2009

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

ADOPTION (AMENDMENT) BILL 2009

EXPLANATORY STATEMENT

Presented by
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Background

When enacted, the *Adoption Act 1993* (the Act) was viewed as progressive legislation which included provisions such as the Aboriginal placement principle; access to origins information; more open adoption; and acknowledgement of the overarching principle of the best interests of the child. The legislation has helped to ensure that in the main the Territory's adoption practice has remained relevant to the children, young people and others affected by adoption, for whom it was developed.

In the light of major legal and public policy initiatives over the last fifteen years, including the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption* and the enacting of the *ACT Human Rights Act 2004*, there was a need to review sections of the Act in terms of contemporary relevance and accountability requirements. It is also essential that the Act be consistent with the *Children and Young People Act 2008,* that it incorporates the principles of the *United Nations Convention on the Rights of the Child* and reflects Government policies as defined in the ACT Children's Plan and the ACT Social Plan.

In November 2005, the Commonwealth House of Representatives Standing Committee on Family and Human Services released a report on its *Inquiry into Adoption of Children from Overseas*. This report also made comment on local adoption matters. The Committee considered evidence from several hundred persons and agencies, reflecting a high level of interest and areas of concern about current inter-country and domestic adoption practices. Subsequently the Committee made 27 recommendations, dealt with in the *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program,* to which the then Minister for Children and Young People became a signatory on 20 May 2008.

The profile of adoption in the ACT community has changed significantly since 1993. Overseas and step-parent adoptions now comprise over 80 % of adoption orders made in the ACT. Adoption of infants from the local community is unusual and often related to complex family difficulties. Another emerging trend is that, as part of permanency planning for children and young people in out of home care, progressively more long term carers are seeking to secure adoption orders for children in their care. Adoption is referred to in the *Children and Young People Act 2008* as a consideration for ensuring the long-term placement of a child or young person in a safe, nurturing and secure environment.

Revisions of terminology used in the Bill, in particular to describe child-centred practices, provide a further reflection of consistency with the *Children and Young People Act 2008.*

Search and reunion services and post order support are also becoming increasingly utilised as community attitudes towards past adoptions become more accepting. The importance of children and young people growing up with a clear sense of identity is in most cases supported through "open" adoption practices that enable some ongoing facilitated contact between adopted children and young people and members of their birth family.

It is also important to acknowledge the impact of past adoption practices upon Aboriginal and Torres Strait Islander communities. In their policy paper, *Achieving Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children*, the Secretariat of National Aboriginal and Islander Child Care Inc. (SNAICC) clearly state:

> *"Adoption is not part of Aboriginal culture…The Stolen Generations and their families are to this day dealing with the trauma of past adoption policies".*

Due to the cultural and spiritual significance of connection to family SNAICC does not endorse adoption, other than customary Torres Strait Islander adoptions within extended families, for Aboriginal and Torres Strait Islander children.

The community consultation process regarding proposed amendments to the *Adoption Act 1993* began with the release in 2006 of a paper for public comment entitled *"A Better System for Children without parents to care for them"*. Feedback was obtained from meetings with targeted interest groups and written submissions. The group expressing most interest were parents of children adopted from overseas but overall there was a limited representation of all parties to adoption. Due to the nature of adoption, which was often interpreted in the past as personal, private and highly sensitive, it was difficult to engage a broad cross-section of people affected by adoption to comment openly about their experiences and acquire their views on contemporary adoption practices.

The overall findings of the consultation process indicated general consent, sometimes with qualification, with the legislative amendment proposals. The Government's response was published in the April 2007 *Report on the Key Findings from the Review of the ACT Adoption Act*, which is available on the Department's web site. This response formed the basis for the development of policy and drafting instructions for the *Adoption (Amendment) Bill 2009.*

Summary

The purpose of the Amendment Bill is to ensure contemporary adoption practice and accountability requirements are addressed and to ensure consistency with the *ACT Human Rights Act 2004*, the *Children and Young People Act 2008*, the principles of the *Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption* (*the Hague Convention*), the *United Nations Convention on the Rights of the Child (UNCROC)* and commitments made by the ACT Government under the *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program* of May 2008.

The amendments also incorporate structural or language clarifications and remove anomalies or inconsistencies identified by the drafters.

Revenue/Cost Implications

The legislation will be implemented within existing financial resources.

DETAIL

Part 1 - Preliminary

This chapter sets out technical clauses of the Bill and general objects, principles, considerations and concepts which apply across the Bill.

Clause 1 - Name of Act

This is a technical clause and sets out the name of the new Act as the *Adoption Amendment Act 2009*.

Clause 2 - Commencement

This clause enables the new Act to commence on a day nominated by the Minister in a commencement notice.

Clause 3 – Legislation Amended

This clause notes that the legislation amended upon commencement of the new Act is the *Adoption Act 1993* and the *Adoption Regulations 1993.*

Consequential amendments are also made to the *Children and Parentage Act 2004*, the *Discrimination Act 1991,* the *Parentage Act 2004* and the *Testamentary Guardianship Act 1984.*

Clause 4 – Long Title

This clause provides for the inclusion of "young people" into the title, ensuring consistency with the *Children and Young People Act 2008,* which distinguishes between a child "a person who is under 12 years old" and a young person "who is 12 years old or older, but not yet an adult".

Part 1A – Objects and Principles

This part substitutes Section 6 of the *Adoption Act 1993* that "the welfare and interests of the child concerned must be regarded as the paramount consideration", by specifying objects and providing further guidance regarding the responsibilities and obligations of the relevant Minister and Chief Executive when administering the Act .

This part also provides explanations of what considerations are to be made to ensure that the best interests of children and young people and the Aboriginal and Torres Strait Islander child placement principles are implemented. This part informs and guides adoption practice now and in the future and is consistent with the principles that are provided in the *Children and Young People Act 2008.*

Clause 4 - Objects of Act

This clause sets out the main objects that underpin the Bill in relation to all aspects of the adoption of children and young people, the inclusion of all affected parties in decision-making at the time an adoption plan is being considered and a commitment to open adoption practices that support all affected parties throughout a life long journey of adoption.

The main objects of the Bill include:

(a) ensuring that the best interests of the child are the paramount consideration in the adoption of a child or young person;

(b) providing an adoption process that promotes the wellbeing and care of children and young people in a way that recognises their right -

(i) to grow in a safe and stable environment; and

(ii) to be cared for by a suitable family and to establish enduring relationships; and

(iii) to know about family background and culture and have the opportunity to maintain or develop cultural identity;

(c) ensuring that the Aboriginal and Torres Strait Islander people are consulted about any adoption of an Aboriginal or Torres Strait Islander child or young person;

(d) ensuring that adoption is centred on the needs of the child or young person rather than an adult wanting to care for a child or young person;

(e) including consultation with the child or young person throughout the adoption process and, wherever possible, taking the child or young person's views into account;

(f) recognising a birth parent's involvement in making decisions about their child's future;

(g) establishing adoption plans to recognise the intentions of parties in an adoption;

(h) ensuring equivalent standards apply for a child or young person adopted from the ACT and a child or young person adopted from overseas; and

(i) ensuring that the adoption process in the ACT complies with Australia's international obligations.

Clause 5 — Best interests of child or young person paramount consideration

This clause enshrines the best interests principle as the paramount consideration for persons making decisions or taking action under the Act.

This reflects the *Convention on the Rights of the Child* (Article 3) which states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Sub-clause (2) provides further guidance as to how this principle is to be implemented and requires that persons making decisions under the Bill must take into account :

(a) the child or young person's age, level of understanding, level of maturity, gender, and personal characteristics;

(b) the child or young person's physical, emotional and educational needs;

(c) the views expressed by the child or young person;

(d) the relationship the child or young person has with the parents, any siblings and any other relatives of the child;

(e) the relationship the child or young person has with the adoptive parents;

(f) the suitability and capacity of the adoptive parents to meet the child or young person's needs; and

(g) the alternatives to adoption for the child or young person.

