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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ADOPTION BILL 1992

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF MR TERRY CONNELLY, M.L.A.  
MINISTER FOR HOUSING AND COMMUNITY SERVICES

#### ADOPTION BILL 1992

The Adoption Bill 1992 repeals and replaces the A.C.T. Adoption of Children Act 1965.

The Bill provides a legislative framework for the relinquishment and adoption of children and access to post adoption information.

The Bill includes provisions which cover consent taking for an adoption; revocation rights for those consenting; the placing of adoption applicants on a register; special conditions for the adoption of aboriginal and overseas children and step children; requirements for the approval of private adoption agencies; conditions under which non-identifying and identifying information about an adoption may be supplied; penalties for contravention of certain sections of the Bill and a mechanism for appeal against certain decisions made under the Bill.

#### FINANCIAL IMPACT STATEMENT

The legislation requires the setting up of an Adoption Information Service in order to administer the access to information provisions. Funding for the Service has been provided for in the Budget as follows:

1992-93	1993-94	1994-95
\$169,500	\$146,300	\$108,100

## ADOPTION ACT 1992

### PART 1: PRELIMINARY

Clause 1 provides that the short title of the proposed Act is the Adoption Act 1992.

Clause 2 provides for the operative provisions of the Act to come into operation on a date or dates to be fixed by the Minister or 6 months after initial Gazettal, whichever is earlier.

Clause 3 repeals certain Acts.

Clause 4 deals with interpretation. In particular, the terms "Aborigine" and "responsible person" are defined, for purposes of clause 21; "relative" is defined as a grandparent, brother, sister, uncle or aunt of a child and the term is further explained in sub-clause (2) - sub-clause 18(5) permits adoptions by relatives, in limited circumstances, and both birth and adoptive relatives have certain rights under the Part V access to information scheme.

Clause 5 allows for this act to apply to all servants of the crown.

Clause 6 provides that in all aspects of adoption covered by this Act, the best interests of the child are the primary consideration and that all such matters should be assessed on the basis of the interests of the individual child concerned.

## PART II: JURISDICTION

Clause 7 confers jurisdiction on the Court in relation to proceedings under the Act. "Court" is defined in clause 4 as the "Supreme Court".

Clause 8 excludes the rules of private international law and acts to prevent the Court being limited in its jurisdiction by considerations drawn from the application of general legal principles or other matters not specified in this Act.

## PART III: ADOPTIONS UNDER THIS ACT

### Division 1 - General

Clause 9 provides that the Court may make an order for the adoption of a child under 18 years or for an older child who has been reared by the applicant/s as his, her or their child in a de facto adoption.

Clause 10 requires that a report be presented to the Court which evidences the good reputation of the applicants and that exceptional circumstances be established to enable an adoption of a person over the age of 18 years, such circumstances may include the person having been maintained in a parent/child relationship with the parents for most of their childhood and wishing to formalise this relationship.

Clause 11 permits the Court to make an adoption order if a child has previously been adopted.

Clause 12 specifies A.C.T. residence or domiciliary requirements and the presence of the child in the A.C.T. at time of application as pre-requisites to the making of an adoption order.

Clause 13 prevents an adoption order being made if a child is, or has been, married.

Clause 14 prevents the Court making an adoption order where it considers that the adoption is being sought primarily as a means of circumventing the Commonwealth's immigration laws, such as attempting to use adoption proceedings to bring a relative, who is not actually a child in need of adoption, into Australia.

Clause 15 provides for the Director to keep a register of all persons whose application for adoption has been approved. It is also required that the Director maintain a register of all persons who have not been approved to adopt, or who have had approval withdrawn.

Clause 16 allows the Director to place a child in the custody of applicants whose names are held on the register described in sub-clause 15(a), for the purpose of adoption pending the hearing of the application in Court. Under sub-clause 2(a) the Director may not place the names of persons on the approval register, nor place a child with them for adoption, unless the person or

persons have been deemed suitable to be adoptive parents according to the criteria specified in sub-clause 19(1)(c).

Clause 17 provides for a review of the Director's decision when he or she refuses to approve the placement of the name or names of applicants for the adoption of a child, on the register. In order to conduct the review the Director shall appoint a committee of not more than three persons who after perusal of the relevant material may recommend confirmation or reversal of the decision. This committee should not include a person who was involved in preparatory work for the original decision. When the Director confirms or reverses the original decision the applicants must be notified in writing. If after 14 days the Director has not made a decision the applicant can apply to the Administrative Appeal Tribunal.

Clause 18 allows an adoption order to be made in favour only of:

. a couple in a stable heterosexual relationship of at least 3 years duration with a demonstrated commitment to the relationship; or

. a step-parent or a relative but only where there has been specific consent to adoption in favour of that person and the Court considers a guardianship and custody order would not be preferable;

a single person upon consideration of the wishes of the birth parent(s) as to the marital status of the adoptive parent(s) and where the court considers there are circumstances justifying the order.

Clause 19 sets out the criteria which a Court must apply and general requirements which a Court must be satisfied have been met before an adoption order can be made:

- . the adoption authority (and/or any relevant interstate authority) has provided the Court with a written report detailing the circumstances of the child and the proposed adoption;
- . revocation of consent provisions have been met;
- . the good repute of the adoptive parent(s) and their capability to take on parental responsibilities;
- . the suitability of the adoptive parent(s) with regard to age(s), education and attitudes to adoption, and physical, mental and emotional health prognosis which indicates a capacity to parent the child until the child reaches the age of independence;
- . promotion of the child's interests and welfare; and

- . consideration of the wishes of the child, and the wishes of birth parent(s) including wishes with regard to the religion, race, ethnic background, or marital status of the adoptive parent(s).

