



Western Australia

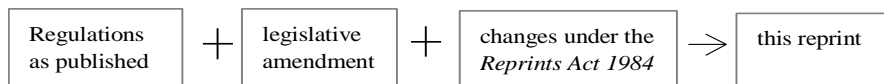
Adoption Act 1994

# **Adoption Regulations 1995**

**Reprint 1: The regulations as at 3 October 2003**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Adoption Regulations 1995

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Reprinted under the  
*Reprints Act 1984* as  
at 3 October 2003

Western Australia

Adoption Act 1994

## Adoption Regulations 1995

### Part 1 — Preliminary

**1. Citation**

These regulations may be cited as the *Adoption Regulations 1995*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the day on which the *Adoption Act 1994* comes into operation<sup>1</sup>.

**3. Interpretation**

In these regulations, a reference to “**the Act**” includes a reference to these regulations.

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

## **Part 2 — Private adoption agencies**

### **5. Interpretation**

In this Part —

“**licence**” means a licence provided for by section 9 of the Act;

“**principal officer**”, in relation to a private adoption agency, includes a person who is acting in the office of principal officer of the agency.

### **6. Functions that may be performed under licence**

- (1) The functions that may be performed under a licence are those referred to in the provisions of the Act set out in the Table to this regulation that would otherwise be performed by the Director-General.

**Table**

<b>Provision</b>	<b>Description of function</b>
section 16	provide certain information and assistance to prospective birth parents
section 18(1)(e)	accept delivery of form of consent to adoption
section 21	notify a person who may be the prospective adoptee’s father or parent under section 6A of the <i>Artificial Conception Act 1985</i>
section 23	accept service of revocation of consent form
section 24	apply for an order to dispense with a person’s consent to a child’s adoption
section 25	apply for an order to dispense with a requirement to serve notice under section 21 or to extend the period for service of notice
section 37	inform and counsel prospective adoptive parents
sections 38 and 39	consider applications from prospective adoptive parents
section 40	appoint persons to prepare assessment reports
section 44	keep and maintain registers

<b>Provision</b>	<b>Description of function</b>
section 45	perform certain duties in relation to the selection of prospective adoptive parents
sections 46, 50 and 73	perform certain duties in relation to the negotiation of adoption plans, selection of prospective adoptive parents and make related applications
sections 48, 49, 51, 52, 53 and 56	place prospective adoptees
section 54	supervise placements
section 55	decide who should agree adoption plans
sections 58 and 61	prepare reports for Court's use in proceedings for adoption orders
section 134	appoint representatives for children
section 139	supervise children adopted outside Australia

- (2) The functions that may be performed under a licence also include those referred to in the provisions of Parts 4 and 5 of these regulations as are relevant to the sections of the Act set out in the Table in subregulation (1) where those functions would otherwise be performed by the Director-General.
- (3) If a private adoption agency is also accredited under regulation 23C, the functions that may be performed under a licence also include those functions that the agency may perform under regulation 23J.

*[Regulation 6 amended in Gazette 3 Sep 1999 p. 4296; 10 Dec 2002 p. 5749; 20 May 2003 p. 1784.]*

#### **6A. Breakdown in placement arrangements**

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

*[Regulation 6A inserted in Gazette 3 Sep 1999 p. 4296.]*

**7. Requirements to be satisfied by applicants**

A body corporate can only apply to the Minister for a licence if it —

- (a) carries on activities or is formed for purposes consistent with the welfare and best interests of children; and
- (b) does not carry on activities and was not formed for the purpose of trading or securing a pecuniary profit to its members.

**8. Procedure for licence and renewal applications**

An application for a licence or for a renewal of a licence is to —

- (a) be in writing;
- (b) be in a form approved by the Minister;
- (c) state the address of —
  - (i) the principal office of the applicant; and
  - (ii) the premises at which will be kept the records and documents relating to the conduct of adoption services;
- (d) nominate a person to be the principal officer of the proposed private adoption agency and the persons who would act as the principal officer of the agency when the principal officer is unavailable; and
- (e) provide information relating to the applicant that may be required by the Minister for making a decision in relation to the application.

**9. Issuing and renewing licences**

The Minister may issue or renew a licence but is not to do so if it appears to the Minister that the applicant —

- (a) is not or is no longer a person to which regulation 7 applies;

- (b) is not or is no longer a suitable person to conduct adoption services having regard to —
  - (i) the qualifications;
  - (ii) the experience;
  - (iii) the character; or
  - (iv) the availability,of any person, who, if the licence were to be issued or renewed, would take part in the management or control of the applicant or conduct adoption services on behalf of the applicant;
- (ba) has contravened, or failed to comply with —
  - (i) a provision of the Act; or
  - (ii) the terms of the licence or a condition or restriction attached to it;
- (c) is, and is likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with a representative of the government of another country;
- (d) has not given an undertaking that while it holds a licence it will not enter into negotiations for the establishment of an adoption agreement with a representative of the government of another country;
- (e) does not have adequate financial resources to carry out the functions the body is authorised to perform under regulation 6;
- (f) does not have a principal officer who is a suitable person to supervise adoption arrangements undertaken by the body having regard to —
  - (i) his or her social science qualifications; and
  - (ii) experience in adoption, substitute care or family services;
- (g) does not employ staff with appropriate qualifications to place prospective adoptees; and

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- (h) does not have accommodation available for its use which —
  - (i) is suitable for the conduct of the functions it may perform under regulation 6; and
  - (ii) does not form part of or is not adjacent to premises occupied by an association or body of persons, corporate or unincorporate, of birth parents, adoptive parents, or other participants in the adoption process,

or on the ground of any other relevant consideration.

*[Regulation 9 amended in Gazette 3 Sep 1999 p. 4296-7;  
20 May 2003 p. 1784.]*

**10. Conditions etc. of licences**

The Minister may issue or renew a licence subject to conditions and restrictions set out in, or provided with, the licence.

**10A. Conduct of private adoption agency**

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

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

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

*[Regulation 10A inserted in Gazette 3 Sep 1999 p. 4297-8.]*

**11. Notification of application results**

The Minister is to cause each person who applies for the issue or renewal of a licence to receive written notice of the result of the application.

**12. Not transferable**

A licence is not transferable.

**13. Duration of licence**

A licence has effect for 3 years from the day specified in the licence as the commencement date.

**14. Renewal of licence**

- (1) A private adoption agency that wishes to have a licence renewed must apply for the renewal before the expiration of the licence.
- (2) A licence that is renewed has effect for 3 years from the expiration of the previous licence.

**15. Offences in relation to licence applications**

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

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

Penalty: \$2 000.

**16. Revocation or suspension of licence**

(1) The Minister may revoke or suspend a licence if the private adoption agency —

- (a) is no longer a suitable person to conduct adoption services, having regard to all relevant considerations including the matters referred to in regulation 9;
- (b) has contravened, or failed to comply with —
  - (i) a provision of the Act; or
  - (ii) the terms of the licence or a condition or restriction attached to it;

or

- (c) had, in relation to its application for the issue or renewal of the licence, provided information in written or oral form that the agency knew to be —
  - (i) false or misleading in a material particular; or
  - (ii) likely to deceive in a material way.

(2) A revocation or suspension of a licence is not effective unless the Minister has —

- (a) caused written notice of the intention to revoke or suspend the licence to be served personally or by registered post on the agency's principal officer, stating the grounds on which the revocation or suspension is to be made and allowing the agency 21 days within which to respond to the notice;



- (b) considered the response of the private adoption agency made within that time; and
  - (c) caused written notice of the revocation or suspension to be served personally or by registered post on the agency's principal officer, stating the grounds on which the revocation or suspension is made.
- (3) Despite subregulation (2), if it appears to the Minister that circumstances are of sufficient gravity to warrant the immediate suspension of a licence, the Minister may suspend the licence without complying with paragraphs (a) and (b) of that subregulation.

