

2009

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Children and Young People)

## Adoption Amendment Bill 2009

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THE LEGISLATIVE ASSEMBLY  
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(As presented)

(Minister for Children and Young People)

## Adoption Amendment Bill 2009

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### A Bill for

An Act to amend the *Adoption Act 1993*, and for other purposes

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

1 **1 Name of Act**

2 This Act is the *Adoption Amendment Act 2009*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written  
5 notice.

6 *Note 1* The naming and commencement provisions automatically commence on  
7 the notification day (see Legislation Act, s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be  
9 fixed, for the commencement of different provisions (see Legislation  
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the  
12 notification day, it automatically commences on the first day after that  
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Adoption Act 1993*.

16 *Note* This Act also amends the following legislation (see sch 1):

- 17 • *Adoption Regulation 1993*
- 18 • *Children and Young People Act 2008*
- 19 • *Discrimination Act 1991*
- 20 • *Parentage Act 2004*
- 21 • *Testamentary Guardianship Act 1984*.

22 **4 Long title**

23 *substitute*

24 An Act relating to the adoption of children and young people

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**5 Section 6***substitute***Part 1A Objects and principles****4 Objects of Act**

The main objects of this Act include—

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

- 1 (g) providing for adoption plans to recognise the intentions of  
2 parties in an adoption; and
- 3 (h) ensuring that equivalent standards apply for a child or young  
4 person adopted from the ACT and a child or young person  
5 adopted from overseas; and
- 6 (i) ensuring that the adoption process in the ACT complies with  
7 Australia's international obligations, in particular the  
8 obligations arising under the Convention on Protection of  
9 Children and Cooperation in Respect of Intercountry Adoption.

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

11 **5 Best interests of child or young person paramount**  
12 **consideration**

- 13 (1) A person making a decision under this Act in relation to a child or  
14 young person, must regard the best interests of the child or young  
15 person as the paramount consideration.
- 16 (2) In forming a view about the best interests of a child or young  
17 person, a person making a decision under this Act must take into  
18 account the following:
- 19 (a) the likely effect of the decision on the life course of the child  
20 or young person;
- 21 (b) the child's or young person's age, level of understanding, level  
22 of maturity, gender, and personal characteristics;
- 23 (c) the child's or young person's physical, emotional and  
24 educational needs;
- 25 (d) the views expressed by the child or young person;
- 26 (e) the relationship the child or young person has with the parents,  
27 any siblings and any other relatives;
- 28 (f) the relationship the child or young person has with the adoptive  
29 parents;



- 1 (g) the suitability and capacity of the adoptive parents to meet the  
2 child's or young person's needs;
- 3 (h) the alternatives to adoption for the child or young person to  
4 secure permanent family arrangements.

5 **6 Aboriginal and Torres Strait Islander child or young**  
6 **person—additional requirements**

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

- 10 (a) take into account the need for the child or young person to  
11 maintain a connection with the lifestyle, culture and traditions  
12 of the child's or young person's Aboriginal or Torres Strait  
13 Islander community; and
- 14 (b) seek and consider submissions about the child or young person  
15 made by or on behalf of any Aboriginal or Torres Strait  
16 Islander people or organisations identified by the chief  
17 executive as providing ongoing support services to the child or  
18 young person or the child's or young person's family; and
- 19 (c) take into account Aboriginal and Torres Strait Islander  
20 traditions and cultural values (including kinship rules) as  
21 identified by reference to the child's or young person's family  
22 and kinship relationships and the community with which the  
23 child or young person has the strongest affiliation.

1 **6 Division 3.1**

2 *substitute*

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

4 **9 Adoption of child or young person**

5 An adoption order may be made for a person who—

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

9 **10 Adoption of person 18 years old or older**

10 An adoption order may be made for a person who was 18 years old  
11 or older on the day the application was filed in the court if the  
12 person—

- 13 (a) has been reared, maintained and educated by the applicant or  
14 applicants under a de facto adoption; and  
15 (b) is present in the ACT.

16 *Note* The following provisions do not apply to the adoption of a person who  
17 was 18 years old or older on the day the application was filed in the  
18 court:

- 19 • div 3.2 (Who can adopt?) (other than s 13 (Residency  
20 requirement));  
21 • div 3.3 (Consents to adoptions) (other than s 28 (Consent of  
22 applicant not required), s 30 (Instrument of consent) and s 34 (1)  
23 (Defective consents));  
24 • div 3.4 (Placement of child or young person before adoption);  
25 • div 3.5 (Guardianship before adoption);  
26 • div 3.6 (Proceedings for an adoption order) (other than s 39A,  
27 s 39B (1) (a), s 39B (2), s 39B (3), s 39C, s 39I and s 39L);  
28 • div 3.7 (Conditional orders);  
29 • s 45 (Names of adopted child or young person);

- 1                                   • s 46 (Effect of order on domicile);  
2                                   • div 3.9 (Interim orders).

3   **11           Previous adoption immaterial**

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

7   **12           Frustration of immigration law**

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

11   **Division 3.2           Who can adopt?**

12   **13           Residency requirement**

- 13                               (1) An adoption order may only be made in favour of a person, or  
14                               2 people, who are ordinarily resident in the ACT.  
15                               (2) This section does not apply to an adoption order under section 57  
16                               (Adoption in ACT of ACT child or young person by parents from  
17                               Convention country).

18   **14           Adoption by couple**

19                               An adoption order for a child or young person may be made in  
20                               favour of 2 people jointly if—

- 21                               (a) neither of them is a parent, step-parent or relative of the child  
22                               or young person; and  
23                               (b) they have lived together in a domestic partnership for at least  
24                               3 years (whether married or not); and  
25                               (c) the court considers they have demonstrated the stability of, and  
26                               their commitment to, the domestic partnership; and

1 (d) they are on the register of suitable people.

2 *Note 1* For adoption by a step-parent or relative of a child or young person, see  
3 s 15 and s 17.

4 *Note 2* For the meaning of *domestic partnership*, see the Legislation Act,  
5 s 169.

6 **15 Adoption by step-parent**

7 An adoption order for a child or young person may be made in  
8 favour of a step-parent of the child or young person if—

9 (a) the instrument of consent shows consent to adoption by the  
10 step-parent; and

11 (b) the Family Court of Australia has given the step-parent leave to  
12 commence a proceeding for the adoption of the child or young  
13 person under the *Family Law Act 1975* (Cwlth), section 60G;  
14 and

15 (c) the step-parent is on the register of suitable people.

16 **16 Adoption by one person**

17 An adoption order for a child or young person may be made in  
18 favour of one person (other than a step-parent or relative of the child  
19 or young person) if—

20 (a) the instrument of consent shows consent to adoption by one  
21 person; and

22 (b) the person is not in a domestic partnership; and

23 (c) the person is on the register of suitable people.

- 
- 1     **17**         **Adoption by relative**
- 2             An adoption order for a child or young person may be made in  
3             favour of a relative of the child or young person if—
- 4             (a) the instrument of consent shows consent to adoption by the  
5                 relative; and
- 6             (b) the court considers that—
- 7                 (i) the family circumstances mean that it would be beneficial  
8                     for the child or young person if the relationships within  
9                     the family were redefined in the way the order would  
10                     redefine them; and
- 11                 (ii) it would not be preferable to make an order relating to  
12                     guardianship or custody of the child or young person; and
- 13             (c) the relative is on the register of suitable people.
- 14     **18**         **Approval of suitable people**
- 15             (1) A person may apply in writing to the chief executive for approval to  
16             be registered as suitable for the placement of a child or young  
17             person for adoption.
- 18             (2) The chief executive must—
- 19                 (a) approve the application; or
- 20                 (b) refuse to approve the application.
- 21             (3) In deciding the application, the chief executive must consider  
22             whether the applicant is suitable for the placement of a child or  
23             young person for adoption having regard to the criteria set out in  
24             section 39F (1) (c) (Deciding application for adoption order for  
25             child or young person).
- 26             (4) The chief executive must not approve an application if the applicant  
27             is not ordinarily resident in the ACT.

