

# Adoption Bill 2009

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the Adoption Bill 2009.

#### Policy Objectives of the Legislation

The objective of the Bill is to provide for the adoption of children in Queensland, and for access to information about parties to adoptions in Queensland, in a way that –

- (a) promotes the wellbeing and best interests of adopted persons throughout their lives; and
- (b) supports efficient and accountable practice in the delivery of adoption services; and
- (c) complies with Australia's obligations under the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Hague convention).

#### Reasons for the Bill

The purpose of adoption is to provide a permanent legal family for children who, for various reasons, cannot live with their family of birth. An adoption order establishes a permanent relationship between a child and his or her adoptive parents and removes the legal relationship between the child and his or her birth parents and extended birth family.

The number of children who are adopted each year has been steadily declining in all Australian jurisdictions over the last 30 years. In 2007-08, 90 adoption orders were made in Queensland. Of these orders, 18 concerned Queensland children placed with adoptive parents, 21 were for children adopted by their step-parents and 51 were for children from overseas adopted by Queensland families. An estimated 50,000 adoptions

have been made in Queensland since the early 1900s, which directly affects over 350,000 people.

Queensland's adoption legislation dates from the 1960s and is in urgent need of reform to reflect contemporary community standards.

On 14 July 2008, the Premier and the Minister for Child Safety and Minister for Women announced the government's proposals for significant reform of Queensland's adoption laws through the release of the *Future Adoption Laws for Queensland* policy paper. The reforms set out in that policy paper, and now introduced by the Bill, are based on public consultation, research about quality adoption practice and outcomes and developments in other jurisdictions.

Adoption law also regulates parties' entitlement to access identifying adoption information about a birth parent or child who was adopted. Queensland is currently the only state that allows one person to block another person's access to identifying adoption information indefinitely (for adoptions that occurred before 1 June 1991), making it the most restrictive regime of all Australian jurisdictions.

On 14 July 2008, the Premier and Minister also announced that laws concerning the release of information about adoptions that occurred prior to June 1991 would also be reviewed, with any reform to be informed by a public consultation process based on the *Balancing Privacy and Access: Adoption Consultation Paper*. The paper stated that the Government's goal in reviewing the law is "to give all people the same access to information about their family history, while maintaining the right to privacy". Reform of this law, based on the results of the public consultation, is reflected in part 11 of the Adoption Bill 2009.

## **Achieving the Objectives**

The Bill achieves the policy objectives by repealing the *Adoption of Children Act 1964* and providing for an updated and more contemporary process for adoption of children in Queensland; as well as for equal access to information about parties to adoptions, irrespective of when the adoption occurred. The Bill brings Queensland into line with other Australian jurisdictions by introducing open adoption, improved birth parent consent requirements, contemporary eligibility criteria and assessment processes, and court ordered adoptions. The main themes of the Bill, including key areas of reform, are discussed below.

### Open adoptions and adoption plans

For the first time in Queensland, the Bill provides for the practice of open adoption, which allows a child's birth and adoptive families to know each other's identities from the time of the child's adoption. The chief executive is required to act as an intermediary between the child's parents and the prospective adoptive parents, to facilitate an agreement between them about the degree of openness there will be in the adoption. The chief executive is also required to facilitate the preparation of an adoption plan, if this is proposed by any of the parties, or if it is mandatory under the Act.

An adoption plan is a written plan, agreed to by the parties to a proposed adoption, or adoption, about anything relating to the adopted child's wellbeing or interests. For example, it may address how and when the parties propose to communicate with each other and, if they agree to in-person contact, how and when the contact will happen.

The purpose of an adoption plan is to contribute to the success of an open adoption arrangement by ensuring that all the parties properly consider the matters that may affect the child's wellbeing and interests, as well as the consequences of entering into the particular arrangement. The purpose of an adoption plan is also to ensure that the parties commit themselves to practical ways to address matters affecting the child.

Adoption plans will not be mandatory unless the parties wish there to be in-person contact; or if a child protection order is, or has been, in force for the child; or if the child to be adopted is an Aboriginal or Torres Strait Islander child.

The parties may still choose to have a closed adoption arrangement if they wish. Also, the Childrens Court will be able to make an order that an adoption arrangement is to remain closed, by making an order that the chief executive not exchange identifying information about the parties, where the court is satisfied that providing this information presents an unacceptable risk that a person will be harmed.

### Consent to adoption

The *United Nations Convention on the Rights of the Child* and the Hague Convention set out a range of principles and obligations that are relevant to adoption consents. Most significantly, these include the obligation to ensure that persons whose consent is required for adoption have been counselled and properly informed of the effects of their consent, that they have given their consent freely, that their consent has not been induced by

payment or other compensation, that their consent has not been withdrawn, and that the consent of the mother has only been given after the birth of the child. Current adoption practice in Queensland reflects these principles, however the Bill's consent provisions make them clear in Queensland law.

If a child's parents are considering adoption for the long-term care of their child, the Bill requires the chief executive to give the parents a range of information about adoption, to ensure that they are fully informed prior to making any decision. For instance, the Bill requires that the parents be given information about –

- options other than adoption for their child's long-term care;
- support that may be available to the parents, regardless of whether or not the adoption proceeds;
- the possible psychological effects for the parent, both short and long-term, of consenting to the adoption of their child;
- the possible psychological effects for their child, both short and long-term, of being adopted;
- if they were to give consent to the adoption of their child, how and when that consent may be revoked;
- how they may give the chief executive their preferences about the child's adoption (e.g. preferences about the child's religious upbringing, or characteristics about the child's adoptive family);
- the adoption process;
- the legal effect of adoption; and
- the rights and responsibilities of all the parties to an adoption.

The Bill also requires the chief executive to arrange for this information to be explained to each parent and for the each parent to receive counselling about the matters that are raised in the information. The counselling may be provided by a qualified person who is an officer of the Department or, if the parents prefer, by a qualified person who is not an officer of the Department to allow them to explore the issues independently of the Department.

The Bill requires a child's mother, father and any legal guardian to give informed and voluntary consent to a child's adoption and for the Department to be sure the parent has the capacity to give the consent. The Bill also requires the chief executive to give a man thought to be a child's

father information about how his paternity can be determined, how he can consent to the child's adoption and how he can seek a Family Court order to permit him to parent the child, if he wishes to do so. Requiring a child's father to consent to the child's adoption is an important reform to Queensland's adoption law. Under the *Adoption of Children Act 1964*, a father was only required to consent to his child's adoption if he was married to the child's mother, either at the time the child was conceived or at the time of adoption.

The Bill recognises that there will be some circumstances in which it is necessary to dispense with the need for a parent's consent to the adoption of their child in order for the child's adoption to proceed. For example, the court will be able to dispense with a parent's consent if the parent's identity cannot be established; if the child's conception was the result of an offence committed by the parent (e.g. rape or incest); or if there would be an unacceptable risk of harm to the child or mother if the other parent was made aware of the child's birth or proposed adoption.

The court will also be able to dispense with a parent's consent if the parent is found not to have capacity to be able to give the consent. In this case, the chief executive must have arranged for a qualified person to assess the parent (if the parent is not an adult) or the Guardianship and Administration Tribunal must have made a declaration that the parent does not have the capacity to consent (if the parent is an adult).

In all cases, the court will not be able to dispense with the need for a parent's consent to the adoption unless it is satisfied that it would be in the child's best interests for arrangements for the child's adoption to continue to be made. In addition, the court will not be able to dispense with the need for a parent's consent if there is a current application before another court seeking a declaration of paternity for the child, or a parenting order for the child under the *Family Law Act 1975* (Cwlth).

### Child's views

Article 12 of the *United Nations Convention on the Rights of the Child* provides that a child who is capable of forming his or her own views has the right to freely express those views, to have them considered and given due weight in accordance with the child's age and maturity and to be given the opportunity to participate in judicial and administrative proceedings affecting him or her, either directly or through a representative.

Where a child to be adopted is old enough to be able to form and express his or her own views about the adoption, then the Bill requires the chief

executive to give information to the child before an application for an adoption order is made. The information must be given in a way and to an extent that is reasonable, having regard to the child's age and ability to understand. The child must be kept informed of matters affecting him or her in a way and to an extent that is appropriate, and the child's views must be given consideration.

The Bill also requires the chief executive to ensure that the child receives counselling about the proposed adoption, and again, this must be conducted in such a way that is reasonable, having regard to the child's age and ability to understand. The chief executive may also appoint a social worker, lawyer or other person to support the child during the adoption process.

When it comes time for the court to make an adoption order for the child, the Bill requires the court to take the child's views into account. If the court considers it necessary and in the child's best interests, the court may order that the child be separately represented by a lawyer and make any orders necessary to secure separate legal representation for the child. The court may also order the chief executive to appoint a qualified person to support the child if necessary.

These provisions that guarantee a child's right to participate in any decision-making about his or her adoption replace the requirement in the *Adoption of Children Act 1964* for a child aged 12 years or over to consent to his or her adoption. This is to ensure that the child does not feel responsible for the decision and put him or herself under undue pressure, particularly where the decision involves choosing between a birth parent and the person who is caring for the child. (Adoption of older children is generally by persons known to the child such as a step-parent.)

#### Recruitment and selection of prospective adoptive parents

If adoption has been identified as the best option for providing long-term care to a child who cannot be cared for by his or her own parents, then the Department of Child Safety must find the best possible adoptive parents for the child. Also, under Australia's arrangements with other countries about adoption, the Queensland Government has agreed to find suitable prospective adoptive parents for children from those countries who require the permanent care of a family.

To assist the Department to meet these obligations, the Adoption Bill is designed to:

- anticipate what are likely to be the placement needs of children requiring adoption each year and to use this information to plan for the future need for adoptive parents;
- recruit people who are interested in being assessed and considered by the Department to be the adoptive parents of a child; and
- select from the large pool of interested people, those who are likely to be required each year to meet the anticipated, or known, placement needs of children requiring adoption.