*[Regulation 16 amended in Gazette 20 May 2003 p. 1793.]*

**17. Appeal against refusal, revocation, suspension or terms of licence**

- (1) If the Minister —
- (a) refuses an application for a licence or renewal of a licence;
  - (b) revokes or suspends a licence; or
  - (c) attaches to a licence any condition or restriction that is not acceptable to the licensee,

the person affected by the Minister's decision may appeal to the District Court on the ground that the Minister made an error of law or of fact in making the decision.

- (2) An appeal is to be made within 21 days of the day of service of the notice of the Minister's decision or such further period as the District Court allows, but an appeal cannot be instituted after 4 months from the day of service of the notice.
- (3) Subject to subregulation (2), an appeal is to be made and determined in accordance with Order 8 of the *District Court Rules 1996*, and for the purposes of rule 29 of that Order —
- (a) a reference in rule 29 to an authority is to be taken to be a reference to the Minister;

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- (b) a reference in that Order to a magistrate is to be taken to be a reference to the Minister; and
  - (c) a reference in that Order to a Clerk of the Local Court is to be taken to be a reference to the Director-General.
- (4) Effect is to be given to the decision of the District Court on an appeal.

*[Regulation 17 amended in Gazette 3 Sep 1999 p. 4298.]*

**18. Status of Minister's decision pending appeal**

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

**19. Issue of licences etc. to be published in *Gazette***

- (1) The Minister is to cause to be published in the *Gazette* notice of the following —
  - (a) an issue of a licence;
  - (b) a renewal of a licence;
  - (c) the revocation or suspension of a licence; and
  - (d) the variation or quashing of a decision of the Minister, on appeal to the District Court.
- (2) A notice under subregulation (1) is to specify —
  - (a) the name of the private adoption agency;
  - (b) the address of the principal office of the private adoption agency; and
  - (c) any conditions and restrictions attaching to the licence.

**20. Acts of principal officer deemed acts of agency**

Acts or omissions of —

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

of a private adoption agency are to be treated, for the purposes of these regulations, as the acts or omissions of the private adoption agency.

**21. Effect of expiry or revocation of licence**

If a licence expires or is revoked —

- (a) all records and documents held by or under the control of the former licensee and which relate to the conduct of adoption services become, by force of this regulation, the property of the Director-General on the expiry or revocation;
- (b) the Director-General may arrange for the names of persons listed in a register under section 44 of the Act that was held by the former licensee to be transferred to the register of the Director-General or another private adoption agency; and
- (c) the Director-General may arrange for the Director-General or another private adoption agency to conduct the adoption services that were being conducted by the former licensee and may give the records and documents to the agency for that purpose.

**22. Effect of suspension of licence**

If a licence is suspended —

- (a) then for the period of the suspension, the Director-General may take possession of all records and documents held by or under the control of the agency

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whose licence is suspended and which relate to the conduct of adoption services; and

- (b) the Director-General may arrange for the Director-General or another private adoption agency to conduct, during the period of the suspension, the adoption services that were being conducted by that agency.

**22A. Biannual report**

A private adoption agency must, by 28 January and 28 July 2004, and 28 January and 28 July in each subsequent year, cause to be prepared and submitted to the Director-General a report containing information on the operations of the agency in relation to the adoption services provided by it and any other information as the Director-General may direct in writing —

- (a) for the period between the day on which the agency's licence has effect and 30 June or 31 December of the year of that day, whichever is the shorter period; and
- (b) for each period of 6 months after 30 June or 31 December of the year in which the agency is required to make its first report under paragraph (a).

*[Regulation 22A inserted in Gazette 20 May 2003 p. 1784-5.]*

**22B. Provision of other information for review of operations**

- (1) The Director-General may, in writing, require a private adoption agency to provide —
  - (a) access to, or copies of, the documents referred to in subregulation (2);
  - (b) oral information in relation to the operations of the agency, any adoption service conducted by the agency, and any document referred to in subregulation (2) or the subject matter of such a document.

- (2) The documents to which subregulation (1) applies are any of the following documents in the custody, power or control of the agency —
  - (a) a document that records information in relation to an adoption or proposed adoption that has been conducted by the agency;
  - (b) a document that relates to the operations of the agency including financial records, management records, staff records, client records and annual and other operational reports.
- (3) The Director-General may require provision of information under subregulation (1) in such manner and form as the Director-General thinks is appropriate in each case.
- (4) A private adoption agency is to comply with a requirement under subregulation (1) within 14 days of receiving written notification of the requirement or such longer period as is stated by the Director-General in the written notification.
- (5) The Director-General is to ensure that a copy of a report prepared on behalf of the Director-General as a result of a review of the operations of a private adoption agency is provided to the agency as soon as practicable after its completion.

*[Regulation 22B inserted in Gazette 20 May 2003 p. 1785.]*

### **23. Power of entry and offence**

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

Penalty: \$2 000.

## **Part 2A — Hague Convention accreditation**

*[Heading inserted in Gazette 3 Sep 1999 p. 4298.]*

### **23A. Interpretation**

In this Part, unless the contrary intention appears —

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

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

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

*[Regulation 23A inserted in Gazette 3 Sep 1999 p. 4298-9.]*

### **23B. Application for accreditation or renewal of accreditation**

- (1) An application for accreditation for the purposes of Article 9 of the Hague Convention or for a renewal of that accreditation must —
  - (aa) if made on or after 1 June 2003, be made during a period of time set by the State Central Authority as a period during which applications for accreditation can be made;
  - (a) be in writing;
  - (b) be in a form approved by the State Central Authority;
  - (c) state the address of —
    - (i) the principal office of the applicant; and
    - (ii) the premises at which will be kept the records and documents relating to the functions the body is authorised to perform under regulation 23J;
  - (d) nominate a person to be the principal officer of the proposed accredited body and the persons who would act as the principal officer of the body when the principal officer is unavailable; and

- (e) provide information relating to the applicant that is required by the State Central Authority for making a decision in relation to the application.
- (2) The State Central Authority is to publish the periods of time set under subregulation (1)(aa) in such manner as the State Central Authority thinks is appropriate.

*[Regulation 23B inserted in Gazette 3 Sep 1999 p. 4299; amended in Gazette 20 May 2003 p. 1785-6.]*

**23C. Requirements to be satisfied by the applicant**

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

- (a) is not a body corporate;
- (b) does not carry on activities or is not formed for purposes consistent with the welfare and best interests of children;
- (c) carries on activities or was formed for the purpose of trading or securing a pecuniary profit to its members;
- (ca) has contravened, or failed to comply with —
  - (i) a provision of the Act; or
  - (ii) a condition or restriction attaching to an accreditation;
- (cb) is not the holder of a current licence granted under section 9 of the Act to conduct adoption services and to perform other functions for the purposes of the Act;
- (d) is, and is likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with a representative of the government of another country;
- (e) has not given an undertaking that while it is an accredited body it will not enter into negotiations for the

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

or on the ground of any other relevant consideration.

*[Regulation 23C inserted in Gazette 3 Sep 1999 p. 4299-300; amended in Gazette 20 May 2003 p. 1786.]*

**23D. Conditions etc. of accreditation**

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

*[Regulation 23D inserted in Gazette 3 Sep 1999 p. 4300.]*



**23E. Notification of application results**

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

*[Regulation 23E inserted in Gazette 3 Sep 1999 p. 4300.]*

**23F. Notices to be given to Commonwealth Central Authority**

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

*[Regulation 23F inserted in Gazette 3 Sep 1999 p. 4301.]*

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**23G. Duration of accreditation**

Accreditation has effect for 3 years from the day specified in the accreditation as the commencement date.