1    **19           Register of suitable people**

- 2           (1) The chief executive must keep—
- 3               (a) a register of people whose application to be registered as
- 4               suitable for the placement of a child or young person for
- 5               adoption has been approved; and
- 6               (b) records of people whose application to be registered as suitable
- 7               for the placement of a child or young person for adoption—
- 8                     (i) has been refused; or
- 9                     (ii) has been approved, but for which the approval has been
- 10                    withdrawn.
- 11          (2) The chief executive may review the register kept under
- 12          subsection (1) (a) and—
- 13               (a) must remove a person from the register if satisfied on
- 14               reasonable grounds that the person is no longer suitable having
- 15               regard to the criteria set out in section 39F (1) (c) (Deciding
- 16               application for adoption order for child or young person); and
- 17               (b) may remove a person from the register if satisfied on
- 18               reasonable grounds that the person is no longer ordinarily
- 19               resident in the ACT.
- 20          (3) If the chief executive removes a person from the register under
- 21          subsection (2), the chief executive must give the person written
- 22          notice of the removal.

23    **7           Division 3.2**

24           *renumber as division 3.3*

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**8 Section 27***substitute***26 Consents of parents and guardians**

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

**27 Information for certain parents considering consent**

- (1) This section applies if the chief executive knows that—
- (a) a parent is considering consenting to the adoption of a child in the 28 days following the birth of the child; or
  - (b) a parent under 18 years old is considering consenting to the adoption of a child.

- 1           (2) The chief executive must offer the parent—  
2               (a) information about—  
3                   (i) the time period for providing the consent; and  
4                   (ii) the process for revocation of consent; and  
5                   (iii) alternatives to adoption; and  
6                   (iv) future contact with the child; and  
7               (b) the opportunity for counselling, if requested.  
8           (3) The chief executive must ensure a parent mentioned in  
9               subsection (1) (b) has access to independent legal advice.

10   **9           General or limited consents**  
11   **Section 29 (3) (d)**

- 12               *substitute*  
13               (d) by a step-parent.

14   **10          Revocation of consent**  
15   **Section 31 (1) (a)**

- 16               *omit*  
17               30 days  
18               *substitute*  
19               28 days

20   **11          Section 31 (1) (b)**

- 21               *omit*  
22               30-day period  
23               *substitute*  
24               28-day period



1 **12 Access during revocation period**  
2 **Section 32 (2)**

3 *omit*  
4 welfare and interests  
5 *substitute*  
6 best interests

7 **13 Defective consents**  
8 **Section 34 (3)**

9 *omit*  
10 7 days  
11 *substitute*  
12 28 days

13 **14 Dispensing with consent**  
14 **Section 35 (1), note**

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

1 **15 New division 3.4**

2 *after section 35, insert*

3 **Division 3.4 Placement of child or young person**  
4 **before adoption**

5 **35A Placement of child or young person before adoption**

6 (1) The chief executive may place a child or young person in the care of  
7 a person if—

8 (a) the chief executive is the guardian of the child or young  
9 person; and

10 (b) the person—

11 (i) is on the register of suitable people; and

12 (ii) intends to apply for an adoption order for the child or  
13 young person; and

14 (iii) has asked the chief executive, in writing, to place the  
15 child or young person in the person's care until the  
16 application is decided; and

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

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

21 (d) if the child or young person is an Aboriginal or Torres Strait  
22 Islander child or young person—the additional requirements  
23 mentioned in section 6 (Aboriginal and Torres Strait Islander  
24 child or young person—additional requirements) have been  
25 complied with.

- 1 (2) The chief executive must not place a child or young person in the  
2 care of a person under subsection (1) unless the chief executive  
3 considers that the person is suitable to adopt the particular child or  
4 young person having regard to the criteria set out in  
5 section 39F (1) (c) (Deciding application for adoption order for  
6 child or young person).
- 7 (3) The chief executive must remove a child or young person from the  
8 care of a person with whom the child or young person has been  
9 placed under this section if—
- 10 (a) the person is no longer on the register of suitable people; or  
11 (b) the chief executive considers that the person is no longer  
12 suitable to adopt the particular child or young person having  
13 regard to the criteria set out in section 39F (1) (c); or  
14 (c) within 1 year after the child or young person is placed in the  
15 care of the person under this section, the person has not applied  
16 for an adoption order for the child or young person.
- 17 (4) A person given care of a child under this section has daily care  
18 responsibility for the child or young person.
- 19 (5) In this section:
- 20 *daily care responsibility*—see the *Children and Young People*  
21 *Act 2008*, section 19.

22 **35B Consultation with child or young person before deciding**  
23 **placement**

- 24 (1) Before deciding about the placement of a child or young person  
25 under section 35A, the chief executive must, if reasonably  
26 practicable, give the child or young person—
- 27 (a) information about the proposed placement, in language and in  
28 a way that the child or young person can understand; and

- 1 (b) the opportunity to freely express his or her views about the  
2 proposed placement; and
- 3 (c) assistance in understanding the information provided and in  
4 expressing his or her views, if required; and
- 5 (d) the opportunity for counselling, if required.
- 6 (2) The consultation under subsection (1) must be appropriate taking  
7 into account the best interests of the child or young person.
- 8 *Note* See s 5 for the matters that must be taken into account by a  
9 decision-maker in forming a view about the best interests of a child or  
10 young person.

11 **16 New division 3.5 heading**

12 *before section 36, insert*

13 **Division 3.5 Guardianship before adoption**

14 **17 Sections 36 and 37**

15 *substitute*

16 **36 Guardianship before adoption**

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

- 
- 1           (2) However, subsection (1) does not apply in relation to a child or  
2           young person if—
- 3           (a) the application for adoption is made by a step-parent under  
4           section 15 (Adoption by step-parent) and a parent of the child  
5           or young person has a continuing role as a parent; or
- 6           (b) the principal officer of a private adoption agency is the  
7           guardian of the child or young person for all purposes except  
8           section 26 (Consents of parents and guardians) because of  
9           subsection (3); or
- 10          (c) a declaration under section 38 that the child or young person is  
11          under the guardianship of an authority in a State or another  
12          Territory is in force; or
- 13          (d) the chief executive has long-term care responsibility for the  
14          child or young person under the *Children and Young People*  
15          *Act 2008*.
- 16          (3) The principal officer of a private adoption agency is the guardian of  
17          a child or young person for all purposes except section 26 (Consents  
18          of parents and guardians) if—
- 19          (a) each person whose consent to the adoption is required has  
20          consented and has, in writing, authorised the private adoption  
21          agency to make arrangements with a view to the adoption; and
- 22          (b) the principal officer of the private adoption agency has told the  
23          chief executive in writing that he or she is willing to assume  
24          the guardianship of the child or young person.
- 25          (4) A guardianship under subsection (1) or (3) continues until—
- 26          (a) an adoption order is made; or
- 27          (b) any consent given is revoked; or
- 28          (c) the court makes an order relating to the guardianship of the  
29          child or young person.

