keep registers	40
	<b>Division 7 — Placement of prospective adoptees</b>	
45.	Selection of prospective adoptive parents	41
46.	Negotiation of adoption plans	42
47.	Duty of CEO as to adoption plans	43
48.	Placement following adoption plan	43
49.	Placement if no adoption plan	44
50.	Orders to constitute provisions of adoption plans	44
51.	Medical report as to child's health before placement	45
52.	Restrictions on placement	45
53.	Placing children who cannot be placed under s. 52	48
54.	Supervision of placements	48

	<b>Division 8 — Adoptions by step-parents or carers</b>	
55.	Adoption plans in adoptions by step-parents or carers	48
	<b>Division 9 — Applications for adoption orders</b>	
56.	Placement to be for at least 6 months	49
57.	Time for applying for adoption order may be shortened	49
58.	Notice of intention to apply for adoption order	49
59.	Notice where birth parent deceased or cannot be found	50
60.	Court applications as to notices	51
61.	Report for adoption proceedings	51
62.	Application for adoption order	51
63.	Intervention by CEO or other persons in applications for adoption orders	52
64.	Evidence on application for adoption order	52
	<b>Division 10 — Adoption orders</b>	
65.	Jurisdiction	53
66.	Who may be adopted	53
67.	Who may adopt	54
68.	Adoption orders in relation to children	55
69.	Adoption orders in relation to adults	58
70.	Court may allow further parties to adoption plans	59
71.	Other powers on adoption applications	59
72.	Approval and enforcement of adoption plans	59
73.	Dispensing with adoption plans	60
74.	Name of adoptee	60
75.	Effect of adoption orders	61
76.	Variation of adoption plans	63
77.	Discharge of adoption order	64
78.	Court to notify Registrar of adoption order etc.	66
	<b>Division 11 — Adoption of a child in Western Australia who is to live in a Convention country</b>	
78A.	Arrangements for adoption	67
78B.	Issue of adoption compliance certificate	68

<b>Part 4 — Adoptions information</b>		
<b>Division 1 — Adoption information services</b>		
79.	Duties of CEO as to adoption information services	69
80.	CEO to notify certain persons in event of death	71
<b>Division 2 — Access to adoptions information</b>		
81.	Interpretation and application of Division 2	71
82.	CEO's authority to allow access to information	72
83.	Court orders as to access to information	73
84.	Court records	74
85.	Registration of birth	75
86.	Portion of registration of birth not referring to adoption	75
88.	Non-identifying information held by adoption agencies	76
89.	If party to adoption deceased	77
90.	If adoptee cannot be found	78
<b>Division 3 — Exchange and preservation of adoptions information</b>		
91.	Family Court to provide information to CEO	80
92.	Registrar to provide information to CEO	80
93.	Persons or bodies to provide information to CEO	80
94.	Preservation of records as to adoptions information	81
<b>Division 4 — Contact vetoes</b>		
99.	Register of contact vetoes	82
100.	Duration of contact vetoes	82
102.	Confirmation, cancellation or variation of vetoes	83
103.	Undertakings not to contact person who has lodged contact veto	84
104.	Offence to breach undertaking or harass	84
<b>Division 5 — Private contact and mediation licensees</b>		
105.	Contact and mediation agencies to be licensed	85
106.	Licences to conduct contact and mediation services	85
107.	Regulations as to contact and mediation agencies	86
108.	Contact and mediation agencies bound by contact veto	86

	<b>Division 6 — Updating non-identifying information</b>	
109.	CEO to attempt to obtain current information	87
	<b>Part 5 — Review of decisions and appeals</b>	
	<b>Division 1 — Review by CEO</b>	
110.	Review by CEO	89
111.	Nature of review by CEO and evidence	89
112.	Powers of CEO on review	90
	<b>Division 2 — Decisions of the adoption applications committee</b>	
113.	CEO may direct committee to review its own procedures	90
	<b>Division 3 — Appeals to Family Court</b>	
114.	Matters that may be appealed to the Family Court	91
115.	Nature of appeal to Family Court	91
116.	Role of CEO in appeals from decisions of committee	92
117.	Status of decision pending appeal	92
	<b>Division 4 — Appeals to Court of Appeal</b>	
118.	Appeals from decision of Family Court under Division 3	92
119.	Appeals from other decisions of Family Court not affected	93
	<b>Part 6 — Offences</b>	
120.	Interpretation	94
121.	Territorial application	94
122.	Payments for adoption, adoptions services etc.	94
123.	Restriction on advertising	95
124.	Restriction on publication of identity of parties	96
125.	Undue influence	97
126.	Harassment etc.	98
127.	Confidentiality	98
128.	Authority, and time in which, to prosecute	99
129.	Other evidentiary matters	100



<b>Part 7 — Miscellaneous</b>		
<b>Division 1 — Delegation and protection</b>		
130.	Delegation by CEO	101
130A.	Delegation by State Central Authority	101
131.	Protection from liability etc.	101
132.	Distribution of property not affected without notice	102
<b>Division 2 — Proceedings</b>		
133.	Proceedings to be private	103
134.	Representation of children	103
<b>Division 2A — State Central Authority</b>		
134A.	State Central Authority	104
134B.	Functions of the State Central Authority	105
<b>Division 3 — Non-Western Australian adoptions</b>		
135.	Arrangements with other States and Territories	105
136.	Recognition of other Australian adoptions	105
136A.	Recognition in Western Australia of an adoption in a Convention country of a child from that country	106
136B.	Order of termination of relationship of child and parent in relation to a simple adoption	106
136C.	Recognition in Western Australia of an adoption of a child from a Convention country to another Convention country	107
136D.	Effect of recognition of adoption	108
136E.	Recognition of a decision in a Convention country to convert a simple adoption	109
136F.	Refusal to recognise an adoption or a decision to convert a simple adoption	110
136G.	Evidential value of adoption compliance certificate	111
136H.	Report on person who wishes to adopt a child in a Convention country	111
137.	Arrangements with other countries	111
138.	Recognition of non-Australian adoptions	112
138A.	Recognition in Western Australia of an adoption in an overseas jurisdiction of a child from that jurisdiction	114
138B.	Effect of recognition of adoption	115
138C.	Evidential value of adoption certificate	116

Contents

---

138D.	Report on person who wishes to adopt a child in an overseas jurisdiction	116
139.	CEO to supervise children adopted outside Australia	117
	<b>Division 4 — Financial assistance and payment for services</b>	
140.	Financial assistance	118
141.	Payment for services	118
	<b>Division 5 — Rules and regulations</b>	
142.	Rules	119
143.	Regulations	119
	<b>Division 6 — Repeal, transitional and savings, consequential amendments and review</b>	
144.	Repeal of <i>Adoption of Children Act 1896</i> , transitional and savings	121
146.	Review	122
	<b>Schedule 1</b>	
	<b>Effective consent</b>	
1.	Information and counselling before consent	123
2.	Witnesses	124
3.	Certificate of witness	125
	<b>Schedule 2</b>	
	<b>Rights and responsibilities to be balanced in adoption plans</b>	
1.	Infancy	126
2.	Childhood	126
3.	Adolescence	127
4.	Adulthood	127

**Schedule 2A — Aboriginal and  
Torres Strait Islander  
children — placement for  
adoption principle**

**Schedule 2B — The Hague  
Convention**

**Schedule 3**

**Transitional and savings**

1.	Interpretation	144
2.	Interpretation Act 1984 not affected	144
3.	Further savings	144
4.	Application for order of adoption	144
5.	Child placed with a view to adoption under repealed Act	144
6.	Consent given but child not placed under repealed Act	145
7.	Waiting lists under repealed Act of prospective adoptive parents	145
8.	Some provisions of this Act to apply to adoptions under repealed Act	145
9.	Some provisions of this Act as to access to information not to apply to adoptions under repealed Act	146
10.	Consent not required if person to consent is deceased	148
11.	If adoptee incapable of giving consent	149
12.	If adoptive or birth parents incapable of giving consent	149
13.	Adoptee under 18 who cannot obtain all required consents	149
14.	Record of Court proceedings under repealed Act	150
15.	Original and re-registrations of birth under repealed Act	150

**Notes**

	Compilation table	151
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Western Australia

## **Adoption Act 1994**

**An Act to make provision for the adoption of persons and for the parties to adoptions and their relatives to have access to information about the parties, to repeal the *Adoption of Children Act 1896*, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Adoption Act 1994*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Principles**

- (1) The paramount considerations to be taken into account in the administration of this Act are —
  - (a) the welfare and best interests of a child who is an adoptee or a prospective adoptee;
  - (b) the principle that adoption is a service for a child who is an adoptee or a prospective adoptee; and
  - (c) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.
- (2) It is acknowledged that adoption is not part of Aboriginal or Torres Strait Island culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.

*[Section 3 inserted by No. 8 of 2003 s. 4.]*

### **4. Interpretation**

- (1) In this Act, unless the contrary intention appears —

“**Aboriginal person**” means a person who is a descendant of Aboriginal people of Australia;

“**access**”, in relation to information, includes the inspection of a document containing the information and the receipt of a

document or extract or copy of a document that contains the information;

**“adoptee”** means a person who is adopted under an adoption order;

**“adoption applications committee”** means the committee appointed under section 12;

**“adoption authority”** means a person, body or office in an overseas jurisdiction responsible for approving the adoption of children;

**“adoption certificate”**, in relation to an adoption, means a certificate or other document issued by an adoption authority in the overseas jurisdiction in which the child to whom the certificate relates was habitually resident before being adopted, stating that —

- (a) the adoption took place in accordance with the laws of that overseas jurisdiction; and
- (b) the CEO, or a person or a delegate of a person whose functions in another State or a Territory correspond with those of the CEO under this Act, agreed that the adoption may proceed;

**“adoption compliance certificate”** means a certificate that is referred to in Article 23 of the Hague Convention;

**“adoption order”** means an order for the adoption of —

- (a) a child under section 68(2);
- (b) an adult under section 69(1); or
- (c) a child under section 78A(2);

**“adoption plan”** has the meaning given by section 46(2), whether the provisions of the plan are agreed between the parties to the plan, determined by the Court or included in the plan under section 70(2) or 76(4);

**“adoption service”** means any one of the things referred to in section 8(1);

**s. 4**

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**“adoptive parent”** means a person who adopts, or 2 persons who jointly adopt, another person under an adoption order;

**“Australian citizen”** means a person who is an Australian citizen under the *Australian Citizenship Act 1948* of the Commonwealth;

**“birth parent”** means, in relation to a child or adoptee —

- (a) the mother of the child or adoptee; and
- (b) the father or parent of the child or adoptee under section 6A of the *Artificial Conception Act 1985*;

**“carer”** means, in relation to a child, a person who has had, or 2 persons who have jointly had, for at least 3 years, the daily care and control of the child and the responsibility for making decisions concerning the daily care and control of the child through a placement arranged or approved by the Department for the care of the child by the person or persons;

**“Central Authority”** means an authority designated under Article 6 of the Hague Convention for a Convention country;

**“CEO”** means the chief executive officer of the Department;

**“child”** means a person who is less than 18 years of age; and in the absence of positive evidence as to age, means a person who is apparently less than 18 years of age;

**“Commonwealth Central Authority”** has the same meaning as it has in the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth;

**“competent authority”** means an authority of a Convention country that has power to issue an adoption compliance certificate and that has been notified to the depository of the Hague Convention under Article 23.2 of the Convention;



**“contact”** includes a communication, or attempted communication, by any means including through another person;

**“contact and mediation licensee”** means a person who holds a licence provided for by Division 5 of Part 4;

**“contact veto”** means a statement that was registered under Part 4 Division 4 before the veto cut off day by which a person forbids another person to contact the first-mentioned person;

**“country”** includes a state, province or other territory that is one of 2 or more such entities that together form a country;

**“Court”** means the Family Court of Western Australia;

**“Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**“effective consent”** has the meaning given by section 18;

**“Hague Convention”** means the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 2B;

**“identifying information”** means any information from which the identity of a person may be ascertained;

**“lawyer”** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

**“lineal relative”**, in relation to a person, means each of the following people —

- (a) the person’s parent or remoter lineal ancestor;
- (b) the person’s child or remoter lineal descendant;
- (c) the person’s sibling of the whole or half blood,

**s. 4**

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whether the relationship is established by, or traced through, marriage, a written law or a natural relationship;

**“medical practitioner”** means a person who is registered under the *Medical Act 1894* and who has a current entitlement to practise under that Act;

**“mother”** means, in relation to a child or adoptee, the woman who gave birth to the child or adoptee;

**“overseas jurisdiction”** means a country prescribed as an overseas jurisdiction;

**“parental responsibility”** means, in relation to a child, all the duties, powers, responsibilities and authority which, by law, parents have in relation to children;

**“party to an adoption”** means —

(a) in relation to a proposed adoption —

- (i) the prospective adoptee;
- (ii) the prospective adoptee’s birth parents; and
- (iii) the prospective adoptive parent;

and

(b) in relation to an adoption —

- (i) the adoptee;
- (ii) the adoptee’s birth parents; and
- (iii) the adoptee’s adoptive parent;

**“private adoption agency”** means a body corporate which holds a licence provided for by Division 2 of Part 2;

**“Registrar”** means the Registrar of Births, Deaths and Marriages;

**“relative”**, in relation to a person, means each of the following people —

(a) the person’s —

- (i) spouse or de facto partner;
- (ii) parent or other ancestor;

- (iii) child or other descendant;
- (iv) step-parent or step-child;
- (v) sibling;
- (vi) uncle or aunt,

whether the relationship is of the whole or half blood, established by, or traced through, marriage, a written law or a natural relationship;

- (b) in the case of an Aboriginal person, a person regarded under the customary law or tradition of the person's community as the equivalent of a person mentioned in paragraph (a);
- (c) in the case of a Torres Strait Islander, a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a person mentioned in paragraph (a);

**“representative”**, in relation to a child means, the child's representative appointed under section 134(1);

**“revocation period”** means the period under section 22, within which a consent to an adoption may be revoked;

**“State Central Authority”** means the person appointed under section 134A to be the Central Authority for the State of Western Australia for the purpose of Article 6.2 of the Hague Convention;

**“step-parent”** means, in relation to a person, another person who —

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

**“Torres Strait Islander”** means a person who is a descendant of the indigenous inhabitants of the Torres Strait Islands;

**s. 4A**

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“**veto cut off day**” means the day fixed under section 2(1) of the *Adoption Amendment Act (No. 2) 2003* <sup>2</sup>.

- (2) A reference in this Act to a married person is a reference to —
- (a) a person who is married; or
  - [(b) deleted]*
  - (c) an Aboriginal person or a Torres Strait Islander who is regarded by the community in which the person lives as being married in accordance with the customs or rules of the community.
- (3) A reference in this Act to a Convention country is, subject to Article 45 of the Hague Convention, a reference to —
- (a) a country specified in column 2 in Schedule 2 to the *Family Law (Hague Convention on Inter-country Adoption) Regulations 1998* of the Commonwealth;
  - (b) any other country for which the Hague Convention has entered into force, other than —
    - (i) Australia; and
    - (ii) a country in respect of which Australia has raised an objection under Article 44 of the Hague Convention.

*[Section 4 amended by No. 57 of 1997 s. 17; No. 41 of 1997 s. 4; No. 40 of 1998 s. 6(2); No. 7 of 1999 s. 4 and 8; No. 3 of 2002 s. 6; No. 8 of 2003 s. 5; No. 65 of 2003 s. 12; No. 34 of 2004 s. 251.]*

**4A. Presumptions of parentage**

The presumptions of parentage set out in Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997* apply when considering, for the purposes of this Act, who is —

- (a) a parent of a person who is a prospective adoptee; or
- (b) a birth parent of a person who is an adoptee.

*[Section 4A inserted by No. 8 of 2003 s. 6.]*

**5. Act binds Crown**

This Act binds the Crown.

## **Part 2 — Adoption agencies**

### **Division 1 — Authority to conduct adoption services**

#### **6. Adoption services to be conducted by or on behalf of CEO**

- (1) The CEO is to conduct adoption services and may delegate that function to officers of the Department or such other persons who the CEO thinks are suitable.
- (2) An adoption service is conducted by a delegate of the CEO only if the person conducting the adoption service is authorised in writing by the CEO to conduct the adoption service, and the adoption service is —
  - (a) conducted for the purpose or case that is specified in the authority; and
  - (b) in accordance with any condition or restriction imposed by the authority.

*[Section 6 amended by No. 34 of 2004 s. 251.]*

#### **7. Adoption services as to step-parent adoptions**

Adoption services may be conducted by the birth parent of a child who has the responsibility for the long-term and day-to-day care, welfare and development of the child or a person acting on behalf of that birth parent, with a view to the child's adoption by a step-parent of the child.

*[Section 7 amended by No. 41 of 1997 s. 6.]*

#### **8. Offence**

- (1) A person must not —
  - (a) make an arrangement for or towards or with a view to the adoption of a child;
  - (b) conduct negotiations for or towards or with a view to the adoption of a child;
  - (c) arrange or participate in a change of a child's place of residence with a view to the adoption of the child; or

- (d) assist in the preparation or mediation of an adoption plan or a variation of an adoption plan.

Penalty: \$25 000 and 2 years' imprisonment.

- (2) This section does not apply to —
  - (a) the CEO or a person authorised under section 6(2);
  - (b) a person to whom section 7 applies; or
  - (c) a private adoption agency, where the adoption service is conducted under and in accordance with a licence provided for by Division 2.

*[Section 8 amended by No. 34 of 2004 s. 251.]*

### **Division 2 — Private adoption agencies**

#### **9. Private adoption agencies**

- (1) The Minister may grant a licence to a body corporate to conduct adoption services and to perform other functions for the purposes of this Act.
- (2) An application for a licence can only be made during a period of time set by the Minister as a period during which applications for licences can be made.
- (3) The Minister is to publish the periods of time set under subsection (2) in such manner as the Minister thinks is appropriate.

*[Section 9 amended by No. 8 of 2003 s. 7(1) and (2).]*

#### **10. Regulations as to private adoption agencies**

The following matters in relation to applications under, and licences provided for by, section 9 are to be prescribed by regulations —

- (a) the functions that may be performed under a licence;
- (b) the qualifications of and requirements to be satisfied by applicants;

**Adoption Act 1994**

**Part 2** Adoption agencies

**Division 3** Adoption applications committee

**s. 11**

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- (c) the procedure for applications and grounds for refusal of applications;
- (d) the duration, renewal, revocation and suspension of licences;
- (e) the effect of revocation or suspension of licences, in relation to records and documents held by the licensee or former licensee;
- (f) the conferral of a right to apply to the State Administrative Tribunal for a review of a decision of the Minister as to an application or licence;
- (g) the requirements for public notification of applications for licences and the making of submissions in relation to such applications;
- (ga) the undertaking by the CEO of reviews of the operations of private adoption agencies;
- (h) the provision of information to the CEO by private adoption agencies in relation to the adoption services conducted by them, whether for the purposes of a review of an agency's operations under regulations made under paragraph (ga), a review under Part 5 Division 1, or otherwise; and
- (i) such other matters as are necessary or expedient for giving effect to this Division.

*[Section 10 amended by No. 8 of 2003 s. 8; No. 34 of 2004 s. 251; No. 55 of 2004 s. 11.]*

**11. Offence of holding out, etc.**

A person, not being a private adoption agency, is not to hold himself, herself or itself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he, she or it is a private adoption agency.

Penalty: \$10 000 and 12 months' imprisonment.



**Division 3 — Adoption applications committee**

*[Heading amended by No. 8 of 2003 s. 9.]*

**12. Establishment of adoption applications committee**

The CEO is to appoint an adoption applications committee in accordance with this Division.

*[Section 12 inserted by No. 8 of 2003 s. 10; amended by No. 34 of 2004 s. 251.]*

**13. Functions of adoption applications committee**

- (1) The functions of the adoption applications committee are —
  - (a) to consider whether or not persons who have applied to the CEO under section 38(1) are suitable for adoptive parenthood; and
  - (b) to approve, either generally or in accordance with subsection (2), or not approve, such persons as prospective adoptive parents.
- (2) The adoption applications committee may approve a person as a prospective adoptive parent for adoptive parenthood of children in one or more of the following categories —
  - (a) children who are of an age, origin or ethnic background specified by the committee;
  - (b) children who require medical, behavioural or psychological care specified by the committee;
  - (c) children who are not of an age, origin or ethnic background specified by the committee;
  - (d) children who do not require medical, behavioural or psychological care specified by the committee.

*[Section 13 amended by No. 8 of 2003 s. 11; No. 34 of 2004 s. 251.]*

**14. Membership of adoption applications committee**

- (1) The adoption applications committee is to consist of at least 4 members.
- (2) The CEO is to select the members from persons who the CEO thinks have relevant expertise or experience but at least one of the members is to be independent of the Department.

