



Australian Capital Territory

# **Adoption Act 1993**

**A1993-20**

**Republication No 23**

**Effective: 1 September 2020 – 19 August 2021**

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Last amendment made by [A2020-39](#)

## About this republication

### The republished law

This is a republication of the *Adoption Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2020. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 September 2020.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Adoption Act 1993

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Dictionary 2
3	Notes 2
<b>Part 1A</b>	<b>Objects and principles</b>
4	Objects of Act 3
5	Best interests of child or young person paramount consideration 4
6	Aboriginal and Torres Strait Islander child or young person—additional requirements 5
<b>Part 2</b>	<b>Jurisdiction</b>
7	Proceedings 7
8	Rules of private international law not to apply 7

---

R23  
01/09/20

Adoption Act 1993  
Effective: 01/09/20-19/08/21

contents 1

---

	Page
<b>Part 3</b>	<b>Adoptions under this Act</b>
<b>Division 3.1</b>	<b>Who can be adopted?</b>
9	Adoption of child or young person 8
10	Adoption of person 18 years old or older 8
11	Previous adoption immaterial 9
12	Frustration of immigration law 9
<b>Division 3.2</b>	<b>Who can adopt?</b>
13	Residency requirement 10
14	Additional requirements for adoption of child or young person 10
18	Approval of suitable people 11
19	Register of suitable people 11
<b>Division 3.3</b>	<b>Consents to adoptions</b>
26	Consents of parents and guardians 12
27	Information for certain parents considering consent 13
28	Consent of applicant not required 14
29	General or limited consents 14
30	Instrument of consent 14
31	Revocation of consent 15
32	Access during revocation period 15
33	Consents under law of a State or another Territory 16
34	Defective consents 16
35	Dispensing with consent 17
<b>Division 3.4</b>	<b>Placement of child or young person before adoption</b>
35A	Placement of child or young person before adoption 18
35B	Consultation with child or young person before deciding placement 20
<b>Division 3.5</b>	<b>Guardianship before adoption</b>
36	Guardianship before adoption 20
37	Guardianship of non-citizen child or young person 22
38	Transfer of guardianship of child or young person until adoption 22
39	Review of status of child or young person released for adoption 24
<b>Division 3.6</b>	<b>Proceedings for an adoption order</b>
39A	Application for adoption order 24
39B	Notice of application for adoption order 25

	Page
39C Parties to proceeding	25
39D Report on proposed adoption	26
39E Consultation with child or young person before adoption order made	27
39F Deciding application for adoption order for child or young person	28
39G Aboriginal or Torres Strait Islander child or young person	29
39H Adoption of non-citizen child or young person	30
39I Deciding application for adoption order for person 18 years old or older	30
39J Notification to director-general of adoption order	30
39K Alternative orders on refusal of adoption order	31
39L Discharge of adoption order	31
<b>Division 3.7 Conditional orders</b>	
40 Adoption order subject to certain conditions	34
41 Amendment of adoption condition	34
42 Cessation of condition	35
<b>Division 3.8 Effect of adoption orders</b>	
43 General effect	35
44 Disposition of property	37
45 Names of adopted child or young person	38
46 Effect of order on domicile	40
47 Distribution of property by trustee or personal representative	40
48 Bequest by will to unascertained adopted person	41
49 Gifts between living people	43
<b>Division 3.9 Interim orders</b>	
50 Making of order	44
51 Duration	44
52 Discharge	44
<b>Part 4 Recognition of Australian adoptions</b>	
53 Recognition of Australian adoptions	45
<b>Part 4A Intercountry and overseas adoption</b>	
<b>Division 4A.1 Preliminary</b>	
54 Adoptions outside Australia—general	46
55 State central authority	46

## Contents

---

	Page
56 Functions of State central authority	46
<b>Division 4A.2 Convention on intercountry adoption</b>	
<b>Subdivision 4A.2.1 Adoption under Convention</b>	
57 Adoption in ACT of ACT child or young person by parents from Convention country	47
57A Report on child for intercountry adoption	48
57B Adoption in ACT of child or young person from Convention country by ACT parents	49
57C Issue of adoption compliance certificate	50
<b>Subdivision 4A.2.2 Recognition under Convention</b>	
57D Recognition of adoption of child or young person from Convention country in that country	50
57E Recognition of adoption of child or young person from Convention country to another Convention country	51
57F Effect of recognition	51
57G Refusal to recognise adoption or decision	51
57H Order terminating legal relationship between child or young person and parents	52
57I Evidential value of adoption compliance certificate	53
<b>Division 4A.3 Bilateral arrangements for intercountry adoptions</b>	
57J Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents	54
57K Evidential value of adoption compliance certificate—div 4A.3	55
<b>Division 4A.4 Recognition of other overseas adoptions</b>	
57L Recognition of adoption order made outside Australia	55
57M Declaration of validity of adoption order made outside Australia	56
<b>Part 5 Access to information</b>	
<b>Division 5.1 General</b>	
58 Definitions—pt 5	58
59 Application—pt 5	59
60 Confidentiality of records	59
61 Records of adoptions	60
62 Provision of information	61

	Page
<b>Division 5.2</b>	<b>Non-identifying information</b>
63	Right of access 62
64	Protection of privacy 63
65	Medical information 63
<b>Division 5.3</b>	<b>Identifying information</b>
66	Right of access 63
67	Recipient of application 63
68	Restriction on entitlement to apply 64
69	Assistance in obtaining approval 65
70	Objection to contact—adoptions before Adoption Amendment Act 2009 (No 2) 65
71	Contact veto by person other than adopted person—adoptions before Adoption Amendment Act 2009 (No 2) 66
72	Counselling services 67
73	Declaration that contact not be attempted 68
74	Birth details of adopted person born overseas 69
75	Application to court in absence of consent 69
76	Other person's right to information 70
77	Family information service 70
78	Adoption information register 71
79	Contact veto register 72
80	Reunion information register 72
<b>Part 6</b>	<b>Private adoption agencies</b>
81	Application for approval 73
82	Grant or refusal of approval 73
83	Change in principal officer 74
84	Effect of action by principal officer 74
85	Revocation or suspension of approval 74
86	Effect of cessation of approved agency 75
87	Requirements for private adoption agencies 75
<b>Part 7</b>	<b>Offences</b>
88	Territorial application of pt 7 76
89	Taking away etc of adopted child or young person by birth parent 76

## Contents

---

	Page	
90	Receiving or harbouring child or young person	76
91	Interfering with upbringing of child or young person	77
92	Approval of communications	77
93	Director-general's report for prosecution	78
94	Payments in consideration of adoptions etc	78
95	Unauthorised arrangements for adoption	79
96	Unauthorised advertising	80
97	Restriction on publication of identity of parties	80
99	Personation of person whose consent to adoption is required	81
100	Presenting consent obtained by fraud etc	82
101	Improperly witnessing consent	82
<b>Part 7A</b>	<b>Notification and review of decisions</b>	
102	Meaning of <i>reviewable decision</i> —pt 7A	83
103	Reviewable decision notices	83
103A	Applications for review	83
<b>Part 8</b>	<b>Miscellaneous</b>	
104	Registration of orders	84
105	Memoranda of orders interstate	84
106	Particulars of interstate orders	85
107	Legal representation of child or young person	85
108	Notification to parents	86
108A	Financial support of adopted children and young people	86
111	Authority to prosecute	87
112	Hearings to be in camera	87
113	Contents of reports not to be disclosed	87
114	Restriction on inspection of records	88
115	Director-general may appear at hearings	88
116	Proof of adoptions	88
118	Determination of fees	88
120A	Approved forms	89
121	Regulation-making power	89
122	Review of certain amendments made by Adoption Amendment Act 2020	90



	Page
<b>Schedule 1</b>	
<b>Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption</b>	91
 <b>Dictionary</b>	 110
 <b>Endnotes</b>	
1 About the endnotes	116
2 Abbreviation key	116
3 Legislation history	117
4 Amendment history	122
5 Earlier republications	137
6 Expired transitional or validating provisions	139





Australian Capital Territory

# Adoption Act 1993

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An Act relating to the adoption of children and young people

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Adoption Act 1993*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*adoptive relative*, for part 5 (Access to information)—see section 58.’ means that the term ‘adoptive relative’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## Part 1A                      Objects and principles

### 4                      Objects of Act

The main objects of this Act include—

- (a) ensuring that the best interests of the child or young person are the paramount consideration in the adoption of a child or young person; and
- (b) providing an adoption process that promotes the wellbeing and care of children and young people in a way that recognises the child's or young person's right—
  - (i) to grow in a safe and stable environment; and
  - (ii) to be cared for by a suitable family and to establish enduring relationships; and
  - (iii) to know about family background and culture and have the opportunity to maintain or develop cultural identity; and
- (c) ensuring that the Aboriginal and Torres Strait Islander people are included and participate in any adoption of an Aboriginal or Torres Strait Islander child or young person; and
- (d) ensuring that adoption is centred on the needs of the child or young person rather than an adult wanting to care for a child or young person; and
- (e) consulting with the child or young person throughout the adoption process and, wherever possible, taking the child's or young person's views into account; and
- (f) recognising a birth parent's involvement in making decisions about their child's future; and
- (g) providing for adoption plans to recognise the intentions of parties in an adoption; and

- (h) ensuring that equivalent standards apply for a child or young person adopted from the ACT and a child or young person adopted from overseas; and
- (i) ensuring that the adoption process in the ACT complies with Australia's international obligations, in particular the obligations arising under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

*Note* The text of the Convention is set out in sch 1.

## **5 Best interests of child or young person paramount consideration**

- (1) A person making a decision under this Act in relation to a child or young person must regard the best interests of the child or young person as the paramount consideration.
- (2) In forming a view about the best interests of a child or young person, a person making a decision under this Act must take into account the following:
  - (a) the likely effect of the decision on the life course of the child or young person taking into account the need to preserve their cultural inheritance, personal identity and sense of belonging;
  - (b) the child's or young person's age, level of understanding, level of maturity, gender, personal characteristics and individual circumstances;
  - (c) the child's or young person's cultural, physical, emotional, intellectual, and educational needs;
  - (d) the views expressed by the child or young person in relation to the decision (including views expressed with adequate and appropriate support to actively participate, to the best of their ability, in consultation related to the decision);

- (e) taking into account the benefit of maintaining meaningful relationships, the likely effect of the decision on the child's or young person's relationship with the following people:
  - (i) the child's or young person's birth parents;
  - (ii) the child's or young person's siblings (if any);
  - (iii) the child's or young person's other relatives;
  - (iv) carers or other significant people in the child's or young person's life;
- (f) the relationship the child or young person has with the adoptive parents;
- (g) the suitability and capacity of the adoptive parents to meet the child's or young person's needs;
- (h) the alternatives to adoption for the child or young person to secure permanent family arrangements;
- (i) the continuity and sense of belonging that comes from a child or young person having stable emotional and physical living conditions;
- (j) the need to protect the child or young person from physical or psychological harm associated with exposure to abuse, neglect or family violence.

## **6 Aboriginal and Torres Strait Islander child or young person—additional requirements**

In addition to section 5, a person making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person must—

- (a) take into account the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community; and

- (b) seek and consider submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the director-general as providing ongoing support services to the child or young person or the child's or young person's family; and
- (c) take into account Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.



## Part 2                      Jurisdiction

### 7                      Proceedings

Jurisdiction is conferred on the court to hear and determine proceedings on applications for the making of adoption orders and other orders under this Act.

### 8                      Rules of private international law not to apply

- (1) The jurisdiction of the Supreme Court under this Act is not dependent on any fact or circumstance not stated in this Act.
- (2) Without limiting subsection (1), the common law rules of private international law do not apply in relation to matters arising under this Act.

## **Part 3                      Adoptions under this Act**

### **Division 3.1              Who can be adopted?**

#### **9                      Adoption of child or young person**

An adoption order may be made for a person who—

- (a) was under 18 years old on the day the application was filed in the court; and
- (b) is present in the ACT.

#### **10                     Adoption of person 18 years old or older**

- (1) An adoption order may be made for a person who was 18 years old or older on the day the application was filed in the court if—
  - (a) the applicant or applicants have been in a care-giving relationship with the person; and
  - (b) the person has received physical, emotional, intellectual and educational support from the applicant or applicants; and
  - (c) the person, or at least 1 applicant, is ordinarily resident in the ACT.
- (2) The following provisions of this Act do not apply to the adoption of a person who was 18 years old or older on the day the application was filed in the court:
  - (a) division 3.2 (Who can adopt?);
  - (b) division 3.3 (Consents to adoptions) other than the following:
    - (i) section 28 (Consent of applicant not required);
    - (ii) section 30 (Instrument of consent);
    - (iii) section 34 (1);

- (c) division 3.4 (Placement of child or young person before adoption);
- (d) division 3.5 (Guardianship before adoption);
- (e) division 3.6 (Proceedings for an adoption order) other than the following:
  - (i) section 39A (2);
  - (ii) section 39B (1) (a), (2) and (3);
  - (iii) section 39C (Parties to proceeding);
  - (iv) section 39I (Deciding application for adoption order for person 18 years old or older);
  - (v) section 39L (Discharge of adoption order);
- (f) division 3.7 (Conditional orders);
- (g) section 45 (Names of adopted child or young person);
- (h) section 46 (Effect of order on domicile);
- (i) division 3.9 (Interim orders).

## **11 Previous adoption immaterial**

An adoption order may be made even if the person has previously been adopted, before or after the commencement of this Act, in the ACT or elsewhere.

## **12 Frustration of immigration law**

An adoption order must not be made if the court considers that it is being sought primarily as a means of evading the operation of a law of the Commonwealth relating to immigration.

## Division 3.2 Who can adopt?

### 13 Residency requirement

- (1) An adoption order may only be made in favour of a person, or 2 people, who are ordinarily resident in the ACT.
- (2) This section does not apply to an adoption order under section 57 (Adoption in ACT of ACT child or young person by parents from Convention country).

### 14 Additional requirements for adoption of child or young person

An adoption order for a child or young person may be made in favour of a person only if—

- (a) the person is on the register of suitable people; and
- (b) for an order to be made in favour of 2 people jointly—
  - (i) they have lived together in a domestic partnership for at least 3 years (whether or not married or in a civil union); and
  - (ii) the court considers they have demonstrated the stability of, and their commitment to, their domestic partnership; and
- (c) for an order to be made in favour of 1 person only—the person either—
  - (i) is a step parent of the child or young person; or
  - (ii) is not in a domestic partnership; and
- (d) if the person is a step-parent of the child or young person—the Family Court of Australia has given the step-parent leave to commence a proceeding for the adoption of the child or young person under the *Family Law Act 1975* (Cwlth), section 60G (Family Court may grant leave for adoption proceedings by prescribed adopting parent); and

- (e) if the person is a relative of the child or young person—the court considers that—
  - (i) the family circumstances mean that it would be beneficial for the child or young person if the relationships within the family were redefined in the way the order would redefine them; and
  - (ii) it would not be preferable to make an order relating to guardianship or custody of the child or young person.

## **18 Approval of suitable people**

- (1) A person may apply in writing to the director-general for approval to be registered as suitable for the placement of a child or young person for adoption.
- (2) The director-general must—
  - (a) approve the application; or
  - (b) refuse to approve the application.
- (3) In deciding the application, the director-general must consider whether the applicant is suitable for the placement of a child or young person for adoption having regard to the criteria set out in section 39F (1) (c) (Deciding application for adoption order for child or young person).
- (4) The director-general must not approve an application if the applicant is not ordinarily resident in the ACT.

## **19 Register of suitable people**

- (1) The director-general must keep—
  - (a) a register of people whose application to be registered as suitable for the placement of a child or young person for adoption has been approved; and

- (b) records of people whose application to be registered as suitable for the placement of a child or young person for adoption—
  - (i) has been refused; or
  - (ii) has been approved, but for which the approval has been withdrawn.
- (2) The director-general may review the register kept under subsection (1) (a) and—
  - (a) must remove a person from the register if satisfied on reasonable grounds that the person is no longer suitable having regard to the criteria set out in section 39F (1) (c) (Deciding application for adoption order for child or young person); and
  - (b) may remove a person from the register if satisfied on reasonable grounds that the person is no longer ordinarily resident in the ACT.
- (3) If the director-general removes a person from the register under subsection (2), the director-general must give the person written notice of the removal.

## **Division 3.3                      Consents to adoptions**

### **26                      Consents of parents and guardians**

- (1) Subject to this division, an adoption order must not be made for a child or young person unless consent to the adoption has been given by—
  - (a) if the child or young person has not previously been adopted—
    - (i) each parent of the child or young person; and
    - (ii) each guardian of the child or young person; or

- (b) if the child or young person has previously been adopted—
  - (i) each adoptive parent of the child or young person; and
  - (ii) each guardian of the child or young person.
- (2) A reference in subsection (1) (a) (i) to a parent of a child or young person does not include a reference to the father of the child or young person unless he is presumed to be the father under the *Parentage Act 2004*.
- (3) Consent of a person is not required if the court is satisfied that the person is dead.

## **27 Information for certain parents considering consent**

- (1) This section applies if the director-general knows that—
  - (a) a parent is considering consenting to the adoption of a child in the 28 days following the birth of the child; or
  - (b) a parent under 18 years old is considering consenting to the adoption of a child.
- (2) The director-general must offer the parent—
  - (a) information about—
    - (i) the time period for providing the consent; and
    - (ii) the process for revocation of consent; and
    - (iii) alternatives to adoption; and
    - (iv) future contact with the child; and
  - (b) the opportunity for counselling, if requested.
- (3) The director-general must ensure a parent mentioned in subsection (1) (b) has access to independent legal advice.