- 1     **37           Guardianship of non-citizen child or young person**
- 2           (1) This section applies in relation to a non-citizen child or young
- 3           person—
- 4           (a) brought from a place outside Australia for adoption in the
- 5           ACT; or
- 6           (b) adopted outside Australia if the adoption is not recognised
- 7           under this Act, part 4A.
- 8           (2) The chief executive is the guardian of the child or young person
- 9           while the child or young person is ordinarily resident in the ACT
- 10          until—
- 11          (a) the child or young person turns 18 years old; or
- 12          (b) an adoption order is made; or
- 13          (c) the court makes an order relating to the guardianship of the
- 14          child or young person; or
- 15          (d) the child or young person leaves Australia with the intention of
- 16          remaining outside Australia permanently.
- 17          *Note*     The Minister for Immigration of the Commonwealth is the guardian of
- 18                  a child arriving in Australia and subject to the *Immigration*
- 19                  (*Guardianship of Children*) Act 1946 (Cwlth) until an adoption order is
- 20                  made. The responsibility for guardianship is delegated to the chief
- 21                  executive under s 5 of the *Immigration (Guardianship of Children)*
- 22                  Act 1946 (Cwlth).

23     **18           Review of status of child released for adoption**

24     **Section 39 (2)**

- 25           *omit*
- 26           welfare and interests
- 27           *substitute*
- 28           best interests

---

**19 New division 3.6**

*after section 39, insert*

**Division 3.6 Proceedings for an adoption order****39A Application for adoption order**

- (1) A person (the *applicant*) may apply to the court for an adoption order for a child or young person if an adoption order for the child or young person may be made in favour of the applicant under this part or part 4A (Intercountry and overseas adoption).
- (2) A person (the *applicant*) may apply to the court for an adoption order for a person who is 18 years old or older if an adoption order for the person may be made in favour of the applicant under section 10.

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

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

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

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

- (2) On application, the court may dispense with the requirement to serve notice under subsection (1).

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

5           **39C       Parties to proceeding**

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

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

12          **39D       Report on proposed adoption**

13          (1) The chief executive, or the principal officer of a private adoption  
14          agency that made the arrangements that resulted in an application  
15          for an adoption order for a child or young person, must give a  
16          written report to the court.

17          (2) The written report must include—

- 18               (a) information about the circumstances of the child or young  
19               person; and  
20               (b) information about the proposed adoption, including the  
21               applicant's reputation, ability to fulfil the responsibility of a  
22               parent and suitability to adopt the particular child or young  
23               person; and  
24               (c) an adoption plan.



- 1 (3) The adoption plan may include anything that is appropriate taking  
2 into account the best interests of the child or young person,  
3 including—
- 4 (a) the preferences of a parent of the child or young person and of  
5 any person whose consent is required for the adoption in  
6 relation to the social, religious and financial characteristics of  
7 the adoptive family; and
- 8 (b) arrangements for exchanging information about the child's or  
9 young person's medical background or condition; and
- 10 (c) arrangements for ongoing contact between the child or young  
11 person and 1 or more of the following:
- 12 (i) a parent of the child or young person;
- 13 (ii) a person whose consent is required for the adoption;
- 14 (iii) a person who otherwise has a significant relationship  
15 with the child or young person; and
- 16 (d) the way the child or young person is to develop an  
17 understanding about his or her family background and culture  
18 and have the opportunity to maintain or develop cultural  
19 identity.
- 20 *Note* See s 5 for the matters that must be taken into account by a  
21 decision-maker in forming a view about the best interests of a child or  
22 young person.
- 23 (4) If the child or young person is under the guardianship of an  
24 authority in a State or another Territory having functions under the  
25 law of that State or Territory corresponding to those of the chief  
26 executive, the court may be given a report from that authority about  
27 the circumstances of the child or young person and the proposed  
28 adoption in addition to or instead of a report mentioned in  
29 subsection (1).

- 1 (5) A written report is not required under this section if the application  
2 is for an adoption order mentioned in section 57 (Adoption in ACT  
3 of ACT child or young person by parents from Convention country).

4 *Note* For these applications, a report by the chief executive is required under  
5 s 57A.

6 **39E Consultation with child or young person before adoption**  
7 **order made**

- 8 (1) Before making an adoption order for a child or young person, the  
9 court must be satisfied that, if reasonably practicable, the chief  
10 executive has given the child or young person—

11 (a) information about the proposed adoption, in language and in a  
12 way that the child or young person can understand; and

13 (b) the opportunity to freely express his or her views about the  
14 proposed adoption; and

15 (c) assistance in understanding the information provided and in  
16 expressing his or her views, if required; and

17 (d) the opportunity for counselling, if required.

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

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

23 **39F Deciding application for adoption order for child or young**  
24 **person**

- 25 (1) The court must not make an adoption order for a child or young  
26 person unless—

27 (a) each consent required under division 3.3 has been given; and

28 (b) the period within which each required consent may be revoked  
29 has expired without the consent having been revoked; and

- 1 (c) after considering the report or reports given to it under  
2 section 39D (Report on proposed adoption) or section 57A  
3 (Report on child for intercountry adoption) and any other  
4 evidence, the court considers that—
- 5 (i) each applicant is of good reputation and able to fulfil the  
6 responsibility of the parent of a child or young person  
7 (including protecting a child's or young person's physical  
8 and emotional well being); and
- 9 (ii) each applicant is suitable to adopt the particular child or  
10 young person having regard to—
- 11 (A) the applicant's age, education and attitude to  
12 adoption; and
- 13 (B) the applicant's physical, mental and emotional  
14 health, particularly as it impacts on capacity to  
15 nurture the child or young person; and
- 16 (C) any other relevant consideration; and
- 17 (iii) the adoption is in the best interests of the child or young  
18 person.
- 19 (2) In deciding whether or not to make an adoption order, the court  
20 must have regard to—
- 21 (a) the views expressed by the child or young person in the  
22 consultation required under section 39E (Consultation with  
23 child or young person before adoption order made); and
- 24 (b) any preferences expressed in an adoption plan given to the  
25 court as part of a report required under section 39D (Report on  
26 proposed adoption).
- 27 *Note* Additional requirements apply to certain intercountry adoptions. See  
28 the following sections:
- 29 • s 57 (3) (Adoption in ACT of ACT child or young person by  
30 parents from Convention country);

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

5   **39G           Aboriginal or Torres Strait Islander child or young person**

- 6           (1) This section is in addition to, and does not limit, section 39F.  
7           (2) An adoption order must not be made for an Aboriginal or Torres  
8           Strait Islander child or young person unless the court is satisfied  
9           that—  
10           (a) the additional requirements mentioned in section 6 (Aboriginal  
11           and Torres Strait Islander child or young person—additional  
12           requirements) have been complied with; and  
13           (b) it is not practicable for the child or young person to remain in  
14           the care of the birth parents or a responsible person; and  
15           (c) the choice of the adoptive parents has been made having regard  
16           to the desirability of the child or young person—  
17                   (i) being in the care of a person who is a member of an  
18                   Aboriginal or Torres Strait Islander community; and  
19                   (ii) being able to establish and maintain contact with his or  
20                   her birth parents, any responsible person and the  
21                   Aboriginal or Torres Strait Islander community of which  
22                   the child or young person is or was a member.