*[Section 14 amended by No. 8 of 2003 s. 12; No. 34 of 2004 s. 251.]*

**15. Procedures etc. of adoption applications committee**

Subject to section 14, the constitution and procedures of, and other matters relating to, the adoption applications committee —

- (a) may be prescribed by regulation; and
- (b) if not prescribed by regulation, may be determined by the adoption applications committee in respect of the business conducted by it.

*[Section 15 amended by No. 8 of 2003 s. 13.]*

## **Part 3 — The adoption process**

### **Division 1 — Preliminary matters**

*[Heading inserted by No. 8 of 2003 s. 14.]*

#### **16. Duties of CEO as to birth parents**

- (1) The CEO is to, if requested by a birth parent or prospective birth parent who is thinking about relinquishing her or his child for adoption —
  - (a) provide the persons known to the CEO as the child's birth parents with information on the matters, and in the manner, set out in clause 1(a) of Schedule 1;
  - (b) provide counselling services to the birth parents;
  - (c) assist the birth parents to make arrangements for the child to be cared for;
  - (d) before the revocation period expires, provide the birth parents with such opportunities for access to the child, as the CEO thinks appropriate;
  - (e) assist in the making of arrangements to obtain information that is, or is likely to become, relevant to the diagnosis, care or treatment of any medical condition of the child; and
  - (f) give the birth parents an opportunity to provide information that is, or is likely to become, relevant to the placement of the child with a view to the child's adoption, and the adoption of the child.
- (2) The CEO is to commence the provision of a service requested under subsection (1) within 7 days of the request.

*[Section 16 amended by No. 34 of 2004 s. 251.]*

**16A.    Matters relevant to the adoption process for Aboriginal or Torres Strait Islander children**

- (1) The CEO is to ensure that an officer of the department who is an Aboriginal person or a Torres Strait Islander is involved at all relevant times to assist in the adoption process of a child who is an Aboriginal person or a Torres Strait Islander.
- (2) The CEO is to consult with an Aboriginal or Torres Strait Islander agency that is approved by the CEO for the purposes of this section, regarding the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander.

*[Section 16A inserted by No. 8 of 2003 s. 15; amended by No. 34 of 2004 s. 251.]*

**Division 2 — Consent to adoption**

**17.    Persons to give consent**

- (1) Subject to section 24(2), the following persons' effective consent to a child's adoption is required —
  - (a) where the child has not been adopted before —
    - (i) the child's mother; and
    - (ii) the child's father or parent under section 6A of the *Artificial Conception Act 1985*;
  - or
  - (b) where the child has been adopted before —
    - (i) in this State; or
    - (ii) elsewhere if under section 136 or 138 the adoption has the same effect as an adoption order,  
each adoptive parent of the child; and
  - (c) in every case —
    - (i) each of the child's guardians; and

- (ii) where the child will be 12 or more years of age at the time when the application for an adoption order is filed in the Court, the child.
- (2) The person to whom a person referred to in subsection (1) is married, or in a de facto relationship with, is not required to consent to the adoption order being made unless the first-mentioned person is also a person referred to in subsection (1).

*[Section 17 amended by No. 3 of 2002 s. 7.]*

**18. Effective consent**

- (1) A consent to a child's adoption is not effective unless —
  - (a) the consent is given at least 28 days after the child is born;
  - (b) the consent is given at least 28 days after the person whose consent is required receives the information and, if requested, the counselling mentioned in clause 1 of Schedule 1;
  - (c) the consent is in writing in a form that has been approved by the CEO;
  - (d) a separate form of consent is signed by each person whose consent is required, and witnessed in accordance with clause 2 of Schedule 1;
  - (da) in the case of a proposed adoption by a step-parent of a child, the CEO has had at least 30 days to comment on the provisions of a proposed adoption plan prepared for the purposes of section 55(1); and
  - (e) the form of consent is delivered to the CEO or, in the case of a proposed adoption by a step-parent of the child, to the prospective adoptive parent.
- (2) A consent is not effective if it has been revoked during the revocation period.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 2** Consent to adoption

**s. 18**

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- (3) If the CEO's consent to a child's adoption is required because the CEO is a guardian of the child, subsection (1)(b) and clauses 1 and 3 of Schedule 1 do not apply.
- (4) A consent to a child's adoption given in another State or a Territory under the law of the other State or the Territory is an effective consent for the purposes of this Act.
- (5) A consent is not effective if —
- (a) it is obtained by fraud, duress or material inducement;
  - (b) a material particular in the form of consent is altered without the authority of the person who signed the form; or
  - (c) a person purporting to give the consent is not, on the day on which the form of consent is signed, physically or mentally capable of giving consent or understanding the nature of a consent to adoption under this Act.
- (6) A consent to a child's adoption is not rendered ineffective solely by reason of an adoption order not being made on an application to adopt the child.
- (7) The consent of a child's birth parent who has not reached 18 years of age to the child's adoption is not effective unless —
- (a) a parent or guardian of the birth parent; or
  - (b) in the case where —
    - (i) the child's birth parents are lineal relatives; or
    - (ii) there has been a breakdown in the relationship between the birth parent and his or her parent or guardian,the CEO,

agrees with the proposed adoption of the child and provides an affidavit by way of evidence of that agreement.

*[Section 18 amended by No. 3 of 2002 s. 8; No. 8 of 2003 s. 16; No. 34 of 2004 s. 251.]*

[19.     *Repealed by No. 8 of 2003 s. 17.*]

**20.     Specification of prospective adoptive parent**

A person may not be specified as a child's prospective adoptive parent in a form of consent to the child's adoption unless the person —

- (a)    is a —
  - (i)    step-parent; or
  - (ii)   carer,  
of the child; and
- (b)    wishes to adopt the child.

**21.     Man who may be a prospective adoptee's father to be notified**

- (1)    The CEO, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is to notify, in accordance with subsections (2), (2a) and (2b) —
  - (a)    any man who might be presumed to be the child's father because of a presumption set out in section 188 or 189 of the *Family Court Act 1997*; and
  - (b)    if applicable, any man (not being a man who could be presumed to be the child's father because of a presumption set out in Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997*) who, to the knowledge of the CEO or that prospective adoptive parent, is a person who has been named as or has claimed to be the child's father.
- (2)    The notification referred to in subsection (1) is to inform the man —
  - (a)    of the consent or consents to the child's adoption;
  - (b)    that if, before the proposed adoption proceeds, he wishes to apply under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth (as is applicable to

**Adoption Act 1994**

**Part 3** The adoption process

**Division 2** Consent to adoption

**s. 21**

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the case) for a parenting order in relation to the child then he must do so within 21 days of service of the notice; and

- (c) that if, before the proposed adoption proceeds, he wishes to apply under Division 3A for a determination of the matter of the child's parentage only then he must do so within 21 days of service of the notice,

but nothing in this section requires all the information to be served at the same time.

- (2a) The notification referred to in subsection (1) is to be in writing and served on the man personally or by registered post at the man's last known address.
- (2b) The CEO, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent is to ensure that notification of all the information referred to in subsection (2) is, or has been, served on the man no later than 7 days after the day on which the first completed form of consent to the child's adoption was received.
- (2c) A person who has been named as or has claimed to be a child's parent under section 6A of the *Artificial Conception Act 1985* is to be notified by the relevant person in accordance with subsection (1) and for that purpose, subsections (2), (2a) and (2b) apply to and in respect of that notification as if a reference in those subsections to "man" was a reference to "person".
- (3) Notification under subsection (1) is not required if —
  - (a) the man has been convicted of an offence and the CEO, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is satisfied on reasonable grounds that the child's conception resulted from the offence; or
  - (b) compensation has been awarded to the child's mother under the *Criminal Injuries Compensation Act 2003* in



relation to an offence within the meaning of that Act that was committed by the man, and the CEO, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is satisfied on reasonable grounds that the child's conception resulted from the offence.

- (4) Notification under subsection (1)(b) is not required if the man is a lineal relative of the child's mother.

*[Section 21 amended by No. 41 of 1997 s. 7; No. 3 of 2002 s. 9; No. 8 of 2003 s. 18; No. 77 of 2003 s. 73; No. 34 of 2004 s. 251.]*

**22. Revocation of consent**

- (1) If only one person is required to consent to a child's adoption, the person may not revoke her or his consent after 28 days from the day on which the form of consent was delivered under section 18(1)(e).
- (2) If 2 or more persons are required to consent to a child's adoption, the persons who have consented may not revoke their consents after 28 days from the day on which all required forms of consent have either been delivered under section 18(1)(e), or have been dispensed with.
- (3) This section is subject to section 26(4) and section 26J.

*[Section 22 amended by No. 41 of 1997 s. 8.]*

**23. Notice of revocation**

- (1) A revocation of a consent to a child's adoption is of no effect unless it is —
- (a) in writing, in a form that has been approved by the CEO and signed by the person who gave the consent before a person who is authorised by clause 2 of Schedule 1; and
  - (b) received, by the CEO or the prospective adoptive parent who received the form of consent under section 18(1)(e), before the revocation period expires.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 3** Court applications as to consents to adoption and notices

**s. 24**

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- (2) If a person wishes to serve a notice of revocation of his or her consent on the prospective adoptive parent mentioned in subsection (1)(b), but is unable to effect service before the revocation period expires, the CEO may accept service of the notice.
- (3) Service on the CEO under subsection (2) is to be taken to be service on the prospective adoptive parent.

*[Section 23 amended by No. 8 of 2003 s. 19; No. 34 of 2004 s. 251.]*

**Division 3 — Court applications as to consents to adoption and notices**

**24. Orders dispensing with consent**

- (1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court by the CEO, a prospective adoptive parent or on behalf of the child for an order to dispense with a requirement under section 17(1) for a person's consent to the child's adoption.
- (2) On an application under subsection (1) the Court may, by order, dispense with the requirement for the person's consent to the child's adoption if the Court is satisfied that —
  - (a) after enquiries which the Court thinks are sufficient, the person cannot be found or contacted;
  - (b) during a period of not less than one year immediately before the application, steps have been taken to establish or re-establish a parent and child relationship between the person and the child but —
    - (i) the person has seriously ill-treated or persistently neglected the child; or
    - (ii) on the report of a person who the Court thinks is suitably qualified, the first-mentioned person has failed to establish or maintain an acceptable relationship with the child;

- (c) the child is 16 or more years of age and consents to being adopted by a prospective adoptive parent who is a step-parent or carer of the child;
- (d) the person's mental condition is such that he or she is incapable of giving an effective consent to the child's adoption and is not likely to be capable of doing so within the time required for the proposed adoption proceedings;
- (e) where the person is the child's father —
  - (i) the person has been convicted of an offence and the Court is satisfied that the child's conception resulted from the offence;
  - (ii) compensation has been awarded to the child's mother under the *Criminal Injuries Compensation Act 2003* in relation to an offence within the meaning of that Act committed by the person and the Court is satisfied that the child's conception resulted from the offence; or
  - (iii) the person is a lineal relative of the child's mother;
- (f) except in the case of a proposed adoption by a step-parent, the person is a birth parent of the child but has neither the responsibility for the day-to-day care of the child nor a parent and child relationship with the child, and is unreasonably withholding his or her consent to the child's adoption; or
- (g) special circumstances exist in which it is proper to dispense with the requirement for the person's consent.

*[Section 24 inserted by No. 41 of 1997 s. 9; amended by No. 8 of 2003 s. 20; No. 77 of 2003 s. 73; No. 34 of 2004 s. 251.]*

**25. Orders as to service of notice**

- (1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court by the CEO, a

**Adoption Act 1994**

**Part 3** The adoption process

**Division 3** Court applications as to consents to adoption and notices

**s. 26**

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prospective adoptive parent or on behalf of the child for an order —

- (a) dispensing with a requirement to serve notice under section 21(2a); or
  - (b) extending the period referred to in section 21(2b) for service of notice.
- (2) On an application under subsection (1)(a), the Court may make an order dispensing with a requirement to serve notice under section 21(2a) if it is satisfied that exceptional circumstances exist in which it is proper to dispense with service of notice.
- (3) On an application under subsection (1)(b), the Court may make an order to extend the period referred to in section 21(2b) for service of notice if it is satisfied that it would be proper to do so.

*[Section 25 amended by No. 41 of 1997 s. 10; No. 34 of 2004 s. 251.]*

**26. Application for parenting order**

- (1) On an application mentioned in section 21(2)(b) for a parenting order in relation to a prospective adoptee (an **“application”**), the Court —
- (a) may make an interim parenting order in relation to the child; and
  - (b) is to have regard to the principle that an application and the final orders arising from the application should be determined expeditiously.
- (2) Notice of an application is to be served on —
- (a) a person whose consent to the adoption is required and has not been dispensed with; and
  - (b) any other person who is a party to the proposed adoption,
- and the person may be joined as a party in the proceedings.
- (3) The Court may extend the period of time allowed by section 21(2)(b) for filing an application.

- (4) If an application is made, a person who has consented to the child's adoption may revoke her or his consent, even though the revocation period has expired; but the person may not revoke her or his consent after 14 days from the day on which the final court order arising from the application is made.

*[Section 26 inserted by No. 41 of 1997 s. 11.]*

**Division 3A — Court applications for determinations of parentage**

*[Heading inserted by No. 41 of 1997 s. 12.]*

**26A. Definitions**

In this Division —

**“application”** means an application made under section 26C;

**“parentage testing order”** means an order of the kind mentioned in section 26D(1)(c).

*[Section 26A inserted by No. 41 of 1997 s. 12.]*

**26B. Application of this Division**

This Division applies where a person makes an application for a determination of the matter of a child's parentage only and does not apply where a person applies for an order under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth.

*[Section 26B inserted by No. 41 of 1997 s. 12.]*

**26C. Application for determination of parentage**

- (1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court —
- (a) by any man who might be presumed to be the child's father because of a presumption set out in Part 5 Division 11 Subdivision 3 of the *Family Court Act 1997*;

**Adoption Act 1994**

**Part 3** The adoption process

**Division 3A** Court applications for determinations of parentage

**s. 26D**

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- (aa) by any person who might be a parent of the child under the *Artificial Conception Act 1985*;
- (b) by a person who has received a notice under section 21(1);
- (c) by the CEO;
- (d) in the case of a proposed adoption by a step-parent of the child, by the prospective adoptive parent; or
- (e) on behalf of the child,

for the determination of the matter of the child's parentage.

- (2) Notice of an application is to be served on —
  - (a) a person whose consent to the adoption is required and has not been dispensed with; and
  - (b) any other person who is a party to the proposed adoption.

*[Section 26C inserted by No. 41 of 1997 s. 12; amended by No. 3 of 2002 s. 10; No. 8 of 2003 s. 21; No. 34 of 2004 s. 251.]*

**26D. Orders on application for determination of parentage**

- (1) On an application the Court —
  - (a) may extend the period of time allowed by section 21(2)(c) for filing the application;
  - (b) may make an order requiring any person to give such evidence as is material to the question; or
  - (c) may make an order requiring a parentage testing procedure to be conducted in relation to a person mentioned in subsection (2) for the purpose of obtaining information to assist in determining the parentage of the child.
- (2) A parentage testing order may be made in relation to —
  - (a) the child;
  - (b) a person known to be the mother of the child; or

- (c) any other person, if the Court is of the opinion that, if the parentage testing procedure were to be conducted in relation to the person, the information that could be obtained might assist in determining the parentage of the child.
- (3) A parentage testing order may be made subject to terms and conditions.

*[Section 26D inserted by No. 41 of 1997 s. 12.]*

**26E. Orders associated with parentage testing orders**

- (1) If the Court makes a parentage testing order, it may also make orders under subsection (2) or (4).
- (2) The Court may make such orders as it considers necessary or desirable —
  - (a) to enable the parentage testing procedure to be conducted; or
  - (b) to make the parentage testing procedure more effective or reliable.
- (3) Some examples of the kinds of orders the Court may make under subsection (2) are as follows —
  - (a) an order requiring a person to submit to a medical procedure;
  - (b) an order requiring a person to provide a bodily sample;
  - (c) an order requiring a person to provide information relevant to the person's medical or family history.
- (4) The Court may make such orders as it considers just in relation to costs incurred in relation to —
  - (a) conducting the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure; or

**Adoption Act 1994**

**Part 3** The adoption process

**Division 3A** Court applications for determinations of parentage

**s. 26F**

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- (b) the preparation of reports relating to the information obtained as a result of conducting the parentage testing procedure.

*[Section 26E inserted by No. 41 of 1997 s. 12.]*

**26F. Orders directed to persons 18 or over**

- (1) If a person who is 18 or more years of age contravenes a parentage testing order or an order under section 26E, the person is not liable to any penalty in relation to the contravention.
- (2) The Court may draw such inferences from the contravention as appear just in the circumstances.
- (3) Nothing in subsection (1) prevents an order made under section 26E(4) in relation to costs from being enforced and such order may be enforced as if it were an order made by the Court under the *Family Court Act 1997*.

*[Section 26F inserted by No. 41 of 1997 s. 12.]*

**26G. Orders directed to children under 18**

- (1) This section applies if a parentage testing order, or an order under section 26E, requires a medical procedure or other act to be carried out in relation to a child who is under 18 years of age.
- (2) The procedure or act must not be carried out in relation to the child under the order without the consent of —
  - (a) a guardian of the child; or
  - (b) a person who is responsible for the child's long-term welfare and development.
- (3) The Court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

*[Section 26G inserted by No. 41 of 1997 s. 12.]*



**26H. No liability if parent etc. consents**

- (1) A person who conducts, or who assists in conducting, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil action in relation to the proper conducting of the procedure or act if it is done with the consent of —
  - (a) a guardian of the child; or
  - (b) a person who is responsible for the child's long-term welfare and development.
- (2) Subsection (1) does not affect any liability of a person for an act done negligently, or negligently omitted to be done, in relation to conducting the medical procedure or act.

*[Section 26H inserted by No. 41 of 1997 s. 12.]*

**26I. Reports of information obtained may be received in evidence**

- (1) A report made for the purposes of this Division in accordance with regulations may be received in evidence in any proceedings under this Act.
- (2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the Court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.

*[Section 26I inserted by No. 41 of 1997 s. 12.]*

**26J. Revocation of consent**

If an application is made, a person who has consented to the child's adoption may revoke her or his consent, even though the revocation period has expired; but the person may not revoke her or his consent after 14 days from the day on which the Court determines the matter of the child's parentage.

*[Section 26J inserted by No. 41 of 1997 s. 12.]*

**Division 4 — Guardianship of prospective adoptees**

**27. Guardians of children awaiting adoption where all consents accounted for**

- (1) When all consents to a child's adoption required by section 17(1) have been either —
  - (a) delivered under section 18(1)(e); or
  - (b) dispensed with under section 24(2),the child's guardian or guardians are to be as provided by this section, to the exclusion of all other persons.
- (2) Where the child's step-parent who is married to, or in a de facto relationship with, the birth parent who has the responsibility for the long-term and day-to-day care, welfare and development of the child has been specified in the forms of consent as the prospective adoptive parent, that birth parent and the step-parent are to be joint guardians.
- (3) Where a carer of the child has been specified in the forms of consent as the prospective adoptive parent, that person is to be the guardian.
- (4) Where carers of the child have been specified in the forms of consent as the prospective adoptive parents, those persons are to be joint guardians.
- (5) Where a prospective adoptive parent has not been specified in the forms of consent or the Court has dispensed with all consents required by section 17(1), the CEO is to be the guardian.
- (6) Subsections (2), (3), (4) and (5) do not apply where the child —
  - (a) the child is the subject of a protection order (time-limited) or protection order (until 18) under the *Children and Community Services Act 2004*; or

- (b) is under the guardianship of a person by operation of the law of another State or a Territory corresponding to the provisions of Part 4 of the *Children and Community Services Act 2004*,

in which case the child's guardian continues to be the child's guardian for the purposes of this Division.

*[Section 27 amended by No. 41 of 1997 s. 13; No. 3 of 2002 s. 11; No. 34 of 2004 s. 251.]*

**28. Guardianship of children awaiting adoption where not all consents finalised**

- (1) This section applies to a child if the child —
- (a) has been relinquished for adoption but where not all the consents to the child's adoption required by section 17(1) have been —
- (i) delivered under section 18(1)(e); or
- (ii) dispensed with under section 24(2);
- or
- (b) is in the care and control of a birth parent who has consented to the child's adoption and then revoked the consent for such number of times as to jeopardise, or be likely to jeopardise, the child's welfare.
- (2) The CEO may make a protection application under the *Children and Community Services Act 2004* for a protection order (time-limited) or protection order (until 18) in respect of a child to whom this section applies.
- (3) For the purposes of Part 4 of the *Children and Community Services Act 2004*, but without limiting section 28(2) of that Act, a child is in need of protection if the child is a child to whom this section applies.

