

ADOPTION ACT 1994

(No. 9 of 1994)

ARRANGEMENT

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Principle
4. Interpretation
5. Act binds Crown

PART 2 — ADOPTION AGENCIES

Division 1 — Authority to conduct adoption services

6. Adoption services to be conducted by or on behalf of Director-General
7. Adoption services as to step-parent adoptions
8. Offence

Adoption Act 1994

Division 2 — Private adoption agencies

- 9. Private adoption agencies
- 10. Regulations as to private adoption agencies
- 11. Offence of holding out, etc.

Division 3 — Adoption applications committees

- 12. Establishment of adoption applications committees
- 13. Functions of adoption applications committees
- 14. Membership of adoption applications committees
- 15. Procedures etc. of adoption applications committees

PART 3 — THE ADOPTION PROCESS

Division 1 — Information and assistance in relation to relinquishing a child for adoption

- 16. Duties of Director-General as to birth parents

Division 2 — Consent to adoption

- 17. Persons to give consent
- 18. Effective consent
- 19. Non-citizen children present in the State for adoption or recognition of overseas adoption
- 20. Specification of prospective adoptive parent
- 21. Man who may be a prospective adoptee's father to be notified
- 22. Revocation of consent
- 23. Notice of revocation

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

- 24. Orders dispensing with consent
- 25. Orders as to service of notice
- 26. Application for custody, parentage

Adoption Act 1994

Division 4 — Guardianship of prospective adoptees

- 27. Guardians of children awaiting adoption where all consents accounted for
- 28. Guardianship of children awaiting adoption where not all consents finalized
- 29. Cessation of guardianship of children awaiting adoption
- 30. If not possible or desirable to place a child for adoption
- 31. Care of child pending placement for adoption
- 32. Responsibilities of guardians of children awaiting adoption
- 33. Renunciation and transfer of guardianship by Director-General
- 34. Transfer of guardianship to Director-General
- 35. Offence

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

- 36. Orders as to guardianship under Division 4

Division 6 — Prospective adoptive parents

- 37. Duty of Director-General as to information about adoptive parenthood
- 38. Application to be a prospective adoptive parent
- 39. Criteria for application
- 40. Assessment of applicants for adoptive parenthood
- 41. Adoption applications committee
- 42. Decisions of adoption applications committees
- 43. Reasons for decision
- 44. Director-General to keep registers

Division 7 — Placement of prospective adoptees

- 45. Selection of prospective adoptive parents
- 46. Negotiation of adoption plans
- 47. Duty of Director-General as to adoption plans
- 48. Placement following adoption plan
- 49. Placement if no adoption plan
- 50. Orders to constitute provisions of adoption plans

Adoption Act 1994

- 51. Medical report as to child's health before placement
- 52. Restrictions on placement
- 53. Placing children who cannot be placed under section 52
- 54. Supervision of placements

Division 8 — Adoptions by step-parents or carers

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

Division 9 — Applications for adoption orders

- 56. Placement to be for at least 6 months
- 57. Time for applying for adoption order may be shortened
- 58. Notice of intention to apply for adoption order
- 59. Notice where birth parent deceased or cannot be found
- 60. Court applications as to notices
- 61. Report for adoption proceedings
- 62. Application for adoption order
- 63. Intervention by Director-General or other persons in applications for adoption orders
- 64. Evidence on applications for adoption order

Division 10 — Adoption orders

- 65. Jurisdiction
- 66. Who may be adopted
- 67. Who may adopt
- 68. Adoption orders in relation to children
- 69. Adoption orders in relation to adults
- 70. Court may allow further parties to adoption plans
- 71. Other powers on adoption applications
- 72. Approval and enforcement of adoption plans
- 73. Dispensing with adoption plans
- 74. Name of adoptee
- 75. Effect of adoption orders
- 76. Variation of adoption plans
- 77. Discharge of adoption order
- 78. Court to notify Registrar General of adoption order etc.

Adoption Act 1994

PART 4 — ADOPTIONS INFORMATION

Division 1 — Adoption information services

- 79. Duties of Director-General as to adoption information services
- 80. Director-General to notify certain persons in event of death

Division 2 — Access to adoptions information

- 81. Interpretation and application of Division 2
- 82. Director-General's authority to allow access to information
- 83. Court orders as to access to information
- 84. Court records
- 85. Registration of birth
- 86. Portion of registration of birth not referring to adoption
- 87. Certified copies of registration of birth or portions of registration as evidence
- 88. Non-identifying information held by adoption agencies
- 89. If party to adoption deceased
- 90. If adoptee cannot be found

Division 3 — Exchange and preservation of adoptions information

- 91. Family Court to provide information to Director-General
- 92. Registrar General to provide information to Director-General
- 93. Persons or bodies to provide information to Director-General
- 94. Preservation of records as to adoptions information

Division 4 — Contact and information vetoes

- 95. Interpretation
- 96. Wishes as to contact to be lodged with Director-General
- 97. Request to prevent release of information to be lodged with Director-General
- 98. Registration of statements and requests

Adoption Act 1994

- 99. Register of contact and information vetoes
- 100. Duration of contact vetoes
- 101. Duration of information vetoes
- 102. Confirmation, cancellation or variation of vetoes
- 103. Undertakings not to contact person who has lodged contact veto
- 104. Offence to breach undertaking or harass

Division 5 — Private contact and mediation agencies

- 105. Contact and mediation agencies to be licensed
- 106. Licences to conduct contact and mediation services
- 107. Regulations as to contact and mediation agencies
- 108. Contact and mediation agencies bound by contact veto

Division 6 — Updating non-identifying information

- 109. Director-General to attempt to obtain current information

PART 5 — REVIEW OF DECISIONS AND APPEALS

Division 1 — Review by Director-General

- 110. Review by Director-General
- 111. Nature of review by Director-General and evidence
- 112. Powers of Director-General on review

Division 2 — Decisions of adoption applications committees

- 113. Director-General may direct committee to review its own procedures

Division 3 — Appeals to Family Court

- 114. Matters that may be appealed to the Family Court
- 115. Nature of appeal to Family Court

Adoption Act 1994

- 116. Role of Director-General in appeals from decisions of committees
- 117. Status of decision pending appeal

Division 4 — Appeals to Full Court

- 118. Appeals from decision of Family Court under Division 3
- 119. Appeals from other decisions of Family Court not affected

PART 6 — OFFENCES

- 120. Interpretation
- 121. Territorial application
- 122. Payments for adoption, adoptions services etc.
- 123. Restriction on advertising
- 124. Restriction on publication of identity of parties
- 125. Undue influence
- 126. Harassment etc.
- 127. Confidentiality
- 128. Authority to prosecute
- 129. Other evidentiary matters

PART 7 — MISCELLANEOUS

Division 1 — Delegation and protection

- 130. Delegation by Director-General
- 131. Protection from liability etc.
- 132. Distribution of property not affected without notice

Division 2 — Proceedings

- 133. Proceedings to be private
- 134. Representation of children

Adoption Act 1994

Division 3 — Non-Western Australian adoptions

- 135. Arrangements with other States and Territories
- 136. Recognition of other Australian adoptions
- 137. Arrangements with other countries
- 138. Recognition of non-Australian adoptions
- 139. Director-General to supervise children adopted outside Australia

Division 4 — Financial assistance and payment for services

- 140. Financial assistance
- 141. Payment for services

Division 5 — Rules and regulations

- 142. Rules
- 143. Regulations

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

- 144. Repeal of *Adoption of Children Act 1896*, transitional and savings
- 145. Consequential amendments
- 146. Review

SCHEDULE 1

EFFECTIVE CONSENT

- 1. Information and counselling before consent
- 2. Witnesses
- 3. Certificate of witness

Adoption Act 1994

SCHEDULE 2

RIGHTS AND RESPONSIBILITIES TO BE BALANCED IN ADOPTION PLANS

1. Infancy
2. Childhood
3. Adolescence
4. Adulthood

SCHEDULE 3

TRANSITIONAL AND SAVINGS

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

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

ADOPTION ACT 1994

No. 9 of 1994

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

[Assented to 15 April 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Adoption Act 1994*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principle

3. The paramount consideration to be taken into account in the administration of this Act is the welfare and best interests of a child who is an adoptee or a prospective adoptee.

Interpretation

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

“**access**”, in relation to information, includes the inspection of a document containing the information and the receipt of a document or extract or copy of a document that contains the information;

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

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

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

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

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

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

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

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

“birth parents” means, in relation to a child or adoptee, the mother and the father of the child or adoptee;

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

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

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

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

“contact veto” means a statement registered under section 98 (1) by which a person forbids another person to contact the first-mentioned person;

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

“Court” means the Family Court of Western Australia created by the *Family Court Act 1975*;

“Department” means the Department for Community Services established by section 4 of the *Community Services Act 1972*;

“Director-General” means the person who for the time being, holds or acts in the office of Director-General of the Department as appointed under section 7 of the *Community Services Act 1972*;

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

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

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

“information veto” means a request that has been registered under section 98 (2);

“lawyer” means a certificated practitioner under the *Legal Practitioners Act 1893*;

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

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

“party to an adoption” means —

- (a) in relation to a proposed adoption —
 - (i) the prospective adoptee;
 - (ii) the prospective adoptee’s birth parents; and
 - (iii) the prospective adoptive parent;and
- (b) in relation to an adoption —
 - (i) the adoptee;
 - (ii) the adoptee’s birth parents; and
 - (iii) the adoptee’s adoptive parent;

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

“Registrar General” includes persons appointed or acting as —

- (a) the Registrar General; or
- (b) a Deputy Registrar General,

for the purposes of the administration of the *Registration of Births, Deaths and Marriages Act 1961*;

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

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

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

- (a) is not a birth parent or adoptive parent of the first-mentioned person; and
- (b) is married to the first-mentioned person’s birth parent or adoptive parent.

(2) A reference in this Act to a married person is a reference to —

- (a) a person who is actually married;
- (b) a person who is co-habiting with another person in a heterosexual relationship, as that person’s spouse, although not actually married to that person and who has so co-habited for a continuous period of not less than 3 years; or
- (c) an Aboriginal person who is regarded by the community in which the person lives as being married in accordance with the customs or rules of the community.

(3) For the purposes of this Act, a man is to be taken to be the father of a child or adoptee —

- (a) if his name is entered in the registration of the birth of the child or adoptee as the father of the child or adoptee;
- (b) if he acknowledges in a statutory declaration that he is the father of the child or adoptee and the mother of the child or adoptee endorses the acknowledgment in a statutory declaration;
- (c) where, by operation of a law of the Commonwealth, a State or a Territory, he is treated as being the father; or

- (d) where a court of the Commonwealth, a State, a Territory or a country other than Australia so finds,

but paragraphs (a), (b) and (c) only apply in the absence of evidence to the contrary.

Act binds Crown

- 5.** This Act binds the Crown.

PART 2 — ADOPTION AGENCIES

Division 1 — Authority to conduct adoption services

Adoption services to be conducted by or on behalf of Director-General

6. (1) The Director-General is to conduct adoption services and may delegate that function to officers of the Department or such other persons who the Director-General thinks are suitable.

(2) An adoption service is conducted by a delegate of the Director-General only if the person conducting the adoption service is authorized in writing by the Director-General to conduct the adoption service, and the adoption service is —

- (a) conducted for the purpose or case that is specified in the authority; and
- (b) in accordance with any condition or restriction imposed by the authority.

Adoption services as to step-parent adoptions

7. Adoption services may be conducted by the birth parent of a child who has the custody of the child or a person acting on behalf of that birth parent, with a view to the child's adoption by a step-parent of the child.

Offence

8. (1) A person must not —

- (a) make an arrangement for or towards or with a view to the adoption of a child;
- (b) conduct negotiations for or towards or with a view to the adoption of a child;

- (c) arrange or participate in a change of a child's place of residence with a view to the adoption of the child; or
- (d) assist in the preparation or mediation of an adoption plan or a variation of an adoption plan.

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

(2) This section does not apply to —

- (a) the Director-General or a person authorized under section 6 (2);
- (b) a person to whom section 7 applies; or
- (c) a private adoption agency, where the adoption service is conducted under and in accordance with a licence provided for by Division 2.

Division 2 — Private adoption agencies

Private adoption agencies

9. The Minister may grant a licence to a body corporate to conduct adoption services and to perform other functions for the purposes of this Act.

Regulations as to private adoption agencies

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

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

- (c) the procedure for applications and grounds for refusal of applications;
- (d) the duration, renewal, revocation and suspension of licences;
- (e) the effect of revocation or suspension of licences, in relation to records and documents held by the licensee or former licensee;
- (f) the conferral of a right of appeal and the procedure for and matters in relation to appeals from the Minister's decisions as to applications and licences;
- (g) the requirements for public notification of applications for licences and the making of submissions in relation to such applications;
- (h) the provision of information to the Director-General by private adoption agencies in relation to the adoption services conducted by them; and
- (i) such other matters as are necessary or expedient for giving effect to this Division.