23   **39H           Adoption of non-citizen child or young person**

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

- 
- 1     **39I       Deciding application for adoption order for person**  
2     **18 years old or older**
- 3       The court must not make an adoption order for a person who was  
4       18 years old or older on the day the application was filed in the  
5       court unless—
- 6       (a) the person consents to the adoption by the applicant or  
7       applicants; and
- 8       (b) the court is satisfied that the applicant or applicants are of good  
9       reputation.
- 10    **39J       Notification to chief executive of adoption order**
- 11       The registrar of the court must notify the chief executive in writing  
12       if the court makes an adoption order.
- 13    **39K       Alternative orders on refusal of adoption order**
- 14       (1) If the court refuses to make an adoption order for a child or young  
15       person, the court may—
- 16       (a) if it considers that the child’s or young person’s best interests  
17       would be promoted by doing so—make an order relating to  
18       guardianship or custody of the child or young person; and
- 19       (b) make any other order it thinks fit.
- 20       (2) An order under subsection (1) (a) may be made in favour of the  
21       chief executive or any other person.
- 22    **39L       Discharge of adoption order**
- 23       (1) On application by a prescribed person, the court may make an order  
24       (a *discharging order*) discharging an adoption order if the court  
25       considers that—
- 26       (a) the adoption order, or any consent to the adoption, was  
27       obtained by fraud, duress or other improper means; or

- 1 (b) there are other circumstances that justify the discharging order.
- 2 (2) For subsection (1) (b), a breakdown in the relationship between the  
3 adopted person and the adoptive parents must not be taken to  
4 constitute a circumstance justifying a discharging order.
- 5 (3) A discharging order must not be made if it appears to the court that  
6 the making of the order would be prejudicial to the best interests of  
7 the adopted person.
- 8 (4) On an application under subsection (1), the court may require the  
9 chief executive to investigate the matter and to provide a written  
10 report to the court.
- 11 (5) A discharging order must not be made unless the applicant has, not  
12 later than 28 days before the return date for the application, served  
13 written notice of the application and its return date on—
- 14 (a) if the adopted person is 12 years old or older—the adopted  
15 person; and
- 16 (b) each adoptive parent; and
- 17 (c) each person whose consent to the adoption was required.
- 18 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for an  
19 application, the form must be used.
- 20 (6) On application, the court may dispense with the requirement to  
21 serve notice under subsection (5).
- 22 (7) If the court makes a discharging order, the court may, at the same  
23 time or subsequently, make any consequential or ancillary orders it  
24 thinks fit to promote the best interests of the adopted person, or  
25 otherwise in the interests of justice, including orders relating to—
- 26 (a) the person's name; or
- 27 (b) the ownership of property; or

- 1 (c) if the person is a child or young person—  
2 (i) guardianship or custody of the person; or  
3 (ii) the place of residence of the person.
- 4 (8) Subject to any order made under subsection (7) and to  
5 section 43 (3), the rights, privileges, obligations, liabilities and  
6 relationships under the law of the Territory of the person and of all  
7 other people are, on the making of a discharging order, the same as  
8 if the adoption order had not been made, but without prejudice to—  
9 (a) anything lawfully done while the adoption order was in force;  
10 or  
11 (b) the consequences of anything unlawfully done while the  
12 adoption order was in force; or  
13 (c) any right or interest that became vested in any person while the  
14 adoption order was in force.
- 15 (9) If an adoption order that has been discharged was made under a  
16 general consent, then, unless the court otherwise orders, that consent  
17 remains effective for the purpose of a further application for an  
18 adoption order about the same person.
- 19 (10) In this section:  
20 *prescribed person*, in relation to an application for a discharging  
21 order for a person, means the Minister, the chief executive, the  
22 public advocate, the adopted person, an adoptive parent or a person  
23 whose consent to the adoption was required.

## 24 **20 Division 3.3**

25 *renumber as division 3.7*

1 **21 Amendment of adoption condition**  
2 **Section 41 (1)**

3 *omit*  
4 welfare and interests  
5 *substitute*  
6 best interests

7 **22 Division 3.4**

8 *renumber as division 3.8*

9 **23 General effect**  
10 **Section 43 (1) and (2)**

11 *substitute*

- 12 (1) Subject to this Act and the provisions of any other Territory law that  
13 expressly distinguishes between adopted people and other people,  
14 on the making of an adoption order, for all purposes—
- 15 (a) the adopted person becomes in law a child of the adoptive  
16 parents, and the adoptive parents become in law the parents of  
17 the adopted person as if the adopted person had been born to  
18 the adoptive parents; and
- 19 (b) the adopted person ceases to be a child of the birth parents or  
20 of any person (a *pre-adoption parent*) who was an adoptive  
21 parent before the making of the adoption order, and any such  
22 pre-adoption parent ceases to be a parent of the adopted  
23 person; and
- 24 (c) if the order is made in favour of a step-parent—the relationship  
25 of the adopted person with the parent living in a domestic  
26 partnership with the step-parent is not affected; and



- 1 (d) the relationship to one another of all people (including the  
2 adopted person and the adoptive parents, birth parents or any  
3 former adoptive parent) must be decided on the basis of  
4 paragraphs (a), (b) and (c) so far as they are relevant; and
- 5 (e) any existing appointment of a person as guardian of the  
6 adopted person ceases to have effect; and
- 7 (f) any previous adoption of the adopted person (whether under a  
8 Territory law or otherwise) ceases to have effect.
- 9 (2) However, an adoption order does not exclude any right of  
10 inheritance that the adopted person might otherwise have from or  
11 through a deceased person if—
- 12 (a) 1 of the birth or former adoptive parents of an adopted person  
13 has died; and
- 14 (b) an adoption order is made in favour of a step-parent after that  
15 death.

## 24 Section 45

17 *substitute*

## 18 45 Names of adopted child or young person

- 19 (1) On the making of an adoption order for a child or young person, the  
20 court may change the name of the child or young person, on the  
21 application of either of the adoptive parents.
- 22 (2) In deciding the name of a child or young person, the court must  
23 consider—
- 24 (a) the best interests of the child or young person; and
- 25 (b) the child's or young person's right to retain his or her name  
26 and identity.

- 1           (3) The court may approve any of the following as a family name for an  
2           adopted child or young person:
- 3           (a) if both adoptive parents are known by the same family name—  
4           that name;
- 5           (b) the maiden name or other family name of the child's or young  
6           person's mother;
- 7           (c) the family name of the child's or young person's father;
- 8           (d) the family name or former family name of any previous parent  
9           of the child or young person;
- 10          (e) a family name formed by combining the parent's family names  
11          or any previous parent's family names.
- 12          (4) If an adoptive parent is applying for an order to change a child's or  
13          young person's given name, the chief executive must provide the  
14          court with a written report about—
- 15          (a) the proposed name change; and
- 16          (b) any exceptional circumstances; and
- 17          (c) the best interests of the child or young person.
- 18          *Note*     See s 6 for the matters that must be taken into account by a  
19          decision-maker in forming a view about the best interests of a child or  
20          young person.
- 21          (5) In considering an application to change the given name of the  
22          adopted child or young person, the court—
- 23          (a) must consider the report provided under subsection (4); and
- 24          (b) must retain the child's or young person's given name unless  
25          there are exceptional circumstances for changing the name; and

1 (c) may give the child or young person additional given names.

2 **Example—par (b)**

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

6 *Note* An example is part of the Act, is not exhaustive and may extend, but  
7 does not limit, the meaning of the provision in which it appears (see  
8 Legislation Act, s 126 and s 132).

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

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

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

17 **25 Distribution of property by trustee or personal**  
18 **representative**  
19 **Section 47 (2)**

20 *omit*

21 shall not

22 *substitute*

23 must not

24 **26 Division 3.5**

25 *renumber as division 3.9*

1 **27** **Making of order**  
2 **Section 50 (2)**

3 *omit*  
4 welfare  
5 *substitute*  
6 wellbeing

7 **28** **Part 4**

8 *substitute*

9 **Part 4** **Recognition of Australian**  
10 **adoptions**

11 **53** **Recognition of Australian adoptions**

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

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

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1 **Part 4A** **Intercountry and overseas**  
2 **adoption**

3 **Division 4A.1** **Preliminary**

4 **54** **Adoptions outside Australia—general**

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

11 **55** **State central authority**

- 12 (1) The chief executive is the State central authority for the ACT for the  
13 purposes of the Convention, article 6 (2).
- 14 (2) The chief executive must tell the Commonwealth central  
15 authority—
- 16 (a) that the chief executive is the State central authority for the  
17 ACT; and
- 18 (b) the address and functions of the State central authority for the  
19 ACT.

