



Australian Capital Territory

Adoption Act 1993

A1993-20

Republication No 10

Effective: 26 August 2008 – 26 October 2008

Republication date: 26 August 2008

Last amendment made by A2008-28

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Adoption Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 26 August 2008. It also includes any amendment, repeal or expiry affecting the republished law to 26 August 2008.

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

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- authorised republications to which the *Legislation Act 2001* applies
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The status of this republication appears on the bottom of each page.

Editorial changes

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

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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R10
26/08/08

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Australian Capital Territory

Adoption Act 1993

An Act relating to the adoption of children

Part 1 Preliminary

1 Short title

This Act may be cited as the *Adoption Act 1993*.

2 Dictionary

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

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

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

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

3 Notes

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

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

6 Welfare and interests of child to be paramount

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

Part 2 Jurisdiction

7 Proceedings

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

8 Rules of private international law not to apply

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

Part 3 Adoptions under this Act

Division 3.1 General

9 Power of court

Subject to this Act, the court may, on application, make an order for the adoption of a child who—

- (a) was under 18 years old on the day the application was filed in the court; or
- (b) has been reared, maintained and educated by the applicants or either of the applicants, or by the applicant and a deceased domestic partner of the applicant, as his, her or their child under a de facto adoption.

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

10 Child over 18

An adoption order shall not be made if the child has attained the age of 18 years unless the court is of the opinion that—

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

11 Previous adoption immaterial

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

12 Residence or domicile

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

- (a) the applicants were resident or domiciled in the Territory; and
 - (b) the child was present in the Territory.
- (2) For subsection (1), where the court is satisfied that the applicants were resident or domiciled in the Territory, or that a child was present in the Territory, within 21 days before the date on which an application was filed, the court may, in the absence of evidence to the contrary, presume that the applicants were resident or domiciled in the Territory, or that the child was present in the Territory, as the case may be, when the application was filed.

13 Married child

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

14 Frustration of immigration law

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

15 Register and records of persons who apply to adopt

The chief executive shall—

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

16 Placement of child pending adoption

- (1) On receiving a request in writing from the applicants for an adoption order, the chief executive may, if he or she considers that they are suitable persons with whom to place a child for the purpose of adoption—
 - (a) include the names of the applicants on the register of persons seeking the placement of a child for the purpose of adoption; and
 - (b) place a child of whom he or she is the guardian in the custody of those applicants pending the determination of the application.
- (2) The chief executive shall not—
 - (a) include the names of applicants on the register under subsection (1) unless he or she considers them to be suitable persons with whom to place a child for the purpose of adoption; or
 - (b) place a child in the custody of persons under subsection (1) unless he or she considers that the child would be suitable, having regard to the criteria specified in section 19 (1) (c) for adoption by those applicants.

U 17 Review of chief executive's decision

- (1) Where—
 - (a) the chief executive refuses to include the names of applicants on the register; and
 - (b) the applicants have, in writing, requested that he or she reconsider that decision;

the Minister shall convene a committee, consisting of not more than 3 persons appointed by him or her, to review the decision.

- (2) A person is not eligible to be appointed as a member of a review committee unless the Minister is satisfied that—
 - (a) the person is not an officer of the administrative unit responsible for providing services for children and young people under the *Children and Young People Act 1999*; and
 - (b) the person has appropriate qualifications or experience.
- (3) Having reviewed a decision, a committee may recommend to the chief executive that he or she confirm or vary the decision.
- (4) On receiving a recommendation from a committee, the chief executive shall reconsider the decision and may confirm or vary it.
- (5) Where the chief executive confirms or varies a decision he or she shall cause notice in writing of the decision to be given to the applicants.

18 Persons in whose favour adoption orders may be made

- (1) Except as provided in this section, an adoption order shall not be made otherwise than in favour of 2 people jointly, being a couple—
 - (a) neither of whom is a parent of the child; and
 - (b) who, whether married or not, have lived together in a domestic partnership for a period of not less than 3 years; and
 - (c) who, in the opinion of the court, have demonstrated the stability of, and a commitment to, that relationship.
- (2) An adoption order shall not be made in favour of a person who is not a parent of the child but has a relationship of the kind described in subsection (1) with a parent of the child unless—
 - (a) the instrument of consent discloses consent to adoption by that particular person; and
 - (b) the court considers that it would not be preferable to make an order relating to guardianship or custody of the child.

- (3) Subject to subsection (2), the court may make an adoption order in favour of 1 person only after having regard to the wishes of the birth parents of the child.
- (4) Except in circumstances described in subsection (2), an adoption order must not be made in favour of 1 person if that person is—
 - (a) married and not living separately and apart from his or her spouse; or
 - (b) in a domestic partnership.
- (5) An adoption order shall not be made in favour of a relative of the child unless—
 - (a) the instrument of consent discloses consent to adoption by that particular relative; and
 - (b) the court is of the opinion that—
 - (i) there are circumstances why the relationships within the family of the child should be redefined as such an order would do; and
 - (ii) it would not be preferable to make an order relating to guardianship or custody of the child.

19 Criteria for court's discretion

- (1) An adoption order shall not be made if the child has not attained the age of 18 years unless—
 - (a) the chief executive, or the principal officer of a private adoption agency that made the arrangements that have resulted in the application, has made a report in writing to the court concerning the circumstances of the child and the proposed adoption; and
 - (b) the period within which any consent required may be revoked has expired without that consent having been revoked; and

- (c) after considering the report and any other evidence, the court is of the opinion that—
 - (i) the applicants are persons of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child (including protecting a child's physical and emotional wellbeing); and
 - (ii) the applicants are suitable persons to adopt the particular child having regard to their—
 - (A) ages, education and attitudes to adoption; and
 - (B) physical, mental and emotional health, particularly in so far as it impacts on capacity to nurture the child; and
 - (C) any other relevant consideration; and
 - (iii) the welfare and interests of the child will be promoted by the making of the order.
- (2) In deciding whether or not to make an adoption order, the court shall have regard to—
 - (a) where it is appropriate given the age and understanding of the child—the wishes of the child; and
 - (b) any wishes expressed in an instrument of consent, including wishes as regards—
 - (i) the racial or ethnic background of the proposed adoptive parents; or
 - (ii) the religious upbringing of the child after adoption; or
 - (iii) whether a single person might adopt the child.
- (3) Where a child is under the guardianship of an authority in a State or another Territory having functions under the law of that State or Territory corresponding to those of the chief executive, the court may consider a report from that authority concerning the

circumstances of the child and the proposed adoption either in addition to or instead of a report referred to in subsection (1) (a), and in such a case the reference to a report in subsection (1) (c) shall be construed accordingly.

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

20 Overseas child

- (1) The following provisions of this section are in addition to, and do not derogate from, the provisions of section 19.
- (2) An adoption order shall not be made if the child was brought from a place outside Australia for the purpose of adoption in Australia unless the court is satisfied that—
- (a) the laws of the child's country of origin relevant to his or her emigration or adoption have been complied with; and
 - (b) arrangements have been made between the Minister and the appropriate authority in the child's country of origin to facilitate the bringing of children from that country to the Territory for the purpose of adoption in the Territory; and
 - (c) any agency in the child's country of origin which made arrangements with a view to the adoption is approved for the purpose by the appropriate authority in that country.

21 Aboriginal child

- (1) The following provisions of this section are in addition to, and do not derogate from, section 19.
- (2) An adoption order shall not be made in respect of an Aboriginal child unless the court is satisfied that—

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

22 Notice of application for adoption order

- (1) An adoption order must not be made unless the applicants have, 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 lives or who has guardianship or custody of the child.

Note See approved form 3.29 (Notice of application for adoption order), approved under the *Court Procedures Act 2004*, s 8.
- (2) On application, the Supreme Court may dispense with the requirement to serve notice under subsection (1).
- (3) If it appears to the Supreme Court to be necessary in the interests of justice, the court may, on application or its own initiative, direct that notice of an application for an adoption order and its return date be served on anyone.