*[Regulation 23G inserted in Gazette 3 Sep 1999 p. 4301; amended in Gazette 20 May 2003 p. 1786.]*

**23H. Renewal of accreditation**

- (1) An accredited body that wishes to have its accreditation renewed must apply for the renewal before the expiration of the accreditation.
- (2) An accreditation that is renewed has effect for 3 years from the expiration of the previous accreditation.

*[Regulation 23H inserted in Gazette 3 Sep 1999 p. 4301; amended in Gazette 20 May 2003 p. 1786.]*

**23I. Conduct of accredited body**

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

- (a) comply with the provisions of the *Adoption Act 1994*;
- (b) comply with the requirements of the Hague Convention relating to those functions;
- (c) not collect funds for disbursement as aid to or disburse funds as aid to people living in another country;
- (d) not give money or other benefits to or receive money or other benefits from a person who collects funds for disbursement as aid to or disburses funds as aid to people living in another country;
- (e) protect the confidentiality of any records held by it in relation to authorised functions;
- (f) keep and not destroy any records held by it in relation to authorised functions;

- (g) not perform any functions other than authorised functions;
- (h) not provide an adoption service in respect of a child domiciled in a country other than a Convention country unless the service is provided in accordance with a licence provided for by section 9 of the Act;
- (i) not issue publications promoting the adoption of children from Convention countries or offer preparation courses for individuals who wish to adopt a child from a Convention country unless the publication or the content of the course has been approved by the State Central Authority;
- (j) not, unless approved by the State Central Authority in writing, perform any authorised functions in any place other than Western Australia;
- (k) continue to comply with the requirements that the accredited body was required to satisfy under regulation 23C; and
- (l) comply with, and ensure that its staff comply with, the Code of Conduct set out in Schedule 1.

*[Regulation 23I inserted in Gazette 3 Sep 1999 p. 4301-2.]*

**23J. Authorisation of accredited body to perform certain functions**

- (1) The State Central Authority may authorise an accredited body to perform any one or more of the following functions in relation to the adoption process —
  - (a) provide information to prospective adoptive parents who request information about intercountry adoptions;
  - (b) conduct information sessions for prospective adoptive parents about intercountry adoptions;
  - [(c) deleted]*

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- (d) perform the functions that would otherwise be performed by the Director-General under section 37 of the Act;
- (e) perform the functions that would otherwise be performed by the Director-General under sections 38 and 39 of the Act;
- (f) perform the functions that would otherwise be performed by the Director-General under section 40 of the Act;
- [(g) deleted]*
- (h) perform the functions that would otherwise be performed by the Director-General under section 44 of the Act;
- (i) perform the functions that would otherwise be performed by the State Central Authority under Article 15 of the Hague Convention;
- (j) perform the functions that would otherwise be performed by the Director-General under sections 46 and 50 of the Act;
- (k) perform the functions that would otherwise be performed by the Director-General under sections 48, 49, 51, 52, 53 and 54 of the Act;
- (l) perform the functions that would otherwise be performed by the State Central Authority under Article 17, 18 or 19 of the Hague Convention;
- (m) perform the functions that would otherwise be performed by the Director-General under section 54 of the Act;
- (n) provide support and advice to a prospective adoptive parent following placement of a child with the person;
- (o) if there is a breakdown in placement arrangements before an adoption order is made, consult with the Director-General about the placement and care of the child;

- (p) perform the functions that would otherwise be performed by the Director-General under section 55 of the Act;
  - (q) perform the functions that would otherwise be performed by the Director-General under sections 58 and 61 of the Act;
  - (r) perform the functions that would otherwise be performed by the Director-General under section 134 of the Act;
  - (s) perform the functions that would otherwise be performed by the State Central Authority under Article 9a of the Hague Convention to provide adoption information until the child is 18 years of age;
  - (t) perform the functions that would otherwise be performed by the State Central Authority under Article 9d of the Hague Convention;
  - (u) provide a referral and support service for a party to an adoption following the making of an adoption order;
  - (v) perform administrative arrangements in relation to established programmes.
- (2) The functions that may be performed by an accredited body also include those referred to in the provisions of Parts 4 and 5 of the regulations as are relevant to the sections of the Act set out in subregulation (1) where those functions would otherwise be performed by the Director-General.

*[Regulation 23J inserted in Gazette 3 Sep 1999 p. 4302-4; amended in Gazette 20 May 2003 p. 1787.]*

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

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

- (a) false or misleading in a material particular; or

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(b) likely to deceive in a material way.

Penalty: \$2 000.

*[Regulation 23K inserted in Gazette 3 Sep 1999 p. 4304.]*

**23L. Revocation or suspension of accreditation**

- (1) The State Central Authority may revoke or suspend an accreditation if the accredited body —
- (a) is no longer a suitable body to perform authorised functions, having regard to all relevant considerations including the matters referred to in regulation 23C;
  - (b) has contravened, or failed to comply with —
    - (i) a provision of the Act; or
    - (ii) a condition or restriction attaching to an accreditation;
- or
- (c) has, in relation to its application for accreditation or renewal of accreditation, provided information in written or oral form that the body knew to be —
    - (i) false or misleading in a material particular; or
    - (ii) likely to deceive in a material way.
- (2) A revocation or suspension of an accreditation is not effective unless the State Central Authority has —
- (a) caused written notice of the intention to revoke or suspend the accreditation to be served personally or by registered post on the body's principal officer, stating the grounds on which the revocation or suspension is to be made and allowing the body 21 days within which to respond to the notice;
  - (b) considered the response of the body made within that time; and
  - (c) caused written notice of the revocation or suspension to be served personally or by registered post on the body's

principal officer, stating the grounds on which the revocation or suspension is made.

- (3) Despite subregulation (2), if it appears to the State Central Authority that circumstances are of sufficient gravity to warrant the immediate suspension of an accreditation, the State Central Authority may suspend the accreditation without complying with paragraphs (a) and (b) of that subregulation.

*[Regulation 23L inserted in Gazette 3 Sep 1999 p. 4304-5; amended in Gazette 20 May 2003 p. 1787.]*

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

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

the body affected by the State Central Authority's decision may appeal to the District Court on the ground that the State Central Authority made an error of law or of fact in making the decision.

- (2) An appeal must be made within 21 days of the day of service of the notice of the State Central Authority's decision or such further period as the District Court allows, but an appeal cannot be instituted after 4 months from the day of service of the notice.
- (3) Subject to subregulation (2), an appeal must be made and determined in accordance with Order 8 of the *District Court Rules 1996*, and for the purposes of rule 29 of that Order —
- (a) a reference in rule 29 to an authority is to be taken to be a reference to the State Central Authority;

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- (b) a reference in that Order to a magistrate is to be taken to be a reference to the State Central Authority; and
  - (c) a reference in that Order to a Clerk of the Local Court is to be taken to be a reference to the Director-General.
- (4) Effect is to be given to the decision of the District Court on an appeal.

*[Regulation 23M inserted in Gazette 3 Sep 1999 p. 4305-6.]*

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

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

*[Regulation 23N inserted in Gazette 3 Sep 1999 p. 4306.]*

**23O. Accreditation to be published in Gazette**

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



- (c) any conditions and restrictions attaching to the accreditation.

*[Regulation 23O inserted in Gazette 3 Sep 1999 p. 4306.]*

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

Acts or omissions of —

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

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

*[Regulation 23P inserted in Gazette 3 Sep 1999 p. 4307.]*

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

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

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

*[Regulation 23Q inserted in Gazette 3 Sep 1999 p. 4307.]*

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**23R. Effect of suspension of accreditation**

If the accreditation of an accredited body is suspended —

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

*[Regulation 23R inserted in Gazette 3 Sep 1999 p. 4307.]*

**23S. Powers of entry and offence**

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

Penalty: \$2 000.