This framework continues and builds on the expression of interest process that was introduced in 2002. New elements are designed to ensure that the expression of interest register accurately represents only the people who are ready and willing to actively proceed through the assessment and adoption process. In some instances, people have expressed an interest before they are ready to commit to the adoption process because, for example, they are still exploring other options for forming a family, such as fertility treatment. By ensuring people are able to express an interest in adoption only when they are ready to actively proceed through the process, the Government believes waiting periods for people who have expressed interest will be reduced.

Under the Adoption Bill 2009, expressions of interest can be lodged at any time. This will create greater certainty for people who are interested in adoption as a means of forming or adding to their family. People will be able to lodge an expression of interest at the time they are ready, willing and able to actively proceed through the adoption process (should they be eligible and suitable to be prospective adoptive parents and have a child placed with them).

The Bill also requires couples to lodge fresh expressions of interest after two years, if they have not moved through to the assessment process. This is to ensure that couples regularly reconsider their decision to pursue adoption, and also to make certain that the expression of interest register only contains the names of people who are currently committed to the adoption process.

It will still be possible for the expression of interest register to be closed (or partly closed), but only if the number of people listed in the register is significantly higher than the number required to meet the anticipated need for adoptive parents at a particular time, based on the profiles of the people whose names are in the register. For instance, it may be necessary to close part of the register relating to intercountry adoptions from a particular

country because the overseas adoption program for that country has been suspended, or the country is not taking any further applications from Australian couples. If it is necessary to close (or partly close) the expression of interest register, the Bill requires the chief executive to review the decision to close the register at regular specified intervals to determine whether it is appropriate to re-open the register.

Another area of reform is that eligibility to lodge expressions of interest will no longer be limited only to married couples. The Bill provides that a couple must have been spouses (either married or de facto) for at least two years, must be currently living together and have lived together continuously for at least 2 years, and may only express their interest jointly as a couple. Same sex couples and single people will not be eligible to lodge an expression of interest.

The Bill also requires the chief executive to decide, at least once each financial year, the numbers of persons with different profiles that it would be reasonable to assess for their suitability to be adoptive parents, to ensure that there are enough suitable prospective adoptive parents to meet the identified needs. The chief executive is not required to assess for suitability any more than this reasonable number on the basis that assessing too many persons:

- is an inefficient use of resources;
- may unnecessarily raise the expectations of some of the assessed persons about the likelihood of their adopting a child; and
- may unnecessarily intrude on the privacy or personal affairs of the persons assessed who are not likely to be required to meet the adoptive needs of children.

The Bill requires the chief executive to consider a range of specified matters about each person, when deciding whether a couple is suitable to be adoptive parents.

Once a couple has been assessed as being suitable to be adoptive parents, their names will be entered in the suitable adoptive parents register. The chief executive must then select people from the suitable adoptive parents register to be a child's prospective adoptive parents. The Bill requires that the chief executive must make the selection that will best promote the child's wellbeing and best interests. In doing this, the chief executive must have regard to the needs of the child to be adopted, including needs relating to the following matters –



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- the child's age and gender;
  - any Aboriginal, Torres Strait Islander or other cultural background of the child;
  - any existing or possible future medical condition or disability of the child;
  - the child's education;
  - whether the child has a sibling who has been adopted or is proposed to be adopted; and
  - the child's social background.

The Bill also requires the chief executive to have regard to any preferences of the child's parents, for example, preferences about the child's religious upbringing; or the characteristics of the child's adoptive parents and adoptive family; or the degree of openness in the adoption.

The Bill makes separate provision for step-parents to be able to apply to adopt their step-child. Particular conditions are that the step-parent has been living with their spouse and the child for at least 3 years up to the time of the application, and that the child is at least 5 years old and not yet turned 17 years of age, although the chief executive will have the discretion to accept an application relating to a 17 year old in certain circumstances.

#### Aboriginal and Torres Strait Islander children

The Bill respects Aboriginal tradition and Torres Strait Island custom and does not promote adoption as an appropriate option for the long-term care of an Aboriginal or Torres Strait Islander child. However, if a parent or guardian of an Aboriginal or a Torres Strait Islander child wishes to explore adoption for the child's care, the Bill contains a range of safeguards to ensure that the child's culture is respected and that adoption only proceeds if there is no better option available to provide the child with long-term stable care.

The guiding principles of the Bill recognise that it is in the best interests of an Aboriginal or Torres Strait Islander child to be cared for within an Aboriginal or Torres Strait Islander community and to maintain contact with their community or language group. The Bill also recognises that it is important for an Aboriginal or Torres Strait Islander child to develop and maintain a connection with their Aboriginal tradition or Island custom, and for their sense of Aboriginal or Torres Strait Islander identity to be preserved and enhanced. The Bill states that the chief executive, and other

officers of the Department, must try to conduct consultations, counselling, negotiations and other proceedings in a way and in a place that is appropriate to Aboriginal tradition or Island custom. The Bill also requires the Childrens Court to have regard to the views of an appropriate Aboriginal or Torres Strait Islander person, when exercising any powers in relation to an Aboriginal or Torres Strait Islander child.

If a parent of an Aboriginal or Torres Strait Islander child is considering adoption for their child, the Bill requires the chief executive to give the parent information about options other than adoption for the child's long term care in accordance with Aboriginal tradition or Island custom. To help the parent understand this information, the person who explains it to them must be an appropriate Aboriginal or Torres Strait Islander person. Also, the counselling that is provided to the parent must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom, unless the parent declines to receive the counselling in this way or from an appropriate Aboriginal or Torres Strait Islander person.

If the child is able to form and express their own views about their situation, the Bill requires that they be given extra information – such as information about other options for their long term care in accordance with Aboriginal tradition or Island custom; and the importance of being cared for in a way that helps them to develop and maintain a connection with their Aboriginal tradition or Island custom, and preserves and enhances their sense of Aboriginal or Torres Strait Islander identity. The child must also receive counselling in a way and at a place that is appropriate to Aboriginal tradition or Island custom.

The Bill's process of assessing a couple for suitability to be the adoptive parents of an Aboriginal or Torres Strait Islander child requires that the chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person about Aboriginal tradition or Island custom relating to the child; and about the couple's suitability to be the child's adoptive parents. When deciding whether a couple is suitable, the chief executive must have regard to the couple's links with, and standing in, the child's community or language group, as well as their commitment to –

- helping the child maintain contact with their community or language group;
- helping the child develop and maintain a connection with their Aboriginal tradition or island custom; and

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- preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.

The Aboriginal and Torres Strait Islander child placement principle is also specifically enshrined in the Bill. When selecting adoptive parents for the child, the chief executive must give proper consideration to selecting, in order of priority –

- a member of the child's community or language group; or
- another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or
- another Aboriginal person or Torres Strait Islander.

A further safeguard in the Bill is that the development of an adoption plan will be mandatory if an Aboriginal or Torres Strait Islander child is to be adopted by a couple from outside of his or her community. The plan will be required to set out how the adoptive parents will –

- help the child maintain contact with their community or language group; and
- help the child develop and maintain a connection with their Aboriginal tradition or Island custom; and
- preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

#### Adoption orders to be made by the court

Under the *Adoption of Children Act 1964*, adoption orders were made by the chief executive, making Queensland the only Australian jurisdiction in which adoption orders are made administratively by a public servant. The chief executive made all decisions about the adoption of a child, including the making of the adoption order. In all other states and territories and most international jurisdictions, adoption orders are made by a court.

The adoption of a child has significant legal consequences because it permanently changes a child's legal identity and legal relationship with his or her birth parents and extended birth family. This makes the adoption of a child an appropriate matter to be decided by a court rather than by a government department. Therefore, the Bill provides that all adoption orders must now be made by the Childrens Court.

### Access to identifying information

Prior to June 1991, Queensland laws gave no right of access to identifying adoption information and adopted people and their birth parents were generally unknown to each other for life. In June 1991, the *Adoption of Children Act 1964* was amended to provide adopted people and birth parents with an entitlement to access identifying information about a birth parent or child who was adopted, once the adopted person turns 18 years of age. However, in recognition of the expectations of anonymity that resulted from the previous historical practices, for adoptions that occurred before 1 June 1991, adopted people and birth parents were given the right to lodge an objection to prevent information about their identity from being released to another person associated with the same adoption.

The legislation concerning the release of information about adoptions that occurred prior to June 1991 has now been reviewed and the Bill incorporates the changes arising from that review. Consequently, the Bill gives adopted people and birth parents equal access to identifying adoption information, whether the adoption occurred before or after 1 June 1991. This is achieved by removing the right for people to lodge an objection to prevent another person from receiving identifying information about them. Existing information objections will be transitioned so that they automatically become a contact statement expressing the person's wish not to be contacted by another person or persons.

The Bill further enhances access to information by –

- defining an adopted person's 'birth parent', for the purposes of access to identifying adoption information, to include a man who did not consent to the person's adoption in circumstances where he acknowledged his paternity at the time of an adopted person's birth or adoption or his paternity can otherwise be proven; and
- permitting the chief executive to contact a birth parent or adopted person to ask for, and to pass on, up to date family medical information, particularly when an objection prevents them from seeking, or providing this information themselves. All information will be collected and exchanged in a non-identifying way.

The Bill only prevents an adopted person or a birth parent from accessing identifying information where the Childrens Court has made an order that the information is not to be released to a stated person because there would be an unacceptable risk of harm to another person if the information was given.

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Other mechanisms in the Bill to guard against people experiencing unwanted contact include the following –

- contact objections that are in place when the new Act commences will continue to be effective, and an adopted person and a birth parent will continue to be able to express their wish not to be contacted;
- a person’s statement that they do not wish to be contacted (including a contact objection made before the commencement of the new Act) will not have to be renewed, but will stay in place until the person who lodged it dies, or unless earlier withdrawn by the person who lodged them;
- for an adoption that occurred prior to June 1991, the chief executive will only be able to release identifying information about a person who does express a wish not to be contacted if the chief executive has:
  - ensured the person seeking the information has participated in an interview (which may be in person or by telephone) with an officer of the Department; and
  - obtained a document signed by the person seeking the information that acknowledges the other person does not want to be contacted and it would be an offence to do so;
- for an adoption that occurred before 1 June 1991, it will continue to be an offence carrying a maximum penalty of 100 penalty units (i.e. \$10,000 from 1 January 2009) or imprisonment for 2 years for a person who knows another person has lodged an objection to contact (or expressed a wish not to be contacted) to contact, or attempt to contact, the person or a relative of the person; and
- the chief executive will be authorised to provide, both directly and through the use of appropriately qualified service providers, information, support and counselling to people who will be affected by any of the changes in the law and, in particular, to outreach a person who has lodged an objection to being contacted, prior to releasing information about the person to another party to the adoption, to offer the person information, support and counselling.