Clause 6 - Aboriginal and Torres Strait Islander child – additional requirements

The clause expands the provisions made for an Aboriginal child at section 21 of the 1993 Act. This clause outlines the additional matters that decision makers must consider when making decisions under the Bill in relation to Aboriginal or Torres Strait Islander children and young people:

(a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;

(b) submissions about the child or young person, made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the Chief Executive as providing ongoing support services to the child or young person or their family; and

(c) Aboriginal or Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child or young person's family, kinship relationships and the community with which the child or young person has the strongest affiliation.

These conditions are referred to as the "Aboriginal and Torres Strait Islander child placement principle" in the *Children and Young People Act 2008*. Emphasis to their importance is again stated as a requirement in Clause 39G "Deciding application for an adoption order – Aboriginal or Torres Strait Islander child or young person".

This principle engages the right to equal protection of the law without discrimination, at section 8(3) of the *Human Rights Act 2004*. However it is justifiable under section 28 of the *Human Rights Act 2004* because the proposed affirmative measures recognise the needs of Aboriginal and Torres Strait Islander children, their families and their communities in the light of their history as Indigenous Australians and the impact of past adoption practices upon Aboriginal and Torres Strait Islander communities.

Application of this clause also takes account of the ACT Aboriginal and Torres Strait Islander community as being diverse, with no single set of traditions and/or culture, hence the importance of consulation with relevant persons.

Part 3 – Adoptions under this Act

Part 3 of the Bill is re-structured to more clearly describe the different stages of adoption processes:

- Divisions 3.1 and 3.2 of this Part are structurally amended to clarify who may be adopted and by whom.
- Division 3.3 deals with birth parent(s) consent.
- Division 3.4 provides for the placement of a child or young person with their prospective adoptive parent(s) in the time in-between the consent to their adoption becoming valid and the adoption order being made.
- Division 3.5 addresses the child or young person's guardianship prior to their adoption.
- Divisions 3.6 to 3.9 describe the proceedings related to making an adoption order including individualised provisions that may be made regarding contact between the child or young person and their birth family, naming of the child or young person and distribution of property.

These processes apply to all adoption orders made in the ACT, or elsewhere if facilitated by the Chief Executive, apart from some limited exceptions relating to some overseas adoptions or adoptions in the ACT by parents from another Convention country, which are cross referenced to Part 4A of the Bill.

Division 3.1 Who can be adopted?

Clause 9 – Power of Court – child or young person
This clause applies to the adoption of persons who are present in the ACT and aged under the age of 18 years at the time that an adoption application is filed.

Clause 10 – Persons 18 years or older
This clause removes any limitations that would prevent the adoption of a person over the age of 18 years other than:

(a) the parties to an adoption being ordinarily resident in the ACT and
(b) the Court being satisfied that the person(s) applying to adopt have a good reputation.

The Bill recognises that some individuals who have been reared under a de facto adoption arrangement may wish to legalise this relationship during their adulthood.

Clause 11 – Previous adoption immaterial
This clause clarifies that a child or young person can be adopted again, whether they were previously adopted in the ACT or elsewhere. This clause enables permanency to be sought for a child or young person whose family arrangements are not secure.

Clause 12 – Frustration of Immigration Law
This clause is a process/language clarification substituting "consider" for "of the opinion" – in this case that an adoption order is not being sought primarily as a means of evading immigration laws. This substitution is repeated elsewhere.

An example of where this clause might apply would be an attempt to use adoption proceedings to bring a relative, who is not actually a child or young person in need of adoption, into Australia.

Division 3.2 Who can adopt?

This division clarifies, in simplified and positive terms, who may adopt.

The definitions for and considerations that are to be applied in determining the eligibility of couple, step-parent, single and relative adoption applicants are provided in separate clauses.

The register of suitable people is also introduced in this Division. Placement on the register is a precursor to all applicant(s) being placed with a child or young person for the purpose of adoption in the ACT and for an adoption order to be made. This is stated in each of the clauses that refer to couple, step-parent, one person (single) and relative adoption applicants.

Clause 13 – Residency Requirement
This clause specifies that an adoption order may only be made in favour of a person or 2 people jointly (people in a domestic partnership) who are ordinarily resident in the ACT. It also means that people who apply to have their names included in the register of persons as suitable for placement of a child or young person for adoption must be ordinarily resident in the ACT.

The Bill addresses the anomaly under the 1993 Act that the ACT is the only state or territory that does not stipulate that adoption applicants have to be ordinarily or habitually resident in the jurisdiction to be eligible to be assessed and placed with a child or young person for the purpose of adoption. The 1993 Act stipulates that the Court need only be satisfied that applicants to adopt are resident or domiciled in the ACT for 21 days prior to filing an adoption application with the Court.

Given this anomaly, residency in the ACT has been identified in policy as an eligibility criteria for applicants to be placed on the register of people suitable to adopt, although there have been waivers made in a few exceptional circumstances, when the following issues were able to be addressed:

(a) access to assessments undertaken by other agencies and individuals, which provide sufficient information about the applicants to satisfy the chief executive that they are capable of fulfilling the best interests of a child or young person in need of adoption;
(b) sufficient information about the applicants' capabilities to meet the birth parents' entitlement to express their wishes about the conditions of child or young person's plan of adoption; and
(c) access to follow up support to families and adopted children living outside of the ACT.

Each of these considerations is required under the Hague Convention.

The residency requirement is re-stated at Clause 18 (4) - Approval of suitable people and Clause 19 (2) (b) - Register of suitable people. However the latter clause provides for the chief executive to apply discretion regarding the removal of applicants from the Register when they are living outside of the ACT on a temporary basis.

It is acknowledged that the ACT has a significant demographic of highly mobile residents, such as defence and public service personnel. Several submissions during the consultation process raised this issue. Balancing this against the evidence about the impact of mobility on individual's and family life it is envisaged future policy may allow, in some circumstances, for applicants who are ordinarily resident in the ACT to apply to remain on the ACT Adoption Register with a suspended status, during any posting away from the ACT.

In such cases it would be expected that the applicant's current circumstances would need to be re-assessed prior to re-instatement on the register and that the best interests of the child principle would remain the paramount consideration. Applicants would need to demonstrate their capacity to provide stability to a child or young person placed with them.

Clause 13 (2) makes a sole exception to the residency requirement when an order is made under section 57 (Adoption in the ACT of ACT child or young person from Convention country). This is a reciprocal arrangement under the Hague Convention where prospective adoptive parents who live overseas have been identified for a child or young person in the ACT in need of adoption. It is envisaged that this clause will have very limited utility, but that it could be applied in cases such as a child or young person being orphaned in the ACT with kin overseas who are suitable to adopt the child or young person and provide them with a permanent family.

Clause 14 – Adoption by couple
In addition to the language clarifications about who is considered to be a couple, this clause includes the first reference in the Bill to a register of suitable people.

Clause 15 – Adoption by step-parent
This clause addresses an anomaly that applies when an adoption order is made in favour of a step-parent. In all other cases an adoption order extinguishes birth parents' rights and responsibilities under provisions of the *Family Law Act 1975*.

In the case of adoption by a step-parent, the other birth parent's rights and responsibilities are not automatically extinguished for the purpose of the Family Law Act unless the Family Court has granted leave for the adoption by the step-parent to proceed. Without the leave being granted, the non-continuing parent could at any time initiate proceedings in the Family Court in relation to the child, which could impact on the child or young person's well-being and security.

The Bill makes it a requirement that step-parent adoption applicants obtain leave to proceed with the adoption from the Family Court under Section 60G of the *Family Law Act 1975*, thus clearing the way to terminate the rights and responsibilities of a non-continuing parent at the time of an adoption order being made, in favour of the child or young person's step-parent.

Clause 16 – Adoption by one person
This clause stipulates that for an adoption order to be made in favour of one only person, the instrument of consent to adoption by the parent(s) must show their consent to the adoption of the child or young person by one person, meaning someone who is not in a domestic partnership, commonly referred to as being "single". This is a stronger requirement than Clause 18 (3) of the Act which requires only that "regard" be given to the wishes of the birth parents about the placement of the child or young person with one person.

This amendment recognises that with Open Adoption, contact between the child or young person, adoptive and birth parents will be encouraged. If the birth parent(s) express a view regarding the adoptive parent(s) domestic status, which is not fulfilled, this could become a complicating factor in future contact arrangements.