Clause 20 allows the Court to make an adoption order for a child brought to Australia for the purpose of adoption if, in addition to the requirements of clause 19, the Court is satisfied that

- . the laws of the country from which the child comes have been complied with;
- . arrangements have been made by an approved agency in the child's country of origin and such arrangements are part of, and are in accordance with, more general arrangements concerning intercountry adoption developed between the government or approved authority of that country and the Minister. These arrangements would normally be those sanctioned by the Social Welfare Ministers Conference on advice from its Standing Sub-Committee on Intercountry Adoption.

Clause 21 makes special provision, in addition to the requirements of clause 19, to safeguard the rights and interests of Aboriginal children and their families in adoption matters. It requires the Court to be satisfied that existing custody or informal care arrangements within the Aboriginal community are not practicable; and that the choice of adoptive parents has been



made with regard to the desirability of proposed adoptive parents being members of an Aboriginal community and to the child's ability to establish and maintain contact with the natural family and the Aboriginal community. These considerations are normally referred to "Aboriginal Placement Principles".

Clause 22 provides for not less than 28 days notice to be given to specified interested persons of an application for an adoption order, and permits the Court to both dispense with this notice upon an application being made and to direct that notice of an application for an adoption order be given to any person.

Clause 23 permits the Court to allow such parties as it thinks fit to be heard at proceedings to oppose an application to adopt, or to oppose an application to dispense with the consent of a person whose consent is required for an adoption order.

Clause 24 provides that when an adoption order has been made, the Registrar of the Supreme Court shall notify the Director in writing.

Clause 25 enables the Court, on considering an adoption application, to make, instead of an adoption order, an order relating to guardianship or custody of the child or any other order where it considers this to be in the child's best interests. Such an order may be made in favour of the Director or any other person.

Clause 26 makes a number of provisions in regard to discharge of an adoption order, including:

- . that the Court may discharge an adoption order where there has been fraud, duress or other improper means or special circumstances (not including breakdown in the relationship between the child and the adoptive parents) and where a discharging order would not be prejudicial to the welfare and interests of the child (sub-clauses (1), (2) and (3));
- . that the Court may require the Director to investigate the circumstances and provide a written report to the Court (sub-clause (4));
- . that birth parents and any others whose consent to adoption is required be given not less than 28 days notice of discharge proceedings (sub-clause (5));
- . that, on application, the Court may dispense with this requirement for giving notice (sub-clause (6));
- . that the Court may, on or after making a discharging order, make any order it considers will promote the welfare and interests of the child including orders relating to:
  - the name of the child;

- the ownership of property;
- guardianship or custody of the child; or
- the domicile of the child (sub-clause (7));

. that, upon the discharge of an adoption order, all rights, privileges, obligations, liabilities and relationships of the child and of all persons shall be the same as if the adoption order had not been made but without changing the effects of any process of law or any rights or interests vested in any person while the adoption order was in force. For example, if an adopted child inherits through a grandparents will, while the order is in force, this would not be effected by the discharging of an order. However, an order discharging an adoption order shall not be regarded as terminating a relationship for the purposes of any law relating to a sexual offence (sub-clause (8), together with the cross-reference to sub-clause 43(3)); For example, any sexual offence committed against one of the adoptive family members by another, could still be the subject of incest charges even if the offence was only reported after the discharge of an adoption order.

. that where an adoption order was made with a general consent, that consent remains effective for the

purposes of further adoption unless the Court orders otherwise (sub-clause (9));

- . that the Attorney-General, the Director, the Community Advocate, the child, an adoptive parent or a person whose consent to the adoption was required are eligible to apply for the discharge of an adoption order (sub-clause (10)).

#### Division 2 - Consents to Adoptions

Clause 27 provides that an order for adoption in respect of a child under 18 years cannot be made without consent to the adoption being given by

- . in the case of a child not previously adopted, each parent or guardian of the child; Parent to include a birth father who would be deemed to be a parent under the Birth, Equality of Status Act.
- . in the case of a child previously adopted, each adoptive parent or guardian of the child.

Clause 28 provides that when a person (eg a person who is the guardian of the child through a Family Court order) whose consent would normally be required is making the application for the adoption order, the consent of that person is not required.

Clause 29 provides that consent to the adoption of a child may be given as a general consent to the adoption of the child by any person or persons. It also provides for the exception, from this generality, for consent to be given to the adoption of the child by a specific person. This limited consent may be in favour of:

- . a relative of the child ("relative" is defined in clause 4);
- . a person who has been appointed as guardian of the child by order of a court;
- . a person who has been given custody of the child by the Director in accordance with a law of the Territory (eg a foster carer under the provisions of the Children's Services Act 1986); or
- . a step-parent.

Clause 30 provides for a prescribed form for an instrument of consent for an adoption. The form of consent will be specified in the Regulations (and there must be substantial compliance with the form); and the consent must be signed by the person giving the consent and attested in accordance with the Regulations' requirements.

Clause 31 provides for the revocation of a consent to an adoption by a person from whom consent was taken:

- . a period of 30 days after the date on which the instrument of consent was signed and an extension period of 14 days (upon written notice being provided to the Registrar of the Court) is set as the maximum period in which revocation of consent can occur;
- . upon receiving such notice, the Registrar must provide written advice to the Director;
- . when the period within which a consent may be revoked has expired, the Director must provide written advice to the person who gave consent.