The Bill also enables any person, irrespective of when the adoption occurred, to express their wish about being contacted, including that the person does not wish to be contacted, and to specify arrangements that suit their individual circumstances. The Bill obliges the chief executive to pass on the person’s wish to another person seeking information about the

person who expressed the wish. This signals a clear end to the restrictive regime contained in part 4A of the *Adoption of Children Act 1964* and marks the introduction of new legislation that strikes a fairer balance between the interests of those people who wish to access information and those who do not wish to be contacted.

### **Administrative costs**

The Bill introduces a number of reforms and new processes which will place additional requirements on existing resources, and consequently incur additional administrative costs (both immediate and ongoing).

The most significant cost impact arises from the need to substantially modify the Adoption Case Management System (ACMS). This is the electronic information system that creates and stores information about the adoption services provided by the Department and supports the efficient delivery of services by managing workflow, automatically generating documents and discharging the legislative obligations to maintain registers and other records. The ACMS provides sophisticated management reporting and facilitates the efficient collection of adoption data that is reported annually by the Australian Institute of Health and Welfare.

Other significant reforms that will incur additional administrative costs include –

- the introduction of open adoption practices, which will require the conduct of extensive case work by experienced, professional staff to enhance the success of open adoption arrangements and the opening of ‘closed’ adoption arrangements made prior to the commencement of the new Act;
- changes to the expression of interest system (that is, opening up of eligibility to de facto couples, changes to other eligibility criteria, and the requirement to manage the expression of interest register in an ongoing way, rather than opening and closing it as was previously the case);
- court ordered adoptions, resulting in an additional requirement for court applications and affidavit material to be prepared, as well as the employment of at least two court coordinators to guide and assist in the preparation of applications and affidavits and to appear in court;
- expanding the ability to access identifying information about any adoption, whether it occurred before or after 1 June 1991; and

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- converting information objections to contact objections, and the consequent necessity to provide post-adoption services to people affected by the change in the law.

## **Fundamental Legislative Principles**

The following aspects of the Bill raise fundamental legislative principles issues.

- Exemption from operation of *Anti-Discrimination Act 1991*

Clause 8 of the Bill exempts adoption processes from the operation of the *Anti-Discrimination Act 1991*, the effect being that discrimination on the basis of the attributes in that Act will be lawful, particularly in relation to recruitment and selection of prospective adoptive parents. For instance, clause 76 prevents pregnant women and people participating in fertility treatment from being eligible from expressing an interest in adopting a child. Additionally, the process for selecting adoptive parents for a particular child may discriminate against people on the basis of other characteristics such as age, race, religion and other grounds, on the basis of the birth parent's preferences (see clause 157).

Overriding the *Anti-Discrimination Act 1991* in this way clearly breaches fundamental legislative principles. However, the breach is justified because the imposition of discriminatory processes, particularly in relation to the recruitment and selection of prospective adoptive parents, is essential to safeguard the wellbeing and best interests of children who need adoptive placements. This paramount principle must be complied with above the rights of any person wishing to adopt a child, including any rights they may otherwise have under the *Anti-Discrimination Act 1991* not to experience discrimination.

- Dispensation of parent's consent to adoption of their child

Clause 175 of the Bill provides the court must not make an adoption order for a child unless satisfied each of a child's parents have given their consent to the adoption, at least 30 days before the making of the order. However, there are circumstances in which a parent's consent may not be able to be obtained and, for the child's adoption to proceed, it is necessary to dispense with the requirement for the parent to consent.

Clause 39 of the Bill enables the Childrens Court to make an order dispensing with the need for a parent's consent to the adoption of their child in circumstances including: if it is not possible to establish the

parent's identity, or to locate the parent, after making all reasonable enquiries; or the parent is a lineal relative of the child's mother; or the child's conception was a result of an offence committed by the parent (e.g. rape); or there would be an unacceptable risk of harm to the child or mother if the parent were made aware of the child's birth or proposed adoption; or the parent does not have the capacity to give consent to the adoption; or there are other special circumstances.

The court may also dispense with a parent's consent to the adoption of his or her child where the court is satisfied the parent is not, and will not be, willing and able to protect the child from harm and meet the child's need for long-term stable care where the parent is unreasonably withholding consent or refusing to engage with the chief executive about giving the consent.

However, the court will only be able to dispense with a parent's consent if satisfied that it would be in the child's best interests for arrangements for his or her adoption to continue to be made. Also, the court will not be able to make a dispensation order if there is reason to believe there is a current application before another court seeking a declaration of paternity for the child, or a parenting order for the child under the *Family Law Act 1975* (Cwth).

The Bill sets out processes for determining whether a parent has capacity to consent to their child's adoption, including requiring the chief executive to apply to the Guardianship and Administration Tribunal for a declaration about an adult parent's capacity to consent to their child's adoption.

The dispensation of a parent's consent overrides their ordinary right to make decisions about arrangements for their child's future care and upbringing. However, there is a need to balance the wellbeing and best interests of the child with any right of the child's parent to make decisions about the child's long-term care. Given this, and given the limits within which the court must exercise its power, the provision enabling the court to make an order dispensing with the need for a parent's consent is considered to be justified.

- Dispensation of requirement to serve parent with copy of application for an order dispensing with the need for that parent's consent.

Clause 36 of the Bill enables the court to dispense with the requirement to serve a copy of the application for a dispensation order on the relevant parent, if the court is satisfied –



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- (a) the applicant can not establish the relevant parent's identity, after making all reasonable enquiries; or
  - (b) the applicant can not locate the relevant parent, after making all reasonable enquiries; or
  - (c) the relevant parent is a lineal relative of the child's mother [that is, the child's conception was the result of incest]; or
  - (d) the child's conception was a result of an offence committed by the relevant parent; or
  - (e) there would be an unacceptable risk of harm to the child or mother if the relevant parent were made aware of the child's birth or proposed adoption; or
  - (f) there are other special circumstances.

Dispensing with this requirement to serve the relevant parent with a copy of the application has the effect of not making them a respondent in the proceeding. Consequently, the parent is denied the opportunity to contest the application for the court to make an order dispensing with their consent. However, this is considered necessary and reasonable to protect the interests of the child and the child's other parent's right to make decisions about the child's long-term care in the circumstances stated above. In addition, after the court has made a dispensation order, clause 41 of the Bill enables the relevant parent to apply to the court for a discharge of that order.

- Right to privacy of information

When deciding whether a person is suitable to be an adoptive parent, clause 121 of the Bill requires the chief executive to decide whether the person, or any member of their household, would pose an unacceptable risk of harming a child adopted by the person. As part of this decision, the chief executive must particularly take into account the criminal, domestic violence and traffic history of the person or of an adult member of their household.

Therefore, to assess the suitability of persons wishing to become adoptive parents, clause 116 of the Bill will enable the chief executive to obtain a range of police information about them and about adult members of their household. This will include the person's criminal and domestic violence history, and investigative information about the person. Clause 117 of the Bill will enable the chief executive to obtain information about the person's traffic history. The criminal history information able to be obtained under

clause 116 will include charges and convictions spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The disclosure of information about charges and spent convictions is generally objectionable on the basis that it infringes a person's rights given the presumption of innocence and desirability for the rehabilitation of offenders. However, the proposal is considered reasonable in that it provides an appropriate balance between a person's right to privacy and the need to ensure the lifelong care environment selected by the Department of Child Safety ensures children who require an adoptive placement are kept safe from risks that can be ascertained.

The chief executive (transport) must comply with a request to provide traffic information about a person, despite section 77 of the *Transport Operations (Road Use Management) Act 1995* which would otherwise prevent the release of the information to the Department of Child Safety. However, the information relates to a person's attitudes towards road safety and is therefore vital for the chief executive's deliberations about whether a person is suitable to be an adoptive parent. Note that a person's traffic history may also be obtained under the *Child Protection Act 1999*.

It should also be noted that the Bill allows for a review of decisions by the Children Services Tribunal about a person's suitability to be an adoptive parent that were made based on a person's police information or traffic information.

- Conversion of information objections to a statement of a person's wish not to be contacted

In relation to persons who were adopted prior to 1 June 1991, section 39AA of the *Adoption of Children Act 1964* enables the birth parent of an adopted person, or an adopted person who is at least 17 years and 6 months old, to object in writing to contact being made and also to the disclosure of identifying information about themselves to other parties to the same adoption. This type of objection will continue to have effect, but only as an expression of the person's wish not to be contacted – as if it had been given as a contact statement under part 11. That is, the objection will no longer prevent the release of identifying information.

The Bill therefore proposes to retrospectively alter a person's expressed objection to the release of identifying information to another person associated with the same adoption that occurred before 1 June 1991. This will adversely affect the person's right (as expressed in their objection) to preserve their anonymity from others associated with the same adoption, by

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keeping their identifying information confidential. This is necessary to promote the rights of adopted people to obtain information about the identity of their birth parents and for birth parents to obtain information about the post-adoption identity of their child who was adopted, which was previously denied to them by another person's information objection.

The consultation conducted about this proposed reform demonstrated that the concerns of people who have lodged objections relate to being contacted by another person associated with the adoption and the consequences of such contact if it results in their family and friends learning of the adoption. However, people were generally not concerned that the person receiving the information would behave in a criminal or problematic way.

A range of measures have been included in the Adoption Bill to reduce the likelihood that a person who lodged an objection to the release of information under part 4A of the *Adoption of Children Act 1964* will experience unwanted contact by another person associated with the same adoption. These measures were described above under the heading 'Achieving the Objectives' in relation to access to identifying information.

