

Queensland



# ADOPTION OF CHILDREN ACT 1964

**Reprinted as in force on 4 June 1999  
(includes amendments up to Act No. 19 of 1999)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3**

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# Information about this reprint

This Act is reprinted as at 4 June 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

# Queensland



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# ADOPTION OF CHILDREN ACT 1964

[as amended by all amendments that commenced on or before 4 June 1999]

## **An Act to consolidate and amend the law relating to the adoption of children**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Adoption of Children Act 1964*.

#### **Commencement**

2.(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by the Governor in Council by proclamation published in the gazette.

(2) Sections 1 to 4 and 6, division 2 of part 3, part 5 and sections 64 to 66 shall come into operation on the date of publication in the gazette of the proclamation for the purposes of subsection (1).

#### **Objective of Act**

5A. The objective of this Act is to facilitate securing for children who are available for adoption the best possible placements, having regard to the welfare and interests of the children, and to protect the rights and to provide for servicing the needs of all parties to the adoption process.

#### **Inherent jurisdiction of Supreme Court preserved**

- 5B. No provision of this Act shall be construed to restrict or prejudice the

jurisdiction of the Supreme Court in relation to persons who have not attained the age of 18 years.

## Definitions

6. In this Act—

**“Adopted Children Register”** means the Adopted Children Register made and kept by the registrar general under the repealed Acts and continued by and kept under this Act.

**“adoption compliance certificate”** means a certificate under article 23 of the Hague convention.

**“adoption list”** means any of the lists kept by the chief executive under section 17.

**“adoption order”** means an order for the adoption of a child under this Act and, where applicable, includes an order for the adoption of a child under the repealed Acts.

**“assessment”** means an assessment made under this Act by the chief executive.

**“central authority”**, of a convention country, means the entity designated under article 6 of the Hague convention as the central authority of the country or, if more than 1 central authority has been designated, the entity designated as the central authority for the relevant function.

**“child”** means a person who had not attained the age of 18 years, or a person who has attained that age in respect of whom an adoption order has been made.

**“Childrens Court”** means the Childrens Court constituted under the *Childrens Court Act 1992* other than by 2 justices of the peace.

**“Commonwealth”** means the Commonwealth of Australia.

**“Commonwealth central authority”** means the Commonwealth Central Authority under the Commonwealth regulation.<sup>1</sup>

**“Commonwealth regulation”** means the *Family Law (Hague Convention*

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<sup>1</sup> Presently, this is the Secretary to the Commonwealth Attorney-General’s Department.

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*on Intercountry Adoption) Regulations 1998 (Cwlth).*

**“convention country”** see section 6A.

**“country”** includes a territorial unit or other part of a country.

**“criminal history”**, in relation to any person, means—

- (a) convictions of that person for any offence committed in Queensland or elsewhere not being convictions that have been quashed or set aside; and
- (b) charges made against that person in respect of any offence committed in Queensland or elsewhere that have proceeded to final determination, which has resulted—
  - (i) in respect of an offence committed in Queensland—in the making of a probation order or a community service order under the *Penalties and Sentences Act 1992* or another law about orders of that kind in relation to that person; or
  - (ii) in respect of an offence committed elsewhere—in the making of an order of a description similar to that of the order referred to in subparagraph (i) in relation to that person.

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

**“general consent”** means a consent referred to in section 20(1), and, where applicable, includes a consent of a similar nature for the adoption of a child given under the repealed Acts.

**“guardian”**, in relation to a child, includes—

- (a) a person having the custody of the child pursuant to an order of a court made under a law of the Commonwealth or of a State or Territory of the Commonwealth;
- (b) a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory of the Commonwealth.

**“Hague convention”** means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, made at the Hague

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on 29 May 1993, a copy of the English text of which is set out in the schedule.

**“interim order”** means an interim order under division 5 of part 3, and, where applicable, includes an interim order of adoption made under the repealed Acts and continued under this Act.

**“non-citizen child”** the same meaning as is ascribed to that term by the *Immigration (Guardianship of Children) Act 1946* (Cwlth).

**“non-convention country”** means a country other than Australia, New Zealand or a convention country.

**“public trustee”** means the public trustee constituted under the *Public Trustee Act 1978*.

**“registrar general”** means the registrar general under the *Registration of Births, Deaths and Marriages Act 1962*, and includes the deputy registrar general under that Act.

**“registrar of the Supreme Court”** means the registrar of the Supreme Court under the *Supreme Court Act 1995*, and, where applicable, includes the registrar of the Central Court and the registrar of the Northern Court under the *Supreme Court Act 1995*.

**“relative”**, in relation to a child, means—

- (a) a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of the whole blood or half blood or by affinity, notwithstanding that the relationship depends upon the adoption of any person; or
- (b) the spouse of a parent of the child, whether natural or adoptive.

**“special needs child”** means a child declared by the chief executive under this Act to be a special needs child, and includes a non-citizen child and a child to whom section 20(3) applies.

**“Supreme Court”** includes a judge of the Supreme Court.

**“Territory of the Commonwealth”** includes any Territory under the trusteeship of the Commonwealth.

**“the commencement of this Act”** means the commencement of the provisions of this Act other than the provisions specified in section 2(2).

“**the court**”, when used in relation to a matter within the jurisdiction of the Supreme Court and of the Childrens Court, includes each of those courts and when used in any other case means the Supreme Court.

“**the repealed Acts**” means the Acts and enactments repealed by section 5(1) (as in force on the commencement of this Act), or any of them.

“**tribunal**” means a children’s services appeals tribunal established under the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996*.

### **Convention countries**

**6A.(1)** Each of the following is a “**convention country**” for this Act—

- (a) a country prescribed under a regulation to be a convention country;
- (b) another country for which the Hague convention has entered into force, under article 46 of the Hague convention, other than—
  - (i) Australia; or
  - (ii) New Zealand; or
  - (iii) a country to whose accession Australia has raised an objection under article 44 of the Hague convention.

(2) However, subsection (1) applies to a country subject to a declaration under article 45 of the Hague convention.

## **PART 2—JURISDICTION CONCERNING ADOPTIONS**

### **Adoption by order of chief executive**

**7.(1)** A child may be adopted in Queensland by means of an order for the adoption of that child made by the chief executive upon an application that has been made and dealt with in accordance with this Act.

(2) Any person or persons in whose favour an adoption order is made and a child in respect of whom an adoption order is made are in this Act referred to as the “**adopter**”, the “**adopters**” and the “**adopted child**” respectively.

### **Nexus with Queensland**

**7A.(1)** It is not competent to the chief executive to make an adoption order in respect of a child unless, at the time the order is made—

- (a) the prospective adopter or, in the case of joint prospective adopters, each of the prospective adopters is resident or domiciled in Queensland; and
- (b) the child is present in Queensland.

**(1A)** Subsection (1)(a) does not apply to an adoption order to which section 18C applies.<sup>2</sup>

(2) If the chief executive is satisfied that a prospective adopter was resident or domiciled in Queensland or that a child was present in Queensland within 21 days before the day on which an adoption order is to be made the chief executive may, unless the chief executive has reason to believe to the contrary, presume that the prospective adopter is resident or domiciled in Queensland or, as the case may be, that the child is present in Queensland at the time the order is made.

### **Rules of private international law not relevant**

**7B.** The power of the chief executive to make an adoption order or of the tribunal to order the making of an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

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<sup>2</sup> Section 18C (Adoption of a child from Queensland by a person habitually resident in a convention country)

## **PART 3—ADOPTIONS UNDER THIS ACT**

### *Division 1—General*

#### **Welfare and interests of child to be paramount**

**10.** For all purposes of this part and of part 2, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

#### **Who may be adopted**

**11.(1)** Subject to this Act, the chief executive may make an order for the adoption of a child who has not attained the age of 18 years on the date when the order is made.

**(2)** The chief executive shall not make an order for the adoption of a person who is, or has been, married.

**(3)** An order may be made under this Act for the adoption of a child notwithstanding that the child has, whether before or after the commencement of this Act, and whether in Queensland or elsewhere, previously been adopted.

#### **Persons in whose favour adoption orders may be made**

**12.(1)** Subject to this section, an adoption order shall not be made except in favour of a husband and wife jointly.

**(2)** An adoption order may be made in favour of a husband and wife jointly notwithstanding that 1 of them is the natural or adoptive parent of the child concerned.

**(3)** Subject to subsection (4), an adoption order may be made in favour of 1 person if—

- (a)** that person is the spouse of the natural or adoptive parent of the child concerned; or
- (b)** in the case of the child concerned being a special needs child—the chief executive is of the opinion that the making of the order would be for the welfare and in the interests of the child; or

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- (c) in any case—the chief executive is satisfied that there are exceptional circumstances that justify making the order.

(4) Except in the case referred to in subsection (3)(a), an adoption order shall not be made in favour of 1 person if that person is married and is not living separately and apart from his or her spouse.

(5) An adoption order shall not be made in favour of a prospective adopter or of prospective adopters either of whom is a relative of the child concerned unless the chief executive is satisfied that, in the circumstances of the case, the welfare and interests of the child would be better served by such an order than by an order for guardianship or custody made by a court of competent jurisdiction in relation to the child.

**Age of adopters**

**13.** The chief executive shall not make an adoption order in favour of a prospective adopter who or in favour of prospective adopters either of whom—

- (a) has not attained the age of 21 years; or  
(b) being male, is less than 18 years older than the child concerned or, being female, is less than 16 years older than the child concerned;  
or

unless—

- (c) in the case of a sole prospective adopter—the prospective adopter is the spouse of a parent of the child concerned, whether natural or adoptive; or  
(d) in the case of a married couple—1 of them is a parent of the child concerned, whether natural or adoptive; or  
(e) in the case of the child concerned being a special needs child—the chief executive is of the opinion that the making of the order would be for the welfare and in the interests of the child; or  
(f) in any case—the chief executive is satisfied that there are exceptional circumstances that justify making the order.

## **Applications**

**13A.(1)** A person who wishes to adopt a child shall make in the prescribed form an application to become an adoptive parent and to have the person's name entered in the appropriate adoption list and shall lodge the application with the chief executive.

**(2)** A married couple may join in the 1 application but each of them shall be required to satisfy the prescribed requirements.

**(3)** A person who duly makes and lodges an application shall be entitled to have the person's name entered in the adoption list appropriate to the person's application but if—

- (a) the person should prove to be ineligible as prescribed to have his or her name entered in the adoption list; or
- (b) the person should fail to comply with the prescribed procedural requirements;

the person's name shall be forthwith removed from the adoption list.

**(4)** Within 14 days after the removal of a person's name from the adoption list, the chief executive must give written notice of the removal and the reasons for it to the person.

## **Chief executive's assessments**

**13B.(1)** As soon as practicable after an applicant's name is included in an adoption list the chief executive shall—

- (a) in respect of a person whose name is in an adoption list referred to in section 17(2)(b) or (d)—make an assessment of whether the applicant is of good repute and is a fit and proper person to become an adoptive parent; or
- (b) in respect of a person whose name is in an adoption list referred to in section 17(2)(a) or (c)—make an assessment of whether the welfare and interests of the child to be adopted will be promoted by making an adoption order in favour of the applicant.

**(1A)** Where a joint application has been made by a married couple the chief executive may make 1 assessment in relation to both applicants.

**(2)** Where the applicant has made application to become an adoptive

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parent of a child of whom the applicant is a relative the chief executive shall not be required to make the assessment referred to in subsection (1)(b) until all consents necessary to the making of an adoption order in respect of the child have been obtained or dispensed with or the chief executive has been notified as prescribed by section 25(2A).

**(2A)** Where an applicant has applied to become an adoptive parent of a child of a particular description the chief executive shall not be required to make an assessment referred to in subsection (1) or (1A) until a child of that description is available for adoption.

**(3)** The chief executive shall give written notification of an assessment made under subsection (1) or (1A) to the applicant in respect of whom it was made or in the case of an assessment made in respect of a married couple, to that couple and in the case of an assessment unfavourable to an applicant or a married couple, shall specify in the notification the grounds on which the assessment is based.

**(3A)** However, if the chief executive has been requested not to specify any particular ground or grounds in a notification by—

- (a) in the case of a notification to a married couple—1 of the applicants; or
- (b) in the case of a notification to a sole applicant who is a spouse—the applicant or the other spouse;

the chief executive is not required by subsection (3) to specify that ground or those grounds in the notification.

**(4)** Every notification required by subsection (3) shall be given within 14 days after the assessment is made.

**(6)** Where the chief executive has made an assessment under subsection (1) or (1A) that is unfavourable to an applicant the chief executive shall—

- (a) subject to any appeal duly made under this Act against the assessment; and
- (b) unless the chief executive decides to defer the matter of the application in question;

cause the name of the applicant or, in the case of an assessment made in respect of a married couple, the names of both applicants to be removed

from the adoption list in which the name is or the names are included.

(7) In respect of applicants whose names are included in an adoption list referred to in section 17(2)(b), (c) or (d) the chief executive shall endeavour to make the assessment required by subsection (1) or (1A) in accordance with the order in which those names are included in the adoption list, except where the chief executive is of the opinion that the welfare and interests of a child require that that order be departed from or where the applicant due to be assessed so approves or, in the case of joint applicants due to be assessed, both of them so approve.

(8) If an applicant whose name is included in the adoption list of applicants referred to in section 17(2)(a) is not assessed under this section within a time prescribed by the regulations the chief executive shall cause the name of that applicant to be removed from the adoption list.

### **Matters to be regarded for assessment**

**13C.** Subject to section 14B(2), in making an assessment under section 13B the chief executive shall have regard to—

- (a) all matters prescribed as matters to be regarded in making an assessment in respect of applicants whose names are included in the adoption list that includes the name of the applicant to be assessed; and
- (b) in the case of an assessment in respect of an applicant whose name is included in an adoption list referred to in section 17(2)(a) or (c), any wishes expressed by a parent or guardian of the child sought to be adopted in an instrument of consent to the adoption of the child with respect to the religious upbringing of the child.

### **Prospective adopters**

**13D.(1)** An applicant in respect of whom—

- (a) the chief executive has made a favourable assessment under section 13B(1); or
- (b) a tribunal has made a favourable assessment on appeal;

shall in relation to his or her application become and in this Act is referred to as a “**prospective adopter**”.

(2) The chief executive shall cause an appropriate notation to be made in an adoption list against the name of each person named therein who has become a 'prospective adopter'.

### **Further assessment of prospective adopters**

**14.(1)** Where, before the chief executive makes an adoption order in favour of any prospective adopter or prospective adopters whose name or names is or are included in an adoption list referred to in section 17(2)(b) or (d), in the chief executive's opinion such time has elapsed since the making of an assessment in respect of the prospective adopter or prospective adopters pursuant to section 13B or since the making of an interim order in favour of the prospective adopter or prospective adopters that it is desirable that an assessment should be made pursuant to this subsection, the chief executive shall make an assessment of whether—

- (a) the prospective adopter or each of the prospective adopters is, at the time the assessment is made, of good repute and a fit and proper person to become an adoptive parent; and
- (b) where there is a child available at the material time for placement—the welfare and interests of the child will be promoted by making an adoption order in favour of the prospective adopter or prospective adopters;

and the chief executive shall not make the adoption order unless the assessment last made is favourable in all respects.