Offence of holding out, etc.

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

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

Division 3 — Adoption applications committees

Establishment of adoption applications committees

12. The Director-General is to appoint, in accordance with this Division, such number of adoption applications committees as are required for the purposes of this Act.

Functions of adoption applications committees

13. The functions of an adoption applications committee are —

- (a) to consider whether or not persons who have applied to the Director-General under section 38 (1) are suitable for adoptive parenthood; and
- (b) to approve, or not approve, such persons as prospective adoptive parents.

Membership of adoption applications committees

14. (1) An adoption applications committee is to consist of at least 4 members.

(2) The Director-General is to select the members from persons who the Director-General thinks have relevant expertise or experience but at least one of the members is to be independent of the Department.

(3) Where a private adoption agency has the function of appointing an adoption applications committee, the principal officer of the agency is to select the members from persons the principal officer thinks have relevant expertise or experience but —

- (a) at least one of the members is to be independent of the agency; and
- (b) at least one of the members is to be selected from the Department.

Procedures etc. of adoption applications committees

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

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

PART 3 — THE ADOPTION PROCESS

Division 1 — Information and assistance in relation to relinquishing a child for adoption

Duties of Director-General as to birth parents

16. (1) The Director-General is to, if requested by a birth parent or prospective birth parent who is thinking about relinquishing her or his child for adoption —

- (a) provide the persons known to the Director-General as the child's birth parents with information on the matters, and in the manner, set out in clause 1 (a) of Schedule 1;
- (b) provide counselling services to the birth parents;
- (c) assist the birth parents to make arrangements for the child to be cared for;
- (d) before the revocation period expires, provide the birth parents with such opportunities for access to the child, as the Director-General thinks appropriate;
- (e) assist in the making of arrangements to obtain information that is, or is likely to become, relevant to the diagnosis, care or treatment of any medical condition of the child; and
- (f) give the birth parents an opportunity to provide information that is, or is likely to become, relevant to the placement of the child with a view to the child's adoption, and the adoption of the child.

(2) The Director-General is to commence the provision of a service requested under subsection (1) within 7 days of the request.

Division 2 — Consent to adoption**Persons to give consent**

17. (1) Subject to section 24 (2), the following persons' effective consent to a child's adoption is required —

(a) where the child has not been adopted before —

(i) the child's mother; and

(ii) the child's father;

or

(b) where the child has been adopted before —

(i) in this State; or

(ii) elsewhere if under section 136 or 138 the adoption has the same effect as an adoption order,

each adoptive parent of the child; and

(c) in every case —

(i) each of the child's guardians; and

(ii) where the child will be 12 or more years of age at the time when the application for an adoption order is filed in the Court, the child.

(2) The person to whom a person referred to in subsection (1) is married is not required to consent to the adoption order being made unless the first-mentioned person is also a person referred to in subsection (1).

Effective consent

18. (1) A consent to a child's adoption is not effective unless —

- (a) the consent is given at least 28 days after the child is born;
- (b) the consent is given at least 28 days after the person whose consent is required receives the information and, if requested, the counselling mentioned in clause 1 of Schedule 1;
- (c) the consent is in writing in a form that has been approved by the Minister;
- (d) a separate form of consent is signed by each person whose consent is required, and witnessed in accordance with clause 2 of Schedule 1; and
- (e) the form of consent is delivered to the Director-General or, in the case of a proposed adoption by a step-parent of the child, to the prospective adoptive parent.

(2) A consent is not effective if it has been revoked during the revocation period.

(3) If the Director-General's consent to a child's adoption is required because the Director-General is a guardian of the child, subsection (1) (b) and clauses 1 and 3 of Schedule 1 do not apply.

(4) A consent to a child's adoption given in another State or a Territory under the law of the other State or the Territory is an effective consent for the purposes of this Act.

(5) A consent is not effective if —

- (a) it is obtained by fraud, duress or material inducement;

- (b) a material particular in the form of consent is altered without the authority of the person who signed the form; or
- (c) a person purporting to give the consent is not, on the day on which the form of consent is signed, physically or mentally capable of giving consent or understanding the nature of a consent to adoption under this Act.

(6) A consent to a child's adoption is not rendered ineffective solely by reason of an adoption order not being made on an application to adopt the child.

(7) The consent of a child's birth parent who has not reached 18 years of age to the child's adoption is not effective unless —

- (a) a parent or guardian of the birth parent; or
- (b) in the case where —
 - (i) the child's father is also a lineal relative of the birth parent; or
 - (ii) there has been a breakdown in the relationship between the birth parent and his or her parent or guardian,

the Director-General,

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

(8) In subsection (7), "**lineal relative**" means a person who is a lineal grandparent, a lineal ancestor, a lineal descendant, or brother, whether the relationship is of the whole or half-blood, whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the

relationship is a natural relationship or a relationship established by a written law.

Non-citizen children present in the State for adoption or recognition of overseas adoption

19. (1) The Director-General is the guardian, to the exclusion of all other persons, of a child who —

- (a) is present in the State; and
- (b) not being an Australian citizen, has entered Australia in the charge of, or for the purposes of living in Australia under the care of, a person who intends to —
 - (i) adopt the child under the law of a State or a Territory; or
 - (ii) secure the recognition, under the law of a State or a Territory, of an adoption of the child by that person under the law of a country other than Australia.

(2) Subsection (1) does not affect the requirement under section 17 (1) for the birth parents or the adoptive parents, as the case may be, of a child to whom paragraph (b) (i) of that subsection applies, to consent to the child's adoption.

Specification of prospective adoptive parent

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

- (a) is a —
 - (i) step-parent; or

- (ii) carer,
of the child; and

(b) wishes to adopt the child.

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

21. (1) Within 7 days of receiving a completed form of consent to a child's adoption the Director-General, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is to notify —

- (a) any man to whom the child's mother was married during the 11 months immediately before the child's birth; and
- (b) if applicable, any man (not being a man who would otherwise be taken to be the child's father under section 4 (3)) who, to the knowledge of the Director-General or that prospective adoptive parent, is a person who has been named as or has claimed to be the child's father.

(2) The notification referred to in subsection (1) is to be in writing and served on the man personally, or by certified mail at the man's last known address, informing him —

- (a) of the consent or consents to the child's adoption; and
- (b) that if, before the proposed adoption proceeds, he wishes to apply under the *Family Court Act 1975* or the *Family Law Act 1975* of the Commonwealth (as the case may be) for —
 - (i) the custody of the child; or
 - (ii) a determination of the matter of the child's parentage,

he must do so within 21 days of service of the notice.

(3) Notification under subsection (1) is not required if —

- (a) the man has been convicted of an offence and the Director-General, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is satisfied on reasonable grounds that the child's conception resulted from the offence; or
- (b) compensation has been awarded to the child's mother under the *Criminal Injuries Compensation Act 1985* in relation to an offence or an alleged offence within the meaning of that Act that was committed by the man, and the Director-General, or in the case of a proposed adoption by a step-parent of the child, the prospective adoptive parent, is satisfied on reasonable grounds that the child's conception resulted from the offence or alleged offence.

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

(5) In subsection (4), “lineal relative” has the meaning given by section 18 (8).

Revocation of consent

22. (1) If only one person is required to consent to a child's adoption, the person may not revoke her or his consent after 28 days from the day on which the form of consent was delivered under section 18 (1) (e).

(2) If 2 or more persons are required to consent to a child's adoption, the persons who have consented may not revoke their consents after 28 days from the day on which all required forms of consent have either been delivered under section 18 (1) (e), or have been dispensed with.

(3) This section is subject to section 26 (4).

Notice of revocation

23. (1) A revocation of a consent to a child's adoption is of no effect unless it is —

- (a) in writing, in a form that has been approved by the Minister and signed by the person who gave the consent before a person who is authorized by clause 2 of Schedule 1; and
- (b) received, by the Director-General or the prospective adoptive parent who received the form of consent under section 18 (1) (e), before the revocation period expires.

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

(3) Service on the Director-General under subsection (2) is to be taken to be service on the prospective adoptive parent.

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

Orders dispensing with consent

24. (1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court by the Director-General, a prospective adoptive parent or on behalf of the child for an order to dispense with a requirement under section 17 (1) for a person's consent to the child's adoption.

(2) On an application under subsection (1) the Court may, by order, dispense with the requirement for the person's consent to the child's adoption if the Court is satisfied that —

- (a) after enquiries which the Court thinks are sufficient, the person cannot be found or contacted;
- (b) during a period of not less than 2 years immediately before the application, steps have been taken to establish or re-establish a parent and child relationship between the person and the child but —
 - (i) the person has seriously ill-treated or persistently neglected the child; or
 - (ii) on the report of a person who the Court thinks is suitably qualified, the first-mentioned person has failed to establish or maintain an acceptable relationship with the child;
- (c) the child is 16 or more years of age and consents to being adopted by a prospective adoptive parent who is a step-parent or carer of the child;
- (d) the person's mental condition is such that he or she is incapable of giving an effective consent to the child's adoption and is not likely to be capable of doing so within the time required for the proposed adoption proceedings;
- (e) where the person is the child's father —
 - (i) the person has been convicted of an offence and the Court is satisfied that the child's conception resulted from the offence;
 - (ii) compensation has been awarded to the child's mother under the *Criminal Injuries Compensation Act 1985* in relation to an offence or an alleged offence within the meaning of that

Act committed by the person and the Court is satisfied that the child's conception resulted from the offence or alleged offence; or

(iii) the person is a lineal relative of the child's mother;

(f) except in the case of a proposed adoption by a step-parent, the person is a birth parent of the child but has neither the custody of the child nor a parent and child relationship with the child, and is unreasonably withholding his or her consent to the child's adoption; or

(g) exceptional circumstances exist in which it is proper to dispense with the requirement for the person's consent.

(3) In subsection (2) (e) (iii), "**lineal relative**" has the meaning given by section 18 (8).

Orders as to service of notice

25. (1) Before an application for an adoption order in relation to a child is filed, an application may be made to the Court by the Director-General, a prospective adoptive parent or on behalf of the child for an order —

(a) dispensing with a requirement to serve notice under section 21 (1); or

(b) extending the period referred to in section 21 (1) for service of notice.

(2) On an application under subsection (1) (a), the Court may make an order dispensing with a requirement to serve notice under section 21 (1) if it is satisfied that exceptional circumstances exist in which it is proper to dispense with service of notice.

(3) On an application under subsection (1) (b), the Court may make an order to extend the period referred to in section 21 (1) for service of notice if it is satisfied that it would be proper to do so.

Application for custody, parentage

26. (1) On an application mentioned in section 21 (2) (b) for the custody of a prospective adoptee or the determination of a prospective adoptee's parentage, the Court —

- (a) may make an order in relation to the interim custody of the child; and
- (b) is to have regard to the principle that such an application and the final order for custody should be determined expeditiously.

(2) Notice of an application to the Court for the custody or determination of parentage of a prospective adoptee is to be served on —

- (a) a person whose consent to the adoption is required and has not been dispensed with; and
- (b) any other person who is a party to the proposed adoption,

and the person may be joined as a party in the proceedings.

(3) The Court may extend the period of time allowed by section 21 (2) (b) for filing the application.

(4) If an application mentioned in subsection (1) is made, a person who has consented to the child's adoption may revoke her or his consent, even though the revocation period has expired; but the person may not revoke her or his consent after 14 days from the day on which the final court order in relation to the custody of the child or the determination of the parentage of the child, is made.

Division 4 — Guardianship of prospective adoptees**Guardians of children awaiting adoption where all consents accounted for**

27. (1) When all consents to a child's adoption required by section 17 (1) have been either —

- (a) delivered under section 18 (1) (e); or
- (b) dispensed with under section 24 (2),

the child's guardian or guardians are to be as provided by this section, to the exclusion of all other persons.

(2) Where the child's step-parent who is married to the birth parent who has custody of the child has been specified in the forms of consent as the prospective adoptive parent, that birth parent and the step-parent are to be joint guardians.

(3) Where a carer of the child has been specified in the forms of consent as the prospective adoptive parent, that person is to be the guardian.

(4) Where carers of the child have been specified in the forms of consent as the prospective adoptive parents, those persons are to be joint guardians.

(5) Where a prospective adoptive parent has not been specified in the forms of consent or the Court has dispensed with all consents required by section 17 (1), the Director-General is to be the guardian.

