

1992

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Housing and Community Services)

Adoption Bill 1992

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1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Housing and Community Services)

Adoption Bill 1992

**A BILL
FOR**

An Act relating to the adoption of children

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Adoption Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Repeal**3. The following Acts are repealed:**

Adoption of Children Act 1965

Adoption of Children Act 1974

5 *Adoption of Children (Amendment) Act 1979*

Adoption of Children (Amendment) Act 1983

Adoption of Children (Amendment) Act 1988

Adoption of Children (Amendment) Act 1991.

Interpretation

10 **4. (1) In this Act, unless the contrary intention appears—**

“Aboriginal child” means a child at least 1 of whose parents is an Aborigine;

“Aborigine” means a person who—

- 15 (a) is descended from an Aborigine or Torres Strait Islander;
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

20 “adoption order” means an order for the adoption of a child made under section 9 or under the corresponding provisions of the repealed laws;

“Australia” includes an external Territory;

25 “charitable organisation” means an organisation, whether incorporated or not, formed or carried on primarily for charitable, benevolent, philanthropic or religious purposes, but does not include an organisation formed or carried on for the purpose of trading or securing a pecuniary profit to its members;

“child” means a person—

- 30 (a) who has not attained the age of 18 years; or
- (b) who has attained that age but in respect of whom an adoption order is sought or has been made;

“Community Advocate” means the Community Advocate appointed under section 4 of the *Community Advocate Act 1991* and includes a person appointed to act as Community Advocate under section 10 of that Act;

- “Contact Veto Register” means the register established under section 79;
- “Court” means the Supreme Court;
- “determined fee” means a fee determined under section 118 for the purposes of the provision in which the expression occurs;
- 5 “Director” means the Director of Family Services appointed under section 4 of the *Children’s Services Act 1986* and includes a person appointed to act as Director under section 10 of that Act;
- “disposition of property” includes the grant or exercise of a power of appointment in respect of property;
- 10 “file”, in relation to a document in proceedings in the Court, means file in the office of the Registrar of the Court;
- “general consent” means a consent referred to in subsection 29 (2);
- “guardian”, in relation to a child, includes—
- 15 (a) a person having the custody of the child under an order of a court; and
- (b) a person who is the guardian of the child (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;
- 20 “instrument of consent” means an instrument referred to in section 30;
- “interim order” means an order under section 50 or under the corresponding provisions of the repealed laws;
- “limited consent” means a consent referred to in subsection 29 (3);
- 25 “principal officer”, in relation to a private adoption agency, means the person specified as its principal officer in its application for approval under section 81 or the person specified as its principal officer in its latest notification to the Director under section 83;
- “private adoption agency” means a charitable organisation approved as a private adoption agency under section 82;
- 30 “relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child;
- “relevant administrative unit” means, the administrative unit of the Public Service that is the responsibility of the Minister for the time being administering this Act;
- 35 “repealed laws” means the Acts repealed by section 3 or the Ordinances repealed by any of those Acts;

“responsible person”, in relation to an Aboriginal child, means—

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

15 “Reunion Information Register” means the Register established under section 80;

“Service” means the Adoption Information Service maintained under section 77.

20 (2) For the purpose of the definition of “relative” in subsection (1), it is immaterial—

- (a) that the relationship is traced through birth or depends upon adoption; or
- (b) in the case of a brother or sister—whether the relationship is of the whole blood or half-blood.

25 (3) In this Act, a reference to the birth or adoptive parents of a child, or to applicants, shall, unless the contrary intention appears, if there is only 1 birth or adoptive parent, or 1 applicant, be read as a reference to that birth or adoptive parent, or that applicant, as the case requires, and any reference to each birth or adoptive parent, or each applicant, shall be construed

30 accordingly.

Position of Crown

5. This Act binds the Crown.

Welfare and interests of child to be paramount

35 6. For the purposes of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

PART II—JURISDICTION

Proceedings

40 7. 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.

Rules of private international law not to apply

8. (1) The jurisdiction of the Supreme Court under this Act is not dependent on any fact or circumstance not specified in this Act.

- 5 (2) Without limiting the generality of subsection (1), the common law rules of private international law do not apply in relation to matters arising under this Act.

PART III—ADOPTIONS UNDER THIS ACT**Division 1—General****Power of Court**

- 10 9. Subject to this Act, the Court may, on application, make an order for the adoption of a child who—

- (a) had not attained the age of 18 years before the date on which the application was filed; or
- 15 (b) has been reared, maintained and educated by the applicants or either of the applicants, or by the applicant and a deceased spouse of the applicant, as his, her or their child under a *de facto* adoption.

Child over 18

- 20 10. An adoption order shall not be made if the child has attained the age of 18 years unless the Court is of the opinion that—

- (a) the applicants are persons of good repute; and
- (b) there are exceptional circumstances that justify the order.

Previous adoption immaterial

- 25 11. An adoption order may be made notwithstanding that the child has, whether before or after the commencement of this Act and whether in the Territory or elsewhere, previously been adopted.

Residence or domicile

12. (1) An adoption order shall not be made unless, when the application for the order was filed—

- 30 (a) the applicants were resident or domiciled in the Territory; and
- (b) the child was present in the Territory.

- (2) For the purposes of subsection (1), where the Court is satisfied that the applicants were resident or domiciled in the Territory, or that a child was present in the Territory, within 21 days before the date on which an application was filed, the Court may, in the absence of evidence to the contrary, presume that the applicants were resident or domiciled in the
- 35

Territory, or that the child was present in the Territory, as the case may be, when the application was filed.

Married child

- 5 **13.** An adoption order shall not be made if the child is, or has been, married.

Frustration of immigration law

14. An adoption order shall not be made if the Court is of the opinion that it is being sought primarily as a means of evading the operation of a law of the Commonwealth relating to immigration.

10 Register and records of persons who apply to adopt

15. The Director shall—

- (a) keep a register of persons whose application for the placement of a child for the purposes of adoption has been approved; and
- 15 (b) keep records of persons whose application for the placement of a child for the purposes of adoption—
- (i) has been refused; or
- (ii) has been approved, but for which the approval has been withdrawn.

Placement of child pending adoption

- 20 **16. (1)** On receiving a request in writing from the applicants for an adoption order, the Director may, if he or she considers that they are suitable persons with whom to place a child for the purpose of adoption—

- (a) include the names of the applicants on the register of persons seeking the placement of a child for the purpose of adoption; and
- 25 (b) place a child of whom he or she is the guardian in the custody of those applicants pending the determination of the application.

(2) The Director shall not—

- (a) include the names of applicants on the register under subsection (1) unless he or she considers them to be suitable persons with whom to place a child for the purpose of adoption; or
- 30 (b) place a child in the custody of persons under subsection (1) unless he or she considers that the child would be suitable, having regard to the criteria specified in paragraph 19 (1) (c) for adoption by those applicants.

35 Review of Director's decision

17. (1) Where—

- (a) the Director refuses to include the names of applicants on the register; and
 - (b) the applicants have, in writing, requested that he or she reconsider that decision;
- 5 the Director shall convene a committee, consisting of not more than 3 persons appointed by him or her, to review the decision.
- (2) A person shall not be a member of a committee if he or she was involved in work preparatory to the making of the decision which is subject to review.
- 10 (3) Having reviewed a decision, a committee may recommend to the Director that he or she confirm or vary the decision.
- (4) On receiving a recommendation from a committee, the Director shall reconsider the decision and may confirm or vary it.
- 15 (5) Where the Director confirms or varies a decision he or she shall cause notice in writing of the decision to be given to the applicants.