**(1A)** Where the prospective adopters are a married couple, the chief executive may make 1 assessment in relation to both of them.

**(2)** When the chief executive is about to make an adoption order in favour of any prospective adopter or prospective adopters whose name or names is or are included in an adoption list referred to in section 17(2)(a) or (c) and in the chief executive's opinion such time has elapsed since the making of an assessment pursuant to section 13B or since the making of an interim order in favour of the prospective adopter or prospective adopters that, in the chief executive's opinion, it is desirable that an assessment should be made pursuant to this subsection, the chief executive shall first make an assessment of whether the welfare and interests of the child will be promoted by making the adoption order in favour of the prospective adopter or prospective adopters, and the chief executive shall not make the adoption

order unless the assessment is favourable in all respects.

(3) For the purposes of an assessment to be made in respect of a prospective adopter the chief executive shall, subject to section 14B(2), have regard to all matters prescribed by section 13C as if the assessment to be made were an assessment under section 13B.

### **Criminal histories to be disclosed**

**14B.(1)** With a view to enabling a proper assessment being made in respect of him or her an applicant to become an adoptive parent or a prospective adopter shall, from time to time upon the request of the chief executive or a person authorised in writing by the chief executive in that behalf, disclose to the chief executive or such person the applicant's criminal history to such extent and in respect of such matters, as, in the opinion of the chief executive, is necessary to enable a proper assessment to be made.

(2) For the purpose of making an assessment in respect of any person the chief executive may have regard to the criminal history (if any) of the person.

(3) If the chief executive is of opinion that the criminal history of a person in respect of whom an assessment is being made shows—

- (a) in the case of a person whose name is in an adoption list referred to in section 17(2)(b) or (d)—that the person is not a fit and proper person to become an adoptive parent; or
- (b) in the case of a person whose name is in an adoption list referred to in section 17(2)(a) or (c)—that the welfare and interests of the child will not be promoted by making an adoption order in favour of that person;

the chief executive may make the assessment on the basis of the criminal history alone.

(4) The chief executive shall not be precluded from making an assessment in respect of any person on the basis of the person's criminal history alone or on bases that include that of the person's criminal history by reason that—

- (a) there has previously been made an assessment in respect of that person on the basis of the person's criminal history alone; or

- (b) an assessment made in respect of that person on the basis of the person's criminal history alone has been set aside on appeal.

### **Procedure upon assessments under s 14**

**14C.(1)** The chief executive shall give written notification of an assessment made under section 14 to the person in respect of whom it was made or, in the case of an assessment made in respect of a married couple, to that couple and in the case of an assessment unfavourable to the person or married couple shall specify in the notification the grounds on which the assessment is based.

**(1A)** However, if the chief executive has been requested not to specify any particular ground or grounds in a notification by—

- (a) in the case of a notification to a married couple—1 of them; or
- (b) in the case of a notification to 1 person only who is a spouse—that person or the other spouse;

the chief executive is not required by this subsection to specify that ground or those grounds in the notification.

**(2)** Every notification required by this section shall be given within 14 days after the assessment is made.

**(3)** Where the chief executive has made an assessment pursuant to section 14 that is unfavourable to the prospective adopter or prospective adopters or, as the case may be, the applicant or applicants the chief executive shall—

- (a) subject to any appeal duly made under this Act against the assessment; and
- (b) unless the chief executive decides to defer the making of the adoption order;

cause the name of the prospective adopter or, as the case may be, applicant or in the case of a married couple the names of both of them to be removed from the adoption list in which the name is or the names are included.

**Appeals to tribunal about adoption lists and assessments**

**14D.(1)** This section applies if the chief executive—

- (a) makes a decision to remove a person's name from the adoption list; or
- (b) makes an assessment that—
  - (i) a person is not of good repute or a fit and proper person to become an adoptive parent; or
  - (ii) the interests and welfare of a child to be adopted will not be promoted by making an adoption order in favour of a person.

(2) The person may appeal to a tribunal against the decision or assessment.

**Notice of intention to make adoption order**

**15.** The chief executive, before making an order for the adoption of a child, may give notice of the chief executive's intention to make the order—

- (a) to any person (not being a person whose consent to the adoption of the child is required under section 19) with whom the child resides or who has the care or custody of the child; and
- (b) where it appears to the chief executive to be desirable so to do—to any other person.

**Discharge of adoption orders**

**16.(1)** The chief executive may apply to the Supreme Court for an order discharging an order for the adoption of a child made under this Act or under the repealed Acts, and the court may make such an order if it is satisfied that—

- (a) the child has not attained the age of 18 years; and
- (b) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means, or that there is some other exceptional reason why, subject to the welfare and interests of the child, the adoption order should

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be discharged.

(2) The court shall not make an order under this section if it appears to the court that the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where the court makes an order discharging an adoption order that was made in reliance upon a general consent given under this Act or under the repealed Acts, then, unless the court otherwise orders, the general consent remains in operation for the purposes of a further application for the adoption of the child.

(4) Where the court makes an order under this section, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the child, including orders relating to—

- (a) the name of the child; or
- (b) the ownership of property; or
- (c) the custody or guardianship of the child; or
- (d) the domicile of the child.

(5) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under subsection (4) of this section and section 28(2), the rights, privileges, duties, liabilities and relationships of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

- (a) anything lawfully done; or
- (b) the consequences of anything unlawfully done; or
- (c) any right or interest that became vested in any person;

whilst the adoption order was in force.

*Division 2—Adoption lists***Keeping of lists**

**17.(1)** The chief executive shall, in accordance with this section, keep lists of the names of persons who are entitled as prescribed to have their names

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included in an adoption list.

(2) An adoption list shall be kept in respect of each of the following classes—

- (a) applicants to become adoptive parents of special needs children;
- (b) applicants to become adoptive parents of children resident in a country outside the Commonwealth and the Territories of the Commonwealth;
- (c) applicants to become adoptive parents of children in respect of whom they are relatives;
- (d) applicants to become adoptive parents of children of any other description.

(3) In this Act—

- (a) the list of applicants referred to in subsection (2)(a) is referred to as the **“Special Needs Children’s Adoption List”**; and
- (b) the list of applicants referred to in subsection (2)(b) is referred to as the **“Foreign Children’s Adoption List”**; and
- (c) the list of applicants referred to in subsection (2)(c) is referred to as the **“Relative Children’s Adoption List”**; and
- (d) the list of applicants referred to in subsection (2)(d) is referred to as the **“General Children’s Adoption List”**.

(5) The chief executive shall—

- (a) keep each adoption list in a form that indicates the order in which the applications by virtue of which names are to be included in the list were lodged with the chief executive; and
- (b) keep in connection with each adoption list such particulars as the chief executive thinks necessary of each person whose name is included in the list and of the description of child that that person has applied to adopt.

(6) Where the chief executive is satisfied that a person who has applied to have the person’s name included in an adoption list is a person whose name is or, within 1 month before the date of the application was included in a similar adoption list kept by a person approved for the purposes of the law of another State or a Territory of the Commonwealth, the chief executive

may treat the application as having been lodged with the chief executive on the date certified in writing by the person having custody of that list to be the date on which the application by virtue of which the name was included in that list was received or was treated pursuant to the law of that State or Territory as having been received by the chief executive.

### **General Children's Adoption List to be ordinarily observed**

**18.** In making arrangements with a view to the adoption of a child in respect of whom a general consent has been given or dispensed with and who is not a special needs child and, in particular, in determining which prospective adopter or prospective adopters the chief executive will approve in the case of such a child the chief executive shall have regard to—

- (a) the order of names in the list referred to in section 17(2)(d) except where the chief executive is of the opinion that the welfare and interests of the child require that the list or the order of names therein be departed from; and
- (b) any wishes that have been expressed by a parent or guardian of the child in the instrument of consent to the adoption of the child with respect to the religious upbringing of the child.

### **Placement of children with indigenous or ethnic backgrounds**

**18A.** In making arrangements with a view to the adoption of a child in respect of whom a general consent has been given or dispensed with and, in particular, in determining which prospective adopter or prospective adopters the chief executive will approve in the case of such a child the chief executive shall have regard to the indigenous or ethnic background and cultural background of the child and shall approve a prospective adopter who, or prospective adopters 1 of whom, has a similar indigenous or ethnic background and cultural background, unless—

- (a) it appears to the chief executive that such a prospective adopter or prospective adopters is not or are not available and cannot reasonably be expected to become available promptly; or
- (b) in the chief executive's opinion, the welfare and interests of the child would not be best served by so doing.

***Division 2A—Intercountry adoptions*****Operation of pt 3 not limited**

**18B.** To remove doubt, it is declared that this division does not limit the operation of another provision in this part, including, in particular, section 10.<sup>3</sup>

**Adoption of a child from Queensland by a person habitually resident in a convention country**

**18C.(1)** This section applies to an application under this Act, by a person who is habitually resident in a convention country, to adopt a child who is habitually resident in Queensland.

**(2)** The chief executive may make an order for the adoption of the child by the applicant only if, at the time of the order—

- (a) the child is not prevented from leaving Australia—
  - (i) under a law of the Commonwealth or a State; or
  - (ii) by an order of a court of the Commonwealth or a State; and
- (b) the chief executive is satisfied that—
  - (i) arrangements for the adoption have been made under the Hague convention and the law of the convention country; and
  - (ii) the central authority of the convention country has agreed to the adoption; and
  - (iii) the child is not prevented by a law of the convention country from residing permanently in that country.

**Adoption of a child from a convention country by a person habitually resident in Queensland**

**18D.(1)** This section applies to an application under this Act, by a person who is habitually resident in Queensland, to adopt a child who is habitually

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<sup>3</sup> Section 10 (Welfare and interests of child to be paramount)

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resident in a convention country.

(2) The chief executive may make an order for the adoption of the child by the applicant only if, at the time of the order—

- (a) the child is not prevented from residing permanently in Australia—
  - (i) under a law of the Commonwealth or a State; or
  - (ii) by an order of a court of the Commonwealth or a State; and
- (b) the chief executive is satisfied that—
  - (i) arrangements for the adoption have been made under the Hague convention and the law of the convention country; and
  - (ii) the central authority of the convention country has agreed to the adoption.

*Division 3—Consents to adoptions***Consents of parents and guardians required to adoptions**

**19.(1)** Subject to this division, the chief executive shall not make an order for the adoption of a child unless consent (not being a consent that has been revoked) to the adoption has been given by the appropriate person or persons ascertained in accordance with the succeeding provisions of this section, or the chief executive is satisfied that there is no such appropriate person.

(2) In the case of a child—

- (a) whose parents were married to each other at the time of its conception or have since married each other; and
- (b) who has not previously been adopted;

the appropriate persons are every person who is a parent or guardian of the child.

(3) In the case of a child—

- (a) whose parents were not married to each other at the time of its

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conception and have not since married each other; and

(b) who has not previously been adopted;

the appropriate person is every person who is the mother or guardian of the child.

(4) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent or guardian of the child.

(5) The consent of a person under this section is not required if that person is the applicant, or 1 of the applicants, for the adoption order.

(6) In the case of a child who is a non-citizen child, the appropriate person is the person who, under the *Immigration (Guardianship of Children) Act 1946* (Cwlth), is the guardian of the child or, where the guardian has under that Act delegated the guardian's powers and functions as guardian to another person, that other person.

(7) Notwithstanding section 23, where the chief executive is, pursuant to the *Children's Services Act 1965*, the guardian of the child, it shall not be necessary for the chief executive's consent to the adoption of the child to be evidenced by an instrument of consent.

### **Giving of consents**

**20.(1)** Subject to this section, a consent for the purposes of section 19 shall be expressed as a consent to the adoption of the child by any prospective adopter or prospective adopters whose name or names is or are included in the adoption list that includes the names of applicants to become adoptive parents of such a child.

(2) Where an applicant to become an adoptive parent or, in the case of applicants who are a married couple, at least 1 of them is a relative of the child, a consent for the purposes of section 19 may be a consent to the adoption of the child by the applicant or applicants only.

(3) Where the child is a child in care within the meaning of the *Children's Services Act 1965* a consent for the purposes of section 19 may be a consent to the adoption of the child by a particular applicant to become an adoptive parent or particular applicants to become adoptive parents (being a married couple) only.

**Consents given under law of another State or of a Territory of the Commonwealth****21. Where—**

- (a) a person whose consent to the adoption of a child is required by section 19 has, in accordance with the law of another State or of a Territory of the Commonwealth, duly signed an instrument of consent to the adoption of the child by any person approved by or on behalf of the officer empowered in that other State or in that Territory to approve persons as fit and proper persons to adopt children; and
- (b) that officer, or a person acting on the officer's behalf, has, by writing under his or her hand, authorised the chief executive to make arrangements for the adoption of the child in Queensland; and
- (c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that other State or of that Territory;

that instrument of consent shall, for the purposes of this Act, be deemed to be an instrument executed in accordance with this division evidencing a subsisting consent, in accordance with section 19(1), to the adoption of the child.

**Revocation of consents**

**22.(1)** A consent to the adoption of a child given for the purposes of this Act or the repealed Acts by a person other than the child may be revoked by notice in writing served on the chief executive before—

- (a) the expiration of 30 days from the date on which the instrument of consent was signed; or
- (b) the day on which an order for the adoption of the child is made;

whichever is the earlier, but may not otherwise be revoked.

**(2)** Service of a notice on the chief executive under subsection (1) shall be effected by delivering it to the chief executive personally or by sending it to the chief executive by registered post at such address as is prescribed.

**Form of consents**

**23.(1)** Subject to this section, a consent for the purposes of the preceding provisions of this division shall be evidenced by an instrument of consent substantially in accordance with the prescribed form signed by the person giving the consent and attested as prescribed.

**(2)** A consent referred to in section 20(2) or (3) has no force or effect unless it is attested by the chief executive or a person authorised in writing by the chief executive to attest that consent or generally to attest such consents.

**Defective consents**

**24.(1)** The chief executive shall not make an adoption order in reliance on a consent given or purporting to have been given by a person (other than the child) if it appears to the chief executive that—

- (a) the consent was not given in accordance with this Act, or (where applicable) the repealed Acts; or
- (b) the consent was obtained by fraud, duress, or other improper means; or
- (c) the consent was revoked at a time when it had not become irrevocable; or
- (d) the instrument of consent has been altered in a material particular without authority; or
- (e) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent; or
- (f) in the case of the consent of a mother to the adoption of her child—the instrument of consent was signed before the birth of the child.

**(2)** The chief executive shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child within 5 days after the birth of the child unless the chief executive is satisfied, on the certificate of a legally qualified medical practitioner or on other adequate evidence, that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

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(3) For the purposes of subsection (2), the chief executive, if satisfied that no legally qualified medical practitioner was readily available to certify as aforesaid, may be satisfied as to the fit condition of the mother to give the consent as required by that subsection upon the production to the chief executive of a certificate of a person registered as a nurse under the *Nursing Act 1992*, certifying that, at the time when the instrument of consent was signed by the mother of the child, the mother was in a fit condition to give the consent.