23 Parties to proceedings

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

24 Notification to chief executive of adoption order

When an adoption order has been made, the registrar of the Supreme Court shall notify the chief executive in writing accordingly.

25 Alternative orders on refusal of adoption order

- (1) Where the court refuses to make an adoption order, the court may—
 - (a) if of the opinion that the child's welfare and interests would be promoted by doing so—make an order relating to guardianship or custody of the child; and
 - (b) make such other orders (if any) as it thinks fit.
- (2) An order under subsection (1) (a) may be made in favour of the chief executive or any other person.

26 Discharge of adoption order

- (1) On application by a prescribed person, the court may make an order (a *discharging order*) discharging an adoption order if the court is of the opinion that—
 - (a) the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means; or
 - (b) there are other circumstances that justify the discharging order.
- (2) For the purpose of subsection (1) (b), a breakdown in the relationship between the child and the adoptive parents shall not be taken to constitute a circumstance justifying a discharging order.

- (3) A discharging order shall not be made if it appears to the court that the making of the order would be prejudicial to the welfare and interests of the child.
- (4) On an application under subsection (1), the court may require the chief executive to investigate the matter and to provide a report in writing to the court.
- (5) A discharging order must not be made unless the applicant has, not later than 28 days before the return date for the application, served written notice of the application and its return date on each person whose consent to the adoption was required.

Note See approved form 3.36 (Notice of application for discharge of adoption order), approved under the *Court Procedures Act 2004*, s 8.

- (6) On application, the Supreme Court may dispense with the requirement to serve notice under subsection (5).
- (7) Where the court makes a discharging order, the court may, at the same time or subsequently, make such consequential or ancillary orders as it thinks fit to promote the welfare and interests of the child, or otherwise in the interests of justice, including orders relating to—
 - (a) the name of the child; or
 - (b) the ownership of property; or
 - (c) guardianship or custody of the child; or
 - (d) the domicile of the child.
- (8) Upon the making of a discharging order, then, but subject to any order made under subsection (7) and to section 43 (3), the rights, privileges, obligations, liabilities and relationships under the law of the Territory of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—
 - (a) anything lawfully done; or

- (b) the consequences of anything unlawfully done; or
 - (c) any right or interest that became vested in any person;
- while the adoption order was in force.

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

prescribed person, in relation to an application for a discharging order for a child, means the Minister, the chief executive, the public advocate, the child, an adoptive parent or a person whose consent to the adoption was required.

Division 3.2 Consents to adoptions

27 Consents of parents and guardians

- (1) Subject to this division, an adoption order shall not be made in respect of a child who has not attained the age of 18 years unless consent to the adoption has been given by each person who is an appropriate person ascertained in accordance with subsection (2).
- (2) For subsection (1), a person is an appropriate person in relation to a proposed adoption of a child if the person is—
 - (a) in the case of a child who has not previously been adopted—
 - (i) each parent of the child; or
 - (ii) the guardian of the child; and
 - (b) in the case of a child who has previously been adopted—each adoptive parent or guardian of the child.

28 Consent of applicant not required

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

29 General or limited consents

- (1) For this Act, consent to the adoption of a child may be general or limited.
- (2) A general consent shall be a consent to the adoption of the child by any person or persons in accordance with the law of the Territory, and shall have effect accordingly.
- (3) A limited consent shall be a consent to the adoption of the child—
 - (a) by a relative of the child; or
 - (b) by a person who has been appointed as a guardian of the child by order of a court; or
 - (c) by a person in whose custody the child has been placed by the chief executive in accordance with a law of the Territory; or
 - (d) by a person referred to in section 18 (2).

30 Instrument of consent

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

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

31 Revocation of consent

- (1) A person who consents to the adoption of a child may revoke the consent only by filing a notice of revocation in the Supreme Court before the end of—

- (a) 30 days after the day the instrument of consent is signed; or
 - (b) if before the end of the 30-day period the person files in the Supreme Court a notice stating the person needs further time—
14 days after the end of the 30-day period.
- (2) A period applying under subsection (1) may not be extended.
 - (3) Subsection (2) has effect despite the Legislation Act, section 151C (Power to extend time).
 - (4) The registrar of the Supreme Court must tell the chief executive in writing about a notice filed under subsection (1).
 - (5) When the period within which a person's consent to the adoption of a child may be revoked ends, the chief executive must tell the person in writing.

32 Access during revocation period

- (1) A person whose consent to the adoption of a child is required is entitled to have access to the child before the expiration of the period during which that consent may be revoked unless the chief executive, by notice in writing served on that person, informs that person that access is denied.
- (2) The chief executive shall not give a notice under subsection (1) unless satisfied that it is necessary for the purpose of protecting the welfare and interests of the child to do so.

33 Consents under law of a State or another Territory

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

34 Defective consents

- (1) The court may refuse to make an adoption order if it appears to the court that—
 - (a) any required consent was—
 - (i) not given in accordance with this Act; or
 - (ii) obtained by fraud, duress or other improper means; or
 - (b) an instrument of consent has been altered in a material particular without the authority of the person who gave the consent; or
 - (c) when an instrument of consent was signed, the person who gave or purported to give the consent was not in a fit condition to give the consent or did not understand the nature of the consent.
- (2) An adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the birth of the child.
- (3) An adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the expiration of 7 days after the day on which the child was born unless—
 - (a) the court is of the opinion that there are circumstances that justify the instrument being treated as an effective consent; or
 - (b) the consent—
 - (i) was given in accordance with a law of a State or another Territory; and
 - (ii) is, by virtue of section 33, an effective consent for the purposes of this Act.

35 Dispensing with consent

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

Note See approved form 3.31 (Application for dispensing with consent to adoption), approved under the *Court Procedures Act 2004*, s 8.

- (2) On an application for an order under subsection (1), the court may require the chief executive to investigate the matter and to provide a report in writing to the court.
- (3) In order to facilitate the making of arrangements with a view to the adoption of a child, on the application of the chief executive or the principal officer of a private adoption agency, the court may make an order under subsection (1) before an application for an adoption order has been made, and the firstmentioned order has effect for the purpose of any subsequent application for an adoption order.
- (4) On the application of the chief executive or of the person the requirement for whose consent was dispensed with, the court may

revoke an order made by virtue of subsection (3) at any time before making an adoption order.

U 36 **Guardianship pending adoption**

- (1) If—
- (a) each person required to consent to the adoption of a child under section 27 (Consents of parents and guardians) has consented; or
 - (b) the requirement for consent has been dispensed with under section 35 (Dispensing with consent) in relation to the child;
- the chief executive is the guardian of the child (other than for the purpose of section 27) until—
- (c) an adoption order is made; or
 - (d) any consent given is revoked; or
 - (e) the court makes an order relating to the guardianship of the child.
- (2) Subsection (1) does not apply in relation to a child if—
- (a) the principal officer of a private adoption agency is the guardian of the child (other than for section 27) because of subsection (3); or
 - (b) a declaration requested under section 38 (Transfer of guardianship of child pending adoption) that the child is under the guardianship of an authority in a State or another Territory is in force.
- (3) Where—
- (a) each person whose consent to the adoption is required has consented and has, in writing, authorised a private adoption agency to make arrangements with a view to the adoption; and

(b) the principal officer of the private adoption agency informs the chief executive in writing that he or she is willing to assume the guardianship of the child;

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

(c) an adoption order is made; or

(d) any consent given is revoked; or

(e) the court makes an order relating to guardianship of the child.

(4) This section does not apply in relation to a child for whom the chief executive has parental responsibility for the long-term care, welfare and development under the *Children and Young People Act 1999*.

37 Guardianship pending adoption of overseas child

(1) This section applies in relation to a child—

(a) brought from a place outside Australia for the purpose of adoption in Australia; or

(b) adopted outside Australia, being an adoption that is not—

(i) to have the same effect as an adoption under this Act pursuant to section 55; or

(ii) the subject of a declaration under section 57.