The proposal to retrospectively remove a person's previous objection to the release of identifying information is considered reasonable in light of the fundamental right of other parties to an adoption to know their family history and heritage. The proposal also ensures all adopted people and birth parents have the same right of access to identifying adoption information, regardless of whether a person was adopted before or after 1 June 1991. In addition, converting information objections to expressions of a person's wish not to be contacted, coupled with the safeguards described above will ensure respect for the privacy of a person who had previously lodged an objection to the release of identifying information.

- Removal of capacity to object to release of identifying information

In relation to persons who were adopted prior to 1 June 1991, the *Adoption of Children Act 1964* enables the adopted person (who is at least 17 years and 6 months old) and the person's birth parent to object in writing to contact being made and also to the disclosure of identifying information about themselves to other parties to the same adoption. The *Adoption of Children Act 1964* does not permit, and has never permitted, such objections to be lodged in relation to adoptions that occurred after 1 June 1991.

The Bill no longer includes capacity for persons who are parties to an adoption that occurred prior to 1 June 1991, to lodge an objection to prevent identifying information about them from being disclosed to other parties to the same adoption. This adversely affects the rights of all adopted people and birth parents associated with pre-1 June 1991 adoptions, to prevent others from accessing identifying information about them. However, this retrospective removal of their rights must be balanced with the benefits that arise by allowing other parties to those adoptions access to information about their identity, family and heritage. The change in the law also ensures that parties to adoptions are treated equally, regardless of when the adoption occurred, as there is no longer any entitlement to object to the release of identifying information.

However, as the Bill is removing the expectation that these people would have had to be able to lodge an objection to the release of identifying information about themselves, the other measures explained above are included to ensure special regard is had for their privacy and that the release of identifying information will be managed sensitively.

## **Consultation**

### Community

The review of Queensland's adoption laws was commenced in 2001. A comprehensive, statewide public consultation strategy was implemented from July to November 2002, including calls for responses to the consultation paper and participation at public forums and focus groups.

During 2004-2005, the then Minister for Child Safety established an Adoption Consultative Forum with membership drawn from organisations that represent the various adopted person, adoptive parent and birth parent stakeholder groups in the adoption community.

The *Future Adoption Laws for Queensland* policy paper was released on 14 July 2008 to provide the community with information about the Government's proposals for the significant reform of Queensland's adoption laws. The reforms set out in that policy paper, and now introduced by the Bill, are based on public consultation, research about quality adoption practice and outcomes and developments in other jurisdictions.

Public consultation about the possible reform of the law about access to identifying adoption information and the right to lodge objections was conducted from 14 July to 19 September 2008. The consultation was

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informed by the *Balancing Privacy and Access: Adoption Consultation Paper* which asked whether the current laws about access to identifying adoption information continue to appropriately protect the rights and balance the best interests of all parties to Queensland adoptions.

In particular, the paper focussed on the current law which applies in the case of adoptions that occurred prior to 1 June 1991 and allows adopted people and birth parents to lodge objections to prevent information about them from being released to another person associated with the same adoption. People who have been affected by this law were also asked to share their experiences of accessing information, being refused information and engaging in contact to provide some qualitative information about the effect the current law has had on individuals.

A total of 452 responses to the *Balancing Privacy and Access: Adoption Consultation Paper* were received, comprising 422 feedback forms completed by individuals, 17 written submissions from individuals and 13 submissions from organisations.

In particular, 223 people identified as people who are subject to the law currently set out in part 4A of the *Adoption of Children Act 1964*, either as adults who were adopted in Queensland (156 people) or birth parents whose adult children were adopted in Queensland (67 people). The views of people who had received identifying information, been refused identifying information, lodged objections to the release of identifying information and revoked an objection have also been identified.

The organisations who provided submissions were (in alphabetical order): the Aboriginal and Torres Strait Islander Legal Service, the Adoption Privacy Protection Group, the Australian Association of Social Workers (Queensland Branch), the Australian Council for Adoption, the CREATE Foundation, Family Voice Australia, Jigsaw Queensland Inc, Link-Up Aboriginal Corporation Inc, Monash University, the National Alliance of Natural Parent Groups, the New South Wales Committee on Adoption and Permanent Care, Origins Inc (Queensland) and the Queensland Law Society.

### Government

Consultation on the Bill has been undertaken with all relevant Government departments including the Departments of the Premier and Cabinet; the Department of Justice and Attorney-General; the Department of Communities; the Queensland Police Service and Queensland Transport.

## Notes on Provisions

### **Part 1                      Preliminary**

#### **Division 1                Introduction**

##### **Short title**

*Clause 1* establishes the short title of the Act as the *Adoption Act 2009*.

##### **Commencement**

*Clause 2* provides that the Act, other than part 17, division 1, commences on a day to be fixed by proclamation.

Part 17, division 1 provides for amendments to the *Adoption of Children Act 1964*, which commence on assent.

##### **Dictionary**

*Clause 3* states that the dictionary in schedule 3 of the Act defines particular words used in the Act.

#### **Division 2                Application, object and guiding principles**

##### **Act binds all persons**

*Clause 4* specifies that the Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States. However, this does not make the State, the Commonwealth or another State liable for an offence.

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## Main object of Act

*Clause 5* sets out the main object of the Act, which is to provide for the adoption of children in Queensland, and for access to information about parties to adoptions in Queensland, in a way that –

- (a) promotes the wellbeing and best interests of adopted persons throughout their lives; and
- (b) supports efficient and accountable practice in the delivery of adoption services; and
- (c) complies with Australia's obligations under the Hague convention.

The Hague convention is defined in the Act's dictionary to mean the *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, made at the Hague on 29 May 1993. A copy of the English text of the Hague convention can be found in schedule 1 of the Act.

## Guiding principles

*Clause 6* provides that the Act must be administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and for the rest of his or her life, are paramount. Therefore, this principle underpins the way in which every other provision of the Act must be read and administered. The operation of this paramount principle means that if the wellbeing and interests of a child to be adopted, an adopted child, or an adopted adult, conflict with those of another person (e.g. a birth parent), the conflict must be resolved in favour of the proposed adopted child's or adopted person's wellbeing and best interests.

The clause then sets out a range of further, more detailed principles that apply to the administration of the Act. These principles reflect:

- the purpose of adoption
- the likely benefit to an adopted child of maintaining an ongoing relationship with his or her birth family
- the participation of the parties to the adoption in the process, including regard being had to the birth parents' views about the child's adoption and the child's right to be involved in decision-making about him or her.

## **Additional principles concerning Aboriginal and Torres Strait Islander persons**

In order to ensure that the operation of the Act specifically respects Aboriginal tradition and Torres Strait Island custom, *clause 7* states that it must be administered under specific principles.

Firstly, these principles recognise that adoption (in the way provided for in the Act) is not part of Aboriginal tradition or Island custom. Although the principles note that Torres Strait Island custom does include a customary child-rearing practice that is similar to adoption, in so far as parental responsibility for a child is permanently transferred to someone other than the child's parents. This practice is sometimes referred to as either 'customary adoption' or 'traditional adoption'.

Following on from this main premise, the principles go on to state:

- (a) adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term stable care only if there is no better option available; and
- (b) it is in the best interests of an Aboriginal or Torres Strait Islander child—
  - (i) to be cared for within an Aboriginal or Torres Strait Islander community; and
  - (ii) to maintain contact with the child's community or language group; and
  - (iii) to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
  - (iv) for the child's sense of Aboriginal or Torres Strait Islander identity to be preserved and enhanced.

Subsection (2) places specific obligations on the Childrens Court when it exercises a power under the Act in relation to an Aboriginal or Torres Strait Islander child. The court must have regard to the views, about the child and about Aboriginal tradition or Island custom relating to the child, of an appropriate Aboriginal or Torres Strait Islander person. See *clause 318* for who is meant by an 'appropriate Aboriginal or Torres Strait Islander person'.

Subsection (3) provides that the chief executive and other officers of the department must try to conduct consultations, counselling, negotiations and other proceedings involving an Aboriginal person or Torres Strait Islander



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in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

### **Act applies despite Anti-Discrimination Act 1991**

*Clause 8* overrides the *Anti-Discrimination Act 1991* to provide that a person may make a decision or do another act that is necessary to comply with, or is specifically authorised by, the Act. This includes making a decision or doing another act to comply with the main guiding principle, which is that the wellbeing and best interests of the adopted child are paramount.

Discrimination on the basis of things such as the state of a person's health, their relationship status, pregnancy, parental status, age, race and sexuality are also likely in relation to decisions required to be made or actions required to be taken under the Act.

For example, when the chief executive is selecting a couple to be the adoptive parents of a child, consideration must be given to any preferences expressed by the child's birth parents for the child's upbringing. If the child's birth parents have expressed a preference for the child to be brought up in a particular religious faith or by adoptive parents of a particular age-range, the chief executive must have regard to that preference when selecting the child's adoptive parents, unless the selection is likely to be contrary to the child's wellbeing and best interests. Discriminating between people in this way is otherwise unlawful under the *Anti-Discrimination Act 1991*. However, in this case the discrimination must be allowed to occur because the chief executive must respect the birth parent's wishes about the child's upbringing as far as possible.

A further example relates to the chief executive's obligation to have regard to the child's particular needs in selecting prospective adoptive parents for a child. If a child has a particular ethnic or cultural background, the chief executive may give preference to selecting prospective adoptive parents who have a similar background or who have previously adopted a child from a similar background. This would also be unlawful discrimination, either direct or indirect, under the *Anti-Discrimination Act 1991*.

Therefore, the *Anti-Discrimination Act 1991* must be overridden to enable many of the requirements of the adoption laws to be correctly fulfilled and administered in a way that gives paramouncy to the wellbeing and best interests of the child.

## **References to child's wellbeing or best interests**

*Clause 9* states that unless a contrary intention appears, a reference in the Act to a child's wellbeing or best interests is a reference to the child's wellbeing or best interests through both childhood and the rest of his or her life.

This clause recognises that the adoption of a child is lifelong and that, for some actions and decisions under the Act, it is important to consider the child's wellbeing and best interests throughout the rest of his or her life.

## **Division 3           Adoptions under this Act**

### **Who may be adopted**

*Clause 10* provides that only children, and not adults, may be adopted and this will happen by an order of the Childrens Court under the Act. Also, a child may be adopted whether or not the child has previously been adopted.