Persons in whose favour adoption orders may be made

18. (1) Except as provided in this section, an adoption order shall not be made otherwise than in favour of a man and woman jointly, being a couple—
- 20 (a) neither of whom is a parent of the child;
- (b) who, whether married or not, have lived together in a heterosexual relationship for a period of not less than 3 years; and
- (c) who, in the opinion of the Court, have demonstrated the stability of, and a commitment to, that relationship.
- 25 (2) An adoption order shall not be made in favour of a person who is not a parent of the child but has a relationship of the kind described in subsection (1) with a parent of the child unless—
- (a) the instrument of consent discloses consent to adoption by that particular person; and
- 30 (b) the Court considers that it would not be preferable to make an order relating to guardianship or custody of the child.
- (3) Subject to subsection (2), the Court may make an adoption order in favour of 1 person only after having regard to the wishes of the birth parents of the child.
- 35 (4) Except in circumstances described in subsection (2) an adoption order shall not be made in favour of 1 person if that person is married and is not living separately and apart from his or her spouse.

(5) An adoption order shall not be made in favour of a relative of the child unless—

- (a) the instrument of consent discloses consent to adoption by that particular relative; and
- 5 (b) the Court is of the opinion that—
 - (i) there are circumstances why the relationships within the family of the child should be redefined as such an order would do; and
 - 10 (ii) it would not be preferable to make an order relating to guardianship or custody of the child.

Criteria for Court's discretion

19. (1) An adoption order shall not be made if the child has not attained the age of 18 years unless—

- 15 (a) the Director, or the principal officer of a private adoption agency that made the arrangements that have resulted in the application, has made a report in writing to the Court concerning the circumstances of the child and the proposed adoption;
- (b) the period within which any consent required may be revoked has expired without that consent having been revoked; and
- 20 (c) after considering the report and any other evidence, the Court is of the opinion that—
 - (i) the applicants are persons of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child (including protecting a child's physical and emotional well-being); and
 - 25 (ii) the applicants are suitable persons to adopt the particular child having regard to their—
 - (A) ages, education and attitudes to adoption;
 - (B) physical, mental and emotional health, particularly in so far as it impacts on capacity to nurture the child; and
 - 30 (C) any other relevant consideration; and
 - (iii) the welfare and interests of the child will be promoted by the making of the order.

35 (2) In deciding whether or not to make an adoption order, the Court shall have regard to—

- (a) where it is appropriate given the age and understanding of the child—the wishes of the child; and
- (b) any wishes expressed in an instrument of consent, including wishes as regards—

- 5 (i) the racial or ethnic background of the proposed adoptive parents;
- (ii) the religious upbringing of the child after adoption; or
- (iii) whether a single person might adopt the child.

10 (3) Where a child 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, the Court may consider a report from that authority concerning the circumstances of the child and the proposed adoption either in addition to or instead of a report referred to in paragraph (1) (a), and in such a case the reference to a report in paragraph (1) (c) shall be construed accordingly.

15 (4) For the purposes of ascertaining the wishes of the child under paragraph (2) (a), or any other relevant consideration in relation to the welfare and interests of the child, the Court may inform itself in such manner as it thinks fit.

20 **Overseas child**

20. (1) The following provisions of this section are in addition to, and do not derogate from, the provisions of section 19.

25 (2) An adoption order shall not be made if the child was brought from a place outside Australia for the purpose of adoption in Australia unless the Court is satisfied that—

- (a) the laws of the child's country of origin relevant to his or her emigration or adoption have been complied with;
- (b) arrangements have been made between the Minister and the appropriate authority in the child's country of origin to facilitate the bringing of children from that country to the Territory for the purpose of adoption in the Territory; and
- 30 (c) any agency in the child's country of origin which made arrangements with a view to the adoption is approved for the purpose by the appropriate authority in that country.

35 **Aboriginal child**

21. (1) The following provisions of this section are in addition to, and do not derogate from, section 19.

(2) An adoption order shall not be made in respect of an Aboriginal child unless the Court is satisfied that—

- (a) it is not practicable for the child to remain in the custody of the birth parents or of a responsible person; and
- 5 (b) the choice of the adoptive parents has been made having regard to the desirability of the child—
 - (i) being in the custody of a person who is a member of an Aboriginal community; and
 - 10 (ii) being able to establish and maintain contact with his or her birth parents, any responsible person and the Aboriginal community of which the child is or was a member.

Notice of application for adoption order

22. (1) An adoption order shall not be made unless the applicants have caused notice in writing of the application and of the date fixed for the hearing of the application to be served, not later than 28 days before the date so fixed, on—

- (a) any person whose consent to the adoption is required but whose consent has not been given; and
- 20 (b) any person (not being a person whose consent is required) with whom the child resides or who has guardianship or custody of the child.

(2) On application, the Court may dispense with the requirement for giving notice in accordance with subsection (1).

25 (3) Where it appears to the Court to be necessary in the interests of justice so to do, the Court may direct that notice of an application for an adoption order, and of the date fixed for the hearing of the application, be given to any person.

Parties to proceedings

30 23. The Court may permit such persons as the Court thinks fit to be joined as parties to proceedings on an application for an adoption order for the purpose of opposing the application or for the purpose of opposing an application to dispense with a requirement for a consent.

Notification to Director of adoption order

35 24. When an adoption order has been made, the Registrar of the Supreme Court shall notify the Director in writing accordingly.

Alternative orders on refusal of adoption order

25. (1) Where the Court refuses to make an adoption order, the Court may—

- (a) if of the opinion that the child's welfare and interests would be promoted by doing so—make an order relating to guardianship or custody of the child; and
- (b) make such other orders (if any) as it thinks fit.

5 (2) An order under paragraph (1) (a) may be made in favour of the Director or any other person.

Discharge of adoption order

10 26. (1) On application by a prescribed person, the Court may make an order (in this section referred to as a discharging order) discharging an adoption order if the Court is of the opinion 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.

15 (2) For the purpose of paragraph (1) (b), a breakdown in the relationship between the child and the adoptive parents shall not be taken to constitute a circumstance justifying a discharging order.

(3) A discharging order shall not be made if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

20 (4) On an application under subsection (1), the Court may require the Director to investigate the matter and to provide a report in writing to the Court.

25 (5) A discharging order shall not be made unless the applicant has caused notice in writing of the application and of the date fixed for the hearing of the application to be served, not later than 28 days before the date so fixed, on each person whose consent to the adoption was required.

(6) On application, the Court may dispense with the requirement for giving notice in accordance with subsection (5).

30 (7) Where the Court makes a discharging order, the Court may, at the same time or subsequently, make such consequential or ancillary orders as it thinks fit to promote the welfare and interests of the child, or otherwise in the interests of justice, including orders relating to—

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

- 5 (8) Upon the making of a discharging order, then, but subject to any order made under subsection (7) and to subsection 43 (3), the rights, privileges, obligations, liabilities and relationships under the law of the Territory of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

- (a) anything lawfully done;
- (b) the consequences of anything unlawfully done; or
- (c) any right or interest that became vested in any person;

while the adoption order was in force.

- 10 (9) Where an adoption order that has been discharged was made pursuant to a general consent, then, unless the Court otherwise orders, that consent remains effective for the purpose of a further application for an adoption order in respect of the same child.

(10) In this section—

- 15 “prescribed person” means the Minister, the Director, the Community Advocate, the child, an adoptive parent or a person whose consent to the adoption was required.

Division 2—Consents to adoptions

Consents of parents and guardians

- 20 27. (1) Subject to this Division, an adoption order shall not be made in respect of a child who has not attained the age of 18 years unless consent to the adoption has been given by each person who is an appropriate person ascertained in accordance with subsection (2).

- 25 (2) For the purposes of subsection (1), a person is an appropriate person in relation to a proposed adoption of a child if the person is—

- (a) in the case of a child who has not previously been adopted—

- (i) each parent of the child; or
- (ii) the guardian of the child; and

- 30 (b) in the case of a child who has previously been adopted—each adoptive parent or guardian of the child.