*[Regulation 23S inserted in Gazette 3 Sep 1999 p. 4308.]*

**23T. Biannual report**

An accredited body must —

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

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

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

*[Regulation 23T inserted in Gazette 3 Sep 1999 p. 4308.]*

**23U. Provision of other information directed by the Minister**

- (1) The Minister may, in writing, direct an accredited body to provide —
  - (a) access to, or copies of, the documents referred to in subregulation (2);
  - (b) oral information in relation to the operations of the body, any adoption service conducted by the body, and any document referred to in subregulation (2) or the subject matter of such a document.
- (2) The documents to which subregulation (1) applies are any of the following documents in the custody, power or control of the body —
  - (a) a document that records information in relation to an adoption or proposed adoption that has been conducted by the body;
  - (b) a document that relates to the operations of the body including financial records, management records, staff records, client records and annual and other operational reports.

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- (3) The Minister may direct that information be provided under subregulation (1) in such manner and form as the Minister thinks is appropriate in each case.
- (4) An accredited body is to comply with a direction under subregulation (1) within 14 days of receiving written notification of the direction or such longer period as is stated by the Minister in the written notification.
- (5) The Minister is to ensure that a copy of a report prepared on behalf of the Minister as a result of a review of the operations of an accredited body is provided to the body as soon as practicable after its completion.

*[Regulation 23U inserted in Gazette 20 May 2003 p. 1787-8.]*

### **Part 3 — Adoption applications committee**

*[Heading amended in Gazette 20 May 2003 p. 1788.]*

#### **24. Interpretation**

In this Part —

“**committee**” means the adoption applications committee;

“**member**” means a member of the adoption applications committee.

*[Regulation 24 amended in Gazette 20 May 2003 p. 1793.]*

#### **25. Membership etc.**

- (1) The committee is not to have more than 8 members.
- (2) A person may be appointed to be a member of the committee by virtue of the position or office held by that person.
- (3) The committee may invite a person who has relevant knowledge and experience in relation to a matter relevant to a particular application to assist the committee in its consideration of the application.

*[Regulation 25 amended in Gazette 20 May 2003 p. 1788.]*

#### **26. Presiding member**

The Director-General is to appoint the presiding member of the committee.

*[Regulation 26 inserted in Gazette 20 May 2003 p. 1788.]*

#### **27. Deputies**

- (1) If the presiding member is not available to act, the deputy presiding member is to act in his or her place.
- (2) The presiding member is to appoint a deputy presiding member and if the presiding member is unable to make the appointment

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then the Director-General is to appoint the deputy presiding member.

- (3) If an independent member referred to in section 14(2) of the Act is unavailable to act then the Director-General is to appoint another person who is independent of the Department to act in the place of the independent member.

*[Regulation 27 amended in Gazette 20 May 2003 p. 1788.]*

**28. Term of member's office**

- (1) A member holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment.
- (2) A member is eligible for re-appointment.
- (3) A member, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which he or she was appointed has expired.

*[Regulation 28 amended in Gazette 20 May 2003 p. 1789.]*

**29. Extraordinary vacancies**

- (1) A member may resign from office by notice in writing delivered to the Director-General.
- (2) The Director-General may remove a member from office —
  - (a) for —
    - (i) mental or physical inability to perform satisfactorily the duties of office;
    - (ii) neglect of duty; or
    - (iii) misconduct;
  - (b) if the member is persistently absent without leave or reasonable excuse from committee meetings of which the member has had notice;

- (c) if the member ceases to hold the office or qualifications by virtue of which the member was appointed to the committee; or
  - (d) if extraordinary circumstances render inappropriate the continuation of the person's membership of the committee.
- (3) An extraordinary vacancy occurs if a member dies, resigns from or is removed from office or no longer holds the position or office by virtue of which he or she had become a member.
- (4) If an extraordinary vacancy occurs, the Director-General is to appoint, in accordance with section 14 of the Act, another person to be a member for the residue of the former member's term.

*[Regulation 29 amended in Gazette 20 May 2003 p. 1789.]*

**30. Committee meetings**

The committee may hold ordinary meetings at an interval to be determined by the committee and special meetings as required for the performance of the committee's functions.

*[Regulation 30 inserted in Gazette 20 May 2003 p. 1789.]*

**31. Quorum**

Four members constitute a quorum for a meeting of the committee and —

- (a) either the presiding member or the deputy presiding member must be present and preside at the meeting; and
- (b) at least one member who is independent of the Department must be present at the meeting.

*[Regulation 31 amended in Gazette 20 May 2003 p. 1789.]*

**32. Voting**

- (1) Each member who is present at a committee meeting is entitled to one vote.

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- (2) In the case of an equality of votes the presiding member has a casting vote in addition to his or her deliberative vote.

**33. Minutes**

The presiding member of the committee is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the committee.

*[Regulation 33 amended in Gazette 20 May 2003 p. 1789.]*

**34. Disclosure of interests**

- (1) A member who has a direct or indirect interest, other than as a member, in a matter before the committee —
- (a) must disclose the nature of the interest to the committee as soon as practicable after the person becomes aware of the matter; and
  - (b) must not take part in any discussion or decision of the committee in relation to the matter without the approval of the committee.

Penalty: \$2 000.

- (2) A disclosure made by a person under this regulation is to be recorded in the minutes of the meeting in relation to the matter.

**35. Remuneration of some adoption applications committee members**

A member who is independent of the Department is entitled to such remuneration and allowances as the Director-General from time to time determines.

*[Regulation 35 amended in Gazette 20 May 2003 p. 1789.]*



## **Part 4 — Prospective adoptive parents**

### **Division 1 — Applications to be prospective adoptive parents**

**36. Definition**

In this Division, “**application**” means an application under section 38 of the Act.

**37. Manner and time in which to commence application**

- (1) An application is to be commenced by the applicant lodging with the Director-General an expression of interest in a form approved by the Director-General.
- (2) The Director-General is not to accept an expression of interest form unless —
  - (a) each applicant who is contemplating adoptive parenthood for the first time —
    - (i) has read the written information about adoption provided by the Director-General under section 37(1) of the Act; and
    - (ii) has been provided with oral information about adoption in the manner and form determined by the Director-General to be relevant to the applicant,  
and has completed a statement to that effect in the expression of interest form;
  - (ab) each applicant who is already an adoptive parent and who is contemplating adoptive parenthood for a second or subsequent time —
    - (i) has read the written information about adoption provided by the Director-General under section 37(1) of the Act; and
    - (ii) has been provided with oral information about adoption in the manner and form determined by the Director-General to be relevant to the

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**Division 1** Applications to be prospective adoptive parents

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applicant if the Director-General decides to provide that information or the applicant has requested the provision of that information under section 37(3),

and has completed a statement to that effect in the expression of interest form;

- (b) evidence in relation to the matters referred to in section 39 of the Act that are to be satisfied by each applicant is provided with the form; and
  - (c) the form is lodged within 12 weeks of having received all the information referred to in paragraph (a).
- (3) The Director-General is to advise in writing each person who lodges an expression of interest form as to whether or not each applicant has satisfied the matters referred to in section 39 of the Act relevant to that person and, if so, that any invitation to proceed with the application will be at the time and in the manner provided for in regulation 38.

*[Regulation 37 amended in Gazette 20 May 2003 p. 1790.]*

**38. Manner and time in which to proceed with application**

- (1) The Director-General may, from time to time, invite any person whose expression of interest under regulation 37 has been accepted to proceed with the application.
- (2) The Director-General is to determine the time when any application may be proceeded with having regard to —
  - (a) the number and requirements of children who have, or may reasonably be expected to, become available for adoption during a particular period of time;
  - (b) the number and attributes of persons whose names are already registered under section 44 of the Act; and
  - (c) any other relevant matter.
- (3) An invitation under this regulation —
  - (a) must be in writing; and

- (b) is to be sent to applicants in the chronological order in which the respective expressions of interest were lodged unless —
  - (i) wishes have been expressed under section 45 of the Act by the birth parent of a child and the Director-General is seeking prospective adoptive parents whose attributes would be consistent with those wishes; or
  - (ii) the applicant has expressed an interest in adopting children who are siblings or a child who (in the opinion of the Director-General) has a disability, is more than 12 months old or is from outside Australia.
  
