

**1993**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ADOPTION ACT 1993**

**ADOPTION REGULATIONS**

**EXPLANATORY MEMORANDUM**

**(CIRCULATED BY AUTHORITY OF MR TERRY CONNOLLY, M.L.A.  
MINISTER FOR COMMUNITY SERVICES)**

## ADOPTION REGULATIONS

### PART 1: PRELIMINARY

Regulations 1 to 3 provide for citation, commencement and interpretation. The Regulations will come into operation on 31 July 1993. In Regulation 3, in particular, the terms "primary witness", and "secondary witness" are defined. This gives effect to sub regulations 7(2) and 7(3) which provide that two persons must witness the giving of consent to adoption.

### PART II: ADOPTION LIST

Regulation 4 sets out the information that applicants must provide to the Director of Family Services by way of application for an adoption order under section 16 (1) of the Act. The information required is in accordance with adoption practice.

### PART III: CONSENTS

Regulation 5 provides that an instrument of consent will be in accordance with either Form 1 or Form 2 in Schedule 1 of the Regulations. Two forms of consent are now provided for, which enables a person giving consent to adoption to give a general consent or a limited consent in accordance with section 29 of the Act. In addition it requires that a person giving consent to adoption must provide a statutory declaration that they are a "birth parent" of a child as defined in section 4 of the Act, and are therefore legally competent to consent to adoption.

Regulation 6 provides that a person must not sign a consent unless they have received the form of consent at least 14 days previously. This is to ensure that before giving consent a birth parent will have had time to consider the matter.

Regulations 7–9 provide that a person must have had explained to them the legal consequences of adoption which form part of the instrument of consent document. It also provides that another approved person must be present when this explanation is given and attest to the fact that the person giving consent understood the explanation, and gave their consent knowing the legal consequences.

#### **PART IV: ACCESS TO INFORMATION**

Regulation 10 provides that where an adopted child was conceived as a result of a rape or an incestuous relationship then the disclosure of this information is not required to be given directly to them. It allows by virtue of section 65 of the Act that the Director may provide this information to an approved medical practitioner, so that the information is made available to the applicant in a way in which their well-being psychological health may be safeguarded.

#### **PART V: ADOPTIONS RECORDS**

Regulations 11 to 13 set out the information that must be provided by a private adoption agency to the Director in respect of any adoptions it might arrange and the conditions under which an agency must maintain records. They also seek to ensure that any private agency that might be approved to make arrangements for adoption preserve appropriate records and furnish information to the Director so that this information can be accessed in the future in accordance with the Act.

## PART VI: PRIVATE ADOPTION AGENCIES

Regulation 14 to 21 set out the conditions that apply to the setting up of a private adoption agency under Part VI of the Act. As well as providing for the information required from an organization wishing to be approved as a private adoption agency the regulations stipulate the qualification and experience required by the officers of an agency.

In particular regulation 18 ensures that a private adoption agency shall not make arrangements in respect of overseas adoption unless the provisions of section 20 (2) of the Act are complied with. This section stipulates that an order for adoption of a child brought from overseas shall only occur where the laws of the country of origin have been complied with, there is in place an agreement between the Minister and the appropriate authorities in that country to facilitate adoptions, and the agency in the country of origin is approved to conduct adoption arrangements.

Regulation 19 provides that a private adoption agency cannot be conducted from residential premises and regulation 20 makes specific provisions in relation to the secure storage of information. These regulations are provided to ensure that private agencies conduct their business in a professional manner.

Regulation 21 ensures that private agencies comply with statutory privacy provisions contained in the *Privacy Act 1988* (Cth).

There are not currently any private adoption agencies operating in the ACT.

## **PART VII: REGISTRATION OF ADOPTIONS**

Regulations 22 to 29 are directed to the Registrar of Births, Deaths and Marriages and provide for the registration, re-registration and amendment of records following the making of an adoption order for a child, as well as giving effect to the access to information provisions in Part V of the Act. These regulations are similar to those existing regulations under the to be repealed legislation.

Regulation 24 makes new provisions to enable the Registrar to issue a certificate of adoption which will largely be in the same form as an ACT birth certificate and this will ensure that adoptive parents do not encounter difficulties in having documentation recognized when applying for passports and other documents dependent on a birth certificate.

Regulation 29 provides that the Registrar may send information on children adopted in the Territory but born elsewhere to the statutory officer responsible for birth registrations in another State or Territory .

Regulation 30 sets out appeal provisions in relation to the Director's powers under the Regulations to refuse to recognize the qualifications of officers employed by a private adoption agency. It provides for appeal to the Administrative Appeals Tribunal.

Regulation 31 provides that the Minister may determine fees and also provides that a determination of such fees is disallowable.