(3) A reference in subparagraph (2) (a) (i) to a parent of a child shall not be read as including a reference to the father unless he is presumed to be the father under the *Birth (Equality of Status) Act 1988*.

Consent of applicant not required

28. Where 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.

5 General or limited consents

29. (1) For the purposes of this Act, consent to the adoption of a child may be general or limited.

10 (2) A general consent shall be a consent to the adoption of the child by any person or persons in accordance with the law of the Territory, and shall have effect accordingly.

(3) A limited consent shall be a consent to the adoption of the child—

- (a) by a relative of the child;
- (b) by a person who has been appointed as a guardian of the child by order of a court;
- 15 (c) by a person in whose custody the child has been placed by the Director in accordance with a law of the Territory; or
- (d) by a person referred to in subsection 18 (2).

Instrument of consent

20 30. A consent to an adoption shall be by an instrument substantially in accordance with the prescribed form, signed by the person giving the consent and attested as prescribed.

Revocation of consent

25 31. (1) A consent to the adoption of a child may be revoked by notice in writing served on the Registrar of the Supreme Court before the expiration of 30 days after the date on which the instrument of consent was signed or, if before the expiration of that period the person who gave the consent has served on the Registrar notice in writing that a further period of 14 days commencing on that expiration is required for the purpose of this section, at the expiration of that further period, but may not otherwise be
30 revoked.

(2) Upon receiving a notice under subsection (1), the Registrar of the Supreme Court shall forthwith notify the Director in writing accordingly.

35 (3) When the period within which a consent may be revoked has expired, the Director shall notify the person who gave the consent in writing accordingly.

Access during revocation period

5 **32. (1)** A person whose consent to the adoption of a child is required is entitled to have access to the child before the expiration of the period during which that consent may be revoked unless the Director, by notice in writing served on that person, informs that person that access is denied.

(2) The Director shall not give a notice under subsection (1) unless satisfied that it is necessary for the purpose of protecting the welfare and interests of the child to do so.

Consents under law of a State or another Territory

10 **33.** A consent to the adoption of a child 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 the purposes of this Act.

15 Defective consents

34. (1) The Court may refuse to make an adoption order if it appears to the Court that—

 (a) any required consent was—

- 20 (i) not given in accordance with this Act; or
- (ii) obtained by fraud, duress or other improper means;
- (b) an instrument of consent has been altered in a material particular without the authority of the person who gave the consent; or
- 25 (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 shall not be made pursuant to an instrument of consent signed by the mother of the child before the birth of the child.

30 **(3)** An adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the expiration of 7 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—

- 35 (i) was given in accordance with a law of a State or another Territory; and
- (ii) is, by virtue of section 33, an effective consent for the purposes of this Act.

Dispensing with consent

35. (1) On application, the Court may, by order, dispense with the requirement for consent of a person to the adoption of a child if the Court is satisfied that—

- 5 (a) the person cannot, after reasonable inquiry, be identified or located;
- (b) the physical or mental condition of the person is such that he or she is not capable of considering properly the question whether consent should be given;
- 10 (c) the person has abandoned or deserted, or has neglected or ill-treated, the child;
- (d) the person has, for a period of not less than 1 year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- 15 (e) there are any other circumstances that justify the requirement for the consent being dispensed with.

(2) On an application for an order under subsection (1), the Court may require the Director to investigate the matter and to provide a report in writing to the Court.

- 20 (3) In order to facilitate the making of arrangements with a view to the adoption of a child, on the application of the Director 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-mentioned order has effect for the purpose of any subsequent application for
- 25 an adoption order.

(4) On the application of the Director or of the person the requirement for whose consent was dispensed with, the Court may revoke an order made by virtue of subsection (3) at any time before making an adoption order.

30 Guardianship pending adoption

- 35 36. (1) Subject to subsection (2) and subsection 38 (4), where the consent of each person who is an appropriate person for the purposes of subsection 27 (1) has been given or the requirement for that consent has been dispensed with under subsection 35 (1), the Director is the guardian of the child (other than for the purpose of section 27) until—

- (a) an adoption order is made;
 - (b) any consent given is revoked; or
 - (c) the Court makes an order relating to the guardianship of the child.
- (2) Where—

- (a) each person whose consent to the adoption is required has consented and has, in writing, authorised a private adoption agency to make arrangements with a view to the adoption; and
- 5 (b) the principal officer of the private adoption agency informs the Director in writing that he or she is willing to assume the guardianship of the child;

the principal officer from time to time of the private adoption agency is the guardian of the child (other than for the purpose of section 27) until—

- (c) an adoption order is made;
- 10 (d) any consent given is revoked; or
- (e) the Court makes an order relating to guardianship of the child.

(3) This section does not apply in relation to a child who is a ward within the meaning of the *Children's Services Act 1986*.

Guardianship pending adoption of overseas child

- 15 37. (1) This section applies in relation to a child—
- (a) brought from a place outside Australia for the purpose of adoption in Australia; or
- (b) adopted outside Australia, being an adoption that is not—
- 20 (i) to have the same effect as an adoption under this Act pursuant to section 55; or
- (ii) the subject of a declaration under section 57.

(2) While a child to whom this section applies is domiciled or resident in the Territory, the Director is the guardian of the child until—

- (a) the child attains the age of 18 years;
- 25 (b) an adoption order is made;
- (c) the Court makes an order relating to guardianship of the child; or
- (d) the child leaves Australia with the intention of remaining outside Australia permanently.

Transfer of guardianship of child pending adoption

- 30 38. (1) On receiving a request in writing by or on behalf of the authority in a State or another Territory having the guardianship of a child in respect of whom consents with a view to adoption in the Territory have been given or dispensed with, the Director may, in writing, declare that the child is under the guardianship of the Director while the child is domiciled or
- 35 resident in the Territory.

(2) Where a declaration under subsection (1) has effect, then, while the child is domiciled or resident in the Territory, the Director is the guardian of the child until—

- (a) the child attains the age of 18 years;
- 5 (b) an adoption order is made; or
- (c) the Court makes an order relating to the guardianship of the child.

(3) A declaration under subsection (1) ceases to have effect if the child ceases to be under the guardianship of the authority in the State or other Territory.

- 10 (4) Where, in the opinion of the Director, a law of a State or another Territory contains a provision corresponding to this section, the Director may request the authority having the guardianship of children pending adoption in that State or Territory to declare that, while a child of whom the Director is the guardian pursuant to this Act (being a child in respect of
- 15 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 is under the guardianship of that authority.

- (5) While a declaration made pursuant to a request under subsection (4) has effect, the functions and obligations of the Director as guardian of the child are suspended.
- 20

(6) Subsection (5) does not apply in relation to the exercise by the Director of a function in respect of a child pursuant to an arrangement made under subsection (7).

- 25 (7) The Director may, on behalf of the Territory, make financial or other arrangements with an authority referred to in subsection (1) or (4) in respect of a child while the child is under the guardianship of the Director or that authority, as the case requires.

- (8) The Director may make arrangements for the return of a child who is under the guardianship of the Director pursuant to this section to his or her former custody.
- 30

Review of status of child released for adoption

39. (1) Where—

- (a) all required consents to the adoption of a child have been given; and
- 35 (b) the child has not been—
 - (i) placed for adoption within a year, or
 - (ii) adopted within a year after being placed for adoption;

the Director shall 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; and
- (b) make such orders in relation to guardianship or custody of the child, or such other orders to promote the welfare and interests of the child, as the Court thinks fit.

Division 3—Conditional Orders

Adoption order subject to certain conditions

40. Where the Court is of the opinion—

- (a) that circumstances exist that justify it doing so, whether by reason of the age of the child or otherwise; and
- (b) that 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 as are specified in the order have such right of access to the child as is specified in the order;
- (d) a condition that the adoptive parents of the child provide information about the child to the Director 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 specified in the order.