- (4) An applicant who wishes to proceed with an application after having been invited to do so is to —
  - (a) pay —
    - (i) the fee referred to in regulation 87(a); and
    - (ii) the fee referred to in regulation 87(b) or (c), as is relevant to the case,unless the applicant is exempted under regulation 88(1) or (2) from paying the particular fee; and
  - (b) provide to the Director-General, in a form approved by the Director-General, particulars that will be relevant to —
    - (i) the assessment of the suitability of the applicant for adoptive parenthood; and
    - (ii) the placement of prospective adoptees with the applicant.

*[Regulation 38 amended in Gazette 16 Jul 2002 p. 3397-8.]*

**Division 2 — Assessments and placements**

**39. Costs of providing information for assessments**

Where an applicant is required by a person appointed under section 40 of the Act to provide information for the purposes of the assessment report, the applicant is to be responsible for any costs associated with the provision of the information.

**40. Review of suitability for prospective adoptive parenthood if 24 months since approval**

Where a person has been approved by the adoption applications committee as a prospective adoptive parent, the Director-General is not to place a child with that person with a view to the child's adoption by that person if more than 24 months have elapsed since the date of the approval unless —

- (a) the Director-General is of the opinion —
  - (i) that at the time of placement, the person would still be suitable for adoptive parenthood; and
  - (ii) where the adoption applications committee has approved the person in accordance with section 13(2) of the Act, that at the time of placement, the person is still suitable to adopt children in a category of children in respect of whom the person has been approved for prospective adoptive parenthood;

or

- (b) the adoption applications committee has reviewed the person's current circumstances and is satisfied —
  - (i) that at the time of placement, the person would still be suitable for adoptive parenthood; and
  - (ii) where the committee has approved the person in accordance with section 13(2) of the Act, that at the time of placement, the person is still suitable to adopt children in a category of children in

respect of whom the person has been approved for prospective adoptive parenthood.

*[Regulation 40 inserted in Gazette 20 May 2003 p. 1790-1.]*

**41. Further restrictions on placement**

- (1) A child is not to be placed with a person with a view to the child's adoption by that person if, at the time of the proposed placement —
  - (a) the adoption of any other child by the person has not been finalized; or
  - (b) the person is undertaking treatment for infertility.
- (2) The requirements of this regulation are not affected by any provision of, and cannot be changed, by any provision of an adoption plan.

**42. Exemption**

Subject to sections 52 and 53 of the Act, if a child cannot otherwise be placed, the Director-General may place the child with a prospective adoptive parent with a view to the child's adoption by that person even though the child would not otherwise have been placed with that person because of regulation 40 or 41.

*[Regulation 42 amended in Gazette 20 May 2003 p. 1791.]*

**Division 3 — Register**

*[43. Repealed in Gazette 20 May 2003 p. 1791.]*

**44. Deletion of names from register**

For the purposes of section 44(2) of the Act, the name of a person may be deleted from a register if —

- (a) the person so requests;

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- (b) the person is found by the adoption applications committee to be unsuitable, or no longer suitable, for adoptive parenthood;
- (c) the person no longer satisfies the criteria applying to that person under section 39 of the Act; or
- (d) the person adopts a child under an adoption order.

*[Regulation 44 amended in Gazette 16 Jul 2002 p. 3398; 20 May 2003 p. 1793.]*

**45. Notification of deletion of names from register**

For the purposes of section 44(3) of the Act, a person whose name has been deleted from a register is to be advised, in writing sent by registered post —

- (a) that his or her name has been deleted and the reason for the deletion; and
- (b) that he or she may apply to the Director-General in the manner set out in regulation 46 to have his or her name re-entered in the register.

*[Regulation 45 amended in Gazette 20 May 2003 p. 1793.]*

**46. Application to have name re-entered in register**

- (1) If a person's name has been deleted from a register on the basis that the person has been found by the adoption applications committee to be unsuitable, or no longer suitable, for adoptive parenthood, the person may apply to the Director-General to have his or her name re-entered in the register by —
  - (a) applying in a form approved by the Director-General; and
  - (b) providing with the application written evidence of the substituted decision of the committee following a review of, or appeal from, the original decision.
- (2) If a person's name has been deleted from a register on the basis that the person no longer satisfies any criterion applying to that

person under section 39 of the Act, the person may apply to the Director-General to have his or her name re-entered in the register by —

- (a) applying in a form approved by the Director-General;  
and
- (b) providing with the application written evidence in support of the proposition that, at the time of the application, the person satisfies the criteria applying to that person under that section.

*[Regulation 46 amended in Gazette 20 May 2003 p. 1793.]*

**47. Grounds for re-entering name in register**

- (1) On an application under regulation 46(1), the Director-General is to re-enter a person's name in the register if he or she is satisfied that there has been a proper review of, or appeal from, the decision of the adoption applications committee, and it would be consistent with the outcome of the review or appeal to re-enter the person's name in the register.
- (2) On an application under regulation 46(2), the Director-General may re-enter a person's name in the register if he or she is satisfied that the person continues to satisfy the criteria applying to that person under section 39 of the Act.

**48. Names can be re-entered in previous position**

If the Director-General decides to re-enter a name in a register, he or she may also direct that the name be placed in the same position that it was in before the name had been deleted.

## **Part 5 — Medical**

### **49. Serology test**

For the purposes of section 51 of the Act, a serology test is to include testing for the diseases set out in the Table to this regulation and such other diseases as the Director-General thinks may be relevant to a particular child.

#### **Table**

Hepatitis B  
Hepatitis C  
Human Immunodeficiency Virus (HIV) infection  
Syphilis.

### **50. Evidence in relation to pregnancy**

For the purposes of section 52(1)(a)(vi) of the Act, the means by which a female prospective adoptive parent is to provide evidence that she is not pregnant at the time of the proposed placement are as follows —

- (a) a negative result of a Beta HCG pregnancy test; or
- (b) written confirmation by a medical practitioner that the prospective adoptive parent has had a hysterectomy or otherwise does not have a uterus.

*[Regulation 50 amended in Gazette 10 Dec 2002 p. 5749.]*



## **Part 6 — Messages**

### **51. When messages may be left**

For the purposes of section 79(1), a person may leave a message for another person in relation to an adoption —

- (a) if a person has obtained identifying information under the Act about another person but has not been able to locate that person;
- (b) if the Director-General is providing mediation in relation to an adoption;
- (c) if a person has requested an information veto or a contact veto and wishes to leave information for a person who is affected by the veto; or
- (d) if a person is affected by an information veto or a contact veto and wishes to leave information for the person who requested the veto.

### **52. How messages are to be left**

A person who wishes to leave a message is to —

- (a) apply to the Director-General to do so in a form approved by the Director-General;
- (b) satisfy the Director-General as to his or her identity;
- (c) be either 18 or more years of age or provide, with the application, the written consent of each parent or guardian to leave the message; and
- (d) before leaving a message, provide the Director-General with a statutory declaration to the effect that —
  - (i) he or she has read the regulations in relation to leaving messages;
  - (ii) the message is of a kind that is provided for by regulation 51; and
  - (iii) the message does not identify a person in respect of whom an information veto has been lodged.

**53. Form of messages**

A message may be in such written or recorded form as is approved by the Director-General.

*For example:* photographs, videotapes, audiotapes, and computer disks.