Clause 18 – Approval of suitable people
This clause concludes the process of decision-making about who can adopt.

People are required to apply in writing to the chief executive for approval to be registered as suitable for the placement of a child or young person for the purpose of adoption.

The chief executive is then required to make the decision to approve or refuse to approve the application, and to ensure consistency, direction is provided that the same criteria are used to decide whether to place a person on the Register of suitable people, as the Court is required to use in deciding an application for an adoption order. These criteria are set out in section 39F (1) (c).

The requirement for residence in the ACT to be eligible for approval is re-stated in this clause.

Clause 19 – Register of suitable people
The Bill distinguishes the separate process of approval and registration of people as suitable to adopt, from that of the making of an adoption order in favour of suitable persons, which is dealt with under Division 3.6 – Proceedings for an adoption order.

This clause states that the chief executive must keep a register of people approved as suitable to adopt and that the register also will include a record of people whose applications to adopt are refused or withdrawn subsequent to an earlier approval.

The chief executive is required to provide written advice to unsuccessful applicants or those whose names are subsequently withdrawn from the register.

Sub clause (2) (b) allows the chief executive to apply discretion regarding the removal of applicants from the Register when they are living outside of the ACT on a temporary basis.

This clause is further amended to make provision for the repeal of legislation and instruments overtaken by the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2).* The decision to refuse or withdraw approval under this clause becomes a reviewable decision (Item 1 of Schedule 2 the Adoption Regulation 1993) and an application to review the decision will be brought before the Administrative and Civil Appeals Tribunal (ACAT).

The 1993 Act provided a process for reconsideration of a decision made by the chief executive not to include the names of applicants on the Register of suitable people. This involved requesting that the Minister convene a committee to review the decision and make a recommendation to the chief executive to either confirm or vary the decision. The chief executive was then obliged to reconsider the decision and inform the applicants in writing of the outcome. However, if no action was taken within fourteen days after the initial request for review, the "chief executive shall be taken to have reconsidered and confirmed that decision on the expiration of that period".

The requirements and time frame for convening a committee appointed by the Minister to reconsider the decision and for the applicants to be informed, were found in practice to be impractical and thus this provision was found to be an ineffective review mechanism. The formation of ACAT provides an alternate review mechanism, with the level of professional expertise required.

Division 3.3 Consent to Adoption

Clause 26 – Consents of parents and guardians
Sub-clauses (1) (a) and (b) are amended to require that the consent to adoption is obtained from each parent and guardian of a child or young person. The previous wording in section 27 of the Act, where consent was required by either a parent or guardian, conceivably might allow for the chief executive or a parent to give sole consent, regardless of the wishes of the other(s).

Further, in sub clause (2) this amendment refers to the *Parentage Act 2004* to define a "parent" for the purpose of consent to adoption. This clause states that the consent to adoption by a child or young person's father is only required if he is presumed to be the father under the *Parentage Act 2004*. This removes a previous legal impediment to the adoption of a child or young person if their father's consent was not able to be obtained when paternity was not disclosed.

Difficulties arose in 2004, when the *Adoption Act* was amended to remove the reference to the *Birth, Equality of Status Act* when that Act was repealed. The section in that Act referred to by the *Adoption Act* defined circumstances where presumptions could be made about fathers whose consents were required to an adoption. The *Parentage Act 2004* is silent on this reference to parentage for the purpose of consent to adoptions.

Two ACT Supreme Court Justices made comments regarding this omission. In 2004 Connolly J commented that the present Act requires consent of the actual father of the child – irrespective of whether that person is known or not and that it has the effect of turning the chief executive into an investigator of the paternity of every proposed adopted child.

In 2006 Higgins J commented that while the Act does not define a "father" for consent purposes there is no basis to exclude unnamed fathers from their right to consent to an adoption, thereby denying them natural justice. He expressed concern that should the consent be dispensed with in such circumstances, the father may, at some stage in the future, seek to have the adoption order overturned and this would not be in the child's best interests.

Sub clause (3) clarifies that the consent of a person who is dead is not required. The 1993 Act was silent on this matter. In 2008 Refshauge J commented on the lack of a clear exception to the requirement to seek the consent of a birth parent to an adoption where that parent is deceased.

Clause 27 – Information for certain parents considering consent
This clause makes provision for consideration of the particular vulnerability of parents considering a plan of adoption either in the first 28 days after the birth of a child or when a parent has not yet attained the age of 18 years. It specifies information that must be provided to parents by the chief executive about the consent and revocation of consent process, future contact with the child or young person and alternatives to adoption. It also requires the chief executive to offer the parent the opportunity for counselling if requested.

Birth parents under the age of 18 years of age fall into a special category of vulnerable people because of the level of maturity associated with their age. In present adoption legislation they are treated no differently to other parents for the purpose of giving adoption consent.

The amendments require that a young person under the age of eighteen who wishes to give consent to the adoption of his or her child be provided with access to counselling and independent legal advice.

General or limited consents - substitution at section 29 (3) (d)
A simplification is made by substituting (d) by a step-parent in place of Section 29 (3) (d) "by a person referred to in section 18 (2)":

Revocation of consent – substitutions at section 31 (1) (a) & (b)
Amendments to Sections 31 (1) (a) and Section 31 (1) (b) substitute a 30 day period with 28 days. This is a practical amendment as 4 calendar weeks is easier to calculate than 30 days.

Defective consents – substitution at section 34 (3)
Section 34(3) of the Act allows for 7 days after birth before a mother can consent to the adoption of her child. A consent taken before the 7 days has elapsed is defective.

The Bill extends the period of time after the birth of the child before which the mother can sign a valid consent to the child's adoption from 7 to 28 days. This amendment is consistent with most other Australian jurisdictions. As in Clause 21 this amendment recognises the particular vulnerability of parents considering a plan of adoption in the period immediately following the birth of the child and affords the parent a more reasonable period of time in which to formulate a decision and plan for the child.

The legislative period that specifies how soon after a child's birth a parent may consent to the child's adoption needs to balance a number of competing interests and considerations. These are the rights of parents to information and support to enable them to make an informed and voluntary decision, the rights and interests of the child to be cared for by his/her parents and family if possible; and the child's need to be placed with a permanent family as quickly as possible. It is considered that 28 days is an appropriate period of time to take into account each of these considerations.

Division 3.4 Placement of child or young person before adoption

This division describes the process of placing a child or young person with their prospective adoptive parent(s) in the time, that in practice amounts to several months, which elapses between the consent to their adoption becoming valid and the adoption order being made.

The Bill expands and provides additional guidance in relation Sections 16 and 19 of the Act to include provisions that will promote effective permanency planning for the child or young person and include them in the planning process.

Clause 35A – Placement of child or young person before adoption
New provisions in this clause which are included to facilitate best practice and consistency with other parts of the Act are:

- consultation with the child or young person (refer to Clause 35B for further guidance);
- application of the Aboriginal and Torres Strait Islander child placement principles where the child or young person is an Aboriginal and Torres Strait Islander;
- reference to the suitability criteria for persons eligible to adopt a child or young person; and
- commitment from the prospective adoptive parents to instigate adoption proceedings within a period of 12 months.

Under this clause the parental responsibility assigned to adoptive parents prior to the making of an adoption order is a new definition of "daily care responsibility", taken from section 19 of the *Children and Young People Act 2008*. Guardianship of the child or young person during this period is vested with the chief executive and is further described at Clauses 36 and 37 which follow.

Clause 35B – Consultation with child or young person before deciding placement
The child or young person's right to participate in decision making, if after taking into account their intellectual and developmental capacity this is reasonably practicable, is seen as a fundamental principle of this legislation.

Provisions in Section 19 (2) (a) of the Act for ascertaining the child or young person's wishes in regard to their own adoption are very general and do not provide sufficient guidance for a decision maker to ensure the child's wishes are heard, or in which circumstances this is appropriate.