**Court may dispense with consents**

**25.(1)** The Supreme Court or the Childrens Court may on the application of—

- (a) the chief executive; or
- (b) a married couple that has duly made and lodged with the chief executive an application to become adoptive parents of a child of whom each of them is either a parent or a relative; or
- (c) a person who has duly made and lodged with the chief executive an application to become an adoptive parent of a child of whom the person is a relative;

by order, dispense with the consent of any person, other than the child where its consent is necessary, to the adoption of a child where the court is satisfied—

- (d) that the person cannot, after reasonable inquiry, be found; or
- (e) that the person is in such a physical or mental condition as not to be capable of properly considering the question whether the person should give his or her consent; or
- (f) that the person has abandoned, deserted or persistently neglected or ill-treated the child; or
- (g) that the person has, for a period of not less than 1 year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (h) that the person has failed to reasonably plan for resumption of care of the child whereby integration of the child in its family is unlikely in the foreseeable future; or

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- (i) that there are any other special circumstances that in the court's opinion make it desirable that an order be made;

and is satisfied that the welfare and interests of the child will be promoted if the order is made.

**(1A)** Where an application is made to the court under subsection (1) by any person or persons other than the chief executive a copy of the application shall be served 21 days at the least before the date fixed for the hearing of the application on the chief executive who shall be entitled to intervene in and become a party to the proceedings.

**(2)** In order to facilitate the making of arrangements by the chief executive with a view to the adoption of a child, the court may, on the application of the chief executive, make an order under this section dispensing with the consent of a person whose consent is required to the adoption of the child before an application to become an adoptive parent of the child has been lodged with the chief executive, and any such order under this section has effect for the purposes of any adoption order that may subsequently be made under this Act.

**(2A)** Where an order is sought under this section before the chief executive has made the assessment of the applicant or applicants required by section 13B to be made or in the circumstances referred to in subsection (2) the court may cause the chief executive to be notified that it is prepared to make the order sought subject to—

- (a) the chief executive or tribunal making an assessment under section 13B of any applicant or applicants to become an adoptive parent or adoptive parents of the child in question; and  
(b) that assessment being favourable to the applicant or applicants;

and refrain from making the order sought until such an assessment is made.

**(3)** An order made under subsection (2) may, on the application of the chief executive or the person whose consent was dispensed with, be revoked—

- (a) in the case of an order made by the Supreme Court—by that court; or  
(b) in the case of an order made by the Childrens Court—by that court or the Supreme Court;

at any time before the making of an adoption order in respect of the child to whom the court order relates.

### **Consent not required in certain circumstances**

**25A.** Subject to section 26, where—

- (a) the chief executive proposes to make an adoption order and is satisfied that the child in respect of whom the order is to be made—
  - (i) has not attained the age of 18 years; and
  - (ii) entered Australia as a non-citizen child; and
- (b) the child has been in the care of the persons in whose favour the adoption order is proposed to be made for at least 12 months; and
- (c) the chief executive considers that the making of the adoption order in favour of those persons would be in the best interests of the child;

no consent to the adoption is required.

### **Consent of child**

**26.(1)** Subject to this division, an order for the adoption of a child who has attained the age of 12 years shall not be made unless the child has consented to the adoption.

**(2)** However, the Supreme Court or the Childrens Court may, on the application of the chief executive, where the court is satisfied that there are special reasons, related to the welfare and interests of the child, why an order of adoption of the child should be made, notwithstanding that the child has refused to consent to the adoption or that the child's consent has not been sought, by order, dispense with the consent of the child.

### **Provisions concerning court's jurisdiction—appeals**

**26A.(1)** When a proceeding for the purposes of section 25 or 26 has been commenced in the Childrens Court, any party to the proceeding or any person likely to be affected by any order made in the proceeding may make

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application to the Supreme Court for an order that the proceeding be removed into the Supreme Court and, if the order is made, the proceeding shall be thereupon removed from the jurisdiction of the Childrens Court accordingly.

(1A) Upon such an application the Supreme Court may make or refuse to make the order sought and may make such order as to costs as it thinks fit.

(2) If the magistrate constituting the Childrens Court to which an application is made pursuant to section 25 or 26 considers that the application should more properly or could more conveniently be determined by the Supreme Court, the magistrate shall refrain from dealing with the application.

(2A) An appeal shall not lie from such a decision.

(3) Any person who feels aggrieved by an order of the Childrens Court made under section 25 or 26 or a refusal by the Childrens Court to make an order under section 25 or 26 (otherwise than pursuant to subsection (2)) may, notwithstanding the provisions of the *District Court Act 1967*, appeal to a judge of the Supreme Court.

(4) Every such appeal shall be by way of re-hearing.

(5) In respect of every such appeal and every order made therein the provisions of division 2 of part 9 of the *Justices Act 1886* other than the provisions of section 222(1), (1A) and (3) and of section 223<sup>4</sup> shall apply with all necessary adaptations and, in particular, for the purposes of such application—

(a) section 222(2) of that Act shall be construed as if—

(i) the words ‘or within 7 days after obtaining the leave of a Judge to appeal against the decision, as the case may be,’ were omitted from paragraph (i)(a); and

(ii) paragraphs (d) to (f) were omitted; and

(b) a reference ‘clerk of petty sessions’ shall be construed as a

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<sup>4</sup> *Justices Act 1886*, sections 222 (Appeal to a single judge) and 223 (Appeal generally a rehearing on the evidence)

reference 'person having custody of the records of the Childrens Court'.

### **Guardianship of child awaiting adoption**

**27.(1)** Upon the chief executive, himself or herself or by the chief executive's duly authorised officer, signifying that the chief executive accepts guardianship of a child in respect of whom the consents required by section 19 to its adoption have been given or dispensed with or upon the expiration of 30 days from the date the chief executive or, as the case may be, the duly authorised officer receives such consents or notification that such consents have been dispensed with, whichever event first occurs, the chief executive shall be the guardian of the child for all purposes, other than the purposes of section 19, to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child; or
- (b) where such consents are given, any such consent is lawfully revoked; or
- (c) another person becomes guardian pursuant to section 27A; or
- (d) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child.

**(2)** The chief executive, himself or herself or by the chief executive's duly authorised officer, may in writing release to its natural parents or 1 of them a child awaiting adoption.

**(2A)** Upon a release to its natural parents or 1 of them of a child awaiting adoption all consents given by the natural parents to the adoption of the child shall be deemed to be thereby lawfully revoked and the guardianship of the child, if it theretofore was in the chief executive, shall thereby pass to the persons or person to whom the child is released.

**(3)** Subsection (1) does not apply—

- (a) to a child for whose guardianship provision is made by the *Children's Services Act 1965*;
- (b) to a child in respect of whom the chief executive has, within the period of 30 days referred to in that subsection, declined in writing to accept guardianship.

(4) Where the chief executive becomes guardian of a child pursuant to this section the chief executive may extend to and in respect of the child such benefits as the chief executive might have extended to or in respect of the child if the child were a child in care within the meaning of the *Children's Services Act 1965* or any Act substituted therefor.

### **Register of children for adoption**

**27A.(1)** Where the chief executive has become guardian of a child pursuant to section 27 or is guardian of a child in respect of whom all consents (other than the chief executive's) necessary to its adoption have been given or dispensed with, except a child in respect of whom the consents necessary to its adoption have been given or dispensed with in relation to its adoption by a person who is a relative of the child, the chief executive shall forthwith cause the child's name to be entered in a register, and shall keep, either in or in connection with the register, such particulars of the child as the chief executive thinks fit.

(2) The register shall be kept in a form that indicates the order in which each child named therein became a child whose name is required to be entered in the register.

(3) If an adoption order has not been made in respect of a child named in the register within 3 months after the child became a child whose name is required to be entered in the register the chief executive shall as soon as is practicable notify that fact to each person who gave consent to the adoption of the child, unless—

- (a) that person has advised the chief executive that he or she does not desire, or that he or she no longer desires, as the case may be, such notification; or
- (b) the whereabouts of that person is unknown to the chief executive after reasonable inquiries have been made.

(4) The chief executive may, in writing, declare a child named in the register to be a special needs child where—

- (a) an adoption order has not been made in respect of that child within 4 months after the child becomes a child whose name is required to be entered in the register; or
- (b) at any time, the chief executive is of the opinion that because of

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the special needs of that child there is little prospect of the child being adopted without considering as a prospective adopter or prospective adopters either a person or persons whose name or names is or are in the adoption list referred to in section 17(2)(a) or a person or persons who may wish to apply to adopt the child.

(5) The chief executive shall regularly review the circumstances of each special needs child with a view to securing for the child a permanent placement within a family environment and promoting the welfare and interests of the child.

(6) When the chief executive is no longer guardian of a child named in the register the name and any other particulars of the child in the register shall be deleted.

(7) This section applies in respect of children within the application of subsection (1) who have come into the guardianship of the chief executive before the commencement of section 21 of the *Adoption of Children Act Amendment Act 1983* as well as in respect of children who come into the chief executive's guardianship after the commencement of that section but in respect of such of the first mentioned children who have been in the chief executive's guardianship for longer than 3 months at the commencement of that section it shall not be obligatory on the chief executive to comply with subsection (3).

### **Renunciation of guardianship of child to be adopted in another State or Territory**

**27B.(1)** Where the chief executive, being guardian of a child pursuant to section 27(1), receives from an officer in another State or in a Territory of the Commonwealth whose powers, functions and duties correspond to those of the chief executive under this Act a notice that application has been or is to be made in that other State or Territory for the adoption of the child and a request that the chief executive renounce the chief executive's guardianship of the child, the chief executive may, if all consents to the adoption of the child obtained to comply with this Act have become irrevocable and if the chief executive thinks it to be in the best interests of the child so to do, by instrument in writing signed by the chief executive renounce the chief executive's guardianship of the child.

(2) Forthwith after signing an instrument of renunciation under

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subsection (1) the chief executive shall send the instrument by registered post to such officer in the other State or Territory concerned together with all consents to the adoption of the child obtained to comply with this Act and held by the chief executive, and upon receipt thereof by such officer the chief executive shall cease to be guardian of the child.

(3) Where application is or is to be made for the adoption of a child of whom the guardian is an officer in another State or in a Territory of the Commonwealth pursuant to a law of that State or Territory that corresponds to section 27, whose powers, functions and duties correspond to those of the chief executive under this Act, the chief executive may notify such officer thereof and request such officer in writing to renounce the officer's guardianship of the child and to send to the chief executive for use in connection with the application all consents to the adoption of the child obtained to comply with a law of that State or Territory that corresponds to this Act and held by such officer.

(4) Upon receiving from such officer an instrument of renunciation of guardianship of the child referred to in subsection (3) together with all consents to the adoption of the child obtained to comply with a law of the State or Territory concerned that corresponds to this Act and held by such officer, the chief executive shall become and be the guardian of the child in all respects (other than as respects the date of commencement of the guardianship) as if such consents had been obtained to comply with this Act and had been duly executed in Queensland on the dates on which they respectively purport to have been signed and attested in that other State or Territory.

**Chief executive may enter into arrangements**

**27C.** When so requested under the *Immigration (Guardianship of Children) Act 1946* (Cwlth) the chief executive may enter into arrangements with the appropriate Commonwealth Minister whereby the guardianship of a non-citizen child who arrives in Australia for the purpose of adoption is transferred to the chief executive.

***Division 4—Effect of adoption orders*****General effect of adoption orders**

**28.(1)** For the purposes of the laws of Queensland but subject to this Act and to the provisions of any other Act that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order—

- (a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or parents of the child, as if the child had been born to the adopter or adopters in lawful wedlock; and
- (b) the adopted child ceases to be a child of any person who was a parent (whether natural or adoptive) of the child before the making of the adoption order, and any such person ceases to be a parent of the child; and
- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent of the adopted child) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant; and
- (d) any guardianship of the adopted child ceases to have effect; and
- (e) any previous adoption of the child (whether effected under the law of Queensland or otherwise) ceases to have effect.

**(1A)** Notwithstanding subsection (1), where a child is adopted by a person who is the spouse of a parent (whether natural or adoptive) of the child whether adopted by that person or jointly by that person and that parent—

- (a) the child does not cease to be a child of that parent and that parent does not cease to be a parent of the child; and
- (b) the relationship between the child and that parent is not determined; and
- (c) if that parent was the guardian of the child—the adoption order does not have the effect of terminating such guardianship; and
- (d) if the child was the adopted child of that parent—the adoption

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order does not have the effect of terminating such adoption.

(2) Notwithstanding subsection (1), for the purposes of any law relating to a sexual offence, being a law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order, as the case may be, had not been made, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

**Effect of orders as regards dispositions of property etc.**

**29.(1)** The provisions of section 28(1) have effect in relation to dispositions of property whether by will or otherwise, and whether made before or after the commencement of this Act, and to devolutions of property in respect of which a person dies intestate after the commencement of this Act, except that—

- (a) those provisions do not affect a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act; and
- (b) those provisions do not affect a disposition of property that has taken effect in possession before the commencement of this Act.

(2) The provisions of section 28(1) do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Act.

(3) Where—

- (a) before the commencement of this Act, a person made, by an instrument other than a will, a disposition of property; and
- (b) the disposition had not taken effect in possession before the commencement of this Act; and
- (c) it did not appear from the instrument that it was the intention of that person to include adopted children as objects of the disposition;

that person may, notwithstanding that the instrument could not, apart from

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this subsection, be revoked or varied, by a like instrument vary the first mentioned instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, and to a devolution of property arising upon the death of a person who in respect of that property died intestate before such commencement, an adoption order made under this Act has effect as if the repealed Acts had not been repealed and the adoption order had been made under the repealed Acts.

(5) Nothing in section 28 or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Act) distinguishing between adopted children and children other than adopted children.

**Bequest by will to unascertained adopted persons**

**29A.(1)** Where, under a will made after the commencement of this section—

- (a) a disposition of property is expressed to be made by the testator to a person who is not named but who is described as child of the testator or of a spouse, parent, child, brother or sister of the testator; and
- (b) the child was described in the will as having been adopted by another person; and
- (c) the personal representative of the testator is unable to ascertain the name and address of the adopted person;

the personal representative shall give to the public trustee a copy of the will and a statement that the personal representative is unable to ascertain the name and address of the adopted person.

(2) Where the public trustee is given a copy of a will under subsection (1), the public trustee shall, by notice in writing given to the chief executive, request the chief executive to make arrangements for ascertaining, and giving to the public trustee, the name, and address of the adopted person.

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(3) Where the chief executive receives a request under subsection (2), the chief executive shall cause such reasonable inquiries to be made of records in the chief executive's possession as will show the name and enable the address or, if the adopted person has died, the date of the death, of the adopted person to be ascertained or, if it appears that the information cannot be obtained from inquiries of those records, seek to obtain the information from the registrar general.

(4) If the chief executive ascertains the name of the adopted person, the chief executive shall take such steps as are reasonably practicable to ascertain the address or, if the adopted person has died, the date of death of the adopted person and shall inform the public trustee of that name and address or date.

(5) If the chief executive is unable to ascertain the name of the adopted person, the chief executive shall so inform the public trustee.

(6) After receiving information from the chief executive under this section, the public trustee shall give notice in writing to the personal representative of the testator stating whether or not the name and address of the adopted person has been ascertained or, if the adopted person has died, the date of death of the adopted person.