**28 Consent of applicant not required**

If a person whose consent to an adoption would, but for this section, be required is an applicant for the adoption order, the consent of that person is not required.

**29 General or limited consents**

- (1) For this Act, consent to the adoption of a child or young person may be general or limited.
- (2) A general consent is a consent to the adoption of the child or young person by any person or persons in accordance with the law of the Territory, and has effect accordingly.
- (3) A limited consent is a consent to the adoption of the child or young person—
  - (a) by a relative of the child or young person; or
  - (b) by a person who has been appointed as a guardian of the child or young person by order of a court; or
  - (c) by a person in whose custody the child or young person has been placed by the director-general in accordance with a law of the Territory; or
  - (d) by a step-parent.

**30 Instrument of consent**

A consent to an adoption must be by an instrument signed by the person giving consent and attested as prescribed under the regulations.

*Note* If a form is approved under s 120A (Approved forms) for a consent, the form must be used.



### **31 Revocation of consent**

- (1) A person who consents to the adoption of a child or young person may revoke the consent only by filing a notice of revocation in the Supreme Court before the end of—
  - (a) 28 days after the day the instrument of consent is signed; or
  - (b) if before the end of the 28-day period the person files in the Supreme Court a notice stating the person needs further time—  
14 days after the end of the 28-day period.
- (2) A period applying under subsection (1) may not be extended.
- (3) Subsection (2) has effect despite the [Legislation Act](#), section 151C (Power to extend time).
- (4) The registrar of the Supreme Court must tell the director-general in writing about a notice filed under subsection (1).
- (5) When the period within which a person's consent to the adoption of a child or young person may be revoked ends, the director-general must tell the person in writing.

### **32 Access during revocation period**

- (1) A person whose consent to the adoption of a child or young person is required is entitled to have access to the child or young person before the end of the period during which that consent may be revoked unless the director-general, by notice in writing served on that person, informs that person that access is denied.
- (2) The director-general must not give a notice under subsection (1) unless satisfied that it is necessary for protecting the best interests of the child or young person to do so.

### **33 Consents under law of a State or another Territory**

A consent to the adoption of a child or young person given by a person in accordance with the law of a State or another Territory that would be an effective consent under that law if the application had been an application for a corresponding order under that law is, if the consent of that person is required, an effective consent for this Act.

### **34 Defective consents**

- (1) The court may refuse to make an adoption order if it appears to the court that—
  - (a) any required consent was—
    - (i) not given in accordance with this Act; or
    - (ii) obtained by fraud, duress or other improper means; or
  - (b) an instrument of consent has been altered in a material particular without the authority of the person who gave the consent; or
  - (c) when an instrument of consent was signed, the person who gave or purported to give the consent was not in a fit condition to give the consent or did not understand the nature of the consent.
- (2) An adoption order must not be made under an instrument of consent signed by the mother of the child before the birth of the child.
- (3) An adoption order must not be made under an instrument of consent signed by the mother of the child before the end of 28 days after the day on which the child was born unless—
  - (a) the court is of the opinion that there are circumstances that justify the instrument being treated as an effective consent; or
  - (b) the consent—
    - (i) was given in accordance with a law of a State or another Territory; and
    - (ii) is, because of section 33, an effective consent for this Act.

### **35 Dispensing with consent**

- (1) On application, the court may, by order, dispense with the requirement for consent of a person to the adoption of a child or young person if the court is satisfied that—
  - (a) either—
    - (i) the person cannot, after reasonable inquiry, be identified or located; or
    - (ii) the person's identity cannot be established; or
  - (b) the person is not able to make a fully informed decision in relation to the consent despite receiving adequate and appropriate support to make the decision to the best of their ability; or
  - (c) it is necessary in the best interests of the child or young person to dispense with the requirement for consent of the person.

*Note* If a form is approved under the [Court Procedures Act 2004](#), s 8 for an application, the form must be used.

- (2) On an application for an order under subsection (1), the court may require the director-general to do one or both of the following:
  - (a) investigate a matter;
  - (b) make an assessment of the best interests of the child or young person.

*Note* See s 5 and s 6 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

- (3) The director-general must give the court a written report detailing the conclusion of an investigation or assessment made under subsection (2).

- (4) To facilitate the making of arrangements for the adoption of a child or young person, on the application of the director-general or the principal officer of a private adoption agency, the court may make an order under subsection (1) before an application for an adoption order has been made, and the first order has effect for the purpose of any subsequent application for an adoption order.
- (5) On the application of the director-general or of the person the requirement for whose consent was dispensed with, the court may revoke an order made because of subsection (4) at any time before making an adoption order.

## **Division 3.4 Placement of child or young person before adoption**

### **35A Placement of child or young person before adoption**

- (1) The director-general may place a child or young person in the care of a person if—
  - (a) the director-general is the guardian of the child or young person; and
  - (b) the person—
    - (i) is on the register of suitable people; and
    - (ii) intends to apply for an adoption order for the child or young person; and
    - (iii) has asked the director-general, in writing, to place the child or young person in the person's care until the application is decided; and

*Note* If a form is approved under s 120A for this provision, the form must be used.

  - (c) the child or young person has been consulted under section 35B; and

- (d) if the child or young person is an Aboriginal or Torres Strait Islander child or young person—the additional requirements mentioned in section 6 (Aboriginal and Torres Strait Islander child or young person—additional requirements) have been complied with.
- (2) The director-general must not place a child or young person in the care of a person under subsection (1) unless the director-general considers that the person is suitable to adopt the particular child or young person having regard to the criteria set out in section 39F (1) (c) (Deciding application for adoption order for child or young person).
- (3) The director-general must remove a child or young person from the care of a person with whom the child or young person has been placed under this section if—
- (a) the person is no longer on the register of suitable people; or
  - (b) the director-general considers that the person is no longer suitable to adopt the particular child or young person having regard to the criteria set out in section 39F (1) (c); or
  - (c) within 1 year after the child or young person is placed in the care of the person under this section, the person has not applied for an adoption order for the child or young person.
- (4) A person given care of a child under this section has daily care responsibility for the child or young person.
- (5) In this section:
- daily care responsibility*—see the *Children and Young People Act 2008*, section 19.

**35B Consultation with child or young person before deciding placement**

- (1) Before deciding about the placement of a child or young person under section 35A, the director-general must, if reasonably practicable, give the child or young person—
  - (a) information about the proposed placement, in language and in a way that the child or young person can understand; and
  - (b) the opportunity to freely express his or her views about the proposed placement; and
  - (c) assistance in understanding the information provided and in expressing his or her views, if required; and
  - (d) the opportunity for counselling, if required.
- (2) The consultation under subsection (1) must be appropriate taking into account the best interests of the child or young person.

*Note* See s 5 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

**Division 3.5 Guardianship before adoption**

**36 Guardianship before adoption**

- (1) The director-general is the guardian of a child or young person for all purposes except section 26 (Consents of parents and guardians) if—
  - (a) each person required to consent to the adoption of the child or young person under section 26 has consented; or
  - (b) the requirement for consent has been dispensed with under section 35 (Dispensing with consent).

- (2) However, subsection (1) does not apply in relation to a child or young person if—
- (a) the application for adoption is made by a step-parent and a parent of the child or young person has a continuing role as a parent; or
  - (b) the principal officer of a private adoption agency is the guardian of the child or young person for all purposes except section 26 (Consents of parents and guardians) because of subsection (3); or
  - (c) a declaration under section 38 that the child or young person is under the guardianship of an authority in a State or another Territory is in force; or
  - (d) the director-general has long-term care responsibility for the child or young person under the *Children and Young People Act 2008*.
- (3) The principal officer of a private adoption agency is the guardian of a child or young person for all purposes except section 26 (Consents of parents and guardians) if—
- (a) each person whose consent to the adoption is required has consented and has, in writing, authorised the private adoption agency to make arrangements with a view to the adoption; and
  - (b) the principal officer of the private adoption agency has told the director-general in writing that he or she is willing to assume the guardianship of the child or young person.
- (4) A guardianship under subsection (1) or (3) continues until—
- (a) an adoption order is made; or
  - (b) any consent given is revoked; or
  - (c) the court makes an order relating to the guardianship of the child or young person.

### **37 Guardianship of non-citizen child or young person**

- (1) This section applies in relation to a non-citizen child or young person—
  - (a) brought from a place outside Australia for adoption in the ACT; or
  - (b) adopted outside Australia if the adoption is not recognised under this Act, part 4A.
- (2) The director-general is the guardian of the child or young person while the child or young person is ordinarily resident in the ACT until—
  - (a) the child or young person turns 18 years old; or
  - (b) an adoption order is made; or
  - (c) the court makes an order relating to the guardianship of the child or young person; or
  - (d) the child or young person leaves Australia with the intention of remaining outside Australia permanently.

*Note* The Minister for Immigration of the Commonwealth is the guardian of a child arriving in Australia and subject to the *Immigration (Guardianship of Children) Act 1946* (Cwlth) until an adoption order is made. The responsibility for guardianship is delegated to the director-general under s 5 of the *Immigration (Guardianship of Children) Act 1946* (Cwlth).

### **38 Transfer of guardianship of child or young person until adoption**

- (1) On receiving a request in writing by or for the authority in a State or another Territory having the guardianship of a child or young person in respect of whom consents with a view to adoption in the ACT have been given or dispensed with, the director-general may, in writing, declare that the child or young person is under the guardianship of the director-general while the child or young person is domiciled or resident in the ACT.



- (2) If a declaration under subsection (1) has effect, then, while the child or young person is domiciled or resident in the ACT, the director-general is the guardian of the child or young person until—
  - (a) the child or young person attains the age of 18 years; or
  - (b) an adoption order is made; or
  - (c) the court makes an order relating to the guardianship of the child or young person.
- (3) A declaration under subsection (1) ceases to have effect if the child or young person ceases to be under the guardianship of the authority in the State or other Territory.
- (4) If, in the opinion of the director-general, a law of a State or another Territory contains a provision corresponding to this section, the director-general may request the authority having the guardianship of children or young people until adoption in that State or Territory to declare that, while a child or young person of whom the director-general is the guardian under this Act (being a child or young person in respect of whom consents with a view to adoption in that State or Territory have been given or dispensed with) is domiciled or resident in that State or Territory, the child or young person is under the guardianship of that authority.
- (5) While a declaration under subsection (4) has effect, the functions and obligations of the director-general as guardian of the child or young person are suspended.
- (6) Subsection (5) does not apply in relation to the exercise by the director-general of a function in respect of a child or young person under an arrangement made under subsection (7).
- (7) The director-general may, on behalf of the Territory, make financial or other arrangements with an authority mentioned in subsection (1) or (4) in respect of a child or young person while the child or young person is under the guardianship of the director-general or that authority.

- (8) The director-general may make arrangements for the return of a child or young person who is under the guardianship of the director-general under this section to his or her former custody.

**39 Review of status of child or young person released for adoption**

- (1) If—
- (a) all required consents to the adoption of a child or young person have been given; and
  - (b) the child or young person has not been—
    - (i) placed for adoption within 1 year; or
    - (ii) adopted within 1 year after being placed for adoption;
- the director-general must apply to the court for an order under this section.
- (2) On an application under subsection (1), the court may—
- (a) review the status of the child or young person; and
  - (b) make any orders in relation to guardianship or custody of the child or young person, or any other orders to promote the best interests of the child or young person, that the court thinks fit.

**Division 3.6 Proceedings for an adoption order**

**39A Application for adoption order**

- (1) A person (the *applicant*) may apply to the court for an adoption order for a child or young person if an adoption order for the child or young person may be made in favour of the applicant under this part or part 4A (Intercountry and overseas adoption).

- (2) A person (the *applicant*) may apply to the court for an adoption order for a person who is 18 years old or older if an adoption order for the person may be made in favour of the applicant under section 10.

*Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

### **39B Notice of application for adoption order**

- (1) An adoption order must not be made unless the applicant has, not later than 28 days before the return date for the application, served written notice of the application and its return date on—
- (a) anyone whose consent to the adoption is required but whose consent has not been given; and
  - (b) anyone whose consent is not required but with whom the child or young person lives or who has guardianship or custody of the child or young person.

*Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

- (2) On application, the court may dispense with the requirement to serve notice under subsection (1).
- (3) If it appears to the court to be necessary in the interests of justice, the court may, on application or its own initiative, direct that notice of an application for an adoption order and its return date be served on anyone.

### **39C Parties to proceeding**

The court may permit anyone the court thinks fit to be joined as a party to a proceeding on an application for an adoption order for the purpose of—

- (a) opposing the application; or
- (b) opposing an application to dispense with a requirement for a consent.

### **39D Report on proposed adoption**

- (1) The director-general, or the principal officer of a private adoption agency that made the arrangements that resulted in an application for an adoption order for a child or young person, must give a written report to the court.
- (2) The written report must include—
  - (a) information about the circumstances of the child or young person; and
  - (b) information about the proposed adoption, including the applicant's reputation, ability to fulfil the responsibility of a parent and suitability to adopt the particular child or young person; and
  - (c) an adoption plan.
- (3) The adoption plan may include anything that is appropriate taking into account the best interests of the child or young person, including—
  - (a) the preferences of a parent of the child or young person and of any person whose consent is required for the adoption in relation to the social, religious and financial characteristics of the adoptive family; and
  - (b) arrangements for exchanging information about the child's or young person's medical background or condition; and
  - (c) arrangements for ongoing contact between the child or young person and 1 or more of the following:
    - (i) a parent of the child or young person;
    - (ii) a person whose consent is required for the adoption;
    - (iii) a person who otherwise has a significant relationship with the child or young person; and

- (d) the way the child or young person is to develop an understanding about his or her family background and culture and have the opportunity to maintain or develop cultural identity.

*Note* See s 5 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

- (4) If the child or young person is under the guardianship of an authority in a State or another Territory having functions under the law of that State or Territory corresponding to those of the director-general, the court may be given a report from that authority about the circumstances of the child or young person and the proposed adoption in addition to or instead of a report mentioned in subsection (1).
- (5) A written report is not required under this section if the application is for an adoption order mentioned in section 57 (Adoption in ACT of ACT child or young person by parents from Convention country).

*Note* For these applications, a report by the director-general is required under s 57A.

### **39E Consultation with child or young person before adoption order made**

- (1) Before making an adoption order for a child or young person, the court must be satisfied that, if reasonably practicable, the director-general has given the child or young person—
- (a) information about the proposed adoption, in language and in a way that the child or young person can understand; and
  - (b) the opportunity to freely express his or her views about the proposed adoption; and
  - (c) assistance in understanding the information provided and in expressing his or her views, if required; and
  - (d) the opportunity for counselling, if required.

- (2) The consultation under subsection (1) must be appropriate taking into account the best interests of the child or young person.

*Note* See s 5 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

**39F Deciding application for adoption order for child or young person**

- (1) The court must not make an adoption order for a child or young person unless—
- (a) each consent required under division 3.3 has been given; and
  - (b) the period within which each required consent may be revoked has expired without the consent having been revoked; and
  - (c) after considering the report or reports given to it under section 39D (Report on proposed adoption) or section 57A (Report on child for intercountry adoption) and any other evidence, the court considers that—
    - (i) each applicant is of good reputation and able to fulfil the responsibility of the parent of a child or young person (including protecting a child’s or young person’s physical and emotional well being); and
    - (ii) each applicant is suitable to adopt the particular child or young person having regard to—
      - (A) the applicant’s age, education and attitude to adoption; and
      - (B) the applicant’s physical, mental and emotional health, particularly as it impacts on capacity to nurture the child or young person; and
      - (C) any other relevant consideration; and

- (iii) the adoption is in the best interests of the child or young person.
- (2) In deciding whether or not to make an adoption order, the court must have regard to—
- (a) the views expressed by the child or young person in the consultation required under section 39E (Consultation with child or young person before adoption order made); and
- (b) any preferences expressed in an adoption plan given to the court as part of a report required under section 39D (Report on proposed adoption).

*Note* Additional requirements apply to certain intercountry adoptions. See the following sections:

- s 57 (3) (Adoption in ACT of ACT child or young person by parents from Convention country);
- s 57B (3) (Adoption in ACT of child or young person from Convention country by ACT parents);
- s 57J (2) (Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents).

### **39G Aboriginal or Torres Strait Islander child or young person**

- (1) This section is in addition to, and does not limit, section 39F.
- (2) An adoption order must not be made for an Aboriginal or Torres Strait Islander child or young person unless the court is satisfied that—
- (a) the additional requirements mentioned in section 6 (Aboriginal and Torres Strait Islander child or young person—additional requirements) have been complied with; and
- (b) it is not practicable for the child or young person to remain in the care of the birth parents or a responsible person; and

- (c) the choice of the adoptive parents has been made having regard to the desirability of the child or young person—
  - (i) being in the care of a person who is a member of an Aboriginal or Torres Strait Islander community; and
  - (ii) being able to establish and maintain contact with his or her birth parents, any responsible person and the Aboriginal or Torres Strait Islander community of which the child or young person is or was a member.

**39H Adoption of non-citizen child or young person**

An adoption order must not be made for a non-citizen child or young person unless the court is satisfied that the provisions of part 4A (Inter-country and overseas adoption) have been complied with.

**39I Deciding application for adoption order for person 18 years old or older**

The court must not make an adoption order for a person who was 18 years old or older on the day the application was filed in the court unless—

- (a) the person consents to the adoption by the applicant or applicants; and
- (b) the court is satisfied that the applicant or applicants are of good reputation.