Variation etc. of condition

41. (1) Where the Court is of the opinion that the welfare and interests of an adopted child would be best served by a condition referred to in section 40 to which the adoption order is subject being varied or revoked, the Court shall, on application by an adoptive parent, a birth parent who consented to the adoption or by or on behalf of the adopted child, by order vary or revoke the condition.

(2) An application under subsection (1) shall be accompanied by a report from the Director.

(3) A variation of a condition shall not be made so as to grant to a person greater rights of access to an adopted child unless the adoptive parents agree and the Court is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them having regard to the age and understanding of the child.

(4) For the purposes of subsection (3) the Court may inform itself in such manner as it thinks fit.

Cessation of condition

5 42. An adoption order ceases to be subject to a condition referred to in section 40—

(a) when the condition is revoked; or

(b) when the adopted child attains the age of 18 years;

whichever first occurs.

Division 4—Effect of adoption orders

10 General effect

43. (1) Subject to this Act and to the provisions of any law of the Territory that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order, for all purposes—

15 (a) the adopted child becomes in contemplation of law a child of the adoptive parents, and the adoptive parents become in contemplation of law the parents of the child as if the child had been born to the adoptive parents;

20 (b) the adopted child ceases to be a child of the birth parents or of any person who was an adoptive parent before the making of the adoption order, and any such person ceases to be a parent of the child;

25 (c) if the order is made in favour of a person referred to in subsection 18 (2)—the relationship of the child with the parent referred to in that subsection is not affected;

(d) the relationship to one another of all persons (including the adopted child and the adoptive parents, birth parents or any former adoptive parent) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant;

30 (e) any existing appointment of a person as guardian of the adopted child ceases to have effect; and

(f) any previous adoption of the child (whether under the law of the Territory or otherwise) ceases to have effect.

(2) Where—

35 (a) 1 of the birth or former adoptive parents of a child has died; and

(b) an adoption order is made in favour of a person referred to in subsection 18 (2) after that death;

the adoption does not exclude any right of inheritance that the child might otherwise have from or through the deceased person.

- 5 (3) Notwithstanding subsection (1), for the purposes of 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
10 discharging an adoption order, shall not be taken to cause the cessation of any relationship that would otherwise have existed, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection or by virtue of the discharge of the adoption order.

Disposition of property

- 15 44. (1) Subsection 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.

- 20 (2) Subsection 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) Where—

- 25 (a) before the commencement of this Act, a person made, by an instrument other than a will, a disposition of property;
- (b) the disposition had not taken effect in possession before the commencement of this Act; and
- 30 (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;

- 35 that person may, notwithstanding that the instrument could not, apart from this subsection, be revoked or varied, by a like instrument, vary the first-mentioned instrument to exclude an adopted child (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

- 40 (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.

5 Names of adopted child

45. (1) Subject to subsection (2), upon the making of an adoption order, the adopted child shall have as his or her surname—

(a) if both parents are known by the same surname—that surname; or

(b) in any other case—

10 (i) the maiden name or other surname of the child's mother;

(ii) the surname of the child's father; or

(iii) a surname formed by combining the mother's maiden name or other surname and the father's surname;

15 whichever the Court, on the application of either of the adoptive parents, approves in the adoption order.

(2) Upon the making of an adoption order, the adopted child shall have as his or her forename or forenames such name or names as, on the application of the adoptive parents, the Court approves in the adoption order.

20 (3) Where, before the making of an adoption order, the adopted child had been generally known by a particular surname, the Court may, in the adoption order, order that the child shall have that name as his or her surname.

25 (4) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with the law of the Territory.

Effect of order on domicile

30 46. (1) Upon the making of an adoption order, the adopted child acquires the domicile of the adoptive parents at the date on which the adoption order was made and after that date the child's domicile shall be determined as if the child had been born in lawful wedlock to the adoptive parents.

(2) The domicile acquired under subsection (1) by an adopted child shall for all purposes be deemed to be also the child's domicile of origin.

35 Distribution of property by trustee or personal representative

47. (1) Notwithstanding 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.

- 5 (2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in subsection (1) shall not be liable to a person claiming directly or indirectly by virtue 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.

- 10 (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.

Bequest by will to unascertained adopted person

- 15 48. (1) Where, under a will made after the commencement of this Act—

- 20 (a) a disposition of property or of an interest in property (in this section called a “bequest”) is expressed to be made by the testator to a person (in this section called the “beneficiary”) who is not named but who is described as a child of the testator or of a spouse, 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;

- 25 the personal representative shall give to the Public Trustee a copy of the will and a statement that he or she is unable to ascertain the name and address of the beneficiary.

- 30 (2) Where the Public Trustee is given a copy of a will under subsection (1), the Public Trustee shall, in writing, request the Director to ascertain and give to the Public Trustee the name and address of the beneficiary.

- 35 (3) Where the Director receives a request under subsection (2), the Director shall examine the records in the possession of the Director and, if necessary, make enquiries of a private adoption agency or other body or person in an endeavour to ascertain the name and address of the beneficiary or, if the beneficiary has died, the date of the death, and the Director shall inform the Public Trustee of the results of the examination and enquiries.

- 40 (4) If the information received from the Director does not disclose the name and address of the beneficiary, or discloses that the beneficiary has died, the Public Trustee shall inform the personal representative accordingly.

(5) If the information received from the Director discloses the name and address of the beneficiary, the Public Trustee shall, if the beneficiary has attained the age of 18 years—

- (a) ascertain whether the beneficiary wishes to accept the bequest;
- 5 (b) if the beneficiary does not wish to accept the bequest—inform the personal representative accordingly;
- (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 on behalf of the beneficiary; and
- 10 (d) on receiving the proceeds of the bequest—transmit the proceeds to the beneficiary.

(6) If the information received from the Director discloses the name and address of the beneficiary, the Public Trustee shall, if the beneficiary has not attained the age of 18 years—

- 15 (a) inform the personal representative that the proceeds of the bequest should be transferred to the Public Trustee to be held in trust for the beneficiary;
- (b) hold the proceeds of the bequest in trust for the beneficiary upon the trusts (if any) set out in or arising under the will until the
- 20 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) Where the personal representative transfers the proceeds of a bequest to the Public Trustee under this section, the personal representative shall be taken to have transferred the bequest to the beneficiary.

(8) Where the Public Trustee gives to the personal representative a statement in writing 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 shall not, in information conveyed to a personal representative under this section, include particulars that identify or tend to identify the adopted person.

Gifts inter vivos

49. (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 (in this section referred to as the “donor”) to a person who is not named but who is described as the child of the donor or of a spouse,

parent, child, brother or sister of the donor, being a person who has been adopted by another person.

(2) In the application of section 48 by virtue of subsection (1), that section has effect as if—

- 5 (a) a reference in that section to a will were a reference to the deed of gift;
- (b) a reference in that section to the testator or to a personal representative were a reference to the donor; and
- 10 (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 5—Interim orders

Making of order

15 50. (1) On an application to the Court for an adoption order, the Court may postpone the determination of the application and make an interim order in favour of the applicants for the custody of the child.

(2) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the Court thinks fit.

20 (3) An interim order shall not be made in favour of any person unless an adoption order in respect of the child could be made in favour of the person.

Duration

25 51. (1) Subject to subsection (2) and to section 52, an interim order remains in force for such period, not exceeding 1 year, as the Court specifies in the order and for such further periods, if any, as the Court by order from time to time determines.

(2) An interim order shall not be in force for periods exceeding, in the aggregate, 2 years.

Discharge

30 52. (1) The Court may, at any time, make an order discharging an interim order, and may make such order for the custody of the child as the Court thinks fit.