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

(a) the child attains the age of 18 years; or

(b) an adoption order is made; or

(c) the court makes an order relating to guardianship of the child;
or

- (d) the child leaves Australia with the intention of remaining outside Australia permanently.

38 Transfer of guardianship of child pending adoption

- (1) On receiving a request in writing by or on behalf of the authority in a State or another Territory having the guardianship of a child in respect of whom consents with a view to adoption in the Territory have been given or dispensed with, the chief executive may, in writing, declare that the child is under the guardianship of the chief executive while the child is domiciled or resident in the Territory.
- (2) Where a declaration under subsection (1) has effect, then, while the child is domiciled or resident in the Territory, the chief executive is the guardian of the child until—
 - (a) the child attains the age of 18 years; or
 - (b) an adoption order is made; or
 - (c) the court makes an order relating to the guardianship of the child.
- (3) A declaration under subsection (1) ceases to have effect if the child ceases to be under the guardianship of the authority in the State or other Territory.
- (4) Where, in the opinion of the chief executive, a law of a State or another Territory contains a provision corresponding to this section, the chief executive may request the authority having the guardianship of children pending adoption in that State or Territory to declare that, while a child of whom the chief executive is the guardian pursuant to this Act (being a child in respect of whom consents with a view to adoption in that State or Territory have been given or dispensed with) is domiciled or resident in that State or Territory, the child is under the guardianship of that authority.

- (5) While a declaration made pursuant to a request under subsection (4) has effect, the functions and obligations of the chief executive as guardian of the child are suspended.
- (6) Subsection (5) does not apply in relation to the exercise by the chief executive of a function in respect of a child pursuant to an arrangement made under subsection (7).
- (7) The chief executive may, on behalf of the Territory, make financial or other arrangements with an authority referred to in subsection (1) or (4) in respect of a child while the child is under the guardianship of the chief executive or that authority, as the case requires.
- (8) The chief executive may make arrangements for the return of a child who is under the guardianship of the chief executive pursuant to this section to his or her former custody.

39 Review of status of child released for adoption

- (1) Where—
 - (a) all required consents to the adoption of a child have been given; and
 - (b) the child has not been—
 - (i) placed for adoption within 1 year; or
 - (ii) adopted within 1 year after being placed for adoption;

the chief executive shall apply to the court for an order under this section.
- (2) On an application under subsection (1), the court may—
 - (a) review the status of the child; and
 - (b) make such orders in relation to guardianship or custody of the child, or such other orders to promote the welfare and interests of the child, as the court thinks fit.

Division 3.3 Conditional orders

40 Adoption order subject to certain conditions

Where the court is of the opinion—

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

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

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

41 Amendment of adoption condition

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

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

42 Cessation of condition

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

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

Division 3.4 Effect of adoption orders

43 General effect

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

- (c) if the order is made in favour of a person referred to in section 18 (2)—the relationship of the child with the parent referred to in that subsection is not affected; and
 - (d) the relationship to one another of all persons (including the adopted child and the adoptive parents, birth parents or any former adoptive parent) shall be determined on the basis of paragraphs (a), (b) and (c) so far as they are relevant; and
 - (e) any existing appointment of a person as guardian of the adopted child ceases to have effect; and
 - (f) any previous adoption of the child (whether under the law of the Territory or otherwise) ceases to have effect.
- (2) Where—
- (a) 1 of the birth or former adoptive parents of a child has died; and
 - (b) an adoption order is made in favour of a person referred to in section 18 (2) after that death;
- the adoption does not exclude any right of inheritance that the child might otherwise have from or through the deceased person.
- (3) Notwithstanding subsection (1), for the purposes of any law of the Territory relating to a sexual offence, being a law under which the relationship between persons is relevant, an adoption order, or an order discharging an adoption order, shall not be taken to cause the cessation of any relationship that would otherwise have existed, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection or by virtue of the discharge of the adoption order.

44 Disposition of property

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

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

- (5) Nothing in section 43 or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Act) distinguishing between adopted children and children other than adopted children.
- (6) In this section:
- repealed laws* means the following Acts or the Ordinances repealed by any of the following Acts:
- (a) *Adoption of Children Act 1965*;
 - (b) *Adoption of Children Act 1974*;
 - (c) *Adoption of Children (Amendment) Act 1979*;
 - (d) *Adoption of Children (Amendment) Act 1983*;
 - (e) *Adoption of Children (Amendment) Act 1988*;
 - (f) *Adoption of Children (Amendment) Act 1991*.

45 Names of adopted child

- (1) Subject to subsection (2), upon the making of an adoption order, the adopted child shall have as his or her surname—
- (a) if both parents are known by the same surname—that surname; or
 - (b) in any other case—
 - (i) the maiden name or other surname of the child's mother; or
 - (ii) the surname of the child's father; or
 - (iii) the surname or former surname of any other parent of the child; or
 - (iv) a surname formed by combining the parents' surnames or former surnames;

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

- (2) Subject to subsection (3), upon the making of an adoption order, the adopted child shall have as his or her forename or forenames such name or names as, on the application of the adoptive parents, the court approves in the adoption order.
- (3) Where, before the making of an adoption order, the adopted child had been generally known by a particular name, the court may, in the adoption order, order that the child shall have that name.
- (4) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with the law of the Territory.

46 Effect of order on domicile

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

47 Distribution of property by trustee or personal representative

- (1) Notwithstanding any other provision of this Act, a trustee or personal representative may, subject to this section, convey, transfer or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption order has been made as a consequence of which a person is or is not entitled to an interest in the property.

- (2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in subsection (1) shall not be liable to a person claiming directly or indirectly by virtue of the making of an adoption order unless the trustee or personal representative had notice of the claim before the time of the conveyance, transfer or distribution.
- (3) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a bona fide purchaser for value without notice, who has received it.

48 Bequest by will to unascertained adopted person

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

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

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

- (2) Where the public trustee is given a copy of a will under subsection (1), the public trustee shall, in writing, request the chief executive to ascertain and give to the public trustee the name and address of the beneficiary.
- (3) Where the chief executive receives a request under subsection (2), the chief executive shall examine the records in the possession of the chief executive and, if necessary, make enquiries of a private

adoption agency or other body or person in an endeavour to ascertain the name and address of the beneficiary or, if the beneficiary has died, the date of the death, and the chief executive shall inform the public trustee of the results of the examination and enquiries.

- (4) If the information received from the chief executive does not disclose the name and address of the beneficiary, or discloses that the beneficiary has died, the public trustee shall inform the personal representative accordingly.
- (5) If the information received from the chief executive discloses the name and address of the beneficiary, the public trustee shall, if the beneficiary has attained the age of 18 years—
 - (a) ascertain whether the beneficiary wishes to accept the bequest; and
 - (b) if the beneficiary does not wish to accept the bequest—inform the personal representative accordingly; and
 - (c) if the beneficiary does wish to accept the bequest—inform the personal representative that the proceeds of the bequest should be transferred to the public trustee on behalf of the beneficiary; and
 - (d) on receiving the proceeds of the bequest—transmit the proceeds to the beneficiary.
- (6) If the information received from the chief executive discloses the name and address of the beneficiary, the public trustee shall, if the beneficiary has not attained the age of 18 years—
 - (a) inform the personal representative that the proceeds of the bequest should be transferred to the public trustee to be held in trust for the beneficiary; and
 - (b) hold the proceeds of the bequest in trust for the beneficiary upon the trusts (if any) set out in or arising under the will until the beneficiary attains the age of 18 years; and

- (c) on the beneficiary attaining the age of 18 years, transfer the proceeds of the bequest to the beneficiary (unless the beneficiary then disclaims the bequest).
- (7) Where the personal representative transfers the proceeds of a bequest to the public trustee under this section, the personal representative shall be taken to have transferred the bequest to the beneficiary.
- (8) Where the public trustee gives to the personal representative a statement in writing to the effect that the beneficiary has disclaimed a bequest to which the beneficiary was entitled under the will that statement is, for the purpose of the administration of the estate by the personal representative, conclusive evidence that the beneficiary has disclaimed the bequest.
- (9) The public trustee shall not, in information conveyed to a personal representative under this section, include particulars that identify or tend to identify the adopted person.