**39J Notification to director-general of adoption order**

The registrar of the court must notify the director-general in writing if the court makes an adoption order.



**39K Alternative orders on refusal of adoption order**

- (1) If the court refuses to make an adoption order for a child or young person, the court may—
  - (a) if it considers that the child's or young person's best interests would be promoted by doing so—make an order relating to guardianship or custody of the child or young person; and
  - (b) make any other order it thinks fit.
- (2) An order under subsection (1) (a) may be made in favour of the director-general or any other person.

**39L Discharge of adoption order**

- (1) On application by a prescribed person, the court may make an order (a *discharging order*) discharging an adoption order if the court considers that—
  - (a) the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means; or
  - (b) there are other circumstances that justify the discharging order.
- (2) For subsection (1) (b), a breakdown in the relationship between the adopted person and the adoptive parents must not be taken to constitute a circumstance justifying a discharging order.
- (3) A discharging order must not be made if it appears to the court that the making of the order would be prejudicial to the best interests of the adopted person.
- (4) On an application under subsection (1), the court may require the director-general to investigate the matter and to provide a written report to the court.

- (5) A discharging order must not be made unless the applicant has, not later than 28 days before the return date for the application, served written notice of the application and its return date on—
- (a) if the adopted person is 12 years old or older—the adopted person; and
  - (b) each adoptive parent; and
  - (c) each person whose consent to the adoption was required.

*Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for an application, the form must be used.

- (6) On application, the court may dispense with the requirement to serve notice under subsection (5).
- (7) If the court makes a discharging order, the court may, at the same time or subsequently, make any consequential or ancillary orders it thinks fit to promote the best interests of the adopted person, or otherwise in the interests of justice, including orders relating to—
- (a) the person's name; or
  - (b) the ownership of property; or
  - (c) if the person is a child or young person—
    - (i) guardianship or custody of the person; or
    - (ii) the place of residence of the person.
- (8) Subject to any order made under subsection (7) and to section 43 (3), the rights, privileges, obligations, liabilities and relationships under the law of the Territory of the person and of all other people are, on the making of a discharging order, the same as if the adoption order had not been made, but without prejudice to—
- (a) anything lawfully done while the adoption order was in force; or
  - (b) the consequences of anything unlawfully done while the adoption order was in force; or

- (c) any right or interest that became vested in any person while the adoption order was in force.
- (9) If an adoption order that has been discharged was made under a general consent, then, unless the court otherwise orders, that consent remains effective for the purpose of a further application for an adoption order about the same person.
- (10) In this section:

***adoption order*** includes an order for the adoption of a person made under a repealed law.

***prescribed person***, in relation to an application for a discharging order for a person, means the Minister, the director-general, the public advocate, the adopted person, an adoptive parent or a person whose consent to the adoption was required.

***repealed law*** means any of the following Acts or an Ordinance repealed by any of the following Acts:

- (a) *Adoption of Children Act 1965*;
- (b) *Adoption of Children Act 1974*;
- (c) *Adoption of Children (Amendment) Act 1979*;
- (d) *Adoption of Children (Amendment) Act 1983*;
- (e) *Adoption of Children (Amendment) Act 1988*;
- (f) *Adoption of Children (Amendment) Act 1991*.

## Division 3.7 Conditional orders

### 40 Adoption order subject to certain conditions

If the court is of the opinion that—

- (a) circumstances exist that justify it doing so, whether because of the age of the child or young person or otherwise; and
- (b) the birth parents and the adoptive parents have, after the required consents were given, agreed that the adoption order should be subject to certain conditions;

the court may make the adoption order subject to either or both of the following conditions:

- (c) a condition that such birth parents and such relatives of the child or young person as are stated in the order have such right of access to the child or young person as is stated in the order;
- (d) a condition that the adoptive parents of the child or young person provide information about the child or young person to the director-general or principal officer of a private adoption agency to be given to the birth parents at such periods and in accordance with such terms as are stated in the order.

### 41 Amendment of adoption condition

- (1) If the court is of the opinion that the best interests of an adopted child or young person would be best served by a condition referred to in section 40 to which the adoption order is subject being amended, the court must, on application by an adoptive parent, a birth parent who consented to the adoption or by or on behalf of the adopted child or young person, by order amend the condition.
- (2) An application under subsection (1) must be accompanied by a report from the director-general.

- (3) An amendment of a condition must not grant to a person greater rights of access to an adopted child or young person unless the adoptive parents agree and the court is satisfied that, so far as practicable, the wishes and feelings of the child or young person have been ascertained and due consideration given to them having regard to the age and understanding of the child or young person.
- (4) For subsection (3) the court may inform itself in any way it thinks fit.

#### **42 Cessation of condition**

An adoption order ceases to be subject to a condition mentioned in section 40—

- (a) if the condition is omitted; or
- (b) when the adopted child or young person attains the age of 18 years.

### **Division 3.8 Effect of adoption orders**

#### **43 General effect**

- (1) Subject to this Act and the provisions of any other Territory law that expressly distinguishes between adopted people and other people, on the making of an adoption order, for all purposes—
  - (a) the adopted person becomes in law a child of the adoptive parents, and the adoptive parents become in law the parents of the adopted person as if the adopted person had been born to the adoptive parents; and
  - (b) the adopted person ceases to be a child of the birth parents or of any person (a *pre-adoption parent*) who was an adoptive parent before the making of the adoption order, and any such pre-adoption parent ceases to be a parent of the adopted person; and

- (c) if the order is made in favour of a step-parent—the relationship of the adopted person with the parent living in a domestic partnership with the step-parent is not affected; and
  - (d) the relationship to one another of all people (including the adopted person and the adoptive parents, birth parents or any former adoptive parent) must be decided on the basis of paragraphs (a), (b) and (c) so far as they are relevant; and
  - (e) any existing appointment of a person as guardian of the adopted person ceases to have effect; and
  - (f) any previous adoption of the adopted person (whether under a Territory law or otherwise) ceases to have effect.
- (2) However, an adoption order does not exclude any right of inheritance that the adopted person might otherwise have from or through a deceased person if—
- (a) 1 of the birth or former adoptive parents of an adopted person has died; and
  - (b) an adoption order is made in favour of a step-parent after that death.
- (3) Despite subsection (1), for any law of the Territory relating to a sexual offence, being a law under which the relationship between persons is relevant, an adoption order, or an order discharging an adoption order, must not be taken to cause the cessation of any relationship that would otherwise have existed, and any such relationship is taken to exist in addition to any relationship that exists because of the application of that subsection or because of the discharge of the adoption order.

#### **44 Disposition of property**

- (1) Section 43 (1) has effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, except that the subsection does not effect a disposition of property—
  - (a) by a person who, or by persons any of whom, died before the commencement of this Act; or
  - (b) that has taken effect in possession before the commencement of this Act.
- (2) Section 43 (1) does not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Act.
- (3) If—
  - (a) before the commencement of this Act, a person made, by an instrument other than a will, a disposition of property; and
  - (b) the disposition had not taken effect in possession before the commencement of this Act; and
  - (c) it did not appear from the instrument that it was the intention of that person to include an adopted child as an object of the disposition;

that person may, even though the instrument could not, apart from this subsection, be revoked or varied, by a like instrument, vary the first instrument to exclude an adopted child (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.
- (4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order made under this Act has the same effect as if the repealed laws had continued in force and the adoption order had been made under those laws.

(5) Nothing in section 43 or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Act) distinguishing between adopted children and children other than adopted children.

(6) In this section:

*repealed laws* means the following Acts or the Ordinances repealed by any of the following Acts:

- (a) *Adoption of Children Act 1965*;
- (b) *Adoption of Children Act 1974*;
- (c) *Adoption of Children (Amendment) Act 1979*;
- (d) *Adoption of Children (Amendment) Act 1983*;
- (e) *Adoption of Children (Amendment) Act 1988*;
- (f) *Adoption of Children (Amendment) Act 1991*.

#### **45 Names of adopted child or young person**

(1) On the making of an adoption order for a child or young person, the court may change the name of the child or young person, on the application of either of the adoptive parents.

(2) In deciding the name of a child or young person, the court must consider—

- (a) the best interests of the child or young person; and
- (b) the child's or young person's right to retain his or her name and identity.

(3) The court may approve any of the following as a family name for an adopted child or young person:

- (a) if both adoptive parents are known by the same family name—  
that name;



- (b) the maiden name or other family name of the child's or young person's mother;
  - (c) the family name of the child's or young person's father;
  - (d) the family name or former family name of any previous parent of the child or young person;
  - (e) a family name formed by combining the parent's family names or any previous parent's family names.
- (4) If an adoptive parent is applying for an order to change a child's or young person's given name, the director-general must provide the court with a written report about—
- (a) the proposed name change; and
  - (b) any exceptional circumstances; and
  - (c) the best interests of the child or young person.

*Note* See s 5 and s 6 for the matters that must be taken into account by a decision-maker in forming a view about the best interests of a child or young person.

- (5) In considering an application to change the given name of the adopted child or young person, the court—
- (a) must consider the report provided under subsection (4); and
  - (b) must retain the child's or young person's given name unless there are exceptional circumstances for changing the name; and
  - (c) may give the child or young person additional given names.

**Example—par (b)**

An exceptional circumstance would be if the given name is likely to make the child or young person vulnerable to ridicule or teasing in every day life in Australian society.

- (6) The registrar of the court must notify the registrar-general under the *Births, Deaths and Marriages Registration Act 1997* if a child's or young person's name is changed under this section.

- (7) This section does not prevent the changing of any name of an adopted child or young person, after the making of the adoption order, in accordance with the law of the Territory.

*Note* The *Births, Deaths and Marriages Registration Act 1997*, s 19 allows parents to apply for a change of name of a child.

#### **46 Effect of order on domicile**

- (1) On the making of an adoption order, the adopted child or young person acquires the domicile of the adoptive parents at the date on which the adoption order was made and after that date the child's or young person's domicile must be determined as if the child or young person had been born to the adoptive parents.
- (2) The domicile acquired under subsection (1) by an adopted child or young person must for all purposes be taken to be also the child's or young person's domicile of origin.

#### **47 Distribution of property by trustee or personal representative**

- (1) Despite any other provision of this Act, a trustee or personal representative may, subject to this section, 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 as a consequence of which a person is or is not entitled to an interest in the property.
- (2) A trustee or personal representative conveying, transferring or distributing property as mentioned in subsection (1) must not be liable to a person claiming directly or indirectly because of the making of an adoption order unless the trustee or personal representative had notice of the claim before the time of the conveyance, transfer or distribution.
- (3) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a bona fide purchaser for value without notice, who has received it.

## **48 Bequest by will to unascertained adopted person**

- (1) If, under a will made after the commencement of this Act—
- (a) a disposition of property or of an interest in property (a *bequest*) is expressed to be made by the testator to a person (the *beneficiary*) who is not named but who is described as a child of the testator or of a domestic partner, parent, child, brother or sister of the testator, being a person who was adopted by another person; and
  - (b) the personal representative of the testator is unable to ascertain the name and address of the beneficiary;

the personal representative must give to the public trustee and guardian a copy of the will and a statement that he or she is unable to ascertain the name and address of the beneficiary.

*Note* For the meaning of *domestic partner*, see [Legislation Act](#), s 169.

- (2) If the public trustee and guardian is given a copy of a will under subsection (1), the public trustee and guardian must, in writing, request the director-general to ascertain and give to the public trustee and guardian the name and address of the beneficiary.
- (3) If the director-general receives a request under subsection (2), the director-general must examine the records in the possession of the director-general and, if necessary, ask a private adoption agency or other body or person to attempt to ascertain the name and address of the beneficiary or, if the beneficiary has died, the date of the death, and the director-general must tell the public trustee and guardian the results of the examination and enquiries.

- (4) If the information received from the director-general does not show the name and address of the beneficiary, or shows that the beneficiary has died, the public trustee and guardian must inform the personal representative accordingly.
- (5) If the information received from the director-general shows the name and address of the beneficiary, the public trustee and guardian must, if the beneficiary has attained the age of 18 years—
  - (a) find out whether the beneficiary wishes to accept the bequest; and
  - (b) if the beneficiary does not wish to accept the bequest—inform the personal representative accordingly; and
  - (c) if the beneficiary does wish to accept the bequest—inform the personal representative that the proceeds of the bequest should be transferred to the public trustee and guardian on behalf of the beneficiary; and
  - (d) on receiving the proceeds of the bequest—transmit the proceeds to the beneficiary.
- (6) If the information received from the director-general shows the name and address of the beneficiary, the public trustee and guardian must, if the beneficiary has not attained the age of 18 years—
  - (a) inform the personal representative that the proceeds of the bequest should be transferred to the public trustee and guardian to be held in trust for the beneficiary; and
  - (b) hold the proceeds of the bequest in trust for the beneficiary on the trusts (if any) set out in or arising under the will until the beneficiary attains the age of 18 years; and
  - (c) on the beneficiary attaining the age of 18 years, transfer the proceeds of the bequest to the beneficiary (unless the beneficiary then disclaims the bequest).

- (7) If the personal representative transfers the proceeds of a bequest to the public trustee and guardian under this section, the personal representative is taken to have transferred the bequest to the beneficiary.
- (8) If the public trustee and guardian gives to the personal representative a written statement to the effect that the beneficiary has disclaimed a bequest to which the beneficiary was entitled under the will that statement is, for the purpose of the administration of the estate by the personal representative, conclusive evidence that the beneficiary has disclaimed the bequest.
- (9) The public trustee and guardian must not, in information conveyed to a personal representative under this section, include particulars that identify or tend to identify the adopted person.

#### **49 Gifts between living people**

- (1) Section 48 applies in relation to a deed executed after the commencement of this Act by which a gift of money is expressed to be made by a person (the *donor*) to a person who is not named but who is described as the child of the donor or of a domestic partner, parent, child, brother or sister of the donor, being a person who has been adopted by another person.

*Note* For the meaning of *domestic partner*, see [Legislation Act](#), s 169.

- (2) In the application of section 48 because of subsection (1), that section has effect as if—
  - (a) a reference in that section to a will were a reference to the deed of gift; and
  - (b) a reference in that section to the testator or to a personal representative were a reference to the donor; and
  - (c) a reference in that section to property or to an interest in property were a reference to the money that is the subject of the gift.

## Division 3.9 Interim orders

### 50 Making of order

- (1) On an application to the court for an adoption order, the court may postpone a decision on the application and make an interim order in favour of the applicants for the custody of the child or young person.
- (2) An interim order may be subject to any terms and conditions relating to the maintenance, education and wellbeing of the child or young person that the court thinks fit.
- (3) An interim order must not be made in favour of any person unless an adoption order in respect of the child or young person could be made in favour of the person.

### 51 Duration

- (1) Subject to subsection (2) and to section 52, an interim order remains in force for the period, not exceeding 1 year, that the court states in the order and for any further periods that the court orders.
- (2) An interim order must not be in force for periods exceeding, in total, 2 years.

### 52 Discharge

- (1) The court may, at any time, make an order discharging an interim order, and may make any order for the custody of the child or young person that the court thinks fit.
- (2) An interim order ceases to have effect on the making of an adoption order in respect of the child or young person, whether made in the ACT, a State or another Territory.

## Part 4                      **Recognition of Australian adoptions**

### **53                      Recognition of Australian adoptions**

An order for the adoption of a person that was made in a State or another Territory (whether before or after the commencement of this Act) has the same effect as an adoption order made under this Act if the order—

- (a) was made in accordance with the law of the State or Territory;  
and
- (b) has not been rescinded under the law of the State or Territory.

## Part 4A Intercountry and overseas adoption

### Division 4A.1 Preliminary

#### 54 Adoptions outside Australia—general

- (1) The adoption of a person in a country outside Australia (whether before or after the commencement of this section) does not have effect as an adoption for the law of the Territory, except as provided for in this part.
- (2) However, nothing in this part affects any right that was acquired by, or became vested in, a person before the commencement of this part.

#### 55 State central authority

- (1) The director-general is the State central authority for the ACT for the purposes of the Convention, article 6 (2).
- (2) The director-general must tell the Commonwealth central authority—
  - (a) that the director-general is the State central authority for the ACT; and
  - (b) the address and functions of the State central authority for the ACT.

#### 56 Functions of State central authority

- (1) Subject to subsection (2), the State central authority for the ACT—
  - (a) has all the duties of a central authority under the Convention; and
  - (b) may exercise all of the powers of a central authority under the Convention.



- (2) The functions of the State central authority for the ACT do not include any functions that are functions of the Commonwealth central authority under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth).

## **Division 4A.2 Convention on intercountry adoption**

### **Subdivision 4A.2.1 Adoption under Convention**

#### **57 Adoption in ACT of ACT child or young person by parents from Convention country**

- (1) The court may make an adoption order for the adoption of a child or young person who is habitually resident in the ACT by a prospective adoptive parent or parents who are habitually resident in a Convention country.

*Note* **Convention country** does not include Australia—see the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth), reg 4.

- (2) Division 3.2 (Who can adopt?) does not apply to an adoption order under this section.
- (3) In addition to the matters set out in section 39F (Deciding application for adoption order for child or young person), the court must not make the order unless satisfied that—
- the report mentioned in section 57A has been given to the central authority of the Convention country; and
  - the central authority of the Convention country has agreed to the adoption of the child or young person; and
  - the central authority of the Convention country has agreed to recognise the ACT adoption order as a full and permanent adoption order in the Convention country; and
  - the prospective adoptive parent or parents are present in the ACT when the adoption order is made.