(7) Unless the adopted person predeceased the testator or, for any other reason known to the personal representative, is not entitled to an interest under the will, the public trustee is hereby declared to be a trustee for the adopted person on the trusts specified in, or arising under, the will and, if the personal representative transfers the property to the public trustee as trustee for the adopted person, the personal representative shall be deemed to have transferred the property to the adopted person.

(8) Where the public trustee—

- (a) is, under subsection (7), a trustee for an adopted person who is a beneficiary under a will; and
- (b) gives the personal representative of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the property to which the adopted person was entitled under that will;

that statement is, for the purposes of the administration of the estate by the

personal representative, conclusive evidence that the adopted person has disclaimed the property.

### **Names of adopted child**

**30.(1)** Subject to subsection (2), upon the making of an adoption order, the adopted child shall have as the adopted child's surname the surname of the adopter or adopters and shall have as the adopted child's first name or christian name or names such name or names as the chief executive, in the adoption order, approves on the application of the adopter or adopters.

**(2)** Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the chief executive may, in the adoption order, order that the child shall have that name as the adopted child's surname.

**(3)** Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with any other Act or law.

### **Adoption order not to affect the distribution of property by trustees or personal representatives unless notice given**

**32.(1)** Notwithstanding any other provision of this Act, trustees or personal representatives may, subject to this section, convey, transfer or distribute real or personal property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption has been effected by virtue of which a person is or is not entitled to an interest in the property.

**(2)** A trustee or personal representative conveying, transferring or distributing real or personal property in the manner referred to in subsection (1) of this section shall not be liable to a person claiming directly or indirectly by virtue of an adoption unless the trustee or personal representative has notice of the claim before the time of the conveyance, transfer or distribution.

**(3)** Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

***Division 5—Interim orders*****Making of interim orders**

**33.(1)** Notwithstanding that the chief executive or the tribunal has made assessments under this Act that are favourable to any prospective adopter or prospective adopters the chief executive or tribunal may, instead of making an adoption order, make an interim order for the custody of the child in favour of the prospective adopter or prospective adopters.

**(2)** An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the chief executive thinks fit.

**(3)** The chief executive shall not make an interim order in respect of a child in favour of any person or persons unless the chief executive could lawfully make an order for the adoption of that child by that person or those persons.

**(4)** While an interim order remains in force in respect of a child, the person or persons in whose favour the order is made is or are entitled to the care and custody of the child.

**Duration of interim orders**

**34.(1)** Subject to this division, an interim order remains in force for such period, not exceeding 1 year, as the chief executive specifies in the order and for such further periods (if any) as the chief executive may from time to time order.

**(2)** An interim order shall not be in force for periods exceeding in the aggregate 2 years.

**Discharge of interim orders**

**35.(1)** The chief executive may, at any time, make an order discharging an interim order made under this division or under the repealed Acts, and, if the child was, at the time of the making of the interim order, a ‘child in care’ within the meaning of the *Children’s Services Act 1965*, and is at the time of discharge of the interim order, under the age of 18 years, the child shall be a ‘child in care’, within the meaning of that Act.

(2) An interim order, whether under this Act or the repealed Acts, ceases to have effect upon the making of an order for the adoption of that child, whether made in Queensland or in another State or in a Territory of the Commonwealth or in New Zealand.

## **PART 4—RECOGNITION OF ADOPTIONS AND RELATED MATTERS**

### *Division 1—Recognition of interstate and foreign adoptions*

#### **Recognition of Australian and New Zealand adoptions**

37. For the purposes of the laws of Queensland, the adoption of a person (whether before or after the commencement of this Act) in another State or a Territory of the Commonwealth or in New Zealand, in accordance with the law of that State or Territory or country has, so long as it has not been rescinded under the law in force in that State or Territory or country, the same effect as an adoption order made in Queensland under this Act, and has no other effect.

#### **Recognition of adoptions granted in convention countries**

37A.(1) This section applies to an adoption granted in a convention country if—

- (a) when the adoption is granted—
  - (i) the adopted child is habitually resident in a convention country; and
  - (ii) the adopter is habitually resident in a convention country, Australia or New Zealand; and
- (b) an adoption compliance certificate, issued in the convention country in which the adoption is granted, is in force for the adoption.

(2) The adoption has effect as if it were an adoption order made under

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this Act.

(3) However, subsection (2) does not apply if the Supreme Court makes a declaration of non-recognition of the adoption.

(4) The Supreme Court may make a declaration of non-recognition of the adoption if it is satisfied the adoption is manifestly contrary to public policy, taking into account the child's best interests.

(5) An interested person may apply to the Supreme Court for a declaration of non-recognition of the adoption.

(6) Before applying for the declaration, the person must give written notice—

- (a) if the person is the chief executive—to the Commonwealth central authority; or
- (b) otherwise—to the chief executive.

(7) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.

(8) If the chief executive is given a notice under subsection (6)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.

(9) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.

(10) This section is subject to division 2.

(11) In this section—

**“declaration of non-recognition”**, of an adoption granted in a convention country, means a declaration that the adoption does not have effect as if it were an adoption order made under this Act.

**“interested person”**, for an adoption, means—

- (a) the chief executive; or
- (b) an adopter; or
- (c) the adopted child.

**Recognition of adoptions granted in non-convention countries**

**38.(1)** For the purposes of the laws of Queensland, the adoption of a person in a non-convention country, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order under this Act.

**(2)** This section applies to an adoption in a non-convention country if—

- (a) the adoption was effective according to the law of that country; and
- (b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters, was resident or domiciled in that country and had been so resident or domiciled for not less than 12 months; and
- (c) in consequence of the adoption, the adopter or adopters had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the adopted person; and
- (d) under the law of that country the adopter or adopters were, by the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

**(4)** Where in any proceedings before a court (including proceedings under section 39) the question arises whether an adoption is one to which this section applies, it shall be presumed, in the absence of proof to the contrary, that in relation to the adoption the conditions referred to in subsection (2) are satisfied and that the adoption has not been rescinded.

**(5)** Notwithstanding the foregoing provisions of this section, a court (including a court dealing with an application under section 39) may refuse to recognise an adoption as being an adoption to which this section applies if it appears to the court that the procedure followed or the law applied in connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.

**(6)** A document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority in a non-convention country shall, upon its production, in the absence of

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proof to the contrary, be sufficient evidence—

- (a) that the adoption was made in and is effective according to the law of that country; and
- (b) that the adoption has not been rescinded.

(7) Except as provided in this section, the adoption of a person in a non-convention country does not have effect for the purposes of the laws of Queensland.

(8) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.

*Division 2—Simple adoptions***Definitions for div 2**

**38AA.** In this division—

**“conversion”**, of a simple adoption, means conversion into a full adoption under article 27 of the Hague convention.

**“declaration of non-recognition”**, of the conversion of a simple adoption, means a declaration that, despite the conversion, the adoption is taken to remain a simple adoption.

**“full adoption”** means an adoption other than a simple adoption.

**“interested person”**, for an adoption, means—

- (a) the chief executive; or
- (b) an adopter; or
- (c) the adopted child.

**“simple adoption”** means an adoption granted in a convention country that, under the law of that country, does not end the legal relationship between the adopted child and the individuals who were, immediately before the adoption, the child’s parents.

**Simple adoption does not end parent-child relationship**

**38AB.** Despite section 37A(2),<sup>5</sup> a simple adoption does not end the legal relationship between the adopted child and the individuals who were, immediately before the adoption, the child's parents.

**Conversion of simple adoption in convention country**

**38AC.(1)** If a simple adoption is converted in a convention country, the adoption is taken to be a full adoption.

(2) However, subsection (1) does not apply if the Supreme Court makes a declaration of non-recognition of the conversion.

(3) The Supreme Court may make a declaration of non-recognition of the conversion if it is satisfied the conversion is manifestly contrary to public policy, taking into account the child's best interests.

(4) An interested person may apply to the Supreme Court for a declaration of non-recognition of the conversion.

(5) Before applying for the declaration, the person must give written notice—

- (a) if the person is the chief executive—to the Commonwealth central authority; or
- (b) otherwise—to the chief executive.

(6) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.

(7) If the chief executive is given a notice under subsection (5)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.

(8) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.

**Conversion of simple adoption by chief executive**

**38AD.(1)** On application by an adopter of a child under a simple

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<sup>5</sup> Section 37A (Recognition of adoptions granted in convention countries)

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adoption, the chief executive may, by written order, declare the adoption to have effect as a full adoption.

(2) If the chief executive makes the order, the adoption has effect as a full adoption.

(3) The chief executive may make the order only if the chief executive is satisfied—

- (a) an adoption compliance certificate, issued in the convention country in which the adoption was granted, is in force for the adoption; and
- (b) the adopter is habitually resident in Queensland; and
- (c) when the adoption was granted, the adopted child was habitually resident in the convention country; and
- (d) if the adopted child is not in Australia when the chief executive proposes to make the declaration—the child is not prevented from entering Australia—
  - (i) under a law of the Commonwealth or a State; or
  - (ii) by an order of a court of the Commonwealth or a State; and
- (e) the child is not prevented from residing permanently in Australia—
  - (i) under a law of the Commonwealth or a State; or
  - (ii) by an order of a court of the Commonwealth or a State.

*Division 3—Other matters concerning foreign adoptions***Chief executive to have limited supervision of adopted children**

**38A.(1)** Subject to subsections (2) and (3), where—

- (a) a child is adopted in a country (other than New Zealand) outside the Commonwealth and the Territories of the Commonwealth, whether or not the adoption is one that pursuant to this Act has the same effect as an adoption order under this Act; and
- (b) the adoption of that child has been in force for a period not

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exceeding 12 months; and

- (c) the adopter or 1 of the adopters was not, at the time of making the order of adoption in relation to that child, a national or citizen of the country in which the order was made; and
- (d) that child is present in Queensland;

the chief executive may supervise the welfare and interests of that child for a period of 12 months commencing on the date of arrival of the child in Queensland and any person authorised in writing by the chief executive in that behalf either generally or in any particular case has a right of access to the child at all reasonable times during that period.

(2) Where a child whose welfare and interests may be supervised by the chief executive pursuant to subsection (1) has, after being adopted but before the child's arrival in Queensland, been resident in any State (other than Queensland) or in a Territory of the Commonwealth or in New Zealand the period during which the child is subject to the chief executive's supervision shall be reduced proportionately to the period of its residence in that other State or Territory or in New Zealand.

(3) The chief executive may exempt any child to whom subsection (1) would otherwise apply from the provisions of that subsection whereupon, for as long as the exemption subsists, that subsection shall not apply in relation to that child.

### **Declarations of validity of foreign adoptions**

**39.(1)** A person specified in subsection (2) may apply to the Supreme Court for an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of a country outside the Commonwealth and the Territories of the Commonwealth, and that the adoption is one to which section 37A or 38 applies, and the court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The persons who may make an application under subsection (1) in relation to an adoption are the adopted child, the adoptive parent or either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

(3) Where an application is made under this section, a copy of the

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application shall be served, 21 days at the least before the date fixed for the hearing of the application, on the chief executive who shall be entitled to intervene in and to become a party to the proceedings concerning the application.

**(3A)** Where an application is made under this section, the court may—

- (a) direct that notice of the application be given to such persons (who may include the Attorney-General) as the court thinks fit; or
- (b) direct that a person be made a party to the application; or
- (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

**(4)** Where the court makes an order upon the application, it may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the court finds to be established.

**(5)** In the case of an application to the court under subsection (1), the court may make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

**(6)** For the purposes of the laws of Queensland, an order under this section binds the Crown in right of the State of Queensland, whether or not notice was given to the Attorney-General, but, except as provided in subsection (7), does not affect—

- (a) the rights of another person unless that person was—
  - (i) a party to the proceedings for the order or a person claiming through such a party; or
  - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or
- (b) an earlier judgment, order or decree of a court of competent jurisdiction.

**(7)** In proceedings in a court in Queensland, being proceedings relating to the rights of a person other than a person referred to in subsection (6)(a)(i) or (ii), the production of a copy of an order made under this section, certified by the registrar of the Supreme Court to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 37A or 38 applies.

## PART 4A—ACCESS TO IDENTIFYING INFORMATION

### Interpretation

**39A.** In this part—

**“adopted person”** means a person who has been adopted in accordance with the law of Queensland applicable to adoptions at the time when the adoption of the person occurred and who has attained the age of 18 years.

**“adoptive parent”** means a person who has adopted a person in accordance with the law of Queensland applicable to adoptions at the time when the adoption of the person occurred.

**“birth parent”**, in relation to an adopted person, means a parent (whether natural or adoptive) of the adopted person whose consent to the adoption of the adopted person was given or dispensed with in accordance with the law of Queensland applicable to adoptions at the time when the adoption of the adopted person occurred.

**“relative”**, in relation to an adopted person, means a person who—

(a) but for the adoption would be—

(i) a brother or sister, whether of the whole or half blood;

(ii) an uncle or aunt by consanguinity or affinity; or

(iii) a grandparent;

of the adopted person;

(b) is a son or daughter of the adopted person, whether natural or adoptive.

### Objections

**39AA.(1)** This section does not apply in relation to an adoption that happens on or after 1 June 1991.

**(2)** A birth parent of an adopted person, or an adopted person who is at least 17 years and 6 months old, may—

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- (a) object to contact being made with the person by a specified person of class of persons; or
- (b) object to contact being made with the person by a specified person or class of persons and also object to the disclosure of information under section 39B to the person or those persons.

(3) The objection must be made by giving the chief executive written notice of the objection in the form approved by the chief executive in writing.

(4) A person who has applied for or received information under section 39B about another person may not make an objection under subsection (2)(b) in relation to the other person.

(5) An objection made by a person who has not attained 18 years of age takes effect when the person attains 18.

(6) An objection made by a person continues in force until it is revoked by the person.

(7) A revocation must be made by giving the chief executive written notice of the revocation in the form approved by the chief executive in writing.

(8) A person must not publish or broadcast—

- (a) the name of a birth parent or adopted person; or
- (b) any other information likely to identify a birth parent or adopted person;

if an objection by the birth parent or adopted person is in force.

Maximum penalty—40 penalty units.

**Disclosure of certain information**

**39B.(1)** An adopted person is entitled to have the chief executive disclose to the adopted person—

- (a) the name of the adopted person's birth parent as at the date consent to the adoption of the adopted person was given or dispensed with; and
- (b) the date of birth of the adopted person's birth parent; and

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- (c) the name and date of birth of any other adopted person who has or had at least 1 parent (whether natural or adoptive) who is or was a birth parent of the adopted person and if—
  - (i) the other adopted person has not made an objection under section 39AA(2)(a) that is in force; and
  - (ii) the other adopted person has so requested in writing; the name and the address of the other adopted person last known to the chief executive;
- (d) if the birth parent has not made an objection under section 39AA(2)(a) that is in force and the birth parent has so requested in writing—the name and the address of the birth parent last known to the chief executive.

**(2)** A birth parent is entitled to have the chief executive disclose to the birth parent in respect of an adopted person of whom he or she is a birth parent—

- (a) the name, at the date of adoption, of the adopted person; and
- (b) the name, at the date of adoption, of the adoptive parent of the adopted person; and
- (c) if the adopted person has not made an objection under section 39AA(2)(a) that is in force and the adopted person has so requested in writing—the name and the address of the adopted person last known to the chief executive.