(6) Subsections (2), (3), (4) and (5) do not apply where the child —

- (a) is a ward within the meaning of the *Child Welfare Act 1947*; or

- (b) is under the guardianship of a person by operation of the law of another State or a Territory corresponding to the provisions of the *Child Welfare Act 1947* in relation to wardship,

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

Guardianship of children awaiting adoption where not all consents finalized

28. (1) The Director-General may apply to the Children's Court of Western Australia established by the *Children's Court of Western Australia Act 1988*, for a declaration that a child is in need of care and protection within the meaning of the *Child Welfare Act 1947*.

(2) For the purposes of subsection (1), "**child in need of care and protection**" within the meaning of the *Child Welfare Act 1947* also means a child who —

- (a) has been relinquished for adoption but where not all the consents to the child's adoption required by section 17 (1) have been —

- (i) delivered under section 18 (1) (e); or

- (ii) dispensed with under section 24 (2);

or

- (b) is in the custody of a birth parent who has consented to the child's adoption and then revoked the consent for such number of times as to jeopardize, or be likely to jeopardize, the child's welfare.

Cessation of guardianship of children awaiting adoption**29. (1) Guardianship under this Division ceases —**

- (a) if a consent to the child's adoption is revoked, in which case the person who was the child's guardian immediately before the commencement of guardianship under this Division is to be the child's guardian again;
- (b) if a court makes further provision for the child's guardianship;
- (c) where the child's guardian is the Director-General —
 - (i) if notice is given under section 30; or
 - (ii) if the guardianship is renounced under section 33 (1);

or

- (d) when an adoption order is made in relation to the child.

(2) Guardianship under this Division is not affected by any provision of, and cannot be changed by, any will, deed, or agreement.

If not possible or desirable to place a child for adoption

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

- (a) the person who was the child's guardian before the commencement of guardianship under this Division becomes the child's guardian again; and

- (b) any consents to the child's adoption cease to be of effect from the day on which the notice is given.

Care of child pending placement for adoption

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

Responsibilities of guardians of children awaiting adoption

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

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

Renunciation and transfer of guardianship by Director-General

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

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

the Director-General may by an instrument in writing, renounce the guardianship.

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

- (a) the revocation period has expired;
- (b) the Director-General has had regard to any current adoption plan in relation to the child; and
- (c) under the law of the other State or the Territory, the corresponding officer will become the child's guardian when the Director-General signs an instrument renouncing guardianship.

(3) The Director-General ceases to be the guardian under this Division when an instrument renouncing the guardianship is signed by the Director-General.

(4) The Director-General is to cause an instrument under subsection (3) to be sent by certified mail to the corresponding officer.

(5) In this section “**a corresponding officer**” means a person whose functions in another State or a Territory correspond to those of the Director-General under this Act in relation to the guardianship of children awaiting adoption.

Transfer of guardianship to Director-General

34. (1) If an application for a child's adoption is to be made under this Act and the child is under the guardianship of a corresponding officer, the Director-General may —

- (a) notify the corresponding officer of the application; and
- (b) request the corresponding officer to renounce guardianship of the child and forward to the Director-General for use in the proceedings, the forms of consents executed in the other State or the Territory in relation to the child.

(2) The Director-General is not to request the renunciation of guardianship under subsection (1) unless —

- (a) the Director-General is satisfied that the child is in this State;
- (b) consents that have been given to the child's adoption cannot be lawfully revoked;
- (c) the Director-General has had regard to any current adoption plan or arrangements under a corresponding law of the other State or the Territory in relation to the child; and
- (d) under the law of the other State or the Territory, if the corresponding officer signs an instrument renouncing guardianship, the corresponding officer ceases to be the child's guardian.

(3) The Director-General becomes the child's guardian under this Division when the corresponding officer signs an instrument of renunciation of guardianship.

(4) In this section “**corresponding officer**” has the meaning given by section 33 (5).

Offence

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

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

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

Orders as to guardianship under Division 4

36. (1) Before an adoption order is made in relation to a child, an application may be made to the Court by or on behalf of the child's guardian under Division 4 for an order to make further provision for the child's guardianship.

(2) On an application under this section, the Court may —

- (a) if further time is required to place the child with a view to the child's adoption, extend the period of guardianship under Division 4 for not more than a further 12 months on each application;
- (b) order that a suitable person other than the child's existing guardian is to be the child's guardian for purposes of Division 4; or
- (c) commit the child to the care of the Department under the *Child Welfare Act 1947*.

Division 6 — Prospective adoptive parents

Duty of Director-General as to information about adoptive parenthood

37. (1) The Director-General is to provide persons contemplating adoptive parenthood with oral and written information about, and counselling in relation to, adoption.

(2) Subsection (1) does not apply to a step-parent or carer of a child who is thinking about adopting the child, but if requested, the Director-General is to provide such a person with oral and

written information about, and counselling in relation to, adoption.

Application to be a prospective adoptive parent

38. (1) A person who wishes to adopt a child is to apply to the Director-General to be assessed for suitability for adoptive parenthood.

(2) An application under subsection (1) may be made by one person, or by 2 persons jointly.

(3) An application under subsection (1) is to be in a form that is approved by the Director-General and made at a time and in a manner prescribed by regulation.

(4) This section does not apply to a step-parent or carer of a child who wishes to adopt the child.

Criteria for application

39. (1) A person cannot apply under section 38 (1) unless at the time of the application, he or she —

- (a) subject to subsection (2), is an Australian citizen;
- (b) is 18 or more years of age;
- (c) is resident or domiciled in this State; and
- (d) if applying as a joint applicant, has been married to the other applicant for at least 3 years.

(2) Two persons cannot apply jointly under section 38 (1) unless at the time of the application —

- (a) both persons are Australian citizens; or

- (b) one of the persons is an Australian citizen and the other is a citizen of a country that, in the opinion of the Director-General, gives rights to adopted persons that are not inferior to the rights of non-adopted persons in relation to entry into, residence, education and medical care in that country.

(3) For the purposes of subsection (1) (d), where the joint applicants are cohabiting with each other in a heterosexual relationship, as each other's spouses, although not actually married to each other, and have been so cohabiting for a continuous period of not less than 3 years, the period of the cohabitation may be included when calculating the period mentioned in subsection (1) (d).

Assessment of applicants for adoptive parenthood

40. (1) Where the Director-General receives an application under section 38 (1), the Director-General is to appoint a person who the Director-General thinks is suitably qualified, to assess the application and prepare a report ("the assessment report") on the applicant or joint applicants.

(2) For purposes of the assessment report, each applicant is to provide information as to the applicant's suitability for adoptive parenthood as required by the person so appointed, including evidence that the applicant —

- (a) is, and continues to be, a person to whom section 39 (1) applies;
- (b) is physically and mentally able to care for and support a child until the child attains 18 years of age;
- (c) is of good repute;
- (d) if applying jointly, has a stable marriage with the other applicant;

- (e) has not been found guilty —
 - (i) in the 5 years before the date of the assessment, of an offence punishable at the time of the finding by imprisonment;
 - (ii) at any time, of an offence punishable at the time of the finding by life imprisonment, strict security life imprisonment or imprisonment for 20 years or more; or
 - (iii) at any time, of any other offence involving an assault or sexual offence against a child, committed when the applicant was 18 or more years of age;
- and
- (f) satisfies other criteria as prescribed by regulation.

Adoption applications committee

41. (1) The person who prepares the assessment report under section 40 (1) is to provide the report to an adoption applications committee.

(2) In performing its functions under section 13, an adoption applications committee is to have regard to the information and recommendations in the assessment report and any other relevant information.

Decisions of adoption applications committees

42. (1) An adoption applications committee may review its decision if it is of the opinion that there is new evidence that it should consider.

(2) If, under section 113 (2) the Director-General directs an adoption applications committee to review a procedure by which it made a decision, the committee may, after complying with that direction, review its decision.

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

Reasons for decision

43. The Director-General is to give to the applicant —

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

Director-General to keep registers

44. (1) The Director-General is to establish and maintain —

- (a) a register of the names of persons who apply under section 38 (1); and
- (b) a register of the names of persons who are approved by an adoption applications committee.

(2) The Director-General may delete, in accordance with regulations, the name of a person or the names of persons entered in a register.

(3) Where the name of any person has been deleted under subsection (2) from a register, the Director-General is to notify the person in a manner prescribed by regulation.

(4) Where the name of any person has been deleted under subsection (2) from a register, the person may, in the manner prescribed by regulation, apply to the Director-General to have his or her name re-entered in the register.

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

Division 7 — Placement of prospective adoptees

Selection of prospective adoptive parents

45. Where a person signs a form of consent to a child's adoption (not being an adoption by a step-parent or carer of the child) then not less than 18 days after the form of consent is signed and not more than 14 days after the revocation period expires —

- (a) the Director-General is to give to the person the opportunity of —
 - (i) expressing to the Director-General, the person's wishes in relation to the child's upbringing and the preferred attributes of the adoptive family; and
 - (ii) studying information provided under paragraph (b) (ii), and selecting a prospective adoptive parent;

and

- (b) the Director-General is to —
 - (i) record the wishes expressed under paragraph (a) (i); and
 - (ii) provide to the person information on a selection of prospective adoptive parents for the child, whose names are entered in a register under section 44 (1) (b) so that, if practicable, the selection is consistent with the wishes expressed under paragraph (a) (i).

Negotiation of adoption plans

46. (1) After the revocation period in relation to a child's proposed adoption expires, an adoption plan is to be negotiated, if possible, between —

- (a) the birth parents of the child who have signed a form of consent to the child's adoption;
- (b) the person or persons selected under section 45 (a) (ii) to be the prospective adoptive parent of the child; and
- (c) if the Director-General thinks it is appropriate, the child's representative.

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

- (a) the exchange of information between the parties to the plan in relation to the child's —
 - (i) medical background or condition; or
 - (ii) development and important events in the child's life;

- (b) subject to subsection (6), the means and nature of contact between the parties to the plan and the child; or
- (c) any other matters relating to the child,

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

(3) If an adoption plan has not been agreed within 7 days after the day on which the negotiations commenced, then within a further 7 days —

- (a) the Director-General is to give the person who made the selection of the prospective adoptive parent under section 45 (a) (ii) the opportunity of selecting another person or persons to be the prospective adoptive parent of the child; and
- (b) an adoption plan is to be negotiated, if possible, between the persons referred to in subsection (1) (a) and (c) and the newly selected prospective adoptive parent.

(4) The selection of, and the negotiation of an adoption plan with, a prospective adoptive parent, under this section, is not to occur more than twice.

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

(6) A provision in an adoption plan that purports to prevent, restrict or make conditional, the movement (whether within or out of Australia) of a party to the adoption, is of no effect.

Duty of Director-General as to adoption plans

47. (1) The Director-General is to provide assistance and mediation services to persons in the process of negotiating an adoption plan under section 46 (1) or (3) (b) or a variation to an adoption plan so negotiated.

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

Placement following adoption plan

48. (1) If an adoption plan is agreed under section 46 (1) or (3) (b), the Director-General is to place the child in the custody of the prospective adoptive parent selected under section 45 (a) (ii) or section 46 (3) (a), as the case may be, with a view to the child's adoption by the prospective adoptive parent.

(2) This section is subject to sections 51 and 52 (1).

Placement if no adoption plan

49. If the Director-General is of the opinion that it is not possible to place a child under section 48 (1), the Director-General may —

- (a) if further time is required to select an adoptive parent, extend the period set out in section 45;
- (b) if further time is required to negotiate an adoption plan, extend the period set out in section 46 (3);
- (c) if a provision of an adoption plan cannot be agreed, apply to the Court under section 50 (1) for an order in relation to the disputed matter;

- (d) place the child (subject to any Court order) with the person who —
 - (i) the Director-General thinks is the most suitable prospective adoptive parent for the child; and
 - (ii) agrees to the placement,with a view to the child's adoption by the person; or
- (e) where the Director-General is the child's guardian under Division 4, cause notice to be given under section 30.

Orders to constitute provisions of adoption plans

50. (1) Before an adoption order is made in relation to a child, the Director-General or any of the parties to the proposed adoption plan in relation to the child may apply to the Court for an order in relation to a disputed matter in the negotiation of the plan.

(2) On an application under subsection (1) the Court may make an order as to the matter which is disputed, and where it does so, the terms of the order are to be treated as the provision of the adoption plan in relation to that matter.

(3) On an application under subsection (1) the Court is to have regard to —

- (a) the rights and responsibilities mentioned in Schedule 2; and
- (b) the wishes of the parties to the proposed adoption.

(4) This section does not apply if the prospective adoptive parent of a child is the step-parent or carer of the child.