**54. Information to be provided by Director-General**

The Director-General is to ensure that copies of the regulations in relation to messages are available to persons who apply under this Part to leave messages and that such persons are informed of any contact veto or information veto that is relevant to the application.

**55. Notifications by Director-General**

(1) A person who is affected by an information veto or a contact veto and leaves a message for the person who requested the veto may also request the Director-General to contact that person and advise him or her that a message has been left.

(2) If —

(a) a person has requested an information veto or a contact veto and leaves a message for a person who is affected by the veto; and

(b) the person who is affected by the veto makes an enquiry to the Director-General in relation to the adoption,

the Director-General is to advise the person affected by the veto that a message has been left.

(3) If the person for whom a message has been left has been advised that the message has been left but has not collected the message, the person who left the message may request the Director-General to remind the person of the message and the Director-General may do so at such time as the Director-General thinks is appropriate.

- (4) If a message is collected, the Director-General is to notify the person who left the message of the fact and date of collection.

**56. Messages confidential**

All messages left with the Director-General under this Part are confidential and not to be inspected by or on behalf of the Director-General except to the extent necessary to determine the sender and intended recipient of the message.

*[Regulation 56 amended in Gazette 20 May 2003 p. 1792.]*

**57. No obligation to collect messages**

A person does not have to collect a message if he or she does not wish to do so.

**58. Holding and collecting messages**

- (1) A message left with the Director-General under this Part is to be held by the Director-General until —
- (a) the message is collected by the person for whom it was left; or
  - (b) the message is withdrawn by the person who left the message.
- (2) A person cannot collect a message unless —
- (a) he or she satisfies the Director-General as to his or her identity; and
  - (b) the person is 18 or more years of age or provides the written consent of each parent or guardian to collect the message.

## **Part 7 — Contact and mediation licensees**

*[Heading amended in Gazette 20 May 2003 p. 1792.]*

### **59. Interpretation**

In this Part —

“**code of practice**” means a code of practice published by order of the Director-General in the *Gazette* in relation to the conduct of a contact and mediation licensee;

“**licence**” means a licence provided for by section 105 of the Act;

“**licensee**” means an individual to whom a licence has been issued;

“**service**” means a contact or mediation service.

*[Regulation 59 amended in Gazette 20 May 2003 p. 1792 and 1793.]*

### **60. Information about applying for licence**

- (1) From time to time, the Director-General is to cause to be published in a newspaper with circulation throughout the State and in the *Gazette*, information about how and where interested persons can apply for a licence.
- (2) Nothing in subregulation (1) prevents a person from applying for a licence at any time of the year.

*[Regulation 60 amended in Gazette 20 May 2003 p. 1793.]*

### **61. How to apply for licence**

An application for a licence is to be made to the Director-General in a form approved by the Director-General and is to be accompanied by —

- (a) either —
  - (i) a copy of a document which is evidence of the applicant’s tertiary qualification in social work or psychology; or

- (ii) a statutory declaration of a person (who the Director-General thinks is appropriate) to the effect that —
  - (I) the applicant has had at least 2 years' full-time counselling experience in relation to adoption with such individual or body as is specified in the declaration; and
  - (II) the counselling was of a high quality and conducted in a manner consistent with any code of practice in effect at the time of the application;
- (b) a certificate of completion of a training course in relation to providing services where the course has been approved by the Director-General;
- (c) police certificate evidence to establish that the applicant has not been convicted, within the 10 year period immediately before the application is made —
  - (i) of an offence against the law of any State or a Territory or of the Commonwealth; or
  - (ii) of an offence against the law of any overseas country where the applicant lived within that period, but only if specifically requested by the Director-General;
- (d) the names and contact details of 3 persons, 2 of whom are to provide references in relation to the applicant's professional capabilities and conduct and the other of whom is to provide a character reference in relation to the applicant;
- (e) details as to each address from which the applicant intends to conduct services;
- (f) evidence as to the arrangements that the applicant has made to ensure the security and confidentiality of records in relation to services; and

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- (g) any other information relating to the applicant that may be required by the Director-General for making a decision in relation to the application.

*[Regulation 61 amended in Gazette 20 May 2003 p. 1793.]*

**62. Issue of licences**

The Director-General is not to issue a licence unless he or she is satisfied that —

- (a) the applicant has provided all the information required under regulation 61 and that that information and the references given in relation to the applicant establish that the applicant is in all respects a fit and proper person to hold a licence;
- (b) during the proposed licence period the applicant will be able to comply with —
  - (i) the provisions of the Act;
  - (ii) any condition or restriction to which the licence is to be subject; and
  - (iii) any code of practice in effect during the licence period;and
- (c) the applicant has not been involved in professional conduct of a nature or standard that renders the applicant unsuitable to hold a licence.

*[Regulation 62 amended in Gazette 20 May 2003 p. 1793.]*

**63. How and when to apply for renewal of licence**

- (1) An application for the renewal of a licence is to be made to the Director-General in a form approved by the Director-General and accompanied by —
  - (a) the names and contact details of 3 persons, 2 of whom are to provide references in relation to the licensee's professional capabilities and conduct and the other of

- whom is to provide a character reference in relation to the licensee;
- (b) details as to each address from which the licensee intends to conduct, or continue to conduct, services; and
  - (c) any other information relating to the licensee that may be required by the Director-General for making a decision in relation to the application.
- (2) An application for the renewal of a licence is to be made no later than 42 days before the day on which the licence is due to expire.

*[Regulation 63 amended in Gazette 20 May 2003 p. 1793.]*

#### **64. Renewal of licences**

The Director-General is not to renew a licence unless he or she is satisfied that —

- (a) the licensee has provided all the information required under regulation 63 and that that information and the references given in relation to the licensee establish that the licensee continues in all respects to be a fit and proper person to hold a licence;
- (b) during the previous licence period the licensee has not been convicted of any offence against the law of any State or a Territory of the Commonwealth in circumstances rendering the renewal of the licence to be inappropriate;
- (c) the licensee has not contravened, or failed to comply with —
  - (i) a provision of the Act;
  - (ii) the licence or a condition or restriction to which the licence is subject; or
  - (iii) any code of practice in effect during the licence period,

in circumstances rendering the renewal of the licence to be inappropriate;

- (d) during the proposed licence period the licensee will be able to comply with —
  - (i) the provisions of the Act;
  - (ii) any condition or restriction to which the licence has been or is to be subject; and
  - (iii) any code of practice in effect during the licence period;

and

- (e) that the licensee has not been involved in professional conduct of a nature or standard that renders him or her unsuitable to continue to hold a licence.

*[Regulation 64 amended in Gazette 20 May 2003 p. 1793.]*

**65. Conditions and restrictions**

The Director-General may issue or renew a licence subject to conditions and restrictions set out in, or provided with, the licence.

*[Regulation 65 amended in Gazette 20 May 2003 p. 1793.]*

**66. Duration of licences**

A licence may be issued or renewed for such period as the Director-General thinks fit but the period cannot exceed 3 years from the day of issue or renewal of the licence.

*[Regulation 66 amended in Gazette 20 May 2003 p. 1793.]*

**67. Not transferable**

A licence is not transferable.



**68. Offences in relation to licence applications**

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

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

Penalty: \$2 000.

**69. Time limit for processing applications**

On an application for the issue of a licence, the Director-General is to issue the licence or decline the application within 42 days from the day on which the application was received by the Director-General, or such further time as the Director-General needs to make a decision in respect of the application.