**(3)** The chief executive may disclose to a relative, who has attained the age of 18 years, of an adopted person—

- (a) the name, at the date of adoption, of the adopted person; and
- (b) the name, at the date of adoption, of the adoptive parent of the adopted person; and
- (c) if the adopted person has not made an objection under section 39AA(2)(a) that is in force and the adopted person has so requested in writing—the name and the address of the adopted person last known to the chief executive.

**(4)** The chief executive may disclose to an adoptive parent, or to a relative who is at least 18 years old, of an adopted person—

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- (a) the name of the adopted person's birth parent as at the date consent to the adoption of the adopted person was given or dispensed with; and
- (b) the date of birth of the adopted person's birth parent; and
- (c) if the birth parent has not made an objection under section 39AA(2)(a) that is in force and the birth parent has so requested in writing—the name and the address of the adopted person's birth parent last known to the chief executive.

(5) The chief executive shall not disclose information referred to in subsection (3) or (4) unless the chief executive is satisfied that—

- (a) in the case of subsection (3)—the birth parent is dead or is in such a condition as to be permanently incapable of applying to have the information referred to in subsection (2) disclosed; and
- (b) in the case of subsection (4)—the adopted person is dead or is in such a condition as to be permanently incapable of applying to have the information referred to in subsection (1) disclosed.

(6) The chief executive must not, under this section, disclose to a person information in relation to another person if an objection by either person under section 39AA(2)(b) is in force in relation to the other person.

(7) The chief executive must not, under subsection (1), disclose information to an adopted person about any other adopted person if—

- (a) either adopted person was adopted by a person who is or was a relative (as defined by section 6) of that adopted person; and
- (b) an objection by the birth parent under section 39AA(2)(b) is in force in relation to either adopted person.

(8) Application for disclosure of information under this section must be made to the chief executive in writing in the form approved by the chief executive in writing.

**Entitlement to certain records etc.**

**39C.** An adoptive person, adoptive parent, birth parent, or relative who has received information in respect of a person under section 39B, or has participated in a reunion pursuant to section 39G (being section 39G

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repealed by the *Adoption of Children Act Amendment Act 1990*), shall be entitled to receive from the registrar general, upon presentation to the registrar general of an authorisation supplied by the chief executive and payment of the fees prescribed under the *Registration of Births, Deaths and Marriages Act 1962*—

- (a) if he or she is an adopted person or an adoptive parent—a certified copy of the entry related to the adopted person as recorded in the Register of Births, endorsed ‘Not to be used for official purposes’;
- (b) if he or she is a birth parent or a relative—
  - (i) a certified copy of the amended birth entry of the adopted person; and
  - (ii) a certified copy of the entry related to the adopted person as recorded in the Register of Births, endorsed ‘Not to be used for official purposes’.

**Offence to contact etc.**

**39D.(1)** Any adopted person, adoptive parent, birth parent or relative who has received information in respect of a person under section 39B shall not—

- (a) contact or attempt to contact that person; or
- (b) arrange or attempt to arrange contact with that person; or
- (c) procure another person to contact, attempt to contact, or attempt to arrange contact with, that person;

if that person has, to the knowledge of, the first mentioned person, parent or relative, made an objection under section 39AA that is in force in relation to the first mentioned person, parent or relative.

**(2)** Any adopted person, adoptive parent, birth parent or relative who has received information in respect of a person under section 39B shall not intimidate or harass that person or procure any other person to intimidate or harass that person.

**(3)** A person shall not claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to

contravening subsection (1) or (2).

Maximum penalty—100 penalty units or imprisonment for 2 years.

### **Counsellors**

**39E.(1)** The chief executive may approve of such number of persons as the chief executive thinks necessary who have appropriate qualifications and experience to be counsellors for the purposes of this part.

**(2)** Any fees payable to a counsellor for such services are to be arranged between the counsellor and the person concerned.

## **PART 5—OFFENCES**

### **Territorial application of part**

**40.** This part, unless otherwise expressly provided, applies in respect of acts done in Queensland in relation to the adoption of children in, or children adopted in, another State or a Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth.

### **Communication etc. by natural parent with adopted child**

**41.(1)** A person who, by reason of the adoption of a child, has ceased to be and is not the parent or guardian of the child—

- (a) shall not take, lead, entice or decoy the child away, or detain the child, with intent to deprive the adopter or adopters of possession of the child; and
- (b) shall not interfere in or influence the upbringing of the child, or the relationship of the child with its adopter or adopters; and
- (c) shall not communicate with the child or with any other person who, to the knowledge of the person, is the adopter or 1 of the adopters of the child, except—
  - (i) with the approval of the chief executive first had and

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obtained; or

- (ii) where the adopter or 1 of the adopters is a relative of the child; or
- (iii) in accordance with part 4A.

(2) A person shall not attempt to contravene any provision of subsection (1).

(3) Where application is made to the chief executive for the chief executive's approval of a communication between a person referred to in subsection (1) and a child or an adopter of a child the chief executive shall not so approve unless the adopter or, where there are 2 adopters, both of them consent to the chief executive so approving.

(4) Where an application for the chief executive's approval of communication is made in relation to a child who immediately before the child's adoption was a special needs child, it is competent to the chief executive, subject to subsection (3)—

- (a) to give the chief executive's approval to communication generally; or
- (b) to give the chief executive's approval to communication restricted in such manner as the chief executive thinks fit.

(5) In this section—

“**communicate**” includes to make contact with by any means whatever or to be in the company of and “**communication**” shall be construed accordingly.

### **Harbouring child taken from adopters**

42. A person shall not receive or harbour a child on behalf of a person who, to the person's knowledge, has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of section 41.

### **Payments in consideration of adoptions etc.**

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

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- (a) the adoption or proposed adoption of a child; or
- (b) the giving of consent, or the signing of an instrument of consent, to the adoption of a child; or
- (c) the transfer of possession or custody of a child with a view to the adoption of the child; or
- (d) the making of arrangements with a view to the adoption of a child.

(2) The references in subsection (1) to the adoption or proposed adoption of a child shall be read as including references to the adoption or proposed adoption of a child under the law of any place (whether in or outside the Commonwealth and the Territories of the Commonwealth).

(3) Subsection (1) does not apply to or in relation to either of the following payments or rewards in connection with an adoption or proposed adoption under this Act—

- (a) a payment made by the adopter or adopters, with the approval in writing of the chief executive, in respect of the hospital and medical expenses reasonably incurred in connection with the birth of the child or the antenatal or postnatal care and treatment of the mother of the child or of the child;
- (b) any other payment or reward authorised in writing by the chief executive.

(4) Subsection (1) does not apply to or in relation to a payment or reward in connection with an adoption or proposed adoption under the law of another State or of a Territory of the Commonwealth or of a country outside the Commonwealth and the Territories of the Commonwealth if the making of the payment or the giving of the reward, or any agreement so to do would have been lawful if it had taken place in that State or Territory or country.

**Restrictions on advertising**

**44.(1)** Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting, television or public exhibition, any advertisement, news item or other matter indicating (whether or not in relation to a particular child, born or unborn)

that—

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

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

### **Restrictions on publication of identity of parties**

**45.(1)** Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, in relation to—

- (a) an application under this Act (whether to the chief executive or to any court or the tribunal); or
- (b) an application under a law of another State or of a Territory of the Commonwealth for the adoption of a child or for the discharge of an order for the adoption of a child; or
- (c) the proceedings on an application referred to in paragraph (a) or (b);

the name of the applicant, the child, the father or mother or a guardian of the child, or, where applicable, the name of an adopter of the child, or any matter reasonably likely to enable any of those persons to be identified.

(2) Subsection (1) does not apply to the publication of any matter with the authority of the court or tribunal to which the application was made.

### **Penalty for making unauthorised arrangements**

**46.(1)** Subject to this section, a person shall not, unless the person is a duly authorised officer, employee, or agent of the chief executive, conduct, or attempt to conduct, any negotiation, or make, or attempt to make, any arrangement with a parent or guardian of a child for or towards or with a view to the adoption of the child.

(2) Subsection (1) shall not be taken to refer to or include the preparation

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of an application under this Act for the adoption of a child or any arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by a relative of the child.

**False statements**

**47.** A person shall not, whether orally or in writing, wilfully make a false statement for the purposes of or in connection with a proposed adoption or any other matter under this Act.

**Personation**

**48.** A person shall not personate or falsely represent himself or herself to be—

- (a) a person whose consent to the adoption of a child is required by this Act or by the law of another State or of a Territory of the Commonwealth; or
- (b) a person—
  - (i) who is authorised by this Act to do anything for any purpose for which this Act provides; or
  - (ii) whose act is necessary to attain any purpose for which this Act provides.

**Presenting forged documents**

**49.** A person shall not present or cause to be presented to the chief executive or to any person acting on behalf of the chief executive or to any court or the tribunal a document purporting to be signed by a particular person, which document—

- (a) is required by this Act in connection with any application or other matter under this Act; or
- (b) might affect any application or other matter under this Act;

knowing that the signature to the document is forged or was obtained by fraud or duress.

**Improperly witnessing consent to adoption**

**50.** A person shall not subscribe the person's name as a witness to the signature of a person to an instrument of consent to the adoption of a child (whether under this Act or under the law of another State or of a Territory of the Commonwealth) unless—

- (a) the person is satisfied that the person signing the instrument is a parent or guardian of the child; and
- (b) the person takes such steps as are prescribed to satisfy himself or herself that the person signing the instrument understands the effect of the consent; and
- (c) the instrument bears the date on which the person subscribes his or her name as a witness.

**Undue influence**

**50A.** A person who uses or threatens to use any force or restraint or does or threatens to do any injury, or causes or threatens to cause any detriment of any kind to a parent or guardian of a child with a view—

- (a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act; or
- (b) to influencing the parent or guardian in the expression of any wishes contained in an instrument of consent to the adoption of a child; or
- (c) to inducing the parent or guardian to revoke a consent to the adoption of the child given by that parent or guardian;

or to any person with a view to inducing that person to make an application under part 4A, commits an offence against this Act.

**Authority to prosecute**

**51.** Proceedings for an offence against this Act shall not be commenced except with the written consent of the Minister.

**Summary proceedings**

**52.(1)** All offences against this Act may be prosecuted in a summary way under the *Justices Acts 1886*.

**(2)** A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

**General penalty**

**53.(1)** Any person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

**(2)** Any person who commits an offence against this Act is liable, except where another penalty is specifically provided, to a penalty not exceeding 40 penalty units or to imprisonment for a term not exceeding 6 months.

**PART 6—MISCELLANEOUS****Registration of orders**

**54.(1)** The chief executive shall cause a memorandum, in accordance with the prescribed form, of every adoption order made under this Act to be sent to the registrar general.

**(2)** The registrar of the Supreme Court shall cause a copy of every order made under this Act for the discharge of an adoption order to be sent to the registrar general.

**(3)** Upon receipt of a memorandum or copy of an order sent to the registrar general under the preceding provisions of this section, the registrar general shall—

- (a) register it, as prescribed, in the Adopted Children Register; and
- (b) if it relates to a child whose birth is registered in Queensland—make such alterations to, or entries in, the appropriate registers of births as are prescribed.

**Adopted Children Register**

**55.** The ‘Adopted Children Register’ made and kept by the registrar general under the repealed Acts shall continue and shall be the Adopted Children Register under this Act.

**Sending of memoranda of orders to other places**

**56.** Where under this Act an adoption order or an order for the discharge of an adoption order has been made, and the registrar general has reason to believe that the birth of the child is registered in another State or in a Territory of the Commonwealth or in New Zealand, the registrar general shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by the registrar general to be a true memorandum or copy, to be sent to such officer of that State or Territory or country having functions in relation to the registration of births as is prescribed.

**Particulars of orders received from other States and countries**

**57.** Where the registrar general receives, in relation to a child whose birth is registered in Queensland—

- (a) a memorandum or copy of an adoption order made under the law in force in another State or in a Territory of the Commonwealth, or of an order discharging such an order certified in writing to be a true memorandum or copy by a person authorised so to certify under the law of that State or Territory; or
- (b) an original or a copy of an order or record of adoption made in a country outside the Commonwealth and the Territories of the Commonwealth that has the same effect as an adoption order under this Act, or of a rescission of such an adoption, certified, in the case of a copy, in writing to be a true copy by a person having custody of the original thereof in that country;

the registrar general shall—

- (c) register it, as prescribed, in the Adopted Children Register; and

- (d) make such alterations to, or entries in, the appropriate registers of births as are prescribed.

### **Assistance to adopters and adopted children**

**57A.(1)** Where an adoption order has been made and it appears to the chief executive that the welfare or interests of the child to whom the order relates requires that assistance be given to the adopter or adopters (or either of them) in whose favour the order was made or to such child, the chief executive may in the chief executive's discretion give such assistance in such form and for such period as the chief executive considers appropriate.

(2) The regulations may prescribe in relation to the giving of assistance under subsection (1) and where they do so such assistance shall be given in accordance with the regulations.

(3) When assistance that may be given under subsection (1) involves the expenditure of money by the chief executive the power conferred by that subsection shall be subject to appropriation by Parliament of moneys for the purpose.

### **Hearings to be in camera**

**58.** An application made under this Act to any court or the tribunal shall be heard in camera and a person—

- (a) who is neither a party to the proceedings nor a representative of a party to the proceedings; or
- (b) who claims to represent a party to the proceedings in a case where representation is excluded by this Act;

shall be excluded from the hearing unless the court or tribunal otherwise permits.

### **Confidentiality**

**59.(1)** Every officer of the department engaged in giving effect to this Act and every person engaged by the chief executive in giving effect to this Act shall, as soon as is practicable after the commencement of section 31 of the *Adoption of Children Act Amendment Act 1983* or, if the officer or

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person first becomes a person of that description after the commencement of that section, within 7 days after the officer or person becomes a person of that description, take and subscribe the prescribed oath of confidentiality or make the prescribed affirmation of confidentiality and abide by his or her oath or affirmation.

**(1A)** An oath or affirmation referred to in subsection (1) may be administered or, as the case may be, taken by any justice of the peace.

**(2)** Except where it is otherwise prescribed by this Act, the records of the chief executive or of the tribunal relating to any matter or proceeding under this Act or under the law of Queensland applicable to adoptions at any time or any proceeding with respect to a child available for adoption shall not be open to inspection by any person other than—

- (a) an officer of the department, in the ordinary discharge of the officer's duties; or
- (b) any other person engaged in giving effect to this Act, in the ordinary discharge of the duties of the person's engagement; or
- (c) any person authorised by the chief executive (in the case of the chief executive's records) or the chairperson of the tribunal (in the case of the tribunal's records) for the purpose of conducting a bona fide research program where that person has given to the chief executive or, as the case may be, the chairperson an undertaking in writing to preserve the identity of and confidentiality in relation to individual persons to whom the records relate; or
- (d) in the case of a record of the tribunal—a party to the proceeding before the tribunal to which the record relates.