49 Gifts inter vivos

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

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

- (2) In the application of section 48 by virtue of subsection (1), that section has effect as if—
- (a) a reference in that section to a will were a reference to the deed of gift; and
- (b) a reference in that section to the testator or to a personal representative were a reference to the donor; and

- (c) a reference in that section to property or to an interest in property were a reference to the money that is the subject of the gift.

Division 3.5 Interim orders

50 Making of order

- (1) On an application to the court for an adoption order, the court may postpone the determination of the application and make an interim order in favour of the applicants for the custody of the child.
- (2) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the court thinks fit.
- (3) An interim order shall not be made in favour of any person unless an adoption order in respect of the child could be made in favour of the person.

51 Duration

- (1) Subject to subsection (2) and to section 52, an interim order remains in force for such period, not exceeding 1 year, as the court specifies in the order and for such further periods (if any) as the court by order from time to time determines.
- (2) An interim order shall not be in force for periods exceeding, in the aggregate, 2 years.

52 Discharge

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

Part 4 Recognition of adoptions

53 Meaning of *country* in pt 4

In this part:

country means a country other than Australia, and includes a part of a country.

54 Australian adoptions

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

55 Overseas adoptions

- (1) For the law of the Territory, the adoption of a person (whether before or after the commencement of this Act) in another country, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order made under this Act.
- (2) This section applies to an adoption in a country if—
 - (a) the adoption was effective according to the law of that country; and
 - (b) either—
 - (i) that country was the usual place of residence of the adoptive parents for a continuous period of not less than 12 months, or such lesser period as a court considers reasonable in the circumstances of the case, immediately

before the commencement of the proceedings for the adoption; or

- (ii) the chief executive or the principal officer of a private adoption agency has, before the adoption in that other country, agreed to the placement of the adopted child with the adoptive parents and the child is placed in accordance with the conditions of approval of the adoptive parents; and
 - (c) in consequence of the adoption, the adoptive parents had, or would have had if the adopted child had been under the age of 18 years, under the law of that country, a right superior to that of any birth parent in respect of the custody of the adopted child; and
 - (d) under the law of that country the adoptive parents were, by virtue of the adoption, placed generally in the position of parents in relation to the adopted child.
- (3) Notwithstanding subsections (1) and (2), a court (including a court dealing with an application under section 57) may refuse to recognise an adoption as being an adoption to which this section applies if it appears to the court that the procedure followed, or the law applied, in connection with the adoption involved a denial of natural justice or otherwise failed to do justice.
 - (4) Where, in any proceedings before a court (including proceedings under section 57), the question arises whether an adoption is one to which this section applies, it shall be presumed that the requirements of subsection (2) were satisfied and the adoption has not been rescinded, but that presumption is rebuttable.
 - (5) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country outside Australia does not have effect for the law of the Territory.
 - (6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.

56 Support of adopted children

- (1) Subject to this section, where—
- (a) a child is adopted in the Territory or elsewhere, whether or not the adoption is an adoption that has, under this Act, the same effect as an adoption order under this Act; and
 - (b) the adoption in relation to the child has been in force for a period not exceeding 12 months; and
 - (c) the child is present in the Territory;
- the chief executive may promote the welfare and interests of the child by providing support for a period not exceeding 12 months commencing on—
- (d) if the child was adopted in the Territory—the date of the adoption; or
 - (e) if the child arrived in the Territory after having been adopted—the date of the arrival;
- and any person authorised in writing by the chief executive for that purpose has a right of access to the child during that period—
- (f) at times agreed between that person and the adoptive parents; or
 - (g) in the absence of such agreement—at times specified by the Minister by notice in writing given to the adoptive parents.
- (2) Where a child whose welfare and interests may be promoted by the chief executive under subsection (1) has, after being adopted but before arriving in the Territory, been resident in a State or in another Territory, the period during which the child may receive support from the chief executive is reduced proportionately to the period of such residence in that State or other Territory.

- (3) In this section:

support, in relation to an adopted child, means the chief executive or a person authorised in writing by the chief executive visiting the child and the family in the child's home environment, but does not include financial support.

57 Declarations of validity of overseas adoptions

- (1) On an application by a person specified in subsection (2), the court may make an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of another country, and that the adoption is one to which section 55 applies.
- (2) The persons who may make an application under subsection (1) are the adopted child, an adoptive parent or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.
- (3) On an application under subsection (1), the court may—
- (a) direct that notice of the application be given to such persons as the court thinks fit; or
 - (b) direct that a person be made a party to the application; or
 - (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.
- (4) Where the court makes an order under subsection (1), the court may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parents as the court finds to be established.
- (5) Except as provided in subsection (6), an order under subsection (1) does not affect—
- (a) the rights of another person unless that person was—

- (i) a party to the proceedings for the order or a person claiming through such a party; or
 - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or
 - (b) an earlier judgment, order or decree of a court of competent jurisdiction.
- (6) In proceedings in a court of the Territory, being proceedings relating to the rights of a person other than a person referred to in subsection (5) (a) (i) or (ii), the production of a copy of an order under subsection (1), certified by the registrar of the Supreme Court to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 55 applies.

Part 5 Access to information

Division 5.1 General

58 Definitions for pt 5

In this part:

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

associated person, in relation to an adoption, means—

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

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

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

identifying information, in relation to an adoption, means—

- (a) a copy of, or an extract from, an entry in a register of births relating to the adopted child; or
- (b) information from which a birth parent, a birth relative or the adopted child may be identified (not being information that consists of the address of a place of residence).

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

relevant authority, in relation to information, means—

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

59 Application of pt 5

The provisions of this part apply in relation to an adoption—

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

60 Confidentiality of records

- (1) Except as provided in this part—
 - (a) records in the possession or under the control of the chief executive or a private adoption agency relating to an adoption; or
 - (b) the records of the court (other than an order or decision of the court) relating to proceedings on an application for an adoption order; or
 - (c) an entry in the register of births relating to the birth of an adopted child, or a copy of, or extract from, such an entry;

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

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

61 Records of adoptions

- (1) The chief executive shall maintain records—
- (a) in respect of each adoption negotiated or arranged by or on behalf of the chief executive; or
 - (b) furnished to the chief executive under subsection (2).
- (2) A private adoption agency shall—
- (a) maintain records in respect of each adoption negotiated or arranged by it; and
 - (b) as soon as practicable after an adoption order has been made following such negotiations or arrangements, furnish to the chief executive the prescribed particulars concerning the persons associated with the application for the order.
- (3) For the purposes of subsection (2), the associated persons are the adopted child, an adoptive parent, a birth parent and the person who made the report referred to in section 19 (1) (a).
- (4) The regulations may make provision for the length of time for which, and the manner in which, records are to be maintained pursuant to subsection (1) or (2).

62 Provision of information

- (1) Where—
- (a) the chief executive receives an application for information under this part; and
 - (b) the chief executive is satisfied that the applicant is a person who, in accordance with this part, is entitled to access to, and to apply for, that information;

the chief executive shall—

- (c) if that information is contained in records in the possession or under the control of the chief executive —give that information to the applicant; and
 - (d) if the information is, to the chief executive’s knowledge, contained in records in the possession or under the control of a relevant authority—
 - (i) request the authority to—
 - (A) give the information to the chief executive; or
 - (B) if the application so requests—give the information to the applicant; and
 - (ii) if the information is received by the chief executive from the authority—give that information to the applicant; or
 - (e) if the information is not contained in any records referred to in paragraph (c) or (d)—
 - (i) make such enquiries as are reasonable in the circumstances of the case in an endeavour to obtain the information; and
 - (ii) upon obtaining the information, give it to the applicant.
- (2) Subsection (1) shall not be taken to require the chief executive to give information, to make enquiries or requests or to do any other act unless any fee or charge payable under a law of the Territory, a State or another Territory for searching for or furnishing information of that kind has been paid.
- (3) Where—
- (a) the registrar-general receives an application for information under this part; and

- (b) the registrar-general is satisfied that the applicant is a person who, in accordance with this part, is entitled to access to, and to apply for, that information;

the registrar-general shall, upon payment of the fee determined for the *Births, Deaths and Marriages Registration Act 1997*, section 43 cause a search to be made in the register of births and issue to the applicant—

- (c) a copy of, or an extract from, the relevant entry; or
(d) a notification of the result of the search;

as the case requires.