*[Section 28 inserted by No. 34 of 2004 s. 251.]*

**29. Cessation of guardianship of children awaiting adoption**

- (1) Guardianship under this Division ceases —
- (a) if a consent to the child's adoption is revoked, in which case the person who was the child's guardian immediately before the commencement of guardianship under this Division is to be the child's guardian again;
  - (b) if a court makes further provision for the child's guardianship;
  - (c) where the child's guardian is the CEO —
    - (i) if notice is given under section 30; or
    - (ii) if the guardianship is renounced under section 33(1);
- or
- (d) when an adoption order is made in relation to the child.
- (2) Guardianship under this Division is not affected by any provision of, and cannot be changed by, any will, deed, or agreement.

*[Section 29 amended by No. 34 of 2004 s. 251.]*

**30. If not possible or desirable to place a child for adoption**

Where the CEO is the guardian of a child under this Division and is of the opinion that it is not possible or desirable to place the child with a view to the child's adoption, the CEO is to cause notice of that opinion to be given to each person who he or she believes is a birth parent of the child or was a guardian of the child before the commencement of guardianship under this Division, in which case —

- (a) the person who was the child's guardian before the commencement of guardianship under this Division becomes the child's guardian again; and
- (b) any consents to the child's adoption cease to be of effect from the day on which the notice is given.

*[Section 30 amended by No. 34 of 2004 s. 251.]*

**31. Care of child pending placement for adoption**

Where the CEO is the guardian of a child under this Division, the CEO may, pending placement of the child with a view to the child's adoption, place the child with a person who the CEO thinks is suitable and who has agreed to look after the child.

*[Section 31 amended by No. 34 of 2004 s. 251.]*

**32. Responsibilities of guardians of children awaiting adoption**

Within 12 months of the commencement of guardianship under this Division or such further time as the Court allows, the guardian is to —

- (a) arrange for an application for an adoption order in relation to the child to be filed in the Court; or
- (b) apply to the Court for an order to make further provision for the child's guardianship.

**33. Renunciation and transfer of guardianship by CEO**

- (1) Where the CEO is the guardian of a child under this Division, and receives from a corresponding officer —

- (a) a notice that an application for the adoption of the child is to be made in the other State or the Territory under the law of the other State or the Territory; and
- (b) a request that the CEO renounce guardianship of the child,

the CEO may by an instrument in writing, renounce the guardianship.

- (2) The CEO is not to renounce guardianship under subsection (1) unless —

- (a) the revocation period has expired;
- (b) the CEO has had regard to any current adoption plan in relation to the child; and

**Adoption Act 1994**

**Part 3** The adoption process

**Division 4** Guardianship of prospective adoptees

**s. 34**

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- (c) under the law of the other State or the Territory, the corresponding officer will become the child's guardian when the CEO signs an instrument renouncing guardianship.
- (3) The CEO ceases to be the guardian under this Division when an instrument renouncing the guardianship is signed by the CEO.
- (4) The CEO is to cause an instrument under subsection (3) to be sent by registered post to the corresponding officer.
- (5) In this section “**a corresponding officer**” means a person whose functions in another State or a Territory correspond to those of the CEO under this Act in relation to the guardianship of children awaiting adoption.

*[Section 33 amended by No. 41 of 1997 s. 28; No. 34 of 2004 s. 251.]*

**34. Transfer of guardianship to CEO**

- (1) If an application for a child's adoption is to be made under this Act and the child is under the guardianship of a corresponding officer, the CEO may —
  - (a) notify the corresponding officer of the application; and
  - (b) request the corresponding officer to renounce guardianship of the child and forward to the CEO for use in the proceedings, the forms of consents executed in the other State or the Territory in relation to the child.
- (2) The CEO is not to request the renunciation of guardianship under subsection (1) unless —
  - (a) the CEO is satisfied that the child is in this State;
  - (b) consents that have been given to the child's adoption cannot be lawfully revoked;
  - (c) the CEO has had regard to any current adoption plan or arrangements under a corresponding law of the other State or the Territory in relation to the child; and

- (d) under the law of the other State or the Territory, if the corresponding officer signs an instrument renouncing guardianship, the corresponding officer ceases to be the child's guardian.
- (3) The CEO becomes the child's guardian under this Division when the corresponding officer signs an instrument of renunciation of guardianship.
- (4) In this section "**corresponding officer**" has the meaning given by section 33(5).

*[Section 34 amended by No. 34 of 2004 s. 251.]*

**35. Offence**

A person must not remove from the State a child who has a guardian under this Division, without the written consent of each guardian.

Penalty: \$10 000 and 12 months' imprisonment.

**Division 5 — Court applications as to guardianship of children awaiting adoption**

**36. Orders as to guardianship under Division 4**

- (1) Before an adoption order is made in relation to a child, an application may be made to the Court by or on behalf of the child's guardian under Division 4 for an order to make further provision for the child's guardianship.
- (2) On an application under this section, the Court may —
  - (a) if further time is required to place the child with a view to the child's adoption, extend the period of guardianship under Division 4 for not more than a further 12 months on each application;
  - (b) order that a suitable person other than the child's existing guardian is to be the child's guardian for purposes of Division 4; or

**Adoption Act 1994**

**Part 3** The adoption process

**Division 6** Prospective adoptive parents

**s. 37**

---

- (c) if the Court finds that the child is in need of protection as defined in section 28(2) of the *Children and Community Services Act 2004*, make a protection order (time-limited) or protection order (until 18) under that Act in respect of the child.
- (3) If the Court makes an order referred to in subsection (2)(c), the Court has, in relation to that order, the powers conferred on the Children's Court by the *Children and Community Services Act 2004*.

*[Section 36 amended by No. 34 of 2004 s. 251.]*

**Division 6 — Prospective adoptive parents**

**37. Duty of CEO as to information about adoptive parenthood**

- (1) The CEO is to provide persons contemplating adoptive parenthood with oral and written information about, and counselling in relation to, adoption.
- (2) Subsection (1) does not apply to a step-parent or carer of a child who is thinking about adopting the child, but if requested, the CEO is to provide such a person with oral and written information about, and counselling in relation to, adoption.
- (3) Despite subsection (1), the CEO does not have to provide a person who is already an adoptive parent and who is contemplating adoptive parenthood for a second or subsequent time with oral information about, and counselling in relation to, adoption unless the person chooses to be provided with such information and counselling.

*[Section 37 amended by No. 8 of 2003 s. 22; No. 34 of 2004 s. 251.]*

**38. Application to be a prospective adoptive parent**

- (1) A person who wishes to adopt a child under this Act, in a Convention country or in an overseas jurisdiction is to apply to the CEO to be assessed for suitability for adoptive parenthood.



- (2) An application under subsection (1) may be made by one person, or by 2 persons jointly.
- (3) An application under subsection (1) is to be in a form that is approved by the CEO and made at a time and in a manner prescribed by regulation.
- (4) This section does not apply to a step-parent or carer of a child who wishes to adopt the child.

*[Section 38 amended by No. 7 of 1999 s. 5 and 9; No. 34 of 2004 s. 251.]*

**39. Criteria for application**

- (1) A person cannot apply under section 38(1) unless at the time of the application, he or she —
  - (a) subject to subsection (2), is an Australian citizen;
  - (b) is 18 or more years of age;
  - (c) is resident or domiciled in this State or, if applying to adopt a child in a Convention country, is habitually resident in this State;
  - (d) if married to, or in a de facto relationship with, another person, applies as a joint applicant with that person; and
  - (e) if applying as a joint applicant —
    - (i) has been married to, or in a de facto relationship with, the other applicant for at least 3 years; and
    - (ii) is not married to, or in a de facto relationship with, any other person.
- (2) Two persons cannot apply jointly under section 38(1) unless at the time of the application —
  - (a) both persons are Australian citizens; or
  - (b) one of the persons is an Australian citizen and the other is a citizen of a country that, in the opinion of the CEO, gives rights to adopted persons that are not inferior to the rights of non-adopted persons in relation to entry

**Adoption Act 1994**

**Part 3** The adoption process

**Division 6** Prospective adoptive parents

**s. 40**

---

into, residence, education and medical care in that country.

- (3) For the purposes of subsection (1)(e)(i) if the joint applicants are married and before the marriage were living as de facto partners, the period of living as de facto partners may be included when calculating the period mentioned in subsection (1)(e)(i).

*[Section 39 amended by No. 7 of 1999 s. 10; No. 3 of 2002 s. 12; No. 8 of 2003 s. 23; No. 34 of 2004 s. 251.]*

**40. Assessment of applicants for adoptive parenthood**

- (1) Where the CEO receives an application under section 38(1), the CEO is to appoint a person who the CEO thinks is suitably qualified, to assess the application and prepare a report (“**the assessment report**”) on the applicant or joint applicants.
- (2) For purposes of the assessment report, each applicant is to provide information as to the applicant’s suitability for adoptive parenthood as required by the person so appointed, including evidence that the applicant —
- (a) is, and continues to be, a person to whom section 39(1) applies;
  - (b) is physically and mentally able to care for and support a child until the child attains 18 years of age;
  - (c) is of good repute;
  - (d) if applying jointly, has a stable marriage or de facto relationship with the other applicant;
  - (da) shows a desire and ability to provide a suitable family environment for the child;
  - (e) has not been found guilty —
    - (i) in the 5 years before the date of the assessment, of an offence punishable at the time of the finding by imprisonment;

- (ii) at any time, of an offence punishable at the time of the finding by life imprisonment, strict security life imprisonment or imprisonment for 20 years or more; or
- (iii) at any time, of any other offence involving an assault or sexual offence against a child, committed when the applicant was 18 or more years of age;

and

- (f) satisfies other criteria as prescribed by regulation.

*[Section 40 amended by No. 3 of 2002 s. 13; No. 34 of 2004 s. 251.]*

#### **41. Adoption applications committee**

- (1) The person who prepares the assessment report under section 40(1) is to provide the report to the adoption applications committee.
- (2) In performing its functions under section 13, the adoption applications committee is to have regard to the information and recommendations in the assessment report and any other relevant information.

*[Section 41 amended by No. 8 of 2003 s. 24.]*

#### **42. Decisions of adoption applications committee**

- (1) The adoption applications committee may review its decision if it is of the opinion that there is new evidence that it should consider.
- (2) If, under section 113(2) the Director-General directs the adoption applications committee to review a procedure by which it made a decision, the committee may, after complying with that direction, review its decision.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 6** Prospective adoptive parents

**s. 43**

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- (3) Subject to subsections (1) and (2) and section 114(2), the decision of the adoption applications committee cannot be reviewed, questioned or affected except by way of judicial review.

*[Section 42 amended by No. 8 of 2003 s. 25.]*

**43. Reasons for decision**

The CEO is to give to the applicant —

- (a) written advice of the adoption applications committee's decision; and
- (b) after the decision is made —
  - (i) written reasons for the decision; and
  - (ii) a copy of the assessment report, if requested by the applicant.

*[Section 43 amended by No. 34 of 2004 s. 251.]*

**44. CEO to keep registers**

- (1) The CEO is to establish and maintain —
  - (a) a register of the names of persons who apply under section 38(1); and
  - (b) a register of the names of persons who are approved by the adoption applications committee.
- (2) The CEO may delete, in accordance with regulations, the name of a person or the names of persons entered in a register.
- (3) Where the name of any person has been deleted under subsection (2) from a register, the CEO is to notify the person in a manner prescribed by regulation.
- (4) Where the name of any person has been deleted under subsection (2) from a register, the person may, in the manner prescribed by regulation, apply to the CEO to have his or her name re-entered in the register.

- (5) The CEO may, on a ground prescribed by regulation, re-enter in the register, the name of a person who applies under subsection (4).

*[Section 44 amended by No. 8 of 2003 s. 26; No. 34 of 2004 s. 251.]*

### **Division 7 — Placement of prospective adoptees**

#### **45. Selection of prospective adoptive parents**

Where a person signs a form of consent to a child's adoption (not being an adoption by a step-parent or carer of the child) then after the form of consent is signed and not more than 14 days after the revocation period expires —

- (a) the CEO is to give to the person the opportunity of —
- (i) expressing to the CEO, the person's wishes in relation to the child's upbringing and the preferred attributes of the adoptive family; and
  - (ii) studying information provided under paragraph (b)(ii), and selecting a prospective adoptive parent;
- and
- (b) the CEO is to —
- (i) record the wishes expressed under paragraph (a)(i); and
  - (ii) provide to the person information on a selection of prospective adoptive parents for the child, whose names are entered in a register under section 44(1)(b) so that, if practicable, the selection is consistent with the wishes expressed under paragraph (a)(i).

*[Section 45 amended by No. 8 of 2003 s. 27; No. 34 of 2004 s. 251.]*

**46. Negotiation of adoption plans**

- (1) After the revocation period in relation to a child's proposed adoption expires, an adoption plan is to be negotiated, if possible, between —
- (a) the birth parents of the child who have signed a form of consent to the child's adoption;
  - (b) the person or persons selected under section 45(a)(ii) to be the prospective adoptive parent of the child; and
  - (c) if the CEO thinks it is appropriate, the child's representative.

- (2) The following matters may be provided for in an adoption plan —

- (a) the exchange of information between the parties to the plan in relation to the child's —
  - (i) medical background or condition; or
  - (ii) development and important events in the child's life;
- (b) subject to subsection (6), the means and nature of contact between the parties to the plan and the child; or
- (c) any other matters relating to the child,

but the provisions of the plan may be to the effect that there will not be any exchange of information or contact.

- (3) If an adoption plan has not been agreed within 21 days after the day on which the negotiations commenced, then within a further 21 days —
- (a) the CEO is to give the person who made the selection of the prospective adoptive parent under section 45(a)(ii) the opportunity of selecting another person or persons to be the prospective adoptive parent of the child; and
  - (b) an adoption plan is to be negotiated, if possible, between the persons referred to in subsection (1)(a) and (c) and the newly selected prospective adoptive parent.

- (4) The selection of, and the negotiation of an adoption plan with, a prospective adoptive parent, under this section, is not to occur more than twice.
- (5) Persons who negotiate an adoption plan under this Division are to have regard to the rights and responsibilities mentioned in Schedule 2.
- (6) A provision in an adoption plan that purports to prevent, restrict or make conditional, the movement (whether within or out of Australia) of a party to the adoption, is of no effect.

*[Section 46 amended by No. 8 of 2003 s. 28; No. 34 of 2004 s. 251.]*

**47. Duty of CEO as to adoption plans**

- (1) The CEO is to provide assistance and mediation services to persons in the process of negotiating an adoption plan under section 46(1) or (3)(b) or a variation to an adoption plan so negotiated.
- (2) If requested, the CEO is to provide assistance and mediation services to persons in the process of negotiating an adoption plan under section 55 or a variation to an adoption plan so negotiated.

*[Section 47 amended by No. 34 of 2004 s. 251.]*

**48. Placement following adoption plan**

- (1) If an adoption plan is agreed under section 46(1) or (3)(b), the CEO is to place the child with the prospective adoptive parent selected under section 45(a)(ii) or section 46(3)(a), as the case may be, with a view to the child's adoption by the prospective adoptive parent.
- (2) This section is subject to sections 51 and 52(1).

*[Section 48 amended by No. 41 of 1997 s. 15; No. 34 of 2004 s. 251.]*

**49. Placement if no adoption plan**

If the CEO is of the opinion that it is not possible to place a child under section 48(1), the CEO may —

- (a) if further time is required to select an adoptive parent, extend the period set out in section 45;
- (b) if further time is required to negotiate an adoption plan, extend the period set out in section 46(3);
- (c) if a provision of an adoption plan cannot be agreed, apply to the Court under section 50(1) for an order in relation to the disputed matter;
- (d) place the child (subject to any Court order) with the person who —
  - (i) the CEO thinks is the most suitable prospective adoptive parent for the child; and
  - (ii) agrees to the placement,with a view to the child's adoption by the person; or
- (e) where the CEO is the child's guardian under Division 4, cause notice to be given under section 30.

*[Section 49 amended by No. 34 of 2004 s. 251.]*

**50. Orders to constitute provisions of adoption plans**

- (1) Before an adoption order is made in relation to a child, the CEO or any of the parties to the proposed adoption plan in relation to the child may apply to the Court for an order in relation to a disputed matter in the negotiation of the plan.
- (2) On an application under subsection (1) the Court may make an order as to the matter which is disputed, and where it does so, the terms of the order are to be treated as the provision of the adoption plan in relation to that matter.
- (3) On an application under subsection (1) the Court is to have regard to —
  - (a) the rights and responsibilities mentioned in Schedule 2; and



- (b) the wishes of the parties to the proposed adoption.
- (4) This section does not apply if the prospective adoptive parent of a child is the step-parent or carer of the child.

*[Section 50 amended by No. 34 of 2004 s. 251.]*

**51. Medical report as to child's health before placement**

The CEO is not to place a child with a view to the child's adoption unless the CEO possesses a report of a medical practitioner who has examined the child, to the effect that —

- (a) the child has undergone a serology test within 21 days before the date of the report and the medical practitioner has been informed of the results of the test; and
- (b) the child is in good health or has, or is likely to develop, such physical or mental conditions (whether genetic or otherwise) as are specified in the report.

*[Section 51 amended by No. 34 of 2004 s. 251.]*

**52. Restrictions on placement**

- (1) The CEO is not to place a child with a view to the child's adoption unless —
  - (a) the prospective adoptive parent —
    - (i) is named in a register under section 44(1)(b);
    - (ii) meets, as far as is practicable, the wishes expressed under section 45(a)(i);
    - (iii) is not more than 45 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have not adopted a child before;
    - (iiia) is not more than 50 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents

**Adoption Act 1994**

**Part 3** The adoption process

**Division 7** Placement of prospective adoptees

**s. 52**

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- who, as a couple, have not adopted a child before;
- (iiib) is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before;
  - (iiic) is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before;
  - (iiid) is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); or
  - (iiie) is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent);
  - (iv) if married or in a de facto relationship, can show that the marriage or de facto relationship is stable;
  - (v) meets, if relevant, the child's wishes;
  - (va) recognises the value of, and need for, cultural and ethnic continuity for the child;
  - (vb) shows a desire and ability to continue the child's established cultural, ethnic, religious or educational arrangements; and
  - (vi) if female, is not pregnant at the time of the proposed placement, evidenced by means prescribed by regulation;
- (aa) where the adoption applications committee has approved the prospective adoptive parent in accordance with

- section 13(2), the child belongs to a category of children in respect of whom the prospective adoptive parent has been approved for prospective adoptive parenthood;
- (ab) where the child is an Aboriginal person or a Torres Strait Islander, the placement is in accordance with the Aboriginal or Torres Strait Islander children — placement for adoption principle as set out in Schedule 2A;
  - (b) where the child is 2 or more years of age, the child has had the nature and implications of his or her adoption explained in a manner appropriate to the child’s age and level of understanding;
  - (c) where there are other children in the prospective adoptive family —
    - (i) the prospective adoptee is to be the youngest child in the prospective adoptive family;
    - (ii) the second youngest child in the family is 12 or more months older than the prospective adoptee; and
    - (iii) each of the other children has been in the family for at least 2 years;
  - (d) where siblings are relinquished for adoption at the same time, all reasonable steps have been taken to place them with the same prospective adoptive parent; and
  - (e) where the child has a sibling who is already adopted or placed for adoption, all reasonable steps have been taken to place the child with the sibling’s adoptive or prospective adoptive parent.
- (2) The requirements of subsection (1) are not affected by any provision of, and cannot be changed, by any provision of an adoption plan.

*[Section 52 amended by No. 3 of 2002 s. 14; No. 8 of 2003 s. 29; No. 34 of 2004 s. 251.]*

**53. Placing children who cannot be placed under s. 52**

The CEO may place a child with a prospective adoptive parent with a view to the child's adoption even though the placement does not fulfil some of the requirements of section 52(1) if —

- (a) the child is a sibling of an adoptee who is resident in the State; or
- (b) the child cannot otherwise be placed.

*[Section 53 inserted by No. 8 of 2003 s. 30; amended by No. 34 of 2004 s. 251.]*

**54. Supervision of placements**

Where the CEO has placed a child with a view to the child's adoption, the CEO is to appoint a person who the CEO thinks is suitably qualified, to supervise the welfare and interests of the child during the period of placement.

*[Section 54 amended by No. 34 of 2004 s. 251.]*

**Division 8 — Adoptions by step-parents or carers**

**55. Adoption plans in adoptions by step-parents or carers**

- (1) An application for an order for a child to be adopted by a step-parent or carer of the child is not to be filed unless, before the revocation period expires, an adoption plan has been agreed between —
  - (a) the birth parents of the child who have signed a form of consent to the child's adoption;
  - (b) the person or persons specified in the forms of consent to the child's adoption as a prospective adoptive parent of the child; and
  - (c) if the CEO thinks it is appropriate, the child's representative,

and a written memorandum of the provisions of the adoption plan has been signed by or on behalf of the parties to the plan.