35 (2) An interim order ceases to have effect upon the making of an adoption order in respect of the child, whether made in the Territory, a State or another Territory.

PART IV—RECOGNITION OF ADOPTIONS**Interpretation**

53. In this Part—

5 “country” means a country other than Australia and includes a part of a country.

Australian adoptions

10 54. For the purposes of the law of the Territory, the adoption of a person (whether before or after the commencement of this Act) in a State or another Territory in accordance with the law of that State or other Territory has, so long as it has not been rescinded under the law of that State or other Territory, the same effect as an adoption order made under this Act.

Foreign adoptions

15 55. (1) For the purposes of the law of the Territory, the adoption of a person (whether before or after the commencement of this Act) in another country, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order made under this Act.

(2) This section applies to an adoption in a country if—

- 20 (a) the adoption was effective according to the law of that country;
- (b) either—
- 25 (i) that country was the usual place of residence of the adoptive parents for a continuous period of not less than 12 months, or such lesser period as a court considers reasonable in the circumstances of the case, immediately before the commencement of the proceedings for the adoption; or
- 30 (ii) the Director or the principal officer of a private adoption agency has, before the adoption in that other country, agreed to the placement of the adopted child with the adoptive parents and the child is placed in accordance with the conditions of approval of the adoptive parents;
- 35 (c) in consequence of the adoption, the adoptive parents had, or would have had if the adopted child had been under the age of 18 years, under the law of that country, a right superior to that of any birth parent in respect of the custody of the adopted child; and
- (d) under the law of that country the adoptive parents were, by virtue of the adoption, placed generally in the position of parents in relation to the adopted child.

5 (3) Notwithstanding subsections (1) and (2), a court (including a court dealing with an application under section 57) may refuse to recognise an adoption as being an adoption to which this section applies 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 otherwise failed to do justice.

10 (4) Where, in any proceedings before a court (including proceedings under section 57), the question arises whether an adoption is one to which this section applies, it shall be presumed that the requirements of subsection (2) were satisfied and the adoption has not been rescinded, but that presumption is rebuttable.

15 (5) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country outside Australia does not have effect for the purposes of the law of the Territory.

(6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.

Supervision of certain adopted children

56. (1) Subject to this section, where—

- 20 (a) a child is adopted in another country, whether or not the adoption is an adoption that has, under this Act, the same effect as an adoption order under this Act;
- (b) the adoption in relation to the child has been in force for a period not exceeding 12 months;
- 25 (c) neither of the adoptive parents of the child was at the time of the making of the order of adoption with respect to the child a national or citizen of the country in which the order was made; and
- (d) the child is present in the Territory;

30 the Director may supervise the welfare and interests of the child for a period not exceeding 12 months commencing on the date of the arrival of the child in the Territory and any person authorised in writing by the Director for that purpose has a right of access to the child at all reasonable times during that period.

35 (2) Where a child whose welfare and interests may be supervised by the Director under subsection (1) has, after being adopted but before arriving in the Territory, been resident in a State or in another Territory, the period during which the child is subject to the supervision of the Director is reduced proportionately to the period of such residence in that State or other Territory.

(3) Where the Director supervises the welfare and interests of a child under this section, the Director may require payment by the adoptive parents of the child of a fee not exceeding the determined fee.

Declarations of validity of foreign adoptions

5 57. (1) On an application by a person specified in subsection (2), the Court may make an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of another country, and that the adoption is one to which section 55 applies.

10 (2) The persons who may make an application under subsection (1) are the adopted child, an adoptive parent or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

(3) On an application under subsection (1), the Court may—

15 (a) direct that notice of the application be given to such persons as the Court thinks fit;

(b) direct that a person be made a party to the application; or

(c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

20 (4) Where the Court makes an order under subsection (1), the Court may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parents as the Court finds to be established.

(5) Except as provided in subsection (6), an order under subsection (1) does not affect—

(a) the rights of another person unless that person was—

25 (i) a party to the proceedings for the order or a person claiming through such a party; or

(ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or

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

35 (6) In proceedings in a court of the Territory, being proceedings relating to the rights of a person other than a person referred to in subparagraph (5) (a) (i) or (ii), the production of a copy of an order under subsection (1), certified by the Registrar of the Supreme Court to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 55 applies.

PART V—ACCESS TO INFORMATION**Division 1—General****Interpretation**

58. In this Part, unless the contrary intention appears—

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

“birth parent”—

- (a) in relation to an adopted child who had a guardian before being adopted, includes the person who was that guardian; and
- 15 (b) does not include the father unless he is presumed to be the father under the *Birth (Equality of Status) Act 1988*;

20 “birth relative”, in relation to an adopted child, means a person who was a relative within the meaning of this Act before the child was adopted;

“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 child; or
- 25 (b) information from which a birth parent, a birth relative or the adopted child may be identified (not being 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);

30 “register of births” means the Register of Births kept pursuant to section 8 of the *Registration of Births, Deaths and Marriages Act 1963*;

35 “Registrar of Births, Deaths and Marriages” means the Registrar of Births, Deaths and Marriages appointed under subsection 6 (1) of the *Births, Deaths and Marriages Act 1963* and includes a person appointed under subsection 6 (3) of that Act to act in that office;

“relevant authority”, in relation to information, means—

- (a) the Director;
- (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 has declared in writing that a private adoption agency is for the time being the relevant authority for the purposes of this Part in relation to that kind of information—that agency.

10 Application of Part

59. The provisions of this Part apply in relation to an adoption—

- (a) whether the order for the adoption was made before or after the commencement of this Act; and
- (b) if the child is domiciled or resident in the Territory—whether that order was made in the Territory or elsewhere.

Confidentiality of records

60. (1) Except as provided in this Part—

- (a) records in the possession or under the control of the Director or a private adoption agency relating to an adoption;
- (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 child, or a copy of, or extract from, such an entry;

shall 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 him or her to do so from obtaining access to information where it is necessary to do so for the administration of this Act.

Records of adoptions

61. (1) The Director shall maintain records—

- (a) in respect of each adoption negotiated or arranged by or on behalf of the Director; or
- (b) furnished to the Director under subsection (2).

(2) A private adoption agency shall—

- (a) maintain records in respect of 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, furnish to the Director the prescribed particulars concerning the persons associated with the application for the order.

(3) For the purposes of subsection (2), the associated persons are the adopted child, an adoptive parent, a birth parent and the person who made the report referred to in paragraph 19 (1) (a).

- (4) The regulations may make provision for the length of time for which, and the manner in which, records are to be maintained pursuant to subsection (1) or (2).

Provision of information

62. (1) Where—

- (a) the Director receives an application for information under this Part; and
- (b) the Director 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 shall—
- (c) if that information is contained in records in the possession or under the control of the Director—give that information to the applicant;
- (d) if the information is, to the Director'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; or
- (B) if the application so requests—give the information to the applicant; and
- (ii) if the information is received by the Director from the authority—give that information to the applicant; or
- (e) if the information is not contained in any records referred to in paragraph (c) or (d)—
- (i) make such enquiries as are reasonable in the circumstances of the case in an endeavour to obtain the information; and
- (ii) upon obtaining the information—give it to the applicant.

5 (2) Subsection (1) shall not be taken to require the Director 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 furnishing information of that kind has been paid.

(3) Where—

- 10 (a) the Registrar of Births, Deaths and Marriages receives an application for information under this Part; and
- (b) the Registrar 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;

15 the Registrar shall, upon payment of the appropriate fee determined under section 62 of the *Registration of Births, Deaths and Marriages Act 1963*, 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;

as the case requires.

Division 2—Non-identifying information

20 Right of access

63. Subject to this Division, an associated person is entitled to access to, and to apply for information, other than identifying information, concerning an adoption.