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

*Clause 11* states that the power to make an adoption order under the Act does not depend on any fact or circumstance not expressly stated in the Act. This makes it clear that the operation of the rules of private international law do not have any effect on how adoption orders are made under the Act. For instance, if a child to be adopted in Queensland is domiciled in a country other than Australia, then under the rules of private international law there may be a question about which country has jurisdiction to give effect to the proposed adoption. Clause 11 prevents the question from arising, because it states that the power to make the adoption order does not depend on anything outside of the Act.

## **Division 4           Custody and guardianship**

### **What is the effect of custody**

*Clause 12* states that, for the Act, a person who has *custody* of a child has –

- (a) the right to have the child's daily care; and

- (b) the right and responsibility to make decisions about the child's daily care.

### **What is the effect of guardianship**

*Clause 13* states that, for the Act, a person who has *guardianship* of a child has –

- (a) the right to have the child's daily care; and
- (b) the right and responsibility to make decisions about the child's daily care; and
- (c) all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, wellbeing and development of the child.

## **Part 2                      Consent to adoption and related matters**

### **Division 1                Preliminary**

#### **Non-application to intercountry adoptions**

*Clause 14* provides that part 2 applies to the proposed adoption of a child other than by an intercountry adoption. This is because, for an intercountry adoption, the consents necessary for a child's adoption are determined by the law of the child's country of origin and obtaining the consents is the responsibility of the competent authority in that country.

#### **References to *parent* in pt 2**

*Clause 15* specifies that a reference in part 2, other than division 6, to a parent of the child does not include a person if, under section 39, a court has dispensed with the need the person's consent to the child's adoption.

This is because part 2, other than division 6, sets out the things that must happen in order for a parent to give consent to the adoption of the person's

child. Once the court has dispensed with the need for the parent's consent to the adoption under division 6, these things are no longer required to happen.

### **Requirement for consent**

*Clause 16* notes that section 175 states the requirement for a child's parents to consent to the adoption under part 2, before the Childrens Court may make an adoption order for the child.

Sections 175(1) and (2) establish that, for the Childrens Court to make an adoption order for a child, each of the child's parents must have given consent to the child's adoption or the need for the parent's consent must have been dispensed with the child court under section 39.

The dictionary in schedule 3 defines *parent* to include a child's mother, father and another person who has the right to the child's daily care and the right and responsibility to make decisions about the child's daily care under a law or order of a court (other than under this Act). However, if the chief executive responsible for the administration of the *Child Protection Act 1999* (referred to in the Act as the chief executive (child safety)) or a corresponding officer of another jurisdiction is the guardian of the child, that person's consent for the child's adoption is not required. Although, section 178 requires the views of chief executive (child safety) to be put before the court prior to an adoption order being made in certain circumstances.

### **References to consent**

*Clause 17* defines what is meant by the term *consent* when used in part 2 of the Act. *Consent* means consent freely and voluntarily given by a person with capacity to give the consent. When the court, under section 175, must be satisfied each parent has given consent to a child's adoption under part 2, in addition to the other requirements set out in part 2, the court must be satisfied the person gave the consent freely and voluntarily and that the person had capacity to give the consent.

Subsection (2) recognises that consent for a child to be adopted by a person who is the child's step-parent under part 9, division 4 can be consent for the child to be adopted by the step-parent only and not by any other person. Otherwise, a consent to the child's adoption is consent to the child's adoption generally, and not to the child's adoption by any particular person or persons.

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## Division 2            Requirements about consent

### Form of consent

*Clause 18* sets out the way in which a parent's consent must be given and the form it must take for the consent to be given validly under this part. The consent must be in the approved form, must be signed by the parent and witnessed by an authorised person.

Subsection (5) defines the term *authorised person* to mean a public service employee, or other appropriate person in Queensland or elsewhere, authorised by the chief executive to witness a consent for the Act. This definition allows the chief executive to authorise a person who is not in Queensland to witness a consent as it may be the case that, while a child to be adopted is in Queensland, a parent whose consent for the child's adoption is required is somewhere else in Australia or is in another country. Generally, the chief executive will make arrangements with a child welfare authority in another state, territory or country to nominate an appropriate person to be authorised to witness the parent's consent.

Subsections (2) and (3) set out matters that must and may be included in the approved form of consent. Subsection (4) states that a single document may only contain the consent of one parent to the adoption of one child.

### Time of consent

*Clause 19* provides that a parent's consent to their child's adoption may not be given –

- (a) less than 30 days after the child's birth; or
- (b) less than 14 days after the parent is given the documents under section 22; or
- (c) less than 14 days after the parent is given the prescribed information under section 23; or
- (d) less than 14 days after the day the counsellor swears the statement mentioned in section 175(3)(b).

The Hague convention sets out a range of principles and obligations about consents for adoption, one of which is that the consent of the mother has only been given after the birth of the child. Therefore, clause 19 ensures that the Act complies with the Hague convention in this regard, and builds

in further safeguards to ensure a parent's consent is fully informed by providing the parent with a minimum period of time in which to consider whether to consent to the adoption of their child, including time to consider information given to them by the chief executive and time to consider the matters discussed with a counsellor.

This is part of a range of measures designed to ensure a parent's consent to their child's adoption is fully informed and given voluntarily. Other measures are that the chief executive must give the parent particular information about adoption (see clause 23) and provide the parent with pre-consent counselling (see clause 24).

### **Revocation of consent**

*Clause 20* provides that a parent may revoke their consent to their child's adoption by giving the chief executive a signed notice within 30 days after the parent gave their consent.

The only requirement for the form of the revocation is that it is a signed notice. However, to assist the parent, clause 22 (Parents to be given consent forms) requires the chief executive to give the parent a document that they may complete and use to revoke their consent.

## **Division 3                    Giving forms, information and counselling to parents**

### **Obligation to enable understanding**

*Clause 21* places an obligation on the chief executive to ensure that information is given to each parent as required under division 3, and counselling of each parent is carried out as required under division 3, in a way that enables the parent to understand. To discharge this obligation, the chief executive must consider matters such as the degree to which the person reads, speaks, hears and comprehends English and whether the person's ability to understand the information will be enhanced if the information is written in another language or provided through the use of an interpreter or in another way.

See clauses 23, 24 and 25 which set out the requirements for what information must be given to parents, and for counselling to be provided to them.

## **Parents to be given consent documents**

*Clause 22* requires the chief executive to give each of the child's parents the following documents –

- (a) a document showing the contents of the approved form for section 18; and
- (b) a document that the parent may use to revoke consent given by the parent to the child's adoption.

This clause ensures the parent does not see the form they must use to consent to their child's adoption for the first time when they are giving the consent, but instead that the parent has had an opportunity to consider the form before giving the consent.

A document that the parent may use to revoke the consent is also given to the parent to assist the parent if the parent decides to revoke his or her consent.

## **Parents to be given prescribed information**

*Clause 23* requires the chief executive to give each of a child's parents a document containing information about the range of matters relating to adoption listed in subsection (1), referred to in the section as the prescribed information. Subsection (2) requires the chief executive to arrange for the prescribed information to be explained to each of the child's parents.

The purpose of requiring the chief executive to give and explain the prescribed information to each parent is to ensure the parent has, and understands, the information that is necessary to make a fully informed decision about whether or not consent to their child's adoption.

## **Parents to be given pre-consent counselling**

*Clause 24* states that the chief executive must arrange for each of the child's parents to receive counselling about the prescribed information given under section 23.

Subsection (2) provides that the counselling must be carried out by a counsellor nominated by the chief executive, and subsection (3) provides that the counsellor may be an officer of the department. However, subsection (4) provides that if the nominated counsellor is an officer of the department, the chief executive is required to advise the parent that he or she may ask for further counselling by someone who is not an officer of the

department. If the parent requests this, the chief executive must nominate another counsellor who is not an officer of the department to carry out the further counselling. This guarantees the parent's right to have further counselling, and to consider the matters raised in the prescribed information, with someone who is independent of the chief executive. If the parent is not in Queensland, the person would be another person with the appropriate qualifications or experience in the state, territory or country the parent is in.

Subsection (5) provides that the counselling must be carried out in a way that allows the parent to ask questions and discuss the prescribed information and matters arising from the information. In this way, the counselling is another way of ensuring a parent who decides to proceed to consent to the adoption of his or her child is fully informed and freely and voluntarily gives the consent.

Subsection (6) specifies that if the counsellor reasonably suspects that the parent does not have capacity to consent to their child's adoption, the counsellor must notify the chief executive. Part 2, division 4 sets out the chief executive's obligations to take steps to ensure a parent has capacity to give consent to adoption if a counsellor advises the chief executive under this section of the counsellor's suspicions that the parent does not have capacity.

Subsection (7) states that the counsellor can offer to meet with persons other than the parent (for example other family members who may help the parent to consider other options for the child's long term care).

Subsection (8) states that the counselling may be carried out in one or more sessions and by one or more counsellors.

Subsection (9) defines the term *counsellor* for this section as a person who the chief executive is satisfied has the appropriate qualifications or experience to carry out the counselling.

### **Pre-consent information and counselling for Aboriginal or Torres Strait Islander child**

*Clause 25* applies if the child who is proposed to be adopted is an Aboriginal person or a Torres Strait Islander and requires the counselling given to each of the child's parents to be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom. This includes a parent who is not also an Aboriginal person or Torres Strait Islander. As part of the counselling, the person who explains to the parent the prescribed



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information given to them under section 23(1)(k), need not be a counsellor under section 24, but must be an appropriate Aboriginal or Torres Strait Islander person.

Subsections (4) and (5) allow a parent to decline to receive the counselling in a way and at a place that is appropriate to Aboriginal tradition or Island custom or in part by an appropriate Aboriginal or Torres Strait Islander person. The parent declines by giving the chief executive a signed notice in the approved form that states the counselling was offered to the parent in the way, or by a person, required by this section, the extent to which the counselling is declined and that the chief executive has given the parent a document containing the information mentioned in subsection (3) relating to the care of an Aboriginal or Torres Strait Islander child in accordance with Aboriginal tradition or Island custom.