Division 5.2 Non-identifying information

63 Right of access

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

64 Protection of privacy

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

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

65 Medical information

Where, under this division, information concerning the medical or psychiatric condition of an applicant for that information or of a birth parent, birth relative or child of the applicant, may be

disclosed, the relevant authority may, if the authority considers that the disclosure might be prejudicial to the physical or mental health or wellbeing of the applicant, refuse to disclose the information to the applicant personally and instead may disclose it (without identifying a person other than the applicant) to a medical practitioner nominated by the applicant and approved by the authority.

Division 5.3 Identifying information

66 Right of access

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

67 Recipient of application

- (1) An application under section 66 shall be made to—
 - (a) if the information sought consists of a copy of, or an extract from, an entry in the register of births—the registrar-general; and
 - (b) in any other case—the chief executive.
- (2) On receiving an application pursuant to subsection (1), the registrar-general shall notify the chief executive in writing accordingly.

68 Restriction on entitlement to apply

- (1) An adopted child who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each adoptive parent and each birth parent.
- (2) Subsection (1) does not apply if—
 - (a) an adoptive parent is a person referred to in section 18 (2); and
 - (b) the information sought consists of a copy of, or an extract from, an entry in the register of births.

- (3) A birth parent of an adopted child who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each adoptive parent.
- (4) A birth relative of an adopted child is not entitled to identifying information unless—
 - (a) if the information sought consists of a copy of, or an extract from, an entry in the register of births relating to the period preceding the person's adoption—the applicant can demonstrate that he or she knows the names of each birth parent of the child who is named in the register; and
 - (b) if the adopted child has not attained the age of 18 years—approval in writing has been obtained from each adoptive parent.
- (5) An adoptive parent of an adopted child who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each birth parent.
- (6) Notwithstanding subsections (1) to (5) the approval of a person is not required for this division if the chief executive or the registrar-general, as the case requires, is satisfied that—
 - (a) the person is dead; or
 - (b) the whereabouts of the person are unknown and could not with reasonable enquiries be ascertained.
- (7) The chief executive may withhold information from a birth parent where he or she believes, on reasonable grounds, that the child has been subjected to sexual or physical abuse from that birth parent.

69 Assistance in obtaining approval

Upon receiving—

- (a) an application for identifying information; or

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

the chief executive shall, at the request of the applicant, on his or her behalf seek to obtain from each person whose approval is required approval in writing to the information being provided.

70 Objection to contact

- (1) Objection may be made by—
- (a) an adopted person who has attained the age of 17 years and 6 months; or
 - (b) an adoptive parent; or
 - (c) a birth relative who has attained the age of 18 years; or
 - (d) an adoptive relative who has attained the age of 18 years; or
 - (e) a child or other descendant of an adopted person, being a child or other descendant, who has attained the age of 18 years; or
 - (f) a birth parent;

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

- (2) An objection shall be made by notice in writing lodged with the chief executive and shall continue in force until revoked by the person by notice in writing lodged with the chief executive.
- (3) Where the chief executive receives an objection or revocation he or she shall enter the particulars in the contact veto register .
- (4) An objection made by a person who is less than 18 years of age takes effect when the person attains that age.

71 Contact veto by a person other than an adopted person

- (1) Where a person, other than an adopted person, has not attained the age of 18 years but would be entitled to lodge a contact veto on attaining 18 years, a parent may lodge a contact veto on his or her behalf.
- (2) A contact veto lodged under subsection (1) remains in force until—
 - (a) revoked by the parent who lodged it; or
 - (b) the person on whose behalf the veto was lodged attains the age of 18 years.
- (3) A person, other than an adopted person, who is 17 years and 6 months of age may lodge a contact veto.
- (4) A contact veto lodged under subsection (3) comes into effect when the person who lodged it attains the age of 18 years.

72 Counselling services

- (1) The chief executive shall not supply a document or information to an applicant specified in, or included in a class of persons specified in, a contact veto under this part unless the applicant has attended an interview with an approved counsellor.
- (2) Where the chief executive receives an application under this part from an applicant referred to in subsection (1), he or she shall inform the applicant in writing of the place or places at which counselling services are available and that information cannot be supplied under this part unless the applicant has attended an interview with an approved counsellor.
- (3) This section does not apply if the chief executive is satisfied that the adopted person and another person referred to in the original birth certificate relating to the adopted person have already exchanged information which may identify that birth parent or a birth relative of the adopted person.

(4) The chief executive may, in writing, approve a person as a counsellor for this Act.

(5) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(6) The chief executive shall not approve a person as a counsellor under subsection (4) unless the person has, in the opinion of the chief executive, such qualifications and experience as are appropriate for a counsellor for this Act.

73 Declaration that contact not be attempted

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

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

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

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

(ii) arrange or attempt to arrange contact with that person; or

(iii) procure another person to contact, attempt to contact, or attempt to arrange contact with, that person;

while the objection remains in force.

74 Birth details of adopted person born overseas

When an adopted child who was—

(a) born outside Australia; and

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

attains the age of 18 years, the chief executive shall, at the request of the adopted child, furnish him or her with a copy of his or her birth

certificate or such other information as is available from the records of the appropriate authority in the child's country of origin.

75 Application to court in absence of consent

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

76 Other person's right to information

- (1) A person who is not entitled under any other provision of this part to access to, and to apply for, information may apply to the court for an order under subsection (3).
- (2) An application under subsection (1) shall be accompanied by a report from the chief executive.
- (3) On an application under subsection (1), the court may, after considering the report referred to in subsection (2) and if of the

opinion that there are circumstances that justify the order, make an order declaring that the applicant is entitled to access to, and to apply for, the information specified in the order.

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

77 Adoption information service

- (1) The Minister shall cause to be established and maintained within the relevant administrative unit a service to be known as the adoption information service .
- (2) The chief executive is responsible for the administration of the service.
- (3) The function of the service is to—
 - (a) advise persons with respect to the provisions of this part; and
 - (b) make arrangements for the provision of counselling in relation to applications under this part; and
 - (c) supervise the taking of and keep declarations made pursuant to section 73; and
 - (d) receive applications for information under this part; and
 - (e) subject to and in accordance with this part, facilitate the provision of information to a person whose name is entered in the adoption information register maintained under section 78.

78 Adoption information register

- (1) The chief executive shall establish and maintain an adoption information register.

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

79 Contact veto register

- (1) The chief executive shall establish and maintain a contact veto register .
- (2) The register shall contain—
- (a) the name of each person who has duly lodged a contact veto; and

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

80 Reunion information register

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

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

Part 6 Private adoption agencies

81 Application for approval

- (1) A charitable organisation desiring to conduct negotiations and make arrangements with a view to the adoption of children may apply in writing to the chief executive for approval as a private adoption agency.
- (2) An application under subsection (1) shall specify the name of a person resident in the Territory appointed by the organisation to be its principal officer in the Territory for this Act.

82 Grant or refusal of approval

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

- (b) any other relevant considerations.