In order to ensure involvement of the child or young person in the planning and decision making about their placement with an adoptive family the amendments specify decisions requiring consultation with the child or young person. These include:

- placement of the child or young person for adoption;
- developing an Adoption Plan concerning the child or young person;
- making an application for an order for the adoption of the child or young person;
- any proposed change of the child or young person's name following their adoption; and
- contact arrangements with birth parents or others connected with the child.

In addition, to ensure that consultation with the child or young person is effective, the amendments state that he or she must have:

- sufficient intellectual and developmental capacity;
- adequate information in accessible language concerning the decision;
- the opportunity to express his or her views freely;
- information about the outcome of the decision and an explanation of reasons for the decision;
- any assistance that is necessary to understand the information and to express views; and
- the opportunity for counseling.

Division 3.5 Guardianship before adoption

As part of the structural clarifications of Part 3 of the Bill this Division describes the guardianship status of children and young people prior to the making of an adoption order.

Clause 36 – Guardianship before adoption
This clause clarifies anomalies under the Act which states that in the case of children and young people residing in the ACT, when all necessary adoption consents have been signed or dispensed with, the child is automatically placed in the guardianship of the chief executive. Whilst this is a vital provision in the case of a local infant whose parent has consented to their adoption, and thus relinquished all responsibility for the child's care, there are other circumstances where a plan of adoption is made that do not require the safeguard of the chief executive assuming guardianship.

In the case of step-parent adoption, the continuing parent consents to the step-parent adopting the child while maintaining their own role as a legal parent. During the period required to then obtain the consent or dispense with the consent of the non-continuing parent, it is considered neither necessary nor desirable that the chief executive assume temporary guardianship, given the child or young person already has a continuing legal parent.

This clause also identifies other exceptions to the desirability of the chief executive assuming guardianship where:

- The principal officer of a private adoption agency is the guardian. Whilst there is no private adoption agency operating in the ACT at the present time this provision may be relevant in the future.
- A child or young person is under the guardianship of the appropriate authority in another state or territory. A system that enables reciprocal arrangements to allow the adoption of a child or young person, who has or it is intended will move to another state or territory with a prospective adoptive family, is in the best interests of children and young people.
- The chief executive has long term care responsibility for the child or young person under the *Children and Young People Act 2008*. The option allowing for the adoption of children and young people on long term care orders is likely to become used increasingly as part of the Office for Children Youth and Family Support's permanency planning practices. These provide guidance about the circumstances in which a change of guardianship is in the best interests of children and young people.

Clause 37 – Guardianship of non-citizen child or young person
This clause makes the first reference in the Bill to overseas adoption and how it applies to ACT residents. Further, its placement within the Division "Guardianship before adoption" demonstrates a reconstruction of the Bill to bring together similarities, where they exist, in the process of adopting a child or young person in the ACT, whether they were born locally or overseas.

This clause does not apply to a child born and adopted overseas, who is the subject of a full and permanent adoption order made overseas.

In a number of countries a full and permanent adoption order is made in the country of a child or young person's birth before they enter Australia. In other cases the process of adoption from overseas requires that an adoption order in the ACT is made to confer guardianship with the adoptive parent(s). Where this applies the chief executive is the guardian of the child or young person until the adoption order is made as is the case with locally born children and young people.

Children and young people who enter Australia for the purpose of adoption, for whom a full and permanent adoption order was not made in their country of birth, are subject to the provisions of the *Immigration (Guardianship of Children) Act 1946*. They are defined as non-citizen children and enter Australia under the guardianship of the Minister for Immigration and Citizenship. The powers and functions of this guardianship are subsequently delegated to the chief executive until an adoption order is finalised in the ACT. The effect of making an adoption order is to transfer the child or young person into the guardianship of their adoptive parent(s) and to give them an entitlement to Australian citizenship.

While the Act refers to the chief executive's guardianship role of certain overseas children and it contains no reference to obtaining this as a delegation from the Minister for Immigration and Citizenship. The amendments reference and explain this.

Later, Part 4A of the Bill describes in detail the different processes that enable inter-country adoption to take place.

Clause 39 (2)
Involves a substitution of language "best interests" (of the child or young person) instead of "welfare and interests".

Division 3.6 Proceedings for an adoption order

This Division is a continuation of the structural amendments that describe, in a sequence that reflects current child-centred adoption practice, the steps to making an adoption order. Thus clauses 39A to 39K re-organise sections 19 – 26 of the Act.

Under this Division various responsibilities are assigned to persons during the proceedings for an adoption order.

Clause 39A – Application for adoption order
This clause clarifies that it is the responsibility of adopting parent(s) "A person who meets the requirements of division 3.2 (Who can apply to adopt?)" or part 4A (Intercountry and overseas adoption) to apply to the court for an adoption order**.**

Clause 39B – Notice of application for adoption order
This clause substitutes Section 22 of the 1993 Act.

Clause 39C – Parties to proceedings
This clause substitutes Section 23 of the 1993 Act.

Clause 39D – Report on proposed adoption
This clause introduces the concept of an "adoption plan", which is the central feature of a report provided to the Court by the chief executive, or principal officer of a private adoption agency if applicable, about the proposed adoption.

The report provides information about the circumstances of the child or young person, the proposed adoptive parent(s) and the adoption plan. The adoption plan is developed in age appropriate consultation with the child or young person and their birth and adoptive parent(s) and may include:

- preferences about the social, financial, and religious characteristics of the adoptive family;
- arrangements for exchanging information about the child or young person's medical background;
- arrangements for contact between the child or young person and their birth family and/or significant others; and
- ways that the child or young person may develop an understanding about his or her family background and culture.

This clause changes the provision in the Act that allows consenting parents to express "wishes" regarding their child's adoptive family to become an ability to express "preferences". This change allows the court to exercise discretion in taking into account whether all aspects of the adoption plan are in the best interests of the child or young person.

This clause also allows for other Central Authorities to provide a report, in a format of their choice, when an application has been made in the ACT for an adoption order with respect to a child or young person in their guardianship. This flexibility means that an adoption plan will not be thwarted simply because of a different reporting style, although the Bill sets out clearly what information and considerations the Court will take into account prior to making an adoption order.

Sub-clause (5) covers the event of the adoption of an ACT child or young person by parents from another Convention Country and provides for a report to be presented by the Chief Executive which includes details of consideration given to placement of the child or young person outside of Australia.

Clause 39E - Consultation with child or young person before adoption order made
This clause re-iterates Clause 35B "Consultation with child or young person before deciding placement" and the child or young person's right to participate in decision-making as a fundamental principle of this legislation.

Clause 39F – Deciding application for adoption order
This clause is a structural and language clarification of section 19 of the Act "Criteria for court's discretion". Rather than the implied "discretion" allowable in the latter title, the criteria upon which the court makes a decision about whether to make an adoption order are clearly set out in these amendments.

Emphasis is given to the process of taking consents by separating out in sub-clauses (1) (a) and (b) that giving of consent and the period of time in which a consent may be revoked.

The Bill also provides the direction that in deciding an application for an adoption order the court must consider the suitability of the applicants, if reasonably practicable the views expressed by the child or young person and whether the best interests of the child or young person will be met by the making of the order.

There is also provision under this clause for other additional requirements that may apply to intercountry adoptions such as the agreement of another Central Authority to the adoption and immigration law.

C**lause 39G – Aboriginal or Torres Strait Islander child or young person**
This clause invokes the Aboriginal and Torres Strait Islander child placement principle, in the decision-making process about an application for an adoption order for a child or young person of Aboriginal or Torres Strait Islander background.

Clause 39H – Adoption of non-citizen child or young person
This clause is a reminder that the court must be assured of compliance with all the provisions in the Act relating to inter-country adoptions before making an order.

Clause 39I – Deciding application for adoption order for person 18 years or older
This clause requires the consent of the person to be adopted as it is conceivable that an improper or exploitative application could be made by someone who previously held a role as the person's carer.

Clause 39J – Notification to chief executive of adoption order
This clause closes the loop in the adoption process - once an adoption order is made the chief executive's guardianship responsibilities for the child or young person are extinguished.

Clause 39K – Alternative orders on refusal of adoption order
This clause enables the court, on considering an adoption application, to make instead of an adoption order, an order relating to the guardianship or custody of the child or young person, or any other order that the court considers will be in the child or young person's best interests. Such an order may be made in favour of the chief executive or any other person.