20 **56** **Functions of State central authority**

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

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

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

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

#### 7           **57           Adoption in ACT of ACT child or young person by** 8           **parents from Convention country**

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

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

- 16          (2) Division 3.2 (Who can adopt?) does not apply to an adoption order  
17          under this section.

- 18          (3) In addition to the matters set out in section 39F (Deciding  
19          application for adoption order for child or young person), the court  
20          must not make the order unless satisfied that—

21                 (a) the report mentioned in section 57A has been given to the  
22                 central authority of the Convention country; and

23                 (b) the central authority of the Convention country has agreed to  
24                 the adoption of the child or young person; and

25                 (c) the central authority of the Convention country has agreed to  
26                 recognise the ACT adoption order as a full and permanent  
27                 adoption order in the Convention country; and

28                 (d) the prospective adoptive parent or parents are present in the  
29                 ACT when the adoption order is made.

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

7       **57A       Report on child for intercountry adoption**

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

1     **57B       Adoption in ACT of child or young person from**  
2     **Convention country by ACT parents**

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

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

8           (2) In addition to the matters set out in section 39F (Deciding  
9           application for adoption order for child or young person), the court  
10          must not make the order unless satisfied that—

11           (a) the central authority of the Convention country has agreed to  
12           the adoption of the child or young person; and

13           (b) the child or young person is allowed to reside permanently in  
14           Australia; and

15           (c) the child or young person is present in the ACT when the  
16           adoption order is made; and

17           (d) arrangements for adoption of the child or young person have  
18           been made by the chief executive or a private adoption agency.

19          (3) For subsection (2) (b), a child or young person is not allowed to  
20          reside permanently in Australia if the child or young person is  
21          affected by a law of the Commonwealth, a State or Territory, or by  
22          an order of a Commonwealth, State or Territory court, the effect of  
23          which is to prevent the child or young person permanently residing  
24          in Australia.

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



1 **57C Issue of adoption compliance certificate**

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

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

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

7 **57D Recognition of adoption of child or young person from**  
8 **Convention country in that country**

9 (1) This section applies if—

10 (a) an adoption (whether before or after the commencement of this  
11 section) by a person who is habitually resident in the ACT, of a  
12 child or young person who is habitually resident in a  
13 Convention country, is granted in that country; and

14 (b) arrangements for adoption of the child or young person have  
15 been made by the chief executive or a private adoption agency;  
16 and

17 (c) an adoption compliance certificate issued (whether before or  
18 after the commencement of this section) in the Convention  
19 country is in force for the adoption.

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

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

- 1     **57E       Recognition of adoption of child or young person from**  
2     **Convention country to another Convention country**
- 3       (1) This section applies if—
- 4           (a) an adoption (whether before or after the commencement of this  
5           section) by a person who is habitually resident in a Convention  
6           country, of a child or young person who is habitually resident  
7           in another Convention country, is granted; and
- 8           (b) an adoption compliance certificate issued (whether before or  
9           after the commencement of this section) in the Convention  
10          country in which the adoption is granted is in force for the  
11          adoption.
- 12       (2) Subject to section 57G (Refusal to recognise adoption or decision),  
13       the adoption is recognised and effective, for the law of the Territory,  
14       on and after the day the certificate becomes effective.
- 15     **57F       Effect of recognition**
- 16       (1) Subject to subsection (2), for the law of the Territory, an adoption of  
17       a child or young person that is recognised and effective under  
18       section 57D or section 57E is to be treated as having the same effect  
19       as an adoption order made under this Act.
- 20       *Note*     See s 43 (General effect) and the Convention, art 26 and 27. The text of  
21       the Convention is set out in sch 1.
- 22       (2) The legal relationship between the child or young person and the  
23       individuals who were, immediately before the adoption, the child’s  
24       or young person’s parents is terminated if the law of the Convention  
25       country where the adoption was granted provides that the adoption  
26       of the child or young person terminates the legal relationship.
- 27     **57G       Refusal to recognise adoption or decision**
- 28       (1) The chief executive may apply to the court for a declaration that an  
29       adoption or decision made in accordance with the Convention,  
30       article 27 is not recognised.

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

7 **57H Order terminating legal relationship between child or**  
8 **young person and parents**

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

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

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

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

15 **57I Evidential value of adoption compliance certificate**

- 16 Subject to section 57G (Refusal to recognise adoption or decision),  
17 an adoption compliance certificate issued in a Convention country is  
18 evidence, for the law of the Territory, that the adoption to which the  
19 certificate or order relates—
- 20 (a) was agreed to by the central authorities of the countries  
21 mentioned in the certificate; and
- 22 (b) was carried out in accordance with the Convention and the law  
23 of that country.

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

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1     **Division 4A.3           Bilateral arrangements for**  
2                                   **intercountry adoptions**

3     **57J           Adoption in ACT of child or young person from**  
4                                   **prescribed overseas jurisdiction by ACT parents**

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

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

- 10          (2) In addition to the matters set out in section 39F (Deciding  
11                application for adoption order for child or young person), the court  
12                must not make the order unless satisfied that—

13               (a) the competent authority of the prescribed overseas jurisdiction  
14                    has agreed to the adoption of the child or young person; and

15               (b) the child or young person is allowed to reside permanently in  
16                    Australia; and

17               (c) the child or young person is present in the ACT when the  
18                    adoption order is made; and

19               (d) arrangements for adoption of the child or young person have  
20                    been made by the chief executive or a private adoption agency.

- 21          (3) For subsection (2) (b), a child or young person is not allowed to  
22                reside permanently in Australia if the child or young person is  
23                affected by a law of the Commonwealth, a State or Territory, or by  
24                an order of a Commonwealth, State or Territory court, the effect of  
25                which is to prevent the child or young person permanently residing  
26                in Australia.

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

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

1     **57K       Evidential value of adoption compliance certificate—**  
2     **div 4A.3**

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

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

12    **57L        Recognition of adoption order made outside Australia**

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

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

20 **57M Declaration of validity of adoption order made outside**  
21 **Australia**

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

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

23 **29 Definitions—pt 5**  
24 **Section 58, definitions of *associated person*, *birth parent*,**  
25 ***birth relative* and *identifying information***

26 *substitute*

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

- 28 (a) the adopted person; or



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

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

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

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

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

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

16 **30 Section 59**

17 *substitute*

18 **59 Application—pt 5**

- 19 (1) The provisions of this part (other than section 70 and section 71)  
20 apply in relation to an adoption whether the adoption order was  
21 made before or after the commencement of this Act.
- 22 (2) Section 70 and section 71 apply in relation to an adoption only if the  
23 adoption order was made—
- 24 (a) before the commencement of this Act; or  
25 (b) after the commencement of this Act but before the  
26 commencement of the *Adoption Amendment Act 2009 (No 2)*.

- 1           (3) If an adopted person is ordinarily resident in the ACT, the  
2           provisions of this part apply in relation to the adoption of the person  
3           whether the adoption order was made in the ACT or elsewhere.

4           **31           Confidentiality of records**  
5           **Section 60 (1) (c)**

- 6           *omit*  
7           adopted child  
8           *substitute*  
9           adopted person

10          **32           Records of adoptions**  
11          **Section 61 (3)**

- 12          *substitute*  
13          (3) For subsection (2), the associated people are the adopted person, an  
14          adoptive parent, a birth parent and the person who made the report  
15          mentioned in section 39D.