Protection of privacy

25 64. (1) A person is not, by virtue of this Division, entitled to personal information relating to another person (whether alive or dead).

(2) In subsection (1)—

30 “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.

Medical information

35 65. Where, under this Division, information concerning 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 well-being 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 3—Identifying information

5 Right of access

66. Subject to this Division, an associated person is entitled to access to, and to apply for, identifying information concerning an adoption.

Recipient of application

67. (1) An application under section 66 shall be made to—

- 10 (a) if the information sought consists of a copy of, or an extract from, an entry in the register of births—the Registrar of Births, Deaths and Marriages; and
- (b) in any other case—the Director.

15 (2) On receiving an application pursuant to subsection (1), the Registrar of Births, Deaths and Marriages shall notify the Director in writing accordingly.

Restriction on entitlement to apply

20 68. (1) An adopted child 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 person referred to in subsection 18 (2); and
- (b) the information sought consists of a copy of, or an extract from, an entry in the register of births.
- 25 (3) A birth parent of an adopted child 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—

- 30 (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 preceding the person's adoption—the applicant can demonstrate that he or she knows the names of each birth parent of the child who is named in the register; and
- 35 (b) if the adopted child 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 child 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.

5 (6) Notwithstanding the preceding subsections, the approval of a person is not required for the purposes of this Division if the Director or the Registrar of Births, Deaths and Marriages, as the case requires, is satisfied that—

- (a) the person is dead; or
- 10 (b) the whereabouts of the person are unknown and could not with reasonable enquiries be ascertained.

(7) The Director may withhold information from a birth parent where he or she believes, on reasonable grounds, that the child has been subjected to sexual or physical abuse from that birth parent.

Assistance in obtaining approval

15 69. Upon receiving—

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

20 the Director shall, 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.

Objection to contact

70. (1) Objection may be made by—

- 25 (a) an adopted person who has attained the age of 17 years and 6 months;
- (b) an adoptive parent;
- (c) a birth relative who has attained the age of 18 years;
- (d) an adoptive relative who has attained the age of 18 years;
- 30 (e) a child or other descendant of an adopted person, being a child or other descendant, who has attained the age of 18 years; or
- (f) a birth parent;

to contact being made with him or her by a specified person or a specified class of persons referred to in the objection (being a person who is or a class of persons each of whom is an associated person).

(2) An objection shall be made by notice in writing lodged with the Director and shall continue in force until revoked by the person by notice in writing lodged with the Director.

5 (3) Where the Director receives an objection or revocation he or she shall enter the particulars in the Contact Veto Register.

(4) An objection made by a person who is less than 18 years of age takes effect when the person attains that age.

Contact veto by a person other than an adopted person

10 71. (1) Where a person, other than an adopted person, has not attained the age of 18 years but would be entitled to lodge a contact veto on attaining 18 years, a parent may lodge a contact veto on his or her behalf.

(2) A contact veto lodged under subsection (1) remains in force until—

15 (a) revoked by the parent who lodged it; or
(b) the person on whose behalf the veto was lodged attains the age of 18 years.

(3) A person, other than an adopted person, who is 17 years and 6 months of age may lodge a contact veto.

20 (4) A contact veto lodged under subsection (3) comes into effect when the person who lodged it attains the age of 18 years.

Counselling services

25 72. (1) The Director shall not supply a document or information to an applicant specified in, or included in a class of persons specified in, a contact veto under this Part unless the applicant has attended an interview with an approved counsellor.

30 (2) Where the Director receives an application under this Part from an applicant referred to in subsection (1), he or she shall inform the applicant in writing of the place or places at which counselling services are available and that information cannot be supplied under this Part unless the applicant has attended an interview with an approved counsellor.

(3) This section does not apply if the Director is satisfied that the adopted person and another person referred to in the original birth certificate relating to the adopted person have already exchanged information which may identify that birth parent or a birth relative of the adopted person.

35 (4) The Director may, by notice published in the *Gazette*, approve a person as a counsellor for the purposes of this Act.

(5) The Director shall not approve a person as a counsellor under subsection (4) unless the person has, in the opinion of the Director, such

qualifications and experience as are appropriate for a counsellor for the purposes of this Act.

Declaration that contact shall not be attempted

5 **73.** Where a person specified in, or included in a class of persons specified in, a contact veto requests information under section 67 (1) and an objection to the provision of information is in force, the Director shall not divulge the information unless that person—

(a) has attended a counselling service pursuant to section 72; and

(b) signs a declaration that he or she will not—

10 (i) contact or attempt to contact the person who lodged the objection;

(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;

15 while the objection remains in force.

Birth details of adopted person born overseas

74. When an adopted child who was—

(a) born outside Australia; and

(b) brought to Australia for the purpose of adoption in Australia;

20 attains the age of 18 years, the Director shall, at the request of the adopted child, furnish him or her with a copy of his or her birth certificate or such other information as is available from the records of the appropriate authority in the child's country of origin.

Application to Court in absence of consent

25 **75. (1)** Where—

(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;

30 the first-mentioned 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 to investigate the matter and to provide a report in writing to the Court.

35 (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.

- 5 (4) Where the Court makes an order under subsection (3), the applicant for the order shall, for the purposes of section 62, be taken to be entitled to access to, and to apply for, identifying information of the kind specified in the order.

Other person's right to information

- 10 76. (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) shall be accompanied by a report from the Director.

- 15 (3) On an application under subsection (1), the Court may, after considering the report referred to 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 specified in the order.

- 20 (4) Where the Court makes an order under subsection (3), the applicant for the order shall, for the purposes of subsection 60 (1), be taken to be entitled to access to, and to apply for, information of the kind specified in the order.

Adoption Information Service

- 25 77. (1) The Minister shall cause to be established and maintained within the relevant administrative unit a service to be known as the Adoption Information Service.

(2) The Director is responsible for the administration of the Service.

(3) The function of the Service is to—

- 30 (a) advise persons with respect to the provisions of this Part;
- (b) make arrangements for the provision of counselling in relation to applications under this Part;
- (c) supervise the taking of and keep declarations made pursuant to section 73;
- (d) receive applications for information under this Part; and
- 35 (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.

Adoption Information Register

78. (1) The Director shall establish and maintain an Adoption Information Register.

(2) The register shall contain—

5 **(a)** the names and addresses of—

(i) adopted persons;

(ii) birth parents of adopted persons;

(iii) birth relatives of adopted persons; and

(iv) adoptive parents;

10 who have, in writing, requested the Director 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 with respect to—

15 **(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.

20 **(3)** The Director shall, upon the request of a person whose name is entered in the Adoption Information Register, amend or cancel the entry relating to that person.

Contact Veto Register

25 **79. (1)** The Director shall establish and maintain a Contact Veto Register.

(2) The register shall contain—

(a) the name of each person who has duly lodged a contact veto;

30 **(b)** the address nominated by the person as the address at which any personal or postal contact by the Director with the person should be made;

(c) the date and place of birth of the person;

(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.

Reunion Information Register

- 5 **80. (1)** The Director shall establish a Reunion Information Register.
- (2)** The Director shall 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.
- 10 **(3)** Application for entry in the register is to be made in the form approved by the Director.

PART VI—PRIVATE ADOPTION AGENCIES

Application for approval

- 15 **81. (1)** A charitable organisation desiring to conduct negotiations and make arrangements with a view to the adoption of children may apply in writing to the Director for approval as a private adoption agency.

(2) An application under subsection (1) shall specify the name of a person resident in the Territory appointed by the organisation to be its principal officer in the Territory for the purposes of this Act.

20 Grant or refusal of approval

82. (1) The Director may grant or refuse to grant the approval sought in the application under subsection 81 (1).