83 Change in principal officer

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

84 Effect of action by principal officer

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

85 Revocation or suspension of approval

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

86 Effect of cessation of approved agency

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

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

87 Requirements for private adoption agencies

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

Part 7 Offences

88 Territorial application of pt 7

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

89 Taking away etc of adopted child by birth parent

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

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

90 Receiving or harbouring child

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

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

91 Interfering with upbringing of child

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

- (a) interfere in or influence the upbringing of the child or the relationship between the child and the adoptive parents; or

- (b) except where an adoptive parent is a birth relative of the child or a person referred to in section 18 (2)—otherwise than in accordance with the approval of the chief executive or in accordance with division 3.3, communicate in any way with—
 - (i) the child until he or she attains the age of 18 years; or
 - (ii) a person who, to his or her knowledge, is an adoptive parent of the child.

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

92 Approval of communications

The chief executive—

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

93 Chief executive's report for prosecution

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

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

94 Payments in consideration of adoptions etc

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

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

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

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

95 Unauthorised arrangements for adoption

- (1) A person other than the chief executive or a person acting on behalf of the chief executive or a private adoption agency shall not—

- (a) conduct negotiations or make arrangements with another person with a view to the adoption of a child by that other person; or
- (b) except in accordance with arrangements made by or on behalf of the chief executive or a private adoption agency—
 - (i) transfer, or cause to be transferred, the possession, custody or control of a child to another person with a view to the adoption of the child by that other person; or
 - (ii) receive possession, custody or control of a child with a view to adopting the child.
- (2) Subsection (1) does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child with a view to the adoption of the child by a relative of the child, or by 2 persons 1 of whom is a parent or relative of the child.

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

96 Unauthorised advertising

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

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

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

97 Restriction on publication of identity of parties

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

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

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

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

99 Personation of person whose consent to adoption is required

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

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

100 Presenting consent obtained by fraud etc

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

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

101 Improperly witnessing consent

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

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

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

Part 8 Miscellaneous

104 Registration of orders

- (1) The registrar of the Supreme Court must send the following to the registrar-general:
 - (a) a memorandum of each adoption order;
 - (b) a copy of each order discharging an adoption order.

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

- (2) On receiving a memorandum or copy of an order under subsection (1), the registrar-general shall—
 - (a) register it, as prescribed, in the register of adoptions; and
 - (b) if it relates to a child whose birth is registered in the register of births—make such alterations to, or entries in, that register as are prescribed.

105 Memoranda of orders interstate

Where—

- (a) the court makes an adoption order, or an order discharging such an order; and
- (b) the registrar of the Supreme Court has reason to believe that the birth of the child is registered in a State or in another Territory;

the registrar shall, as soon as practicable, cause a memorandum of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him or her to be a true memorandum or copy, to be sent to such officer of that State or other Territory having functions in relation to registration of births as is prescribed

or having functions corresponding to those of the registrar-general under the *Births, Deaths and Marriages Registration Act 1997*.

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

106 Particulars of interstate orders

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

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

107 Legal representation of child

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

108 Notification to parents

The chief executive shall inform a birth parent of a child in writing of—

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

- (e) if the chief executive becomes aware of it—the death of the child.

109 Notice of decisions

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

(m) refusing to approve advertising or other matter under section 96 (1);

he or she shall cause notice in writing of the decision to be given to the relevant person.

(2) Where the registrar-general makes a decision under section 62 (3) refusing to—

(a) cause a search to be made in the register of births; and

(b) issue to the applicant—

(i) a copy of, or an extract from, the relevant entry; or

(ii) a notification of the result of the search;

as the case requires;

he or she shall cause notice in writing of the decision to be given to the applicant.

(3) A notice under subsection (1) or (2) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

(5) In subsection (1):

relevant person means—

(a) in the case of a decision referred to in subsection (1) (a)—the person or each of the persons who requested a review of the decision; and

(b) in the case of a decision referred to in subsection (1) (b)—

(i) the person who has been denied access to the child; and

(ii) each person who has custody of the child; and

- (iii) if the chief executive considers it appropriate having regard to the age of the child that notice be given to the child—the child; and
- (c) in the case of a decision referred to in subsection (1) (c)—
 - (i) the requesting authority in a State or another Territory; and
 - (ii) a person with whom the child has been placed with a view to adoption; and
 - (iii) if the chief executive considers it appropriate having regard to the age of the child that notice be given to the child—the child; and
- (d) in the case of a decision referred to in subsection (1) (d)—the person who applied for the information; and
- (e) in the case of a decision referred to in subsection (1) (e)—the applicant for the information; and
- (f) in the case of a decision referred to in subsection (1) (f)—the applicant for the document or information; and
- (g) in the case of a decision referred to in subsection (1) (g)—the person refused approval as a counsellor; and
- (h) in the case of a decision referred to in subsection (1) (h) and (i)—the principal officer of the organisation; and
- (i) in the case of a decision referred to in subsection (1) (j)—
 - (i) the person who sought approval to communicate; and
 - (ii) if the chief executive considers it appropriate having regard to the age of the child that notice be given to the child—the child; and
 - (iii) each adoptive parent; and
- (j) in the case of a decision referred to in subsection (1) (k)—

- (i) each adoptive parent; and
 - (ii) the birth mother of the child; and
 - (iii) the person who sought approval of a payment in respect of hospital and medical expenses; and
- (k) in the case of a decision referred to in subsection (1) (l)—
- (i) each adoptive parent; and
 - (ii) the birth mother of the child; and
 - (iii) the person who sought approval of the payment or reward; and
- (l) in the case of a decision referred to in subsection (1) (m)—
- (i) the person who sought approval of the advertisement or other matter; and
 - (ii) if the chief executive considers it appropriate having regard to the age of the child that notice be given to the child—the child.

110 Review by administrative appeals tribunal

- (1) Subject to subsection (2), application may be made to the administrative appeals tribunal for a review of a decision referred to in section 109.
- (2) An application for a review of a decision referred to in section 109 (1) (a) shall not be made unless the chief executive has reconsidered and confirmed that decision under section 17 (4).
- (3) Where—
 - (a) a request has been made under section 17 (1) for a reconsideration of a decision referred to in section 109 (1) (a); and

- (b) at the expiration of the period of 14 days after the day on which the request was made the persons who made the request have not been informed in writing by the chief executive of the result of his or her reconsideration;

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

- (4) For the *Administrative Appeals Tribunal Act 1989*, section 27, a decision referred to in section 109 (1) (a) shall be taken to have been made on the date on which the chief executive reconsidered and confirmed that decision, or is by virtue of subsection (3) to be taken to have reconsidered and confirmed that decision, under section 17 (4).

111 Authority to prosecute

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

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

112 Hearings to be in camera

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

113 Contents of reports not to be disclosed

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

114 Restriction on inspection of records

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

115 Chief executive may appear at hearings

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

116 Proof of adoptions

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

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

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

117 Judicial notice of signatures

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

118 Determination of fees

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

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

120A Approved forms

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

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

121 Regulation-making power

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

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to—

- (a) the keeping of lists by the chief executive and by private adoption agencies of people approved for the placement of a child for adoption; and
- (b) access to the register of adoptions; and
- (c) the giving of copies of, or extracts from, entries included in the register of adoptions; and
- (d) the making, correction or cancellation of entries about adopted children in the register of births.

- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative appeals tribunal
- administrative unit
- chief executive (see s 163)
- contravene
- document
- domestic partner (see s 169 (1))
- Executive
- file
- function
- instrument (see s 14)
- proceeding
- Supreme Court.

Aboriginal child means a child at least 1 of whose parents is an Aborigine.

Aborigine means a person who—

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

adoption order means an order for the adoption of a child under section 9.

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

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

Australia includes an external Territory.

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

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

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

child means an individual who is—

- (a) under 18 years old; or
- (b) 18 years or older but for whom an adoption order is sought or has been made.

contact veto register means the register established under section 79.

country, for part 4 (Recognition of adoptions)—see section 53.

court means the Supreme Court.

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

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

guardian, in relation to a child, includes—

- (a) a person having the custody of the child under an order of a court; and
- (b) a person who is the guardian of the child (whether to the exclusion of, or in addition to, a parent or other guardian) under a law of the Territory, the Commonwealth, a State or another Territory; and

- (c) someone with parental responsibility for the long-term care, welfare and development of the child, whether by order of a court or otherwise.