Medical report as to child's health before placement

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

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

Restrictions on placement

52. (1) The Director-General is not to place a child with a view to the child's adoption unless —

- (a) the prospective adoptive parent —
 - (i) is named in a register under section 44 (1) (b);
 - (ii) meets, as far as is practicable, the wishes expressed under section 45 (a) (i);
 - (iii) is not more than 40 years older than the child;
 - (iv) if married, can show that the marriage relationship is stable;
 - (v) meets, if relevant, the child's wishes and shows a desire and ability to continue the child's established cultural, religious or educational arrangements; and
 - (vi) if female, is not pregnant at the time of the proposed placement, evidenced by means prescribed by regulation;

- (b) where the child is 2 or more years of age, the child has had the nature and implications of his or her adoption explained in a manner appropriate to the child's age and level of understanding;
- (c) where there are other children in the prospective adoptive family —
 - (i) the prospective adoptee is to be the youngest child in the prospective adoptive family;
 - (ii) the second youngest child in the family is 12 or more months older than the prospective adoptee; and
 - (iii) each of the other children has been in the family for at least 2 years;
- (d) where siblings are relinquished for adoption at the same time, all reasonable steps have been taken to place them with the same prospective adoptive parent; and
- (e) where the child has a sibling who is already adopted or placed for adoption, all reasonable steps have been taken to place the child with the sibling's adoptive or prospective adoptive parent.

(2) The requirements of subsection (1) are not affected by any provision of, and cannot be changed, by any provision of an adoption plan.

Placing children who cannot be placed under section 52

53. If, but only 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 even though the prospective adoptive parent does not fulfil some of the requirements of section 52 (1).

Supervision of placements

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

Division 8 — Adoptions by step-parents or carers**Adoption plans in adoptions by step-parents or carers**

55. (1) An application for an order for a child to be adopted by a step-parent or carer of the child is not to be filed unless, before the revocation period expires, an adoption plan has been agreed between —

- (a) the birth parents of the child who have signed a form of consent to the child's adoption;
- (b) the person or persons specified in the forms of consent to the child's adoption as a prospective adoptive parent of the child; and
- (c) if the Director-General thinks it is appropriate, the child's representative,

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

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

Division 9 — Applications for adoption orders

Placement to be for at least 6 months

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

Time for applying for adoption order may be shortened

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

Notice of intention to apply for adoption order

58. (1) A person is not to file an application for an adoption order in relation to a child unless, at least 60 days before the application is filed, the person has notified the Director-General, by written notice delivered to the Department or sent by certified mail to the Director-General, of the person's intention to so apply.

(2) A person who gives notice under subsection (1) is to provide the Director-General with such information as the Director-General may request for the purpose of preparing a report under section 61.

Notice where birth parent deceased or cannot be found

59. (1) Where —

(a) a child's birth parent —

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

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

or

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

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

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

- (a) a birth parent;
- (b) a brother or sister of the whole or half-blood; or
- (c) an uncle or aunt,

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

Court applications as to notices

60. (1) A person intending to file an application for an adoption order in relation to a child may apply to the Court for orders in relation to a requirement to give notice under section 58 (1) or 59 (2).

(2) On an application under subsection (1) the Court may, on such terms and conditions as it thinks fit —

- (a) vary the time for giving the notice;
- (b) dispense wholly or partly with a requirement to give the notice; or
- (c) determine the person or persons to whom it is sufficient for notice to be given for purposes of section 59 (2).

Report for adoption proceedings

61. (1) On receipt of a notice under section 58 (1), the Director-General is to appoint a person who the Director-General thinks is suitably qualified, to prepare a written report for the Court's use in proceedings for an adoption order in relation to the child.

(2) A report under this section is to contain information on —

- (a) such of the matters to which the Court is to have regard under section 68 (1) and (2) as are relevant to the child and the prospective adoptive parent; and
- (b) any other matter or opinion that the person who prepares the report thinks is relevant to an application for the child's adoption.

Application for adoption order

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

(2) An application for an adoption order in relation to a child is to be filed in the Court together with a written memorandum

of the provisions of the adoption plan in relation to the child that is signed by or on behalf of the parties to the plan.

(3) The requirement in subsection (2) to file a memorandum of the provisions of the adoption plan does not apply where an application will be made for the Court to dispense with the requirement for an adoption plan.

Intervention by Director-General or other persons in applications for adoption orders

63. (1) In proceedings for an application for an adoption order, any person may apply for leave to intervene in the proceedings and the Court may make an order entitling the person to intervene in the proceedings.

(2) The Director-General may intervene in the proceedings for an application for an adoption order in relation to a child.

(3) A person who, under subsection (1) or (2), intervenes in proceedings, is to be treated as a party to the proceedings with all the rights, duties and liabilities of a party, unless the Court otherwise orders.

Evidence on application for adoption order

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

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

Division 10 — Adoption orders

Jurisdiction

65. (1) An adoption order in relation to a person is not to be made unless, at the time when the application for the order is filed —

- (a) the person is present in the State and is permitted under a law of the Commonwealth to remain permanently in Australia; and
- (b) each prospective adoptive parent resides, or is domiciled, in the State.

(2) For the purposes of subsection (1), if in the proceedings for the application the Court is satisfied that the person was present in, or that each prospective adoptive parent was resident or domiciled in the State, on a day within 21 days before the day on which the application was filed, the Court may, in the absence of evidence to the contrary, presume that the person was present in, or that each prospective adoptive parent was resident or domiciled in, the State at the time when the application was filed.

(3) The Court has jurisdiction under this section to make an adoption order despite any rule of private international law to the contrary.

Who may be adopted

66. (1) Subject to subsection (2), a person may be adopted if he or she —

- (a) is a child; and
- (b) is not, and has not been, married,

but not otherwise.

(2) A person who is 18 or more years of age may be adopted by a person who was a carer or step-parent of the first-mentioned person immediately before the first-mentioned person attained 18 years of age.

Who may adopt

67. (1) A person may, subject to this Act, adopt a child if he or she —

- (a) is a step-parent of the child;
- (b) is a carer of the child; or
- (c) has, under this Act, had the child placed in his or her care with a view to the child's adoption by him or her.

(2) Persons referred to in subsection (1) (b) and (c) and carers referred to in section 66 (2) may, subject to this Act, jointly adopt another person if the first-mentioned persons or carers are married to each other, but not otherwise.

(3) A child is not to adopt another child.

Adoption orders in relation to children

68. (1) An adoption order in relation to a child is not to be made unless the Court is satisfied that —

- (a) each person whose consent to the child's adoption is required has given an effective consent, or the requirement to consent has been dispensed with under section 24 (2);
- (b) any notice that is required by section 21 (1) has been given or the application is in accordance with an order under section 25 (2);
- (c) the application is in accordance with an order on any application mentioned in section 21 (2) (b);

- (d) where the child was placed under section 53, the child was otherwise unable to be placed;
- (e) if section 56 applied to the child, the placement has been for the required period or the application is in accordance with an order under section 57; and
- (f) notices required by sections 58 (1) and 59 (2) have been given or the application is in accordance with an order under section 60 (2).

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

- (a) where the prospective adoptive parent is a step-parent of the child —
 - (i) a parent and child relationship exists between the step-parent and the child, and the child is treated as a member of the family formed by the marriage of the step-parent and the child's parent;
 - (ii) the marriage of the step-parent and the child's parent is stable; and
 - (iii) the step-parent is a fit and proper person to adopt the child;
- (b) where the prospective adoptive parent has had the child placed in his or her care with a view to the child's adoption or is a carer of the child —
 - (i) the prospective adoptive parent is of good repute and is a fit and proper person to fulfil the responsibilities of adoptive parenthood;

- (ii) the prospective adoptive parent is a suitable person to adopt the child having regard to all relevant matters including —
 - (I) the ages of the child and the prospective adoptive parent;
 - (II) the states of health of the child and the prospective adoptive parent;
 - (III) the ability of the prospective adoptive parent to satisfy the child's educational or future educational requirements; and
 - (IV) the size and stability of the prospective adoptive family;
- (c) if 2 prospective adoptive parents are applying to adopt the child jointly, their marriage is stable; and
- (d) in every case, the adoption plan —
 - (i) adequately balances the rights and responsibilities mentioned in Schedule 2;
 - (ii) is reasonable in the circumstances; and
 - (iii) promotes the child's long-term welfare.

Adoption orders in relation to adults

69. (1) The Court may make an adoption order in relation to a person who is 18 or more years of age if it is satisfied that —

- (a) the prospective adoptee and each prospective adoptive parent —
 - (i) have received the information and, if requested, the counselling mentioned in clause 1 of

Schedule 1 on the matters relevant to those parties; and

(ii) consent to the proposed adoption;

and

(b) the welfare and interest of the prospective adoptee will be promoted by the proposed adoption.

(2) The Court may request from the Director-General a written report in relation to the proposed adoption.

(3) On receipt of a request under subsection (2), the Director-General is to appoint a person who the Director-General thinks is suitably qualified, to prepare the report.

Court may allow further parties to adoption plans

70. (1) On an application for an adoption order in relation to a child, the Court may allow a person notified under section 59 (2) or a person who is a party to the proceedings although not a party to the proposed adoption, to become a party to the adoption plan in relation to the child.

(2) Where a person becomes a party to an adoption plan under subsection (1), the Court may order the provisions of the plan to be varied if the proposed variation adequately balances the rights and responsibilities of the parties mentioned in Schedule 2.

Other powers on adoption applications

71. On an application for an adoption order in relation to a child, the Court may, in addition to its powers under the *Family Court Act 1975*, and whether or not it makes an adoption order, make orders as if an application had been made under section 24 (1), 25 (1), 36 (1), 50 (1), 57, or 60 (1).

Approval and enforcement of adoption plans

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

(2) Where an adoption plan has been approved by the Court —

- (a) in the case of a breach or potential breach of any provision of the plan, the Court may —
 - (i) order the parties to the plan to participate in a mediation process; or
 - (ii) exercise its powers under section 47, 48 or 53 of the *Family Court Act 1975* as it thinks fit, to enforce a provision of the plan, as if the provision were an order of the Court;

and

- (b) in the case of a breach of any provision of the plan, the Court may deal with the matter as if the person who breached the provision were in contempt of court, and punish the contempt by exercising its powers under section 88 (2), (4) or (5) of the *Family Court Act 1975*.

Dispensing with adoption plans

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

- (a) unable or unwilling to participate, or incapable of participating, in a plan; or
- (b) cannot be found or contacted after enquiries which the Court thinks are sufficient.

Name of adoptee

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

(2) Before making an order changing an adoptee's name, the Court is to have regard to —

- (a) the requirements of section 21A of the *Registration of Births, Deaths and Marriages Act 1961*;
- (b) the wishes expressed by the adoptee on the subject; and
- (c) any adoption plan that is made in relation to the adoptee and approved by the Court.

(3) The Court is not to change the name of an adoptee who is 12 or more years of age unless the adoptee —

- (a) consents to the change; or
- (b) is incapable by reason of mental disability of consenting.

(4) An order under this section does not prevent a subsequent change of name under a law of the State or the Commonwealth.

Effect of adoption orders

75. (1) Where an adoption order is made, for the purposes of the law of this State —

- (a) the relationship between the adoptee and the adoptive parent is to be treated as being that of child and parent;

- (b) the relationship between the adoptee and —
 - (i) the adoptee's birth parents; or
 - (ii) if the adoptee was previously adopted, the previous adoptive parent,is to be treated as not being that of child and parent;
- (c) if the adoptee had been previously adopted, whether under the law of this State or otherwise, the previous adoption ceases to have effect; and
- (d) the relationships of all persons to the adoptee, the adoptive parent and the birth parent or previous adoptive parent are to be determined in accordance with this section.

(2) Subsection (1) (b) (i) does not apply to the adoptee's birth parent who is married to the adoptive parent who adopts the adoptee in the capacity of step-parent.

(3) Subsection (1) (b) (ii) and (c) do not apply to a previous adoptive parent who is married to the adoptive parent who adopts the adoptee in the capacity of step-parent.

(4) If an adoption order is made in relation to an adoptee, an appointment, in a deed or will existing at the time the adoption order is made, of a person as the guardian of the adoptee, ceases to have effect.

(5) Despite subsections (1) to (4), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order (as the case may be) had not been made, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the adoption order or by virtue of the discharge of an adoption order.

(6) For the purposes of subsection (1), section 35 of the *Family Court Act 1975* is of no effect.

(7) In this section a reference to “**child**” includes a reference to a person who is 18 or more years of age.

Variation of adoption plans

76. (1) Where an adoption order is made in relation to a child —

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

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

(2) An application may not be made under subsection (1) unless —

- (a) the person referred to in that subsection and the parties to the adoption plan have participated in a mediation process conducted by the Director-General; and
- (b) the Director-General has certified that the mediation process has been completed.

(3) Subsection (2) does not apply in relation to an adoption by a step-parent or carer.