- (2) Persons who negotiate an adoption plan under this section are to have regard to the rights and responsibilities mentioned in Schedule 2.

*[Section 55 amended by No. 34 of 2004 s. 251.]*

### **Division 9 — Applications for adoption orders**

#### **56. Placement to be for at least 6 months**

If a child is placed by the CEO with a view to the child's adoption, a person is not to file an application for an adoption order in relation to the child before the expiration of 6 months after the day on which the child was so placed.

*[Section 56 amended by No. 34 of 2004 s. 251.]*

#### **57. Time for applying for adoption order may be shortened**

A person may apply to the Court for leave to file an application for an adoption order, before the expiration of the period provided for in section 56 and the Court may grant leave accordingly.

#### **58. Notice of intention to apply for adoption order**

- (1) A person is not to file an application for an adoption order in relation to a child unless, at least 60 days before the application is filed, the person has notified the CEO, by written notice delivered to the CEO, of the person's intention to so apply.
- (2) A person who gives notice under subsection (1) is to provide the CEO with such information as the CEO may request for the purpose of preparing a report under section 61.

*[Section 58 amended by No. 41 of 1997 s. 28; No. 8 of 2003 s. 31; No. 34 of 2004 s. 251.]*

**59. Notice where birth parent deceased or cannot be found**

(1) Where —

(a) a child's birth parent —

(i) has died without signing a form of consent to the child's adoption; or

(ii) has died after signing a form of consent to the child's adoption and before an adoption order is made in relation to the child;

or

(b) the requirement for a birth parent's consent to his or her child's adoption has been dispensed with on the ground that the birth parent cannot be found or contacted,

a person is not to file an application for an adoption order in relation to the child unless at least 30 days before the application is filed, the person gives the notice required by subsection (2).

(2) Notice of the intention to file an application for an adoption order in relation to the child is to be given to a person who is the first in order of priority of the following relatives of the child's birth parent to whom subsection (1) applies ("**the birth parent**") and who has attained the age of 18 years and is reasonably available at the relevant time —

(a) a birth parent of the birth parent or, if the birth parent's birth parent was an adoptee, an adoptive parent of the birth parent;

(b) a brother or sister of the birth parent whether of the whole or half blood; or

(c) an uncle or aunt of the birth parent,

in a written notice delivered personally or by registered post to that relative's last known address.

*[Section 59 amended by No. 41 of 1997 s. 28; No. 8 of 2003 s. 32.]*

**60. Court applications as to notices**

- (1) A person intending to file an application for an adoption order in relation to a child may apply to the Court for orders in relation to a requirement to give notice under section 58(1) or 59(2).
- (2) On an application under subsection (1) the Court may, on such terms and conditions as it thinks fit —
  - (a) vary the time for giving the notice;
  - (b) dispense wholly or partly with a requirement to give the notice; or
  - (c) determine the person or persons to whom it is sufficient for notice to be given for purposes of section 59(2).

**61. Report for adoption proceedings**

- (1) On receipt of a notice under section 58(1) and on payment of the prescribed fee, if applicable, the CEO is to appoint a person who the CEO thinks is suitably qualified, to prepare a written report for the Court's use in proceedings for an adoption order in relation to the child.
- (2) A report under this section is to contain information on —
  - (a) such of the matters to which the Court is to have regard under section 68(1) and (2) or section 78A(2) as are relevant to the child and the prospective adoptive parent; and
  - (b) any other matter or opinion that the person who prepares the report thinks is relevant to an application for the child's adoption.

*[Section 61 amended by No. 7 of 1999 s. 11; No. 8 of 2003 s. 33; No. 34 of 2004 s. 251.]*

**62. Application for adoption order**

- (1) An application for an adoption order is to be in the form prescribed by rule.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 9** Applications for adoption orders

**s. 63**

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- (2) An application for an adoption order in relation to a child is to be filed in the Court together with a written memorandum of the provisions of the adoption plan in relation to the child that is signed by or on behalf of the parties to the plan.
- (3) The requirement in subsection (2) to file a memorandum of the provisions of the adoption plan does not apply where an application will be made for the Court to dispense with the requirement for an adoption plan.

**63. Intervention by CEO or other persons in applications for adoption orders**

- (1) In proceedings for an application for an adoption order, any person may apply for leave to intervene in the proceedings and the Court may make an order entitling the person to intervene in the proceedings.
- (2) The CEO may intervene in the proceedings for an application for an adoption order in relation to a child.
- (3) A person who, under subsection (1) or (2), intervenes in proceedings, is to be treated as a party to the proceedings with all the rights, duties and liabilities of a party, unless the Court otherwise orders.

*[Section 63 amended by No. 34 of 2004 s. 251.]*

**64. Evidence on application for adoption order**

On an application for an adoption order, the Court may —

- (a) order the attendance of any witness, and for that purpose may direct the issue and service upon the witness of a summons in the prescribed form; and
- (b) take oral evidence upon oath or evidence by affidavit on any matter relevant to the proceedings before the Court.



### **Division 10 — Adoption orders**

#### **65. Jurisdiction**

- (1) An adoption order in relation to a person is not to be made unless, at the time when the application for the order is filed —
  - (a) either —
    - (i) the person is present in the State and is permitted under a law of the Commonwealth to remain permanently in Australia; or
    - (ii) the person, having been born in the State, is present in the State;
  - and
  - (b) each prospective adoptive parent resides, or is domiciled, in the State.
- (2) For the purposes of subsection (1), if in the proceedings for the application the Court is satisfied that the person was present in, or that each prospective adoptive parent was resident or domiciled in the State, on a day within 21 days before the day on which the application was filed, the Court may, in the absence of evidence to the contrary, presume that the person was present in, or that each prospective adoptive parent was resident or domiciled in, the State at the time when the application was filed.
- (3) The Court has jurisdiction under this section to make an adoption order despite any rule of private international law to the contrary.

*[Section 65 amended by No. 8 of 2003 s. 34(1).]*

#### **66. Who may be adopted**

- (1) Subject to subsection (2), a person may be adopted if he or she —
  - (a) is a child; and

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 67**

---

(b) is not, and has not been, married or in a de facto relationship,

but not otherwise.

- (2) A person who is 18 or more years of age may be adopted by a person who was a carer or step-parent of the first-mentioned person immediately before the first-mentioned person attained 18 years of age.
- (3) A person cannot be adopted by a relative of the person, other than a step-parent.

*[Section 66 amended by No. 3 of 2002 s. 15; No. 8 of 2003 s. 35.]*

**67. Who may adopt**

- (1) A person may, subject to this Act, adopt a child if he or she —
- (a) is a step-parent of the child and has been married to, or in a de facto relationship with, a parent of the child for at least 3 years;
  - (b) is a carer of the child; or
  - (c) has, under this Act, had the child placed in his or her care with a view to the child's adoption by him or her.
- (2) Persons referred to in subsection (1)(b) and (c) and carers referred to in section 66(2) may, subject to this Act, jointly adopt another person if the first-mentioned persons or carers are married to, or in a de facto relationship with, each other and have been so for at least 3 years, but not otherwise.
- (3) A child is not to adopt another child.
- (4) For the purposes of subsection (1)(a) if the step-parent is married to a parent of the child and before the marriage those persons were living as de facto partners, the period of living as de facto partners may be included when calculating the period referred to in subsection (1)(a).

- (5) For the purposes of subsection (2) if the persons referred to in subsection (1)(b) and (c) or the carers referred to in section 66(2) are married and before the marriage those persons or carers were living as de facto partners, the period of living as de facto partners may be included when calculating the period referred to in subsection (2).

*[Section 67 amended by No. 3 of 2002 s. 16; No. 8 of 2003 s. 36.]*

**68. Adoption orders in relation to children**

- (1) Subject to section 78A, an adoption order in relation to a child is not to be made unless the Court is satisfied that —
- (a) each person whose consent to the child's adoption is required has given an effective consent, or the requirement to consent has been dispensed with under section 24(2);
  - (b) any notice that is required by section 21(1) has been given or the application is in accordance with an order under section 25(2);
  - (c) the application is in accordance with an order on any application mentioned in section 21(2)(b) or (c);
  - (d) where the child was placed under section 53, the child was otherwise unable to be placed;
  - (e) if section 56 applied to the child, the placement has been for the required period or the application is in accordance with an order under section 57;
  - (f) notices required by sections 58(1) and 59(2) have been given or the application is in accordance with an order under section 60(2);
  - (fa) if a step-parent of a child wishes to adopt the child, the Court has determined that the child's adoption by the step-parent is preferable to any of the following orders being made under the *Family Law Act 1975* of the

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 68**

---

Commonwealth or the *Family Court Act 1997*, as is relevant to the case —

- (i) a parenting order in respect of the child;
- (ii) an order in respect of the welfare of the child; or
- (iii) an order in respect of the appointment or removal of a guardian of the child;

and

(g) if the child is habitually resident in a Convention country —

- (i) the arrangements for the adoption of the child have been made in accordance with the requirements of the Hague Convention;
- (ii) the arrangements for the adoption of the child are in accordance with the laws of the Convention country;
- (iii) the Central Authority of the Convention country has agreed to the adoption of the child; and
- (iv) the State Central Authority has agreed to the adoption of the child.

(2) The Court may make an adoption order in relation to a child if, after having regard to the report under section 61, the wishes of the parties to the proposed adoption, the wishes of the parties to the proceedings and any other evidence before the Court, the Court is satisfied that —

(a) where the prospective adoptive parent is a step-parent of the child —

- (i) a parent and child relationship exists between the step-parent and the child, and the child is treated as a member of the family formed by the marriage, or de facto relationship, of the step-parent and the child's parent;
- (ii) the marriage, or de facto relationship, of the step-parent and the child's parent is stable; and

- (iii) the step-parent is a fit and proper person to adopt the child;
- (b) where the prospective adoptive parent has had the child placed in his or her care with a view to the child's adoption or is a carer of the child —
  - (i) the prospective adoptive parent is of good repute and is a fit and proper person to fulfil the responsibilities of adoptive parenthood;
  - (ii) the prospective adoptive parent is a suitable person to adopt the child having regard to all relevant matters including —
    - (I) the ages of the child and the prospective adoptive parent;
    - (II) the states of health of the child and the prospective adoptive parent;
    - (III) the ability of the prospective adoptive parent to satisfy the child's educational or future educational requirements; and
    - (IV) the size and stability of the prospective adoptive family;
- (c) if 2 prospective adoptive parents are applying to adopt the child jointly, their marriage, or de facto relationship, is stable; and
- (d) in every case, the adoption plan —
  - (i) adequately balances the rights and responsibilities mentioned in Schedule 2;
  - (ii) is reasonable in the circumstances; and
  - (iii) promotes the child's long-term welfare.

*[Section 68 amended by No. 41 of 1997 s. 16; No. 7 of 1999 s. 12; No. 3 of 2002 s. 17; No. 8 of 2003 s. 37.]*

**69. Adoption orders in relation to adults**

- (1) The Court may make an adoption order in relation to a person who is 18 or more years of age if it is satisfied that —
  - (a) the prospective adoptee and each prospective adoptive parent —
    - (i) have received the information and, if requested, the counselling mentioned in clause 1 of Schedule 1 on the matters relevant to those parties; and
    - (ii) consent to the proposed adoption;
  - (b) the welfare and interest of the prospective adoptee will be promoted by the proposed adoption; and
  - (c) notices required by subsection (4) have been given or the application is in accordance with an order under subsection (6).
- (2) The Court may request from the CEO a written report in relation to the proposed adoption.
- (3) On receipt of a request under subsection (2), the CEO is to appoint a person who the CEO thinks is suitably qualified, to prepare the report.
- (4) A person is not to file an application for an adoption order in relation to an adult unless at least 30 days before the application is filed, the person gives notice of the intention to file the application to each of the prospective adoptee's birth parents in a written notice delivered personally or by registered post to the respective birth parent's last known address.
- (5) A person intending to file an application for an adoption order in relation to an adult may apply to the Court for orders in relation to a requirement to give notice under subsection (4).
- (6) On an application under subsection (5) the Court may, on such terms and conditions as it thinks fit —
  - (a) vary the time for giving the notice; or

- (b) dispense wholly or partly with a requirement to give the notice.

*[Section 69 amended by No. 8 of 2003 s. 38; No. 34 of 2004 s. 251.]*

**70. Court may allow further parties to adoption plans**

- (1) On an application for an adoption order in relation to a child, the Court may allow a person notified under section 59(2) or a person who is a party to the proceedings although not a party to the proposed adoption, to become a party to the adoption plan in relation to the child.
- (2) Where a person becomes a party to an adoption plan under subsection (1), the Court may order the provisions of the plan to be varied if the proposed variation adequately balances the rights and responsibilities of the parties mentioned in Schedule 2.

**71. Other powers on adoption applications**

On an application for an adoption order in relation to a child, the Court may, in addition to its powers under the *Family Court Act 1997*, and whether or not it makes an adoption order, make orders as if an application had been made under section 24(1), 25(1), 26D, 26E, 36(1), 50(1), 57, or 60(1).

*[Section 71 amended by No. 41 of 1997 s. 17.]*

**72. Approval and enforcement of adoption plans**

- (1) Subject to section 73, an adoption order in relation to a child cannot be made unless the Court approves the adoption plan in relation to the child, whether the provisions of the plan have been agreed by the parties to the plan, determined by an order under section 50(2), or affected by an order under section 70(2) or 71.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 73**

---

- (2) Where an adoption plan has been approved by the Court —
- (a) in the case of a breach or potential breach of any provision of the plan, the Court may —
    - (i) order the parties to the plan to participate in a mediation process; or
    - (ii) exercise its powers under the *Family Court Act 1997* as it thinks fit, to enforce a provision of the plan, as if the provision were an order made by the Court under that Act;
- and
- (b) in the case of a breach of any provision of the plan, the Court may deal with the matter as if the person who breached the provision had contravened an order made by the Court under the *Family Court Act 1997* or had been in contempt of the Court.

*[Section 72 amended by No. 41 of 1997 s. 18.]*

**73. Dispensing with adoption plans**

The Court may dispense with the requirement for an adoption plan or that a particular birth parent be a party to the plan —

- (a) if a birth parent is —
    - (i) unable or unwilling to participate, or incapable of participating, in a plan; or
    - (ii) cannot be found or contacted after enquiries which the Court thinks are sufficient;
- or
- (b) in special circumstances.

*[Section 73 inserted by No. 8 of 2003 s. 39.]*

**74. Name of adoptee**

- (1) If an adoption order is made, the Court is to, by the same order, declare the name by which the adoptee is to be known.



- (2) Before making an order changing an adoptee's name, the Court is to have regard to —
- (aa) the principle that a child's first name should not be changed at the time of adoption except in special circumstances;
    - (a) section 34(3) of the *Births, Deaths and Marriages Registration Act 1998*;
    - (b) the wishes expressed by the adoptee on the subject; and
    - (c) any adoption plan that is made in relation to the adoptee and approved by the Court.
  - (3) The Court is not to change the name of an adoptee who is 12 or more years of age unless the adoptee —
    - (a) consents to the change; or
    - (b) is incapable by reason of mental disability of consenting.
  - (4) An order under this section does not prevent a subsequent change of name under a law of the State or the Commonwealth.  
*[Section 74 amended by No. 40 of 1998 s. 6(3); No. 8 of 2003 s. 40.]*

**75. Effect of adoption orders**

- (1) Where an adoption order is made, for the purposes of the law of this State —
- (a) the relationship between the adoptee and the adoptive parent is to be treated as being that of child and parent;
  - (b) the relationship between the adoptee and —
    - (i) the adoptee's birth parents; or
    - (ii) if the adoptee was previously adopted, the previous adoptive parent,is to be treated as not being that of child and parent;
  - (c) if the adoptee had been previously adopted, whether under the law of this State or otherwise, the previous adoption ceases to have effect; and

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 76**

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- (d) the relationships of all persons to the adoptee, the adoptive parent and the birth parent or previous adoptive parent are to be determined in accordance with this section.
- (2) Subsection (1)(b)(i) does not apply to the adoptee's birth parent who is married to, or in a de facto relationship with, the adoptive parent who adopts the adoptee in the capacity of step-parent.
- (3) Subsection (1)(b)(ii) and (c) do not apply to a previous adoptive parent who is married to, or in a de facto relationship with, the adoptive parent who adopts the adoptee in the capacity of step-parent.
- (4) If an adoption order is made in relation to an adoptee, an appointment, in a deed or will existing at the time the adoption order is made, of a person as the guardian of the adoptee, ceases to have effect.
- (5) Despite subsections (1) to (4), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order (as the case may be) had not been made, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the adoption order or by virtue of the discharge of an adoption order.
- [(6) *repealed*]
- (7) In this section a reference to “**child**” includes a reference to a person who is 18 or more years of age.

*[Section 75 amended by No. 41 of 1997 s. 19; No. 3 of 2002 s. 18.]*

**76. Variation of adoption plans**

- (1) Where an adoption order is made in relation to a child —
- (a) a person who is a party to the adoption plan made in relation to the child that has been approved by the Court; or
  - (b) a person who is a party to the adoption, even though —
    - (i) the requirement for the person's consent was dispensed with; or
    - (ii) the person was not a party to the adoption plan made in relation to the child that has been approved by the Court,

subject to subsection (2), may apply to the Court at any time before the child attains 18 years of age, to vary the adoption plan.

- (2) An application may not be made under subsection (1) unless —
- (a) the person referred to in that subsection and the parties to the adoption plan have participated in a mediation process conducted by the CEO; and
  - (b) the CEO has certified that the mediation process has been completed.
- (3) Subsection (2) does not apply in relation to an adoption by a step-parent or carer.
- (4) On an application under subsection (1), if the Court, after having regard to the wishes of the parties, is satisfied that —
- (a) there has been a change of circumstances since the adoption plan was approved by the Court; and
  - (b) the proposed variation adequately balances the rights and responsibilities of the parties mentioned in Schedule 2,

the Court may allow the provisions of the plan to be varied or a party to be added to the adoption plan, as the case may be.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 77**

---

- (5) An adoption plan that is varied under this section may be enforced in the manner provided for by section 72(2).

*[Section 76 amended by No. 34 of 2004 s. 251.]*

**77. Discharge of adoption order**

- (1) The following persons may apply to the Court for an order to discharge an adoption order —
- (a) the Attorney General;
  - (b) the CEO;
  - (c) an adult adoptee who has notified the CEO of the adoptee's intention to so apply.
- (2) On an application under subsection (1), the Court may make an order to discharge an adoption order if it is satisfied that —
- (a) the adoption order was obtained by fraud, duress or other improper means;
  - (b) a consent relied on for the making of the adoption order was not an effective consent because it was obtained by fraud, duress or material inducement; or
  - (c) there is some exceptional reason why the order should be made.
- (3) The Court is not to make an order under subsection (2) —
- (a) if to do so would not be for the welfare and in the best interests of the adoptee; and
  - (b) unless the Court is satisfied that reasonable efforts have been made to notify all the parties to the adoption of the application.
- (3a) Any person may apply for leave to intervene in an application under subsection (1) and the Court may make an order entitling the person to intervene in the application.

- (3b) A person who, under subsection (3a), intervenes in an application under subsection (1), is to be treated as a party to the application with all the rights, duties and liabilities of a party, unless the Court orders otherwise.
- (4) Where an order is made under subsection (2) in relation to an adoption in which the adoptive parent was not specified in the forms of consent to the adoption, the consents to the adoption continue to have effect unless the Court orders otherwise.
- (5) Where an order is made under subsection (2), the Court may make such consequential or ancillary orders as it thinks fit in the interests of justice or the welfare and best interests of the adoptee, including orders relating to —
- (a) the name of the adoptee;
  - (b) the ownership or possession of property;
  - (c) guardianship of the adoptee or any other matter affecting the adoptee in relation to the duties, powers, responsibilities and authority which, by law, parents have in relation to children; or
  - (d) the domicile of the adoptee.
- (6) Where an order is made under subsection (2), the rights, duties, liabilities and relationships of persons under the law of the State are to be as if the adoption order had not been made.
- (7) Subsection (6) —
- (a) is subject to orders made under subsection (5) and to section 75(5); and
  - (b) does not otherwise affect —
    - (i) anything lawfully done;
    - (ii) the consequences of anything lawfully done; or
    - (iii) any proprietary right or interest that became vested in any person while the adoption order was in force.

**Adoption Act 1994**

**Part 3** The adoption process

**Division 10** Adoption orders

**s. 78**

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- (8) An adoption order cannot be appealed against, reviewed, called in question or affected by any court on any account, except —
- (a) under this section; or
  - (b) under section 211(3) of the *Family Court Act 1997*.