Clause 32 provides for the birth parent(s) to have access to the child during the revocation period unless this is considered likely to constitute a risk to the welfare and interests of the child. If access is denied, the Director must serve written notice on the person seeking access.

Clause 33 allows an adoption to take place in the A.C.T., with regard to this Act's consent requirements, relying on a consent given in accordance with the law of a State or another Territory.

Clause 34 provides that consents may be regarded as defective under certain conditions:

- . the required consent was not given in accordance with this Act or was obtained by fraud, duress or other

improper means (paragraph (1)(a));

- . the instrument of consent has been altered in an important sense without the authority of the person who gave the consent (paragraph (1)(b));
- . the person giving consent was not in a fit condition to give the consent or did not understand the nature of the consent (paragraph (1)(c)); eg. the person was psychiatrically ill at the time; person illiterate.
- . the instrument of consent was signed by the mother of the child before the birth of the child (sub-clause (2));
- . the instrument of consent was signed by the mother of the child before the expiration of 7 days after the day on which the child was born (unless the Court considers there are justifiable circumstances or the consent was given in accordance with a law of a State or another Territory and is, by virtue of clause 33, an effective consent) (sub-clause (3)).

Clause 35 establishes the grounds on which the Court may dispense with the consent of a person to the adoption of a child:

- . after reasonable inquiry, the person cannot be identified or located;

- . the physical or mental condition of the person is such that he/she is not capable of considering properly the question whether consent should be given;
- . the person has abandoned, deserted, neglected or ill-treated the child;
- . 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;
- . there are other circumstances that justify the dispensation of consent (sub-clause (1)).

It also provides that the Court may require the Director to investigate and provide a written report (sub-clause (2)) and may, on application, make an order for dispensation of consent before an application for an adoption order has been made (sub-clause (3)). On application, the Court may revoke such an advance dispensation order at any time before making an adoption order (sub-clause (4)).

Clause 36 makes provision for guardianship of a child awaiting adoption to be solely vested in the Director or in the principal officer of a private adoption agency once all required consents have been given or dispensed with.



Such guardianship is for all purposes (other than that of consent to adoption) until:

- . an adoption order is made;
- . any consent given is revoked; or
- . the Court makes an order relating to guardianship of the child.

The above does not apply in relation to a child who is a Ward within the meaning of the Children's Services Act 1986, and is thus already in the Guardianship of the Director.

Clause 37 makes provision for guardianship by the Director pending adoption of an overseas child while that child is domiciled or resident in the A.C.T. The Director is guardian of the child until

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

The clause does not apply to an overseas child who is the subject of a recognised overseas adoption (under clause 55) or in respect of whom a clause 57 declaration has been made.

Clause 38 provides for the sharing of guardianship (between the Director and appropriate interstate authority) of children in respect of whom adoption consents have been given or dispensed with interstate, who move to live in the A.C.T. before an adoption order is made (sub-clause (1)).

Such guardianship of the Director has effect while the child is domiciled or resident in the A.C.T. until

- . the child attains the age of 18 years;
- . an adoption order is made; or
- . the Court makes an order relating to the guardianship of the child; or
- . the child ceases to be under the guardianship of the authority in the State or other Territory.

Similarly, sub-clause (4),(5),(6) and (8) make provision for shared guardianship where A.C.T. child moves from the A.C.T. to another State or Territory with reciprocal legislation, before an A.C.T. adoption order is made.

Provision is also made for financial and other arrangements with States and other Territories in respect of such children who have moved into or out of the A.C.T. (sub-clause (7)).

Clause 39 provides that, in instances where all required consents to the adoption of a child have been given and the child has not been placed for adoption within a year of consent-giving or has not been brought before the Court for an adoption within a year of placement, the matter must be reviewed by the Court.

On application by the Director the Court may review the child's status and make any order it considers will promote the welfare and interests of the child.

Clause 40 provides that the Court may make an adoption order subject to conditions relating to access to the child by the birth parents and specified relatives and/or to conditions requiring the provision of information about the child by the adoptive parents to the birth parents, through the adoption authority. These conditions, which must be specified in the order, may be put in place where the court is of the opinion that circumstances justify such conditions and that both birth and adoptive parents have agreed.

### **Division 3 - Conditional Orders**

Clause 41 makes provision for an adoptive parent, a birth parent who consented to the adoption or the adopted child to apply to

the Court to vary or revoke a clause 40 condition to which the adoption order is subject.

Upon an application (which must be accompanied by a report by the Director) the Court may, by order, vary or revoke the condition if it is of the opinion that this would serve the welfare and interests of the child.

Any variation of a condition must not grant a person greater rights of access to an adopted child unless the adoptive parents agree and the Court is satisfied that due consideration has been given to the wishes and feelings of the child.

Clause 42 provides that a clause 40 condition will cease to apply when the condition is revoked or when the adopted child attains the age of 18 years, whichever happens first.

#### **Division 4 - Effect of Adoption Orders**

Clause 43 specifies the legal effects of an adoption order with respect to family relationships:

- . the adoption order severs the child's legal relationship with the birth parents or with any person who was an adoptive parent before the making of the adoption order and the adoptive parents become the legal parents of the child as if the child had been born to them (paragraphs (1)(a) and (b));

- . in the case of step-parent adoptions, the adoption order is granted to the step-parent only. The legal relationship thus established is between that step-parent and the child. The legal relationship of the child with the non-relinquishing birth parent in this situation is not affected (paragraph (1)(c));
- . other extended familial relationships are worked out accordingly (paragraph (1)(d));
- . any existing legal guardianship of the child or previous adoption ceases to have effect (paragraphs (1)(e) and (f));
- . in the case of step-parent adoptions occurring after the death of one of the birth or former adoptive parents, the adoption does not exclude any right of inheritance that the child might otherwise have from or through the deceased person (sub-clause (2));
- . an adoption order, or an order discharging an adoption shall not be regarded as severing a relationship for the purposes of any A.C.T. law relating to a sexual offence where the relationship between persons is relevant (sub-clause (3)).