*[Regulation 69 amended in Gazette 20 May 2003 p. 1793.]*

**70. Notice of issue or renewal of licence or refusal to do so**

- (1) Where the Director-General issues or renews a licence, the Director-General is to cause the applicant to be served, by registered post and no later than 28 days after the decision is made, with written notice setting out the decision.
- (2) Where the Director-General declines to issue a licence, the Director-General is to cause the applicant to be served, by registered post and no later than 28 days after the decision is made, with written notice setting out the decision and the reasons for the decision.
- (3) Where the Director-General declines to renew a licence, the Director-General is to cause the applicant to be served, by registered post and no later than 14 days before the day on which the licence is due to expire, with written notice setting out the decision and the reasons for the decision.

*[Regulation 70 amended in Gazette 20 May 2003 p. 1793.]*

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**71. Provision of information**

By 31 August each year, each licensee is to provide to the Director-General an annual report containing the following information —

- (a) the number and outcome of contacts made and mediations conducted solely by the licensee in the previous 12 month period commencing 1 July and finishing on 30 June;
- (b) the number and outcome of contacts made and mediations conducted in the previous 12 month period commencing 1 July and finishing on 30 June by the licensee in conjunction with other persons, and the names of those persons; and
- (c) the changes, if any, to any of the criteria by virtue of which the licence was issued to the licensee.

**72. Suspension and revocation of licences**

(1) Subject to subregulation (2), the Director-General may —

- (a) suspend a licence for such period, not exceeding the remaining period of the licence, as the Director-General thinks fit; or
- (b) revoke a licence.

(2) The Director-General may exercise a power referred to in subregulation (1) if —

- (a) during the licence period the licensee has been convicted of an offence against the law of any State or a Territory of the Commonwealth in circumstances rendering the continued holding of a licence by the licensee to be inappropriate;
- (b) the licensee has contravened, or failed to comply with —
  - (i) a provision of the Act;
  - (ii) the licence or a condition or restriction to which the licence is subject; or

- (iii) any code of practice in effect during the licence period,  
in circumstances rendering the continued holding of a licence by the licensee to be inappropriate;
- (c) the licensee no longer satisfies the criteria required to be satisfied by an applicant for the issue or renewal of a licence;
- (d) the licensee has been involved in professional conduct of a nature or standard that renders him or her unsuitable to continue to hold a licence; or
- (e) the licensee had, in relation to his or her application for the issue or renewal of the licence, provided information in written or oral form that the licensee knew to be —
  - (i) false or misleading in a material particular; or
  - (ii) likely to deceive in a material way.

*[Regulation 72 amended in Gazette 20 May 2003 p. 1793.]*

**73. Notice of suspension, revocation**

- (1) If the Director-General suspends or revokes a licence, he or she is to cause written notice of the decision to be served on the licensee within 3 working days from the day on which the decision was made, stating the grounds on which the decision was made.
- (2) A person who has received notice under subregulation (1) must comply with any directions of the Director-General in relation to delivering up the licence.  
Penalty: \$2 000.
- (3) If a licence is suspended under this regulation it is to be treated as being of no effect during the period of suspension.

*[Regulation 73 amended in Gazette 20 May 2003 p. 1793.]*

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**74. Director-General to investigate if information received**

Where the Director-General receives information to the effect that there may be a ground for the suspension or revocation of a licence in relation to a licensee, the Director-General is to conduct such investigations as satisfy the Director-General that the ground can, or cannot, as the case may be, be established in relation to the licensee.

*[Regulation 74 amended in Gazette 20 May 2003 p. 1792 and 1793.]*

**75. Effect of suspension**

Where the Director-General has suspended a licence —

- (a) the Director-General is to reinstate the licence if and when the Director-General is satisfied that the licensee is fit to resume conducting services; and
- (b) the Director-General may subsequently revoke the licence if and when the Director-General is satisfied that the licensee is not fit to resume conducting services.

*[Regulation 75 amended in Gazette 20 May 2003 p. 1793.]*

**76. Effect of revocation**

A person who has had his or her licence revoked is, by force of this regulation, to be treated as being disqualified from re-applying for a licence for such period as is set out by the Director-General in the notice of revocation, but that period cannot exceed 10 years.

*[Regulation 76 amended in Gazette 20 May 2003 p. 1793.]*

**77. Appeal against refusal, revocation, suspension or terms of licence**

- (1) If the Director-General —
  - (a) refuses an application for a licence or renewal of a licence;

- (b) revokes or suspends a licence; or
- (c) attaches to a licence any condition or restriction that is not acceptable to the licensee,

the person affected by the Director-General's decision may appeal to the District Court on the ground that the Director-General made an error of law or of fact in making the decision.

- (2) An appeal is to be made within 21 days of the day of service of the notice of the Director-General's decision or such further period as the District Court allows, but an appeal cannot be instituted after 4 months from the day of service of the notice.
- (3) Subject to subregulation (2), an appeal is to be made and determined in accordance with Order 8 of the *District Court Rules 1996*, and for the purposes of rule 29 of that Order —
  - (a) a reference in rule 29 to an authority is to be taken to be a reference to the Director-General;
  - (b) a reference in that Order to a magistrate is to be taken to be a reference to the Director-General; and
  - (c) a reference in that Order to a Clerk of the Local Court is to be taken to be a reference to the Director-General.
- (4) Effect is to be given to the decision of the District Court on an appeal.

*[Regulation 77 amended in Gazette 3 Sep 1999 p. 4308-9; 20 May 2003 p. 1793.]*

**78. Status of Director-General's decision pending appeal**

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

decision and may revoke or amend an order made under subregulation (1).

*[Regulation 78 amended in Gazette 20 May 2003 p. 1793.]*

**79. Application for licence after revocation period**

Where a person's licence has been revoked and any period during which the person was disqualified from re-applying for a licence has passed, the person may re-apply for a licence but only if —

- (a) the application is made and considered as if it were an application for the issue, not the renewal, of a licence; and
- (b) the person provides evidence to support the proposition that the circumstances in which the licence was revoked no longer apply and that there is no reasonable prospect of those circumstances arising if the licence is re-issued.

**80. Issue of licences etc. to be published in *Gazette***

- (1) The Director-General is to cause to be published in the *Gazette* notice of the following —
  - (a) an issue of a licence;
  - (b) a renewal of a licence;
  - (c) the revocation or suspension of a licence; and
  - (d) the variation or quashing of a decision of the Director-General, on appeal to the District Court.
- (2) A notice under subregulation (1) is to specify the name and address of the person to whom the notice applies.

*[Regulation 80 amended in Gazette 20 May 2003 p. 1793.]*

## **Part 8 — Miscellaneous**

### **Division 1 — Identification**

**81. Proving identity**

If under the Act a person is required to prove, or satisfy another person as to, his or her identity, the person is to prove his or her identity in accordance with this Division.

**82. Proof by single document**

A person may prove his or her identity by producing for inspection one of the following —

- (a) the person's current motor driver's licence but only if it bears a photograph of the person;
- (b) the person's current passport; or
- (c) an identification card issued to the person by —
  - (i) a tertiary education institution; or
  - (ii) the Public Service,but only if it bears a photograph of the person.

**83. Proof by 2 documents**

If a person cannot prove his or her identity in accordance with regulation 82, the person may prove his or her identity by producing for inspection —

- (a) any one of the following —
  - (i) a certificate or an extract from a certificate of the person's birth;
  - (ii) a certificate of the person's marriage;
  - (iii) a certificate of the person's citizenship of, or naturalisation in, a country;
  - (iv) if the person's name has changed, the deed poll (or corresponding document from outside this

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State) by which the change of name was effected;  
or

- (v) a document issued by the department of the public service of the Commonwealth principally responsible for assisting the Commonwealth minister for immigration, which establishes the person's identity;

plus

- (b) any one of the following —
  - (i) the person's current motor driver's licence (without a photograph of the person);
  - (ii) an identification card issued to the person (without a photograph) by —
    - (I) a tertiary education institution; or
    - (II) the Public Service;
  - (iii) the person's Medicare card;
  - (iv) a social security card issued to the person;  
*example:* a Health Benefit Card, a Health Care Card, a Pensioner Health Benefits Card/Travel Card or a Veterans Health Benefits Card issued by the Department of Social Security or the Department of Veterans' Affairs of the Commonwealth or a concession card issued by a department of the Public Service of this State;
  - (v) a statement not more than 12 months old or a current card issued to the person by a bank or other financial institution in relation to an account held by the person or a credit facility provided to the person;
  - (vi) the current notice of assessment for council, water or land tax rates in relation to the person's property;



- (vii) an account for the person's use of a telephone or power within the previous 6 months; or
- (viii) the person's income tax assessment notice for the previous financial year.