The purpose of this section is to ensure each of the child's parents, including a parent who is not Indigenous, considers matters relating to the importance of the child's Aboriginal tradition or Island custom for the child's care and wellbeing when making a decision about whether or not to consent to the child's adoption.

### **Parents' access to legal advice**

*Clause 26* requires the chief executive to ensure that each of the child's parents is told that they may wish to seek legal advice and that they are given the details of at least 1 entity that generally provides free legal services. This acknowledges that adoption has legal consequences and that a parent should be given an opportunity to explore these consequences with the advice of a lawyer.

## **Division 4            Ensuring parents have capacity to consent**

### **Meaning of *qualified person* for div 4**

*Clause 27* defines the term *qualified person* for the purposes of division 4 as a person who, if called as a witness in a proceeding, would be qualified to give expert evidence on the issue whether a parent has capacity to give consent to an adoption of the child.

### **Assessing whether a non-adult parent has capacity to consent**

*Clause 28* applies if a parent of the child is not an adult. The clause requires the chief executive to have a qualified person assess whether the parent has capacity to give the consent before the parent gives consent to the adoption. Subsection (3) states that the qualified person must not be the same person who counsels the parent under section 24.

### **Declaration of tribunal whether an adult parent has capacity to consent**

*Clause 29* applies to an adult parent of the child if a counsellor under section 24 notifies the chief executive that the counsellor reasonably suspects the parent does not have capacity to consent to the adoption or the chief executive otherwise knows or reasonably suspects the parent does not have capacity to consent to the adoption.

Subsection (2) requires the chief executive to apply to the Guardianship and Administration Tribunal for a declaration about the parent's capacity to give the consent before the parent may consent to the adoption. (See section 146 of the *Guardianship and Administration Act 2000*). The parent may then only give the consent if the tribunal declares the parent does have the requisite capacity (see section 17(1) for the requirement for a person giving consent to have the capacity to give the consent.).

However, if the parent is not in Queensland at the time the parent's consent is proposed to be given, subsection (3) requires the chief executive to take the following steps—

- (a) if it is possible for the chief executive to make an application, equivalent to an application mentioned in subsection (2), in the jurisdiction where the parent is, the chief executive must make that application;
- (b) otherwise, the chief executive must ensure a qualified person assesses whether the parent has capacity to give the consent.

### **Appointment of guardian for adult parent without capacity to consent**

*Clause 30* applies if the Guardianship and Administration Tribunal makes a declaration that the parent does not have capacity to give the consent and the parent does not have a guardian under the *Guardianship and Administration Act 2000* for the matter of dispensation.

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Subsection (2) requires the chief executive, before making an application under division 6 for an order for dispensation, to apply to the Guardianship and Administration Tribunal for an order appointing a guardian for the matter of the dispensation. This will enable the guardian to act in the parent's interests in relation to a proceeding for the dispensation by, for example, engaging a lawyer to represent the parent in the proceeding.

## **Division 5            Identifying child's father and related matters**

### **Application of div 5**

*Clause 31* provides that division 5 applies in relation to a child if, so far as the chief executive is aware, every consent required for the child's adoption has been given other than the consent of the child's father.

### **Establishing father's identity and location**

*Clause 32* requires the chief executive to take reasonable steps to establish the identity and location of the child's father.

Article 18 of the *United Nations Convention on the Rights of the Child* provides that governments should, as far as possible, ensure that both parents have common responsibilities for the upbringing and development of a child. *Clause 32* contributes to the Act's compliance with this article of the Convention by requiring that every reasonable effort is made to identify and locate a child's father. The objective being that if the father can be identified and located, he can be given the opportunity to participate in decisions about the child's adoption or other long-term care arrangements, where this is appropriate.

### **Giving notice to father or person suspected to be father**

If the chief executive knows or reasonably suspects a person is the child's father, *clause 33* requires the chief executive to give him a notice stating –

- (a) the other consent or consents to the child's adoption have been given;
- and

- (b) how he may give his consent; or take steps to establish whether he is the child's father; or apply under the *Family Law Act 1975* (Cwlth) for a parenting order for the child.

However, it is acknowledged that there are some circumstances in which it would not be appropriate to have a child's father involved in any considerations about the child's adoption or long-term care, and that the decisions about this should be made only by the child's mother and/or another guardian. Therefore, subsection (2) states that the requirement to give the notice to the person does not apply if the chief executive is satisfied –

- (a) the person is a lineal relative of the child's mother (that is, the child was conceived as a result of incest); or
- (b) the child was conceived as a result of a criminal offence committed by the person (for example, rape); or
- (c) there would be an unacceptable risk of harm to the child or the mother if the person were made aware of the child's birth or proposed adoption.

Under clause 39, the court may not dispense with the consent of a man believed to be a child's father within 30 days of the notice required by this clause or if the court has reason to believe there is a current application in a court for a declaration about paternity of for a parenting order for the child.

### **Chief executive may apply for declaration of paternity**

*Clause 34* provides that for the *Status of Children Act 1978*, section 10(1)(c), the chief executive is a person having a proper interest in the result of the question whether the relationship of father and child exists between the child and another person. This enables the chief executive to apply to the Supreme Court under section 10(1) of the *Status of Children Act 1978* for a declaration about the paternity of a child. This course of action may become necessary for example, in circumstances where the chief executive suspects a man of being a child's father but the man denies this and refuses to submit to a testing procedure to determine whether he is, or is not, the child's father.

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## **Division 6            Dispensing with requirement for parent's consent**

### **Application for dispensation**

Where necessary and appropriate, it will be possible for the Childrens Court to make an order dispensing with the need for the consent of a stated parent to a child's adoption (the *relevant parent*). *Clause 35* initiates this process by allowing the chief executive, or a person who has made an application to the chief executive under part 5 to adopt a stepchild, to apply to the Childrens Court for an order dispensing with the need for the consent of the *relevant parent* to the child's adoption. The application must state the grounds on which it is made.

### **Notice of application**

*Clause 36* requires the applicant to serve a copy of the application on the relevant parent and, if the applicant is not the chief executive, on the chief executive as soon as practicable after filing the application in the court.

The clause provides that a served copy must state where and when the application is to be heard and a copy served on the relevant parent must also state that the application may be heard and decided even though the relevant parent does not appear in court.

However, subsection (4) provides that the court may dispense with the requirement to serve a copy of the application on the relevant parent if the court is satisfied that –

- (a) the applicant can not establish the relevant parent's identity, after making all reasonable enquiries; or
- (b) the applicant can not locate the relevant parent, after making all reasonable enquiries; or
- (c) the relevant parent is a lineal relative of the child's mother; or
- (d) the child's conception was a result of an offence committed by the relevant parent; or
- (e) there would be an unacceptable risk of harm to the child or mother if the relevant parent were made aware of the child's birth or proposed adoption; or
- (f) there are other special circumstances for giving the dispensation.

For paragraph (4)(d), the court can be satisfied that the child's conception resulted from an offence committed by the relevant parent, irrespective of whether the parent has been charged with, or convicted of, an offence. Clause 226(2) provides that, if the Childrens Court is to be satisfied of a matter on an application for an order, the court need only be satisfied of the matter on the balance of probabilities. In this circumstance, the court need only be satisfied that the child's conception was the result of an offence committed by the relevant parent on the balance of probabilities.

### **Respondent**

*Clause 37* makes a relevant parent served with a copy of the application a respondent in the proceeding for an order dispensing with the need for his or her consent. Also, if the chief executive is not the applicant, the chief executive may apply to the court to be included as a respondent in the proceeding.

### **Hearing of application in absence of relevant parent**

*Clause 38* provides that the court may hear and decide the application in the absence of the relevant parent only if the relevant parent has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing or the court dispenses with the requirement to serve a copy of the application on the relevant parent.

However, this does not limit the court's jurisdiction to exclude a person from a proceeding.

### **Court may dispense with need for consent**

*Clause 39* allows the court to make an order dispensing with the need for the relevant parent's consent to the adoption of their child. Subsection (1) sets out the range of bases on which the court may make the order, which relate to the relevant parent not being able to be identified or found, the child's conception resulting from the commission of an offence, the risk of harm to the mother or child and the relevant parent's capacity to give the consent and the existence of other special circumstances.

Subsection (1)(e) allows the court to make the order dispensing with the need for the relevant parent's consent where the parent is not, and will not be within a time frame appropriate to the child's age and circumstances,

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willing and able to protect the child from harm and meet the child's need for long-term stable care and is also unreasonably:

- withholding his or her consent to the adoption; or
- refusing to engage with the chief executive in relation to the issue of whether to give consent to the adoption.

However, subsection (2) provides that if the relevant parent is or is believed to be the child's father, the court may not give the dispensation within 30 days after notice is given to the relevant parent under section 33 there is reason to believe there is –

- (i) a current application under section 10 of the *Status of Children Act 1978* for a declaration of paternity for the child; or
- (ii) a current application under the *Family Law Act 1975* (Cwlth) by the relevant parent for a parenting order for the child.

Subsection (3) provides that the court must not give the dispensation unless satisfied it would be in the child's best interests for arrangements for the child's adoption to continue to be made.

Subsection (4) sets out further matters the court must take into account to determine whether it would be in a child's best interests for arrangements for the child's adoption to continue to be made. Where the application for dispensation relates to an application by a person to adopt the person's step-child, the court must be satisfied the grounds for making an adoption order in favour of the applicant are likely to exist. These grounds are set out in clause 208.

Where the application relates to a child who is in the custody or guardianship of the chief executive (child safety) or someone else under the *Child Protection Act 1999* the court must consider anything in a case plan in force for the child under that Act about adoption as a way of meeting the child's need for long-term stable care or re-uniting the child with the child's family. The court must also consider whether there is another way of meeting the child's need for long-term stable care that would better promote the child's wellbeing and best interests.

There will be some circumstances in which the child to be adopted is old enough to be able to form their own views about the adoption. This is likely where a step-parent has applied to adopt the child, or where the child has been in the child protection system and the proposed adoption is a way of securing a permanent family environment for the child. If it is the case that the child has views about the adoption, subsection (5) requires the

court to consider the child's views about the relevant parent, having regard to the child's age and ability to understand.