*[Section 77 amended by No. 41 of 1997 s. 20; No. 8 of 2003 s. 41; No. 34 of 2004 s. 251.]*

**78. Court to notify Registrar of adoption order etc.**

- (1) If the Court —
- (a) makes; or
  - (b) under section 77(2) makes an order discharging,
- an adoption order, the registrar of the Court is to give the Registrar written notice of the particulars.
- (2) If the adoptee's birth is not registered in this State under the *Births, Deaths and Marriages Registration Act 1998* then in addition to the notice referred to in subsection (1), the registrar of the Court is to give the Registrar a copy of the original registration of the adoptee's birth, if available.
- (3) In this section —
- “particulars”** means —
- (a) the date of the order;
  - (b) the full name, address and occupation of the adoptive parent;
  - (c) the name by which the adoptee is known before, and is to be known after, the order becomes effective;
  - (d) the terms of consequential or ancillary orders under section 77(5);
  - (e) if available, details of the date and place of the adoptee's birth and name and address of the adoptee's birth parents; and

- (f) if available, such other information required by the Registrar in relation to the registration of the adoptee's birth under the *Births, Deaths and Marriages Registration Act 1998*.

*[Section 78 inserted by No. 40 of 1998 s. 6(4).]*

**Division 11 — Adoption of a child in Western Australia who is  
to live in a Convention country**

*[Heading inserted by No. 7 of 1999 s. 13.]*

**78A. Arrangements for adoption**

- (1) Despite section 39(1)(a) and (c) and (2), a person who is habitually resident in a Convention country who wishes to adopt a child who is habitually resident in Western Australia may make an application to the Court for an adoption order.
- (2) Despite any other provision in this Part to the contrary, the Court may make an adoption order on an application under subsection (1) if the Court is satisfied that —
- (a) the child is in Western Australia;
  - (b) the child is not prevented from leaving Australia —
    - (i) under a law of the Commonwealth, a State or a Territory; or
    - (ii) because of an order of a court of the Commonwealth, a State or a Territory;
  - (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention;
  - (d) the Central Authority of the Convention country has agreed to the adoption of the child;
  - (e) the State Central Authority has agreed to the adoption of the child; and

**Adoption Act 1994**

**Part 3** The adoption process

**Division 11** Adoption of a child in Western Australia who is to live in a Convention country

**s. 78B**

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- (f) the application for the adoption complies with such of the provisions of section 68(1) or (2) as are relevant to the circumstances of or the arrangements for the adoption.

*[Section 78A inserted by No. 7 of 1999 s. 13.]*

**78B. Issue of adoption compliance certificate**

If the Court has made an adoption order in relation to a child under section 78A(2), the State Central Authority may, in relation to the child, issue an adoption compliance certificate for the purpose of Article 23 of the Hague Convention.

*[Section 78B inserted by No. 7 of 1999 s. 13.]*



## **Part 4 — Adoptions information**

### **Division 1 — Adoption information services**

#### **79. Duties of CEO as to adoption information services**

- (1) The CEO is to establish and maintain services to —
  - (a) facilitate the exchange of identifying and non-identifying information between the parties to an adoption and their relatives in accordance with this Act;
  - (b) obtain and preserve information about the parties to an adoption, including medical information in accordance with this Act;
  - (c) provide information and counselling to persons who are parties to an adoption plan and to parties to adoptions and their relatives in relation to their rights and responsibilities under this Act;
  - (d) provide mediation in —
    - (i) matters arising between persons who are parties to an adoption or an adoption plan; or
    - (ii) negotiations of parties to an adoption as to those parties' wishes in relation to contact between them;
  - (e) assist parties to an adoption to identify or contact the other parties to the adoption in accordance with this Act;
  - (f) provide the means for the parties to an adoption to leave messages for each other, subject to —
    - (i) the provisions of any contact veto in relation to the party for whom the message is intended; and
    - (ii) the regulations;
  - (g) coordinate the collation, preservation and access requirements of this Part as to information and documents held by the CEO, private adoption agencies,

**Adoption Act 1994**

**Part 4** Adoptions information

**Division 1** Adoption information services

**s. 79**

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- other adoption organisations, the Court and the Registrar;
- (h) develop and supervise the implementation of codes of practice in relation to —
- (i) the release of identifying or non-identifying information under this Act;
  - (ii) contacting a party to an adoption on behalf of another person; or
  - (iii) the mediation of disputes between the parties to an adoption or an adoption plan, or negotiations of parties to an adoption as to those parties' wishes in relation to contact between them;
- (i) conduct training courses for contact and mediation licensees; and
- (j) inform the public, by way of notices or advertisements, of the CEO's functions under this Act.
- (2) The CEO is to ensure that the services as to information, counselling and mediation mentioned in subsection (1) are available on the request of parties to adoptions or their relatives —
- (a) before the release of identifying information under this Part; or
  - (b) before the registration of a contact veto.
- (3) The CEO is not to release identifying information under this Act to a person whose access to the information is the subject of an information veto that will become, or became, ineffective because of the operation of section 59(2) of the *Adoption Amendment Act (No. 2) 2003* unless —
- (a) the person attends an interview with an officer of the Department; and
  - (b) all the parties to the adoption and their relatives have been provided with the information, counselling and

mediation that the CEO thinks is necessary in the particular case.

*[Section 79 amended by No. 40 of 1998 s. 6(5); No. 8 of 2003 s. 42; No. 34 of 2004 s. 251.]*

**80. CEO to notify certain persons in event of death**

- (1) If the CEO is informed by the Registrar that an adoptee has died, the CEO is to inform the adoptee's birth parents of the death if the CEO considers that —
  - (a) it is reasonably practicable to do so; and
  - (b) it is appropriate to do so, after having regard to the provisions of the relevant adoption plan.
- (2) If the CEO receives information that one of the parties to an adoption or a sibling of the adoptee (whether of the whole or half blood) has died, the CEO is to inform the other parties to the adoption, or the adoptee's siblings (whether of the whole or half blood), as the case may be, of the death so far as the CEO considers that it is reasonably practicable to do so.
- (3) The CEO does not have to inform a person under subsection (1) or (2) of a death —
  - (a) if the person has, in a manner approved by the CEO, notified the CEO that the person does not wish to be so advised; or
  - (b) in special circumstances.

*[Section 80 amended by No. 40 of 1998 s. 6(6); No. 8 of 2003 s. 43; No. 34 of 2004 s. 251.]*

**Division 2 — Access to adoptions information**

**81. Interpretation and application of Division 2**

- (1) In this Division —
  - (a) **“descendant”** means a lineal descendant;

**Adoption Act 1994**

**Part 4** Adoptions information

**Division 2** Access to adoptions information

**s. 82**

---

- (b) **“grandparent”** means a lineal grandparent or a lineal ancestor;
- (c) **“sibling”** means a brother or sister of the whole or half blood,

whether or not the relationship is traced through, or to, a person whose parents were not married to each other at the time of the person’s birth, or subsequently, but does not include a relationship that is established by a written law if the relationship is not otherwise a natural relationship.

- (2) This Division has effect subject to the provisions of an adoption plan that allow a party to the plan greater or earlier access to information in relation to an adoptee or the adoptee’s adoptive family or birth parents than that provided for in this Division.
- (3) This Division applies despite a provision of any contract or adoption plan that purports to restrict or exclude a right set out in this Division, and any such provision is of no effect.
- (4) Subsections (2) and (3) have effect subject to an order of the Court under section 83(2).
- (5) This Division applies despite the *Freedom of Information Act 1992*.

*[Section 81 amended by No. 3 of 2002 s. 19.]*

**82. CEO’s authority to allow access to information**

- (1) A person wishing to have access to information under section 84(1), 85(1), 88, 89 or 90 is to apply to the CEO in a form approved by the CEO and provide proof of the person’s identity, if relevant the person’s age, and other information that the CEO thinks is relevant to the application.
- (2) On an application under subsection (1), the CEO is to give his or her authority for the applicant to have access to the information as requested in the application unless the CEO thinks that there is a good reason for not doing so and in that

case, the CEO may give the authority on condition that the applicant may or may not have access to the information specified in the authority.

- (3) The CEO's authority under subsection (2) is to be in writing in a form approved by the CEO.
- (4) The CEO's power to authorise the access to information under this section is subject to an order of the Court under section 83(2) and to section 103.

*[Section 82 amended by No. 8 of 2003 s. 44; No. 34 of 2004 s. 251.]*

**83. Court orders as to access to information**

- (1) On an application for an adoption order or after an adoption order has been made, a party to the adoption may apply to the Court for an order to prevent the CEO from giving his or her authority under section 82(2) in relation to a person who would otherwise have a right of access to information under this Act.
- (2) On an application under subsection (1), the Court may make an order referred to in that subsection if it is satisfied that the person's access to the information would be likely to place the applicant or the person to whom the applicant is married, or in a de facto relationship with, or the applicant's children at serious risk.
- (3) If an order is made under subsection (2), the registrar of the Court is to give the CEO a certified copy of the order as soon as is practicable.
- (4) On the application of a person affected by an order under subsection (2), the Court may revoke, suspend or vary the order.

*[Section 83 amended by No. 3 of 2002 s. 20; No. 34 of 2004 s. 251.]*

**84. Court records**

- (1) Subject to section 82(2), no persons other than the following persons have the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption —
  - (a) the adoptee;
  - (b) a birth parent of the adoptee;
  - (c) an adoptive parent of the adoptee; and
  - (d) a person who was a party to the proceedings.
- (2) Subsection (1) has effect subject to —
  - (a) the production to the registrar of the court or other similar officer, of the authority under section 82(2) to allow access to the information;
  - (b) the requirements of the relevant court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings;
  - (c) any court order in relation to exclusion of persons from the hearing of the proceedings; and
  - (d) sections 89 and 90.
- (3) Nothing in subsection (1) prevents an adoptive parent from obtaining a record of the adoption order.
- (4) Nothing in subsection (1) or (2) prevents a person referred to in subsection (1)(a) to (d) from applying in writing to the Court for a copy of a report under section 61 or a report from a representative of the child submitted to the Court in relation to the adoption.
- (5) On an application under subsection (4) the Court may, as it thinks fit, release all or part of a report under section 61 or a report from a representative of the child submitted to the Court in relation to the adoption.

*[Section 84 amended by No. 8 of 2003 s. 45.]*

**85. Registration of birth**

- (1) Subject to section 82(2), no persons other than the following persons have the right to have access to the registration of an adoptee's birth —
  - (a) the adoptee;
  - (b) a birth parent of the adoptee; and
  - (c) an adoptive parent of the adoptee.
- (2) Subsection (1) has effect subject to —
  - (a) production to the Registrar, of the authority under section 82(2) to allow access to the information;
  - (b) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by the Registrar; and
  - (c) sections 89 and 90.
- (3) The production to the Registrar of the authority referred to in subsection (2)(a) is to be treated as an adequate reason, for the purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —
  - (a) to allow a person access to the Register;
  - (b) to provide a person with information extracted from the Register; or
  - (c) to search for information in the Register,within the meaning of that Act.

*[Section 85 amended by No. 40 of 1998 s. 6(7), (8) and (9).]*

**86. Portion of registration of birth not referring to adoption**

- (1) At the request of —
  - (a) an adoptee's adoptive parent, if the adoptee is less than 18 years of age; or

**Adoption Act 1994**

**Part 4** Adoptions information

**Division 2** Access to adoptions information

**s. 88**

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- (b) an adoptee, if the adoptee is 18 or more years of age, the Registrar is to issue to the person making the request, a certified copy of that portion of the registration of the adoptee's birth that does not refer to the adoptee's adoption or birth parents.
- (2) A certified copy of that portion of the registration of an adoptee's birth that does not refer to the adoptee's adoption or birth parents that is issued by the Registrar under subsection (1) is admissible in legal proceedings as evidence of the facts recorded on the document.

*[Section 86 amended by No. 40 of 1998 s. 6(10); No. 8 of 2003 s. 46.]*

*[87. Repealed by No. 3 of 2003 s. 47.]*

**88. Non-identifying information held by adoption agencies**

Subject to section 82(2), the following persons have the right to have access to non-identifying information in relation to the parties to an adoption that is in the custody, power or control of the CEO or a private adoption agency —

- (a) the adoptee;
- (b) a birth parent of the adoptee;
- (c) an adoptive parent of the adoptee;
- (d) any grandparent of the adoptee;
- (e) any descendant of the adoptee who is 18 or more years of age;
- (f) any sibling of the adoptee, if both the adoptee and the sibling are 18 or more years of age; and
- (g) any other person who, in the opinion of the CEO, has a suitable reason for having access to the information.

*[Section 88 amended by No. 34 of 2004 s. 251.]*



**89. If party to adoption deceased**

(1) If a party to an adoption is deceased, any —

- (a) grandparent of the party;
- (b) descendant of the party; or
- (c) sibling of the party,

who is 18 or more years of age has the right to have access to the registration of the adoptee's birth.

(2) Subsection (1) is subject to —

- (a) section 82(2);
- (b) production to the Registrar, of the authority under section 82(2) to allow access to the information; and
- (c) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by the Registrar.

(3) The production to the Registrar of the authority referred to in subsection (2)(b) is to be treated as an adequate reason, for the purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —

- (a) to allow a person access to the Register;
- (b) to provide a person with information extracted from the Register; or
- (c) to search for information in the Register,

within the meaning of that Act.

(4) If a party to an adoption is deceased, any —

- (a) grandparent of the party;
- (b) descendant of the party; or
- (c) sibling of the party,

who is 18 or more years of age has the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption.

**Adoption Act 1994**

**Part 4** Adoptions information

**Division 2** Access to adoptions information

**s. 90**

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- (5) Subsection (4) is subject to —
- (a) section 82(2);
  - (b) the production to the registrar of the court or other similar officer, of the authority under section 82(2) to allow access to the information;
  - (c) the requirements of the relevant court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings; and
  - (d) any court order in relation to exclusion of persons from the hearing of the proceedings.

*[Section 89 inserted by No. 8 of 2003 s. 48.]*

**90. If adoptee cannot be found**

- (1) If an adoptee who is 18 or more years of age, cannot be found or contacted after enquiries which the CEO thinks are sufficient, any —
- (a) grandparent of the adoptee;
  - (b) descendant of the adoptee; or
  - (c) sibling of the adoptee,
- who is 18 or more years of age has the right to have access to the registration of the adoptee's birth.
- (2) Subsection (1) is subject to —
- (a) section 82(2);
  - (b) production to the Registrar, of the authority under section 82(2) to allow access to the information; and
  - (c) the *Births, Deaths and Marriages Registration Act 1998* in relation to the manner of application for access to information held by the Registrar.
- (3) The production to the Registrar of the authority referred to in subsection (2)(b) is to be treated as an adequate reason, for the

purposes of section 54 or 55 of the *Births, Deaths and Marriages Registration Act 1998*, for the Registrar —

- (a) to allow a person access to the Register;
- (b) to provide a person with information extracted from the Register; or
- (c) to search for information in the Register,

within the meaning of that Act.

- (4) If an adoptee who is 18 or more years of age, cannot be found or contacted after enquiries which the CEO thinks are sufficient, any —

- (a) grandparent of the adoptee;
- (b) descendant of the adoptee; or
- (c) sibling of the adoptee,

who is 18 or more years of age has the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption.

- (5) Subsection (4) is subject to —

- (a) section 82(2);
- (b) the production to the registrar of the court or other similar officer, of the authority under section 82(2) to allow access to the information;
- (c) the requirements of the relevant court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings; and
- (d) any court order in relation to exclusion of persons from the hearing of the proceedings.

*[Section 90 inserted by No. 8 of 2003 s. 49; amended by No. 34 of 2004 s. 251.]*

**Division 3 — Exchange and preservation of adoptions information**

**91. Family Court to provide information to CEO**

The registrar of the Court is to give to the CEO such information from the records under the registrar's control as the CEO certifies in writing is required by the CEO for the purposes of this Act.

*[Section 91 amended by No. 34 of 2004 s. 251.]*

**92. Registrar to provide information to CEO**

- (1) The Registrar is to give to the CEO such information from the Register as the CEO certifies in writing is required by the CEO for the purposes of this Act.
- (2) If the Registrar receives information that a person has died, and it appears from the Register that the person was an adoptee, the Registrar is to inform the CEO of the adoptee's death.
- (3) In this section —

**“Register”** has the meaning that it has in the *Births, Deaths and Marriages Registration Act 1998*.

*[Section 92 inserted by No. 40 of 1998 s. 6(12); amended by No. 34 of 2004 s. 251.]*

**93. Persons or bodies to provide information to CEO**

- (1) The CEO may direct a person (including an association or body of persons, corporate or unincorporate) that conducts or has conducted adoption services, whether before or after the commencement of this Act, to give to the CEO such information in relation to those adoption services, from the records in its custody, power or control, as the CEO certifies in writing is required for the purposes of this Act.

- (2) A person is to comply with a direction of the CEO under subsection (1).

Penalty: \$10 000 and 12 months' imprisonment.

*[Section 93 amended by No. 34 of 2004 s. 251.]*

**94. Preservation of records as to adoptions information**

- (1) Records of proceedings in a court in relation to an adoption or proposed adoption are to be preserved, in so far as is practicable, indefinitely.
- (2) Where it is not practicable to keep a record referred to in subsection (1), the record may only be destroyed with the authority of the registrar of the court or other similar officer, after consultation with the CEO.
- (3) The CEO, a person (including a hospital or hostel or any other association or body of persons, corporate or unincorporate) that conducts or has conducted adoption services, whether before or after the commencement of this Act, or a person acting on behalf of such a person, who has in his, her or its custody, power or control, any document that records information in relation to an adoption or proposed adoption or the parties to such adoption, is to cause the document to be preserved for not less than 100 years from the day on which the document came into his, her or its custody, power or control.  
Penalty: \$10 000 and 12 months' imprisonment.
- (4) If a person (other than the CEO) referred to in subsection (3) ceases or has ceased the conduct of adoption services, the person is to cause any document in his, her or its power, custody or control of the nature referred to in subsection (3) to be transferred to the possession of the CEO unless the person satisfies the CEO that provision has been made for access to and safekeeping of the document under this Act.  
Penalty: \$10 000 and 12 months' imprisonment.

*[Section 94 amended by No. 8 of 2003 s. 50; No. 34 of 2004 s. 251.]*

**Division 4 — Contact vetoes**

*[Heading amended by No. 8 of 2003 s. 51.]*

*[95. Repealed by No. 8 of 2003 s. 52.]*

*[96. Repealed by No. 8 of 2003 s. 53.]*

*[97. Repealed by No. 8 of 2003 s. 54.]*

*[98. Repealed by No. 8 of 2003 s. 56.]*

**99. Register of contact vetoes**

The CEO is to maintain a register of —

- (a) the statements of wishes that were registered under this Division before the veto cut off day; and
- (b) any cancellation or variation under section 102(1).

*[Section 99 inserted by No. 8 of 2003 s. 57; amended by No. 34 of 2004 s. 251.]*

**100. Duration of contact vetoes**

- (1) A contact veto is of effect —
  - (a) for the period stated by the person who lodged the statement of wishes;
  - (b) until the person who lodged the statement of wishes dies;
  - (c) until cancelled by the person who lodged the statement of wishes; or
  - (d) subject to subsection (3), where the statement of wishes was lodged by a guardian of behalf of an adoptee who was less than 18 years of age at the time of lodgement, until the adoptee attains 19 years of age,

whichever occurs first.

- (2) The person who lodged the statement of wishes may vary the period referred to in subsection (1)(a).
- (3) An adoptee on behalf of whom a statement of wishes for a contact veto was lodged before the veto cut off day may —
  - (a) within 12 months after attaining the age of 18 years; and
  - (b) in writing given to the CEO,

continue the effect of the statement of wishes and, in that case, subsections (1)(a), (b) and (c) and (2) and sections 102, 103 and 104 apply in relation to the adoptee as if the adoptee were the person who lodged the statement of wishes or sought the registration of the relevant contact veto.

*[Section 100 amended by No. 8 of 2003 s. 58; No. 34 of 2004 s. 251.]*

*[101. Repealed by No. 8 of 2003 s. 59(1).]*

**102. Confirmation, cancellation or variation of vetoes**

- (1) A person whose statement of wishes was registered under this Division before the veto cut off day may, in a form approved by the CEO, cancel or apply to vary the statement.
- (2) The CEO may approach the person who sought the registration of a contact veto and ask the person whether he or she wishes to —
  - (a) confirm the veto;
  - (b) cancel the veto; or
  - (c) vary the veto in so far as it relates to contact with a specified person.
- (3) The CEO may arrange for a party or parties affected by a contact veto to be offered such counselling as the CEO thinks will assist in the matter.