- (4) The court must not make the order if the child or young person is not allowed to leave Australia—
- (a) under a law of the Commonwealth, a State or another Territory;  
or
  - (b) because of an order of a court of the Commonwealth, a State or another Territory.

**57A Report on child for intercountry adoption**

- (1) For an adoption order mentioned in section 57, the director-general must prepare a written report that includes—
- (a) information about the identity, background, social environment, family and medical history of the child or young person; and
  - (b) evidence that each consent required under division 3.3 has been given, or that the requirement for consent has been dispensed with; and
  - (c) details of the consideration given to placing the child or young person for adoption in Australia and any other action that could be taken to care for the child or young person in Australia; and
  - (d) an assessment of whether the director-general is satisfied that the child should be adopted outside Australia; and
  - (e) information about the circumstances and suitability of the prospective adoptive parent or parents.
- (2) A copy of the report must be given to—
- (a) the court; and
  - (b) the central authority of the Convention country where the prospective adoptive parent or parents are habitually resident.

**57B Adoption in ACT of child or young person from  
Convention country by ACT parents**

- (1) The court may make an adoption order for the adoption of a child or young person who is habitually resident in a Convention country by a prospective adoptive parent or parents who are on the register of suitable people.

*Note* For the register of suitable people, see s 19.

- (2) In addition to the matters set out in section 39F (Deciding application for adoption order for child or young person), the court must not make the order unless satisfied that—
- (a) the central authority of the Convention country has agreed to the adoption of the child or young person; and
  - (b) the child or young person is allowed to reside permanently in Australia; and
  - (c) the child or young person is present in the ACT when the adoption order is made; and
  - (d) arrangements for adoption of the child or young person have been made by the director-general or a private adoption agency.
- (3) For subsection (2) (b), a child or young person is not allowed to reside permanently in Australia if the child or young person is affected by a law of the Commonwealth, a State or Territory, or by an order of a Commonwealth, State or Territory court, the effect of which is to prevent the child or young person permanently residing in Australia.

*Note* A child entering Australia before the order is made is subject to the [Immigration \(Guardianship of Children\) Act 1946](#) (Cwlth). See this Act, s 37.

### **57C Issue of adoption compliance certificate**

If the court has made an adoption order for the adoption of a child or young person under section 57 or section 57B, the State central authority for the ACT may issue an adoption compliance certificate.

*Note* *Adoption compliance certificate*—see the dictionary.

### **Subdivision 4A.2.2 Recognition under Convention**

#### **57D Recognition of adoption of child or young person from Convention country in that country**

- (1) This section applies if—
  - (a) an adoption (whether before or after the commencement of this section) by a person who is habitually resident in the ACT, of a child or young person who is habitually resident in a Convention country, is granted in that country; and
  - (b) arrangements for adoption of the child or young person have been made by the director-general or a private adoption agency; and
  - (c) an adoption compliance certificate issued (whether before or after the commencement of this section) in the Convention country is in force for the adoption.

*Note* *Adoption compliance certificate*—see the dictionary.

- (2) Subject to section 57G (Refusal to recognise adoption or decision), the adoption is recognised and effective, for the law of the Territory, on and after the day the certificate becomes effective.

**57E Recognition of adoption of child or young person from Convention country to another Convention country**

- (1) This section applies if—
  - (a) an adoption (whether before or after the commencement of this section) by a person who is habitually resident in a Convention country, of a child or young person who is habitually resident in another Convention country, is granted; and
  - (b) an adoption compliance certificate issued (whether before or after the commencement of this section) in the Convention country in which the adoption is granted is in force for the adoption.
- (2) Subject to section 57G (Refusal to recognise adoption or decision), the adoption is recognised and effective, for the law of the Territory, on and after the day the certificate becomes effective.

**57F Effect of recognition**

- (1) Subject to subsection (2), for the law of the Territory, an adoption of a child or young person that is recognised and effective under section 57D or section 57E is to be treated as having the same effect as an adoption order made under this Act.

*Note* See s 43 (General effect) and the Convention, art 26 and 27. The text of the Convention is set out in sch 1.

- (2) The legal relationship between the child or young person and the individuals who were, immediately before the adoption, the child's or young person's parents is terminated if the law of the Convention country where the adoption was granted provides that the adoption of the child or young person terminates the legal relationship.

**57G Refusal to recognise adoption or decision**

- (1) The director-general may apply to the court for a declaration that an adoption or decision made in accordance with the Convention, article 27 is not recognised.

- (2) The court may make the declaration if satisfied that the adoption or decision is manifestly contrary to public policy, taking into account the best interests of the child or young person.
- (3) If the court declares that it does not recognise the adoption or decision, the adoption or decision has no effect for the law of the Territory.

**57H Order terminating legal relationship between child or young person and parents**

- (1) This section applies if—
  - (a) an adoption, by an adoptive parent who is habitually resident in the ACT, of a child or young person who is habitually resident in a Convention country is granted in that country; and
  - (b) the law of the Convention country does not provide that the adoption of the child or young person terminates the legal relationship between the child or young person and the individuals who were, immediately before the adoption, the child's or young person's parents (the *pre-adoption parents*).

*Note* The text of the Convention is set out in sch 1.

- (2) The director-general may, on behalf of an adoptive parent, apply to the court for an order that the adoption of the child or young person terminates the legal relationship between the child or young person and the pre-adoption parents.
- (3) The director-general must give written notice of the application to the central authority of the Convention country that granted the adoption.
- (4) The court may make the order only if satisfied that—
  - (a) an adoption compliance certificate issued in the Convention country is in force for the adoption; and

- (b) the law of the Convention country does not provide that the adoption of the child or young person terminates the legal relationship between the child or young person and the pre-adoption parents; and
  - (c) the child or young person is allowed—
    - (i) to enter Australia; and
    - (ii) to reside permanently in Australia; and
  - (d) notice has been given as required by subsection (3).
- (5) For subsection (4) (c), a child or young person is not allowed to enter or reside permanently in Australia if the child or young person is affected by a law of the Commonwealth, a State or Territory, or by an order of a Commonwealth, State or Territory court, the effect of which is to prevent the child or young person from entering or residing permanently in Australia.

## **57I Evidential value of adoption compliance certificate**

Subject to section 57G (Refusal to recognise adoption or decision), an adoption compliance certificate issued in a Convention country is evidence, for the law of the Territory, that the adoption to which the certificate or order relates—

- (a) was agreed to by the central authorities of the countries mentioned in the certificate; and
- (b) was carried out in accordance with the Convention and the law of that country.

*Note* **Adoption compliance certificate**—see the dictionary.

## Division 4A.3 Bilateral arrangements for intercountry adoptions

### 57J Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents

- (1) The court may make an adoption order for the adoption of a child or young person who is habitually resident in a prescribed overseas jurisdiction by a prospective adoptive parent or parents who are on the register of suitable people.

*Note* For the register of suitable people, see s 19.

- (2) In addition to the matters set out in section 39F (Deciding application for adoption order for child or young person), the court must not make the order unless satisfied that—
- (a) the competent authority of the prescribed overseas jurisdiction has agreed to the adoption of the child or young person; and
  - (b) the child or young person is allowed to reside permanently in Australia; and
  - (c) the child or young person is present in the ACT when the adoption order is made; and
  - (d) arrangements for adoption of the child or young person have been made by the director-general or a private adoption agency.
- (3) For subsection (2) (b), a child or young person is not allowed to reside permanently in Australia if the child or young person is affected by a law of the Commonwealth, a State or Territory, or by an order of a Commonwealth, State or Territory court, the effect of which is to prevent the child or young person permanently residing in Australia.

*Note 1* A child entering Australia before the order is made is subject to the [Immigration \(Guardianship of Children\) Act 1946](#) (Cwlth) see this Act, s 37.

*Note 2* **Prescribed overseas jurisdiction**—see the dictionary.



**57K Evidential value of adoption compliance certificate—  
div 4A.3**

An adoption compliance certificate issued in a prescribed overseas jurisdiction, or an adoption order certified by the competent authority of a prescribed overseas jurisdiction as having been made in accordance with the law of that country, is evidence, for the law of the Territory, that the adoption to which the certificate or order relates was carried out in accordance with the law of the prescribed overseas jurisdiction.

**Division 4A.4 Recognition of other overseas  
adoptions**

**57L Recognition of adoption order made outside Australia**

- (1) This section applies to an order for the adoption of a person that was made (whether before or after the commencement of this section) in a country outside Australia if, when the legal steps that resulted in the adoption were commenced, the adoptive parent or parents—
  - (a) had been resident in a country outside Australia for 1 year or more; or
  - (b) were domiciled in a country outside Australia.
- (2) An order for the adoption of a person to which this section applies has the same effect as an adoption order made under this Act if—
  - (a) the adoption is in accordance with and has not been rescinded under the law of the country outside Australia where the adoption order was made; and
  - (b) in consequence of the adoption, the adoptive parent or parents, under the law of that country, have a right superior to that of the adopted person's birth parents in relation to the care of the adopted person; and

- (c) under the law of that country, the adoptive parent or parents were, because of the adoption, placed generally in relation to the adopted person in the position of a parent or parents.
- (3) Despite subsection (2), a court (including a court dealing with an application under section 57M) may refuse to recognise an adoption under this section if it appears to the court that the procedure followed, or the law applied, in connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.
- (4) A court that refuses to recognise an adoption may, when refusing or later, give leave to the applicant to seek an order for the adoption of the person concerned.
- (5) In any proceeding before a court (including a proceeding under section 57M), it is to be presumed unless the contrary appears from the evidence, that an order for the adoption of a person that was made in a country outside Australia complies with subsection (1).
- (6) This section does not affect any right that was acquired by, or became vested in, a person before the commencement of this section.

**57M Declaration of validity of adoption order made outside Australia**

- (1) Any of the parties to an adoption order made in a country outside Australia may apply to the court for a declaration that the order complies with section 57L.
- (2) On an application under this section, the court may—
  - (a) direct that notice of the application be given to the people (including the Attorney-General) that the court thinks fit; or
  - (b) direct that a person be made a party to the application; or
  - (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceeding.

- (3) If the court makes a declaration under this section, it may include in the declaration the particulars in relation to the adoption, the adopted person and the adoptive parent or parents that the court finds to be established.
- (4) For the law of the Territory, a declaration under this section binds—
  - (a) the Territory, whether or not notice was given to the Attorney-General; and
  - (b) a person who was a party to the proceeding for the declaration or a person claiming through a party to the proceeding; and
  - (c) a person to whom notice of the application for the declaration was given or a person claiming through a person given notice.
- (5) For the law of the Territory, a declaration under this section does not affect—
  - (a) the rights of a person not mentioned in subsection (4); or
  - (b) an earlier judgment, order or decree of a court or other body of competent jurisdiction.
- (6) In a proceeding in a court of the Territory, the production of a certified copy of a declaration made under this section is evidence—
  - (a) of the facts stated in, and the matters appearing from, the order mentioned in subsection (1); and
  - (b) that the adoption complies with section 57L.

## Part 5 Access to information

### Division 5.1 General

#### 58 Definitions—pt 5

In this part:

*adoptive relative* means a person who is a relative within the meaning of this Act as a consequence of an adoption.

*associated person*, in relation to an adoption, means—

- (a) the adopted person; or
- (b) an adoptive parent; or
- (c) a birth parent or relative of the adopted person; or
- (d) a child or other descendant of the adopted person.

*birth parent*, of an adopted person, includes anyone who was a guardian of the person before the person was adopted.

*birth relative*, of an adopted person, means a person who—

- (a) was a relative of the person before the person was adopted; or
- (b) would have been a relative of the person if the adoption had not taken place.

*identifying information*, in relation to an adoption, means—

- (a) a copy of, or an extract from, an entry in a register of births relating to the adopted person; or
- (b) information from which a birth parent, a birth relative or the adopted person may be identified (other than information that consists of the address of a place of residence).

*information* means identifying information or non-identifying information (not being personal, sexual or medical information of a prescribed kind).

*relevant authority*, in relation to information, means—

- (a) the director-general; or
- (b) if the information is contained in records in the possession or under the control of a private adoption agency—that agency; or
- (c) if the director-general has declared in writing that a private adoption agency is for the time being the relevant authority for this part in relation to that kind of information—that agency.

## **59 Application—pt 5**

- (1) The provisions of this part (other than section 70 and section 71) apply in relation to an adoption whether the adoption order was made before or after the commencement of this Act.
- (2) Section 70 and section 71 apply in relation to an adoption only if the adoption order was made—
  - (a) before the commencement of this Act; or
  - (b) after the commencement of this Act but before the commencement of the [Adoption Amendment Act 2009 \(No 2\)](#).
- (3) If an adopted person is ordinarily resident in the ACT, the provisions of this part apply in relation to the adoption of the person whether the adoption order was made in the ACT or elsewhere.

## **60 Confidentiality of records**

- (1) Except as provided in this part—
  - (a) records in the possession or under the control of the director-general or a private adoption agency relating to an adoption; or

- (b) the records of the court (other than an order or decision of the court) relating to proceedings on an application for an adoption order; or
- (c) an entry in the register of births relating to the birth of an adopted person, or a copy of, or extract from, such an entry;

must not be made available to, or be open to inspection by, any person.

- (2) Subsection (1) does not operate to prevent a person whose duties require it, from obtaining access to information if it is necessary to do so for the administration of this Act.

## **61 Records of adoptions**

- (1) The director-general must maintain records—
  - (a) for each adoption negotiated or arranged by or for the director-general; or
  - (b) given to the director-general under subsection (2).
- (2) A private adoption agency must—
  - (a) maintain records for each adoption negotiated or arranged by it; and
  - (b) as soon as practicable after an adoption order has been made following such negotiations or arrangements, give the director-general the prescribed particulars concerning the persons associated with the application for the order.
- (3) For subsection (2), the associated people are the adopted person, an adoptive parent, a birth parent and the person who made the report mentioned in section 39D.
- (4) A regulation may provide for the length of time for which, and the manner in which, records are to be maintained for subsection (1) or (2).

## **62 Provision of information**

- (1) If—
- (a) the director-general receives an application for information under this part; and
  - (b) the director-general is satisfied that the applicant is a person who, in accordance with this part, is entitled to access to, and to apply for, that information;
- the director-general must—
- (c) if that information is contained in records in the possession or under the control of the director-general—give that information to the applicant; and
  - (d) if the information is, to the director-general's knowledge, contained in records in the possession or under the control of a relevant authority—
    - (i) request the authority to—
      - (A) give the information to the director-general; or
      - (B) if the application so requests—give the information to the applicant; and
    - (ii) if the information is received by the director-general from the authority—give that information to the applicant; or
  - (e) if the information is not contained in any records mentioned in paragraph (c) or (d)—
    - (i) make any enquiries that are reasonable in the circumstances of the case in an endeavour to obtain the information; and
    - (ii) on obtaining the information, give it to the applicant.

- (2) Subsection (1) must not be taken to require the director-general to give information, to make enquiries or requests or to do any other act unless any fee or charge payable under a law of the Territory, a State or another Territory for searching for or giving information of that kind has been paid.
- (3) If—
- (a) the registrar-general receives an application for information under this part; and
  - (b) the registrar-general is satisfied that the applicant is a person who, in accordance with this part, is entitled to access to, and to apply for, that information;
- the registrar-general must, on payment of the fee determined for the *Births, Deaths and Marriages Registration Act 1997*, section 43 cause a search to be made in the register of births and issue to the applicant—
- (c) a copy of, or an extract from, the relevant entry; or
  - (d) a notification of the result of the search.

## **Division 5.2 Non-identifying information**

### **63 Right of access**

Subject to this division, an associated person is entitled to access to, and to apply for information, other than identifying information, about an adoption.



**64 Protection of privacy**

- (1) A person is not, because of this division, entitled to personal information relating to another person (whether alive or dead).
- (2) In subsection (1):

*personal information* means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**65 Medical information**

If, under this division, information about the medical or psychiatric condition of an applicant for that information or of a birth parent, birth relative or child of the applicant, may be disclosed, the relevant authority may, if the authority considers that the disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant, refuse to disclose the information to the applicant personally and instead may disclose it (without identifying a person other than the applicant) to a medical practitioner nominated by the applicant and approved by the authority.

**Division 5.3 Identifying information**

**66 Right of access**

Subject to this division, an associated person is entitled to access to, and to apply for, identifying information about an adoption.

**67 Recipient of application**

- (1) An application under section 66 must be made to—
  - (a) if the information sought consists of a copy of, or an extract from, an entry in the register of births—the registrar-general; and
  - (b) in any other case—the director-general.

- (2) On receiving an application under subsection (1), the registrar-general must notify the director-general in writing accordingly.

**68 Restriction on entitlement to apply**

- (1) An adopted person who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each adoptive parent and each birth parent.
- (2) Subsection (1) does not apply if—
- (a) an adoptive parent is a step-parent; and
  - (b) the information sought consists of a copy of, or an extract from, an entry in the register of births.
- (3) A birth parent of an adopted person who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each adoptive parent.
- (4) A birth relative of an adopted child is not entitled to identifying information unless—
- (a) if the information sought consists of a copy of, or an extract from, an entry in the register of births relating to the period before the person's adoption—the applicant can demonstrate that he or she knows the names of each birth parent of the person who is named in the register; and
  - (b) if the adopted person has not attained the age of 18 years—approval in writing has been obtained from each adoptive parent.
- (5) An adoptive parent of an adopted person who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each birth parent.