(4) On an application under subsection (1), if the Court, after having regard to the wishes of the parties, is satisfied that —

- (a) there has been a change of circumstances since the adoption plan was approved by the Court; and
- (b) the proposed variation adequately balances the rights and responsibilities of the parties mentioned in Schedule 2,

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

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

Discharge of adoption order

77. (1) The Director-General or the Attorney General may apply to the Court for an order to discharge an adoption order.

(2) On an application under subsection (1), the Court may make an order to discharge an adoption order if it is satisfied that —

- (a) the adoption order was obtained by fraud, duress or other improper means;
- (b) a consent relied on for the making of the adoption order was not an effective consent because it was obtained by fraud, duress or material inducement; or
- (c) there is some exceptional reason why the order should be made.

(3) The Court is not to make an order under subsection (2) if to do so would not be for the welfare and in the best interests of the adoptee.

(4) Where an order is made under subsection (2) in relation to an adoption in which the adoptive parent was not specified in the forms of consent to the adoption, the consents to the adoption continue to have effect unless the Court orders otherwise.

(5) Where an order is made under subsection (2), the Court may make such consequential or ancillary orders as it thinks fit in the interests of justice or the welfare and best interests of the adoptee, including orders relating to —

- (a) the name of the adoptee;
- (b) the ownership or possession of property;
- (c) the guardianship or custody of the adoptee; or
- (d) the domicile of the adoptee.

(6) Where an order is made under subsection (2), the rights, duties, liabilities and relationships of persons under the law of the State are to be as if the adoption order had not been made.

(7) Subsection (6) —

- (a) is subject to orders made under subsection (5) and to section 75 (5); and
- (b) does not otherwise affect —
 - (i) anything lawfully done;
 - (ii) the consequences of anything lawfully done; or
 - (iii) any proprietary right or interest that became vested in any person while the adoption order was in force.

(8) An adoption order cannot be appealed against, reviewed, called in question or affected by any court on any account, except —

- (a) under this section; or
- (b) under section 81 (2a) of the *Family Court Act 1975*.

Court to notify Registrar General of adoption order etc.

78. (1) If the Court —

- (a) makes; or
- (b) under section 77 (2) makes an order discharging,

an adoption order, the registrar of the Court is to give the Registrar General written notice of the particulars.

(2) On receipt of a notice under subsection (1), the Registrar General is to endorse the registration of the adoptee's birth with the particulars.

(3) If the adoptee's birth is not registered in this State under the *Registration of Births, Deaths and Marriages Act 1961*, the Court is also to give the Registrar General written notice of details of the date and place of the adoptee's birth and name and address of the adoptee's birth parents, and, if available a copy of the original registration of the adoptee's birth.

(4) On receipt of notices under subsections (1) and (3), the Register General is to register the adoptee's birth in accordance with the details in the notice under subsection (3) and endorse the registration with the particulars.

(5) In this section, "**particulars**" means —

- (a) the date of the order;

- (b) the full name, address and occupation of the adoptive parent;
- (c) the name by which the adoptee is known before, and is to be known after, the order becomes effective; and
- (d) the terms of consequential or ancillary orders under section 77 (5).

PART 4 — ADOPTIONS INFORMATION

Division 1 — Adoption information services

Duties of Director-General as to adoption information services

79. (1) The Director-General is to establish and maintain services to —

- (a) facilitate the exchange of identifying and non-identifying information between the parties to an adoption and their relatives in accordance with this Act;
- (b) obtain and preserve information about the parties to an adoption, including medical information in accordance with this Act;
- (c) provide information and counselling to persons who are parties to an adoption plan and to parties to adoptions and their relatives in relation to their rights and responsibilities under this Act;
- (d) provide mediation in —
 - (i) matters arising between persons who are parties to an adoption or an adoption plan; or
 - (ii) negotiations of parties to an adoption as to those parties' wishes in relation to contact between them;
- (e) assist parties to an adoption to identify or contact the other parties to the adoption in accordance with this Act;

- (f) provide the means for the parties to an adoption to leave messages for each other, subject to —
 - (i) the provisions of any contact veto or information veto in relation to the party for whom the message is intended; and
 - (ii) the regulations;
- (g) co-ordinate the collation, preservation and access requirements of this Part as to information and documents held by the Director-General, private adoption agencies, other adoption organizations, the Court and the Registrar General;
- (h) develop and supervise the implementation of codes of practice in relation to —
 - (i) the release of identifying or non-identifying information under this Act;
 - (ii) contacting a party to an adoption on behalf of another person; or
 - (iii) the mediation of disputes between the parties to an adoption or an adoption plan, or negotiations of parties to an adoption as to those parties' wishes in relation to contact between them;
- (i) conduct training courses for contact and mediation agencies; and
- (j) inform the public, by way of notices or advertisements, of the Director-General's functions under this Act.

(2) The Director-General is to ensure that the services as to information, counselling and mediation mentioned in

subsection (1) are available on the request of parties to adoptions or their relatives —

- (a) before the release of identifying information under this Part; or
- (b) before the registration of a contact veto or an information veto.

Director-General to notify certain persons in event of death

80. (1) If the Director-General is informed by the Registrar General that an adoptee has died, the Director-General is to inform the adoptee's birth parents of the death if the Director-General considers that —

- (a) it is reasonably practicable to do so; and
- (b) it is appropriate to do so, after having regard to the provisions of the relevant adoption plan.

(2) If the Director-General receives information that one of the parties to an adoption or a sibling of the adoptee (whether of the whole or half-blood) has died, the Director-General is to inform the other parties to the adoption, or the adoptee's siblings (whether of the whole or half-blood), as the case may be, of the death so far as the Director-General considers that it is reasonably practicable to do so.

Division 2 — Access to adoptions information

Interpretation and application of Division 2

81. (1) In this Division —

- (a) **“descendant”** means a lineal descendant;

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

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

(2) This Division has effect subject to the provisions of an adoption plan that allow a party to the plan greater or earlier access to information in relation to an adoptee or the adoptee's adoptive family or birth parents than that provided for in this Division.

(3) This Division applies despite a provision of any contract or adoption plan that purports to restrict or exclude a right set out in this Division, and any such provision is of no effect.

(4) Subsections (2) and (3) have effect subject to an order of the Court under section 83 (2).

(5) This Division applies despite the *Freedom of Information Act 1992*.

Director-General's authority to allow access to information

82. (1) A person wishing to have access to information under section 84 (1), 85 (1), 88, 89 or 90 is to apply to the Director-General in a form approved by the Director-General and provide proof of the person's identity, if relevant the person's age, and other information that the Director-General thinks is relevant to the application.

(2) On an application under subsection (1), the Director-General is to give his or her authority for the applicant to have access to the information as requested in the application unless —

- (a) an information veto is in effect; or
- (b) the Director-General thinks that there is a good reason for not doing so,

but if paragraph (a) or (b) applies, the Director-General may give the authority on condition that the applicant may or may not have access to the information specified in the authority.

(3) The Director-General's authority under subsection (2) is to be in writing in a form approved by the Director-General.

(4) The Director-General's power to authorize the access to information under this section is subject to an order of the Court under section 83 (2) and to section 103.

Court orders as to access to information

83. (1) On an application for an adoption order or after an adoption order has been made, a party to the adoption may apply to the Court for an order to prevent the Director-General from giving his or her authority under section 82 (2) in relation to a person who would otherwise have a right of access to information under this Act.

(2) On an application under subsection (1), the Court may make an order referred to in that subsection if it is satisfied that the person's access to the information would be likely to place the applicant or the person to whom the applicant is married or the applicant's children at serious risk.

(3) If an order is made under subsection (2), the registrar of the Court is to give the Director-General a certified copy of the order as soon as is practicable.

(4) On the application of a person affected by an order under subsection (2), the Court may revoke, suspend or vary the order.

Court records

84. (1) Subject to section 82 (2), no persons other than the following persons have the right to have access to the record of proceedings in a court in relation to an adoption or a proposed adoption —

- (a) the adoptee;
- (b) a birth parent of the adoptee;
- (c) an adoptive parent of the adoptee; and
- (d) a person who was a party to the proceedings.

(2) Subsection (1) has effect subject to —

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

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

Registration of birth

85. (1) Subject to section 82 (2), no persons other than the following persons have the right to have access to the registration of an adoptee's birth —

- (a) the adoptee;
- (b) a birth parent of the adoptee; and
- (c) an adoptive parent of the adoptee.

(2) Subsection (1) has effect subject to —

- (a) production to the Registrar General, of the authority under section 82 (2) to allow access to the information;
- (b) the *Registration of Births, Deaths and Marriages Act 1961* and the regulations made under that Act in relation to access to information held by the Registrar General; and
- (c) sections 89 and 90.

(3) The production to the Registrar General, of the authority referred to in subsection (2) (a) is sufficient reason for the Registrar General to give his or her consent or authority, as the case may be, under section 18 (2) of the *Registration of Births, Deaths and Marriages Act 1961*.

Portion of registration of birth not referring to adoption

86. At the request of —

- (a) an adoptee's adoptive parent, if the adoptee is less than 18 years of age; or
- (b) an adoptee, if the adoptee is 18 or more years of age,

the Registrar General is to issue to the person making the request, a certified copy of that portion of the registration of the adoptee's birth that does not refer to the adoptee's adoption or birth parents.

Certified copies of registration of birth or portions of registration as evidence

87. Section 19 (1) of the *Registration of Births, Deaths and Marriages Act 1961* applies to —

- (a) a certified copy of the registration of an adoptee's birth endorsed under section 78 (2) or registered and endorsed under section 78 (4); and
- (b) a certified copy of the portion of the registration of an adoptee's birth issued under section 86.

Non-identifying information held by adoption agencies

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

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

If party to adoption deceased

89. Subject to sections 82 (2) and 85 (2) (a) and (b), where a party to an adoption is deceased, any —

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

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

If adoptee cannot be found

90. Subject to sections 82 (2) and 85 (2) (a) and (b), if an adoptee who is 18 or more years of age, cannot be found or contacted after enquiries which the Director-General thinks are sufficient, any —

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

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

Division 3 — Exchange and preservation of adoptions information

Family Court to provide information to Director-General

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

Registrar General to provide information to Director-General

92. (1) The Registrar General is to give to the Director-General such information from the records under the Registrar General's control as the Director-General certifies in writing is required by the Director-General for the purposes of this Act.

(2) If the Registrar General receives information that a person has died, and it appears from a register kept by the Registrar General that the person was an adoptee, the Registrar General is to inform the Director-General of the adoptee's death.

Persons or bodies to provide information to Director-General

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

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

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

Preservation of records as to adoptions information

94. (1) Records of proceedings in a court in relation to an adoption or proposed adoption are to be preserved, in so far as is practicable, indefinitely.

(2) Where it is not practicable to keep a record referred to in subsection (1), the record may only be destroyed with the

authority of the registrar of the court or other similar officer, after consultation with the Director-General.

(3) The Director-General, a person (including an association or body of persons, corporate or unincorporate) that conducts or has conducted adoption services, whether before or after the commencement of this Act, or a person acting on behalf of such a person, who has in his, her or its custody, power or control, any document that records information in relation to an adoption or proposed adoption or the parties to such adoption, is to cause the document to be preserved for not less than 75 years from the day on which the document came into his, her or its custody, power or control.

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

(4) If a person (other than the Director-General) referred to in subsection (3) ceases or has ceased the conduct of adoption services, the person is to cause any document in his, her or its power, custody or control of the nature referred to in subsection (3) to be transferred to the possession of the Director-General unless the person satisfies the Director-General that provision has been made for access to and safekeeping of the document under this Act.

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

Division 4 — Contact and information vetoes

Interpretation

95. In this Division —

“relative” means, in relation to a person, the person to whom the first-mentioned person is married, a parent, step-parent, child, step-child, grandparent, ancestor, sibling, uncle or aunt of the first-mentioned person, whether by the whole or half-blood or marriage or a

relationship established by written law, including a relationship that is traced through or to a person whose parents were not actually married to each other at the time of the first-mentioned person's birth or subsequently.

Wishes as to contact to be lodged with Director-General

96. (1) A person who is a party to an adoption or a relative of a party to an adoption, may lodge with the Director-General a statement of the person's wishes as to contact, or objection to contact, by one or more of the parties to the adoption or any relative of a party to the adoption.

(2) Where a person referred to in subsection (1) —

- (a) is less than 18 years of age; or
- (b) is 18 or more years of age and has a guardian who has been appointed under the *Guardianship and Administration Act 1990* in respect of matters referred to in that subsection,

any statement under subsection (1) by or on behalf of the person is to be lodged by the person's guardian.