Clause 44 provides for the legal effect of an adoption on dispositions of property, either during a benefactor's life or upon his or her death.

The general rule, as provided in sub-clause (1), is that the legal relationships established (or severed) by sub-clause 43(1) govern dispositions of property, whether by will or otherwise and whether made before or after this Act's commencement, in accordance with the general law. The exceptions to this are where

- . the benefactor died before this Act's commencement (paragraph (1)(a)); or
- . the disposition took effect in possession before this Act's commencement (paragraph (1)(b)).

Sub-clause (2) provides that agreements or instruments (other than dispositions of property) eg the testamentary appointment of an executor, made or executed before this Act's commencement, are not affected by the sub-clause 43(1) changes in legal relationships.

Sub-clause (3) provides to a benefactor a power to revoke or vary a dispositive instrument (other than a will) in specified circumstances so as to ensure any desired exclusion of an adopted child.

Sub-clause (4) preserves the operation of the repealed laws in relation to dispositions of property by a person or persons who died before the commencement of this Act.

Sub-clause (5) establishes the entitlement of a person, in a will or other instrument (whenever made or becoming operative), to effectively distinguish between adopted children and children not adopted.

Clause 45 provides that the adopted child's surname becomes the surname of the adoptive parents, and his/her forenames become those approved by the Court on the application of the adoptive parents

an exception is that the Court may order that, where an adopted child has been generally known by a particular surname, the child shall have that name (sub-clause (2)).

Sub-clause (3) preserves the operation of other A.C.T. laws as to name-change, post-adoption.

Clause 46 provides that, upon the making of an adoption order, the child acquires the domicile of the adoptive parents at the date of the adoption order and this shall be deemed for all purposes to be the child's domicile of origin.

Clause 47 provides that an adoption order will not affect the distribution of property by a trustee or personal representative to or among persons appearing to be entitled to the property unless the trustee or personal representative had notice of a claim arising by virtue of an adoption. A trustee or personal representative, without notice of an adoption, is not required to inquire whether an adoption has been effected. Nonetheless, sub-clause (3) ensures the continued entitlement of a rightful beneficiary to make claim to the property in the possession of a person, other than a bona fide purchaser of the property.

Clause 48 establishes the procedure to be followed where there is a clear statement of intention on the part of the testator that a person who has been adopted out of the testator's family should benefit under his or her will.

It makes provision for the Public Trustee to act as intermediary for purposes of the transfer, by accessing information from adoption records, and functioning as trustee for the adopted person, in order to enable an adopted person specified in a will to inherit.

Clause 49 makes provision for the same procedure (as under clause 48) to be followed to allow a benefactor to provide monetary gifts to an adopted person through the Public Trustee.



## Division 5 - Interim Orders

Clause 50 makes provision for the Court to postpone an adoption and make an interim order giving custody of the child to the applicants (but only where the applicants have been deemed suitable to adopt the child), this course of action may be necessary if the Court needs to hear other matters in relation to the adoption before making a final order. The interim order may be subject to terms and conditions to allow the Court to be satisfied that the child's welfare is being maintained and promoted during this interim period.

Clause 51 provides that, subject to any earlier discharge or cessation under clause 52, an interim order is effective for the period specified in the order (being a period not exceeding 1 year), although the Court may extend it for further periods. An upper limit of 2 years duration, in aggregate, is set for the time an interim order may be in force.

Clause 52 makes provision for the Court to order the discharge of an interim order, at any time, and provides that an interim order ceases to have effect upon the making of an adoption order in the A.C.T., a State or another Territory.

## PART IV: RECOGNITION OF ADOPTIONS

Clause 53 defines "country", for purposes of the Part, as a country other than Australia, including a part of a country.

Clause 54 provides for recognition in the A.C.T of an adoption considered lawful in another State or Territory.

Clause 55 provides that a lawful adoption, not rescinded, in another country has the same effect as an adoption order made under this Act where certain requirements are satisfied.

These requirements are that:

- . the adoption was effective according to the law of that country;
- . the adoptive parents have resided in that country continuously for at least 1 year (or such lesser period as the Court considers reasonable) before proceedings for adoption were commenced; or the adoptive parents were approved to adopt the particular child by the Director or the principal Officer of a private adoption agency.
- . the adoption under the law of that country affords the adoptive parents custody rights in respect of the adopted child superior to those of any natural parent; and
- . the adoption, under the law of that country, places the adoptive parents in the position of parents of the adopted child (sub-clause (2)).

Notwithstanding the above criteria, a court may refuse to recognise an adoption if it appears that the adoption involved a denial of natural justice or otherwise failed to do justice (sub-clause (3)). (eg. in situations where consent requirements were not met)

Sub-clause (4) establishes a rebuttable presumption that the sub-clause (2) requirements are satisfied and that the adoption has not been rescinded.

Recognition can only be achieved under the provisions of this clause (sub-clause (5)), but its provisions do not affect rights of a person which were acquired or became vested before this Act's commencement (sub-clause (6)).