- (6) Despite subsections (1) to (5) the approval of a person is not required for this division if the director-general or the registrar-general, as the case requires, is satisfied that—
- (a) the person is dead; or
  - (b) the location of the person is not known and could not with reasonable enquiries be ascertained.
- (7) The director-general may withhold information from a birth parent if the director-general believes, on reasonable grounds, that the person has been subjected to sexual or physical abuse from that birth parent.

**69 Assistance in obtaining approval**

On receiving—

- (a) an application for identifying information; or
- (b) a notification under section 67 (2) in relation to such an application;

the director-general must, at the request of the applicant, on his or her behalf seek to obtain from each person whose approval is required approval in writing to the information being provided.

**70 Objection to contact—adoptions before Adoption Amendment Act 2009 (No 2)**

*Note* This section applies in relation to an adoption order only if the adoption order was made before the commencement of the [Adoption Amendment Act 2009 \(No 2\)](#) (see this Act, s 59 (2)).

- (1) An objection to contact (an *objection*) may be made by—
- (a) an adopted person who is at least 17 years and 6 months old; or
  - (b) an adoptive parent; or
  - (c) a birth relative who is at least 18 years old; or
  - (d) an adoptive relative who is at least 18 years old; or

- (e) a child or other descendant of an adopted person, being a child or other descendant, who is at least 18 years old; or
  - (f) a birth parent.
- (2) An objection—
- (a) must state the person or a class of people (each of whom is an associated person) to whom the objection relates; and
  - (b) must be made by notice in writing lodged with the director-general; and
  - (c) continues in force until revoked by notice in writing lodged with the director-general, by the person who made the objection.
- (3) If the director-general receives an objection or revocation, the director-general must enter the particulars in the contact veto register.
- (4) An objection made by a person who is under 18 years old takes effect when the person turns 18 years old.

**71 Contact veto by person other than adopted person—  
adoptions before Adoption Amendment Act 2009 (No 2)**

*Note* This section applies in relation to an adoption order only if the adoption order was made before the commencement of the [Adoption Amendment Act 2009 \(No 2\)](#) (see s 59 (2)).

- (1) A contact veto may be lodged by a parent on behalf of a person who is under 18 years old if—
- (a) the person is not an adopted person; and
  - (b) the person would be entitled to lodge an objection on turning 18 years old.
- (2) A contact veto lodged under subsection (1) remains in force until—
- (a) the parent who lodged the objection revokes it; or
  - (b) the person on whose behalf the objection was lodged turns 18 years old.

- (3) A person may lodge a contact veto if the person—
  - (a) is not an adopted person; and
  - (b) is at least 17 years and 6 months old.
- (4) A contact veto lodged under subsection (3) comes into effect when the person turns 18 years old.

## **72 Counselling services**

- (1) The director-general must not give a document or information to an applicant stated in, or included in a class of persons stated in, a contact veto under this part unless the applicant has attended an interview with an approved counsellor.
- (2) If the director-general receives an application under this part from an applicant mentioned in subsection (1), the director-general must tell the applicant in writing of the place or places where counselling services are available and that information cannot be given under this part unless the applicant has attended an interview with an approved counsellor.
- (3) This section does not apply if the director-general is satisfied that the adopted person and another person mentioned in the original birth certificate relating to the adopted person have already exchanged information that may identify that birth parent or a birth relative of the adopted person.
- (4) The director-general may approve a person as a counsellor for this Act.
- (5) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (6) The director-general must not approve a person as a counsellor under subsection (4) unless the person has, in the opinion of the director-general, the qualifications and experience appropriate for a counsellor for this Act.

*Note* An objection to contact under s 70 may be made in relation to an adoption only if the adoption order was made before the commencement of the *Adoption Amendment Act 2009 (No 2)*.

### **73 Declaration that contact not be attempted**

- (1) This section applies if—
- (a) a person stated in, or included in a class of people stated in, an objection to contact or contact veto requests information under section 67 (1); and
  - (b) an objection to contact or contact veto has been made under section 70 or section 71; and
  - (c) the objection to contact or contact veto has not been revoked.

*Note* An objection to contact under s 70 and a contact veto under s 71 may only be made in relation to an adoption order made before the commencement of the *Adoption Amendment Act 2009 (No 2)*.

- (2) The director-general must not divulge the information unless the person requesting the information—
- (a) has attended a counselling service under section 72; and
  - (b) signs a declaration that he or she will not—
    - (i) contact or attempt to contact the person who lodged the objection; or
    - (ii) arrange or attempt to arrange contact with that person; or
    - (iii) procure another person to contact, attempt to contact, or attempt to arrange contact with, that person.

**74 Birth details of adopted person born overseas**

When an adopted person who was—

- (a) born outside Australia; and
- (b) brought to Australia for adoption in Australia;

attains the age of 18 years, the director-general must, at the request of the adopted person, give the person a copy of his or her birth certificate or any other information that is available from the records of the appropriate authority in the person's country of origin.

**75 Application to court in absence of consent**

- (1) If—
  - (a) a person would, under this division, be entitled to identifying information with the approval in writing of another person; and
  - (b) that other person has refused to give that approval;the first person may apply to the court for an order under subsection (3).
- (2) On an application under subsection (1), the court may request the director-general to investigate the matter and to provide a written report to the court.
- (3) The court may, if of the opinion that there are circumstances that justify the order, make an order declaring that the applicant is entitled to access to, and to apply for, the identifying information specified in the order.
- (4) If the court makes an order under subsection (3), the applicant for the order is, for section 62, taken to be entitled to access to, and to apply for, identifying information of the kind stated in the order.

## **76 Other person's right to information**

- (1) A person who is not entitled under any other provision of this part to access to, and to apply for, information may apply to the court for an order under subsection (3).
- (2) An application under subsection (1) must be accompanied by a report from the director-general.
- (3) On an application under subsection (1), the court may, after considering the report mentioned in subsection (2) and if of the opinion that there are circumstances that justify the order, make an order declaring that the applicant is entitled to access to, and to apply for, the information stated in the order.
- (4) If the court makes an order under subsection (3), the applicant for the order is, for the purposes of section 60 (1), taken to be entitled to access to, and to apply for, information of the kind stated in the order.

## **77 Family information service**

- (1) The Minister must establish and maintain within the relevant administrative unit a service to be known as the family information service.
- (2) The director-general is responsible for the administration of the service.
- (3) The function of the service is to—
  - (a) advise people about the provisions of this part; and
  - (b) make arrangements for the provision of counselling in relation to applications under this part; and
  - (c) supervise the taking of and keep declarations made under section 73; and
  - (d) receive applications for information under this part; and



- (e) subject to and in accordance with this part, facilitate the provision of information to a person whose name is entered in the adoption information register maintained under section 78.

## **78 Adoption information register**

- (1) The director-general must establish and maintain an adoption information register.
- (2) The register must contain—
  - (a) the names and addresses of—
    - (i) adopted persons; and
    - (ii) birth parents of adopted persons; and
    - (iii) birth relatives of adopted persons; and
    - (iv) adoptive parents;  
who have, in writing, requested the director-general to enter their names and addresses in the register; and
  - (b) in relation to each person so registered, notations recording the wishes of any such person about to—
    - (i) obtaining identifying information about, or contacting or providing information to; or
    - (ii) whether or not to release the name, address or any information about the person to;  
another person whose name is, or may in the future be, entered in the adoption information register.
- (3) The director-general must, on the written request of a person whose name is entered in the adoption information register, amend or cancel the entry relating to that person.

## 79 Contact veto register

- (1) The director-general must establish and maintain a contact veto register .
- (2) The register must contain—
  - (a) the name of each person who has duly lodged a contact veto; and
  - (b) the address nominated by the person as the address at which any personal or postal contact by the director-general with the person should be made; and
  - (c) the date and place of birth of the person; and
  - (d) the persons or class of persons in relation to whom an objection under section 70 or 71 has been lodged; and
  - (e) the name and address of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

## 80 Reunion information register

- (1) The director-general must establish a reunion information register.
- (2) The director-general must enter in the register the name of every person who has duly applied for entry of his or her name in the register with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption.

*Note* If a form is approved under s 120A (Approved forms) for an application, the form must be used.

## Part 6 Private adoption agencies

### 81 Application for approval

- (1) A charitable organisation desiring to conduct negotiations and make arrangements for the adoption of children or young people may apply in writing to the director-general for approval as a private adoption agency.
- (2) An application under subsection (1) must state the name of a person appointed by the organisation to be its principal officer in the Territory for this Act.

### 82 Grant or refusal of approval

- (1) The director-general may grant or refuse to grant the approval sought in the application under section 81 (1).
- (2) Without limiting subsection (1), the director-general must refuse the approval sought if it appears to the director-general that the applicant is—
  - (a) not a charitable organisation; or
  - (b) not suited to conducting negotiations and making arrangements for the adoption of children or young people.
- (3) For subsection (2), the director-general must have regard to—
  - (a) the qualifications, experience, character and number of persons—
    - (i) taking part, or proposing to take part, in the management or control of the organisation; or
    - (ii) who would, on behalf of the organisation, conduct the negotiations or make the arrangements if the approval were granted; and
  - (b) any other relevant considerations.

**83 Change in principal officer**

- (1) If a vacancy occurs in the position of principal officer for a private adoption agency, the agency must, within 7 days—
  - (a) appoint a person resident in the ACT as its principal officer in the ACT for this Act; and
  - (b) notify the director-general in writing accordingly.
- (2) A person ceases to be the principal officer of a private adoption agency for this Act if the person ceases to be resident in the ACT.

**84 Effect of action by principal officer**

- (1) Any act or thing done by the principal officer of a private adoption agency for this Act is, for this Act, taken to have been done by the private adoption agency.
- (2) Subsection (1) must not be taken to affect any personal liability of a principal officer for any act or thing done.

**85 Revocation or suspension of approval**

- (1) The director-general may, by written notice served on the principal officer of a private adoption agency, revoke or suspend the approval of the agency under this part—
  - (a) at the request of the agency; or
  - (b) on the ground that the agency—
    - (i) is no longer suitable to conduct negotiations and make arrangements with a view to the adoption of children or young people; or
    - (ii) has contravened a provision of this part or the regulations.
- (2) For subsection (1) (b) (i), the director-general must have regard to the matters specified in section 82 (3).

**86 Effect of cessation of approved agency**

If a charitable organisation ceases to be approved as a private adoption agency—

- (a) all records and other documents held by it or under its control relating to the conduct of negotiations or the making of arrangements of adoptions become the property of the director-general; and
- (b) if the principal officer of the organisation was, immediately before the cessation, the guardian of a child or young person under this Act—the director-general becomes the guardian of that child or young person on the cessation; and
- (c) the negotiations or arrangements being undertaken by the organisation immediately before the cessation may be continued by the director-general.

**87 Requirements for private adoption agencies**

A regulation may prescribe requirements to be observed, and facilities to be provided, by private adoption agencies, including requirements about the qualifications and experience of persons acting for or on behalf of private adoption agencies.

## Part 7                      Offences

### 88                      Territorial application of pt 7

This part does not apply to acts occurring outside the ACT but, except to the extent to which the contrary intention appears, does apply to acts done in the ACT in relation to the adoption of children or young people in, or children or young people adopted in, a State, another Territory or another country.

### 89                      Taking away etc of adopted child or young person by birth parent

A person who was a parent or guardian of a child or young person but has, because of an adoption of the child or young person, ceased to be the parent or guardian of the child or young person must not take, lead, entice or decoy the child or young person away, or detain the child or young person with intent to deprive the adoptive parents of the custody of the child or young person.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

### 90                      Receiving or harbouring child or young person

A person must not receive or harbour a child or young person on behalf of a person who, to his or her knowledge, has contravened section 89.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**91 Interfering with upbringing of child or young person**

A person who was a parent or guardian of a child or young person but has, because of an adoption of the child or young person, ceased to be the parent or guardian of the child or young person must not—

- (a) interfere in or influence the upbringing of the child or young person or the relationship between the child or young person and the adoptive parents; or
- (b) except if an adoptive parent is a birth relative of the child or young person or a step-parent—otherwise than in accordance with the approval of the director-general or with division 3.7, communicate in any way with—
  - (i) the child or young person until he or she attains the age of 18 years; or
  - (ii) a person who, to his or her knowledge, is an adoptive parent of the child or young person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**92 Approval of communications**

The director-general—

- (a) must not approve a communication for section 91 (b) without the consent of the adoptive parents; and
- (b) may approve the communication generally or subject to specified conditions and restrictions.

**93 Director-general's report for prosecution**

In proceedings for an offence against section 91 (b), a court must—

- (a) require the director-general to give a written report about the circumstances of the alleged communication; and
- (b) consider that report.

**94 Payments in consideration of adoptions etc**

- (1) Subject to this section, a person must not (whether before or after the birth of the child or young person concerned) make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of—

- (a) the adoption or proposed adoption of a child or young person; or
- (b) the signing of an instrument of consent to the adoption of a child or young person; or
- (c) the transfer of the custody or control of a child or young person with a view to the adoption of the child or young person; or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of a child or young person.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) Subsection (1) does not apply in relation to any of the following payments or rewards in connection with an adoption or proposed adoption:

- (a) a payment of legal expenses;



- (b) a payment made by an adoptive parent, with the approval in writing of the director-general or with the approval of the court, for the hospital and medical expenses reasonably incurred in connection with the birth of the child or the antenatal or postnatal care and treatment of the mother or the child;
  - (c) any other payment or reward authorised by the director-general or by the court.
- (3) Subsection (1) does not apply in relation to a payment or reward in connection with an adoption or proposed adoption under a law of a State or another Territory if making the payment or giving the reward, or agreeing to make the payment or give the reward, would have been lawful if it had taken place in that State or other Territory.

## **95 Unauthorised arrangements for adoption**

- (1) A person other than the director-general or a person acting on behalf of the director-general or a private adoption agency must not—
- (a) conduct negotiations or make arrangements with another person with a view to the adoption of a child or young person by that other person; or
  - (b) except in accordance with arrangements made by or for the director-general or a private adoption agency—
    - (i) transfer, or cause to be transferred, the possession, custody or control of a child or young person to another person with a view to the adoption of the child or young person by that other person; or
    - (ii) receive possession, custody or control of a child or young person with a view to adopting the child or young person.

- (2) Subsection (1) does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child or young person with a view to the adoption of the child or young person by a relative of the child or young person, or by 2 persons 1 of whom is a parent or relative of the child or young person.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

## **96 Unauthorised advertising**

- (1) Subject to this section, a person must not publish, or cause to be published, by electronic or print media or any other means, any advertisement or other matter indicating (whether or not in relation to a particular child or young person) that—
- (a) a parent or guardian of a child or young person wishes to have the child or young person adopted; or
  - (b) a person wishes to adopt a child or young person; or
  - (c) a person is willing to make arrangements with a view to the adoption of a child or young person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply in relation to an advertisement or other matter that has been approved by the director-general.

## **97 Restriction on publication of identity of parties**

- (1) Subject to this section, a person must not publish, or cause to be published, by electronic or print media or any other means, in relation to—
- (a) an application for an adoption order or for a corresponding order under a law of a State or another Territory; or
  - (b) the proceedings on such an application; or

(c) any legal steps taken preparatory to or consequent on such an application;

the name of an applicant, the child or young person, or a parent or guardian of the child or young person, or any matter reasonably likely to allow any of those persons to be identified.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply in relation to the publication of any matter with the authorisation of the court to which the application was made.
- (3) An authorisation for subsection (2) must not be given unless the court is satisfied that publication will not operate to the prejudice of any person and that it is otherwise in the interests of justice to give the authorisation.

## **99 Personation of person whose consent to adoption is required**

A person must not personate or falsely represent himself or herself to be a person whose consent to the adoption of a child or young person is required under this Act or under a law of a State or another Territory.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**100 Presenting consent obtained by fraud etc**

A person must not present, or cause to be presented, to the court in connection with an application for an adoption order a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required under this Act if the signature to the document was, to the knowledge of the first person, obtained by fraud, duress or other improper means.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

**101 Improperly witnessing consent**

A person must not subscribe his or her name as a witness to the signature of a person on an instrument of consent unless—

- (a) he or she is satisfied that the person who signed the instrument is a parent or guardian of the child or young person; and
- (b) he or she takes reasonable steps to satisfy himself or herself that the person who signed the instrument understands the effect of the consent; and
- (c) the instrument bears the date on which it is signed by that person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Part 7A                      Notification and review of decisions

### 102            Meaning of *reviewable decision*—pt 7A

In this part:

*reviewable decision* means a decision prescribed by regulation.

### 103            Reviewable decision notices

- (1) If a person makes a reviewable decision, the person must give a reviewable decision notice only to each entity prescribed by regulation in relation to the decision.
- (2) If a child or young person is prescribed by regulation for subsection (1), the director-general must give a reviewable decision notice to the child or young person only if the director-general considers it is appropriate to give the notice to the child or young person having regard to the child's or young person's age.

*Note*        The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 103A          Applications for review

An entity prescribed by regulation in relation to a reviewable decision may apply to the ACAT for review of the decision.

*Note*        If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 8                      Miscellaneous

### 104            Registration of orders

(1) The registrar of the Supreme Court must send the following to the registrar-general:

- (a) a memorandum of each adoption order;
- (b) a copy of each order discharging an adoption order.

*Note*      If a form is approved under s 120A (Approved forms) for a memorandum, the form must be used.

(2) On receiving a memorandum or copy of an order under subsection (1), the registrar-general must—

- (a) register it, as prescribed, in the register of adoptions; and
- (b) if it relates to a person whose birth is registered in the register of births—make any alterations to, or entries in, that register that are prescribed.