Request to prevent release of information to be lodged with Director-General

97. Subject to section 98 (2) (d), where an adoptee —

- (a) has only one adoptive parent, the adoptive parent; or
- (b) has 2 adoptive parents, both adoptive parents,

may lodge with the Director-General a request that the Director-General not give his or her authority under section 82 (2) for a birth parent of the adoptee to have access to information to which the birth parent would otherwise have been entitled to have access under sections 84 (1) (b) and 85 (1) (b).

Registration of statements and requests

98. (1) A statement under section 96 (1) is to be in a form approved by the Director-General and is to be registered by the Director-General if he or she is satisfied —

- (a) as to the identity of the applicant; and
- (b) that the proposed contact veto will not be inconsistent with the provisions of any adoption plan affecting the persons proposed to be affected by the contact veto.

(2) A request under section 97 is to be in a form approved by the Director-General and is not to be registered by the Director-General unless —

- (a) he or she is satisfied as to the identity of the applicant;
- (b) the Court had dispensed with the requirement for that birth parent's consent to the adoption;
- (c) the Court had dispensed with the requirement —
 - (i) for that birth parent to be a party to the adoption plan; or
 - (ii) for there to be an adoption plan, in relation to the adoption;
- (d) where the adoptee has 2 adoptive parents but only one has lodged the request, the Director-General is satisfied that there has been a breakdown in the relationship between the other adoptive parent and the adoptee;
- (e) he or she is satisfied that at the time the adoptee was placed with the adoptive parent, the adoptive parent had a reasonable expectation that that birth parent would not seek access to the information before the adoptee attained 18 years of age; and

- (f) where there is an adoption plan affecting the persons who will be affected by the proposed information veto, the information veto will not be inconsistent with the provisions of the adoption plan.

Register of contact and information vetoes

99. The Director-General is to establish and maintain a register of —

- (a) the statements of wishes registered under section 98 (1);
- (b) the requests registered under section 98 (2); and
- (c) any cancellation or variation under section 102 (1).

Duration of contact vetoes

100. (1) A contact veto is of effect —

- (a) for the period stated by the person who lodged the statement of wishes;
- (b) until the person who lodged the statement of wishes dies;
- (c) until cancelled by the person who lodged the statement of wishes; or
- (d) where the statement of wishes was lodged by a guardian of behalf of an adoptee who was less than 18 years of age at the time of lodgement, until the adoptee attains 18 years of age,

whichever occurs first.

(2) The person who lodged the statement of wishes may vary the period referred to in subsection (1) (a).

Duration of information vetoes

101. (1) An information veto is of effect —

- (a) for the period stated by the person or persons who lodged the request;
- (b) until the person who lodged the request dies, or where 2 persons lodged the request, both persons die;
- (c) until the adoptee attains 18 years of age;
- (d) if the adoptee dies before attaining the age of 18 years, until the adoptee dies; or
- (e) until cancelled by the person or persons who lodged the request,

whichever occurs first.

(2) The person or persons who lodged the request may vary the period referred to in subsection (1) (a).

Confirmation, cancellation or variation of vetoes

102. (1) A person whose —

- (a) statement of wishes has been registered under section 98 (1); or
- (b) request has been registered under section 98 (2),

may, in a form approved by the Director-General, cancel or apply to vary the statement or request.

(2) The Director-General may approach the person who sought the registration of a contact veto or an information veto and ask the person whether he or she wishes to —

- (a) confirm the veto;

- (b) cancel the veto; or
- (c) vary the veto in so far as it relates to contact with, or information in relation to, a specified person.

(3) The Director-General may arrange for a party or parties affected by a contact veto or an information veto to be offered such counselling as the Director-General thinks will assist in the matter.

Undertakings not to contact person who has lodged contact veto

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

Offence to breach undertaking or harass

104. (1) A person must comply with an undertaking entered into by the person under section 103.

(2) A person who enters into an undertaking under section 103 must not —

- (a) harass; or
- (b) request another person to act in a manner that is likely to harass,

the person who lodged the contact veto.

(3) A person, other than the Director-General under section 102 (2), must not, on behalf of a person —

(a) contact; or

(b) harass, or act in a manner that is likely to harass, another person, if he or she knows that the person on whose behalf he is acting is bound by an undertaking under section 103 not to contact the other person.

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

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

Contact and mediation agencies to be licensed

105. (1) A person, other than the Director-General, is not to act on behalf of another person —

(a) for the purpose of contacting a party to an adoption in relation to the adoption; or

(b) in negotiations as to contact between any parties to an adoption,

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

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

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

Licences to conduct contact and mediation services

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

Regulations as to contact and mediation agencies

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

- (a) the qualifications of and requirements to be satisfied by applicants;
- (b) the procedure for applications and grounds for refusal of applications;
- (c) the duration, renewal, revocation and suspension of licences, including provision for the contravention of or failure to comply with a provision of a code of practice published by order of the Minister in the *Government Gazette* in relation to the conduct of a contact and mediation agency to be a ground for the suspension, revocation or refusal of the renewal of a licence under this Division;
- (d) the procedure for and matters in relation to appeals from the Minister's decisions as to applications and licences;
- (e) the requirements for public notification of applications for licences and the making of submissions in relation to such applications; and
- (f) the provision of information to the Director-General by contact and mediation agencies in relation to the services conducted by them.

Contact and mediation agencies bound by contact veto

108. (1) A contact and mediation agency that proposes to contact a person in relation to an adoption is to apply to the Director-General, before contacting the person, to ascertain whether a current contact veto is registered in relation to the person it proposes to contact.

(2) Where the Director-General notifies a contact and mediation agency of the requirements of a current contact veto registered in relation to a person, the agency must not contravene or fail to comply with those requirements.

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

(3) If a contact and mediation agency is convicted of an offence under this section, the Minister may —

- (a) cancel the agency's licence forthwith;
- (b) order that the agency not be re-issued with a licence for 10 years; and
- (c) where the agency is registered with, or a member of, a professional organization, inform the organization of the offence and conviction.

Division 6 — Updating non-identifying information**Director-General to attempt to obtain current information**

109. (1) If the Director-General receives a request for current non-identifying information (which may include medical information) from —

- (a) an adoptee who is 18 or more years of age, as to a birth parent of the adoptee or a sibling of the adoptee who is 18 or more years of age;

- (b) an adoptee's birth parent, as to the adoptee if the adoptee is 18 or more years of age or the adoptee's adoptive parent;
- (c) an adoptee's adoptive parent, as to a birth parent of the adoptee or a sibling of the adoptee who is 18 or more years of age; or
- (d) a sibling, who is 18 or more years of age, of the adoptee, as to the adoptee if the adoptee is 18 or more years of age or the adoptee's adoptive parent,

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

(2) If a person is approached by the Director-General under subsection (1), the person may decline to provide some or all of the requested information.

(3) In this section, "**sibling**" has the same meaning as in section 81 (1) (c).

PART 5 — REVIEW OF DECISIONS AND APPEALS

Division 1 — Review by Director-General

Review by Director-General

110. (1) A person who is aggrieved by a decision made for the purposes of this Act by a person to whom the Director-General had delegated a function under section 6 (1), may apply to the Director-General to review the decision.

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

Nature of review by Director-General and evidence

111. (1) An application for review under this Division is to be in a form approved by the Director-General and is to be delivered to the Director-General within 21 days from the day on which the applicant received notice of the decision, or such further time as the Director-General allows.

(2) The Director-General is to determine the review —

- (a) on the material that was before the person who made the decision; and
- (b) on such further material either oral or in writing as the Director-General thinks fit to receive.

Powers of Director-General on review

112. (1) Upon a review under this Division, the Director-General may do one or more of the following things —

- (a) confirm, set aside or vary the decision being reviewed;
or

- (b) substitute another decision for the decision being reviewed.

(2) On the request of the applicant, the Director-General is to provide written reasons for the decision under subsection (1).

***Division 2 — Decisions of adoption
applications committees***

Director-General may direct committee to review its own procedures

113. (1) A person who is aggrieved by a decision of an adoption applications committee may, in addition to the right to request the committee to review its decision under section 42 (1), apply to the Director-General to direct the committee to review the procedure by which the decision was made.

(2) If —

- (a) the Director-General thinks that the decision was made without complying with a procedure prescribed by regulation for the making of such a decision; or
- (b) the decision was made under a procedure determined by the committee under section 15 (b) and the Director-General thinks that the procedure was unfair, defective or inadequate,

the Director-General is to direct the committee to review the procedure and may give a direction as to the procedure that he or she thinks is appropriate.

(3) A committee to which a direction is given under subsection (2) must comply with the direction.

(4) The Director-General is to give to the applicant under subsection (1) written advice of the adoption applications

committee's decision after the review and, if the applicant requests, written reasons for the decision.

Division 3 — Appeals to Family Court

Matters that may be appealed to the Family Court

114. (1) A person who is aggrieved by the decision of the Director-General on the review under Division 1 of a decision may appeal to the Court on a question of law, a question of fact or a question of mixed law and fact in relation to the first-mentioned decision.

(2) A person who is aggrieved by the decision of an adoption applications committee may appeal to the Court on a question of law, a question of fact or a question of mixed law and fact in relation to a procedure by which the committee reached the decision.

(3) An appeal does not lie under this section from a decision to place a child with a view to the child's adoption if the child has already been placed with a view to the child's adoption.

Nature of appeal to Family Court

115. (1) A decision from which an appeal lies under section 114 (1) and (2) is to be treated as being a decree from which an appeal lies under section 81 (2) of the *Family Court Act 1975*.

(2) Subject to sections 116 and 117, an appeal under this Division is to be in accordance with rules of court.

Role of Director-General in appeals from decisions of committees

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

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

Status of decision pending appeal

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

(2) The Court may, at any time before the completion of the appeal, make an order as to the operation or otherwise of the decision and may revoke or amend an order made under subsection (1).

Division 4 — Appeals to Full Court

Appeals from decision of Family Court under Division 3

118. (1) A person who is aggrieved by a decision of the Court on an appeal under Division 3 may, with leave granted under and in accordance with rules of court, appeal to the Full Court of the Supreme Court.

(2) An application for leave to appeal, and an appeal, under this section may only be made on the ground that the Court made an error of law.

Appeals from other decisions of Family Court not affected

119. Nothing in this Act affects a right under section 81 (2a) of the *Family Court Act 1975* to appeal from a decree, within the meaning of section 81 (1) of that Act, to the Full Court of the Supreme Court.

PART 6 — OFFENCES

Interpretation

120. (1) In this Part —

“**child**” includes a reference to an unborn child;

“**publish**” means to bring, by any means, to the notice of the public or a person in his or her capacity as a member of the public;

“**relative**” means, in relation to a person, the person to whom the first-mentioned person is married, a parent, step-parent, child, step-child, grandparent, ancestor, sibling, uncle or aunt of the first-mentioned person, whether by blood or marriage or a relationship established by written law, including a relationship that is traced through or to a person whose parents were not actually married to each other at the time of the first-mentioned person’s birth or subsequently.

(2) In this Part, a reference to the authority of, the approval of or charges made by, a private adoption agency is a reference to the authority, approval or charging that is in accordance with the agency’s licence or any condition or restriction attached to the licence.

Territorial application

121. Sections 122, 123, 124 and 125 —

- (a) do not apply to acts outside this State; and
- (b) unless otherwise expressly provided, apply to acts in this State in relation to —
 - (i) the adoption of a child in; or

(ii) a person adopted in,

another State or a Territory or a country other than Australia.

Payments for adoption, adoptions services etc.

122. (1) A person must not make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of —

- (a) a child's adoption or proposed adoption;
- (b) the giving of consent, or signing a form of consent to a child's adoption; or
- (c) conducting an adoption service in relation to a child.

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

(2) This section does not apply to a payment —

- (a) of legal expenses;
- (b) of medical or hospital expenses for the care or treatment of a mother or child in relation to the bearing and birth of the child, that is authorized by the Director-General or a private adoption agency;
- (c) authorized by the Director-General, a private adoption agency or the Court, that was incurred in relation to an adoption or proposed adoption or to an adoptee or prospective adoptee.

(3) This section does not apply to a payment or reward made, given or received, or agreed to be made, given or received in relation to an adoption or proposed adoption under the law of another State or a Territory, if the making of the payment, giving

of the reward or agreement to do so is lawful under the law of the other State or the Territory.

(4) This section does not apply to charges made by the Director-General or private adoption agencies for providing services under this Act.

(5) An agreement under which a person makes, gives or receives a payment or reward for or in consideration of a matter mentioned in subsection (1) (a), (b) or (c), other than a payment or reward mentioned in subsection (2), (3) or (4), is of no effect.

Restriction on advertising

123. (1) A person must not publish material to the effect that a person —

- (a) wishes to have a child adopted, or placed with another person with a view to the adoption of the child by that other person;
- (b) wishes to adopt a child, or to have a child placed with the person with a view to adopting the child; or
- (c) conducts or is available to conduct an adoption service.