Clause 56 allows the Director to supervise the welfare of a child who enters the A.C.T. with an adoption order of less than twelve months duration. This supervision can be exercised at the Director's discretion for up to twelve months.

Clause 57 provides for the Court to make an order declaring the validity of a foreign adoption (in accordance with the requirements of clause 55), on application by specified persons.

These persons are the adopted child, an adoptive parent or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

On an application under this clause the Court may:

- . direct that notice of the application be given to such persons as the Court sees fit;
- . direct that a person be made party to the application;
- . permit an interested person to intervene in and become a party to the proceedings.

An order under this clause binds the Crown but does not affect an earlier judgment, order or decree, or the rights of another person unless that person was a party to the proceedings or a person to whom notice of the application was given (or a person claiming through such person).

Sub-clause (6) is an evidentiary provision, providing that a copy of an order certified as a true copy by the Registrar of the Court shall be evidence that an adoption is legally effective under this Act.

#### **PART V: ACCESS TO INFORMATION**

##### **Division 1: General**

Clause 58 deals with interpretation. In particular, the term "associated person" is defined: such a person is accorded rights to non-identifying information, under Division 2 of this Part,

and identifying information (subject to restrictions), under Division 3. "Birth parent" includes any guardian of a child before adoption and, for fathers, makes cross-reference to the Birth (Equality of Status) Act 1988. To determine who is an adopted person's "birth relative", reference must also be made to the sub-clause 4(1) definition of "relative".

Clause 59 provides that this Part applies to adoptions made before or after the commencement of this Act and irrespective of where the order was made.

Clause 60 provides the general rule that all adoption records (other than the court order) including records kept by the Director, the Court and the Registrar of Birth, Deaths and Marriages, shall not be made available to or open to inspection by any person except to a person whose duties require the accessing of such information to administer the Act.

Clause 61 provides that the Director or a private adoption agency shall maintain records of each adoption. Furthermore, an agency shall provide to the Director the prescribed particulars of the adopted child, an adoptive parent, a birth parent and the person who made the report referred to in paragraph 19(1)(a) as soon as possible after an adoption order has been made: sub-clauses (2) and (3).

Sub-clause (4) deals with the length of time, and manner of keeping, these records.

Clause 62 provides that when any established fee has been paid, the Director shall, upon application, give appropriate information about an adoption to a person who is entitled to access that information. The information provided shall be obtained by the Director:

- . from records in the possession of the Director;
- . by requesting the release of information from the authority holding the records (this may be the Registry, the Court, a Hospital)
- . by making reasonable enquires to obtain information that is not available from the above two sources.

Having established that the applicant is entitled to the information sought, and having received the appropriate fee, the Registrar of Births, Deaths and Marriages shall provide a copy of or an extract from the relevant entry or notify the result of his or her search: sub-clause (3).

#### Division 2: Non-identifying Information

Clause 63 provides right of access to non-identifying information to any associated person ("associated person" is defined in clause 58).

Clause 64 provides for protection of privacy in that information given under this Division shall not be identifying and shall not relate to the personal affairs of another. (Personal affairs can include sexual behaviour; sensitive medical information; criminal records etc.)

Clause 65 provides that where medical or psychiatric information is considered by the relevant authority to be prejudicial to the physical or mental health or well-being of the applicant, this information may be disclosed instead to a qualified medical practitioner nominated by the applicant and not given directly to the applicant.

### Division 3: Identifying Information

Clause 66 allows for an associated person as defined in clause 58 to apply for identifying information in relation to an adoption.

Clause 67 requires that the application of an associated person under clause 66, be made to the Director of Family Services, except in the case of application for a copy of, or extract from an entry in the Birth, Deaths and Marriages. The Register will then notify the Director in writing when such an application has been made.

Clause 68 provides for some restrictions on entitlement to apply for identifying information. These include:

- . a restriction on an adopted child under the age of eighteen who can only receive identifying information with approval in writing from each adoptive and birth parent. This restriction does not apply to adoptees under 18 years who were the subject of a step parent adoption as in sub- clause 18(2) when the information sought is a birth certificate;
- . a restriction on the obtaining of identifying information by the birth parent of an adopted child who is under 18 years. Information may be supplied if approval in writing has been supplied by both adoptive parents;
- . a restriction on birth relatives obtaining identifying information, unless the information sought is a birth certificate relating to the period before the person's adoption and the birth relative can supply the names of each birth parent of the child about whom the information is requested. These restrictions are to prevent the obtaining of information for malicious purposes. The supply of such information will also require the approval in writing of the adoptive parents if the adopted child is under 18 years;



a restriction on supply of identifying information to adoptive parents when the adopted person is under eighteen years, unless the birth parents have approved in writing.

Sub-clause 6 allows for the approval of the person in all these cases to be dispensed with, when the Director or Register of Births, Deaths and Marriages, is satisfied that the person is dead or unable to be found with reasonable enquires.

Sub-clause 7 provides for the Director to refuse to supply information when he or she has reason to believe that the child has been sexually or physically abused by the natural parent.

Clause 69 requires the Director at the request of the applicant to seek the approval in writing of any persons whose consent is required under clause 68, before identifying information or a certificate from Births, Deaths and Marriages is provided.

Clause 70 allows an objection to be made by an adopted person from the age of 17 years 6 months; an adoptive parent; a birth or adoptive relative over the age of 18 years; a child or other descendent over 18 years; a birth parent; to contact with a particular person or number of persons who are associated (as defined in clause 58):

- . provides for the objection to remain in force indefinitely or until revoked in writing to the Director;
- . provides for the Director to enter the details of an objection or revocation under this section to be entered in the Contact Veto Register as described in clause 79.