*[Section 102 amended by No. 8 of 2003 s. 60; No. 34 of 2004 s. 251.]*

**103. Undertakings not to contact person who has lodged contact veto**

If the CEO receives an application under section 82(1) to authorise access to identifying information in relation to a person and a contact veto has been registered that forbids the applicant from contacting the person, the CEO is not to give his or her authorisation under section 82(2) unless the applicant signs an undertaking, in a form approved by the CEO, that the applicant will not, while the contact veto remains in force, contact, or request another person to contact on his or her behalf, the person who lodged the contact veto.

*[Section 103 amended by No. 34 of 2004 s. 251.]*

**104. Offence to breach undertaking or harass**

- (1) A person must comply with an undertaking entered into by the person under section 103.
- (2) A person who enters into an undertaking under section 103 must not —
  - (a) harass; or
  - (b) request another person to act in a manner that is likely to harass,

the person who lodged the contact veto.

- (3) A person, other than the CEO under section 102(2), must not, on behalf of a person —
  - (a) contact; or
  - (b) harass, or act in a manner that is likely to harass,another person, if he or she knows that the person on whose behalf he is acting is bound by an undertaking under section 103 not to contact the other person.



Penalty: \$10 000 and 12 months' imprisonment.

*[Section 104 amended by No. 34 of 2004 s. 251.]*

**Division 5 — Private contact and mediation licensees**

*[Heading amended by No. 8 of 2003 s. 61.]*

**105. Contact and mediation agencies to be licensed**

- (1) A person, other than the CEO, is not to act on behalf of another person —
- (a) for the purpose of contacting a party to an adoption in relation to the adoption; or
  - (b) in negotiations as to contact between any parties to an adoption,

except under and in accordance with a licence under this Division to do so.

- (2) A person, not being a contact and mediation licensee, is not to hold himself, herself or itself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he, she or it is a contact and mediation licensee.

Penalty: \$10 000 and 12 months' imprisonment.

*[Section 105 amended by No. 8 of 2003 s. 62; No. 34 of 2004 s. 251.]*

**106. Licences to conduct contact and mediation services**

The CEO may grant a licence to an individual to conduct the activities mentioned in section 105(1) on behalf of another person.

*[Section 106 amended by No. 8 of 2003 s. 63; No. 34 of 2004 s. 251.]*

**107. Regulations as to contact and mediation agencies**

The following matters in relation to applications under, and licences provided for by, this Division are to be prescribed by regulations —

- (a) the qualifications of and requirements to be satisfied by applicants;
- (b) the procedure for applications and grounds for refusal of applications;
- (c) the duration, renewal, revocation and suspension of licences, including provision for the contravention of or failure to comply with a provision of a code of practice published by order of the CEO in the *Government Gazette* in relation to the conduct of a contact and mediation licensee to be a ground for the suspension, revocation or refusal of the renewal of a licence under this Division;
- (d) the conferral of a right to apply to the State Administrative Tribunal for a review of a decision of the CEO as to an application or licence;
- (e) the requirements for public notification of applications for licences and the making of submissions in relation to such applications; and
- (f) the provision of information to the CEO by contact and mediation licensees in relation to the services conducted by them.

*[Section 107 amended by No. 8 of 2003 s. 64; No. 34 of 2004 s. 251; No. 55 of 2004 s. 12.]*

**108. Contact and mediation agencies bound by contact veto**

- (1) A contact and mediation licensee who proposes to contact a person in relation to an adoption is to apply to the CEO, before contacting the person, to ascertain whether a current contact veto is registered in relation to the person the licensee proposes to contact.

- (2) Where the CEO notifies a contact and mediation licensee of the requirements of a current contact veto registered in relation to a person, the licensee must not contravene or fail to comply with those requirements.  
Penalty: \$10 000 and 12 months' imprisonment.
- (3) If a contact and mediation licensee is convicted of an offence under this section, the CEO may —
- (a) cancel the licensee's licence forthwith;
  - (b) order that the licensee not be re-issued with a licence for 10 years; and
  - (c) where the licensee is registered with, or a member of, a professional organisation, inform the organisation of the offence and conviction.

*[Section 108 amended by No. 8 of 2003 s. 65; No. 34 of 2004 s. 251.]*

### **Division 6 — Updating non-identifying information**

#### **109. CEO to attempt to obtain current information**

- (1) If the CEO receives a request for current non-identifying information (which may include medical information) from —
- (a) an adoptee who is 18 or more years of age, as to a birth parent of the adoptee or a sibling of the adoptee who is 18 or more years of age;
  - (b) an adoptee's birth parent, as to the adoptee if the adoptee is 18 or more years of age or the adoptee's adoptive parent;
  - (c) an adoptee's adoptive parent, as to a birth parent of the adoptee or a sibling of the adoptee who is 18 or more years of age; or
  - (d) a sibling, who is 18 or more years of age, of the adoptee, as to the adoptee if the adoptee is 18 or more years of age or the adoptee's adoptive parent,

**Adoption Act 1994**

**Part 4** Adoptions information

**Division 6** Updating non-identifying information

**s. 109**

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the CEO may approach the person in relation to whom the information is requested and indicate the nature of the requested information.

- (2) If a person is approached by the CEO under subsection (1), the person may decline to provide some or all of the requested information.
- (3) In this section, “**sibling**” has the same meaning as in section 81(1)(c).

*[Section 109 amended by No. 34 of 2004 s. 251.]*

## **Part 5 — Review of decisions and appeals**

### **Division 1 — Review by CEO**

*[Heading amended by No. 34 of 2004 s. 251.]*

#### **110. Review by CEO**

- (1) A person who is aggrieved by a decision made for the purposes of this Act by —
- (a) a person to whom the CEO had delegated a function under section 6(1); or
  - (b) a private adoption agency,
- may apply to the CEO to review the decision.

- (2) This section does not apply to a decision of the adoption applications committee.

*[Section 110 amended by No. 8 of 2003 s. 66; No. 34 of 2004 s. 251.]*

#### **111. Nature of review by CEO and evidence**

- (1) An application for review under this Division is to be in a form approved by the CEO and is to be delivered to the CEO within 21 days from the day on which the applicant received notice of the decision, or such further time as the CEO allows.
- (2) The CEO is to determine the review —
- (a) on the material that was before the person who made the decision; and
  - (b) on such further material either oral or in writing as the CEO thinks fit to receive.

*[Section 111 amended by No. 34 of 2004 s. 251.]*

**112. Powers of CEO on review**

- (1) Upon a review under this Division, the CEO may do one or more of the following things —
  - (a) confirm, set aside or vary the decision being reviewed; or
  - (b) substitute another decision for the decision being reviewed.
- (2) On the request of the applicant, the CEO is to provide written reasons for the decision under subsection (1).

*[Section 112 amended by No. 34 of 2004 s. 251.]*

**Division 2 — Decisions of the adoption applications committee**

*[Heading inserted by No. 8 of 2003 s. 67.]*

**113. CEO may direct committee to review its own procedures**

- (1) A person who is aggrieved by a decision of the adoption applications committee may, in addition to the right to request the committee to review its decision under section 42(1), apply to the CEO to direct the committee to review the procedure by which the decision was made.
- (2) If —
  - (a) the CEO thinks that the decision was made without complying with a procedure prescribed by regulation for the making of such a decision; or
  - (b) the decision was made under a procedure determined by the committee under section 15(b) and the CEO thinks that the procedure was unfair, defective or inadequate,the CEO is to direct the committee to review the procedure and may give a direction as to the procedure that he or she thinks is appropriate.
- (3) The committee must comply with a direction given under subsection (2).

- (4) The CEO is to give to the applicant under subsection (1) written advice of the adoption applications committee's decision after the review and, if the applicant requests, written reasons for the decision.

*[Section 113 amended by No. 8 of 2003 s. 68; No. 34 of 2004 s. 251.]*

### **Division 3 — Appeals to Family Court**

#### **114. Matters that may be appealed to the Family Court**

- (1) A person who is aggrieved by the decision of the CEO on the review under Division 1 of a decision may appeal to the Court on a question of law, a question of fact or a question of mixed law and fact in relation to the first-mentioned decision.
- (2) A person who is aggrieved by the decision of the adoption applications committee may appeal to the Court on a question of law, a question of fact or a question of mixed law and fact in relation to a procedure by which the committee reached the decision.
- (3) An appeal does not lie under this section from a decision to place a child with a view to the child's adoption if the child has already been placed with a view to the child's adoption.

*[Section 114 amended by No. 8 of 2003 s. 69; No. 34 of 2004 s. 251.]*

#### **115. Nature of appeal to Family Court**

- (1) A decision from which an appeal lies under section 114(1) and (2) is to be treated as being a decree from which an appeal lies under section 211(2) of the *Family Court Act 1997*.
- (2) Subject to sections 116 and 117, an appeal under this Division is to be in accordance with rules of court.

*[Section 115 amended by No. 41 of 1997 s. 21.]*

**116. Role of CEO in appeals from decisions of committee**

Where an appeal from a decision of the adoption applications committee is instituted under this Division —

- (a) a copy of the notice of the appeal is to be served on the CEO within 14 days after filing the notice and need not be served on any member of the committee; and
- (b) the CEO is to have the conduct of the proceedings on behalf of the committee for the purposes of the appeal.

*[Section 116 amended by No. 8 of 2003 s. 70; No. 34 of 2004 s. 251.]*

**117. Status of decision pending appeal**

- (1) If an appeal is instituted under this Division in relation to a decision, the decision is to continue to have effect pending the appeal, unless the Court otherwise orders.
- (2) The 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 subsection (1).

**Division 4 — Appeals to Court of Appeal**

*[Heading amended by No. 45 of 2004 s. 37.]*

**118. Appeals from decision of Family Court under Division 3**

- (1) A person who is aggrieved by a decision of the Court on an appeal under Division 3 may, with leave granted under and in accordance with rules of court, appeal to the Court of Appeal.
- (2) An application for leave to appeal, and an appeal, under this section may only be made on the ground that the Court made an error of law.

*[Section 118 amended by No. 45 of 2004 s. 37.]*



**119. Appeals from other decisions of Family Court not affected**

Nothing in this Act affects a right under section 211(3) of the *Family Court Act 1997* to appeal from a decree, within the meaning of section 211(1) of that Act, to the Court of Appeal.

*[Section 119 amended by No. 41 of 1997 s. 22; No. 45 of 2004 s. 37.]*

## **Part 6 — Offences**

### **120. Interpretation**

- (1) In this Part —
- “**child**” includes a reference to an unborn child;
  - “**publish**” means to bring, by any means, to the notice of the public or a person in his or her capacity as a member of the public.
- (2) In this Part, a reference to the authority of, the approval of or charges made by, a private adoption agency is a reference to the authority, approval or charging that is in accordance with the agency’s licence or any condition or restriction attached to the licence.

*[Section 120 amended by No. 3 of 2002 s. 22; No. 8 of 2003 s. 71.]*

### **121. Territorial application**

Sections 122, 123, 124 and 125 —

- (a) do not apply to acts outside this State; and
- (b) unless otherwise expressly provided, apply to acts in this State in relation to —
  - (i) the adoption of a child in; or
  - (ii) a person adopted in,  
another State or a Territory or a country other than Australia.

### **122. Payments for adoption, adoptions services etc.**

- (1) A person must not make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of —
- (a) a child’s adoption or proposed adoption;
  - (b) the giving of consent, or signing a form of consent to a child’s adoption; or

- (c) conducting an adoption service in relation to a child.  
Penalty: \$25 000 and 2 years' imprisonment.
- (2) This section does not apply to a payment —
  - (a) of legal expenses;
  - (b) of medical or hospital expenses for the care or treatment of a mother or child in relation to the bearing and birth of the child, that is authorised by the CEO or a private adoption agency;
  - (c) authorised by the CEO, a private adoption agency or the Court, that was incurred in relation to an adoption or proposed adoption or to an adoptee or prospective adoptee.
- (3) This section does not apply to a payment or reward made, given or received, or agreed to be made, given or received in relation to an adoption or proposed adoption under the law of another State or a Territory, if the making of the payment, giving of the reward or agreement to do so is lawful under the law of the other State or the Territory.
- (4) This section does not apply to charges made by the CEO or private adoption agencies for providing services under this Act.
- (5) An agreement under which a person makes, gives or receives a payment or reward for or in consideration of a matter mentioned in subsection (1)(a), (b) or (c), other than a payment or reward mentioned in subsection (2), (3) or (4), is of no effect.

*[Section 122 amended by No. 34 of 2004 s. 251.]*

**123. Restriction on advertising**

- (1) A person must not publish material to the effect that a person —
  - (a) wishes to have a child adopted, or placed with another person with a view to the adoption of the child by that other person;
  - (b) wishes to adopt a child, or to have a child placed with the person with a view to adopting the child; or

**s. 124**

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(c) conducts or is available to conduct an adoption service.

Penalty: \$10 000 and 12 months' imprisonment.

(2) This section does not apply to material approved by the CEO or a private adoption agency for publication.

*[Section 123 amended by No. 34 of 2004 s. 251.]*

**124.      Restriction on publication of identity of parties**

(1) A person must not publish material that identifies or is likely to identify a person —

(a) who is, or was but is no longer, a party to an adoption or a proposed adoption, as a party to the adoption or proposed adoption;

(b) who is a party to proceedings in any court in relation to an adoption, a proposed adoption or the discharge of an adoption order, as a party to the proceedings;

(c) whose consent to the adoption of a person is or was required, (whether or not the requirement for consent has been dispensed with), as a person whose consent was so required;

(d) who is, or is likely to be affected by an adoption order or an adoption plan, as a person so affected; or

(e) who is a relative of a person to whom paragraph (a) or (b) applies, as a person who is such a relative,

where the adoption is under this Act or a law of another State or a Territory.

Penalty: \$10 000 and 12 months' imprisonment.

(2) This section does not apply to —

(a) material approved by the CEO, a private adoption agency or a court for publication; or

(b) the matters mentioned in section 243(8) of the *Family Court Act 1997*.

- (3) This section does not apply to the identification or likely identification of —
- (a) an adoptee or prospective adoptee who is 18 or more years of age and consents in writing to being identified;
  - (b) an adoptee or prospective adoptee who is less than 18 years of age where consent in writing to the identification of that person has been given by the person's guardian; or
  - (c) a person, other than an adoptee or prospective adoptee, who is 18 or more years of age and consents in writing to being identified, unless the identification of the person identifies or is likely to identify an adoptee or prospective adoptee who has not consented to being identified,

where the identification is in accordance with any conditions or restrictions attached to the consent.

- (4) In subsection (3) —
- “adoptee”** includes a person who was but is no longer an adoptee.

*[Section 124 amended by No. 41 of 1997 s. 23; No. 8 of 2003 s. 72; No. 34 of 2004 s. 251.]*

## **125. Undue influence**

A person must not use or threaten to use force or restraint, or injure or threaten to injure, or cause or threaten detriment of any kind to another person, with a view —

- (a) to inducing the other person to consent, or to refrain from consenting, to an adoption;
- (b) to inducing the other person to revoke, or to refrain from revoking, his or her consent to an adoption; or
- (c) to influencing the other person in the —
  - (i) specification in a form of consent of a person as a child's prospective adoptive parent;

**s. 126**

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(ii) expression of wishes under section 45(a)(i) or section 52(1)(a)(v); or

(iii) negotiation of an adoption plan.

Penalty: \$10 000 and 12 months' imprisonment.

**126. Harassment etc.**

A person must not do any act intended or likely to harass, intimidate, embarrass, or ridicule another person by reason of that other person being —

(a) a party to an adoption or proposed adoption; or

(b) a relative of a party to an adoption or proposed adoption.

Penalty: \$10 000 and 12 months' imprisonment.

**127. Confidentiality**

(1) A person must not directly or indirectly —

(a) make a record of;

(b) make use of; or

(c) disclose or communicate to another person,

information to which this section applies.

Penalty: \$10 000 and 12 months' imprisonment.

(2) This section applies to information contained in any document of or in the possession or under the control of —

(a) the Minister;

(b) the Department;

(ba) an Aboriginal or Torres Strait Islander agency, approved by the CEO for the purposes of section 16A(2);

(c) a private adoption agency; or

(d) a contact and mediation licensee,

relating to an adoption or proposed adoption, an adoption service conducted in relation to an adoptee or a prospective adoptee, the parties to an adoption or proposed adoption, an

adoption plan in relation to an adoptee or prospective adoptee, or mediation between the parties to an adoption or proposed adoption, or the discharge of an adoption order.

- (3) This section does not apply to the recording, use, disclosure or communication of information —
- (a) under and in accordance with this Act or any other law;
  - (b) in the course of duty;
  - (c) for the purposes of proceedings in any court in relation to matters under or in relation to, or offences against, this Act; or
  - (d) with the written authority of the Minister or all persons to whom the information relates.

*[Section 127 amended by No. 8 of 2003 s. 73; No. 34 of 2004 s. 251.]*

**128. Authority, and time in which, to prosecute**

- (1) All proceedings for offences against this Act are to be —
- (a) instituted by a person who —
    - (i) is the Attorney General;
    - (ii) is the CEO;
    - (iii) is the Commissioner of Police; or
    - (iv) has the written consent of a person referred to in subparagraph (i), (ii) or (iii) to do so;
- and
- (b) commenced within 12 months after the day on which evidence, sufficient in the person's opinion to justify the proceedings, comes to the person's knowledge.
- (2) A certificate of the person referred to in subsection (1) that evidence referred to in subsection (1)(b) came to the person's knowledge on a particular day, is conclusive evidence of that fact.

**s. 129**

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- (3) Judicial notice is to be taken, for the purposes of this section, of the signature of a person referred to in subsection (1) on a prosecution notice and on a certificate purporting to be issued under subsection (2).

*[Section 128 inserted by No. 8 of 2003 s. 74; amended by No. 34 of 2004 s. 251; No. 84 of 2004 s. 79.]*

**129. Other evidentiary matters**

- (1) In all courts and before all persons and bodies authorised to receive evidence —
- (a) a certificate purporting to be issued by the CEO and stating that any person was or was not licensed as a private adoption agency or a contact and mediation licensee, or the conditions or restrictions applicable to any such licence, on any day or days or during any period mentioned in the certificate, is evidence of the matters so stated;
  - (b) a certificate purporting to be issued by the CEO and stating that the CEO had or had not given authority under section 82(2) for a person to have access to the information described in the certificate, on any day or days, is evidence of the matters so stated; and
  - (c) a copy of or extract from a register under section 44(1) or Division 4 of Part 4, or any statement that purports to reproduce matters entered in a register and to be certified by the CEO as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement.
- (2) Judicial notice is to be taken, for the purposes of this Act, of the fact that a person is the CEO and of the signature of the CEO on a certificate purporting to be issued under subsection (1).

*[Section 129 amended by No. 8 of 2003 s. 75; No. 34 of 2004 s. 251.]*



## **Part 7 — Miscellaneous**

### **Division 1 — Delegation and protection**

#### **130. Delegation by CEO**

The CEO may delegate for the purposes of this Act, either generally or as otherwise provided by the instrument of delegation, by writing signed by the CEO, to a person any of the CEO's functions under this Act, other than this power of delegation.

*[Section 130 amended by No. 34 of 2004 s. 251.]*

#### **130A. Delegation by State Central Authority**

The State Central Authority may delegate for the purposes of this Act, either generally or as otherwise provided by the instrument of delegation, by writing signed by the State Central Authority, to the CEO or an officer of the Department any of the State Central Authority's functions under this Act or the Hague Convention, other than this power of delegation.

*[Section 130A inserted by No. 7 of 1999 s. 14; amended by No. 8 of 2003 s. 76; No. 34 of 2004 s. 251.]*

#### **131. Protection from liability etc.**

- (1) A matter or thing done or omitted by —
  - (a) the Minister;
  - (b) the CEO or a person to whom section 6(2) or 130 applies;
  - (c) a private adoption agency, or a person acting on behalf of the agency, where the matter or thing done or omitted was in accordance with the agency's licence or any condition or restriction attached to the licence;
  - (d) an officer of the Department;

**Adoption Act 1994**

**Part 7** Miscellaneous

**Division 2** Proceedings

**s. 132**

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- (e) the adoption applications committee or a member of that committee;
- (f) a person who otherwise performs a function under this Act,

does not, if the matter or thing was done or omitted in good faith for the purposes of this Act, subject the person to any action, liability, claim or demand.

- (2) Subsection (1) does not apply to a contact and mediation licensee.