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

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

Restriction on publication of identity of parties

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

- (a) who is a party to an adoption or a proposed adoption, as a party to the adoption or proposed adoption;

- (b) who is a party to proceedings in any court in relation to an adoption or proposed adoption, as a party to the proceedings;
- (c) whose consent to the adoption of a person is or was required, (whether or not the requirement for consent has been dispensed with), as a person whose consent was so required;
- (d) who is, or is likely to be affected by an adoption order or an adoption plan, as a person so affected; or
- (e) who is a relative of a person to whom paragraph (a) or (b) applies, as a person who is such a relative,

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

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

(2) This section does not apply to —

- (a) material approved by the Director-General, a private adoption agency or a court for publication; or
- (b) the matters mentioned in section 82C (9) of the *Family Court Act 1975*.

(3) This section does not apply to the identification or likely identification of —

- (a) an adoptee or prospective adoptee who is 18 or more years of age and consents in writing to being identified;
- (b) an adoptee or prospective adoptee who is less than 18 years of age where consent in writing to the identification of that person has been given by the person's guardian; or

- (c) a person, other than an adoptee or prospective adoptee, who is 18 or more years of age and consents in writing to being identified, unless the identification of the person identifies or is likely to identify an adoptee or prospective adoptee who has not consented to being identified,

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

Undue influence

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

- (a) to inducing the other person to consent, or to refrain from consenting, to an adoption;
- (b) to inducing the other person to revoke, or to refrain from revoking, his or her consent to an adoption; or
- (c) to influencing the other person in the —
 - (i) specification in a form of consent of a person as a child's prospective adoptive parent;
 - (ii) expression of wishes under section 45 (a) (i) or section 52 (1) (a) (v); or
 - (iii) negotiation of an adoption plan.

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

Harassment etc.

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

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

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

Confidentiality

127. (1) A person must not directly or indirectly —

- (a) make a record of;
- (b) make use of; or
- (c) disclose or communicate to another person,

information to which this section applies.

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

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

- (a) the Minister;
- (b) the Department;

- (c) a private adoption agency; or
- (d) a contact and mediation agency,

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

(3) This section does not apply to the recording, use, disclosure or communication of information —

- (a) under and in accordance with this Act or any other law;
- (b) in the course of duty;
- (c) for the purposes of proceedings in any court in relation to matters under or in relation to, or offences against, this Act; or
- (d) with the written authority of the Minister or all persons to whom the information relates.

Authority to prosecute

128. (1) All proceedings for offences against this Act are to be —

- (a) instituted by the Attorney General or by a person who has the written consent of the Attorney General to do so; and
- (b) commenced within 12 months after the day on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the Attorney General's knowledge.

(2) A certificate of the Attorney General that evidence referred to in subsection (1) came to the Attorney General's knowledge on a particular day, is conclusive evidence of that fact.

Other evidentiary matters

129. (1) In all courts and before all persons and bodies authorized to receive evidence —

- (a) a certificate purporting to be issued by the Director-General and stating that any person was or was not licensed as a private adoption agency or a contact and mediation agency, or the conditions or restrictions applicable to any such licence, on any day or days or during any period mentioned in the certificate, is evidence of the matters so stated;
- (b) a certificate purporting to be issued by the Director-General and stating that the Director-General had or had not given authority under section 82 (2) for a person to have access to the information described in the certificate, on any day or days, is evidence of the matters so stated; and
- (c) a copy of or extract from a register under section 44 (1) or Division 4 of Part 4, or any statement that purports to reproduce matters entered in a register and to be certified by the Director-General as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement.

(2) Judicial notice is to be taken, for the purposes of this Act, of the fact that a person is the Director-General and of the signature of the Director-General on a certificate purporting to be issued under subsection (1).

PART 7 — MISCELLANEOUS

Division 1 — Delegation and protection

Delegation by Director-General

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

Protection from liability etc.

131. (1) A matter or thing done or omitted by —

- (a) the Minister;
- (b) the Director-General or a person to whom section 6 (2) or 130 applies;
- (c) a private adoption agency, or a person acting on behalf of the agency, where the matter or thing done or omitted was in accordance with the agency's licence or any condition or restriction attached to the licence;
- (d) an officer of the Department;
- (e) an adoption applications committee or a member of such a committee; or
- (f) a person who otherwise performs a function under this Act,

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

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

Distribution of property not affected without notice

132. (1) A trustee or personal representative may convey, transfer, or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption order has been made which may affect a person's entitlement to an interest in the property.

(2) A trustee or personal representative who conveys, transfers or distributes property in the manner referred to in subsection (1) is not liable to a person who claims, directly or indirectly, an entitlement to an interest in the property by reason of an adoption, unless the trustee or personal representative had notice of the claim before the conveyance, transfer or distribution was effected.

(3) This section does not affect the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

Division 2 — Proceedings

Proceedings to be private

133. (1) Proceedings in any court under or in relation to this Act are not to be heard in open court and all persons other than a party to the proceedings or his or her lawyer are to be excluded during the proceedings, except as otherwise directed by the court.

(2) A court may order any person to leave the room or other place during the examination of a witness in proceedings mentioned in subsection (1).

Representation of children

134. (1) The Director-General may appoint a person who, in the Director-General's opinion, is suitably qualified to represent a child who is a prospective adoptee or adoptee —

- (a) where the child's consent to his or her own adoption is required and the Director-General thinks that the child requires assistance in considering, or articulating his or her wishes about, the proposed adoption;
- (b) where the Director-General thinks that the child requires separate representation in the negotiation of an adoption plan in relation to the child or a variation of the plan; or
- (c) where the child is involved or is likely to be involved in proceedings in a court under or in relation to this Act in respect of the child and the Director-General thinks that consideration should be given to instructing a lawyer to represent the child in the proceedings.

(2) A person appointed under subsection (1) may instruct a lawyer on behalf of the child, and in that case, the Director-General is to make arrangements in relation to the legal advice to be given to, or the legal representation to be provided for, the child.

(3) In proceedings under or in relation to this Act in respect of a child who is a prospective adoptee or an adoptee, the court before which the proceedings are held may direct that the child be separately represented by a lawyer.

(4) If a court gives a direction under subsection (3), the Director-General is to —

- (a) make arrangements in accordance with the direction; and

- (b) be responsible for the legal costs,
- unless the court orders otherwise.

Division 3 — Non-Western Australian adoptions

Arrangements with other States and Territories

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

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

Recognition of other Australian adoptions

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

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

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

Arrangements with other countries

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

- (a) the adoption in this State of a child or children from the other country who cannot be placed with a view to adoption in that country; or
- (b) the exchange of information about a child or children from the other country placed with a view to adoption or adopted in this State.

(2) The Minister is not to make arrangements under subsection (1) unless the arrangements —

- (a) are approved by the government of the other country; and
- (b) are within guidelines agreed between the governments of the Commonwealth and other States and Territories.

Recognition of non-Australian adoptions

138. (1) An order for the adoption of a person that was made in a country other than Australia (whether before or after the commencement of this Act) is to be treated as having the same effect as an adoption order made under this Act if —

- (a) the order is in accordance with and has not been rescinded under the law of that country;
- (b) either —
 - (i) when the order was made the adoptive parent —
 - (I) was domiciled; or

(II) had been resident for at least 12 months,
in that country; or

- (ii) before the order was made, the adoptee had been placed with the adoptive parent with the agreement and on the conditions approved by the Director-General or a person whose functions in another State or a Territory correspond to those of the Director-General under this Act;
- (c) the proceedings in which the order was made involved no denial of natural justice or failure to observe the requirements of substantial justice; and
- (d) as a consequence of the adoption, the adoptive parent,
according to the law of that country —
 - (i) has a right superior to that of the adoptee's birth parents in relation to the custody of the adoptee; and
 - (ii) is placed in a relationship with the adoptee that is treated as a parent and child relationship (even though the adoptee may be 18 or more years of age).

(2) In any proceedings it is to be presumed, unless the contrary appears, that an order for the adoption of a person that was made in a country other than Australia, complies with subsection (1).

(3) Any of the parties to an adoption under an order made under a law of a country other than Australia may apply to the Court for a declaration that the order complies with subsection (1).

(4) On an application under subsection (3) the Court may —

- (a) direct that notice of the application be given to such persons, who may include the Attorney General or the Director-General, as the Court thinks fit;
- (b) direct that a person be made a party to the application; or
- (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

(5) Where, on an application under subsection (3) the Court makes an order or declaration, such particulars in relation to the adoption and the parties to the adoption as the Court finds to be established may be included in the order or declaration.

(6) For the purposes of the law of this State, an order or declaration under this section binds the Crown in right of the State, whether or not a notice of the application for the order was given to the Attorney General or the Director-General, but, does not affect —

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

or

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

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

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

Director-General to supervise children adopted outside Australia

139. (1) Where —

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

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

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

reduced by the length of the period of the residence in the other State or the Territory.

Division 4 — Financial assistance and payment for services

Financial assistance

140. (1) The Director-General may provide financial assistance —

- (a) to a person in whose care a child has been placed; or
- (b) in relation to a service provided or arranged,

under Division 1 of Part 3.

(2) The Director-General may provide financial assistance to —

- (a) a person who looks after a child under section 31;
- (b) a prospective adoptive parent with whom a child has been placed with a view to the child's adoption by that person;
- (c) a carer who is a prospective adoptive parent; or
- (d) a child's adoptive parent, in relation to the child.

Payment for services

141. (1) The following are to be prescribed by regulation —

- (a) the fees and charges for services provided by the Director-General under this Act;
- (b) the persons or classes of persons to be exempted from paying fees or charges.

(2) The Director-General may require payment or reimbursement of expenses incurred in the provision of services under this Act.

(3) The Director-General may —

- (a) waive the payment of, or reduce, a fee or charge;
- (b) waive or reduce the payment to, or the reimbursement of, the Department in relation to expenses incurred in the provision of services under this Act,

either generally or in a particular case.

Division 5 — Rules and regulations

Rules

142. (1) A majority of the judges of the Court may, from time to time, make rules —

- (a) for the practice and procedure to be followed in the Court and the matters incidental to such practice and procedure;
- (b) necessary or convenient to be prescribed for the conduct of matters in the Court; and
- (c) for the keeping of records and the provision of information in connection with the performance of the Court's functions under this Act.

(2) If no provision is made by law or rule under subsection (1) in relation to a matter for which rules may be made under that subsection —

- (a) the provisions of the rules and regulations under the *Family Court Act 1975* that are most nearly applicable in relation to the matter are to apply; or

- (b) if there is no provision such as that mentioned in paragraph (a), the rules and regulations under the *Family Law Act 1975* of the Commonwealth that are most nearly applicable in relation to the matter are to apply.

Regulations

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

(2) Without limiting the generality of subsection (1), regulations may be made for the purpose of prescribing the fees to be payable in relation to proceedings in the Court under this Act.

(3) Regulations made under this Act may provide for a penalty for contravention of a provision of the regulations not exceeding a fine of \$2 000.

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

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

144. (1) The *Adoption of Children Act 1896* is repealed.

(2) Schedule 3 has effect in relation to the repeal effected by subsection (1).

Consequential amendments

145. The Acts referred to in the first column of Schedule 4 are amended in the manner set out in the second column of that Schedule.

Review

146. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 2 years from the commencement day, and in the course of that review the Minister is to consider and have regard to —

- (a) the implementation and administration of the Act;
- (b) the extent to which members of the public are aware of the effects of the Act;
- (c) the effect of the Act on birth parents, adoptees and prospective adoptees, adoptive parents and the relatives of parties to adoptions; and
- (d) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review under subsection (1).

(3) The Minister is to cause the report to be laid before each House of Parliament not later than 12 months after the expiration of 2 years from the commencement day.

(4) In this section, “**commencement day**” means the day on which this Act comes into operation or, if the provisions of this Act come into operation on different days, means the day on which the latest provision to come into operation comes into operation.

SCHEDULE 1

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

EFFECTIVE CONSENT

Information and counselling before consent

1. A person whose consent is required for a child's adoption must not sign a form of consent to the adoption unless the person —

- (a) has received oral and written information on —
 - (i) the alternatives to adoption;
 - (ii) the community supports available whether or not the child is relinquished for adoption;
 - (iii) the social implications of adoption for the parties to an adoption;
 - (iv) the legal process of adoption, including consent, revocation of consent, the selection procedure, adoption plans, the role of the Court and review and appeals procedures; and
 - (v) the rights and responsibilities of the parties to an adoption including access to information about, or contact with, the other parties to the adoption,

in a manner that the person who provides the information or counselling thinks will be understood by the first-mentioned person;

- (b) has been offered counselling on the matters referred to in paragraph (a); and
- (c) if counselling on the matters referred to in paragraph (a) has been requested, has received the counselling.