Examples of where this clause might be used include:

- recognition of a customary care arrangement within an Aboriginal or Torres Strait Islander child or young person's extended family
- making an Enduring Parental Responsibility Order where the court considers that it would not be in the child or young person's interests to legally extinguish their relationship to their birth family.

Clause 39L – Discharge of adoption order
The substitution of "consider" for "of the opinion" is repeated elsewhere.

Taking into account the seriousness of this clause which has the effect of extinguishing a parental relationship, this clause is strengthened. Under the existing Act written notice of an application to discharge an order must only be served to each person whose consent to the adoption was required; this clause extends the obligation to serve notice to include the other parties to the adoption, that is the adopted person if aged 12 years or older and each adoptive parent

Division 3.7 Conditional Orders

A structural amendment, this Division heading was previously 3.3.

Division 3.8 Effect of adoption orders

A structural amendment, this Division heading was previously 3.4.

Clause 43 – General Effect
Sections 43 and 44 of he 1993 Act are simplified to clarify child-parent legal relationship(s) following adoption and the adopted person's right of inheritance.

Clause 45 – Names of adopted child or young person
The "best interests" principle has to be applied to all decisions made under the Act, however this clause recognises that there are some rights of the child or young person that need to be specifically supported by legislation.

The United Nations Convention on the Rights of the Child (UNCROC) states that a child has a right to retain name and identity. This right is one that was disputed by a number of parties during the public consultation process. The Government position is that UNCROC must be applied.

The Act allows a child to be given any name on adoption, including retaining an existing first name or surname, or replacing either or both of these.

Even if not deemed important at the time of adoption, retention of a child or young person's given and family name into their full name after adoption, are an important factor in promoting a secure sense of identity.

The amendments require adoptive parents to preserve the child's given name(s) with the option to give the child additional names. In certain circumstances adoptive parents may apply for a court order to change the name(s). Such an application would require a report with a recommendation from the chief executive that the change would be in the child's best interest.

This clause substitutes section 45 (2) with:

- a requirement that the child or young person's given name(s) be retained after adoption;
- the option to add additional names after the given name(s); and
- provision to appeal to the court after the adoption order has been made, for name change in certain circumstances.

It is envisaged the last provision would only be applied in special circumstances, for example where the given name is likely to make the child or young person vulnerable to ridicule or teasing in his or her every day life in Australian society, or that having a different name to other family members can be demonstrated as a barrier to the child or young person settling into their adoptive family.

Distribution of property by trustee or personal representative – substitution at section 47 (2)

Substitution is made of "shall not" with "must not".

Division 3.9 Interim Orders

A structural amendment, this Division heading was previously 3.5.

Part 4 Recognition of Australian adoptions

Clause 53 – Recognition of Australian Adoptions
This clause is a language clarification, in simplified and positive terms, that an adoption made in another Australian State or Territory has the same effect as an order made in the ACT.

Part 4A Intercountry and overseas adoption

This part was significantly re-written to take into account obligations under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague Convention or Convention). – Schedule 1 of the Bill.

The Australian Government became a signatory to the Convention on 1 December 1998. The Convention came about largely to prevent child trafficking and to ensure that the increasingly common practice of placing children away from their country of origin for the purpose of adoption remained consistent with Article 35 of UNCROC, which deals with child kidnapping and selling.

The Convention establishes a system of reciprocal cooperation between contracting states and provides a common set of fundamental principles to guide intercountry adoption practice between them.

The objectives of the Convention are:

- To establish safeguards to ensure intercountry adoptions take place in the best interests of the child with respect for his/her fundamental rights as recognised in international law;
- To establish a system of cooperation amongst contracting states to ensure those safeguards are respected and thereby prevent the abduction of, sale or trafficking in children; and
- To secure recognition in contracting states of adoptions made in accordance with the convention.

As a result of Australia ratifying the Convention, all Australian states and territories have endorsed the articles of the Convention. Under the agreement, a "Central Authority" is the designated authority in each ratifying state, responsible for undertaking the adoption process and ensuring that adoptions comply with Convention standards.

The Secretary of Commonwealth Attorney-General's Department is the designated principal Central Authority in Australia for the Convention and each state and territory has a designated Central Authority. In the ACT, the Chief Executive, Department of Disability, Housing and Community Services is the designated ACT Central Authority and is required to fulfil the functions of a Central Authority in accordance with the Convention.

These functions include:

- undertaking day-to-day casework involved in a particular adoption;
- approving an application for the adoption of a child or young person;
- giving consent to the adoption of a child or young person;
- accrediting a body/bodies to carry out functions under the Convention, where applicable; and
- revoking the accreditation of a body for the purposes of the Convention, where applicable.

The Commonwealth, states and territories are party to a further agreement named the *Commonwealth/State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 2008,* which sets out the terms of their relationship in administering their duties as Central Authorities. This agreement includes further obligations under Commonwealth law, including immigration law, in relation to the overseas adoption.

Not all countries with which the ACT has existing adoption agreements have ratified the Convention. In accordance with the terms of the *Commonwealth - State Agreement*, the ACT Central Authority can continue to arrange adoptions with countries that have not ratified the Convention (commonly referred to as "non-Convention countries"), if an agreement was already in existence at the time of signing. These are known as Bilateral Agreements.

It is envisaged several of Australia's intercountry adoption programs will continue to operate as non-Convention programs, subject to Bilateral Agreements, into the future. In some instances, whilst particular countries have the infrastructure to support Convention-compliant programs, those countries have indicated little or no interest in becoming signatories to the Convention. In other instances limited infra-structure is a barrier at present to the countries concerned.

Each of the Bilateral Agreements is reviewed on a regular basis, being considered at least every three years, by the Community and Disability Services Ministers' Conference. This process of review has been established to ensure that Australian intercountry adoption practices remain compliant with the Convention.

The above describes a complex set of arrangements in relation to intercountry adoption that the ACT adoption legislation must now govern. Prior to the amendments these were largely administered through policy.

Division 4A.1 Preliminary

Clause 54 – Adoptions outside Australia

This clause directs that the adoption of a child or young person outside of Australia is only recognised in the ACT if it is covered by the provisions of this part of the Bill.

Clause 55 – State central authority
This clause identifies the chief executive as the State central authority and that there is an obligation on him or her to keep the Commonwealth central authority of current contact details.

Clause 56 – Functions of State central authority
This clause recognises the division of responsibilities between State and Commonwealth central authorities, which are detailed in the *Commonwealth - State Agreement 2008.*

Division 4A.2 Convention on intercountry adoption

Subdivision 4A.2.1 Adoption under Convention

Clause 57- Adoption in ACT of ACT child or young person by parents from Convention country
This clause allows for the adoption of an ACT child or young person by parents from another country that is a signatory to the Hague Convention. In this instance Australia would be the "donor" country and the child would be raised by adoptive parents outside of Australia.

It is envisaged that it is unlikely that this clause is ever employed , but in the event that there is a child or young person for whom it would be in their best interests to be adopted by parents who reside in another country, this clause allows for this to occur.

In this clause several exclusions from Division 3 of the Bill recognise the different eligibility and reporting criteria involved in making an order for a child to by adopted by parents outside Australia, which will be determined by the other country's legislation and willingness to recognise the ACT adoption as a full and permanent adoption in the other country.

Clause 57A – Report on child for intercountry adoption
This clause covers the obligations upon the chief executive to provide a report to the central authority of a Convention country about a proposed overseas adoption of an ACT child. These obligations reciprocate those of other authorities placing a child with ACT adoptive parents.

Clause 57B – Adoption in ACT of child or young person from Convention Country by ACT parents
Adoptions orders made in Convention countries are either "full and permanent" or "simple" or "guardianship" orders (refer to the flow chart on page 26). In the former case there is no necessity for further adoption proceedings in the ACT and the adoption in the overseas country is recognised in the ACT (see Subdivision 4A.2.2).

However simple or guardianship adoptions mean that while an order is made in the overseas country placing a child or young person in the care of adoptive parents, a further order is required in the ACT to finalise and permanently extinguish the child or young person's legal relationship with their birth parents.