Clause 71 allows for a person, other than the adopted person, who would be entitled to lodge a contact veto at the age of 18 years, to have a contact veto lodged on his or her behalf by his or her parents (this would be most likely to apply to a young sibling of an adult adoptee):

- . allows for a veto lodged under sub-clause (1) to be revoked by the parents before the person reaches the age of 18 years;
- . requires that the contact veto be revoked when the person on whose behalf it was lodged, turns 18 years;
- . allows for a person, other than an adopted person to lodge a contact veto on attaining the age of 17 years and 6 months to come into effect when that person reaches 18 years.

Clause 72 requires that counselling be provided to an applicant for information about a particular person where that person has lodged a contact veto specifying the applicant:

- . requires the Director to inform the applicant for information where counselling services can be obtained and that information cannot be supplied until counselling has been undertaken.
- . allows the Director to dispense with counselling if he or she is satisfied that identifying information has already been exchanged between the two parties;
- . requires the Director to publish the names of approved counsellors for this part in the Gazette and to approve only persons with suitable qualifications as counsellors.

Clause 73 requires that when a person who has been named as the subject of a contact veto, applies for identifying information the Director shall not supply this information until the applicant has:

- . attended a counselling session as referred to in clause 72; and
- . signs a declaration acknowledging the existence of the contact veto and that he or she will not contact or

attempt to contact the vetoer personally or through another person while the veto remains in force.

Clause 74 provides that when an adopted child who was born outside Australia and brought to Australia for the purpose of adoption attains the age of 18 years the Director shall, upon the request of the child, provide a copy of his or her birth certificate or other information that is available from records kept in the child's country of origin.

Clause 75 provides that where a person whose approval to the release of identifying information has refused to give that approval, the applicant for identifying information who would otherwise be entitled to the information may apply to the Court for an order under sub-clause (3).

The court may request an investigation of the facts and a written report from the Director.

Should the Court decide that circumstances warrant it, an order may be made declaring an entitlement to identifying information and specifying the information that shall be released to the applicant.

Clause 76 provides that a person who is not entitled under any other provisions to access to information may apply to the Court for the release of information. "Information" is defined in clause 58 as identifying or non-identifying information.

An application under this clause shall be accompanied by a report from the Director.

After considering this report, the Court may make an order declaring an entitlement to information and specifying the information that shall be released to the applicant.

The applicant is then excluded from the application of the clause 60 general rule of confidentiality of records.

Clause 77 enables the establishment of the Adoption Information Service as a body that shall be maintained within the relevant administrative unit of the Public Service.

The Director is responsible for the administration of the Service, which is to provide information, counselling and services to the public in relation to adoption.

Specific functions of the Service include the maintenance of an Adoption Information Register (clause 78); Contact Veto Register (clause 79); Reunion Information Register (clause 80); Receiving of Declarations under clause 73 and counselling in relation to these declarations.

Clause 78 requires the Director to maintain an Adoption Information Register which includes the names and addresses of adopted persons; birth parent of adopted persons; birth relatives of adopted persons; and adoptive parents who have requested in writing to have their names included in the register:

- . requires the Director to note the wishes of the persons registered with regard to obtaining and providing identifying information; releasing names, addresses or any information about the person to any other person who may be entered on this Register;
- . allows these wishes to be varied upon request to the Director.

Clause 79 requires the Director to maintain a Contact Veto Register which includes the names of persons who have lodged contact vetos; their addresses; dates and places of birth; the specific person or class of persons with whom they don't wish to have contact (an objection under clause 71 has been lodged); and the names and addresses of persons who wish to be notified if the veto is cancelled or varied.

Clause 80 requires the director to maintain a Reunion Information Register which will include the names of all persons who wish to be reunited with a person from whom they have been separated by adoption. Associated persons may opt to register for reunion rather than apply for identifying information and initiate contact. This way they can be sure that the other party also desires contact.

**PART VI: PRIVATE ADOPTION AGENCIES**

Clause 81 provides for a charitable organisation to make an application to the Minister for approval as a private adoption agency.

The name of the organisation's principal officer, resident in the A.C.T., must be specified in the application.

Clause 82 establishes the Director's power to grant or refuse an application under sub-clause 81(1).

The Director shall refuse the application if it appears that the applicant is:

- . not a charitable organisation; or
- . not suited to carrying out required procedures with a view to the adoption of children.

With regard to this, the Director shall take into account all relevant considerations, including the qualifications, experience, character and number of the persons who are:

- . taking part (or proposing to) in the management of control of the organisation; or

- . who would, on behalf of the organisation, conduct the negotiations or make the arrangements if the approval were granted.

Clause 83 provides that a private agency shall, within 7 days of the occurrence of a vacancy in the position of principal officer, notify the Director in writing and appoint a person residing in the A.C.T. as its principal officer.

Sub-clause (2) provides that a person ceases to be the principal officer for the purposes of this Act if he or she ceases to be resident in the A.C.T.

Clause 84 provides that, without affecting any personal liability, any act or thing done by the principal officer of a private adoption agency for the purposes of this Act shall be deemed to have been done by the agency.

Clause 85 establishes the Director's power to revoke or suspend the approval of a private adoption agency by notice in writing served on its principal officer, at the request of the agency; or on grounds that the agency is no longer suitable to carry out the function associated with the adoption of children (having regard to sub-clause 82(3)) or has contravened a provision of this Part or the regulations.

