

Australian Capital Territory

Adoption Amendment Regulation 2010 (No 1)

Subordinate Law SL2010-32

made under the

Adoption Act 1993, section 121 (Regulation-making power)

EXPLANATORY STATEMENT

Background

When the *ACT Adoption Act* was first enacted in 1993, it was viewed as leading edge legislation to ensure the Territory's adoption practice maintained the best interests of children and young people as the key guiding principle and was responsive to the needs of all parties involved.

However over the past seventeen years, there have been a number of developments that pointed to the need to review this legislation in line with contemporary practice and wisdom. These developments have included:

- The United Nations Convention on the Rights of the Child,
- The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (commonly referred to as the Hague Convention),
- The *ACT Human Rights Act 2004*, and
- The *Children and Young People Act 2008*,

The Government began the process of reviewing the *ACT Adoption Act* in 2006 with public consultation on the discussion paper *A Better System for Children without Parents to Care for Them*. The consultation was concluded with the publication of a *Report on Key Findings from the Review of the Adoption Act 1993*.

The review and consultation identified that seventeen separate sections of the 1993 *Adoption Act* needed to be changed. These amendments were approved by the ACT Assembly on 27 August 2009.

Summary

The purpose of the Adoption Amendment Regulation 2010 (No 1) is to ensure that the contemporary adoption practice as legislated in the Adoption Act 1993, as amended, is properly supported by the regulation to ensure an accountable legal framework to guide the subsequent service delivery for all parties involved or affected by adoption matters.

The amendments also make the Adoption Regulation easier to understand and guide a child/ young person-centred focus for adoption practices in the Territory. Finally the amended regulation also incorporate current language updates and removes previous anomalies or inconsistencies identified by the drafters.

Revenue/Cost Implications

The legislation will be implemented within existing financial resources.

DETAIL

Section 1 Name of regulation

This section sets out the name of the new regulation as the *Adoption Amendment Regulation 2010 (No 1)*.

Section 2 Commencement

This section provides that the regulation commences on the day after its notification day.

Section 3 Legislation amended

This section states that this regulation amends the *Adoption Regulation 1993*.

Section 4-6, definitions and dictionary

These sections omit the definition of *adoption list* and relocate the amended definitions to the new dictionary inserted at the end of the regulation.

Section 7 Part 2 Heading

This section substitutes the heading of Part 2 to *Register of suitable people* more accurately captures the intention of this part which is to ensure the suitability of applicants to be included on the register to adopt children. This renaming also moves away from the previous language *the Adoption List* which was more focused on the rights of adoption applicants, to reflect coherence with the new Adoption legislation which enshrines the best interests of children and young people being the paramount consideration.

Section 8 Section 4

This part substitutes section 4 with *Register of suitable people—requests for inclusion* which again reflects current language to clearly confirm the practice principle of ensuring that adoption is a service providing for the needs of children and young people rather than for adults wishing to care for a child or young person. Thus applicants need to evidence their suitability to adopt.

This regulation sets a regulatory framework for the information that must be obtained regarding applicants prior to assessing their suitability for the placement of a child or young person for adoption. Casework practice utilises this regulation to build a more comprehensive psycho social assessment of applicants to compliment the legislative framework.

The new regulation captures all of the required information of the previous regulation but also refines the information required about applicants' length of time of their domestic partnership and removes the requirement of providing information about whether a couple residing in a domestic partnership are likely to have a further biological child. Both these changes reflect current best practice that is inclusive of a range of domestic partnerships providing suitable adoption placements for children and young persons.

Finally this amendment clarifies the placement process for children and young people, in that applicants must be suitable to provide a placement for a child or young person with a plan for adoption, prior to the adoption order being

sought as the order is not sought for a minimum 12 months period post placement.

Section 9

This amendment is consequential to amendments in the Act. The substitution refers to the requirement by the Chief Executive to supply a written report to the court about the arrangements for a child or young person that resulted in an application for an adoption order.

Section 10

This amendment is consequential to amendments in the Act and refers to the registering of adoptions by the Registrar-General in relation to the recognition of adoption orders made for overseas born children and young persons to Territory residents who were living overseas and who have satisfied both Australian Immigration law and the law of the child's country of origin, to effect the adoption.

The Adoption Amendment Act 2009 (No 2) sought to provide a more comprehensive legal framework to accurately reflect the range of legal pathways to effect the adoption of a child or young person born overseas and which also reflected Australia's responsibilities under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry. The regulation substitutes section 23 (4) to update cross references to the Act. .

Section 11

This is a consequential amendment which updates the reference to a *child's name after adoption* to be more inclusive and substitutes section 25 (1) (a) (i) *child's or young person's name after adoption*, in recognition that adoption is a service both for children and young people. The narrow use of the term child is reflective of past practice when adoption was seen primarily as a service for infants to be placed with infertile couples. The use of the terms child and young person is particularly relevant when utilising adoption as a planned process to secure the permanency of arrangements for children and young people who reside in out of home care.

Section 12 New dictionary

This section inserts a new dictionary. All key definitions which were previously noted throughout the regulation are now included in one dictionary which greatly enhances the clarity of the regulation. The dictionary defines all relevant terms within the regulation and is consistent with the meanings that the terms have in the Adoption Act 1993.

Section 13 and 14 Further amendments, mentions of *child/children*

The term 'child' is substituted with 'child or young person' where this denotes the age of the individual rather than their dependency from/relationship with another.