(2) Without limiting the generality of subsection (1), the Director shall refuse the approval sought if it appears to the Director that the applicant is—

- 25 (a) not a charitable organisation; or
- (b) not suited to conducting negotiations and making arrangements with a view to the adoption of children.
- (3)** For the purpose of subsection (2), the Director shall have regard to—
- 30 (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
- 35 granted; and
- (b) any other relevant considerations.

Change in principal officer

83. (1) If a vacancy occurs in the position of principal officer for a private adoption agency, the agency shall, within 7 days—

- 5 (a) appoint a person resident in the Territory as its principal officer in the Territory for the purposes of this Act; and
- (b) notify the Director in writing accordingly.

(2) A person ceases to be the principal officer of a private adoption agency for the purposes of this Act if the person ceases to be resident in the Territory.

10 **Effect of action by principal officer**

84. (1) Any act or thing done by the principal officer of a private adoption agency for the purposes of this Act shall, for those purposes, be deemed to have been done by the private adoption agency.

- 15 (2) Subsection (1) shall not be taken to affect any personal liability of a principal officer for any act or thing done.

Revocation or suspension of approval

85. (1) The Director may, by notice in writing served on the principal officer of a private adoption agency, revoke or suspend the approval of the agency under this Part—

- 20 (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
- (ii) has contravened a provision of this Part or the regulations.

- 25 (2) For the purpose of subparagraph (1) (b) (i), the Director shall have regard to the matters specified in subsection 82 (3).

Effect of cessation of approved agency

86. Where a charitable organisation ceases to be approved as a private adoption agency—

- 30 (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 shall become the property of the Director;
- 35 (b) if the principal officer of the organisation was, immediately before the cessation, the guardian of a child under this Act, the Director becomes the guardian of that child upon the cessation; and

- (c) the negotiations or arrangements being undertaken by the organisation immediately before the cessation may be continued by the Director.

Requirements for private adoption agencies

- 5 **87.** The regulations may prescribe requirements to be observed, and facilities to be provided, by private adoption agencies, including requirements with respect to the qualifications and experience of persons acting for or on behalf of private adoption agencies.

PART VII—OFFENCES

10 Territorial application of Part

- 15 **88.** This Part does not apply in respect of acts occurring outside the Territory but, except to the extent to which the contrary intention appears, does apply in respect of acts done in the Territory in relation to the adoption of children in, or children adopted in, a State, another Territory or another country.

Taking away etc. of adopted child by birth parent

- 20 **89.** A person who was a parent or guardian of a child but has, by reason of an adoption of the child, ceased to be the parent or guardian of the child shall not take, lead, entice or decoy the child away, or detain the child with intent to deprive the adoptive parents of the custody of the child.

Penalty: \$50,000 or imprisonment for 5 years.

Receiving or harbouring child

- 25 **90.** A person shall not receive or harbour a child on behalf of a person who, to his or her knowledge, has contravened section 89.

Penalty: \$20,000 or imprisonment for 2 years.

Interfering with upbringing of child

- 30 **91.** A person who was a parent or guardian of a child but has, by reason of an adoption of the child, ceased to be the parent or guardian of the child shall not—

- 35 (a) interfere in or influence the upbringing of the child or the relationship between the child and the adoptive parents; or
- (b) except where an adoptive parent is a birth relative of the child or a person referred to in subsection 18 (2)—otherwise than in accordance with the approval of the Director or in accordance with Division 3 of Part III, communicate in any way with—
- (i) the child 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.

Penalty: \$5,000 or imprisonment for 6 months.

Approval of communications

5 **92. The Director—**

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

10 **Director's report for prosecution**

93. In proceedings for an offence against paragraph 91 (b), a court shall—

- (a) require the Director to furnish a report concerning the circumstances of the alleged communication; and
- 15 (b) consider that report.

Payments in consideration of adoptions etc.

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

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

Penalty: \$50,000 or imprisonment for 5 years.

(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;
- 30 (b) a payment made by an adoptive parent, with the approval in writing of the Director or with the approval of the Court, in respect of the hospital and medical expenses reasonably incurred in connection with the birth of the child or the ante-natal or post-natal care and treatment of the mother or the child;

- (c) any other payment or reward authorised by the Director or by the Court.

- 5 (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.

Unauthorised arrangements for adoption

- 10 95. (1) A person other than the Director or a person acting on behalf of the Director or a private adoption agency shall not—

- (a) conduct negotiations or make arrangements with another person with a view to the adoption of a child by that other person; or
- (b) except in accordance with arrangements made by or on behalf of the Director or a private adoption agency—
- 15 (i) transfer, or cause to be transferred, the possession, custody or control of a child to another person with a view to the adoption of the child by that other person; or
- (ii) receive possession, custody or control of a child with a view to adopting the child.

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

Penalty: \$20,000 or imprisonment for 2 years.

25 Unauthorised advertising

96. (1) Subject to this section, a person shall 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) that—

- 30 (a) a parent or guardian of a child wishes to have the child adopted;
- (b) a person wishes to adopt a child; or
- (c) a person is willing to make arrangements with a view to the adoption of a child.

Penalty: \$5,000 or imprisonment for 6 months.

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

Restriction on publication of identity of parties

97. (1) Subject to this section, a person shall not publish, or cause to be published, by electronic or print media or any other means, in relation to—

- 5 (a) an application for an adoption order or for a corresponding order under a law of a State or another Territory;
- (b) the proceedings on such an application; or
- (c) any legal steps taken preparatory to or consequent upon such an application;
- 10 the name of an applicant, the child, or a parent or guardian of the child, or any matter reasonably likely to enable any of those persons to be identified.

Penalty: \$20,000 or imprisonment for 2 years.

- (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.
- 15

 (3) An authorisation for the purpose of subsection (2) shall 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.

20 **False statements**

98. A person shall not, whether orally or in writing, wilfully make a false statement for the purpose of or in connection with an application for an adoption order or any other matter arising under this Act.

Penalty: \$20,000 or imprisonment for 2 years.

25 **Personation of person whose consent to an adoption is required**

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

- 30 Penalty: \$20,000 or imprisonment for 2 years.

Presenting forged consent

100. A person shall 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-mentioned person, forged or obtained by fraud, duress or other improper means.
- 35

Penalty: \$20,000 or imprisonment for 2 years.

Improperly witnessing consent

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

- 5 (a) he or she is satisfied that the person who signed the instrument is a parent or guardian of the child;
- (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
- 10 (c) the instrument bears the date on which it is signed by that person.

Penalty: \$5,000 or imprisonment for 6 months.

Forged approval documents

- 102.** A person shall not forge, or present to the Director, to a private adoption agency or to the Court knowing it to be forged, a document purporting to be an approval to the giving of identifying information concerning an adoption.

Penalty: \$20,000 or imprisonment for 2 years.

PART VIII—MISCELLANEOUS

Delegations

- 20 **103.** The Director or the Community Advocate may, by instrument in writing, delegate to a public servant all or any of his or her powers or functions under this Act.

Registration of orders

- 25 **104. (1)** The Registrar of the Supreme Court shall cause a memorandum, in accordance with the prescribed form, of each adoption order made, and a copy of each order discharging an adoption order, to be sent to the Registrar of Births, Deaths and Marriages.

(2) On receiving a memorandum or copy of an order under subsection (1), the Registrar of Births, Deaths and Marriages shall—

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

Memoranda of orders interstate

- 35 **105.** Where—

- (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;
- 5 the Registrar shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him or her to be a true memorandum or copy, to be sent to such officer of that State or other Territory having functions in relation to registration of births as is prescribed or having functions corresponding to those of the Registrar of Births, Deaths and Marriages.

Particulars of interstate orders

106. Where the Registrar of Births, Deaths and Marriages receives, in relation to a child whose birth is registered in the register of births, a memorandum or copy of an order for the adoption of the child 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 shall—

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

Legal representation of child

107. In proceedings on an application for an adoption order, the Court may make an order for the legal representation of the child.