This clause outlines the considerations that the court must take into account before making an order in the ACT to finalise the adoption of a child or young person born overseas. It is to be read in conjunction with clause 39F of Division 3 "Deciding an application for adoption order for child or young person".

The specific considerations under this clause are that:

- the child or young person was previously resident in a Convention country;
- the applicants are on the register of suitable people;
- the central authority of the Convention country has agreed to the adoption of the child or young person;
- the child or young person is allowed to reside permanently in Australia;
- the child or young person is present in Australia (the implicit expectation is that they are in the care of their adopting parents); and
- arrangements for the adoption of the child or young person have been facilitated by the chief executive or, if applicable, a private adoption agency.

These checks ensure compliance with the Hague Convention and that the child or young person's best interests are safe-guarded :

- the child or young person is in need of adoption, consents have been properly obtained and the wishes of the parent(s) and child or young person have been considered;
- that after consideration of possibilities for placement of the child or young person within their country of origin, it has been determined that an intercountry adoption is in their best interests;
- that the prospective adoptive parents are suitable to adopt the child or young person; and
- recognition of the legal parent-child relationship between the child or young person and their adopting parents will result in their entitlement to Australian citizenship (and stability and permanency within the family unit).

Clause 57C – Issue of adoption compliance certificate

When an adoption order is made in the ACT for a child either born in a Convention country (subject to clause 57B) or going to live in a Convention country (clause 57) the chief executive has an responsibility under the Hague Convention to issue an adoption compliance certificate to the central authority of the Convention country.

Subdivision 4A2.2 Recognition under Convention

Clause 57D – Recognition of adoption of child or young person from Convention country in that country

This clause applies to the adoption of a child or young person in a Convention country, for which the chief executive or a private adoption agency has made arrangements.

In relation to the flowchart on page 26, this clause applies to when an order made overseas is categorised as a "full and permanent" order. No further legal proceedings are required in Australia for the overseas order to have the same effect as an adoption order made under the Act.

To ensure the validity of the overseas order, sub-clause (1) (b) refers to the issue of an adoption compliance certificate in the overseas country, the adoption becoming recognised and effective in the ACT on and after the date the certificate takes effect.

The dictionary defines adoption compliance certificate as "a certification (however described) issued in accordance with the Convention, article 23." This allows for overseas authorities to determine the form of certification as long as it certifies that the adoption was made in accordance with the Convention. In terms of Australia's intercountry adoption program with the People's Republic of China this definition is given additional strength through the *Family Law (Bilateral arrangements – Intercountry Adoption) Regulations 1998*, which specifically recognises adoption compliance certificate issued by the PRC.

Clause 57E – Recognition of adoption of child or young person from Convention country to another Convention country
This clause covers the recognition of an adoption carried out in a Convention country by adoptive parents who were habitually resident in that country at the time. This adoption does not involve the chief executive or a private adoption agency accredited in the ACT and thus the requirements of Part 3 of the Bill do not apply.

This clause applies to adoptions, verifiable with an adoption compliance certificate" by expatriate Australian families living and adopting in a Convention country and subsequently returning with their adopted child or young person to the ACT.

Clause 57F – Effect of recognition
This clause reiterates that a full and permanent overseas adoption has the same effect as an adoption made in the Act and that this means that the legal relationship that the child or young person had with their birth parent(s) is terminated.

Clause 57G - Refusal to recognise adoption or decision
This clause allows the chief executive to apply to the court for a declaration to be made that refuses recognition of a "full and permanent" adoption in a Convention country.

Resort to this provision may only be made if the adoption can be demonstrated as being manifestly contrary to public policy, taking into account the best interests of the child or young person.

Clause 57H – Order terminating legal relationship between child or young person and parents
This clause provides for the chief executive to make an application to have the legal relationship between the child or young person and their birth parent(s) terminated, if the order in the overseas country has not done so.

This may apply to "simple adoption" or "guardianship" orders on the flowchart which must be "finalised" in Australia to have the same effect as an adoption order made under the Act.

Under this provision the court must be satisfied that a compliance certificate was issued by the Convention authority, which signifies that the requirements under the Convention regarding counselling and taking of consents from the Parent(s) have been followed.

Clause 57I – Evidential value of adoption compliance certificate
This clause provides that an adoption compliance certificate is considered evidence that an adoption was carried out in accordance with the Convention and the laws of the overseas country.

As above this clause allows for overseas authorities to determine the form of certification as long as it certifies that the adoption was made in accordance with the Convention.

Division 4A.3 Bilateral arrangements for intercountry adoptions

Australian States and Territories facilitate adoptions only from countries that have signed the Hague Convention and countries with which Australia has existing bi-lateral arrangements in relation to adoptions – referred to hereafter in the Bill as adoptions from prescribed overseas jurisdictions. The bilateral agreements are reviewed on a regular basis by the Community and Disability Services Ministers Conference.

Clause 57J - Adoption in ACT of child or young person from prescribed overseas country by ACT parents
This clause provides for the court to make an adoption order for a child or young person from a prescribed overseas country in favour of ACT parents. The child or young person must be present when the order is made.

This order can only be made if the competent authority of the prescribed overseas jurisdiction has agreed to the adoption and arrangements that have been made by the chief executive or a private adoption agency for the adoption of the child.

This clause covers the circumstance where the adopting parents travel to the non-convention country and complete legal proceedings there which enable the child to be placed with them, for travel back to Australia. For the purposes of making the order, the child or young person needs to be allowed to reside permanently in Australia.

In relation to the flowchart on page 26, this clause applies to when an order made overseas is categorised as a “simple adoption” and must be “finalised” in Australia to have the same effect as an adoption order made under the Act.

Clause 57K – Evidential value of adoption compliance certificate – div 4A.3
This clause means that an adoption compliance certificate, or certification of the adoption order made in a prescribed overseas jurisdiction will be recognised as evidence that the adoption was carried out in accordance with the law of that country.

Division 4A.4 Recognition of other overseas adoptions

This Division applies to adoptions made overseas in which the chief executive was not involved in arranging.

57L – Recognition of adoption order made outside Australia
This clause provides for the recognition of an adoption order made outside Australia if it is compliant with the Hague Convention. The Convention allows people domiciled or resident overseas for a minimum of 12 months, for purposes other than adoption, to adopt a child or young person from an overseas country, according to the laws of that country.