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

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

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

interim order means an order under section 50.

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

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

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

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

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

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

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

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

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

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

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

reunion information register means the register established under section 80.

service means the adoption information service maintained under section 77.

Endnotes

1 About the endnotes

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

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

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

The endnotes also include a table of earlier republications.

2 Abbreviation key

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

Endnotes

3 Legislation history

3 Legislation history

Adoption Act 1993 No 20

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

as amended by

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

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

Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1

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

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 4

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

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

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

Statute Law Revision (Penalties) Act 1994 No 81 sch

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

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

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

**Legal Practitioners (Consequential Amendments) Act 1997 No 96
sch 1**

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

**Births, Death and Marriages Registration (Consequential Provisions)
Act 1997 No 113 sch**

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

Statute Law Revision (Penalties) Act 1998 No 54 sch

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

**Children and Young People (Consequential Amendments) Act 1999
No 64 sch 2**

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

Legislation (Consequential Amendments) Act 2001 No 44 pt 7

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

Parentage Act 2004 A2004-1 sch 1 pt 1.2

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

Endnotes

3 Legislation history

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

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

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

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

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

notified LR 22 February 2006
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
amdt 1.8 commenced 23 February 2006 (s 2)

Note This Act only amends the Public Advocate Act 2005 A2005-47

Civil Unions Act 2006 A2006-22 sch 1 pt 1.2

notified LR 19 May 2006
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))
sch 1 pt 1.2 never commenced

Note Act repealed by disallowance 14 June 2006 (see Cwlth Gaz
2006 No S93)

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

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

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

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

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

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.1 commenced 26 August 2008 (s 2)

4 Amendment history**Dictionary**s 2 om 2001 No 44 amdt 1.48
ins A2008-28 amdt 3.8**Notes**s 3 om 1999 No 64 sch 2
ins A2008-28 amdt 3.8**Interpretation for Act**s 4 defs reloc to dict A2008-28 amdt 3.7
om A2008-28 amdt 3.8
def **community advocate** om A2005-47 amdt 1.1
def **determined fee** om 2001 No 44 amdt 1.49
def **Director** sub 1994 No 97 sch pt 1
om 1999 No 64 sch 2
def **file** om A2006-40 amdt 2.48
def **repealed laws** om A2008-28 amdt 3.6**Position of Crown**

s 5 om 1993 No 44 sch 2

General

div 3.1 hdg (prev pt 3 div 1 hdg) renum R4 LA

Power of court

s 9 am A2004-1 amdt 1.2, amdt 1.3; A2006-40 amdt 2.49

Married childs 13 hdg sub A2006-22 amdt 1.8 (A2006-22 rep before commenced by
disallowance (see Cwlth Gaz 2006 No S93))
s 13 am A2006-22 amdt 1.9 (A2006-22 rep before commenced by
disallowance (see Cwlth Gaz 2006 No S93))**Register and records of persons who apply to adopt**

s 15 am 1999 No 64 sch 2

Placement of child pending adoption

s 16 am 1999 No 64 sch 2

Review of chief executive's decisions 17 am 1999 No 64 sch 2; A2008-20 amdt 3.1

Endnotes

4 Amendment history

Persons in whose favour adoption orders may be made

s 18 am A2004-1 amds 1.4-1.6; A2006-22 amdt 1.10, amdt 1.11
(A2006-22 rep before commenced by disallowance (see
Cwlth Gaz 2006 No S93))

Criteria for court's discretion

s 19 am 1999 No 64 sch 2

Notice of application for adoption order

s 22 sub A2006-40 amdt 2.50
am A2008-28 amdt 3.9

Notification to chief executive of adoption order

s 24 am 1999 No 64 sch 2

Alternative orders on refusal of adoption order

s 25 am 1999 No 64 sch 2

Discharge of adoption order

s 26 am 1999 No 64 sch 2; A2005-47 amdt 1.2; A2006-40
amdt 2.51; A2008-28 amdt 3.10

Consents to adoptions

div 3.2 hdg (prev pt 3 div 2 hdg) renum R4 LA

Consents of parents and guardians

s 27 am A2004-1 amdt 1.7

General or limited consents

s 29 am 1999 No 64 sch 2

Instrument of consent

s 30 sub 2001 No 44 amdt 1.50

Revocation of consent

s 31 am 1999 No 64 sch 2
sub A2006-40 amdt 2.52

Access during revocation period

s 32 am 1999 No 64 sch 2

Dispensing with consent

s 35 am 1999 No 64 sch 2; A2008-28 amdt 3.11

Guardianship pending adoption

s 36 am 1999 No 64 sch 2; A2008-20 amdt 3.2

Guardianship pending adoption of overseas child

s 37 am 1999 No 64 sch 2

Transfer of guardianship of child pending adoption

s 38 am 1999 No 64 sch 2

Review of status of child released for adoption

s 39 am 1999 No 64 sch 2

Conditional orders

div 3.3 hdg (prev pt 3 div 3 hdg) renum R4 LA

Adoption order subject to certain conditions

s 40 am 1999 No 64 sch 2

Amendment of adoption condition

s 41 hdg sub A2006-40 amdt 2.53

s 41 am 1999 No 64 sch 2; A2006-40 amdts 2.54-2.56

Cessation of condition

s 42 am A2006-40 amdt 2.57

Effect of adoption orders

div 3.4 hdg (prev pt 3 div 4 hdg) renum R4 LA

Disposition of property

s 44 am A2008-28 amdt 3.12

Names of adopted child

s 45 am A2004-1 amdt 1.8

Bequest by will to unascertained adopted person

s 48 am 1999 No 64 s 4 sch 2; A2004-1 amdt 1.9, amdt 1.10

Gifts inter vivos

s 49 am A2004-1 amdt 1.11, amdt 1.12

Interim orders

div 3.5 hdg (prev pt 3 div 5 hdg) renum R4 LA

Overseas adoptions

s 55 am 1999 No 64 sch 2

Support of adopted children

s 56 am 1999 No 64 sch 2

General

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

Definitions for pt 5

s 58 am 1993 No 64; 1997 No 113; 1999 No 64 sch 2
def *birth parent* sub A2004-1 amdt 1.13

Confidentiality of records

s 60 am 1999 No 64 sch 2

Records of adoptions

s 61 am 1999 No 64 sch 2

Endnotes

4 Amendment history

Provision of information

s 62 am 1993 No 64; 1997 No 113; 1999 No 64 sch 2

Non-identifying information

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

Identifying information

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

Recipient of application

s 67 am 1993 No 64; 1999 No 64 sch 2

Restriction on entitlement to apply

s 68 am 1993 No 64; 1999 No 64 sch 2

Assistance in obtaining approval

s 69 am 1999 No 64 sch 2

Objection to contact

s 70 am 1999 No 64 sch 2

Counselling services

s 72 am 1999 No 64 sch 2; 2001 No 44 amdt 1.51, amdt 1.52; R4 LA (see 2001 No 44 amdt 1.53)