**(3)** An officer of the department, or other person engaged in giving effect to this Act shall not disclose or be required to disclose to any person, court or tribunal information that—

- (a) is likely to allow identification, by the natural parents of a person who has been adopted, of that person or the person's whereabouts; or
- (b) is likely to allow identification, by the natural parents of a person who has been adopted, of the adoptive parents of that person or their whereabouts; or

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- (c) is likely to allow identification, by the adoptive parents of a person who has been adopted, of the natural or adoptive parents of that person or their whereabouts; or
- (d) is likely to allow identification, by a person who has been adopted, of the person's natural parents or their whereabouts;

except where this Act otherwise permits, expressly or impliedly, or where such identification is unavoidably incidental to the adoption of the person who has been adopted.

**(3A)** In subsection (3)—

**“adoptive parents”** has the meaning assigned to it in part 4A.

**(4)** An officer of the department or any other person engaged in giving effect to this Act shall not disclose to any person—

- (a) information that to the officer's knowledge is contained in the records of the chief executive or the tribunal; or
- (b) information that has come to the officer's knowledge in connection with the officer giving effect to this Act;

except—

- (c) where the disclosure is to facilitate giving effect to this Act and does not constitute a contravention of subsection (3); or
- (d) where the chief executive is satisfied that the disclosure is for a reasonable purpose in the circumstances and does not constitute a contravention of subsection (3); or
- (e) where the disclosure is made under the authority of an order of the Supreme Court made in exercise of jurisdiction, which is hereby conferred upon the court, to make such an order upon the application of the chief executive if the court is satisfied that the disclosure proposed is necessary in the interests of the health of any person or in furtherance of medical research; or
- (f) where the disclosure is to the Supreme Court for the purposes of a proceeding under section 16.

**(4A)** Subsection (4) applies to a person referred to in subsection (2)(c) as if the person were an officer of the department.

**(5)** Subsections (3) to (4) do not operate so as to prejudice the entitlement

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of any person referred to in subsection (2) to access to records of the chief executive or the tribunal.

(6) A person who—

- (a) permits access to the records of the chief executive or the tribunal to any person except one authorised by this Act to have such access; or
- (b) not being authorised by this Act to have access to the records of the chief executive or the tribunal or to a particular part thereof, inspects any part of those records or, as the case may be, that part or attempts so to do; or
- (c) makes a disclosure that is in contravention of this section;

commits an offence against this Act.

(7) A court shall not convict a person of an offence defined in subsection (6)(c) if it is satisfied that the disclosure consists in a publication to which section 45(1) is expressed by section 45(2) not to apply.

### **Protection of persons**

**59A.(1)** A person who for any purpose of this Act inserts or publishes in or by way of the records of the chief executive or the tribunal, or makes or gives any allegation, comment, or opinion in respect of any matter that concerns the history or family background of any child or its parent, or of any person who has applied to have his or her name included in the adoption list or to become an adoptive parent, or that concerns the welfare of any child shall not thereby incur any liability for injury to any person if the person has therein acted in good faith and without malice and with reasonable care.

(2) In any proceeding taken against any such person on account of such an insertion, publication, making or giving, the burden of proof that such person has acted otherwise than in good faith or with malice or without reasonable care shall be on the plaintiff.

### **Disclosure of information authorised in certain cases**

**59B.** Notwithstanding the provisions of section 59 or any other provision of this Act, where the chief executive has entered into working

arrangements with—

- (a) the government of a country outside the Commonwealth and the Territories of the Commonwealth; or
- (b) any authority or person in such a country being an authority or person recognised by the chief executive as having a proper concern with the adoption of children in or from that country;

for the purpose of facilitating the adoption in Queensland of children from that country, the chief executive or any officer of the department authorised by the chief executive in that behalf either generally or in any particular case may give, supply or transmit to such government or a person or authority acting under the authority of such government or, as the case may be, to such authority or person with whom the working arrangements subsist any information, report or document that is to be given, supplied or transmitted by the chief executive to that government, authority or person under the terms of such working arrangements.

### **Disclosure of criminal histories**

**59C.(1)** Upon a request signed by the chief executive or an officer of the department authorised in writing by the chief executive in that behalf, the commissioner of the police service or a person delegated by the commissioner for the purpose shall disclose in writing to the chief executive the criminal history (as shown in the commissioner's records) of any person specified in the request to be an applicant to become an adoptive parent or a prospective adopter.

**(2)** The Crown, a police officer or any other person shall not incur liability, on account of a disclosure of the whole or any part of the criminal history of any person pursuant to the obligation imposed by subsection (1).

### **Proof of adoptions**

**60.(1)** In any proceedings in any court in Queensland—

- (a) a document purporting to be either the original or a certified copy of or certified extract from an order effecting an adoption (whether in Queensland or elsewhere); or
- (b) a certified copy of an entry in any public official record of the

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adoption of children (whether kept in Queensland or elsewhere) or a certificate or extract giving particulars of such an entry and purporting to be signed by the person having the custody of such record; or

- (c) a document purporting to be an order made under section 38AD or a certified copy of an order made under section 38AD;<sup>6</sup>

shall be prima facie evidence of the making of the order and of the facts stated therein.

(2) An adoption compliance certificate is evidence that the adoption to which it relates—

- (a) was agreed to by the central authorities of the countries stated in it; and
- (b) was carried out under the Hague convention and the laws of the countries stated in it.

**Judicial notice of signatures**

61. In proceedings under this Act, or affecting any matter under this Act, judicial notice shall be taken of the signature of a person who holds or has held or is acting or has acted in any of the following offices, that is to say—

- (a) the director of the Department of Children's Services;
- (b) the deputy director of the Department of Children's Services;
- (c) the permanent head for the purposes of the *Family Services Act 1987*;
- (d) the chief executive;

and of any corresponding officer in another State or in a Territory of the Commonwealth, and of any delegate of such a person, appearing on a document and of the fact that, at the time the document was signed by him or her, he or she held, or was acting in, that office.

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<sup>6</sup> Section 38AD (Conversion of simple adoption by chief executive)

### **Deputy director**

**62.** The fact that the deputy director of the Department of Children's Services or a person for the time being performing the duties of the office of the deputy director of the Department of Children's Services made an adoption order or exercised any power, authority or function, or performed any duty conferred by this Act or the repealed Acts on the director of the Department of Children's Services shall, until the contrary is proved, be sufficient evidence that the deputy director or such person so acted in accordance with section 12<sup>7</sup> of the *Children's Services Act 1965*.

### **Engagement of agents**

**62A.(1)** The chief executive may enter into contracts for services with such persons having qualifications and experience appropriate to the proper discharge of the contracts as the chief executive thinks fit with a view to those persons acting as the chief executive's agents in preparing reports in connection with the making of assessments.

**(2)** Every person with whom the chief executive enters into a contract under subsection (1) shall be entitled to fees upon a scale from time to time approved by the Minister.

### **Parties to applications under Act**

**63.(1)** Where an application is made to the court under section 16, 25, or 26<sup>8</sup> the court may permit such persons as it thinks fit to be joined as parties to the proceedings for the purpose of opposing the application.

**(2)** Where the court, pursuant to subsection (1), permits a person to be joined as a party to proceedings, the court may, subject to subsection (3), make such order as to costs and security for costs, by way of interlocutory order or otherwise, as it thinks fit which costs and security, when ordered by the Children's Court, shall be upon a scale applicable to costs awarded by Magistrates Courts constituted under the *Magistrates Courts Act 1921*.

**(3)** Where a person permitted to be joined as a party to proceedings upon

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<sup>7</sup> *Children's Services Act 1965*, section 12 (Deputy Director)

<sup>8</sup> Section 16 (Discharge of adoption orders), 25 (Court may dispense with consents) or 26 (Consent of child)

an application made under section 25(1) or 26 is the person in respect of whom or of whose consent the order is sought, the court concerned shall not make an order as to costs against that person irrespective of the outcome of the application.

### **Practice and procedure upon applications**

**64.(1)** In the absence of a rule of court or a sufficient rule of court that regulates in any particular the practice and procedure of the Supreme Court upon applications that may be made to the court under any provision of this Act, the Supreme Court may give directions for the purpose of giving full effect to the provisions of this Act in relation to an application made to the court.

**(2)** All steps taken in accordance with the directions so given shall be deemed to be regular and sufficient.

### **Regulation-making power**

**65.(1)** The Governor in Council may make regulations under this Act.

**(1A)** A regulation may be made for or about the following matters—

- (a) matters of practice, procedure or evidence in or in connection with proceedings under this Act;
- (b) matters of practice or procedure in or in connection with consents to be used for the purposes of this Act;
- (ba) matters to be regarded in making assessments under this Act;
- (c) forms to be used under this Act and the respective purposes for which such forms or forms to the like effect shall be used and the verification of such forms by means of a statutory declaration under and in accordance with the *Oaths Act 1867*;
- (d) fees payable for the purposes of this Act and waiver of the payment of such fees, wholly or partly;
- (da) fees and expenses payable to witnesses called by the tribunal in proceedings before it;
- (e) the keeping of the adoption lists and the eligibility of persons to have their names entered or remain in those lists, notification to

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the chief executive of changes in circumstances that might affect such eligibility and removal of names from those lists as prescribed in the event of—

- (i) the withdrawal or lapsing of an application to become an adoptive parent; or
  - (ii) the chief executive's having reasonable cause to believe that any applicant or applicants does not or do not intend to proceed with an application made under this Act;
- (f) the prohibition or regulation of access to the Adopted Children Register or to the register kept by the registrar general intituled 'RECORD OF CHILDREN whose Births have been registered in the State of Queensland and who have been transferred under Deed of Adoption' or to entries relating to adopted persons in the registers of births kept under the law of Queensland;
- (g) the inspection of the records of any proceedings under this Act;
- (h) the furnishing of copies or certificates of, or extracts from, matters included in either of the first 2 registers referred to in paragraph (f);
- (i) the making, correction or cancellation of entries relating to persons who have been adopted in the registers of births kept under the law of Queensland;
- (j) penalties, not exceeding 20 penalty units or imprisonment for 3 months, for offences against the regulations.

(2) A regulation may prescribe a country, other than Australia or New Zealand, to be a convention country for this Act, but only if the country is a convention country for the Commonwealth regulation.

**Service of documents**

**67.(1)** A notification required by this Act to be given to any person shall be taken to have been duly given if—

- (a) it is served personally on the person to whom it is directed or, in the case of a notification directed to a married couple, it is served personally on 1 of them or, in either case, on a person authorised by a person to be served, either generally or in a particular case to

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accept service of documents on the person's behalf;

- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

(2) A notification shall be deemed to have been received by the person to whom it is directed—

- (a) where it has been given in the manner referred to in subsection (1)(a), on the day it is served in accordance with that paragraph;
- (b) where it has been given in the manner referred to in subsection (1)(b), on the day next following the day it is left at the place specified therein;
- (c) where it has been given in the manner referred to in subsection (1)(c), unless the contrary is proved, at the time when it would be delivered in the ordinary course of post.

## **PART 7—SAVINGS**

### *Division 1—Provision for Adoption of Children Act 1964, Act No. 54 of 1964*

#### **Savings**

**68.(1A)** Without limiting the operation of the *Acts Interpretation Act 1954*—

- (a) all books, registers and records kept and maintained under the repealed Acts shall be deemed to be so kept and maintained under this Act, and all entries therein shall be deemed to have been made under this Act;
- (b) all certificates and certified copies of and certified extracts from

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entries in any register kept and maintained under the repealed Acts and issued under the repealed Acts shall be valid and effectual as if issued under this Act;

- (c) every adoption order made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act and may be discharged in accordance with this Act;
- (d) every interim order of adoption made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act until it expires by effluxion of time or is discharged or otherwise determined under this Act;
- (e) every application for an order for the adoption of a child under the repealed Acts that was pending immediately prior to the commencement of this Act may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with, under the provisions of the repealed Acts as if this Act had not come into operation, but an adoption order made pursuant to this paragraph shall have effect as if made under this Act.

(2) A consent in writing to the adoption of a child by a person or persons given by a person before the commencement of this Act in accordance with the repealed Acts shall, for the purposes of proceedings under this Act for the adoption of the child by the person or persons specified in the consent, be deemed to be a sufficient consent of the person giving the consent.

(3) Subject to subsection (4), sections 28 and 29<sup>9</sup> (other than subsection (4)) apply in relation to an adoption order made under the repealed Acts as if this Act had been in force when the order was made and the order had been made under this Act.

(4) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, or to a devolution of property arising upon the death of a person

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<sup>9</sup> Sections 28 (General effect of adoption orders) and 29 (Effect of orders as regards dispositions of property etc.)

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who in respect of that property died intestate before such commencement, an adoption order referred to in subsection (3) has the same effect as if the repealed Acts had not been repealed.

***Division 2—Provision for Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999***

**Savings—recognition of foreign adoptions under s 38**

**69.(1)** This section applies to an adoption to which section 38<sup>10</sup> applied immediately before the commencement of the *Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999*, section 17.

**(2)** Section 38, as in force before that commencement, continues to apply to the adoption.

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<sup>10</sup> Section 38 (Recognition of foreign adoptions)

**SCHEDULE****HAGUE CONVENTION**

section 6, definition “Hague convention”

**CONVENTION ON PROTECTION OF CHILDREN  
AND COOPERATION IN RESPECT OF  
INTERCOUNTRY ADOPTION**

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

## SCHEDULE (continued)

Have agreed upon the following provisions—

**CHAPTER I—SCOPE OF THE CONVENTION***Article 1*

The objects of the present Convention are—

- a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b* to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

*Article 2*

1 The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationship.

*Article 3*

The Convention ceases to apply if the agreements mentioned in

## SCHEDULE (continued)

Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

**CHAPTER II—REQUIREMENTS FOR  
INTERCOUNTRY ADOPTIONS***Article 4*

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- a* have established that the child is adoptable;
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c* have ensured that
  - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d* have ensured, having regard to the age and degree of maturity of the child, that
  - (1) he or she has been counselled and duly informed of the

## SCHEDULE (continued)

effects of the adoption and of his or her consent to the adoption, where such consent is required,

- (2) consideration has been given to the child's wishes and opinions,
- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
- (4) such consent has not been induced by payment or compensation of any kind.

*Article 5*

An adoption within the scope of the convention shall take place only if the competent authorities of the receiving State—

- a* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b* have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c* have determined that the child is or will be authorised to enter and reside permanently in that State.

**CHAPTER III—CENTRAL AUTHORITIES AND  
ACCREDITED BODIES***Article 6*

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

## SCHEDULE (continued)

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

*Article 7*

1 Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to—

- a* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- b* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

*Article 8*

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

*Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

## SCHEDULE (continued)

- a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b* facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c* promote the development of adoption counselling and post-adoption services in their States;
- d* provide each other with general evaluation reports about experience with intercountry adoption;
- e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

*Article 10*

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

*Article 11*

An accredited body shall—

- a* pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c* be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

## SCHEDULE (continued)

*Article 12*

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

*Article 13*

The designation of the Central Authorities and where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

**CHAPTER IV—PROCEDURAL REQUIREMENTS IN  
INTERCOUNTRY ADOPTION***Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

*Article 15*

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the

## SCHEDULE (continued)

characteristics of the children for whom they would be qualified to care.