*[Section 131 amended by No. 8 of 2003 s. 77; No. 34 of 2004 s. 251.]*

**132. Distribution of property not affected without notice**

- (1) A trustee or personal representative may convey, transfer, or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption order has been made which may affect a person's entitlement to an interest in the property.
- (2) A trustee or personal representative who conveys, transfers or distributes property in the manner referred to in subsection (1) is not liable to a person who claims, directly or indirectly, an entitlement to an interest in the property by reason of an adoption, unless the trustee or personal representative had notice of the claim before the conveyance, transfer or distribution was effected.
- (3) This section does not affect the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

## **Division 2 — Proceedings**

### **133. Proceedings to be private**

- (1) Proceedings in any court under or in relation to this Act are not to be heard in open court and all persons other than a party to the proceedings or his or her lawyer are to be excluded during the proceedings, except as otherwise directed by the court.
- (2) A court may order any person to leave the room or other place during the examination of a witness in proceedings mentioned in subsection (1).

### **134. Representation of children**

- (1) The CEO may, at any time, appoint a person who, in the CEO's opinion, is suitably qualified to represent a child who is a prospective adoptee or adoptee.
  - (1a) The CEO must, as soon as practicable after the Department has been contacted in relation to the matter, appoint a person who, in the CEO's opinion, is suitably qualified to represent a child who —
    - (a) is a prospective adoptee or adoptee; and
    - (b) has a disability of a kind that is likely to affect the placement of the child.
  - (1b) The CEO must, as soon as practicable after the Department has been contacted in relation to the matter, appoint a person who, in the CEO's opinion, is suitably qualified to represent a child who is a birth parent and who is considering the adoption of her or his child.
- (2) A person appointed under subsection (1), (1a) or (1b) may instruct a lawyer on behalf of the child, and in that case, the CEO is to make arrangements in relation to the legal advice to be given to, or the legal representation to be provided for, the child.

- (3) In proceedings under or in relation to this Act in respect of a child who is a prospective adoptee or an adoptee, the court before which the proceedings are held may direct that the child be separately represented by a lawyer.
- (4) If a court gives a direction under subsection (3), the CEO is to —
- (a) make arrangements in accordance with the direction; and
  - (b) be responsible for the legal costs,
- unless the court orders otherwise.
- (5) A lawyer who represents a child under a direction under subsection (3) must act on the instructions of the child if the child —
- (a) has sufficient maturity and understanding to give instructions; and
  - (b) wishes to give instructions,
- and in any other case must act in the best interests of the child.
- (6) Any question as to whether a child has sufficient maturity and understanding to give instructions is to be determined by the court.

*[Section 134 amended by No. 8 of 2003 s. 78; No. 34 of 2004 s. 251.]*

**Division 2A — State Central Authority**

*[Heading inserted by No. 7 of 1999 s. 15.]*

**134A. State Central Authority**

- (1) The Minister is appointed to be the Central Authority for the State of Western Australia for the purpose of Article 6.2 of the Hague Convention.

- (2) The Minister is to advise the Commonwealth Central Authority that the Minister is the State Central Authority and the address and functions of the State Central Authority.
- (3) As soon as practicable after a change to the address or functions of the State Central Authority, the Minister is to advise the Commonwealth Central Authority of the change.

*[Section 134A inserted by No. 7 of 1999 s. 15.]*

**134B. Functions of the State Central Authority**

The State Central Authority, in this State —

- (a) has all the duties of a Central Authority under the Hague Convention; and
- (b) may exercise all of the powers of a Central Authority under the Hague Convention.

*[Section 134B inserted by No. 7 of 1999 s. 15.]*

**Division 3 — Non-Western Australian adoptions**

**135. Arrangements with other States and Territories**

The Minister may make arrangements with the minister or other authority administering, in another State or a Territory, the law in that State or Territory relating to the adoption of persons, for the exchange of information in relation to the adoption or proposed adoption of a person who was —

- (a) born in the other State or the Territory and adopted or to be adopted in this State; or
- (b) born in this State and adopted or to be adopted in the other State or the Territory.

**136. Recognition of other Australian adoptions**

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

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

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

**136A. Recognition in Western Australia of an adoption in a Convention country of a child from that country**

- (1) Subject to section 136F, an adoption in a Convention country (whether before or after the commencement of this section) —
  - (a) of a child who is habitually resident in a Convention country;
  - (b) by a person who is habitually resident in Australia,is recognised if an adoption compliance certificate issued by a competent authority of that country is in force in relation to the adoption.
- (2) An adoption that is recognised under subsection (1) is effective on and from the day the adoption compliance certificate becomes effective.
- (3) In any proceedings it is to be presumed, unless the contrary appears, that an adoption of a child that was made in a Convention country complies with subsection (1).

*[Section 136A inserted by No. 7 of 1999 s. 16.]*

**136B. Order of termination of relationship of child and parent in relation to a simple adoption**

- (1) If —
  - (a) a child who was or is habitually resident in a Convention country was adopted in a Convention country;
  - (b) the adoption was by a person who is habitually resident in this State; and

- (c) the laws of that country do not provide that the adoption has the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent,

any of the parties to the adoption may apply to the Court for an order that the relationship between the child and the persons who were, immediately before the adoption, the child's parents, is to be treated as not being that of child and parent.

- (2) If the Court is satisfied that —
  - (a) an adoption compliance certificate issued by a competent authority of the Convention country is in force in relation to the adoption; and
  - (b) the child is permitted —
    - (i) to enter Australia; and
    - (ii) to reside permanently in Australia,

the Court may make an order that the relationship between the child and the persons who were, immediately before the adoption, the child's parents, is to be treated as not being that of child and parent.

*[Section 136B inserted by No. 7 of 1999 s. 16.]*

**136C. Recognition in Western Australia of an adoption of a child from a Convention country to another Convention country**

Subject to section 136F, if —

- (a) a child who is habitually resident in a Convention country is adopted by a person who is habitually resident in another Convention country; and
- (b) an adoption compliance certificate issued by a competent authority of the Convention country in which the adoption was made or granted is in force in relation to the adoption,

the adoption is recognised and effective for the laws of the State on and from the day the certificate becomes effective.

*[Section 136C inserted by No. 7 of 1999 s. 16.]*

**136D. Effect of recognition of adoption**

- (1) If the adoption of a child is recognised under section 136A, for the purposes of the laws of the State —
  - (a) the relationship between the child and each of the child's adoptive parents is to be treated as being that of child and parent;
  - (b) each adoptive parent of the child has parental responsibility for the child;
  - (c) if the laws of the Convention country where the adoption was granted provide that the adoption has the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent — the relationship between the child and those persons is to be treated as not being that of child and parent;
  - (d) if the child had been previously adopted, whether under the law of this State or otherwise, the previous adoption does not have effect and the relationship between the child and the individuals who adopted the child under the previous adoption is to be treated as not being that of child and parent;
  - (e) the child has the same rights as a child who is adopted under this Act;
  - (f) the relationship of all persons to the child, the person who adopted the child and the birth parent or previous adoptive parent are to be determined in accordance with this section; and



- (g) an appointment, in a deed or will existing at the time an adoption is effective, of a person as the guardian of the child, ceases to have effect.
- (2) Despite subsection (1), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, the recognition of the adoption of a child in a Convention country does not cause the cessation of any relationship that would have existed if the adoption had not occurred, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the recognition of an adoption.
- (3) In this section a reference to a “**child**” includes a reference to a person who is 18 or more years of age.
- (4) Nothing in this section affects the jurisdiction of a court of the State or of the Commonwealth to entertain proceedings, make an order, or take any other action in relation to a child whose adoption is recognised under section 136A.

*[Section 136D inserted by No. 7 of 1999 s. 16.]*

**136E. Recognition of a decision in a Convention country to convert a simple adoption**

- (1) Subject to section 136F, if a decision is made in a Convention country to convert an adoption of a child in accordance with Article 27 of the Hague Convention, the decision is recognised and effective for the laws of the State on and from the day the decision becomes effective.
- (2) The recognition of the decision includes the recognition for the laws of the State that the decision has the effect that the relationship between the child and the individuals who were, immediately before the adoption, the child’s parents is to be treated as not being that of child and parent.

*[Section 136E inserted by No. 7 of 1999 s. 16.]*

**136F. Refusal to recognise an adoption or a decision to convert a simple adoption**

- (1) If the State Central Authority considers that —
- (a) an adoption recognised under section 136A or 136C; or
  - (b) a decision made in accordance with Article 27 of the Hague Convention,

is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates, the State Central Authority may apply to the Court for a declaration that the adoption or decision is not recognised.

- (2) If the Court is satisfied that —
- (a) an adoption recognised under section 136A or 136C; or
  - (b) a decision made in accordance with Article 27 of the Hague Convention,

is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates, the Court may declare that the adoption or decision is not recognised in this State and that the adoption or decision has no effect in this State.

- (3) A declaration made under subsection (2) has effect according to its tenor.
- (4) If the State Central Authority makes an application to the Court under subsection (1), the Authority is to give the Commonwealth Central Authority written notice of the application.
- (5) After the Court has made a decision under subsection (2), the State Central Authority is to give the Commonwealth Central Authority written notice of the Court's decision.
- (6) A declaration made by a court of another State or a Territory under a law corresponding to subsection (2) is to be treated as

having the same effect as a declaration made under that subsection.

*[Section 136F inserted by No. 7 of 1999 s. 16; amended by No. 8 of 2003 s. 79.]*

**136G. Evidential value of adoption compliance certificate**

Subject to a declaration made under section 136F(2), an adoption compliance certificate is evidence, for the laws of the State, that the adoption to which the certificate relates —

- (a) was agreed to by the Central Authorities of the countries identified in the certificate; and
- (b) was carried out in accordance with the Hague Convention and the laws of the countries identified in the certificate.

*[Section 136G inserted by No. 7 of 1999 s. 16.]*

**136H. Report on person who wishes to adopt a child in a Convention country**

If a person —

- (a) wishes to adopt a child in a Convention country; and
- (b) is on the register of the names of persons who are approved by the adoption applications committee,

the State Central Authority is to prepare and send a report that complies with Article 15 of the Hague Convention to the Central Authority of the Convention country.

*[Section 136H inserted by No. 7 of 1999 s. 16; amended by No. 8 of 2003 s. 80.]*

**137. Arrangements with other countries**

- (1) The Minister may make arrangements on behalf of this State with a representative of the government of another country for —

- (a) the adoption in this State of a child or children from the other country who cannot be placed with a view to adoption in that country; or
  - (b) the exchange of information about a child or children from the other country placed with a view to adoption or adopted in this State.
- (2) The Minister is not to make arrangements under subsection (1) unless the arrangements —
- (a) are approved by the government of the other country; and
  - (b) are within guidelines agreed between the governments of the Commonwealth and other States and Territories.

**138. Recognition of non-Australian adoptions**

- (1) Subject to sections 136A, 136B, 136C, 136D, 138A and 138B, an order for the adoption of a person that was made in a country other than Australia (whether before or after the commencement of this Act) is to be treated as having the same effect as an adoption order made under this Act if —
- (a) the order is in accordance with and has not been rescinded under the law of that country;
  - (b) either —
    - (i) when the order was made the adoptive parent —
      - (I) was domiciled; or
      - (II) had been resident for at least 12 months, in that country; or
    - (ii) before the order was made, the adoptee had been placed with the adoptive parent with the agreement and on the conditions approved by the CEO or a person whose functions in another State or a Territory correspond to those of the CEO under this Act;

- (c) the proceedings in which the order was made involved no denial of natural justice or failure to observe the requirements of substantial justice; and
- (d) as a consequence of the adoption, the adoptive parent, according to the law of that country —
  - (i) has a right superior to that of the adoptee's birth parents in relation to all the duties, powers, responsibilities and authority which, by law, parents have in relation to children; and
  - (ii) is placed in a relationship with the adoptee that is treated as a parent and child relationship (even though the adoptee may be 18 or more years of age).
- (2) In any proceedings it is to be presumed, unless the contrary appears, that an order for the adoption of a person that was made in a country other than Australia, complies with subsection (1).
- (3) Any of the parties to an adoption under an order made under a law of a country other than Australia may apply to the Court for a declaration that the order complies with subsection (1).
- (4) On an application under subsection (3) the Court may —
  - (a) direct that notice of the application be given to such persons, who may include the Attorney General or the CEO, as the Court thinks fit;
  - (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.
- (5) Where, on an application under subsection (3) the Court makes an order or declaration, such particulars in relation to the adoption and the parties to the adoption as the Court finds to be established may be included in the order or declaration.
- (6) For the purposes of the law of this State, an order or declaration under this section binds the Crown in right of the State, whether

**Adoption Act 1994**

**Part 7** Miscellaneous

**Division 3** Non-Western Australian adoptions

**s. 138A**

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or not a notice of the application for the order was given to the Attorney General or the CEO, but, does not affect —

- (a) the rights of another person unless that person was —
  - (i) a party to the proceedings for the order or declaration, or a person claiming through such a party; or
  - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person;

or

- (b) an earlier judgment, order or decree of a court of competent jurisdiction.

(7) In any proceedings affected by an order or declaration made under this section, being proceedings relating to the rights of a person other than a person referred to in subsection (6)(a)(i) or (ii), the production of a copy of the order or declaration certified by the registrar of the Court to be a true copy of the order is evidence that —

- (a) an adoption was effected in accordance with the particulars contained in the order or declaration; and
- (b) the adoption is one to which this section applies.

*[Section 138 amended by No. 41 of 1997 s. 24; No. 7 of 1999 s. 6 and 17; No. 34 of 2004 s. 251.]*

**138A. Recognition in Western Australia of an adoption in an overseas jurisdiction of a child from that jurisdiction**

- (1) An adoption in an overseas jurisdiction —
  - (a) of a child who is habitually resident in the overseas jurisdiction;
  - (b) by a person who is habitually resident in Australia,is recognised if —
  - (c) the adoption is granted in accordance with the laws of that overseas jurisdiction; and

- (d) an adoption certificate is in force in relation to the adoption.
- (2) An adoption that is recognised under subsection (1) is effective on and from the date that the adoption takes effect in the overseas jurisdiction.

*[Section 138A inserted by No. 7 of 1999 s. 7.]*

**138B. Effect of recognition of adoption**

- (1) If the adoption of a child is recognised under section 138A, for the purposes of the laws of the State —
  - (a) the relationship between the child and each of the child's adoptive parents is to be treated as being that of child and parent;
  - (b) each adoptive parent of the child has parental responsibility for the child;
  - (c) if the laws of the overseas jurisdiction in which the adoption was granted do not have the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent, that relationship is to be treated as not being that of child and parent and 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;
  - (d) if the child had been previously adopted, whether under the law of this State or otherwise, the previous adoption does not have effect and the relationship between the child and the individuals who adopted the child under the previous adoption is to be treated as not being that of child and parent;
  - (e) the child has the same rights as a child who is adopted under this Act;

- (f) the relationship of all persons to the child, the person who adopted the child and the birth parent or previous adoptive parent are to be determined in accordance with this section; and
  - (g) an appointment, in a deed or will existing at the time an adoption is effective, of a person as the guardian of the child, ceases to have effect.
- (2) Despite subsection (1), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, the recognition of the adoption of a child in an overseas jurisdiction does not cause the cessation of any relationship that would have existed if the adoption had not occurred, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the recognition of an adoption.
- (3) In this section a reference to a “**child**” includes a reference to a person who is 18 or more years of age.
- (4) Nothing in this section affects the jurisdiction of a court of the State or of the Commonwealth to entertain proceedings, make an order, or take any other action in relation to a child whose adoption is recognised under section 138A.

*[Section 138B inserted by No. 7 of 1999 s. 7.]*

**138C. Evidential value of adoption certificate**

An adoption certificate is evidence, for the laws of the State, that the adoption to which the certificate relates was carried out in accordance with the laws of the overseas jurisdiction whose adoption authority issued the certificate.

*[Section 138C inserted by No. 7 of 1999 s. 7.]*

**138D. Report on person who wishes to adopt a child in an overseas jurisdiction**

If a person —



- (a) wishes to adopt a child in an overseas jurisdiction; and
- (b) is on the register of the names of persons who are approved by the adoption applications committee,

the CEO may send an assessment report on the person to the adoption authority of the overseas jurisdiction.

*[Section 138D inserted by No. 7 of 1999 s. 7; amended by No. 8 of 2003 s. 81; No. 34 of 2004 s. 251.]*

**139. CEO to supervise children adopted outside Australia**

- (1) Where —
  - (a) a child is adopted in a country other than Australia, whether or not the adoption is an adoption that has the same effect as an adoption order under this Act;
  - (b) the order that was made in relation to the child's adoption has been in force for less than 12 months;
  - (c) an adoptive parent of the child was not a citizen of the country in which the order was made at the time the order was made; and
  - (d) the child is present in this State,

the CEO may supervise the welfare and interests of the child during the 6 months commencing from the day on which the child arrived in this State, and a person authorised in writing by the CEO for that purpose has a right of access to the child at all reasonable times during that period.

- (2) If a child to whom subsection (1) applies has been resident in another State or a Territory after being adopted but before arriving in this State, the period of supervision is to be reduced by the length of the period of the residence in the other State or the Territory.

*[Section 139 amended by No. 34 of 2004 s. 251.]*

**Division 4 — Financial assistance and payment for services**

**140. Financial assistance**

- (1) The CEO may provide financial assistance —
  - (a) to a person in whose care a child has been placed; or
  - (b) in relation to a service provided or arranged,  
under Division 1 of Part 3.
- (2) The CEO may provide financial assistance to —
  - (a) a person who looks after a child under section 31;
  - (b) a prospective adoptive parent with whom a child has been placed with a view to the child's adoption by that person;
  - (c) a carer who is a prospective adoptive parent; or
  - (d) a child's adoptive parent, in relation to the child.

*[Section 140 amended by No. 34 of 2004 s. 251.]*

**141. Payment for services**

- (1) The following are to be prescribed by regulation —
  - (a) the fees and charges for services provided by the CEO under this Act;
  - (b) the persons or classes of persons to be exempted from paying fees or charges.
- (2) The CEO may require payment or reimbursement of expenses incurred in the provision of services under this Act.
- (3) The CEO may —
  - (a) waive the payment of, or reduce, a fee or charge;
  - (b) waive or reduce the payment to, or the reimbursement of, the Department in relation to expenses incurred in the provision of services under this Act,  
either generally or in a particular case.

*[Section 141 amended by No. 34 of 2004 s. 251.]*

### **Division 5 — Rules and regulations**

#### **142. Rules**

- (1) A majority of the judges of the Court may, from time to time, make rules —
  - (a) for the practice and procedure to be followed in the Court and the matters incidental to such practice and procedure;
  - (b) necessary or convenient to be prescribed for the conduct of matters in the Court; and
  - (c) for the keeping of records and the provision of information in connection with the performance of the Court's functions under this Act.
- (2) If no provision is made by law or rule under subsection (1) in relation to a matter for which rules may be made under that subsection —
  - (a) the provisions of the rules and regulations under the *Family Court Act 1997* that are most nearly applicable in relation to the matter are to apply; or
  - (b) if there is no provision such as that mentioned in paragraph (a), the rules and regulations under the *Family Law Act 1975* of the Commonwealth that are most nearly applicable in relation to the matter are to apply.

*[Section 142 amended by No. 41 of 1997 s. 25.]*

#### **143. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

- (2) Without limiting the generality of subsection (1), regulations may —
- (a) be made for the purpose of prescribing the fees to be payable in relation to proceedings in the Court under this Act;
  - (b) provide for the conduct of parentage testing procedures under parentage testing orders; and
  - (c) provide for the preparation of reports relating to the information obtained as the result of conducting such procedures.
- (2a) If no provision is made by regulation under subsection (1) or (2) in relation to a matter for which regulations may be made under either of those subsections —
- (a) the provisions of the regulations under the *Family Court Act 1997* that are most nearly applicable in relation to the matter are to apply; or
  - (b) if there is no provision such as that mentioned in paragraph (a), the regulations under the *Family Law Act 1975* of the Commonwealth that are most nearly applicable in relation to the matter are to apply.
- (3) Regulations made under this Act may provide for a penalty for contravention of a provision of the regulations not exceeding a fine of \$2 000.
- (4) Without limiting the generality of subsection (1), regulations may be made prescribing all matters that are necessary or convenient for giving effect to the Hague Convention including —
- (a) granting accreditation to a body for the purposes of Article 9 of the Hague Convention;
  - (b) the functions that may be performed by a body granted accreditation;
  - (c) the qualifications of and requirements to be satisfied by an applicant for accreditation;

- (d) the procedure for applications and grounds for refusal of applications;
- (e) the duration, renewal, revocation and suspension of accreditation;
- (f) the effect of the winding up of an accredited body or revocation or suspension of accreditation, in relation to records and documents held by the accredited body or former accredited body;
- (g) the conferral of a right to apply to the State Administrative Tribunal for a review of a decision as to an application or as to accreditation;
- (h) the requirements for public notification of the accreditation of bodies;
- (i) the provision of a biannual report to the Minister on the operations of the body in relation to the performance of authorised functions and any other information as the Minister may direct in writing; and
- (j) the provision of a code of conduct for an accredited body and its staff.