Clause 86 - Effect of Cessation



Clause 87 provides that the regulations may set out certain requirements to be met by private adoption agencies.

**PART VII: OFFENCES**

Clause 88 limits the application of this Part to acts done in the A.C.T. in relation to the adoption of children, or children already adopted, in a State, another Territory or another country.

Clause 89 provides that upon the adoption of a child, a person who thereby ceased to be the parent or guardian of that child shall not:

- . take, lead, entice or decoy the child away or detain the child, with intent to deprive the adoptive parents of the custody of the child. Penalty: \$50,000 or imprisonment for 5 years;

Clause 90 provides that a person who receives or harbours a child on behalf of a person known to have contravened the provisions of clause 89 shall be liable to a penalty of \$20,000 or two years imprisonment.

Clause 91 provides that upon adoption of a child, a person who thereby ceased to be a parent or guardian of the child shall not interfere or influence the upbringing of the child or the relationship between the child and the adoptive parent;

- . communicate in any way with the child, or a person known to be an adoptive parent of the child, except where;
  - (i) the adoptive parent is a birth relative of the child or a person referred to in sub-clause 18(2) (that is, a step-parent); or
  - (ii) where the approach is in accordance with a conditional order under Division 3 of Part III of this Act or with the approval of the Director.
- Penalty: \$5,000 or imprisonment for 6 months.

Clause 92 provides that the Director:

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

Clause 93 provides that in proceedings for an offence against paragraph 91 B the Court must consider a report provided by the Director concerning the circumstances of the alleged communication.

Clause 94 provides that a person shall not, whether before or after the birth of the child concerned, either make or agree to make, give or receive a payment or reward for or in consideration of:

- . the adoption or proposed adoption of a child;
- . the signing of a consent to the adoption;
- . the transfer of the custody or control of the child with a view to adoption; or
- . the conduct of negotiations or the making of arrangements with a view to the adoption of a child.

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

Exceptions to the general rule prohibiting payments or rewards in connection with an adoption or proposed adoption are set out in sub-clause (2):

- . payment of legal expenses;
- . payment by an adoptive parent, with approval in writing from the Director or the Court, in respect of hospital and medical expenses reasonably incurred in connection with the

birth of the child or the ante or post-natal  
care of the mother or child; and

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

In addition, sub-clause (3) permits a payment or reward in relation to an interstate adoption, if the payment or reward would have been lawful under the law of the State or other Territory had it been made or given there.

Clause 95 provides that a person other than the Director (or agent of the Director) or a private adoption agency shall not:

- . . . conduct negotiations or make arrangements  
with another person with a view to the  
adoption of a child by that person; or
- . transfer or cause to be transferred the  
custody or control of a child to another  
person with a view to the adoption of the  
child by that person, except in accordance  
with arrangements made by or on behalf of  
the Director or a private adoption agency.

The above restrictions do 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 or by two

persons, one of whom is a parent or relative of the child. ("Relative" is defined in clause 4 and sub-clause 18 (5) restricts the Court's power to order such an adoption).  
Penalty for contravention of this clause is \$20,000 or imprisonment for 2 years.

Clause 96 provides that a person shall not publish or cause to be published, by any means, any advertisement or other matter indicating that:

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

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

The Director has the discretionary power to approve an advertisement or other matter, in which case no offence arises: sub-clause (2). Clauses 94,95,96 would also prevent financial negotiations for the obtaining of children for adoption through surrogacy arrangements.

Clause 97 provides that a person shall not publish or cause to be published by any means the name of an applicant, the child or parent or guardian of the child or anything that will enable one of these persons to be identified, in relation to:

- . an application for an adoption order or for a corresponding order under a law of a State or another Territory;
- . the proceedings on such an application; or
- . any legal steps taken in connection with such an application.

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

The Court to which the application was made may authorise the publication of any matter, providing the Court is satisfied that publication will not operate to the prejudice of any person and that giving the authorisation serves the interests of justice: sub-clauses (2) and (3).

Clause 98 provides a penalty of \$20,000 or imprisonment for 2 years for any person who wilfully, whether orally or in writing, makes a false statement in connection with an application for an adoption order or any other matter arising under this Act.

Clause 99 provides a penalty of \$20,000 or imprisonment for 2 years for any person who personates or falsely represents him or herself to be a person whose consent to the adoption is required under this Act or under the law of a State or another Territory.

Clause 100 provides a penalty of \$20,000 or imprisonment for 2 years where a person presents or causes to be presented to the Court an instrument of consent to the adoption which he or she knows to contain a forged signature or a signature that was obtained by fraud, duress or other improper means.

Clause 101 provides that a person shall not witness the signature of a person on an instrument of consent unless:

- . satisfied that the signatory to the consent is a parent or guardian of the child;
- . he or she takes reasonable steps to ascertain that the person who signed the instrument understands the effect of the consent; and
- . the instrument bears the date on which it is signed by that person.

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

Clause 102 provides a penalty of \$20,000 or imprisonment for 2 years for a person who forges or presents (knowing it to be forged) a document approving the giving of identifying information.

**PART III: MISCELLANEOUS**

Clause 103 makes provision for the Director or the Community Advocate to delegate to a public servant all or any of his or her powers or functions under this Act. The delegation must be made by instrument in writing.

Clause 104 makes provision for the Registrar of Births, Deaths and Marriages to be informed of each A.C.T. adoption order and each discharge order, and to make appropriate entries in the register of adoptions and register of births and any necessary alterations to existing entries in the register of births.