2 It shall transmit the report to the Central Authority of the State of origin.

*Article 16*

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

- a* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c* ensure that consents have been obtained in accordance with Article 4; and
- d* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

*Article 17*

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- a* the Central Authority of that State has ensured that the prospective adoptive parents agree;

## SCHEDULE (continued)

- b* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c* the Central Authorities of both States have agreed that the adoption may proceed; and
- d* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

***Article 18***

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

***Article 19***

1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

***Article 20***

The Central Authorities shall keep each other informed about the

## SCHEDULE (continued)

adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

*Article 21*

1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—

- a* to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
- b* in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
- c* as a last resort, to arrange the return of the child, if his or her interests so require.

2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

*Article 22*

1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the

## SCHEDULE (continued)

supervision of the competent authorities of that State, also by bodies or person who—

- a* meet the requirements of integrity, professional competence, experience and accountability of that State; and
- b* are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provide for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

## **CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION**

### *Article 23*

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2 Each Contracting State shall, at the time of signature, ratification,

## SCHEDULE (continued)

acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

*Article 24*

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

*Article 25*

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

*Article 26*

1 The recognition of an adoption includes recognition of—

- a* the legal parent-child relationship between the child and his or her adoptive parents;
- b* parental responsibility of the adoptive parents for the child;
- c* the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such

## SCHEDULE (continued)

State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

*Article 27*

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect—

- a* if the law of the receiving State so permits; and
- b* if the consent referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

2 Article 23 applies to the decision converting the adoption.

**CHAPTER VI—GENERAL PROVISIONS***Article 28*

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

*Article 29*

There shall be no contact between the prospective adoptive parents and

## SCHEDULE (continued)

the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

*Article 30*

1 The competent Authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

*Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

*Article 32*

1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2 Only costs and expenses, including reasonable professional fees of person involved in the adoption, may be charged or paid.

3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

## SCHEDULE (continued)

***Article 33***

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

***Article 34***

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

***Article 35***

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

***Article 36***

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c* any reference to the competent authorities or to be public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;

## SCHEDULE (continued)

- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

*Article 37*

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of person, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 38*

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

*Article 39*

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

## SCHEDULE (continued)

*Article 40*

No reservation to the Convention shall be permitted.

*Article 41*

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

*Article 42*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

**CHAPTER VII—FINAL CLAUSES***Article 43*

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

## SCHEDULE (continued)

***Article 44***

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

***Article 45***

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matter dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

***Article 46***

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

## SCHEDULE (continued)

2 Thereafter the Convention shall enter into force—

- a* for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
- b* for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 47*

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2 The denunciation takes effect on the first day of the month following the expirations of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

*Article 48*

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b* the accessions and objections raised to accessions referred to in Article 44;
- c* the date on which the Convention enters into force in accordance with Article 46;

## SCHEDULE (continued)

- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

In whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the twenty-ninth day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 June 1999. Future amendments of the Adoption of Children Act 1964 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 2 of 1991	24 February 1994
1A	to Act No. 15 of 1994	6 August 1996
1B	to Act No. 51 of 1996	14 April 1997
2	to Act No. 51 of 1996	2 April 1998

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Renumbered provisions	1

## 6 List of legislation

### **Adoption of Children Act 1964 No. 54**

date of assent 21 December 1964

ss 1–4, 6, pt 3 div 2, pt 5 and ss 64–6 commenced 3 July 1985 (see s 2(2))

remaining provisions commenced 1 August 1965 (proc pubd gaz 3 July 1965 p 1247)

as amended by—

### **Children's Services Act 1965 No. 42 s 154 sch 2**

date of assent 23 November 1965

commenced 1 August 1966 (proc pubd gaz 2 July 1966 p 1231)

### **Adoption of Children Acts Amendment Act 1967 No. 14**

date of assent 5 April 1967

commenced 1 August 1965 (see s 2)

### **Adoption of Children Act Amendment Act 1972 No. 17**

date of assent 19 December 1972

commenced 1 April 1973 (proc pubd gaz 31 March 1973 p 1497)

**Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

**Status of Children Act 1978 No. 30 s 14 sch**

date of assent 8 June 1978

commenced 1 January 1979 (see s 1(2))

**Adoption of Children Act Amendment Act 1979 No. 22**

date of assent 17 May 1979

commenced 11 August 1979 (proc pubd gaz 11 August 1979 p 1905)

**Adoption of Children Act Amendment Act 1981 No. 42**

date of assent 12 June 1981

ss 1–2 commenced on date of assent

ss 3–4 commenced 17 July 1982 (proc pubd gaz 17 July 1982 p 2342)

ss 5–6 commenced 18 March 1982 (proc pubd gaz 13 March 1982 p 1060–1)

ss 7–10 commenced 5 September 1981 (proc pubd gaz 5 Sep 1981 p 63)

**Adoption of Children Act Amendment Act 1983 No. 26 (as amd 1986 No. 35 pt 3 (as from 5 September 1986); 1987 No. 6 (as from 15 April 1987); 1987 No. 32 s 69(1), (4) sch cls 22–5 (as from 30 April 1987))**

date of assent 19 April 1983

ss 1–2 commenced on date of assent

ss 5(d), (f)–(g), 27–29, 31, 33 and 34 commenced 11 May 1987 (proc pubd gaz 14 March 1987 p 1121)

remaining provisions commenced 27 June 1988 (proc pubd gaz 21 May 1988 p 558)

**Adoption of Children Acts and Another Act Amendment Act 1986 No. 35 pt 2 (as amd 1987 No. 32 s 69(1), (5) sch cls 26–7 (as from 30 April 1987))**

date of assent 5 September 1986

ss 3–8, 11 and 13 commenced 11 May 1987 (proc pubd gaz 28 Mar 1987 p 1364)

remaining provisions commenced 27 June 1988 (proc pubd gaz 21 May 1988 p 558)

**Family Services Act 1987 No. 32 s 69(1) and (3) sch cls 18–21 (as amd 1988 No. 47 s 3 sch 1; 1994 No. 87 s 3 sch 3 pt 1 (as from 1 December 1994))**

date of assent 30 April 1987

s 69(1), (3) sch cl 19 never proclaimed into force and rep 1994 No. 87 s 3 sch 3 pt 1

remaining provisions commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

**Acts Amendment and Construction Act 1988 No. 47 s 3(1) sch 1**

date of assent 12 May 1988

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

**Adoption of Children Act Amendment Act 1990 No. 8 (as amd 1991 No. 2 pt 2)**

date of assent 25 May 1990

s 17 commenced 1 September 1990 (see s 2(2))

ss 4–5, 15–16, 18, 23–25(a) commenced 1 June 1991 (see s 2(3))

remaining provisions commenced on date of assent

**Adoption Legislation Amendment Act 1991 No. 2 pt 3**

date of assent 28 February 1991

ss 7–10 commenced 1 June 1991 (see s 1(2))

remaining provisions commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1994 No. 15 s 3 sch 2**

date of assent 10 May 1994

commenced on date of assent

**Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996  
No. 51 ss 1–2, 84 sch 1**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 392)

**Adoption of Children (Hague Convention on Intercountry Adoption)  
Amendment Act 1999 No. 3**

date of assent 18 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 1999 (1999 SL No. 61)

**Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

**7 List of annotations****Parts**

s 3 amd 1983 No. 26 s 3; 1986 No. 35 s 4; 1990 No. 8 s 5  
om R1 (see RA s 40)

**Severability**

s 4 om 1999 No. 3 s 4

**Objective of Act**

s 5A ins 1983 No. 26 s 4

**Inherent jurisdiction of Supreme Court preserved**

s 5B ins 1983 No. 26 s 4A (as ins 1986 No. 35 s 16)

**Definitions**

- prov hdg** sub 1999 No. 3 s 6(1)
- s 6** def **“adoption compliance certificate”** ins 1999 No. 3 s 6(3)
- def **“adoption list”** sub 1983 No. 26 s 5(a)
- amd 1999 No. 3 s 3 sch
- def **“assessment”** ins 1983 No. 26 s 5(b)
- amd 1999 No. 3 s 3 sch
- def **“central authority”** ins 1999 No. 3 s 6(3)
- def **“chief executive for child protection”** ins 1999 No. 10 s 205 sch 3
- def **“child”** amd 1974 No. 57 s 8 sch; 1990 No. 8 s 6(a)
- def **“Children’s Court”** ins 1986 No. 35 s 5(a)
- sub 1994 No. 15 s 3 sch 2
- def **“Commonwealth central authority”** ins 1999 No. 3 s 6(3)
- def **“Commonwealth regulation”** ins 1999 No. 3 s 6(3)
- def **“convention country”** ins 1999 No. 3 s 6(3)
- def **“country”** ins 1999 No. 3 s 6(3)
- def **“criminal history”** ins 1986 No. 35 s 5(b)
- amd 1994 No. 15 s 3 sch 2
- def **“department”** ins 1987 No. 32 s 69(1) sch cl 18
- amd 1988 No. 47 s 3(1) sch 1
- om 1999 No. 3 s 6(2)
- def **“director”** sub 1965 No. 42 s 154 sch 2; 1987 No. 32 s 69(1) sch
- amd 1988 No. 47 s 3(1) sch 1
- om 1999 No. 3 s 6(2)
- def **“Father”** om 1978 No. 30 s 14 sch
- def **“Hague convention”** ins 1999 No. 3 s 6(3)
- def **“Minister”** sub 1983 No. 26 s 5(c)
- om 1999 No. 3 s 6(2)
- def **“non-citizen child”** ins 1990 No. 8 s 6(b)
- def **“non-convention country”** ins 1999 No. 3 s 6(3)
- def **“public trustee”** ins 1990 No. 8 s 6(b)
- def **“registrar of the Supreme Court”** amd 1999 No. 3 s 6(4)–(5)
- def **“relative”** amd 1978 No. 30 s 14 sch
- sub 1983 No. 26 s 5(d)
- def **“special needs child”** ins 1983 No. 26 s 5(e) (as sub 1986 No. 35 s 17(a))
- amd 1990 No. 8 s 6(c); 1999 No. 3 s 3 sch
- def **“Supreme Court”** sub 1983 No. 26 s 5(f) (as sub 1986 No. 35 s 17(b))
- def **“the court”** sub 1983 No. 26 s 5(f) (as sub 1986 No. 35 s 17(b))
- def **“the repealed Acts”** amd 1999 No. 3 s 6(6)
- def **“the tribunal”** ins 1983 No. 26 s 5(g) (as ins 1986 No. 35 s 17(b))
- om 1996 No. 51 s 84 sch 1
- def **“tribunal”** ins 1996 No. 51 s 84 sch 1

**Convention countries**

- s 6A** ins 1999 No. 3 s 7

**PART 2—JURISDICTION CONCERNING ADOPTIONS****pt hdg** sub 1983 No. 26 s 6**Adoption by order of chief executive****prov hdg** amd 1999 No. 3 s 3 sch**s 7** sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(a))  
amd 1999 No. 3 ss 8, 3 sch**Nexus with Queensland****s 7A** ins 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(b))  
amd 1999 No. 3 ss 9, 3 sch**Rules of private international law not relevant****s 7B** ins 1983 No. 26 s 6  
amd 1999 No. 3 s 3 sch**Adoptions Appeals Tribunal****prov hdg** amd 1983 No. 35 s 6 (as amd 1986 No. 35 s 18(c)(i))**s 8** sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(c)(ii)–(iii); 1987 No. 32  
s 69(1) sch)  
om 1996 No. 51 s 84 sch 1**Jurisdiction of tribunal****s 8A** ins 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(d))  
om 1996 No. 51 s 84 sch 1**Appeals to tribunal****s 9** sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(e))  
om 1996 No. 51 s 84 sch 1**PART 3—ADOPTIONS UNDER THIS ACT****Welfare and interests of child to be paramount****s 10** amd 1983 No. 26 s 7**Who may be adopted****s 11** amd 1974 No. 57 s 8 sch; 1983 No. 26 s 8 (as sub 1986 No. 35 s 19); 1990  
No. 8 s 7; 1999 No. 3 s 3 sch**Persons in whose favour adoption orders may be made****s 12** sub 1983 No. 26 s 9 (as amd 1986 No. 35 s 20)  
amd 1999 No. 3 s 3 sch**Age of adopters****s 13** sub 1983 No. 26 s 10 (as amd 1986 No. 35 s 21)  
amd 1999 No. 3 s 3 sch**Applications****s 13A** ins 1983 No. 26 s 11 (as amd 1986 No. 35 s 22(a))  
amd 1996 No. 51 s 84 sch 1; 1999 No. 3 ss 10, 3 sch**Chief executive's assessments****prov hdg** amd 1999 No. 3 s 3 sch**s 13B** ins 1983 No. 26 s 11 (as amd 1986 No. 35 s 22(b))  
amd 1999 No. 3 ss 11, 3 sch

**Matters to be regarded for assessment**

**s 13C** ins 1983 No. 26 s 11 (as sub 1986 No. 35 s 22(c))  
amd 1999 No. 3 s 3 sch

**Prospective adopters**

**s 13D** ins 1983 No. 26 s 11 (as ins 1986 No. 35 s 22(d))  
amd 1996 No. 51 s 84 sch 1; 1999 No. 3 s 3 sch

**Further assessment of prospective adopters**

**s 14** amd 1974 No. 57 s 8 sch  
sub 1983 No. 26 s 12 (as amd 1986 No. 35 s 23)  
amd 1999 No. 3 s 3 sch

**Special assessment for adoption of mature person**

**s 14A** ins 1983 No. 26 s 13 (as amd 1986 No. 35 s 24(b))  
om 1990 No. 8 s 8

**Criminal histories to be disclosed**

**s 14B** ins 1983 No. 26 s 13 (as ins 1986 No. 35 s 24(d))  
amd 1999 No. 3 s 3 sch

**Procedure upon assessments under s 14**

**prov hdg** ins 1983 No. 26 s 13 (as amd 1986 No. 35 s 24(c)(i)); 1990 No. 8 s 9(a)  
**s 14C** (prev s 14B) ins 1983 No. 26 s 13 (as amd 1986 No. 35 s 24(c)(ii))  
renum 1983 No. 26 s 13 (as amd 1986 No. 35 s 24(c))  
amd 1990 No. 8 s 9; 1999 No. 3 s 3 sch