*[Section 143 amended by No. 41 of 1997 s. 26; No. 7 of 1999 s. 18; No. 8 of 2003 s. 82; No. 55 of 2004 s. 13.]*

**Division 6 — Repeal, transitional and savings, consequential amendments and review**

**144. Repeal of *Adoption of Children Act 1896*, transitional and savings**

- (1) The *Adoption of Children Act 1896* is repealed.
- (2) Schedule 3 has effect in relation to the repeal effected by subsection (1).

*[145. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

**146. Review**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from the commencement day, and in the course of that review the Minister is to consider and have regard to —
  - (a) the implementation and administration of the Act;
  - (b) the extent to which members of the public are aware of the effects of the Act;
  - (c) the effect of the Act on birth parents, adoptees and prospective adoptive parents and the relatives of parties to adoptions; and
  - (d) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review under subsection (1).
- (3) The Minister is to cause the report to be laid before each House of Parliament not later than 12 months after the expiration of 3 years from the commencement day.
- (4) In this section —

**“commencement day”** means the day fixed under section 2(1) of the *Adoption Amendment Act (No. 2) 2003*<sup>2</sup>.

*[Section 146 inserted by No. 8 of 2003 s. 83.]*

## **Schedule 1**

[sections 16(1)(a), 18(1)(b) and (d), 23(1)(a) and 69(1)(a)(i)]

### **Effective consent**

#### **1. Information and counselling before consent**

- (1) A person whose consent is required for a child's adoption must not sign a form of consent to the adoption unless the person —
- (a) has received from the CEO oral and written information on —
    - (i) the alternatives to adoption;
    - (ii) the community supports available whether or not the child is relinquished for adoption;
    - (iii) the social implications of adoption for the parties to an adoption;
    - (iv) the legal process of adoption, including consent, revocation of consent, the selection procedure, adoption plans, the role of the Court and review and appeals procedures; and
    - (v) the rights and responsibilities of the parties to an adoption including access to information about, or contact with, the other parties to the adoption,in a manner that the CEO thinks will be understood by the person;
  - (b) has been offered counselling to be given on behalf of the CEO on the matters referred to in paragraph (a);
  - (c) has received from the CEO a list of independent counsellors from whom the person may seek further counselling if the person so wishes;
  - (d) if he or she has sought counselling from the CEO or an independent counsellor on the matters referred to in paragraph (a), has received the counselling; and
  - (e) has considered the alternatives to the child's adoption.

**cl. 2**

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(2) In this clause —

**“independent counsellor”** means a person, other than an officer or employee of the Department, who has been approved by the CEO as a person who has such qualifications and experience as are appropriate for the person to provide counselling for the purposes of this Schedule.

*[Clause 1 inserted by No. 8 of 2003 s. 84(1); amended by No. 34 of 2004 s. 251.]*

**2. Witnesses**

(1) Subject to subclauses (2) and (3), the signing of a form of consent to adoption is to be witnessed by one of the following persons —

- (a) a Justice of the Peace;
- (b) the chief executive officer or deputy chief executive officer of a local government;
- (c) an Electoral Registrar under the *Electoral Act 1907* or the *Electoral Act 1918* of the Commonwealth;
- (d) a person engaged under the *Australian Postal Corporation Act 1989* of the Commonwealth to be in charge of an Australia Post office;
- (e) an officer under the *Public Sector Management Act 1994* or the *Public Service Act 1922* of the Commonwealth;
- (f) a person employed as a member of the teaching staff within the meaning of the *School Education Act 1999* or as a teacher of a non-government school within the meaning of that Act;
- (g) a lawyer;
- (h) a medical practitioner;
- (i) a police officer;
- (j) any person before whom a person may make a statutory declaration under the *Oaths, Affidavits and Statutory Declarations Act 2005* or under the *Statutory Declarations Act 1959* of the Commonwealth;
- (k) a member of Parliament or a member of the Commonwealth House of Representatives or Senate; or
- (l) such other persons as are prescribed by regulation.



- (2) A person who provides information or counselling under clause 1 is not to witness the signing of a form of consent by the person who was informed or counselled by the first-mentioned person.
- (3) The signing of a form of consent is not to be witnessed under subclause (1) —
  - (a) where a lawyer prepares the form of consent or acts for an applicant for an adoption order in relation to the child who is the subject of the consent, by the lawyer or the lawyer's partner, employee or agent; or
  - (b) where the CEO is conducting adoption services in relation to the child who is the subject of the consent, by an officer or employee of the Department, or a delegate of the CEO.

*[Clause 2 amended by No. 14 of 1996 s. 4; No. 36 of 1999 s. 247; No. 34 of 2004 s. 251; No. 24 of 2005 s. 63.]*

### **3. Certificate of witness**

A person referred to in clause 2(1) is not to witness the signing of a form of consent to adoption unless the person certifies, in a form approved by the CEO, that he or she has seen affidavit evidence sworn by or on behalf of the person who provided the information or counselling under clause 1 to the effect that the person who has signed the form of consent —

- (a) has been provided with written and oral information on the matters referred to in clause 1(1)(a) by the CEO;
- (b) has been offered counselling to be given on behalf of the CEO on the matters referred to in clause 1(1)(a);
- (c) has received from the CEO a list of independent counsellors from whom the person may seek further counselling if the person so wishes;
- (d) if he or she has sought counselling from the CEO or an independent counsellor on the matters referred to in clause 1(1)(a), has received the counselling; and
- (e) has considered the alternatives to the child's adoption.

*[Clause 3 inserted by No. 8 of 2003 s. 84(2); amended by No. 34 of 2004 s. 251.]*

## **Schedule 2**

[sections 46(5), 50(3)(a), 55(2), 68(2)(d)(i), 70(2) and 76(4)(b)]

### **Rights and responsibilities to be balanced in adoption plans**

#### **1. Infancy**

- (1) A significant feature of the infancy stage is that the child needs to be able to trust others to care for and nurture the child. The child has the right —
  - (a) to be cared for and nurtured; and
  - (b) to develop attachment to the adoptive family without undue disruption by the birth parents.
- (2) Before consenting to the child's adoption, the child's birth parents have the right to make an informed and unpressured decision about the child's future. After consenting to the child's adoption, the child's birth parents have the right to negotiate as to the provision of information and the extent of any contact between the parties.
- (3) There is no right to adopt a child. The adoptive or prospective adoptive parent with whom the child is placed with a view to the child's adoption has the right to bond to the child.

#### **2. Childhood**

- (1) A significant feature of the childhood stage is the development of autonomy and initiative. The child has the right —
  - (a) to belong to a secure family system, extending to friends, schooling and neighbourhood activities; and
  - (b) to know about the adoption in a manner appropriate to the child and the child's stage of development.
- (2) The birth parents have a responsibility during this stage to respect the privacy of the child's adoptive family.
- (3) The adoptive parent has the right —
  - (a) to rear the child without undue disruption by the birth parents; and
  - (b) to family privacy,and a responsibility to inform the child of the adoption.

**3. Adolescence**

- (1) A significant feature of adolescence is the development of the child's sense of identity. The child has the right to resolve identity issues and is to be responsible for the effects of his or her actions on others if access to information is made available.
- (2) The birth parents have a responsibility to be aware of the child's needs when responding to requests for information about the child's origins.
- (3) The adoptive parent has the right —
  - (a) to rear the child without undue disruption by the birth parents; and
  - (b) to family privacy,and has a responsibility to support the child during any identity crisis and be responsive to the child's needs.

**4. Adulthood**

- (1) A significant feature of adulthood is forming and consolidating relationships. The child's right to information about the birth parents increases in importance as the child approaches adulthood.
- (2) The birth parents' right to information about the child increases in importance as the child approaches adulthood.
- (3) The adoptive parent's right to control the exchange of information and any contact between the child and the birth parents lessens as the child approaches adulthood.

**Schedule 2A — Aboriginal and Torres Strait Islander children — placement for adoption principle**

[s. 52(1)(ab)]

The objective of this principle is to maintain a connection with family and culture for children who are Aboriginal persons or Torres Strait Islanders and who are to be placed with a person or persons with a view to adoption by the person or persons.

If there is no appropriate alternative to adoption for the child, the placement of the child for adoption is to be considered in the following order of priority.

1. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practice.
2. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander.
3. The child be placed with a person who is not an Aboriginal person or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, family.

*[Schedule 2A inserted by No. 8 of 2003 s. 85.]*

## **Schedule 2B — The Hague Convention**

[s. 4(1)]

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

The States signatory to the present Convention,

Recognizing 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,

Recognizing 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 recognized in international law;

*b* to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

*c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

*Article 2*

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

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

*Article 3*

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

CHAPTER II — REQUIREMENTS FOR INTERCOUNTRY  
ADOPTIONS

*Article 4*

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

- a* have established that the child is adoptable;
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c* have ensured that
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

- (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d* have ensured, having regard to the age and degree of maturity of the child, that
- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
- (2) consideration has been given to the child's wishes and opinions,
- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
- (4) such consent has not been induced by payment or compensation of any kind.

*Article 5*

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

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

CHAPTER III — CENTRAL AUTHORITIES AND  
ACCREDITED BODIES

*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

*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

##### *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 expiration 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.

*[Schedule 2B inserted by No. 7 of 1999 s. 19.]*

## **Schedule 3**

[section 144(2)]

### **Transitional and savings**

**1. Interpretation**

In this Schedule —

**“commencement”** means the commencement of Part 3 of this Act;

**“order of adoption”** means an order of adoption within the meaning of and made under the repealed Act —

- (a) subsisting immediately before commencement; or
- (b) made after commencement under clause 4 or 5;

**“repealed Act”** means the *Adoption of Children Act 1896*.

**2. Interpretation Act 1984 not affected**

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 144(1).

**3. Further savings**

Section 8 of the repealed Act continues to apply to the dispositions of property mentioned in section 8(1)(a) and (b) of the repealed Act and the agreements and instruments mentioned in section 8(2) of the repealed Act as if the repealed Act had not been repealed.

**4. Application for order of adoption**

Subject to clause 8, an application for an order of adoption filed before commencement continues to be governed by the repealed Act, despite the repeal of that Act.

**5. Child placed with a view to adoption under repealed Act**

Subject to clause 8, where immediately before commencement, a child had been placed in a person’s care under the repealed Act for or towards or with a view to the child’s adoption by the person, an application for the child’s adoption continues to be governed by the repealed Act, despite the repeal of that Act.

**6. Consent given but child not placed under repealed Act**

Where a person has consented to a child's adoption under the repealed Act, but before commencement the child had not been placed in a person's care under the repealed Act for or towards or with a view to the child's adoption, the person's consent is to be treated as a consent for the purposes of section 18(1) of this Act but otherwise, the child's adoption is to be governed by this Act.

**7. Waiting lists under repealed Act of prospective adoptive parents**

On commencement, a list maintained by the CEO for the purposes of the repealed Act, and in existence immediately before commencement, of the persons who are candidates for assessment for adoptive parenthood or candidates accepted for assessment, is to be treated as being a register of names under section 44(1) of this Act.

*[Clause 7 amended by No. 34 of 2004 s. 251.]*

**8. Some provisions of this Act to apply to adoptions under repealed Act**

- (1) Subject to clause 9, sections 75 and 77 and Parts 4 to 7 of this Act apply in relation to —

- (a) an order of adoption; and
- (b) a party to an adoption under an order of adoption,

and for the purposes of this Act, an order of adoption is to be treated as an adoption order under this Act, and a party to an adoption under an order of adoption is to be treated as a party to an adoption under this Act.

- (2) A reference in Parts 4 to 7 of this Act to a party to an adoption includes a reference to a person presumed under section 4A to be the father of an adoptee under an order of adoption, even where the father's consent to the adoption was not required under the repealed Act.

- (3) Where an order of adoption is made after commencement under clause 4 or 5, section 78 applies to the order of adoption as if it were an adoption order under this Act.

*[Clause 8 amended by No. 8 of 2003 s. 86(1).]*

**cl. 9**

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**9. Some provisions of this Act as to access to information not to apply to adoptions under repealed Act**

- (1) Paragraphs (a) and (b) of section 84(1) do not apply in relation to an adoptee or a birth parent of an adoptee under an order of adoption, and in that case, the following paragraphs apply in substitution for those paragraphs —

“

- (a) the adoptee, if he or she is —
  - (i) 18 or more years of age; or
  - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee, and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptee having access to the information;
- (b) a birth parent of the adoptee, if —
  - (i) the adoptee is 18 or more years of age; or
  - (ii) the adoptee is less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the birth parent having access to the information, after having due regard to the wishes of the adoptee;

”.

- (2) Paragraph (c) of section 84(1) does not apply in relation to an adoptive parent under an order of adoption, and in that case, the following paragraph applies in substitution for that paragraph —

“

- (c) an adoptive parent of the adoptee, if —
  - (i) the adoptee is 18 or more years of age; or
  - (ii) the adoptee is less than 18 years of age and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptive parent having access to the information; and

”.

- (3) Section 84(3) does not apply in relation to an adoptive parent under an order of adoption, and in that case, the following subsection applies in substitution for that subsection —

“

- (3) Nothing in subsection (1) prevents an adoptive parent from obtaining a record of the order of adoption.

”.

- (4) Paragraphs (a) and (c) of section 85(1) do not apply to the original registration under the *Registration of Births, Deaths and Marriages Act 1961*<sup>3</sup> of an adoptee under an order of adoption, and in that case, the following paragraphs apply in substitution for those paragraphs —

“

- (a) the adoptee, if he or she is —
- (i) 18 or more years of age; or
  - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee, and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptee having access to the information;

”;

and

“

- (c) an adoptive parent of the adoptee, if —
- (i) the adoptee is 18 or more years of age; or
  - (ii) the adoptee is less than 18 years of age and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptive parent having access to the information.

”.

- (5) Paragraph (b) of section 85(1) does not apply to —
- (a) the re-registration under section 12A of the repealed Act of the birth of an adoptee under an order of adoption; or

**cl. 10**

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- (b) the registration under section 13A of the repealed Act of the birth of an adoptee under an order of adoption,

and in those cases, the following paragraph applies in substitution of that paragraph —

“

- (b) a birth parent of the adoptee, if —
- (i) the adoptee is 18 or more years of age; or
  - (ii) the adoptee is less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the birth parent having access to the information, after having due regard to the wishes of the adoptee; and

”.

- (6) Paragraph (a) of section 88 does not apply to an adoptee under an order of adoption and in that case, the following paragraph applies in substitution for that paragraph —

“

- (a) the adoptee, if he or she is —
- (i) 18 or more years of age; or
  - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the adoptee having access to the information;

”.

*[Clause 9 amended by No. 8 of 2003 s. 86(2)-(5).]*

**10. Consent not required if person to consent is deceased**

A person’s consent in relation to access to information under this Act, as affected by clause 9, is required only if the person is living, and lack of consent because of the person being deceased is not to prevent access to the information where it would otherwise be available under this Act.



**11. If adoptee incapable of giving consent**

If an adoptee's consent for access to information is required by this Act, as affected by clause 9, but the adoptee is mentally incapable of understanding the nature and effect of the consent required, the consent may be given by the adoptee's guardian appointed under the *Guardianship and Administration Act 1990*, or if such a guardian has not been appointed and where relevant, the adoptee's parent or guardian.

**12. If adoptive or birth parents incapable of giving consent**

If the consent of an adoptive or birth parent is required by this Act, as affected by clause 9, for another person's access to information but the adoptive or birth parent is mentally incapable of understanding the nature and effect of the consent required, in that case the consent of the adoptive or birth parent to the access to the information is not required.

**13. Adoptee under 18 who cannot obtain all required consents**

- (1) Where an adoptee under an order of adoption is less than 18 years of age and wishes to have access to information which requires the consent of a person who has not given consent under section 84, 85 or 88 as affected by clause 9 the adoptee may apply to the CEO to give his or her authority under section 82(2) for the adoptee to have access to the information.
- (2) On an application under subclause (1) the CEO may give his or her authority for the adoptee to have access to the information if the CEO is satisfied that —
  - (a) an adoptive parent or guardian of the adoptee is unreasonably withholding consent, or cannot be found or contacted after reasonable enquiries; or
  - (b) there has been a breakdown in the adoption relationship and attempts to resolve the matter have not been successful,

and the adoptee is mature enough to receive the information.

*[Clause 13 amended by No. 34 of 2004 s. 251.]*

**cl. 14**

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**14. Record of Court proceedings under repealed Act**

A reference in this Act to the record of proceedings in a court, includes a reference, where the proceedings were under the repealed Act, to the record kept by the registrar of the Court, whether the proceedings were in the Court or the Supreme Court and whether before or after commencement, and includes a certified copy or a memorandum of an order of adoption mentioned in section 13A(2) of the repealed Act.

**15. Original and re-registrations of birth under repealed Act**

A reference in this Act to the registration of the birth of an adoptee under an order of adoption, includes a reference, where the order of adoption was made before commencement, unless the contrary intention appears, to —

- (a) the registration of the adoptee's birth under the *Registration of Births, Deaths and Marriages Act 1961*<sup>3</sup>;
- (b) the re-registration of the adoptee's birth under section 12A of the repealed Act; or
- (c) the registration of the adoptee's birth under section 13A of the repealed Act,

or more than one of those, as is relevant to the individual case.

*[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]*

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## Notes

- <sup>1</sup> This reprint is a compilation as at 12 May 2006 of the *Adoption Act 1994* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Adoption Act 1994</i>	9 of 1994	15 Apr 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 25 Nov 1994 p. 5905)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> Pt. 2	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 17	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> s. 6	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Adoption Amendment Act 1999</i>	7 of 1999	13 Apr 1999	Act other than Pt. 3: 13 Apr 1999 (see s. 2(1)); Pt. 3: 15 Sep 1999 (see s. 2(2) and <i>Gazette</i> 3 Sep 1999 p. 4295)
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<b>Reprint of the <i>Adoption Act 1994</i> as at 2 Jan 2001</b> (includes amendments listed above)			
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> Pt. 3	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)

## Adoption Act 1994

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Short title	Number and year	Assent	Commencement
<i>Adoption Amendment Act (No. 2) 2003</i> <sup>4,5</sup>	8 of 2003	1 Apr 2003	Act other than s. 5(4) and (5), 42(1) and (3), 44, 51, 53, 54, 56, 57, 59, 60 and 86(2), (4) and (5): 1 Jun 2003 (see s. 2(1) and <i>Gazette</i> 20 May 2003 p. 1783); s. 5(4) and (5), 42(1) and (3), 44, 51, 53, 54, 56, 57, 59, 60 and 86(2), (4) and (5): 1 Jun 2005 (see s. 2(2))
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 12	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Criminal Injuries Compensation Act 2003</i> s. 73	77 of 2003	15 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<b>Reprint 2: The Adoption Act 1994 as at 21 May 2004</b> (includes amendments listed above except those in the <i>Adoption Amendment Act (No. 2) 2003</i> s. 5(4) and (5), 42(1) and (3), 44, 51, 53, 54, 56, 57, 59, 60 and 86(2), (4) and (5))			
<i>Children and Community Services Act 2004</i> s. 251 <sup>6</sup>	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 2 <sup>7</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 79	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)
<b>Reprint 3: The Adoption Act 1994 as at 12 May 2006</b> (includes amendments listed above)			

<sup>2</sup> The day fixed under s. 2(1) of the *Adoption Amendment Act (No. 2) 2003* is 1 June 2003: see *Gazette* 20 May 2003 p. 1783.

<sup>3</sup> Repealed by the *Births, Deaths and Marriages Registration Act 1998*.

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<sup>4</sup> The *Adoption Amendment Act (No. 2) 2003* s. 7(3) is a transitional provision that is of no further effect.

<sup>5</sup> The *Adoption Amendment Act (No. 2) 2003* s. 34(2) and 59(2) read as follows:

“

**34. Section 65 amended and validation of certain adoption orders**

- (2) An adoption order made or purported to be made by the Court before the commencement of this Act is, and is taken always to have been, as valid and effective as it would have been if the amendments made by subsection (1) were in effect at the time the order was made or purported to be made.

”

“

**59. Section 101 repealed and a provision declaring information vetoes to be ineffective from the time of the repeal**

- (2) An information veto —
- (a) that was registered under Part 4 Division 4 of the *Adoption Act 1994* before the veto cut off day; and
  - (b) that has effect immediately before the day on which subsection (1) comes into operation,
- has no effect on and from the day on which subsection (1) comes into operation.

”

<sup>6</sup> The amendment in the *Children and Community Services Act 2004* Sch. 2 cl. 2(9) to s. 107(d) is not included because the provision it sought to amend was replaced by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 12 before the amendment purported to come into operation.

<sup>7</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.