Clause 105 makes provision for the Registrar of Births, Deaths and Marriages to inform the equivalent officer of a State or other Territory where he or she believes the child's birth is registered, of any adoption order or any order discharging an adoption made in the Territory.

Clause 106 complements clauses 104 and 105, and makes provision for the Registrar of Births, Deaths and Marriages to make appropriate entries in the register of adoptions and register of births and any necessary alterations to existing entries in the



register of births, where he or she receives notice of an interstate adoption or discharge order in respect of an A.C.T.-born child.

Clause 107 provides that the Court may make an order for the legal representation of the child in adoption proceedings.

Clause 108 sets out the happenings which the Director must advise in writing, to a birth parent of an adopted child. These are:

- . the child is placed with prospective adoptive parents;
- . the child has not been placed within 6 months of consent being given;
- . the placement has broken down;
- . an adoption order is made;
- . the Director has become aware of the death of the child.

Clause 109 requires that where the Director makes the following administrative decisions he or she will notify the "relevant" persons in writing within thirty days; this notification will include advice that an application may be made to the Administrative Appeals Tribunal for review of the decision subject to the Administrative Appeals Tribunal Act 1989.

- . the following administrative decisions are those that will be the subject of A.A.T. review and the persons listed alongside are "relevant" persons entitled to make such appeal:

- . decision to not approve .... person/s not  
persons as suitable approved  
to adopt children under  
sub-clause 16(1)(a)
- . decision to deny access .... person whose  
during the revocation access has been  
period under clause 32 denied  
..... the child or,  
where appropriate due  
to the child's age,  
the current carers  
of the child
- . decision not to declare .... requesting  
  
a child to be under the state/territory  
Director's guardianship .... persons with whom  
under clause 38 the child has been  
placed with a view  
to adoption  
..... the child if  
appropriate in

view of the age  
of the child

- . decision of Director or .... applicant for  
Register not to supply information whose  
information under clause 62 application has been  
refused.

- . Director's decision to .... principal officer  
refuse to grant approval of the agency  
as a private agency or to  
revoke such approval under  
clauses 82 and 85

- . decision to not approve .... person seeking  
communication or to approval to  
approve subject to communicate  
conditions under .... the child, if  
clause 92 appropriate in

view of the age  
of the child  
.... the adoptive  
parents

- . decision to not approve .... the adoptive parent  
payment of hospital and .... the mother of the  
medical expenses or not child

to authorise any other .... the person who had  
 payment or reward applied to the  
 paragraphs 94(2)(b) Director for  
 and 94(2)(c) authorisation of  
 making a payment  
 or reward

. decision not to approve .... the person who  
 advertisement or other wishes to advertise  
 matter under .... the child, if  
 sub-clause 96(2) appropriate in view  
 of the age of the  
 child

. the validity of the decision referred to in sub-clause  
 (1) won't be affected by a failure to comply with that  
 sub-clause.

The following decisions of the Director are also reviewable:

- (i) withholding information undersubsection 68(7);
- (ii) where a contact veto has been lodged, supplying  
 identifying information to an applicant without  
 requiring the applicant to be interviewed by a  
 counsellor (subsection 72(3)); and

- (iii) refusing to approve a person as a counsellor under subsection 72(4)

Clause 110 provides that decision referred to in clause 109 may be reviewed by the Administrative Appeals Tribunal, however an application for review of a decision referred to in paragraph 109(1)(a) cannot be made unless the decision has been reconsidered and confirmed under sub-clause 17(4) which allows for the convening of a committee to receive a decision of non-approval of a person or persons as suitable to adopt children.

- . for the purpose of section 27 of the Administrative Appeals Tribunal Act 1989, the decision referred to in paragraph 109(1)(a) will be assumed to have been made on the date on which the Director reconsidered and confirmed that decision under sub-clause 17(4).

Clause 111 requires that proceedings for an offence against this Act can only commence with the written consent of the minister.

Clause 112 makes provision for adoption proceedings to be conducted in a closed court and provides that, unless the Court permits otherwise, only persons who are parties to the action, their counsel, solicitors or representatives shall attend the hearing of any proceedings relating to an adoption.

Clause 113 places a prohibition on access to the report of the

Director (or private adoption agency) to the Court under clause 19 concerning the circumstances of the child and the proposed adoption. The Court may expressly order that the report be made available. The general prohibition on access covers any party to the proceedings or any other person.

Clause 114 prohibits the opening for public inspection of the records of any proceedings under this Act unless in accordance with prescribed regulations.

Clause 115 makes provision for the Director, or his/her agent, to appear as a party to the proceedings on an application for an adoption order and gives him or her power to address the Court, and call, examine and cross-examine witnesses.

Clause 116 is an evidentiary provision referring to the acceptability in a court of the A.C.T. of:

- . the original or certified copy or certified extract of an adoption order; or
- . an official certificate, entry or record of an adoption.

Clause 117 is a further evidentiary provision which forestalls the necessity to prove the signature and status of office-holders

including the Director.

Clause 118 makes provision for the Minister to determine fees for the purposes of this Act by written notice in the Gazette.

Clause 119 provides for payment of specified fees to the Territory.

Clause 120 is a savings provision which ensures continuity of adoption proceedings brought under the repealed legislation and the continued efficacy of orders made and consents taken under the repealed legislation: sub-clauses (1) and (2). Sub-clauses (3) and (4) deal with the legal effect of an adoption order made under the repealed laws: other than for dispositions of property by a person who died before the commencement of this Act, the adoption order has effect as if it had been made under this Act.

Clause 121 enables the making of regulations for purposes of the Act.