**Appeals to tribunal about adoption lists and assessments**

**s 14D** ins 1996 No. 51 s 84 sch 1  
amd 1999 No. 3 s 3 sch

**Notice of intention to make adoption order**

**s 15** amd 1999 No. 3 s 3 sch

**Discharge of adoption orders**

**s 16** amd 1974 No. 57 s 8 sch; 1981 No. 42 s 3; 1999 No. 3 s 3 sch

**Division 2—Adoption lists**

**div hdg** sub 1983 No. 26 s 14

**Keeping of lists**

**s 17** sub 1983 No. 26 s 14 (as amd 1986 No. 35 s 25)  
amd 1999 No. 3 ss 12, 3 sch

**General Children's Adoption List to be ordinarily observed**

**s 18** sub 1983 No. 26 s 15 (as sub 1986 No. 35 s 26; as amd 1987 No. 6  
s 4(a)–(b))  
amd 1999 No. 3 s 3 sch

**Placement of children with indigenous or ethnic backgrounds**

**s 18A** ins 1983 No. 26 s 15 (as sub 1986 No. 35 s 26; as ins 1987 No. 6 s 4(c))  
amd 1999 No. 3 s 3 sch

**Division 2A—Intercountry adoptions****div 2A (ss 18B–18D)** ins 1999 No. 3 s 13**Consents of parents and guardians required to adoptions****s 19** amd 1965 No. 42 s 154 sch 2; 1978 No. 30 s 14 sch; 1979 No. 22 s 3; 1990 No. 8 s 10; 1999 No. 3 s 3 sch; 1999 No. 10 s 205 sch 3**Giving of consents****s 20** amd 1983 No. 26 s 16 (as sub 1986 No. 35 s 27); 1999 No. 10 s 205 sch 3**Consents given under law of another State or of a Territory of the Commonwealth****s 21** amd 1999 No. 3 s 3 sch**Revocation of consents****s 22** amd 1999 No. 3 s 3 sch**Form of consents****s 23** amd 1983 No. 26 s 16A (as ins 1986 No. 35 s 28); 1999 No. 3 s 3 sch**Defective consents****s 24** amd 1994 No. 15 s 3 sch 2; 1999 No. 3 s 3 sch**Court may dispense with consents****s 25** amd 1983 No. 26 s 17 (as amd 1986 No. 35 s 29); 1999 No. 3 s 3 sch**Consent not required in certain circumstances****s 25A** ins 1979 No. 22 s 4  
amd 1986 No. 35 s 6; 1990 No. 8 s 11; 1999 No. 3 s 3 sch**Consent of child****s 26** amd 1983 No. 26 s 18 (as sub 1986 No. 35 s 30); 1999 No. 3 s 3 sch**Provisions concerning court's jurisdiction—appeals****s 26A** ins 1983 No. 26 s 19 (as sub 1986 No. 35 s 31)  
amd 1999 No. 19 s 3 sch**Guardianship of child awaiting adoption****s 27** amd 1965 No. 42 s 154 sch 2  
sub 1972 No. 17 s 3  
amd 1983 No. 26 s 20; 1999 No. 3 s 3 sch; 1999 No. 10 s 205 sch 3**Register of children for adoption****s 27A** ins 1983 No. 26 s 21 (as amd 1986 No. 35 s 32; 1987 No. 6 s 5)  
amd 1999 No. 3 s 3 sch**Renunciation of guardianship of child to be adopted in another State or Territory****s 27B** pres s 27B (prev s 27A) ins 1972 No. 17 s 4  
renum 1983 No. 26 s 22  
amd 1999 No. 3 s 3 sch**Chief executive may enter into arrangements****prov hdg** amd 1999 No. 3 s 3 sch  
**s 27C** ins 1990 No. 8 s 12  
amd 1999 No. 3 s 3 sch

**General effect of adoption orders**

s 28 amd 1983 No. 26 s 23 (as amd 1986 No. 35 s 33)

**Effect of orders as regards dispositions of property etc.**

s 29 amd 1967 No. 14 s 4

**Bequest by will to unascertained adopted persons**

s 29A ins 1990 No. 8 s 13  
amd 1999 No. 3 s 3 sch

**Names of adopted child**

s 30 amd 1999 No. 3 s 3 sch

**Effect of order on domicile**

s 31 om 1981 No. 42 s 4

**Making of interim orders**

s 33 amd 1983 No. 26 s 24 (as amd 1986 No. 35 s 34); 1999 No. 3 s 3 sch

**Duration of interim orders**

s 34 amd 1999 No. 3 s 3 sch

**Effect of interim orders on child protection orders**

s 34A ins 1999 No. 10 s 205 sch 3

**Discharge of interim orders**

s 35 amd 1965 No. 42 s 154 sch 2; 1983 No. 26 s 25; 1989 No. 103 s 3 sch;  
1999 No. 3 s 3 sch; 1999 No. 10 s 205 sch 3

**PART 4—RECOGNITION OF ADOPTIONS AND RELATED MATTERS**

pt hdg sub 1999 No. 3 s 14

**Division 1—Recognition of interstate and foreign adoptions**

div hdg ins 1999 No. 3 s 14

**Definition**

s 36 om 1999 No. 3 s 15

**Recognition of Australian and New Zealand adoptions**

prov hdg amd 1972 No. 17 s 5(a)

s 37 amd 1972 No. 17 s 5(b)

**Recognition of adoptions granted in convention countries**

s 37A ins 1999 No. 3 s 16

**Recognition of adoptions granted in non-convention countries**

prov hdg sub 1999 No. 3 s 17(1)

s 38 amd 1972 No. 17 s 6; 1981 No. 42 s 5; 1990 No. 8 s 14; 1999 No. 3  
s 17(2)–(6)

**Division 2—Simple adoptions**

div 2 (ss 38AA–38AD) ins 1999 No. 3 s 18

**Division 3—Other matters concerning foreign adoptions**

div hdg ins 1999 No. 3 s 19

**Chief executive to have limited supervision of adopted children**

- prov hdg** amd 1999 No. 3 s 3 sch  
**s 38A** ins 1981 No. 42 s 6  
 amd 1999 No. 3 s 3 sch

**Declarations of validity of foreign adoptions**

- s 39** amd 1981 No. 42 s 7; 1999 No. 3 ss 20, 3 sch

**PART 4A—ACCESS TO IDENTIFYING INFORMATION**

- pt hdg** ins 1986 No. 35 s 7  
 sub 1990 No. 8 s 15

**Interpretation**

- 39A** ins 1986 No. 35 s 7  
 def “**adopted person**” amd 1990 No. 8 s 16(b)  
 def “**adoptive parent**” amd 1989 No. 103 s 3 sch  
 def “**register**” om 1990 No. 8 s 16(a)  
 def “**relative**” sub 1990 No. 8 s 16(c)

**Objections**

- s 39AA** ins 1990 No. 8 s 17  
 sub 1991 No. 2 s 6(1)  
 amd 1999 No. 3 s 3 sch

**Disclosure of certain information**

- 39B** ins 1986 No. 35 s 7 (as amd 1987 No. 32 s 69(1) sch)  
 sub 1990 No. 8 s 18  
 amd 1991 No. 2 s 7; 1999 No. 3 s 3 sch

**Entitlement to certain records etc.**

- 39C** ins 1986 No. 35 s 7  
 sub 1990 No. 8 s 18  
 amd 1991 No. 2 s 8; 1999 No. 3 s 3 sch

**Offence to contact etc.**

- 39D** ins 1986 No. 35 s 7  
 sub 1990 No. 8 s 18  
 amd 1991 No. 2 s 9

**Counsellors**

- s 39E** ins 1986 No. 35 s 7  
 sub 1990 No. 8 s 18  
 amd 1999 No. 3 s 3 sch

**Crown, etc., not liable**

- 39F** ins 1986 No. 35 s 7  
 sub 1990 No. 8 s 18  
 om 1991 No. 2 s 10

**Arrangement of reunions**

- s 39G** ins 1986 No. 35 s 7  
 om 1990 No. 8 s 18

**Arrangement of reunions in absence of adoptive parents' particulars**

**s 39H** ins 1986 No. 35 s 7  
om 1990 No. 8 s 18

**Modes of reunion**

**s 39I** ins 1986 No. 35 s 7  
om 1990 No. 8 s 18

**Court orders affecting matters within purview of this part**

**s 39J** ins 1986 No. 35 s 7  
om 1990 No. 8 s 18

**Revocation of order under s 39J(2)**

**s 39K** ins 1986 No. 35 s 7  
om 1990 No. 8 s 18

**Territorial application of part**

**s 40** amd 1990 No. 8 s 19

**Communication etc. by natural parent with adopted child**

**prov hdg** sub 1990 No. 8 s 20(a)

**s 41** sub 1972 No. 17 s 7  
amd 1983 No. 26 s 26; 1986 No. 35 s 10; 1990 No. 8 s 20(b)–(c); 1999  
No. 3 s 3 sch

**Restriction on placing or receiving child with a view to adoption**

**s 41A** ins 1987 No. 32 s 69(1) sch (never proclaimed into force and om 1994  
No. 87 s 3 sch 3 pt 1)

**Harbouring child taken from adopters**

**s 42** amd 1972 No. 17 s 12; 1986 No. 35 s 10

**Payments in consideration of adoptions etc.**

**s 43** amd 1972 No. 17 s 12; 1986 No. 35 s 10; 1999 No. 3 s 3 sch

**Restrictions on advertising**

**s 44** amd 1972 No. 17 s 12; 1986 No. 35 s 10; 1999 No. 3 s 3 sch

**Restrictions on publication of identity of parties**

**s 45** amd 1972 No. 17 s 12; 1983 No. 26 s 27 (as amd 1986 No. 35 s 35); 1986  
No. 35 s 10; 1990 No. 8 s 21; 1999 No. 3 s 3 sch

**Penalty for making unauthorised arrangements**

**s 46** amd 1972 No. 17 s 12; 1986 No. 35 s 10; 1999 No. 3 s 3 sch

**False statements**

**s 47** amd 1972 No. 17 s 12; 1986 No. 35 s 10

**Personation**

**s 48** amd 1972 No. 17 s 12  
sub 1986 No. 35 s 8

**Presenting forged documents**

**s 49** amd 1972 No. 17 s 12  
sub 1983 No. 26 s 28 (as amd 1986 No. 35 s 36)  
amd 1999 No. 3 s 3 sch

**Improperly witnessing consent to adoption**

**s 50** amd 1972 No. 17 s 12; 1986 No. 35 s 10

**Undue influence**

**s 50A** ins 1983 No. 26 s 29 (as amd 1986 No. 35 s 37)

**General penalty**

**s 53** amd 1972 No. 17 s 12  
sub 1986 No. 35 s 9  
amd 1990 No. 8 s 22

**Registration of orders**

**s 54** amd 1999 No. 3 s 3 sch

**Sending of memoranda of orders to other places**

**prov hdg** amd 1972 No. 17 s 8(a)

**s 56** amd 1972 No. 17 s 8(b); 1999 No. 3 s 21

**Particulars of orders received from other States and countries**

**s 57** sub 1972 No. 17 s 9

**Assistance to adopters and adopted children**

**s 57A** ins 1981 No. 42 s 8

amd 1999 No. 3 s 3 sch

**Hearings to be in camera**

**s 58** sub 1983 No. 26 s 30 (as amd 1986 No. 35 s 38)

**Confidentiality**

**s 59** sub 1972 No. 17 s 10

amd 1983 No. 26 s 31 (as sub 1986 No. 35 s 39; as amd 1987 No. 6 s 6;  
1987 No. 32 s 69(1) sch); 1999 No. 3 s 3 sch

**Protection of persons**

**prov hdg** amd 1983 No. 26 s 32(a) (as sub 1986 No. 35 s 40)

**s 59A** ins 1972 No. 17 s 11

amd 1983 No. 26 s 32(b)–(d) (as sub 1986 No. 35 s 40); 1999 No. 3 s 3  
sch

**Disclosure of information authorised in certain cases**

**s 59B** ins 1979 No. 22 s 5

sub 1981 No. 42 s 9

amd 1987 No. 32 s 69(1) sch; 1999 No. 3 s 3 sch

**Disclosure of criminal histories**

**s 59C** ins 1986 No. 35 s 11 (as amd 1987 No. 32 s 69(1) sch)

amd 1999 No. 3 s 3 sch

**Proof of adoptions**

**s 60** amd 1999 No. 3 s 22

**Judicial notice of signatures**

**s 61** amd 1965 No. 42 s 154 sch 2; 1987 No. 32 s 69(1) sch; 1988 No. 47  
s 3(1) sch 1; 1999 No. 3 s 23

**Deputy director**

**s 62** amd 1965 No. 42 s 154 sch 2

**Engagement of agents**

**s 62A** ins 1986 No. 35 s 12  
amd 1990 No. 8 s 23; 1999 No. 3 s 3 sch

**Parties to applications under Act**

**s 63** sub 1983 No. 26 s 33 (as sub 1986 No. 35 s 41)  
amd 1990 No. 8 s 24

**Practice and procedure upon applications**

**s 64** sub 1986 No. 35 s 13

**Regulation-making power**

**prov hdg** sub 1999 No. 3 s 24(1)  
**s 65** amd 1981 No. 42 s 10; 1983 No. 26 s 34 (as sub 1986 No. 35 s 42; as amd  
1987 No. 6 s 7; 1987 No. 32 s 69(1) sch); 1990 No. 8 s 25; 1999 No. 3  
ss 24(2)–(3), 3 sch

**Publication of proclamations etc.**

**s 66** om 1999 No. 3 s 25

**Service of documents**

**s 67** ins 1983 No. 26 s 35

**PART 7—SAVINGS**

**pt hdg** ins 1999 No. 3 s 26

**Division 1—Provision for Adoption of Children Act 1964, Act No. 54 of 1964**

**div hdg** ins 1999 No. 3 s 26

**Savings**

**s 68** (prev s 5) amd 1967 No. 14 s 3; R1 (see RA s 40)  
reloc and renum 1999 No. 3 s 5

**Division 2—Provision for Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999**

**div 2 (s 69)** ins 1999 No. 3 s 27

**SCHEDULE—HAGUE CONVENTION**

ins 1999 No. 3 s 28

**SCHEDULE 1—REPEAL**

om R1 (see RA s 40)

**SCHEDULE 2—PROVISIONS CONCERNING THE ADOPTIONS APPEALS TRIBUNAL**

ins 1983 No. 26 s 36 (as amd 1986 No. 35 s 43; 1987 No. 32 s 69(1) sch)  
amd 1989 No. 103 s 3 sch; 1990 No. 8 s 26  
om 1996 No. 51 s 84 sch 1

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Child Protection Act 1999 No. 10 s 205 sch 3 reads as follows—**

### **ADOPTION OF CHILDREN ACT 1964**

#### **1. Section 6—**

*insert—*

‘**“chief executive for child protection”** means the chief executive of the department in which the *Child Protection Act 1999* is administered.’.

#### **2. Section 19(7)—**

*omit, insert—*

‘(7) Despite section 23, if, under the *Child Protection Act 1999*, the chief executive for child protection has custody or guardianship of a child, it is not necessary for that chief executive’s consent to the child’s adoption to be evidenced by an instrument of consent.’.

#### **3. Section 20(3), from ‘Where’ to ‘1965’—**

*omit, insert—*

‘If the chief executive for child protection has custody or guardianship of the child under a child protection order under the *Child Protection Act 1999*,’.

**4. Section 27(3)(a)—**

*omit, insert—*

‘(a) to a child in the custody or under the guardianship of the chief executive for child protection under a child protection order under the *Child Protection Act 1999*; or’.

**5. Section 27(4), from ‘a child in care’—**

*omit, insert—*

‘in the custody or under the guardianship of the chief executive for child protection under a child protection order under the *Child Protection Act 1999*.’.

**6. After section 34—**

*insert—*

**‘Effect of interim orders on child protection orders**

‘**34A.(1)** If an interim order is made for a child for whom a child protection order is in force, the child protection order does not have effect while the interim order is in force.

‘(2) In this section—

“**child protection order**”, for a child, means a child protection order under the *Child Protection Act 1999* granting the chief executive for child protection custody or guardianship of the child.’.

**7. Section 35(1)—**

*omit.*