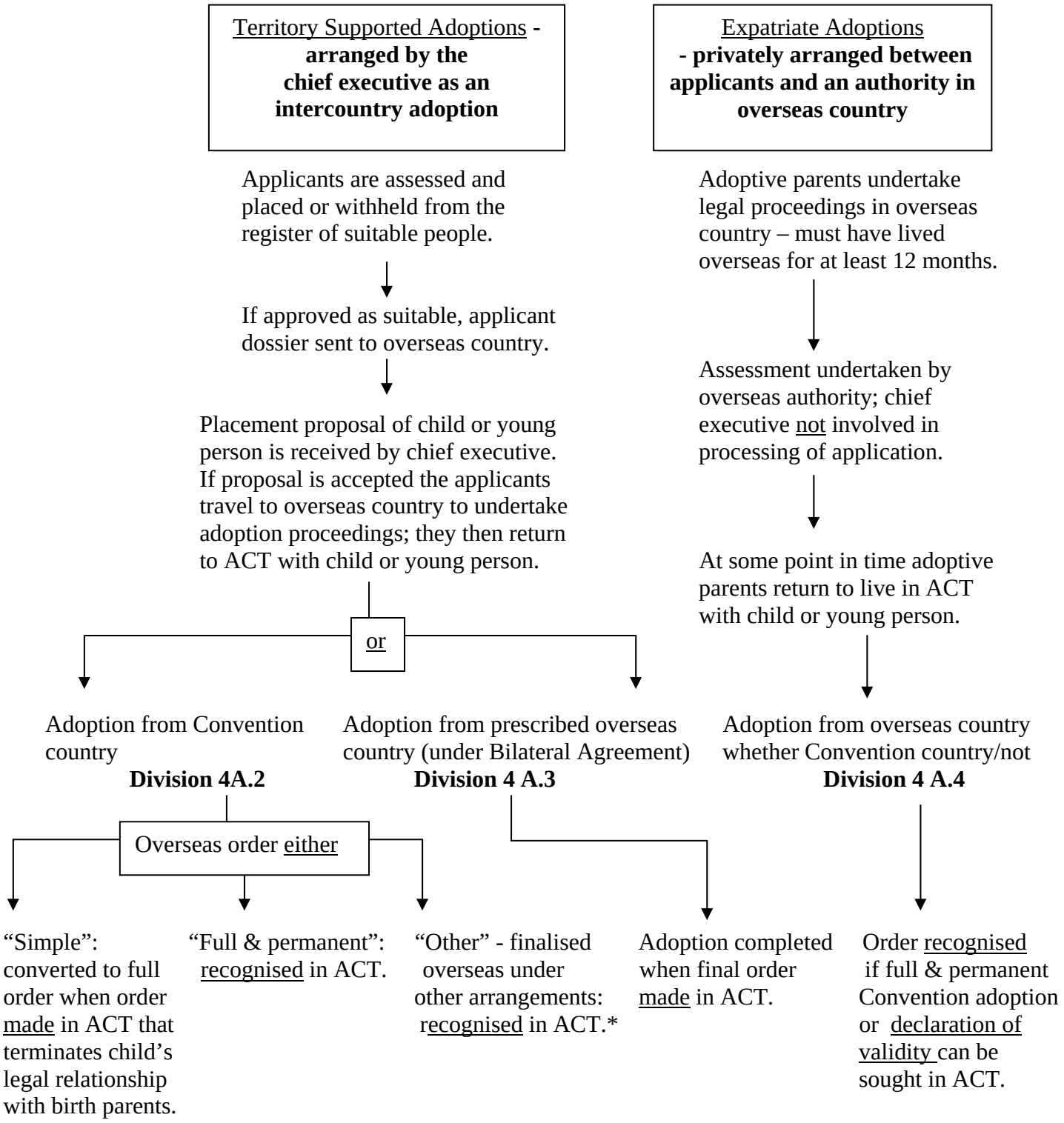
Under this clause an adoption order made outside Australia will have the same effect as an order made under the Act if:

- the adoption is in accordance with and not been rescinded under the law of that country; and
- as a result of the adoption, the adoptive parent(s) take on the parenting role of the child or young person and in this respect have a superior right to that of the child or young person's birth parent(s).

Under this clause the court may refuse to recognise an adoption if it considers there has been a denial of natural justice to any party.

Clause 57M – Declaration of validity of adoption order made outside Australia
This clause is open to those adoptive families described in this Division, who after their return to Australia, wish to obtain a declaration of validity of the overseas adoption order. This declaration would give the overseas order the same effect as an order made under the Act.

Intercountry and overseas adoption orders



*Family Law (Bilateral arrangements – Intercountry Adoption) Regulations 1998, entered into prior to People's Republic of China ratification of Hague, recognise adoption compliance certificate issued by PRC, that are different from compliance certificates issued under the Hague Convention

For a full list of countries with which Australia has an intercountry adoption program the current status of orders made in those countries is at http://www.ag.gov.au/www/agd/agd.nsf/Page/IntercountryAdoption_Currentintercountryadoptionprograms

Part 5 Access to Information

The absolute right of adopted people to access identifying information about their adoption after turning 18 years is now provided in all Australian state and territory adoption legislation except for the Northern Territory, where a veto may be placed on the release of information.

The 1993 Act allows access to information by birth parents, adoptive parents and some types of birth relatives, as well as the adopted person, after the adopted person has turned eighteen. This is the widest eligibility categories of any Australian state or territory. In the Act, these categories of eligible applicants are termed "associated persons". In addition, there are very few restrictions on the type of information that can be supplied to "associated persons". Access is allowed to most information available to the Chief Executive about a particular adoption, placing restrictions only on information stating that the adopted person was born as the result of rape or incest.

Initial misgivings expressed by some other jurisdictions that information in the ACT would be too readily available to too many people have proved to be unfounded and the supply of adoption information has proceeded largely without controversy. Since the legislation was enacted there has been a steady increase in the number of applications but no letters of complaint to the Minister or Ombudsman about the access to information provisions since 1997. This suggests that the provisions are widely accepted in the ACT community.

The Act also includes provision for parties to adoptions who do not want to be contacted after another party has received identifying information to place a "veto" on contact. Contacting against a veto is an offence under the Act although there have been no convictions to date.
The ability to veto contact was considered important to protect the privacy of those who were involved in an adoption process in an era when it was believed the adoption would remain secret indefinitely and future contact would be impossible. The veto provision does not apply if there has already been contact.

Since 1993, most adoption orders made in the ACT have some degree of openness with ongoing information or, in some cases, regular contact. Local adoptive parents and birth parents are now well aware that future contact between an adopted person and their family of origin is a strong possibility while many families who have adopted from overseas are now exploring future avenues of contact and reunion for their children.

The administrative unit that provides most post adoption information services is termed in the Act the "Adoption Information Service". The unit provides information, registers vetoes and assists with reunion, as well as providing informal counselling.

Clause 58 – Definition of associated persons, birth parent, birth relative and identifying information
This clause provides new expanded definitions for "associated person" – to include as a birth relative a person born after the child or young person was adopted who would have been a relative if the adoption had not taken place. An example of this expanded group of relatives is sibling of the adopted person who was born after the adoption.

Clause 59 – Application – pt 5
This clause recognises the provisions under the Act that allowed for an objection to contact to be made and/or contact vetos to be lodged. These options are removed under the Bill and will not be allowable after the commencement of the Bill.

Clause 60 – Confidentiality of records
Sub clause (1) (c) substitutes "adopted child" with "adopted person" as adopted children and young people under the age of 18 years are not entitled to access identifying information without approval in writing from each adoptive parent and each birth parent. The requirement of approval from the latter assumes, in accordance with open adoption that there has already been an exchange of personal information.

Clause 61 (3) – Records of adoptions
This clause refers to the obligation upon a private adoption agency (if in operation) to provide the chief executive with the particulars of persons associated with the application for an adoption order – "adopted person" substitutes for "adopted child" and the author of the report on the proposed adoption is re-referenced to clause 39D.

Clause 68 – Restriction on entitlement to apply
Sub clauses (1), (3), (4) (a) and (b), (5)and (7) substitute "adopted child" with "adopted person" as above in clause 60 (1).

Sub clause (2) (a) specifies "step parent" as a clarification, rather than "a person mentioned in section 18 (2).

Clause 70 – Objection to contact – adoptions before Adoption Amendment Act 2009 (No 2)
This clause sets out the provisions under the Act, to make an objection to contact, which will apply only in relation to an adoption order made before the commencement of the Bill. The language used is simplified for the purpose of clarity.

Clause 71 – Contact veto by person other than adopted person – adoptions before Adoption Amendment Act 2009 (No 2)
This clause sets out the provisions under the Act, to lodge a contact veto, which will apply only in relation to an adoption order made before the commencement of the Bill. The language used is simplified for the purpose of clarity.

Clause 72 – New note
A new note to subsection (1) makes it clear that contact veto provisions will only apply to orders made before the commencement of the Bill. Thus the provision under "counselling services", that information subject to a contact veto may only be passed on to an applicant after they have attended a counselling interview with an approved counsellor, will only apply to orders made before the commencement of the Bill.

Clause 73 – Declaration that contact not be attempted
This clause reaffirms that counselling must be provided to any applicant before information is released to them, if there was an objection to contact or a contact veto lodged about an adoption made prior to the commencement of the Bill.

The applicant is also required under this clause to sign a declaration that they will not attempt to either directly or indirectly contact the person who lodged the objection.

This clause respects the expectation of privacy that, in the past, persons who wished to have no contact with other parties to an adoption order, may have relied upon.

Clause 74 - Birth details of adopted person born overseas
As above "child" and "adopted child" are substituted with "person" and "adopted person".

Clause 77 – Family Information Service
This is a new clause heading, replacing the "Adoption Information Service". This former title of the unit that administers this part of the Bill may be misleading and does not truly reflect the work of the unit. Counseling and mediation services are offered to all parties to an adoption and reunions may be arranged between them. A more appropriate title is the Family Information Service.