**84. Proof by other means**

If a person cannot prove his or her identity in accordance with either regulation 82 or 83, the person may prove his or her identity by producing for inspection —

- (a) the statutory declaration of a person who has known the first-mentioned person for at least 12 months and who is unrelated to that person; or
- (b) such other proof as may be required by the Director-General.

**Division 2 — Court records**

**85. Court documents to be specified in authority**

If a person applies under section 82 of the Act for access to the record of proceedings in a court in relation to an adoption or a proposed adoption and the Director-General decides to give his or her authority for the applicant to have access to the record, the Director-General is to specify in the authority each document constituting the record to which the applicant may have access.

**86. What constitutes Family Court record of proceedings**

- (1) For the purposes of regulation 85, the following documents are to be taken as constituting the record of proceedings in the Court —
  - (a) each form signed by a birth parent of the child in which the birth parent consented to the child's adoption;
  - (b) if relevant, each Application to Dispense with Consent(s) being Form 4 in the Second Schedule to the *Adoption of Children Rules 1970*<sup>2</sup>;

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- (c) the application for the adoption order;
  - (d) the adoption order;
  - (e) if relevant, the order discharging the adoption order; and
  - (f) in the case of an applicant who is the adoptee, that portion of any document naming a birth parent of the adoptee, but only if that birth parent has admitted parentage and provided evidence to that effect which has been accepted by the Court.
- (2) For the purposes of subregulation (1), if the adoption was conducted under the *Adoption of Children Act 1896*<sup>3</sup>, a reference in that subregulation to an adoption order is to be taken to be reference to an order of adoption within the meaning of that Act.

*[Regulation 86 amended in Gazette 10 Dec 2002 p. 5749.]*

**Division 3 — Prescribed overseas jurisdiction**

*[Heading inserted in Gazette 3 Sep 1999 p. 4309.]*

**86A. Prescribed overseas jurisdiction**

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

*[Regulation 86A inserted in Gazette 3 Sep 1999 p. 4309.]*

## **Part 9 — Payment for services**

**86B. Fees for provision of information to persons contemplating adoptive parenthood**

A fee not exceeding \$110 for each session for each person may be charged for the provision of information for the purposes of section 37 of the Act.

*[Regulation 86B inserted in Gazette 20 May 2003 p. 1792.]*

**87. Fees on proceeding with application to be prospective adoptive parent**

The fees for the purposes of regulation 38(4)(a) are as follows —

- (a) \$750 for registration as an applicant to be a prospective adoptive parent;
- (b) \$986 for the preparation of the assessment report under section 40 of the Act in the case where the applicant or the joint applicants have not previously adopted a child;
- (c) \$650 for the preparation of the assessment report under section 40 of the Act in the case where the applicant or the joint applicants have previously adopted a child.

*[Regulation 87 inserted in Gazette 16 Jul 2002 p. 3398.]*

**87A. Fee for preparation of report for Court in step-parent adoptions**

A fee of \$450 is payable for the preparation of a report under section 61 of the Act if the report is required in relation to an application for an order for a child to be adopted by a step-parent.

*[Regulation 87A inserted in Gazette 16 Jul 2002 p. 3398.]*

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**88. Exemptions from paying fees**

- (1) A person is exempted from paying all the fees referred to in regulation 87 if the person proceeds with the application under section 38 of the Act in respect of the adoption of a child who, in the opinion of the Director-General, has a disability.
- (2) A person is exempted from paying the fee referred to in regulation 87(b) or (c), as is relevant to the case, if the person proceeds with the application under section 38 of the Act in respect of the adoption of a child who resides, or is domiciled, in the State at the time the application is proceeded with.

*[Regulation 88 inserted in Gazette 16 Jul 2002 p. 3399.]*

**89. Responsibility for other costs not affected**

Nothing in this Part affects any requirement of a person to pay —

- (a) fees charged by a private adoption agency in relation to services provided by it in accordance with its licence; or
- (b) legal costs associated with an application to the Court by the person for an adoption order.

**90. Refund of fees paid**

If a person has paid a fee referred to in regulation 87 and subsequently proceeds with an application under section 38 of the Act in respect of the adoption of a child referred to in regulation 88(1) or (2), the Director-General may refund to the person all or part of the fee that the person would have been exempt from paying under regulation 87.

*[Regulation 90 inserted in Gazette 20 May 2003 p. 1792-3.]*

**Schedule 1 — Code of conduct for an accredited body**

[r. 10A(g), 23I(1)]

**1. Conflict of interest**

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

**2. Acceptance of gifts or benefits**

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

**3. Personal and professional behaviour**

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

**4. Duties of staff of an accredited body**

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

- (a) must keep up to date with any changes in practice or procedure relating to intercountry adoption;
- (b) must comply with the laws, and any relevant administrative requirements of the Commonwealth and the State or internal Territory of accreditation;
- (c) must maintain and preserve record information systems in accordance with the requirements of the State Central Authority that accredited the body;

- (d) must treat all clients with courtesy, sensitivity and in confidence;
- (e) must not take any improper advantage of any information gained in the carrying out of his or her duties; and
- (f) must report to the State Central Authority that accredited the body any unethical behaviour or wrong doing by other members of staff of which he or she is aware.

**5. Fairness and equity**

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

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

**6. Exercise of discretionary power**

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

**7. Public comment and the use of information**

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

**8. Confidentiality**

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

*[Schedule 1 inserted in Gazette 3 Sep 1999 p. 4309-11.]*

**Schedule 2 — Prescribed overseas jurisdiction**

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People's Republic of China

*[Schedule 2 inserted in Gazette 3 Sep 1999 p. 4311.]*



### Notes

- <sup>1</sup> This reprint is a compilation as at 3 October 2003 of the *Adoption Regulations 1995* 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

Citation	Gazettal	Commencement
<i>Adoption Regulations 1995</i>	29 Dec 1994 p. 7171-208	1 Jan 1995 (see r. 2 and <i>Gazette</i> 25 Nov 1994 p. 5905)
<i>Adoption Amendment Regulations 1999</i>	3 Sep 1999 p. 4295-311	16 Sep 1999 (see r. 2 and <i>Gazette</i> 3 Sep 1999 p. 4295)
<i>Adoption Amendment Regulations 2002</i>	16 Jul 2002 p. 3397-9	16 Jul 2002
<i>Adoption Amendment Regulations (No. 2) 2002</i>	10 Dec 2002 p. 5748-9	10 Dec 2002
<i>Adoption Amendment Regulations 2003</i>	20 May 2003 p. 1783-93	1 Jun 2003 (see r. 2 and <i>Gazette</i> 20 May 2003 p. 1783)
<b>Reprint 1: The <i>Adoption Regulations 1995</i> as at 3 Oct 2003</b> (includes amendments listed above)		

- <sup>2</sup> Repealed by the *Adoption Rules 1995*.

- <sup>3</sup> Repealed by the *Adoption Act 1994*.



## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
accredited body .....	23A
application.....	36
authorised function.....	23A
code of practice .....	59
committee.....	24
licence .....	5, 59
licensee.....	59
member .....	24
principal officer.....	5, 23A
service .....	59
the Act.....	3