16          **33           Restriction on entitlement to apply**  
17          **Section 68 (1)**

- 18          *omit*  
19          adopted child  
20          *substitute*  
21          adopted person

1 **34 Section 68 (2) (a)**

2 *omit*

3 a person mentioned in section 18 (2)

4 *substitute*

5 a step-parent

6 **35 Section 68 (3)**

7 *omit*

8 adopted child

9 *substitute*

10 adopted person

11 **36 Section 68 (4) (a)**

12 *omit*

13 the child

14 *substitute*

15 the person

16 **37 Section 68 (4) (b) and (5)**

17 *omit*

18 adopted child

19 *substitute*

20 adopted person

1 **38 Section 68 (7)**

2 *omit*

3 the child

4 *substitute*

5 the person

6 **39 Section 70**

7 *substitute*

8 **70 Objection to contact—adoptions before Adoption**  
9 **Amendment Act 2009 (No 2)**

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

- 13 (1) An objection to contact (an *objection*) may be made by—
- 14 (a) an adopted person who is at least 17 years and 6 months old; or
  - 15 (b) an adoptive parent; or
  - 16 (c) a birth relative who is at least 18 years old; or
  - 17 (d) an adoptive relative who is at least 18 years old; or
  - 18 (e) a child or other descendant of an adopted person, being a child  
19 or other descendant, who is at least 18 years old; or
  - 20 (f) a birth parent.
- 21 (2) An objection—
- 22 (a) must state the person or a class of people (each of whom is an  
23 associated person) to whom the objection relates; and
  - 24 (b) must be made by notice in writing lodged with the chief  
25 executive; and

- 1 (c) continues in force until revoked by notice in writing lodged  
2 with the chief executive, by the person who made the  
3 objection.
- 4 (3) If the chief executive receives an objection or revocation, the chief  
5 executive must enter the particulars in the contact veto register.
- 6 (4) An objection made by a person who is under 18 years old takes  
7 effect when the person turns 18 years old.

## 8 **40 Section 71**

9 *substitute*

### 10 **71 Contact veto by person other than adopted person—** 11 **adoptions before Adoption Amendment Act 2009 (No 2)**

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

- 15 (1) A contact veto may be lodged by a parent on behalf of a person who  
16 is under 18 years old if—
- 17 (a) the person is not an adopted person; and
- 18 (b) the person would be entitled to lodge an objection on turning  
19 18 years old.
- 20 (2) A contact veto lodged under subsection (1) remains in force until—
- 21 (a) the parent who lodged the objection revokes it; or
- 22 (b) the person on whose behalf the objection was lodged turns  
23 18 years old.
- 24 (3) A person may lodge a contact veto if the person—
- 25 (a) is not an adopted person; and
- 26 (b) is at least 17 years and 6 months old.

- 1 (4) A contact veto lodged under subsection (3) comes into effect when  
2 the person turns 18 years old.

3 **41 Counselling services**  
4 **Section 72, new note**

5 *insert*

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

9 **42 Section 73**

10 *substitute*

11 **73 Declaration that contact not be attempted**

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

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

- 22 (2) The chief executive must not divulge the information unless the  
23 person requesting the information—  
24 (a) has attended a counselling service under section 72; and  
25 (b) signs a declaration that he or she will not—  
26 (i) contact or attempt to contact the person who lodged the  
27 objection; or

- 1 (ii) arrange or attempt to arrange contact with that person; or  
2 (iii) procure another person to contact, attempt to contact, or  
3 attempt to arrange contact with, that person.

4 **43 Birth details of adopted person born overseas**  
5 **Section 74**

- 6 *omit*  
7 adopted child  
8 *substitute*  
9 adopted person

10 **44 Section 74**

- 11 *omit*  
12 the child  
13 *substitute*  
14 the person

15 **45 Section 74**

- 16 *omit*  
17 the child's  
18 *substitute*  
19 the person's

1	<b>46</b>	<b>Section 77 heading</b>
2		<i>substitute</i>
3	<b>77</b>	<b>Family information service</b>
4	<b>47</b>	<b>Section 77 (1)</b>
5		<i>omit</i>
6		adoption information service
7		<i>substitute</i>
8		family information service
9	<b>48</b>	<b>Interfering with upbringing of child</b>
10		<b>Section 91 (b)</b>
11		<i>omit</i>
12		a person referred to in section 18 (2)—otherwise than in accordance
13		with the approval of the chief executive or in accordance with
14		division 3.3
15		<i>substitute</i>
16		a step-parent—otherwise than in accordance with the approval of
17		the chief executive or with division 3.7
18	<b>49</b>	<b>Registration of orders</b>
19		<b>Section 104 (2) (b)</b>
20		<i>omit</i>
21		a child
22		<i>substitute</i>
23		a person



1 **50 Particulars of interstate orders**  
2 **Section 106**

3 *omit*

4 child

5 *substitute*

6 person

7 **51 New section 108A**

8 *insert*

9 **108A Financial support of adopted children and young people**

10 (1) This section applies if—

11 (a) a child or young person is adopted in the ACT; and

12 (b) the child or young person is ordinarily resident in the ACT;  
13 and

14 (c) before the adoption order was made—

15 (i) the chief executive had daily care responsibility or  
16 long-term care responsibility for the child or young  
17 person under the *Children and Young People Act 2008*;  
18 or

19 (ii) the adoptive parents had daily care responsibility or  
20 long-term care responsibility for the child or young  
21 person as foster carers under the *Children and Young  
22 People Act 2008*; or

23 (iii) the adoptive parents had daily care responsibility or  
24 long-term care responsibility for the child or young  
25 person as kinship carers under the *Children and Young  
26 People Act 2008*.

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

12       **52           Contents of reports not to be disclosed**  
13       **Section 113**

14           *omit*

15           section 19

16           *substitute*

17           section 39D

18       **53           Regulation-making power**  
19       **Section 121 (2) (d)**

20           *omit*

21           children

22           *substitute*

23           people

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**54** **New part 20***insert***Part 20** **Transitional—Adoption  
Amendment Act 2009 (No 2)****200** **Definitions—pt 20**

In this part:

*amended Act* means the *Adoption Act 1993* as in force immediately after the commencement of the amending Act.*amending Act* means the *Adoption Amendment Act 2009 (No 2)*.*commencement day* means the day this part commences.*pre-amendment Act* means the *Adoption Act 1993* as in force immediately before the commencement day.**201** **Proceeding not completed before commencement day**

(1) This section applies if, before the commencement day—

(a) a proceeding had been started in the court under the pre-amendment Act; and

(b) the proceeding had not been completed.

(2) The amended Act applies in relation to the proceeding.

(3) However, the amendments of section 31 (1) (a) and (b) do not apply in relation to an instrument of consent signed before the commencement day.

*Note* The amendments of s 31 (1) (a) and (b) reduce the time for filing a notice of revocation from 30 days to 28 days after the instrument of consent is signed.

1     **202           Consents to which s 34 (3) applies**

2                   The amendment of section 34 (3) made by the amending Act applies  
3                   only in relation to a consent signed after the commencement day.

4                   *Note*        The amendment of s 34 (3) increases the time before a notice of consent  
5                   can be signed from 7 days to 28 days after the birth of the child.

6     **203           Request for placement not decided before**  
7                   **commencement day**

- 8           (1) This section applies if, before the commencement day—
- 9                   (a) a request has been made to the chief executive for custody of a  
10                   child under the pre-amendment Act, section 16; and
- 11                   (b) the chief executive has not made a decision in relation to the  
12                   request.
- 13           (2) The request is taken to be a request under the amended Act,  
14                   section 35A.