Notification to parents

108. The Director shall inform a birth parent of a child in writing of—

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

Notice of decisions

109. (1) Where the Director makes a decision—

- (a) refusing to include the name of a person on the register of persons seeking the placement of a child for the purpose of adoption under paragraph 16 (1) (a);
- (b) denying access under section 32;
- 5 (c) refusing to declare under section 38 that a child is under his or her guardianship;
- (d) refusing to give information, to request an authority to give information, or to make enquiries under section 62;
- (e) withholding information under subsection 68 (7);
- 10 (f) supplying a document or information under subsection 72 (1) when the applicant has not attended an interview with an approved counsellor;
- (g) refusing to approve a person as a counsellor under subsection 72 (4);
- 15 (h) refusing to grant approval of a private adoption agency under section 82;
- (i) revoking or suspending an approval under section 85;
- (j) denying approval of a communication, or approving a communication subject to conditions or restrictions, under section 92;
- 20 (k) refusing to approve a payment in respect of hospital and medical expenses under paragraph 94 (2) (b);
- (l) refusing to authorise a payment or reward under paragraph 94 (2) (c); or
- 25 (m) refusing to approve advertising or other matter under subsection 96 (1);

he or she shall, within 30 days after the date of the decision, cause notice in writing of the decision to be given to the relevant person.

- 30 (2) Where the Registrar of Births, Deaths and Marriages makes a decision under subsection 62 (3) refusing to—
 - (a) cause a search to be made in the register of births; and
 - (b) issue to the applicant—
 - (i) a copy of, or an extract from, the relevant entry; or
 - (ii) a notification of the result of the search;
- 35 as the case requires;

he or she shall, within 30 days after the date of the decision, cause notice in writing of the decision to be given to the applicant.

(3) A notice under subsection (1) or (2) shall—

- 5 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates;
- 10 (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act; and
- (c) if the notice relates to a decision referred to in paragraph (1) (a)—include a statement to the effect that the applicants may request the Director to reconsider the decision under section 17.
- 15 (4) The validity of a decision referred to in subsection (1) or (2) shall not be taken to be affected by a failure to comply with subsection (3).
- (5) In subsection (1), “relevant person” means—
- 20 (a) in the case of a decision referred to in paragraph (1) (a)—the person or each of the persons who requested a review of the decision;
- (b) in the case of a decision referred to in paragraph (1) (b)—
- 25 (i) the person who has been denied access to the child;
- (ii) each person who has custody of the child; and
- (iii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child;
- 30 (c) in the case of a decision referred to in paragraph (1) (c)—
- (i) the requesting authority in a State or another Territory;
- (ii) a person with whom the child has been placed with a view to adoption; and
- (iii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child;
- 35 (d) in the case of a decision referred to in paragraph (1) (d)—the person who applied for the information;
- (e) in the case of a decision referred to in paragraph (1) (e)—the applicant for the information;

- (f) in the case of a decision referred to in paragraph (1) (f)—the applicant for the document or information;
- (g) in the case of a decision referred to in paragraph (1) (g)—the person refused approval as a counsellor;
- 5 (h) in the case of a decision referred to in paragraph (1) (h) and (i)—the principal officer of the organisation;
- (i) in the case of a decision referred to in paragraph (1) (j)—
 - (i) the person who sought approval to communicate;
 - 10 (ii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child; and
 - (iii) each adoptive parent;
- (j) in the case of a decision referred to in paragraph (1) (k)—
 - (i) each adoptive parent;
 - 15 (ii) the mother of the child; and
 - (iii) the person who sought approval of a payment in respect of hospital and medical expenses;
- (k) in the case of a decision referred to in paragraph (1) (l)—
 - (i) each adoptive parent;
 - 20 (ii) the mother of the child; and
 - (iii) the person who sought approval of the payment or reward; and
- (l) in the case of a decision referred to in paragraph (1) (m)—
 - 25 (i) the person who sought approval of the advertisement or other matter; and
 - (ii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child.

Review by Administrative Appeals Tribunal

30 **110. (1)** Subject to subsection (2), application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 109.

(2) An application for a review of a decision referred to in paragraph 109 (1) (a) shall not be made unless the Director has reconsidered and confirmed that decision under subsection 17 (4).

(3) Where—

- (a) a request has been made under subsection 17 (1) for a reconsideration of a decision referred to in paragraph 109 (1) (a); and
- 5 (b) at the expiration of the period of 14 days after the day on which the request was made the persons who made the request have not been informed in writing by the Director of the result of his or her reconsideration;

10 for the purpose of subsection (2), the Director shall be taken to have reconsidered and confirmed that decision on the expiration of that period.

(4) For the purpose of section 27 of the *Administrative Appeals Tribunal Act 1989*, a decision referred to in paragraph 109 (1) (a) shall be taken to have been made on the date on which the Director reconsidered and confirmed that decision, or is by virtue of subsection (3) to be taken to have

15 reconsidered and confirmed that decision, under subsection 17 (4).

Authority to prosecute

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

20 **Hearings to be *in camera***

112. (1) Proceedings on an application for an adoption order or ancillary proceedings shall not be heard in open court.

(2) Persons other than parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise permitted by the

25 Court, be excluded during the hearing of the proceedings.

Contents of reports not to be disclosed

113. Except as the Court otherwise orders, a report to the Court under section 19 shall not be made available to a party to the proceedings or any other person.

30 **Restriction on inspection of records**

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

Director may appear at hearings

35 115. (1) The Director, or a person appointed for the purpose by the Director, 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 the purpose of subsection (1), the Director is a party to the proceedings.

Proof of adoptions

5 **116.** 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;

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

Judicial notice of signatures

15 **117.** In proceedings under this Act judicial notice shall be taken of the signature of a person who is or was the Director or his or her delegate, or holds or has held a corresponding office in a State or another Territory appearing on a document and of the fact that, at the time the document was signed, he or she held, or was acting in, that office.

Determination of fees

118. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

20 Fees payable

119. A fee determined under section 118 is payable to the Territory in relation to the relevant matter specified in the notice referred to in that section.

Transitional provisions

25 **120. (1)** Notwithstanding the repeal effected by section 3—

(a) an adoption order or interim order made under the repealed laws and in force immediately before the commencement of this Act continues in force; and

30 (b) proceedings on an application to the Court for an order under the repealed laws that were pending immediately before the commencement of this Act may be continued and dealt with, and incidental proceedings may be instituted, continued and dealt with, under the provisions of this Act as if this Act had been in operation when the application was made and an adoption order may be
35 made under this Act accordingly.

(2) An instrument of consent to the adoption of a child given by a person before the commencement of this Act in accordance with the repealed laws and duly attested and verified shall, for the purpose of proceedings

under this Act for the adoption of the child, be deemed to be a sufficient consent of the person giving the consent.

5 (3) Subject to subsection (4), the provisions of sections 43 and 44 (other than subsection 44 (4)) apply in relation to an adoption order made under the repealed laws as if this Act had been in force when the order was made and the order had been made under this Act.

10 (4) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order referred to in subsection (3) has the same effect as if the repealed laws had continued in operation.

Regulations

15 121. The Executive may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, making provision for or in relation to—

- (a) the forms to be used for the purposes of this Act;
- 20 (b) the keeping of lists by the Director and by private adoption agencies of persons approved for the placement of a child for the purposes of adoption;
- (c) the prohibition or regulation of access to the register of adoptions;
- (d) the furnishing of copies of, or extracts from, entries included in the register of adoptions;
- 25 (e) the making, correction or cancellation of entries relating to adopted children in the register of births; and
- (f) penalties, not exceeding a fine of \$500, for offences against the regulations.