### **Notice of court order**

*Clause 40* provides that if the court makes an order dispensing with the need for the relevant parent's consent, and the chief executive was not the person who applied for the order, the person who was the applicant must give the chief executive a copy of the order.

### **Discharge of dispensation order if relevant parent not served with application**

*Clause 41* allows a relevant parent or the chief executive to apply to the court for a discharge of an order dispensing with the need for the relevant parent's consent if a copy of the application for the dispensation order was not served on the relevant parent.

In this case, subsection (3) requires the person applying for the discharge of the dispensation order (i.e. the chief executive or the relevant parent) to serve a copy of the application on each party to the proceeding for the dispensation order.

Subsection (4) allows the court to discharge the dispensation order if an adoption order for the child has not been made and the court is satisfied the ground on which the dispensation order was made does not apply.

To remove doubt, subsection (5) provides that the discharge of a dispensation order does not affect a consent given by anyone else to the child's adoption, unless the court decides otherwise.

## **Division 7            Complying interstate consents**

### **Consent given under a law of another State**

*Clause 42* states that a complying interstate consent has effect for the Act as if it were a consent given under this part.

A person's consent is a *complying interstate consent* if an authorised officer for another State has given the chief executive a notice stating that the consent was given, by signed writing, under a law of the other State and



it has not been revoked under that law and a written authorisation to make arrangements for the adoption of the child in Queensland.

For the purposes of this clause, subsection (3) defines *authorised person* for another State as means an officer who, under the law of the State, is authorised to make arrangements for the adoption of children in the State.

## **Division 8            Giving information, counselling and support to child**

### **Application of div 8**

*Clause 43* specifies that this division applies if the child is able to form and express views about the adoption.

### **Child must be given information**

*Clause 44* requires the chief executive to ensure the child is given the prescribed information before an application for an adoption order for the child is made. The information must be given in a way and to an extent that is reasonable, having regard to the child's age and ability to understand.

Subsection (3) defines the *prescribed information* that must be given to the child.

### **Child must be given counselling**

*Clause 45* states that the chief executive must ensure the child receives counselling about the proposed adoption, from a counsellor nominated by the chief executive, before an application for an adoption order is made.

Subsections (2) and (3) provide that the counselling must be carried out in a way and to an extent that is reasonable, having regard to the child's age and ability to understand and that it may be carried out in one or more sessions and by one or more counsellors.

The clause defines a *counsellor* for this section as a person who the chief executive is satisfied has the appropriate qualifications or experience to carry out the counselling.

## **Counselling for Aboriginal or Torres Strait Islander child**

*Clause 46* applies if the child who is proposed to be adopted is an Aboriginal person or a Torres Strait Islander. The clause provides that the counselling must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom. As part of the counselling, the person who explains to the child the prescribed information given to them under section 44(3), need not be a counsellor, but must be an appropriate Aboriginal or Torres Strait Islander person.

However, this requirement does not apply to the extent the child declines to receive counselling in a way, or by an appropriate Aboriginal or Torres Strait Islander person.

## **Child may be given other support**

*Clause 47* states that the chief executive may appoint a qualified person to support the child during the adoption process. The clause defines a *qualified person* for this section as a social worker, a lawyer or other person who the chief executive is satisfied has the necessary expertise or experience to give the relevant support and who is not an employee of the department.

# **Part 3                      Custody and guardianship of a child awaiting adoption**

## **Division 1                Custody of child under care agreement**

### **References to *parent* in div 1**

*Clause 48* provides that a reference in part 3, division 1 to a parent of a child does not include a person if, under section 39, a court has dispensed with the need for the person's consent to the child's adoption.

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## Meaning of care agreement

*Clause 49* provides that for part 3, division 1, a **care agreement** means an agreement under the division between a child's parent and the chief executive for the short-term placement of the child in care while consents for the child's adoption are obtained.

## Entering into care agreements

If a parent has indicated to the chief executive that they may consider adoption for the long-term care of their child, *clause 50* provides that the chief executive (child safety) may enter into a care agreement with a parent who has custody of the child. Note that the chief executive (child safety) is defined in the Act's dictionary as the chief executive of the department in which the *Child Protection Act 1999* is administered.

The agreement must be in the approved form, signed by the parties and state:

- (a) arrangements for contact between the child and the parents; and
- (b) the type of decisions relating to the child for which the parents must be consulted.

Subsection (4) provides that the child may also be a party to the agreement if the chief executive (child safety) considers it appropriate, having regard to the child's age and ability to understand.

## Effect of care agreement

*Clause 51* provides that while a care agreement is in force, the chief executive (child safety) has custody of the child and may place the child in care under the *Child Protection Act 1999*, chapter 2, part 6 division. 4.

Subsection (2) provides that the *Child Protection Act 1999*, sections 74 (Charter of rights for a child in care), 90 (Notice of removal from care) and 162 (Offence to remove child from custody or guardianship) apply as if a reference in those sections to a care agreement included a care agreement under this Act.

## No agreement against the wishes of a parent

*Clause 52* provides that a parent of a child may give the chief executive (child safety) notice that the parent does not wish the child to be placed in

care under a care agreement. If the chief executive receives such a notice from the parent the chief executive (child safety) must not enter a care agreement for the child with another parent of the child or, if a care agreement is in force for the child with another parent of the child, the chief executive (child safety) must end the agreement under section 54.

### **Maximum period of care agreement**

*Clause 53* states that a care agreement may not be entered into for a child if one or more care agreements have already been in force for the child for a total period of 1 year. A care agreement expires if the total period for which the care agreement, and any other care agreement entered into for the child under this division, have been in force is 1 year.

### **Ending of care agreement**

*Clause 54* provides that a care agreement has effect until the chief executive becomes a guardian of the child under section 57 unless it ends earlier under this division. The chief executive becomes the child's guardian under clause 57 when the child's parents have given their consent to the child's adoption, or the need for their consent has been dispensed with.

Subsection (2) provides that a care agreement may be ended at any time with the agreement of the chief executive and each parent who is a party to the agreement or, under subsection (3), by one party by giving at least two days notice to the other parties.

Subsection (4) states that a care agreement ends if the chief executive (child safety) obtains custody or guardianship of the child under the *Child Protection Act 1999*. In circumstances where a care agreement ends and the child is a child in need of protection under the *Child Protection Act 1999*, the chief executive (child safety) may take the action under that Act that the chief executive (child safety) considers appropriate.

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## **Division 2                    Guardianship of child after consent is given to local adoption**

### **Application of div 2**

*Clause 55* provides that division 2 applies to the proposed adoption of a child by a local adoption.

### **Definitions for div 2**

*Clause 56* defines the terms *consent* and *dispense with*, in relation to the need for a parent's consent, for the purposes of this division.

### **Chief executive becomes guardian when consent is given or dispensed with**

*Clause 57* applies when a parent consents to their child's adoption, or when the need for a parent's consent to the child's adoption is dispensed with.

Subsections (2) and (3) provide that the parent stops having guardianship of the child and the chief executive becomes a guardian of the child.

Subsection (4) provides that no-one else's guardianship of the child is affected by this. This means the chief executive could have guardianship of the child at the same time that another parent or guardian also has guardianship of the child.

### **Child may be placed in care**

If the chief executive becomes a child's guardian under the previous section, *clause 58* enables the chief executive to place the child in care under the *Child Protection Act 1999*, chapter 2, part 6, division 4.

### **Effect of consent or dispensation ending**

*Clause 59* applies if a parent revokes his or her consent to the child's adoption under section 20 or an order dispensing with the need for a parent's consent is overturned on appeal or discharged.

Subsections (2) and (3) provide that the parent's guardianship of the child resumes and the chief executive's guardianship under section 57, because of the consent or dispensation, ends. However, subsection (4) provides that

the chief executive's guardianship under section 57, because of another parent's consent or another dispensation, is not affected.

### **Chief executive may place child in parents' care**

*Clause 60* applies if:

- (a) the chief executive is the child's guardian under section 57; and
- (b) it is at least 30 days since, for each of the child's parents, his or her consent was given or the need for his or her consent was dispensed with; and
- (c) the chief executive is satisfied one or more of the child's parents are willing and able to protect the child from harm and meet the child's need for long-term stable care and it would otherwise be in the child's best interests to be placed in the care of one or more of the parents; and
- (d) an interim order is not in force for the child.

Subsection (2) allows the chief executive to place the child in the care of one or more of the parents by giving each of them a signed notice. On placement of the child with one or more of the parents, subsection (3) provides that the chief executive's guardianship of the child under section 57 ends and a consent to the child's adoption given by a parent of the child stops having effect.

### **Other ending of chief executive's guardianship**

*Clause 61* provides that the chief executive's guardianship of the child under section 57 ends if –

- (a) a final adoption order for the child is made; or
- (b) a court makes an order ending the chief executive's guardianship of the child; or
- (c) under a law of another jurisdiction, the chief executive agrees to someone else having guardianship of the child for the purpose of the child's adoption under that law.

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## **Guardianship under Child Protection Act not affected**

*Clause 62* provides that nothing in the division affects the chief executive (child safety)'s guardianship of a child under the *Child Protection Act 1999*.

## **Division 3            Transfer of guardianship between chief executive and corresponding officer for another State**

### **Corresponding officers**

*Clause 63* defines the term *corresponding officer* for another State to mean an officer with powers and functions substantially corresponding to the chief executive's powers and functions under the Act.

### **Chief executive may renounce guardianship**

*Clause 64* applies if –

- (a) the chief executive is a guardian of a child under section 57; and
- (b) it is at least 30 days since the last consent required for the adoption was given; and
- (c) the chief executive has received a notice from a corresponding officer for another State stating that the corresponding officer wishes to arrange for the child's adoption in the other State and asking the chief executive to renounce the chief executive's guardianship of the child.

Subsection (2) provides that if the chief executive is satisfied it would be in the child's best interests, the chief executive may, by a signed document, renounce the chief executive's guardianship of the child.

Subsection (3) provides that immediately after signing the document in subsection (2), the chief executive must give to the corresponding officer the document and all consents to the adoption of the child held by the chief executive.

Subsection (4) provides that when the chief executive gives the documents to the corresponding officer, the chief executive stops having guardianship of the child.