15     **204           Placement in force before commencement day**

16                   A placement in force immediately before the commencement day  
17                   under the pre-amendment Act, section 16 is taken to be a placement  
18                   under the amended Act, section 35A.

19     **205           Transitional regulations**

- 20           (1) A regulation may prescribe transitional matters necessary or  
21                   convenient to be prescribed because of the enactment of the  
22                   *Adoption Amendment Act 2009 (No 2)*.
- 23           (2) A regulation may modify this part (including in relation to another  
24                   territory law) to make provision in relation to anything that, in the  
25                   Executive's opinion, is not, or is not adequately or appropriately,  
26                   dealt with in this part.
- 27           (3) A regulation under subsection (2) has effect despite anything  
28                   elsewhere in this Act or another territory law.

1 **206 Expiry—pt 20**

2 (1) This part expires 2 years after the commencement day.

3 (2) This part is a law to which the Legislation Act, section 88 (Repeal  
4 does not end effect of transitional laws etc) applies.

5 **55 New schedule 1**

6 *insert*

7 **Schedule 1 Convention on Protection of**  
8 **Children and Cooperation in**  
9 **Respect of Intercountry**  
10 **Adoption**

11 (dict, def *Convention*)

12 The States signatory to the present Convention,

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

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

18 Recognising that intercountry adoption may offer the advantage of a permanent  
19 family to a child for whom a suitable family cannot be found in his or her State  
20 of origin,

21 Convinced of the necessity to take measures to ensure that intercountry  
22 adoptions are made in the best interests of the child and with respect for his or  
23 her fundamental rights, and to prevent the abduction, the sale of, or traffic in  
24 children,

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

8 Have agreed upon the following provisions—

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

10 **Article 1**

11 The objects of the present Convention are—

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

21 **Article 2**

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

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**Article 3**

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

**CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

**Article 4**

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

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

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

13 **Article 5**

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

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

22 **CHAPTER III—CENTRAL AUTHORITIES AND**  
23 **ACCREDITED BODIES**

24 **Article 6**

- 25 (1) A Contracting State shall designate a Central Authority to discharge  
26 the duties which are imposed by the Convention upon such  
27 authorities.



- 1 (2) Federal States, States with more than one system of law or States  
2 having autonomous territorial units shall be free to appoint more  
3 than one Central Authority and to specify the territorial or personal  
4 extent of their functions. Where a State has appointed more than one  
5 Central Authority, it shall designate the Central Authority to which  
6 any communication may be addressed for transmission to the  
7 appropriate Central Authority within that State.

8 **Article 7**

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

19 **Article 8**

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

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**Article 9**

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

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption,
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption,
- (c) promote the development of adoption counselling and post-adoption services in their States,
- (d) provide each other with general evaluation reports about experience with intercountry adoption,
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

**Article 10**

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

**Article 11**

An accredited body shall—

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation,

- 1 (b) be directed and staffed by persons qualified by their ethical  
2 standards and by training or experience to work in the field of  
3 intercountry adoption, and
- 4 (c) be subject to supervision by competent authorities of that State  
5 as to its composition, operation and financial situation.

6 **Article 12**

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

10 **Article 13**

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

16 **CHAPTER IV—PROCEDURAL REQUIREMENTS IN**  
17 **INTERCOUNTRY ADOPTION**

18 **Article 14**

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

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**Article 15**

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

**Article 16**

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—
  - (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child’s family, and any special needs of the child,
  - (b) give due consideration to the child’s upbringing and to his or her ethnic, religious and cultural background,
  - (c) ensure that consents have been obtained in accordance with Article 4, and
  - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

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**Article 17**

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

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

**Article 18**

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

**Article 19**

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

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**Article 20**

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

**Article 21**

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child’s best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
  - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care,
  - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care, an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents,
  - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

**Article 22**

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

- 1 (2) Any Contracting State may declare to the depositary of the  
2 Convention that the functions of the Central Authority under  
3 Articles 15 to 21 may be performed in that State, to the extent  
4 permitted by the law and subject to the supervision of the competent  
5 authorities of that State, also by bodies or person who—
- 6 (a) meet the requirements of integrity, professional competence,  
7 experience and accountability of that State, and
- 8 (b) are qualified by their ethical standards and by training or  
9 experience to work in the field of intercountry adoption.
- 10 (3) A Contracting State which makes the declaration provided for in  
11 paragraph (2) shall keep the Permanent Bureau of the Hague  
12 Conference on Private International Law informed of the names and  
13 addresses of these bodies and persons.
- 14 (4) Any Contracting State may declare to the depositary of the  
15 Convention that adoptions of children habitually resident in its  
16 territory may only take place if the functions of the Central  
17 Authorities are performed in accordance with paragraph (1).
- 18 (5) Notwithstanding any declaration made under paragraph (2), the  
19 reports provided for in Articles 15 and 16 shall, in every case, be  
20 prepared under the responsibility of the Central Authority or other  
21 authorities or bodies in accordance with paragraph (1).

22 **CHAPTER V—RECOGNITION AND EFFECTS OF THE**  
23 **ADOPTION**

24 **Article 23**

- 25 (1) An adoption certified by the competent authority of the State of the  
26 adoption as having been made in accordance with the Convention  
27 shall be recognised by operation of law in the other Contracting  
28 States. The certificate shall specify when and by whom the  
29 agreements under Article 17, sub-paragraph (c), were given.

- 1           (2) Each Contracting State shall, at the time of signature, ratification,  
2           acceptance, approval or accession, notify the depositary of the  
3           Convention of the identity and the functions of the authority or the  
4           authorities which, in that State, are competent to make the  
5           certification. It shall also notify the depositary of any modification  
6           in the designation of these authorities.

7           **Article 24**

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

11          **Article 25**

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

16          **Article 26**

- 17          (1) The recognition of an adoption includes recognition of—  
18               (a) the legal parent-child relationship between the child and his or  
19               her adoptive parents,  
20               (b) parental responsibility of the adoptive parents for the child,  
21               (c) the termination of a pre-existing legal relationship between the  
22               child and his or her mother and father, if the adoption has this  
23               effect in the Contracting State where it was made.
- 24          (2) In the case of an adoption having the effect of terminating a  
25          pre-existing legal parent-child relationship, the child shall enjoy in  
26          the receiving State, and in any other Contracting State where the  
27          adoption is recognised, rights equivalent to those resulting from  
28          adoptions having this effect in each such State.



- 1 (3) The preceding paragraphs shall not prejudice the application of any  
2 provision more favourable for the child, in force in the Contracting  
3 State which recognises the adoption.

4 **Article 27**

- 5 (1) Where an adoption granted in the State of origin does not have the  
6 effect of terminating a pre-existing legal parent-child relationship, it  
7 may, in the receiving State which recognises the adoption under the  
8 Convention, be converted into an adoption having such an effect—  
9 (a) if the law of the receiving State so permits, and  
10 (b) if the consent referred to in Article 4, sub-paragraphs (c) and  
11 (d) have been or are given for the purpose of such an adoption.  
12 (2) Article 23 applies to the decision converting the adoption.

13 **CHAPTER VI - GENERAL PROVISIONS**

14 **Article 28**

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

19 **Article 29**

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

1                   **Article 30**

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

9                   **Article 31**

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

14                   **Article 32**

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

22                   **Article 33**

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

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**Article 34**

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

**Article 35**

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

**Article 36**

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

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

**Article 37**

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

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**Article 38**

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

**Article 39**

- (1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Article 40**

No reservation to the Convention shall be permitted.