### 105            Memoranda of orders interstate

If—

- (a) the court makes an adoption order, or an order discharging such an order; and

- (b) the registrar of the Supreme Court has reason to believe that the birth of the child is registered in a State or in another Territory;

the registrar must, as soon as practicable, cause a memorandum of the adoption order, or a copy of the discharging order certified in writing by him or her to be a true memorandum or copy, to be sent to the prescribed officer of that State or other Territory having functions in relation to registration of births or having functions corresponding to those of the registrar-general under the *Births, Deaths and Marriages Registration Act 1997*.

*Note* If a form is approved under s 120A (Approved forms) for a memorandum, the form must be used.

## **106 Particulars of interstate orders**

If the registrar-general receives, in relation to a person whose birth is registered in the register of births, a memorandum or copy of an order for the adoption of the person made (whether by a court or not) under a law of a State or another Territory, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorised to certify that under the law of that State or other Territory, the registrar-general must—

- (a) register it, as prescribed, in the register of adoptions; and
- (b) make any prescribed alterations to, or entries in, the register of births.

## **107 Legal representation of child or young person**

In proceedings on an application for an adoption order, the court may make an order for the legal representation of the child or young person.

**108 Notification to parents**

The director-general must inform a birth parent of a child or young person in writing of—

- (a) the placement of the child or young person with a prospective adopting parent; or
- (b) the non-placement of a child or young person at the end of 6 months after the instrument of consent was signed; or
- (c) any breakdown in placement and the return of the child or young person to the custody of an appropriate authority; or
- (d) the making of an adoption order; or
- (e) if the director-general becomes aware of it—the death of the child or young person.

**108A Financial support of adopted children and young people**

- (1) This section applies if—
  - (a) a child or young person is adopted in the ACT; and
  - (b) the child or young person is ordinarily resident in the ACT; and
  - (c) before the adoption order was made—
    - (i) the director-general had daily care responsibility or long-term care responsibility for the child or young person under the *Children and Young People Act 2008*; or
    - (ii) the adoptive parents had daily care responsibility or long-term care responsibility for the child or young person as foster carers under the *Children and Young People Act 2008*; or
    - (iii) the adoptive parents had daily care responsibility or long-term care responsibility for the child or young person as kinship carers under the *Children and Young People Act 2008*.



- (2) The director-general may provide financial support to the adoptive parents of the child or young person if—
  - (a) the child or young person has complex or high needs; and
  - (b) the adoptive parents require financial assistance to help manage the child's or young person's needs; and
  - (c) the financial burden of meeting the child's or young person's needs without any financial assistance might prevent an adoption order which would otherwise be in the best interests of the child or young person.
- (3) Support provided under this section must be reviewed by the director-general every 12 months.

### **111 Authority to prosecute**

Proceedings for an offence against this Act must not be commenced except by, or with the written consent of, the Minister.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see [Legislation Act 2001](#), s 104).

### **112 Hearings to be in camera**

- (1) Proceedings on an application for an adoption order or ancillary proceedings must not be heard in open court.
- (2) People other than parties to the proceedings or their legal practitioners or representatives must, except as otherwise permitted by the court, be excluded during the hearing of the proceedings.

### **113 Contents of reports not to be disclosed**

Except as the court otherwise orders, a report to the court under section 39D must not be made available to a party to the proceedings or any other person.

**114 Restriction on inspection of records**

Except as provided by regulation, the records of any proceedings under this Act must not be open to public inspection.

**115 Director-general may appear at hearings**

- (1) The director-general, or a person appointed for the purpose by the director-general, may appear at the hearing of the proceedings on an application for an adoption order, and may address the court, and call, examine and cross-examine witnesses.
- (2) For subsection (1), the director-general is a party to the proceedings.

**116 Proof of adoptions**

In any proceedings in a court of the Territory, a document purporting to be—

- (a) the original or a certified copy or certified extract of an adoption order; or
- (b) an official certificate, entry or record of an adoption;

(whether made in Australia or elsewhere) is evidence of the facts stated in, and matters appearing from, the document.

**118 Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**120A Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**121 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may make provision in relation to—
  - (a) the keeping of lists by the director-general and by private adoption agencies of people approved for the placement of a child or young person for adoption; and
  - (b) access to the register of adoptions; and
  - (c) the giving of copies of, or extracts from, entries included in the register of adoptions; and
  - (d) the making, correction or cancellation of entries about adopted people in the register of births.
- (3) A regulation may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

**122 Review of certain amendments made by Adoption Amendment Act 2020**

- (1) The Minister must review the operation of the amendments made by the *Adoption Amendment Act 2020* to the following sections of this Act:
  - (a) section 5 (Best interests of child or young person paramount consideration);
  - (b) section 35 (Dispensing with consent).
- (2) The Minister must—
  - (a) start the review no later than 1 September 2022; and
  - (b) present a report of the review to the Legislative Assembly within 2 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

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## Schedule 1      Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption

(dict, def *Convention*)

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations *Convention on the Rights of the Child*, of 20 November 1989, and the United Nations *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally* (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

## **CHAPTER I—SCOPE OF THE CONVENTION**

### **Article 1**

The objects of the present Convention are—

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law,
- (b) to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children,
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

### **Article 2**

- (1) The Convention shall apply where a child habitually resident in one Contracting State (‘ "the State of origin" ’) has been, is being, or is to be moved to another Contracting State (‘ "the receiving State" ’) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
- (2) The Convention covers only adoptions which create a permanent parent-child relationship.

### **Article 3**

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

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## CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

### Article 4

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

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

- (2) consideration has been given to the child's wishes and opinions,
- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
- (4) such consent has not been induced by payment or compensation of any kind.

### **Article 5**

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

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

## **CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES**

### **Article 6**

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.



### **Article 7**

- (1) Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- (2) They shall take directly all appropriate measures to—
  - (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms,
  - (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

### **Article 8**

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

### **Article 9**

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption,
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption,
- (c) promote the development of adoption counselling and post-adoption services in their States,

- (d) provide each other with general evaluation reports about experience with intercountry adoption,
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

### **Article 10**

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

### **Article 11**

An accredited body shall—

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation,
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption, and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

### **Article 12**

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

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### **Article 13**

The designation of the Central Authorities and where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

## **CHAPTER IV—PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

### **Article 14**

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

### **Article 15**

- (1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
- (2) It shall transmit the report to the Central Authority of the State of origin.

### **Article 16**

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—
  - (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child,

- (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background,
  - (c) ensure that consents have been obtained in accordance with Article 4, and
  - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

### **Article 17**

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree,
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin,
- (c) the Central Authorities of both States have agreed that the adoption may proceed, and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

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### Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

### Article 19

- (1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- (2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- (3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

### Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

### Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
  - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care,

- (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care, an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents,
  - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

### **Article 22**

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- (2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or person who—
- (a) meet the requirements of integrity, professional competence, experience and accountability of that State, and
  - (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- (3) A Contracting State which makes the declaration provided for in paragraph (2) shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

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- (4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph (1).
  - (5) Notwithstanding any declaration made under paragraph (2), the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph (1).

## **CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION**

### **Article 23**

- (1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph (c), were given.
- (2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

### **Article 24**

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

**Article 25**

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph (2).

**Article 26**

- (1) The recognition of an adoption includes recognition of—
  - (a) the legal parent-child relationship between the child and his or her adoptive parents,
  - (b) parental responsibility of the adoptive parents for the child,
  - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

**Article 27**

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect—
  - (a) if the law of the receiving State so permits, and



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- (b) if the consent referred to in Article 4, sub-paragraphs (c) and (d) have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

## **CHAPTER VI - GENERAL PROVISIONS**

### **Article 28**

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

### **Article 29**

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs (a) to (c), and Article 5, sub-paragraph (a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

### **Article 30**

- (1) The competent Authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
- (2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

**Article 31**

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

**Article 32**

- (1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- (2) Only costs and expenses, including reasonable professional fees of person involved in the adoption, may be charged or paid.
- (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

**Article 33**

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

**Article 34**

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

**Article 35**

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

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### Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State,
- (b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit,
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit,
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

### Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

### Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

### Article 39

- (1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

- (2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Article 40**

No reservation to the Convention shall be permitted.

**Article 41**

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

**Article 42**

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

**CHAPTER VII - FINAL CLAUSES****Article 43**

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

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#### **Article 44**

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph (1).
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### **Article 45**

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

#### **Article 46**

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

- (2) Thereafter the Convention shall enter into force—
- (a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession,
  - (b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### **Article 47**

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expirations of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

#### **Article 48**

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 43,
- (b) the accessions and objections raised to accessions referred to in Article 44,
- (c) the date on which the Convention enters into force in accordance with Article 46,

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- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45,
  - (e) the agreements referred to in Article 39,
  - (f) the denunciations referred to in Article 47.

In whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the twenty-ninth day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- administrative unit
- civil union
- contravene
- director-general (see s 163)
- document
- domestic partner (see s 169 (1))
- Executive
- file
- function
- instrument (see s 14)
- parent
- proceeding
- public trustee and guardian
- reviewable decision notice
- Supreme Court.

***Aboriginal or Torres Strait Islander child or young person*** means a child or young person at least 1 of whose parents is a person who—

- (a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or a Torres Strait Islander person; and
- (c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.



***adoption compliance certificate*** means—

- (a) in division 4A.2—a certification (however described) issued in accordance with the Convention, article 23; or
- (b) in division 4A.3—a document issued in accordance with the Commonwealth Bilateral Arrangements Regulations.

***adoption order*** means an order for the adoption of a person made under this Act.

***adoptive relative***, for part 5 (Access to information)—see section 58.

***associated person***, for part 5 (Access to information)—see section 58.

***Australia*** includes an external Territory.

***birth parent***, for part 5 (Access to information)—see section 58.

***birth relative***, for part 5 (Access to information)—see section 58.

***central authority***, for a Convention country, means an entity designated for the Convention country under the Convention, article 6.

***charitable organisation*** means a body carried on for a charitable, benevolent, philanthropic or religious purpose, other than a body carried on for the financial benefit of its members.

***child***, if age rather than descendancy is relevant, means a person who is under 12 years old.

***Commonwealth Bilateral Arrangements Regulation*** means the [Family Law \(Bilateral Arrangements—Intercountry Adoption\) Regulations 1998](#) (Cwlth).

***Commonwealth central authority*** has the same meaning as in the [Family Law \(Hague Convention on Intercountry Adoption\) Regulations 1998](#) (Cwlth).

**competent authority** means—

- (a) for a prescribed overseas jurisdiction—an entity in that country responsible for approving the adoption of children or young people; and
- (b) for the ACT—the director-general.

**contact veto register** means the register established under section 79.

**Convention** means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at the Hague on 29 May 1993, a copy of the English text of which is set out in schedule 1.

**Convention country**—see the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth), regulation 4.

*Note* For the purposes of reg 4 Australia is not a Convention country.

**country** includes part of a country.

**court** means the Supreme Court.

**disposition of property** includes the grant or exercise of a power of appointment in respect of property.

**general consent** means a general consent under section 29 (2).

**guardian**, in relation to a child or young person, includes—

- (a) a person having the custody of the child or young person under an order of a court; and
- (b) a person who is the guardian of the child or young person (whether to the exclusion of, or in addition to, a parent or other guardian) under a law of the Territory, the Commonwealth, a State or another Territory; and
- (c) someone with parental responsibility for the long-term care, wellbeing and development of the child or young person, whether by order of a court or otherwise.

**identifying information**, for part 5 (Access to information)—see section 58.

**information**, for part 5 (Access to information)—see section 58.

**instrument of consent** means an instrument of consent to an adoption under section 30.

**intercountry adoption** means the adoption—

- (a) by a person habitually resident in the ACT of a non-citizen child or young person from a country outside Australia; or
- (b) by a person habitually resident in a country outside Australia of a child or young person habitually resident in the ACT.

**interim order** means an order under section 50.

**limited consent** means a limited consent under section 29 (3).

**non-citizen child or young person** has the same meaning as **non-citizen child** in the *Immigration (Guardianship of Children) Act 1946* (Cwlth).

**prescribed overseas jurisdiction** means a jurisdiction mentioned in the Commonwealth Bilateral Arrangements Regulation, schedule 1.

**principal officer**, for a private adoption agency, means the person stated as its principal officer in—

- (a) its application for approval under section 81; or
- (b) its latest notification to the director-general under section 83.

**private adoption agency** means a charitable organisation approved as a private adoption agency under section 82.

**register of births** means the register under the *Births, Deaths and Marriages Registration Act 1997*.

**register of suitable people** means the register kept under section 19.

**relative**, of a child or young person, means a grandparent, brother, sister, uncle or aunt of the child or young person, whether or not the relationship is—

- (a) traced through birth or depends on adoption; or
- (b) for a brother or sister—of the whole blood or half-blood.

**relevant administrative unit** means the administrative unit that is the responsibility of the Minister for the time being administering this Act.

**relevant authority**, for part 5 (Access to information)—see section 58.

**responsible person**, in relation to an Aboriginal or Torres Strait Islander child or young person, means—

- (a) a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Islander community of which the child or young person is a member, has responsibility for, or an interest in, the wellbeing of the child or young person; or
- (b) if the child or young person is not in the custody of any person or is in the custody of a person who is not either a parent of the child or young person or a member of an Aboriginal or Torres Strait Islander community—a person who, in accordance with the traditions and customs of the Aboriginal or Torres Strait Islander community of which a parent of the child or young person is or was a member, has responsibility for, or an interest in, the wellbeing of the child or young person.

**reunion information register** means the register established under section 80.

**reviewable decision**, for part 7A (Notification and review of decisions)—see section 102.

**service** means the adoption information service maintained under section 77.

***State central authority***, for the ACT, means the authority mentioned in section 55.

***step-parent***, of a child or young person, means a person who—

- (a) is not a parent of the child or young person; and
- (b) whether married or not, has lived in a domestic partnership for not less than 3 years with a parent of the child or young person.

***young person*** means—

- (a) a person who is 12 years old or older, but not yet an adult; and
- (b) in relation to an application for an adoption order—a person who is an adult but for whom the application for an adoption order was filed in the court before the person became an adult.

*Note*     ***Adult*** is defined in the [Legislation Act](#), dict, pt 1.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Adoption Act 1993 A1993-20**

notified 2 April 1993 (Gaz 1993 No S46)  
s 1, s 2 commenced 2 April 1993 (s 2 (1))  
remainder (ss 3-121) commenced 31 July 1993 (s 2 (2) and Gaz 1993 No 28)

as amended by

#### **Acts Revision (Position of Crown) Act 1993 A1993-44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)  
sch 2 commenced 27 August 1993 (s 2)

#### **Registrar-General (Consequential Provisions) Act 1993 A1993-64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 A1994-38 sch 1 pt 4**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 4 commenced 1 July 1994 (s 2 (2) and see Gaz 1994 No S142)

#### **Administrative Appeals (Consequential Amendments) Act 1994 A1994-60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

#### **Statute Law Revision (Penalties) Act 1994 A1994-81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

## Endnotes

3 Legislation history

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### **Statutory Offices (Miscellaneous Provisions) Act 1994 A1994-97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

### **Legal Practitioners (Consequential Amendments) Act 1997 A1997-96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

### **Births, Deaths and Marriages Registration (Consequential Provisions) Act 1997 A1997-113 sch**

notified 24 December 1997 (Gaz 1997 No S420)  
s 1, s 2 commenced 24 December 1997 (s 2 (1))  
sch commenced 24 June 1998 (s 2 (2))

### **Statute Law Revision (Penalties) Act 1998 A1998-54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

### **Children and Young People (Consequential Amendments) Act 1999 A1999-64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

### **Legislation (Consequential Amendments) Act 2001 A2001-44 pt 7**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 7 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

### **Parentage Act 2004 A2004-1 sch 1 pt 1.2**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 22 March 2004 (s 2 and [CN2004-3](#))



**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.2**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.2 commenced 9 April 2004 (s 2 (1))

**Public Advocate Act 2005 A2005-47 sch 1 pt 1.1 (as am by A2006-3  
amdt 1.8)**

notified LR 2 September 2005  
s 1, s 2 commenced 2 September 2005 (LA s 75 (1))  
sch 1 pt 1.1 commenced 1 March 2006 (s 2 (1) as am by A2006-3  
amdt 1.8)

**Human Rights Commission Legislation Amendment Act 2006  
A2006-3 amdt 1.8**

notified LR 22 February 2006  
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))  
amdt 1.8 commenced 23 February 2006 (s 2)  
*Note* This Act only amends the [Public Advocate Act 2005 A2005-47](#)

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.2**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.2 never commenced  
*Note* Act repealed by disallowance 14 June 2006 (see Cwlth Gaz  
2006 No S93)

**Justice and Community Safety Legislation Amendment Act 2006  
A2006-40 sch 2 pt 2.4**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 2 pt 2.4 commenced 29 September 2006 (s 2 (1))

**Children and Young People (Consequential Amendments) Act 2008  
A2008-20 sch 3 pt 3.1**

notified LR 17 July 2008  
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))  
s 3 commenced 18 July 2008 (s 2 (1))  
sch 3 pt 3.1 commenced 27 October 2008 (s 2 (4) and see [Children  
and Young People Act 2008 A2008-19, s 2](#) and [CN2008-13](#))

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.1**

notified LR 12 August 2008  
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
sch 3 pt 3.1 commenced 26 August 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.2**

notified LR 4 September 2008  
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
sch 1 pt 1.2 commenced 2 February 2009 (s 2 (1) and see [ACT Civil and Administrative Tribunal Act 2008](#) A2008-35, s 2 (1) and [CN2009-2](#))