Clause 91 – Interfering with upbringing of child
Sub clause (b) specifies "step parent" as a clarification, rather than "a person mentioned in section 18 (2).

Clause 104 – Registration of orders and
Clause 106 – Particulars of interstate orders
Substitution of "child" with "person".

Clause 108A – Financial support of adopted children and young people
This clause introduces new provisions. Section 56 (3) of the Act prevents the chief executive from providing financial support to an adoptive family after an adoption order has been made.

The amendments allow financial assistance to be provided in cases where adoption would be in the child or young person's best interests but financial considerations may be a barrier to this happening.

This clause limits financial support to be provided on behalf of a child or young person, who prior to the adoption was the subject of a daily care responsibility or long term care responsibility provision, under the *Children and Young People Act 20008.*

It is envisaged this type of assistance would be appropriately offered in instances such as:

- a financially disadvantaged foster family, who have cared for the child for a number of years, applying to adopt that child; or
- where a child with high and complex needs has a plan of adoption that may not be able to be effected due to expected exceptional care and medical costs.

The extent of the assistance would be at the discretion of the chief executive and subject to regular review.

Clause 113 – Contents of reports not to be disclosed
This clause reflects the structural changes to the Bill. The report about a proposed adoption provided to court the by the chief executive is now referred to as a Section 39D report rather than a report pursuant to Section 19 of the 1993 Act.

Clause 121 – Regulation-making power
In this clause "children" sis substituted with "people" to reflect that the Bill is concerned with promoting the well-being of adopted people throughout their lives.

Part 20 Transitional – Adoption Amendment Act 2009 (No 2)

This part provides for the transitional arrangements for a period of up to two (2) years from the commencement of the Adoption Act 2009 that are to be employed in relation to consents, placement, access and applications for an adoption order made under the pre-amendment Act.

Schedule 1 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

This is a new schedule which is to be applied under Division 4A of the Bill.

Dictionary

New definitions are provided in the Bill

Aboriginal or Torres Strait Islander child or young person – an updated definition to replace "Aboriginal child" and "Aborigine", consistent with the definition in the *Children and Young People Act 2008.*

adoption compliance certificate –a certificate issued in accordance with article 23 of the Hague Convention, or in accordance with the *Commonwealth Bilateral Arrangements Regulations,* is considered evidence that an adoption was carried out in accordance with the Convention and the laws of the overseas country.

adoption order – means an order for the adoption of a person made under this Bill. This also applies to full and permanent adoption orders made in another jurisdiction and recognised in the ACT under part 4A.

central authority – new inclusion, based on the definition in article 6 of the Convention, applies only to Part 4A intercountry adoption

child - to be used where age rather than relationship with another is relevant. The Act refers to a child as being a person under the age of 18 years but the Bill makes the distinction between a child, being a person under 12 years of age and young people, persons between the ages of 12 and 17 years – this distinction is in line with contemporary practice and the *Children and Young People Act 2008.*

competent authority - prescribed in the Convention, applies only to intercountry adoption

Commonwealth Bilateral Arrangements Regulation – means the Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998 (Cwth) which was entered into prior to People's Republic of China ratification of the Hague Convention and recognises the adoption compliance certificate issued by PRC, that are different from compliance certificates issued under the Hague Convention.

Commonwealth Central Authority – is the Attorney General's Department.

Convention - also referred to as the Hague Convention – at Schedule 1 of the Bill.
Convention country - as further described in Commonwealth F*amily Law (Hague convention on Intercountry Adoption) Regulations 1998, regulation 4.*

Country - a structural clarification, which transfers this meaning under part 4 of the Act into the definitions section.

intercountry adoption - a definition not previously provided, as prescribed under the Convention.

non-citizen child or young person - a language clarification, has the same meaning as non-citizen child, referred to in the Commonwealth *Immigration (Guardianship of Children) Act 1946.*

prescribed overseas jurisdiction - a country that is not a signatory to the Convention, but with whom Australia has a bilateral agreement relating to intercountry adoption.

register of suitable people - Division 3.2 of the Bill "Who can adopt?" makes a clear link between all categories of applicants needing to be entered on the register of suitable people to be eligible seek an adoption order in the ACT. This clarifies that the register is more than an administrative tool.

responsible person – this definition, which applies to Aboriginal and Torres Strait Islander children and young people is updated, substituting its applicability to "an Aboriginal child" with relation to "an Aboriginal and Torres Strait Islander child or young person".

State central authority – for the ACT means the chief executive of the Department of Disability Housing and Community Services

step-parent – this definition clearly identifies the separate provisions for step-parents under clause 15 of Division 3.2 of the Bill "Who can adopt?". This clarification is an improvement on section 18 (2) which describes a step- parent relationship without naming it.

young person – is introduced as a new status consistent with contemporary child-centred practice and the *Children and Young People Act 2008.*

Further amendments, mentions of child, child's and children
Throughout the Bill "child" is substituted with "child or young person" where this denotes the age of the individual rather than their descendancy from/relationship with another.

Further amendments, mentions of welfare and interests
References in the Act to "welfare and interests" are replaced with "best interests" in the Bill as this is the contemporary term used in child-centred practice.

Further amendments, mentions of welfare
References in the Act to "welfare" are replaced with "wellbeing" as this is the contemporary term used in child-centred practice.

Schedule 1 Consequential amendments

This schedule deals with consequential amendments required to other legislation and regulations as a result of the amendments made in the Bill

Part 1.1 Adoption Regulation 1993

[1.5] Access to information
Section 10
This clause which refers "Prescribed information – incest and sexual assault" is omitted in the Bill.

Such information, while possibly distressing, is important for an adopted person to understand. The circumstances of their birth, and in the case of incest, may be vital medical information.

People requesting information about an adoption are always offered assistance and counselling – although this is voluntary - so that difficult information can be presented in a sensitive manner.

[1.6] Maintenance of records
Section 13
New provisions are substituted in the Bill:

- Specific provisions about the retention of adoption records are no longer required as these are covered under the *Territory Records Act 2002* which governs the storage, retention and disposal schedules for all records held by ACT Government agencies.
- The provision that all adoption records held by a private adoption agency must be kept in a lockable, fire-resistant steel cabinet is retained in the Bill as a private agency is not subject to regulation by the *Territory Records Act 2002.*

[1.7] Schedule 2, item 1 - Reviewable decisions
This clause inserts items in the list of reviewable decisions:

- 1 - refusal to approve an application to be placed on the register of suitable persons to adopt; and
- 1A – removal of a person's name from the register.

This clause is amended to make provision for the repeal of legislation and instruments overtaken by the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2).* The decision to refuse or withdraw approval to be placed on the Register of suitable persons to adopt becomes a reviewable decisions before the Administrative and Civil Appeals Tribunal (ACAT).

Part 1.2 Children and Young People Act 2008

[1.1] Care plans – stability proposals
Section 456 (5)

This is a consequence of structural amendment, replacing section 21 of the Act with clause 39G. This section refers to the obligation upon the chief executive to include consideration of the Aboriginal and Torres Strait Islander child placement principle if adoption is part of a proposal for long term placement for an Aboriginal or Torres Strait Islander child or young person.

Part 1.3 Discrimination Act 1991

[1.2] Adoption
Section 25A (a), (b)) and (c)

These amendments are consequential to clarifying and structural amendments in the Act. They refer to exceptions under the Disability Act which allow the chief executive to determine the suitability or unsuitability of people in making a decision to approve persons to be placed on the register as suitable for placement of a child or young person, placement of a child or young person and removal from the register of suitable people.

Part 1.4 Parentage Act 2004

[1.3] Section 29 (3)

This amendment is a language simplification, substituting "Gifts inter vivos" with "Gifts between living people"

Part 1.4 Testamentary Guardianship Act 1984

[1.4] Application of Act
Section 3 (2)

This amendment picks up a previously missed consequential amendment at the time of the enactment of the Adoption Act. The *Adoption of Children Ordinance* 1965 is replaced with the *Adoption Act 1993.*