**Article 41**

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

**Article 42**

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

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## CHAPTER VII - FINAL CLAUSES

### Article 43

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

### Article 44

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

### Article 45

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

- 1           (2) Any such declaration shall be notified to the depositary and shall  
2           state expressly the territorial units to which the Convention applies.
- 3           (3) If a State makes no declaration under this Article, the Convention is  
4           to extend to all territorial units of that State.

5           **Article 46**

- 6           (1) The Convention shall enter into force on the first day of the month  
7           following the expiration of three months after the deposit of the  
8           third instrument of ratification, acceptance or approval referred to in  
9           Article 43.
- 10          (2) Thereafter the Convention shall enter into force—
- 11           (a) for each State ratifying, accepting or approving it subsequently,  
12           or acceding to it, on the first day of the month following the  
13           expiration of three months after the deposit of its instrument of  
14           ratification, acceptance, approval or accession,
- 15           (b) for a territorial unit to which the Convention has been extended  
16           in conformity with Article 45, on the first day of the month  
17           following the expiration of three months after the notification  
18           referred to in that Article.

19          **Article 47**

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

**Article 48**

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

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 43,
- (b) the accessions and objections raised to accessions referred to in Article 44,
- (c) the date on which the Convention enters into force in accordance with Article 46,
- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45,
- (e) the agreements referred to in Article 39,
- (f) the denunciations referred to in Article 47.

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

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

**56 Dictionary, note 2**

*insert*

- parent

1 **57 Dictionary, definition of *Aboriginal child***

2 *omit*

3 **58 Dictionary, new definition of *Aboriginal or Torres Strait***  
4 ***Islander child or young person***

5 *insert*

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

- 9 (a) is descended from an Aborigine or Torres Strait Islander; and  
10 (b) identifies as an Aborigine or Torres Strait Islander; and  
11 (c) is accepted as an Aborigine or Torres Strait Islander by an  
12 Aboriginal or Torres Strait Islander community.

13 **59 Dictionary, definition of *Aborigine***

14 *omit*

15 **60 Dictionary, new definition of *adoption compliance***  
16 ***certificate***

17 *insert*

18 *adoption compliance certificate* means—

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



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**61 Dictionary, definition of *adoption order***

1  
2 *substitute*

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

**62 Dictionary, new definition of *central authority***

5  
6 *insert*

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

**63 Dictionary, definition of *child***

10  
11 *substitute*

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

**64 Dictionary, new definitions**

14  
15 *insert*

16 *Commonwealth Bilateral Arrangements Regulation* means the  
17 *Family Law (Bilateral Arrangements—Intercountry Adoption)*  
18 *Regulations 1998* (Cwlth).

19 *Commonwealth central authority* has the same meaning as in the  
20 *Family Law (Hague Convention on Intercountry Adoption)*  
21 *Regulations 1998* (Cwlth).

22 *competent authority* means—

23 (a) for a prescribed overseas jurisdiction—an entity in that country  
24 responsible for approving the adoption of children or young  
25 people; and

26 (b) for the ACT—the chief executive.

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

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

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

8            **65        Dictionary, definition of *country***

9            *substitute*

10          ***country*** includes part of a country.

11          **66        Dictionary, definition of *guardian*, paragraph (c)**

12          *omit*

13          welfare

14          *substitute*

15          wellbeing

16          **67        Dictionary, new definition of *intercountry adoption***

17          *insert*

18          ***intercountry adoption*** means the adoption—

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

21          (b) by a person habitually resident in a country outside Australia of  
22          a child or young person habitually resident in the ACT.

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**68 Dictionary, new definitions**

*insert*

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

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

**69 Dictionary, new definition of *register of suitable people***

*insert*

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

**70 Dictionary, definition of *responsible person***

*substitute*

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

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

1 **71 Dictionary, new definitions**

2 *insert*

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

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

6 (a) is not a parent of the child or young person; and

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

9 *young person* means—

10 (a) a person who is 12 years old or older, but not yet an adult; and

11 (b) in relation to an application for an adoption order—a person  
12 who is an adult but for whom the application for an adoption  
13 order was filed in the court before the person became an adult.

14 *Note* *Adult* is defined in the Legislation Act, dict, pt 1.

15 **72 Further amendments, mentions of *child***

16 *omit*

17 *child*

18 *substitute*

19 *child or young person*

20 *in*

- 21 • section 29
- 22 • sections 31 to 33
- 23 • section 35
- 24 • sections 38 to 42
- 25 • section 46
- 26 • section 50

- 1 • section 52
- 2 • section 86
- 3 • sections 89 to 91
- 4 • section 94 (1)
- 5 • sections 95 to 97
- 6 • section 99
- 7 • section 101
- 8 • section 103
- 9 • section 107
- 10 • section 108
- 11 • section 121
- 12 • dictionary, definition of *guardian*
- 13 • dictionary, definition of *relative*

### **73 Further amendments, mentions of *child's***

- 15 *omit*
- 16 *child's*
- 17 *substitute*
- 18 *child's or young person's*
- 19 *in*
- 20 • section 46
- 21 • section 103

### **74 Further amendments, mentions of *children***

- 23 *omit*
- 24 *children*
- 25 *substitute*
- 26 *children or young people*

- 1            *in*
- 2            • section 38 (4)
- 3            • section 81
- 4            • section 82
- 5            • section 85
- 6            • section 88

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Adoption Regulation 1993**

4 **[1.1] Section 10**

5 *omit*

6 **[1.2] Section 13**

7 *substitute*

8 **13 Maintenance of records**

9 For the Act, section 61 (4), all adoption records held by a private  
10 adoption agency must be kept in a lockable, fire-resistant steel  
11 cabinet.

12 *Note* Adoption records held by the chief executive must be held in  
13 accordance with the *Territory Records Act 2002*.

14 **[1.3] Schedule 2, item 1**

15 *substitute*

1	Act, 18	refuse to approve application under section 18	applicant for approval
1A	Act, 19	removal of person's name from register under section 19	person whose name was removed

1 **Part 1.2 Children and Young People Act**  
2 **2008**

3 **[1.4] Section 456 (5)**

4 *omit*

5 section 21

6 *substitute*

7 section 39G

8 **Part 1.3 Discrimination Act 1991**

9 **[1.5] Section 25A (a), (b) and (c)**

10 *substitute*

11 (a) under the *Adoption Act 1993*, section 18 in relation to the  
12 approval of a person to be registered as suitable for the  
13 placement of a child or young person for adoption; or

14 (b) under the *Adoption Act 1993*, section 19 in relation to the  
15 removal of a person's name from the register of suitable  
16 people; or

17 (c) under the *Adoption Act 1993*, section 35A in relation to the  
18 placement of a child or young person before adoption in the  
19 care of a person who is on the register of suitable people.



1 **Part 1.4** **Parentage Act 2004**

2 **[1.6] Section 29 (3)**

3 *omit*

- 4 • section 49 (Gifts inter vivos)

5 *substitute*

- 6 • section 49 (Gifts between living people)

7 **Part 1.5** **Testamentary Guardianship Act**  
8 **1984**

9 **[1.7] Section 7 (2)**

10 *substitute*

11 (2) Nothing in this Act is to be taken to affect the operation of the  
12 following sections of the *Adoption Act 1993*:

- 13 • section 8 (Rules of private international law not to apply)  
14 • section 43 (General effect)  
15 • section 53 (Recognition of Australian adoptions)  
16 • section 57L (Recognition of adoption order made outside  
17 Australia).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2009.

**2 Notification**

Notified under the Legislation Act on 2009.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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