**Adoption Amendment Act 2009 A2009-6**

notified LR 5 March 2009  
s 1, s 2 commenced 5 March 2009 (LA s 75 (1))  
remainder commenced 6 March 2009 (s 2)

**Adoption Amendment Act 2009 (No 2) A2009-36**

notified LR 22 October 2009  
s 1, s 2 commenced 22 October 2009 (LA s 75 (1))  
remainder commenced 22 April 2010 (s 2 and LA s 79)

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.5**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.5 commenced 1 July 2011 (s 2 (1))

**Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.2**

notified LR 22 November 2011  
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011](#) A2011-12, s 2 and [CN2012-4](#))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.2**

notified LR 4 September 2012  
s 1, s 2 commenced 4 September 2012 (LA s 75 (1))  
sch 3 pt 3.2 commenced 11 September 2012 (s 2)

**Protection of Rights (Services) Legislation Amendment Act 2016  
(No 2) A2016-13 sch 1 pt 1.2**

notified LR 16 March 2016

s 1, s 2 commenced 16 March 2016 (LA s 75 (1))

sch 1 pt 1.2 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016 A2016-1 s 2](#))

**Children and Young People Legislation Amendment Act 2016  
A2016-38 pt 2**

notified LR 22 June 2016

s 1, s 2 commenced 22 June 2016 (LA s 75 (1))

pt 2 commenced 23 June 2016 (s 2)

**Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.3**

notified LR 23 February 2017

s 1, s 2 commenced 23 February 2017 (LA s 75 (1))

sch 3 pt 3.3 commenced 9 March 2017 (s 2)

**Statute Law Amendment Act 2019 A2019-42 sch 3 pt 3.2**

notified LR 31 October 2019

s 1, s 2 commenced 31 October 2019 (LA s 75 (1))

sch 3 pt 3.2 commenced 14 November 2019 (s 2 (1))

**Adoption Amendment Act 2020 A2020-39**

notified LR 20 August 2020

s 1, s 2 commenced 20 August 2020 (LA s 75 (1))

remainder commenced 1 September 2020 (s 2)

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Long Title

long title sub [A2009-36](#) s 4

#### Dictionary

s 2 om [A2001-44](#) amdt 1.48  
ins [A2008-28](#) amdt 3.8

#### Notes

s 3 om [A1999-64](#) sch 2  
ins [A2008-28](#) amdt 3.8

#### Objects and principles

pt 1A hdg ins [A2009-36](#) s 5

#### Objects of Act

s 4 defs reloc to dict [A2008-28](#) amdt 3.7  
om [A2008-28](#) amdt 3.8  
ins [A2009-36](#) s 5  
def *community advocate* om [A2005-47](#) amdt 1.1  
def *determined fee* om [A2001-44](#) amdt 1.49  
def *Director* sub [A1994-97](#) sch pt 1  
om [A1999-64](#) sch 2  
def *file* om [A2006-40](#) amdt 2.48  
def *repealed laws* om [A2008-28](#) amdt 3.6

#### Best interests of child or young person paramount consideration

s 5 om [A1993-44](#) sch 2  
ins [A2009-36](#) s 5  
sub [A2020-39](#) s 4

#### Aboriginal and Torres Strait Islander child or young person—additional requirements

s 6 sub [A2009-36](#) s 5  
am [A2011-22](#) amdt 1.25

#### Who can be adopted?

div 3.1 hdg (prev pt 3 div 1 hdg) renum as div 3.1 hdg R4 LA  
sub [A2009-36](#) s 6

#### Adoption of child or young person

s 9 am [A2004-1](#) amdt 1.2, amdt 1.3; [A2006-40](#) amdt 2.49  
sub [A2009-36](#) s 6

#### Adoption of person 18 years old or older

s 10 am [A2009-6](#) s 4  
sub [A2009-36](#) s 6; [A2020-39](#) s 5

#### Previous adoption immaterial

s 11 sub [A2009-36](#) s 6

**Frustration of immigration law**s 12 sub [A2009-36](#) s 6**Who can adopt?**

div 3.2 hdg **orig div 3.2 hdg**  
 (prev pt 3 div 2 hdg) renum as div 3.2 hdg and then renum as  
 div 3.3 hdg  
**pres div 3.2 hdg**  
 ins [A2009-36](#) s 6

**Residency requirement**

s 13 hdg sub [A2006-22](#) amdt 1.8 ([A2006-22](#) rep before commenced by  
 disallowance (see Cwlth Gaz 2006 No S93))  
 s 13 am [A2006-22](#) amdt 1.9 ([A2006-22](#) rep before commenced by  
 disallowance (see Cwlth Gaz 2006 No S93))  
 sub [A2009-6](#) s 5; [A2009-36](#) s 6

**Additional requirements for adoption of child or young person**

s 14 sub [A2009-36](#) s 6  
 am [A2012-40](#) amdt 3.9  
 sub [A2016-38](#) s 4

**Adoption by step-parent**

s 15 am [A1999-64](#) sch 2  
 sub [A2009-36](#) s 6  
 om [A2016-38](#) s 4

**Adoption by one person**

s 16 am [A1999-64](#) sch 2  
 sub [A2009-36](#) s 6  
 om [A2016-38](#) s 4

**Adoption by relative**

s 17 am [A1999-64](#) sch 2; [A2008-20](#) amdt 3.1; [A2008-37](#) amdt 1.9  
 sub [A2009-36](#) s 6  
 om [A2016-38](#) s 4

**Approval of suitable people**

s 18 am [A2004-1](#) amdts 1.4-1.6; [A2006-22](#) amdt 1.10, amdt 1.11  
 ([A2006-22](#) rep before commenced by disallowance (see  
 Cwlth Gaz 2006 No S93))  
 sub [A2009-36](#) s 6  
 am [A2011-22](#) amdt 1.25

**Register of suitable people**

s 19 am [A1999-64](#) sch 2  
 sub [A2009-36](#) s 6  
 am [A2011-22](#) amdt 1.25

**Overseas child**

s 20 om [A2009-36](#) s 6

## Endnotes

### 4 Amendment history

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#### **Aboriginal child**

s 21 om [A2009-36](#) s 6

#### **Notice of application for adoption order**

s 22 sub [A2006-40](#) amdt 2.50  
am [A2008-28](#) amdt 3.9  
om [A2009-36](#) s 6

#### **Parties to proceedings**

s 23 om [A2009-36](#) s 6

#### **Notification to chief executive of adoption order**

s 24 am [A1999-64](#) sch 2  
om [A2009-36](#) s 6

#### **Alternative orders on refusal of adoption order**

s 25 am [A1999-64](#) sch 2  
om [A2009-36](#) s 6

#### **Consents to adoptions**

div 3.3 hdg **orig div 3.3 hdg**  
(prev pt 3 div 3 hdg) renum as div 3.3 hdg and then renum as  
div 3.7 hdg  
**pres div 3.3 hdg**  
(prev pt 3 div 2 hdg) renum as div 3.2 hdg R4 LA and then  
renum as div 3.3 hdg (see [A2009-36](#) s 7)

#### **Consents of parents and guardians**

s 26 am [A1999-64](#) sch 2; [A2005-47](#) amdt 1.2; [A2006-40](#) amdt 2.51;  
[A2008-28](#) amdt 3.10  
om [A2009-36](#) s 6  
ins [A2009-36](#) s 8

#### **Information for certain parents considering consent**

s 27 am [A2004-1](#) amdt 1.7  
sub [A2009-36](#) s 8  
am [A2011-22](#) amdt 1.25

#### **General or limited consents**

s 29 am [A1999-64](#) sch 2; [A2009-36](#) s 9, s 72; [A2011-22](#) amdt 1.25

#### **Instrument of consent**

s 30 sub [A2001-44](#) amdt 1.50

#### **Revocation of consent**

s 31 am [A1999-64](#) sch 2  
sub [A2006-40](#) amdt 2.52  
am [A2009-36](#) s 10, s 11, s 72; [A2011-22](#) amdt 1.25

#### **Access during revocation period**

s 32 am [A1999-64](#) sch 2; [A2009-36](#) s 12, s 72; [A2011-22](#) amdt 1.25

**Consents under law of a State or another Territory**s 33 am [A2009-36](#) s 72**Defective consents**s 34 am [A2009-36](#) s 13**Dispensing with consent**s 35 am [A1999-64](#) sch 2; [A2008-28](#) amdt 3.11; [A2009-36](#) s 14, s 72; [A2011-22](#) amdt 1.25; [A2020-39](#) s 6; ss renum R23 LA**Placement of child or young person before adoption**div 3.4 hdg **orig div 3.4 hdg**  
(prev pt 3 div 4 hdg) renum as div 3.4 hdg and then renum as div 3.8 hdg  
**pres div 3.4 hdg**  
ins [A2009-36](#) s 15**Placement of child or young person before adoption**s 35A ins [A2009-36](#) s 15  
am [A2011-22](#) amdt 1.25**Consultation with child or young person before deciding placement**s 35B ins [A2009-36](#) s 15  
am [A2011-22](#) amdt 1.25**Guardianship before adoption**div 3.5 hdg **orig div 3.5 hdg**  
(prev pt 3 div 5 hdg) renum as div 3.5 hdg and then renum as div 3.9 hdg  
**pres div 3.5 hdg**  
ins [A2009-36](#) s 16**Guardianship before adoption**s 36 am [A1999-64](#) sch 2; [A2008-20](#) amdt 3.2  
sub [A2009-36](#) s 17  
am [A2011-22](#) amdt 1.25; [A2016-38](#) s 5**Guardianship of non-citizen child or young person**s 37 am [A1999-64](#) sch 2  
sub [A2009-36](#) s 17  
am [A2011-22](#) amdt 1.25**Transfer of guardianship of child or young person until adoption**s 38 hdg am [A2009-36](#) s 72  
s 38 am [A1999-64](#) sch 2; [A2009-36](#) s 72, s 74; [A2011-22](#) amdt 1.25**Review of status of child or young person released for adoption**s 39 hdg am [A2009-36](#) s 72  
s 39 am [A1999-64](#) sch 2; [A2009-36](#) s 18, s 72; [A2011-22](#) amdt 1.25**Proceedings for an adoption order**div 3.6 hdg ins [A2009-36](#) s 19

## Endnotes

4 Amendment history

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### **Application for adoption order**

s 39A ins [A2009-36](#) s 19

### **Notice of application for adoption order**

s 39B ins [A2009-36](#) s 19

### **Parties to proceeding**

s 39C ins [A2009-36](#) s 19

### **Report on proposed adoption**

s 39D ins [A2009-36](#) s 19  
am [A2011-22](#) amdt 1.25

### **Consultation with child or young person before adoption order made**

s 39E ins [A2009-36](#) s 19  
am [A2009-36](#) s 72; [A2011-22](#) amdt 1.25

### **Deciding application for adoption order for child or young person**

s 39F ins [A2009-36](#) s 19

### **Aboriginal or Torres Strait Islander child or young person**

s 39G ins [A2009-36](#) s 19

### **Adoption of non-citizen child or young person**

s 39H ins [A2009-36](#) s 19

### **Deciding application for adoption order for person 18 years old or older**

s 39I ins [A2009-36](#) s 19

### **Notification to director-general of adoption order**

s 39J hdg am [A2011-22](#) amdt 1.25  
s 39J ins [A2009-36](#) s 19  
am [A2011-22](#) amdt 1.25

### **Alternative orders on refusal of adoption order**

s 39K ins [A2009-36](#) s 19  
am [A2011-22](#) amdt 1.25

### **Discharge of adoption order**

s 39L ins [A2009-36](#) s 19  
am [A2011-22](#) amdt 1.25; [A2017-4](#) amdt 3.4

### **Conditional orders**

div 3.7 hdg (prev pt 3 div 3 hdg) renum as div 3.3 hdg R4 LA and then  
renum as div 3.7 hdg (see [A2009-36](#) s 20)

### **Adoption order subject to certain conditions**

s 40 am [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#) amdt 1.25

### **Amendment of adoption condition**

s 41 hdg sub [A2006-40](#) amdt 2.53  
s 41 am [A1999-64](#) sch 2; [A2006-40](#) amdts 2.54-2.56; [A2009-36](#)  
s 21, s 72; [A2011-22](#) amdt 1.25



**Cessation of condition**

s 42 am [A2006-40](#) amdt 2.57; [A2009-36](#) s 72

**Effect of adoption orders**

div 3.8 hdg (prev pt 3 div 4 hdg) renum as div 3.4 hdg R4 LA and then  
renum as div 3.8 hdg (see [A2009-36](#) s 22)

**General effect**

s 43 am [A2009-36](#) s 23

**Disposition of property**

s 44 am [A2008-28](#) amdt 3.12

**Names of adopted child or young person**

s 45 am [A2004-1](#) amdt 1.8  
sub [A2009-36](#) s 24  
am [A2011-22](#) amdt 1.25; [A2020-39](#) s 7

**Effect of order on domicile**

s 46 am [A2009-36](#) s 72, s 73

**Distribution of property by trustee or personal representative**

s 47 am [A2009-36](#) s 25

**Bequest by will to unascertained adopted person**

s 48 am [A1999-64](#) s 4 sch 2; [A2004-1](#) amdt 1.9, amdt 1.10;  
[A2011-22](#) amdt 1.25; [A2016-13](#) amdt 1.3

**Gifts between living people**

s 49 am [A2004-1](#) amdt 1.11, amdt 1.12

**Interim orders**

div 3.9 hdg (prev pt 3 div 5 hdg) renum as div 3.5 hdg R4 LA and then  
renum as div 3.9 hdg (see [A2009-36](#) s 26)

**Making of order**

s 50 am [A2009-36](#) s 27, s 72

**Discharge**

s 52 am [A2009-36](#) s 72

**Recognition of Australian adoptions**

pt 4 hdg sub [A2009-36](#) s 28

**Recognition of Australian adoptions**

s 53 sub [A2009-36](#) s 28

**Intercountry and overseas adoption**

pt 4A hdg ins [A2009-36](#) s 28

**Preliminary**

div 4A.1 hdg ins [A2009-36](#) s 28

## Endnotes

### 4 Amendment history

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#### **Adoptions outside Australia—general**

s 54 sub [A2009-36](#) s 28

#### **State central authority**

s 55 am [A1999-64](#) sch 2  
sub [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

#### **Functions of State central authority**

s 56 am [A1999-64](#) sch 2  
sub [A2009-36](#) s 28

#### **Convention on intercountry adoption**

div 4A.2 hdg ins [A2009-36](#) s 28

#### **Adoption under Convention**

sdiv 4A.2.1 hdg ins [A2009-36](#) s 28

#### **Adoption in ACT of ACT child or young person by parents from Convention country**

s 57 sub [A2009-36](#) s 28

#### **Report on child for intercountry adoption**

s 57A ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

#### **Adoption in ACT of child or young person from Convention country by ACT parents**

s 57B ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

#### **Issue of adoption compliance certificate**

s 57C ins [A2009-36](#) s 28

#### **Recognition under Convention**

sdiv 4A.2.2 hdg ins [A2009-36](#) s 28

#### **Recognition of adoption of child or young person from Convention country in that country**

s 57D ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

#### **Recognition of adoption of child or young person from Convention country to another Convention country**

s 57E ins [A2009-36](#) s 28

#### **Effect of recognition**

s 57F ins [A2009-36](#) s 28

#### **Refusal to recognise adoption or decision**

s 57G ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

**Order terminating legal relationship between child or young person and parents**

s 57H ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

**Evidential value of adoption compliance certificate**

s 57I ins [A2009-36](#) s 28

**Bilateral arrangements for intercountry adoptions**

div 4A.3 hdg ins [A2009-36](#) s 28

**Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents**

s 57J ins [A2009-36](#) s 28  
am [A2011-22](#) amdt 1.25

**Evidential value of adoption compliance certificate—div 4A.3**

s 57K ins [A2009-36](#) s 28

**Recognition of other overseas adoptions**

div 4A.4 hdg ins [A2009-36](#) s 28

**Recognition of adoption order made outside Australia**

s 57L ins [A2009-36](#) s 28

**Declaration of validity of adoption order made outside Australia**

s 57M ins [A2009-36](#) s 28

**General**

div 5.1 hdg (prev pt 5 div 1 hdg) renum as div 5.1 hdg R4 LA

**Definitions—pt 5**

s 58 am [A1993-64](#); [A1997-113](#); [A1999-64](#) sch 2  
def **associated person** sub [A2009-36](#) s 29  
def **birth parent** sub [A2004-1](#) amdt 1.13; [A2009-36](#) s 29  
def **birth relative** sub [A2009-36](#) s 29  
def **identifying information** sub [A2009-36](#) s 29  
def **relevant authority** am [A2011-22](#) amdt 1.25

**Application—pt 5**

s 59 sub [A2009-36](#) s 30

**Confidentiality of records**

s 60 am [A1999-64](#) sch 2; [A2009-36](#) s 31; [A2011-22](#) amdt 1.25

**Records of adoptions**

s 61 am [A1999-64](#) sch 2; [A2009-36](#) s 32; [A2011-22](#) amdt 1.25

**Provision of information**

s 62 am [A1993-64](#); [A1997-113](#); [A1999-64](#) sch 2; [A2011-22](#)  
amdt 1.21, amdt 1.25