Witnesses

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

- (a) a Justice of the Peace;
- (b) a town clerk or a shire clerk under the *Local Government Act 1960*, or the deputy of such a person;
- (c) an Electoral Registrar under the *Electoral Act 1907* or the *Electoral Act 1918* of the Commonwealth;
- (d) a person engaged under the *Australian Postal Corporation Act 1989* of the Commonwealth to be in charge of an Australia Post office;
- (e) an officer under the *Public Service Act 1978* or the *Public Service Act 1922* of the Commonwealth;
- (f) a teacher appointed by the Minister for Education under the *Education Act 1928*;
- (g) a lawyer;
- (h) a medical practitioner;
- (i) a police officer;
- (j) a Commissioner for Declarations under the *Declarations and Attestations Act 1913* or the *Statutory Declarations Act 1959* of the Commonwealth;
- (k) a member of Parliament or a member of the Commonwealth House of Representatives or Senate; or
- (l) such other persons as are prescribed by regulation.

(2) A person who provides information or counselling under clause 1 is not to witness the signing of a form of consent by the person who was informed or counselled by the first-mentioned person.

(3) The signing of a form of consent is not to be witnessed under subclause (1) —

- (a) where a lawyer prepares the form of consent or acts for an applicant for an adoption order in relation to the child who is the subject of the consent, by the lawyer or the lawyer's partner, employee or agent; or
- (b) where the Director-General is conducting adoption services in relation to the child who is the subject of the consent, by an officer or employee of the Department, or a delegate of the Director-General.

Certificate of witness

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

- (a) has been provided with written and oral information on the matters referred to in clause 1 (a);
- (b) has been offered counselling under clause 1 (b); and
- (c) if that counselling under clause 1 (b) has been requested, has received the counselling.

SCHEDULE 2

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

RIGHTS AND RESPONSIBILITIES TO BE BALANCED IN ADOPTION PLANS

Infancy

1. (1) A significant feature of the infancy stage is that the child needs to be able to trust others to care for and nurture the child. The child has the right —

- (a) to be cared for and nurtured; and
- (b) to develop attachment to the adoptive family without undue disruption by the birth parents.

(2) Before consenting to the child's adoption, the child's birth parents have the right to make an informed and unpressured decision about the child's future. After consenting to the child's adoption, the child's birth parents have the right to negotiate as to the provision of information and the extent of any contact between the parties.

(3) There is no right to adopt a child. The adoptive or prospective adoptive parent with whom the child is placed with a view to the child's adoption has the right to bond to the child.

Childhood

2. (1) A significant feature of the childhood stage is the development of autonomy and initiative. The child has the right —

- (a) to belong to a secure family system, extending to friends, schooling and neighbourhood activities; and
- (b) to know about the adoption in a manner appropriate to the child and the child's stage of development.

(2) The birth parents have a responsibility during this stage to respect the privacy of the child's adoptive family.

(3) The adoptive parent has the right —

(a) to rear the child without undue disruption by the birth parents; and

(b) to family privacy,

and a responsibility to inform the child of the adoption.

Adolescence

3. (1) A significant feature of adolescence is the development of the child's sense of identity. The child has the right to resolve identity issues and is to be responsible for the effects of his or her actions on others if access to information is made available.

(2) The birth parents have a responsibility to be aware of the child's needs when responding to requests for information about the child's origins.

(3) The adoptive parent has the right —

(a) to rear the child without undue disruption by the birth parents; and

(b) to family privacy,

and has a responsibility to support the child during any identity crisis and be responsive to the child's needs.

Adulthood

4. (1) A significant feature of adulthood is forming and consolidating relationships. The child's right to information about the birth parents increases in importance as the child approaches adulthood.

(2) The birth parents' right to information about the child increases in importance as the child approaches adulthood.

(3) The adoptive parent's right to control the exchange of information and any contact between the child and the birth parents lessens as the child approaches adulthood.

SCHEDULE 3

[section 144 (2)]

TRANSITIONAL AND SAVINGS

Interpretation

1. In this Schedule —

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

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

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

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

Interpretation Act 1984 not affected

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

Further savings

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

Application for order of adoption

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

Child placed with a view to adoption under repealed Act

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

Consent given but child not placed under repealed Act

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

Waiting lists under repealed Act of prospective adoptive parents

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

Some provisions of this Act to apply to adoptions under repealed Act

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

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

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

(2) A reference in Parts 4 to 7 of this Act to a party to an adoption includes a reference to a father, within the meaning of section 4 (3), of an adoptee under an order of adoption, even where the father's consent to the adoption was not required under the repealed Act.

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

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

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

“

(a) the adoptee, if he or she is —

(i) 18 or more years of age; or

(ii) less than 18 years of age and an adoptive parent or guardian of the adoptee, and each of the adoptee's birth parents who consented to the adoption, consent to the adoptee having access to the information;

(b) a birth parent of the adoptee, if —

(i) the adoptee is 18 or more years of age; or

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

”.

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

“

(c) an adoptive parent of the adoptee, if —

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

”.

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

“

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

”.

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

“

(a) the adoptee, if he or she is —

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

”;

and

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

(5) Paragraph (b) of section 85 (1) does not apply to —

- (a) the re-registration under section 12A of the repealed Act of the birth of an adoptee under an order of adoption; or
- (b) the registration under section 13A of the repealed Act of the birth of an adoptee under an order of adoption,

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

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

(6) Paragraph (a) of section 88 does not apply to an adoptee under an order of adoption and in that case, the following paragraph applies in substitution for that paragraph —

- “
- (a) the adoptee, if he or she is —
 - (i) 18 or more years of age; or
 - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the adoptee having access to the information;
- ”.

(7) Section 97 does not apply to parties to an adoption under an order of adoption and in that case, the following section applies in substitution for that section —

“

97. (1) A person who is a party to an adoption may lodge with the Director-General a request that the Director-General not give his or her authority under section 82 (2) for another person to have access to information to which that other person would otherwise have been entitled to have access under section 84 (1), 85 (1), 89 or 90 in respect of the party.

(2) Where a party referred to in subsection (1) —

- (a) is less than 18 years of age; or
- (b) is 18 or more years of age and has a guardian who has been appointed under the *Guardianship and Administration Act 1990* in respect of matters referred to in that subsection,

any request under subsection (1) by or on behalf of the party is to be lodged by the party's guardian, or if there is more than one guardian, all the party's guardians.

”

(8) Section 98 (2) does not apply to parties to an adoption under an order of adoption and in that case, the following subsection applies in substitution for that subsection —

“

(2) A request under section 97 (1) is to be in a form approved by the Director-General and is not to be registered by the Director-General unless —

- (a) he or she is satisfied as to the identity of the applicant; and
- (b) the applicant has received counselling on the effect of information vetoes, and the possible benefits of information exchange.

”

(9) Section 101 does not apply to parties to an adoption under an order of adoption and in that case, the following section applies in substitution for that section —

“

101. (1) An information veto is of effect —

(a) in the case of a request lodged in respect of the lodging party —

- (i) for the period stated by the person who lodged the request;
- (ii) until the person who lodged the request dies; or
- (iii) until cancelled by the person who lodged the request,

whichever occurs first; and

(b) in the case of a request lodged on behalf of an adoptee before he or she had attained 18 years of age —

- (i) for the period stated by the person or persons who lodged the request;
- (ii) until the adoptee attains 18 years of age;
- (iii) if the adoptee dies before attaining the age of 18 years, until the adoptee dies; or
- (iv) until cancelled by the person or persons who lodged the request,

whichever occurs first.

(2) The person or persons who lodged the request may vary the period referred to in paragraphs (a) (i) and (b) (i) of subsection (1).

(3) Where —

- (a) a birth parent requests access to information that would identify an adoptee who is then 18 or more years of age; and
- (b) an information veto has been requested by an adoptive parent of the adoptee (whether or not the veto still has effect),

if practicable, the Director-General is to inform the adoptive parent of the birth parent's request.

(4) If —

- (a) the Director-General has informed the adoptive parent under subsection (3); and
- (b) the adoptee has not requested an information veto within 3 months after the day on which the Director-General informed the adoptive parent,

the Director-General is not to give his or her authority under section 82 (2) until he or she has ascertained that the adoptee is aware of the birth parent's request and has had the opportunity of lodging a request for an information veto.

”.

Consent not required if person to consent is deceased

10. A person's consent in relation to access to information under this Act, as affected by clause 9, is required only if the person is living, and lack of consent because of the person being deceased is not to prevent access to the information where it would otherwise be available under this Act.

If adoptee incapable of giving consent

11. If an adoptee's consent for access to information is required by this Act, as affected by clause 9, but the adoptee is mentally incapable

of understanding the nature and effect of the consent required, the consent may be given by the adoptee's guardian appointed under the *Guardianship and Administration Act 1990*, or if such a guardian has not been appointed and where relevant, the adoptee's parent or guardian.

If adoptive or birth parents incapable of giving consent

12. If the consent of an adoptive or birth parent is required by this Act, as affected by clause 9, for another person's access to information but the adoptive or birth parent is mentally incapable of understanding the nature and effect of the consent required, in that case the consent of the adoptive or birth parent to the access to the information is not required.

Adoptee under 18 who cannot obtain all required consents

13. (1) Where an adoptee under an order of adoption is less than 18 years of age and wishes to have access to information which requires the consent of a person who has not given consent under section 84, 85 or 88 as affected by clause 9 the adoptee may apply to the Director-General to give his or her authority under section 82 (2) for the adoptee to have access to the information.

(2) On an application under subclause (1) the Director-General may give his or her authority for the adoptee to have access to the information if the Director-General is satisfied that —

- (a) an adoptive parent or guardian of the adoptee is unreasonably withholding consent, or cannot be found or contacted after reasonable enquiries; or
- (b) there has been a breakdown in the adoption relationship and attempts to resolve the matter have not been successful,

and the adoptee is mature enough to receive the information.

Record of Court proceedings under repealed Act

14. A reference in this Act to the record of proceedings in a court, includes a reference, where the proceedings were under the repealed Act, to the record kept by the registrar of the Court, whether the proceedings were in the Court or the Supreme Court and whether before or after commencement, and includes a certified copy or a memorandum of an order of adoption mentioned in section 13A (2) of the repealed Act.

Original and re-registrations of birth under repealed Act

15. A reference in this Act to the registration of the birth of an adoptee under an order of adoption, includes a reference, where the order of adoption was made before commencement, unless the contrary intention appears, to —

- (a) the registration of the adoptee's birth under the *Registration of Births, Deaths and Marriages Act 1961*;
- (b) the re-registration of the adoptee's birth under section 12A of the repealed Act; or
- (c) the registration of the adoptee's birth under section 13A of the repealed Act,

or more than one of those, as is relevant to the individual case.

SCHEDULE 4

[section 145]

CONSEQUENTIAL AMENDMENTS

1. *Constitution Acts
Amendment Act
1899*

Part 3 of Schedule V is amended by inserting after the item relating to the Aboriginal Cultural Material Committee, the following —

“ Any adoption applications
committee appointed under the
Adoption Act 1994. ”.

2. *Parliamentary
Commissioner
Act 1971*

The Schedule is amended by inserting after the item relating to the *Abattoirs Act 1909*, the following —

“ Any adoption applications
committee appointed by the
Director-General under the
Adoption Act 1994. ”.

3. *Registration of
Births, Deaths
and Marriages
Act 1961*

Section 68 is repealed and the following section is substituted —

“ **Entries as to registration of
births of adopted persons**

68. (1) Where the Registrar General is required under section 78 (2) or (4) of the *Adoption Act 1994* to endorse a registration of birth or to register a birth and endorse the registration, the endorsement or registration and endorsement (as the case may be) shall be made in a manner and form approved by the Registrar General.

(2) Where the Registrar General is required under section 86 of the *Adoption Act 1994* to issue a certified copy of that portion of the registration of an adoptee's birth that does not refer to the adoptee's adoption or birth parents, the certified copy shall be in a form approved by the Registrar General.

(3) The Registrar General shall amend the index of the register kept in the Registrar General's office and is to cause the index of the register kept in the office of the district registrar to be amended, so as to refer to any endorsement or registration and endorsement effected under section 78 (2) or (4) of the *Adoption Act 1994*. ”.

4. *Spent Convictions Act 1988*

Schedule 3 is amended in the table to clause 2 (1) —

- (a) by inserting in the first column, the following item —

“ 7. A person applying under section 38 (1) of the *Adoption Act 1994* to be assessed for suitability for adoptive parenthood ”;

and

- (b) by inserting in the second column in a position that corresponds to the item inserted under paragraph (a), the following —

“ Division 4 ”.

5. *Child Welfare
Act 1947*

Section 47D is repealed.