Declaration that contact not be attempted

s 73 am 1999 No 64 sch 2

Birth details of adopted person born overseas

s 74 am 1999 No 64 sch 2

Application to court in absence of consent

s 75 am 1999 No 64 sch 2

Other person's right to information

s 76 am 1999 No 64 sch 2

Adoption information service

s 77 am 1999 No 64 sch 2

Adoption information register

s 78 am 1999 No 64 sch 2

Contact veto register

s 79 am 1999 No 64 sch 2

Reunion information register

s 80 am 1999 No 64 sch 2; 2001 No 44 amdt 1.54, amdt 1.55

Application for approval

s 81 am 1999 No 64 sch 2

Grant or refusal of approval

s 82 am 1999 No 64 sch 2

Change in principal officer

s 83 am 1999 No 64 sch 2

Revocation or suspension of approval

s 85 am 1999 No 64 sch 2

Effect of cessation of approved agency

s 86 am 1999 No 64 sch 2

Taking away etc of adopted child by birth parent

s 89 am 1994 No 81

Receiving or harbouring child

s 90 am 1994 No 81

Interfering with upbringing of child

s 91 am 1994 No 81; 1999 No 64 sch 2

Approval of communications

s 92 1999 No 64 sch 2

Chief executive's report for prosecution

s 93 1999 No 64 sch 2

Payments in consideration of adoptions etc

s 94 am 1994 No 81; 1999 No 64 sch 2

Unauthorised arrangements for adoption

s 95 am 1994 No 81; 1999 No 64 sch 2

Unauthorised advertising

s 96 am 1994 No 81; 1999 No 64 sch 2

Restriction on publication of identity of parties

s 97 am 1994 No 81

False statements

s 98 am 1994 No 81
om A2004-15 amdt 2.7

Personation of person whose consent to adoption is required

s 99 am 1994 No 81

Presenting consent obtained by fraud etc

s 100 hdg sub A2004-15 amdt 2.8
s 100 am 1994 No 81; A2004-15 amdt 2.9

Improperly witnessing consent

s 101 am 1994 No 81

Forged approval documents

s 102 am 1994 No 81; 1999 No 64 sch 2
om A2004-15 amdt 2.10

Endnotes

4 Amendment history

Delegations

s 103 am 1999 No 64 sch 2
om A2005-47 amdt 1.3

Registration of orders

s 104 am 1993 No 64; 2001 No 44 amdt 1.56

Memoranda of orders interstate

s 105 am 1993 No 64; 1997 No 113; 2001 No 44 amdt 1.57,
amdt 1.58

Particulars of interstate orders

s 106 am 1993 No 64

Notification to parents

s 108 am 1999 No 64 sch 2

Notice of decisions

s 109 am 1993 No 64; 1994 No 60; 1999 No 64 sch 2

Review by administrative appeals tribunal

s 110 am 1999 No 64 sch 2

Authority to prosecute

s 111 am 2001 No 44 amdt 1.59, amdt 1.60

Hearings to be in camera

s 112 am 1998 No 96

Chief executive may appear at hearings

s 115 am 1999 No 64 sch 2

Judicial notice of signatures

s 117 am 1999 No 64 sch 2

Determination of fees

s 118 sub 2001 No 44 amdt 1.61

Fees payable

s 119 om 2001 No 44 amdt 1.61

Transitional provisions

s 120 om A2008-28 amdt 3.13

Approved forms

s 120A ins 2001 No 44 amdt 1.62
(4)-(7) exp 12 September 2002 (s 120A (7))

Regulation-making power

s 121 am 1998 No 54; 1999 No 64 sch 2
sub 2001 No 44 amdt 1.63

Dictionary

dict

ins A2008-28 amdt 3.14

def **Aboriginal child** reloc from s 4 A2008-28 amdt 3.7

def **Aborigine** reloc from s 4 A2008-28 amdt 3.7

def **adoption order** sub A2008-28 amdt 3.1
reloc from s 4 A2008-28 amdt 3.7

def **adoptive relative** ins A2008-28 amdt 3.14

def **associated person** ins A2008-28 amdt 3.14

def **Australia** reloc from s 4 A2008-28 amdt 3.7

def **birth parent** ins A2008-28 amdt 3.14

def **birth relative** ins A2008-28 amdt 3.14

def **charitable organisation** sub A2008-28 amdt 3.2
reloc from s 4 A2008-28 amdt 3.7

def **child** sub A2008-28 amdt 3.2
reloc from s 4 A2008-28 amdt 3.7

def **contact veto register** reloc from s 4 A2008-28 amdt 3.7

def **country** ins A2008-28 amdt 3.14

def **court** reloc from s 4 A2008-28 amdt 3.7

def **disposition of property** reloc from s 4 A2008-28 amdt 3.7

def **general consent** sub A2008-28 amdt 3.2
reloc from s 4 A2008-28 amdt 3.7

def **guardian** am 1999 No 64 sch 2
reloc from s 4 A2008-28 amdt 3.7

def **identifying information** ins A2008-28 amdt 3.14

def **information** ins A2008-28 amdt 3.14

def **instrument of consent** sub A2008-28 amdt 3.2
reloc from s 4 A2008-28 amdt 3.7

def **interim order** sub A2008-28 amdt 3.3
reloc from s 4 A2008-28 amdt 3.7

def **limited consent** sub A2008-28 amdt 3.4
reloc from s 4 A2008-28 amdt 3.7

def **principal officer** am 1999 No 64 sch 2
sub A2008-28 amdt 3.4
reloc from s 4 A2008-28 amdt 3.7

def **private adoption agency** reloc from s 4 A2008-28
amdt 3.7

def **register of births** ins 1997 No 113 sch
reloc from s 4 A2008-28 amdt 3.7

def **relative** sub A2008-28 amdt 3.5
reloc from s 4 A2008-28 amdt 3.7

def **relevant authority** ins A2008-28 amdt 3.14

def **relevant administrative unit** am 1994 No 38 sch 1 pt 4
reloc from s 4 A2008-28 amdt 3.7

def **responsible person** reloc from s 4 A2008-28 amdt 3.7

def **reunion information register** reloc from s 4 A2008-28
amdt 3.7

def **service** reloc from s 4 A2008-28 amdt 3.7

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R0A 11 Aug 2003	27 Aug 1993– 30 Sept 1993	A1993-44	amendments by A1993-44
R1 31 Jan 1994	1 Oct 1993– 30 June 1994	A1993-64	amendments by A1993-64
R1 (RI) 11 Aug 2003	1 Oct 1993– 30 June 1994	A1993-64	reissue of printed version
R1A 11 Aug 2003	1 July 1994– 13 Nov 1994	A1994-38	amendments by A1994-38
R1B 11 Aug 2003	14 Nov 1994– 28 Nov 1994	A1994-60	amendments by A1994-60
R1C 11 Aug 2003	29 Nov 1994– 14 Dec 1994	A1994-81	amendments by A1994-81
R2 31 Jan 1995	15 Dec 1994– 31 May 1998	A1994-97	amendments by A1994-97
R2 (RI) 11 Aug 2003	15 Dec 1994– 31 May 1998	A1994-97	reissue of printed version
R2A 11 Aug 2003	1 June 1998– 23 June 1998	<u>A1997-113</u>	amendments by A1997-96
R3 31 Jan 1999	9 Dec 1998– 9 May 2000	A1998-54	amendments by A1997-113 and A1998-54
R3 (RI) 11 Aug 2003	9 Dec 1998– 9 May 2000	A1998-54	reissue of printed version

Republication No and date	Effective	Last amendment made by	Republication for
R3A 11 Aug 2003	10 May 2000– 11 Sept 2001	A1999-64	amendments by A1999-64
R4 13 Dec 2001	12 Sept 2001– 12 Sept 2002	A2001-44	amendments by A2001-44
R5 13 Sept 2002	13 Sept 2002– 21 Mar 2004	A2001-44	commenced expiry
R6 22 Mar 2004	22 Mar 2004– 8 Apr 2004	A2004-1	amendments by A2004-1
R7 9 Apr 2004	9 Apr 2004– 28 Feb 2006	A2004-15	amendments by A2004-15
R8* 1 Mar 2006	1 Mar 2006– 28 Sept 2006	A2006-3	amendments by A2005-47 as amended by A2006-3
R9 29 Sept 2006	29 Sept 2006– 25 Aug 2008	A2006-40	amendments by A2006-40

Endnotes

6 Uncommenced amendments

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 3 pt 3.1
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Part 3.1 Adoption Act 1993

[3.1] Section 17 (2) (a)

substitute

- (a) the person is not an authorised person under the *Children and Young People Act 2008*; and

[3.2] Section 36 (4)

substitute

- (4) This section does not apply in relation to a child for whom the chief executive has long-term care responsibility under the *Children and Young People Act 2008*.

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