## Endnotes

### 4 Amendment history

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#### **Non-identifying information**

div 5.2 hdg (prev pt 5 div 2 hdg) renum as div 5.2 hdg R4 LA

#### **Identifying information**

div 5.3 hdg (prev pt 5 div 3 hdg) renum as div 5.3 hdg R4 LA

#### **Recipient of application**

s 67 am [A1993-64](#); [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

#### **Restriction on entitlement to apply**

s 68 am [A1993-64](#); [A1999-64](#) sch 2; [A2009-36](#) ss 33-38; [A2011-22](#) amdt 1.25

#### **Assistance in obtaining approval**

s 69 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

#### **Objection to contact—adoptions before Adoption Amendment Act 2009 (No 2)**

s 70 am [A1999-64](#) sch 2  
sub [A2009-36](#) s 39  
am [A2011-22](#) amdt 1.25

#### **Contact veto by person other than adopted person—adoptions before Adoption Amendment Act 2009 (No 2)**

s 71 sub [A2009-36](#) s 40

#### **Counselling services**

s 72 am [A1999-64](#) sch 2; [A2001-44](#) amdt 1.51, amdt 1.52; R4 LA  
(see [A2001-44](#) amdt 1.53); [A2009-36](#) s 41; [A2011-22](#) amdt 1.25

#### **Declaration that contact not be attempted**

s 73 am [A1999-64](#) sch 2  
sub [A2009-36](#) s 42  
am [A2011-22](#) amdt 1.25

#### **Birth details of adopted person born overseas**

s 74 am [A1999-64](#) sch 2; [A2009-36](#) ss 43-45; [A2011-22](#) amdt 1.25

#### **Application to court in absence of consent**

s 75 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

#### **Other person's right to information**

s 76 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

#### **Family information service**

s 77 hdg sub [A2009-36](#) s 46  
s 77 am [A1999-64](#) sch 2; [A2009-36](#) s 47; [A2011-22](#) amdt 1.25

#### **Adoption information register**

s 78 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Contact veto register**

s 79 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Reunion information register**

s 80 am [A1999-64](#) sch 2; [A2001-44](#) amdt 1.54, amdt 1.55;  
[A2011-22](#) amdt 1.25

**Application for approval**

s 81 am [A1999-64](#) sch 2; [A2009-36](#) s 74; [A2011-22](#) amdt 1.25;  
[A2016-38](#) s 6

**Grant or refusal of approval**

s 82 am [A1999-64](#) sch 2; [A2009-36](#) s 74; [A2011-22](#) amdt 1.25

**Change in principal officer**

s 83 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Revocation or suspension of approval**

s 85 am [A1999-64](#) sch 2; [A2009-36](#) s 74; [A2011-22](#) amdt 1.25

**Effect of cessation of approved agency**

s 86 am [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#) amdt 1.25

**Territorial application of pt 7**

s 88 am [A2009-36](#) s 74

**Taking away etc of adopted child or young person by birth parent**

s 89 hdg am [A2009-36](#) s 72  
s 89 am [A1994-81](#); [A2009-36](#) s 72

**Receiving or harbouring child or young person**

s 90 hdg am [A2009-36](#) s 72  
s 90 am [A1994-81](#); [A2009-36](#) s 72

**Interfering with upbringing of child or young person**

s 91 hdg am [A2009-36](#) s 72  
s 91 am [A1994-81](#); [A1999-64](#) sch 2; [A2009-36](#) s 48, s 72;  
[A2011-22](#) amdt 1.25

**Approval of communications**

s 92 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Director-general's report for prosecution**

s 93 hdg sub [A2011-22](#) amdt 1.22  
s 93 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Payments in consideration of adoptions etc**

s 94 am [A1994-81](#); [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#)  
amdt 1.25

**Unauthorised arrangements for adoption**

s 95 am [A1994-81](#); [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#)  
amdt 1.25

## Endnotes

### 4 Amendment history

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#### **Unauthorised advertising**

s 96 am [A1994-81](#); [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#) amdt 1.25

#### **Restriction on publication of identity of parties**

s 97 am [A1994-81](#); [A2009-36](#) s 72

#### **False statements**

s 98 am [A1994-81](#)  
om [A2004-15](#) amdt 2.7

#### **Personation of person whose consent to adoption is required**

s 99 am [A1994-81](#); [A2009-36](#) s 72

#### **Presenting consent obtained by fraud etc**

s 100 hdg sub [A2004-15](#) amdt 2.8  
s 100 am [A1994-81](#); [A2004-15](#) amdt 2.9

#### **Improperly witnessing consent**

s 101 am [A1994-81](#); [A2009-36](#) s 72

#### **Notification and review of decisions**

pt 7A hdg ins [A2008-37](#) amdt 1.10

#### **Meaning of *reviewable decision*—pt 7A**

s 102 am [A1994-81](#); [A1999-64](#) sch 2  
om [A2004-15](#) amdt 2.10  
ins [A2008-37](#) amdt 1.10

#### **Reviewable decision notices**

s 103 am [A1999-64](#) sch 2  
om [A2005-47](#) amdt 1.3  
ins [A2008-37](#) amdt 1.10  
am [A2009-36](#) s 72, s 73; [A2011-22](#) amdt 1.25

#### **Applications for review**

s 103A ins [A2008-37](#) amdt 1.10

#### **Registration of orders**

s 104 am [A1993-64](#); [A2001-44](#) amdt 1.56; [A2009-36](#) s 49

#### **Memoranda of orders interstate**

s 105 am [A1993-64](#); [A1997-113](#); [A2001-44](#) amdt 1.57, amdt 1.58

#### **Particulars of interstate orders**

s 106 am [A1993-64](#); [A2009-36](#) s 50

#### **Legal representation of child or young person**

s 107 hdg am [A2009-36](#) s 72  
s 107 am [A2009-36](#) s 72

#### **Notification to parents**

s 108 am [A1999-64](#) sch 2; [A2009-36](#) s 72; [A2011-22](#) amdt 1.25

**Financial support of adopted children and young people**

s 108A ins [A2009-36](#) s 51  
am [A2011-22](#) amdt 1.25

**Notice of decisions**

s 109 am [A1993-64](#); [A1994-60](#); [A1999-64](#) sch 2  
om [A2008-37](#) amdt 1.11

**Review by administrative appeals tribunal**

s 110 am [A1999-64](#) sch 2  
om [A2008-37](#) amdt 1.11

**Authority to prosecute**

s 111 am [A2001-44](#) amdt 1.59, amdt 1.60

**Hearings to be in camera**

s 112 am [A1997-96](#)

**Contents of reports not to be disclosed**

s 113 am [A2009-36](#) s 52

**Director-general may appear at hearings**

s 115 hdg am [A2011-22](#) amdt 1.25  
s 115 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25

**Judicial notice of signatures**

s 117 am [A1999-64](#) sch 2; [A2011-22](#) amdt 1.25  
om [A2011-48](#) amdt 1.2

**Determination of fees**

s 118 sub [A2001-44](#) amdt 1.61

**Fees payable**

s 119 om [A2001-44](#) amdt 1.61

**Transitional provisions**

s 120 om [A2008-28](#) amdt 3.13

**Approved forms**

s 120A ins [A2001-44](#) amdt 1.62  
(4)-(7) exp 12 September 2002 (s 120A (7))

**Regulation-making power**

s 121 am [A1998-54](#); [A1999-64](#) sch 2  
sub [A2001-44](#) amdt 1.63  
am [A2009-36](#) s 53, s 72; [A2011-22](#) amdt 1.25

**Review of certain amendments made by Adoption Amendment Act 2020**

s 122 ins [A2020-39](#) s 8  
exp 1 September 2023 (s 122 (3))

## Endnotes

4 Amendment history

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### **Transitional—Adoption Amendment Act 2009 (No 2)**

pt 20 hdg ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Definitions—pt 20**

s 200 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))  
def **amended Act** ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))  
def **amending Act** ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))  
def **commencement day** ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))  
def **pre-amendment Act** ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Proceeding not completed before commencement day**

s 201 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Consents to which s 34 (3) applies**

s 202 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Request for placement not decided before commencement day**

s 203 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Placement in force before commencement day**

s 204 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Transitional regulations**

s 205 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Expiry—pt 20**

s 206 ins [A2009-36](#) s 54  
exp 22 April 2012 (s 206 (1) (LA s 88 declaration applies))

### **Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption**

sch 1 ins [A2009-36](#) s 55

### **Dictionary**

dict ins [A2008-28](#) amdt 3.14  
am [A2008-37](#) amdt 1.12, amdt 1.13; [A2009-36](#) s 56; [A2011-22](#)  
amdt 1.23, amdt 1.24; [A2012-40](#) amdt 3.10; [A2016-13](#)  
amdt 1.4  
def **Aboriginal child** reloc from s 4 [A2008-28](#) amdt 3.7  
om [A2009-36](#) s 57



- def **Aboriginal or Torres Strait Islander child or young person** ins [A2009-36](#) s 58  
sub [A2019-42](#) amdt 3.2
- def **Aborigine** reloc from s 4 [A2008-28](#) amdt 3.7  
om [A2009-36](#) s 59
- def **adoption compliance certificate** ins [A2009-36](#) s 60
- def **adoption order** sub [A2008-28](#) amdt 3.1  
reloc from s 4 [A2008-28](#) amdt 3.7  
sub [A2009-36](#) s 61
- def **adoptive relative** ins [A2008-28](#) amdt 3.14
- def **associated person** ins [A2008-28](#) amdt 3.14
- def **Australia** reloc from s 4 [A2008-28](#) amdt 3.7
- def **birth parent** ins [A2008-28](#) amdt 3.14
- def **birth relative** ins [A2008-28](#) amdt 3.14
- def **central authority** ins [A2009-36](#) s 62
- def **charitable organisation** sub [A2008-28](#) amdt 3.2  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **child** sub [A2008-28](#) amdt 3.2  
reloc from s 4 [A2008-28](#) amdt 3.7  
sub [A2009-36](#) s 63
- def **Commonwealth Bilateral Arrangements Regulation** ins [A2009-36](#) s 64
- def **Commonwealth central authority** ins [A2009-36](#) s 64
- def **competent authority** ins [A2009-36](#) s 64  
am [A2011-22](#) amdt 1.25
- def **contact veto register** reloc from s 4 [A2008-28](#) amdt 3.7
- def **Convention** ins [A2009-36](#) s 64
- def **Convention country** ins [A2009-36](#) s 64
- def **country** ins [A2008-28](#) amdt 3.14  
sub [A2009-36](#) s 65
- def **court** reloc from s 4 [A2008-28](#) amdt 3.7
- def **disposition of property** reloc from s 4 [A2008-28](#) amdt 3.7
- def **general consent** sub [A2008-28](#) amdt 3.2  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **guardian** am [A1999-64](#) sch 2  
reloc from s 4 [A2008-28](#) amdt 3.7  
am [A2009-36](#) s 66, s 72
- def **identifying information** ins [A2008-28](#) amdt 3.14
- def **information** ins [A2008-28](#) amdt 3.14
- def **instrument of consent** sub [A2008-28](#) amdt 3.2  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **intercountry adoption** ins [A2009-36](#) s 67
- def **interim order** sub [A2008-28](#) amdt 3.3  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **limited consent** sub [A2008-28](#) amdt 3.4  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **non-citizen child or young person** ins [A2009-36](#) s 68

## Endnotes

4 Amendment history

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- def **prescribed overseas jurisdiction** ins [A2009-36](#) s 68
- def **principal officer** am [A1999-64](#) sch 2  
sub [A2008-28](#) amdt 3.4  
reloc from s 4 [A2008-28](#) amdt 3.7  
am [A2011-22](#) amdt 1.25
- def **private adoption agency** reloc from s 4 [A2008-28](#)  
amdt 3.7
- def **register of births** ins [A1997-113](#) sch  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **register of suitable people** ins [A2009-36](#) s 69
- def **relative** sub [A2008-28](#) amdt 3.5  
reloc from s 4 [A2008-28](#) amdt 3.7  
am [A2009-36](#) s 72
- def **relevant authority** ins [A2008-28](#) amdt 3.14
- def **relevant administrative unit** am [A1994-38](#) sch 1 pt 4  
reloc from s 4 [A2008-28](#) amdt 3.7
- def **responsible person** reloc from s 4 [A2008-28](#) amdt 3.7  
sub [A2009-36](#) s 70  
am [A2019-42](#) amdt 3.3
- def **reunion information register** reloc from s 4 [A2008-28](#)  
amdt 3.7
- def **reviewable decision** ins [A2008-37](#) amdt 1.14
- def **service** reloc from s 4 [A2008-28](#) amdt 3.7
- def **State central authority** ins [A2009-36](#) s 71
- def **step-parent** ins [A2009-36](#) s 71
- def **young person** ins [A2009-36](#) s 71

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R0A 11 Aug 2003	27 Aug 1993– 30 Sept 1993	<a href="#">A1993-44</a>	amendments by <a href="#">A1993-44</a>
R1 31 Jan 1994	1 Oct 1993– 30 June 1994	<a href="#">A1993-64</a>	amendments by <a href="#">A1993-64</a>
R1 (RI) 11 Aug 2003	1 Oct 1993– 30 June 1994	<a href="#">A1993-64</a>	reissue of printed version
R1A 11 Aug 2003	1 July 1994– 13 Nov 1994	<a href="#">A1994-38</a>	amendments by <a href="#">A1994-38</a>
R1B 11 Aug 2003	14 Nov 1994– 28 Nov 1994	<a href="#">A1994-60</a>	amendments by <a href="#">A1994-60</a>
R1C 11 Aug 2003	29 Nov 1994– 14 Dec 1994	<a href="#">A1994-81</a>	amendments by <a href="#">A1994-81</a>
R2 31 Jan 1995	15 Dec 1994– 31 May 1998	<a href="#">A1994-97</a>	amendments by <a href="#">A1994-97</a>
R2 (RI) 11 Aug 2003	15 Dec 1994– 31 May 1998	<a href="#">A1994-97</a>	reissue of printed version
R2A 11 Aug 2003	1 June 1998– 23 June 1998	<a href="#">A1997-113</a>	amendments by <a href="#">A1997-96</a>
R3 31 Jan 1999	9 Dec 1998– 9 May 2000	<a href="#">A1998-54</a>	amendments by <a href="#">A1997-113</a> and <a href="#">A1998-54</a>
R3 (RI) 11 Aug 2003	9 Dec 1998– 9 May 2000	<a href="#">A1998-54</a>	reissue of printed version
R3A 11 Aug 2003	10 May 2000– 11 Sept 2001	<a href="#">A1999-64</a>	amendments by <a href="#">A1999-64</a>

## Endnotes

### 5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R4 13 Dec 2001	12 Sept 2001– 12 Sept 2002	<a href="#">A2001-44</a>	amendments by <a href="#">A2001-44</a>
R5 13 Sept 2002	13 Sept 2002– 21 Mar 2004	<a href="#">A2001-44</a>	commenced expiry
R6 22 Mar 2004	22 Mar 2004– 8 Apr 2004	<a href="#">A2004-1</a>	amendments by <a href="#">A2004-1</a>
R7 9 Apr 2004	9 Apr 2004– 28 Feb 2006	<a href="#">A2004-15</a>	amendments by <a href="#">A2004-15</a>
R8* 1 Mar 2006	1 Mar 2006– 28 Sept 2006	<a href="#">A2006-3</a>	amendments by <a href="#">A2005-47</a> as amended by <a href="#">A2006-3</a>
R9 29 Sept 2006	29 Sept 2006– 25 Aug 2008	<a href="#">A2006-40</a>	amendments by <a href="#">A2006-40</a>
R10 26 Aug 2008	26 Aug 2008– 26 Oct 2008	<a href="#">A2008-28</a>	amendments by <a href="#">A2008-28</a>
R11 27 Oct 2008	27 Oct 2008– 1 Feb 2009	<a href="#">A2008-37</a>	amendments by <a href="#">A2008-20</a>
R12 2 Feb 2009	2 Feb 2009– 5 Mar 2009	<a href="#">A2008-37</a>	amendments by <a href="#">A2008-37</a>
R13 6 Mar 2009	6 Mar 2009– 21 Apr 2010	<a href="#">A2009-6</a>	amendments by <a href="#">A2009-6</a>
R14 22 Apr 2010	22 Apr 2010– 30 June 2011	<a href="#">A2009-36</a>	amendments by <a href="#">A2009-36</a>
R15* 1 July 2011	1 July 2011– 29 Feb 2012	<a href="#">A2011-22</a>	amendments by <a href="#">A2011-22</a>
R16 1 Mar 2012	1 Mar 2012– 22 Apr 2012	<a href="#">A2011-48</a>	amendments by <a href="#">A2011-48</a>
R17 23 Apr 2012	23 Apr 2012– 10 Sept 2012	<a href="#">A2011-48</a>	expiry of transitional provisions (pt 20)
R18 11 Sept 2012	11 Sept 2012– 31 Mar 2016	<a href="#">A2012-40</a>	amendments by <a href="#">A2012-40</a>

Republication No and date	Effective	Last amendment made by	Republication for
R19 1 Apr 2016	1 Apr 2016– 22 June 2016	<a href="#">A2016-13</a>	amendments by <a href="#">A2016-13</a>
R20 23 June 2016	23 June 2016– 8 Mar 2017	<a href="#">A2016-38</a>	amendments by <a href="#">A2016-38</a>
R21 9 Mar 2017	9 Mar 2017– 13 Nov 2019	<a href="#">A2017-4</a>	amendments by <a href="#">A2017-4</a>
R22 14 Nov 2019	14 Nov 2019– 31 Aug 2020	<a href="#">A2019-42</a>	amendments by <a href="#">A2019-42</a>

## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.