## **Chief executive may ask corresponding officer to renounce guardianship**

*Clause 65* applies if the chief executive wishes to arrange for a child's adoption and a corresponding officer for another State has guardianship of the child under a law of the other State substantially corresponding to section 57.

Subsection (2) allows the chief executive to ask the corresponding officer to give the chief executive a document under which the officer renounces the officer's guardianship of the child. If the chief executive receives such a document, the chief executive becomes the guardian of the child. This subsection also contains a note to explain that the chief executive may also ask the corresponding officer to give the chief executive any of the following documents –

- a consent to the adoption of the child given under the law of the other State, that is held by the officer.
- a document mentioned in section 42.

# **Part 4                      Recruitment and selection of prospective adoptive parents**

## **Division 1                Planning**

### **Chief executive must plan for future need**

The chief executive has an obligation to find suitable prospective adoptive parents to care for children from Queensland who require an adoptive placement. Also, under arrangements that Australia has entered into with other countries about adoption, the Queensland Government has agreed to find suitable prospective adoptive parents for children from overseas who require the permanent care of a family.

*Clause 66* assists in meeting the chief executive's obligation to children who require adoptive families by requiring the chief executive to plan continually for the future need for adoptive parents by –



- 
- (a) anticipating the numbers and characteristics of children likely to need an adoptive placement by local adoption; and
  - (b) anticipating the numbers and characteristics of children likely to be placed for an intercountry adoption from each country with which arrangements have been made or with which it is anticipated arrangements will be made; and
  - (c) anticipating what are likely to be the placement needs of the children; and
  - (d) identifying the numbers and profiles of prospective adoptive parents likely to be needed, having regard to the matters mentioned in paragraphs (a) to (c).

The purpose of the planning phase is to anticipate the likely needs of children who will require adoption and to identify the number and profile of prospective adoptive parents likely to be required to meet the placement needs of these children.

### **Deciding number of parents to be assessed**

*Clause 67* requires the chief executive to, at least once in each financial year, decide the numbers of persons with different profiles that it would be reasonable to assess for suitability to ensure there are enough suitable prospective adoptive parents to meet the needs identified under section 66, paragraph (d).

For the purpose of deciding the number of persons it would be reasonable to assess for suitability, subsection (2) requires the chief executive to have regard to the numbers and profiles of persons currently listed in the suitable adoptive parents register, and to the considerations that –

- (a) if too few persons with appropriate profiles are assessed, the need for adoptive parents may not be met within a reasonable time; and
- (b) if too many persons with appropriate profiles are assessed, this—
  - (i) may be an inefficient use of resources; and
  - (ii) may unnecessarily raise the expectations of some of the assessed persons about the likelihood of their adopting a child; and
  - (iii) may unnecessarily intrude on the privacy or personal affairs of the persons assessed who are not likely to be required.

This process allows the chief executive to limit the number of people on the expression of interest register who are assessed to determine their suitability to be an adoptive parent.

## **Division 2            Making expressions of interest**

### **Who may make an expression of interest**

*Clause 68* states that a couple may make an expression of interest in being assessed for suitability to be adoptive parents. Subsection (2) clarifies that an expression of interest may only be made by a couple, by stating that a person may not make an expression of interest unless the person has a spouse and makes the expression of interest jointly with their spouse.

Subsection (3) provides that a person may not express an interest if the person's name is already in the expression of interest register or the suitable adoptive parents register or if the person has custody of a child under an interim order. This is because the chief executive would not generally invite a couple to begin the assessment process if any of these circumstances existed.

### **Form**

*Clause 69* explains that a couple must make an expression of interest by giving the chief executive a notice in the approved form. Subsection (2) requires the form to be signed by the couple and by each person who is, at the time the form is given to the chief executive, an adult member of the couple's household.

Subsection (3) stipulates that the information required by the approved form may include the following for each member of the couple –

- (a) information demonstrating the person's eligibility to have his or her name entered in the expression of interest register;
- (b) information demonstrating the person's compliance with a requirement prescribed under section 71 or another requirement under the division;
- (c) information relating to the person's profile, including—
  - (i) any preferences of the person relating to the characteristics of a child whom the person is willing to adopt; and

- 
- (ii) other information relevant to whether the person would meet the anticipated placement needs of children relevant to the expression of interest;
  - (d) information relevant to the person's suitability, including information about the person's health and personal history;
  - (e) membership of the person's household;
  - (f) information of which the person is aware, or that the person reasonably suspects, about the personal history of each adult member of the person's household.

Note that the term *personal history* is defined in the Act's dictionary to mean criminal history, domestic violence history and traffic history.

To ensure that the couple is provided with information about the assessment process, subsection (4) provides that the approved form must include information about the assessment that will be carried out under part 6 if the couple is selected for assessment under division 5.

### **Nomination relating to local or intercountry adoption**

*Clause 70* provides that an expression of interest must state whether it relates to a local adoption, an intercountry adoption or both. In addition, if the expression of interest relates to an intercountry adoption, it must state each country for which the couple wish to be considered.

### **Other requirements for expressing an interest**

*Clause 71* provides power for a regulation to be made to prescribe requirements a couple must comply with before or when expressing an interest. For example, a regulation may prescribe that the couple must –

- (a) attend a departmental information session within a stated time before expressing an interest; or
- (b) when expressing an interest, be able to demonstrate that one or both of them has the ability to personally care for a child full-time for a stated period after the child is placed with them; or – for an intercountry adoption – that the couple has an ability to meet the full costs involved in completing the adoption process within a stated period.

In addition, subsection (3) provides that a regulation may prescribe a fee payable for an information session or other thing relating to a requirement under the section.

### **Person may express an interest despite previous expressions**

*Clause 72* clarifies that a person may express an interest even though they have previously expressed an interest, or purported to express an interest, and either—

- (a) the person was not eligible or, for another reason, their expression of interest or purported expression of interest did not comply with the requirements of the division; or
- (b) the person's name was removed from the expression of interest register.

### **Changes to current expression of interest or relevant information**

*Clause 73* provides that a couple with a current expression of interest may change their preferences relating to the characteristics of a child who they are willing to adopt or a country for which they wish to be considered for an intercountry adoption. They make the change by giving a notice to the chief executive.

Subsection (2) states that a couple with a current expression of interest may also notify the chief executive of any other new information or changes in information previously given to the chief executive.

### **No expressions of interest while register is closed**

*Clause 74* explains that an expression of interest may not be made while the expression of interest register, or a part of it to which the expression of interest relates, is closed. Division 4 provides for the closing and re-opening of the expression of interest register.

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## **Division 3            Expression of interest register**

### **Expression of interest register**

*Clause 75* requires the chief executive to keep a register of persons who have made an expression of interest. The register will be the *expression of interest register*.

Subsection (2) stipulates that the chief executive may only, and must, enter a person's name in the expression of interest register if –

- (a) the person and the person's spouse make an expression of interest under division 2; and
- (b) the chief executive is satisfied the person and the person's spouse are both eligible to have their names entered in the expression of interest register (see clause 76).

### **Eligibility for inclusion in register**

*Clause 76* sets out the criteria that a person must meet to be eligible to have his or her name entered or remain in the expression of interest register. Under clause 80(1)(a), the person's name must be removed from the register if he or she is not eligible to have his or her name remain in the register under this section.

### **Notice and information to persons entered in register**

*Clause 77* places a requirement on the chief executive to give a couple a notice after entering their names in the expression of interest register. The notice must state that the couple's names have been entered in the register, explain the selection and assessment processes and contain information about fees and other costs associated with the adoption process.

The reason for giving the notice is to let the couple know that their names are now listed in the register, and to alert them about what to expect with regards to the next stages of the adoption process.

### **Notice to persons not entered in register**

If a person has made, or purported to make, an expression of interest under division 2, and the chief executive considers that their name may not be entered in the expression of interest register (see clause 75(2)), then *clause*

78 requires the chief executive to give the person a *show cause notice*. This notice must state –

- (a) that the person’s name has not been entered in the register; and
- (b) why the person’s name has not been entered in the register; and
- (c) that the person may, within a stated time of at least 28 days, give the chief executive a written response about entering the person’s name in the register.

Subsection (3) requires the chief executive to consider any response given by the person within the time stated in the show cause notice before deciding whether the person’s name may be entered in the register.

Subsection (4) provides that if the chief executive subsequently decides the person’s name may not be entered in the register, the chief executive must give the person an information notice for the decision.

The dictionary in schedule 3 explains that an information notice, for a decision, means a written notice stating the reasons for the decision, that the person to whom the notice is given may apply to the tribunal to have the decision reviewed and how the person may apply for the review, including the time by which the application must be made.

### **Automatic removal from register**

*Clause 79* sets out the circumstances in which the chief executive must remove a person’s name from the expression of interest register, that is, if –

- (a) it is 2 years since the person’s name was entered in the register and the person has not been given a notice under section 91 stating that the person and the person’s spouse have been selected for assessment; or
- (b) the person has given the chief executive a written request to remove the person’s name from the register; or
- (c) the name of the person’s spouse is not in the register.

Subsection (2) provides that after removing the person’s name from the expression of interest register in accordance with this section, the chief executive must give the person a notice stating that the person’s name has been removed from the register, and the reason for the removal.

The effect of clause 79(1)(a) is to require a couple to lodge a new expression of interest after two years, if they have not been assessed for suitability to be adoptive parents. This is to ensure that people reconsider

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their decision to pursue adoptive parenthood at regular intervals and ensure that the expression of interest register only contains the names of people who are currently committed to the adoption process. A couple will be able to lodge a new expression of interest at any time and, in doing so, will demonstrate their ongoing commitment to adoption. Note that there is no fee payable for lodging an expression of interest.

### **Other removal from register**

People who lodge expressions of interest must maintain their eligibility and must participate in the adoption process honestly and in good faith. Therefore, *clause 80* sets out other reasons for removing a person's name from the expression of interest register.

Subsection (1) states that the chief executive must remove a person's name from the register if –

- (a) the person or person's spouse is not eligible to have his or her name remain in the register; or
- (b) the person has not complied with a requirement under section 112 to pay a prescribed fee or part of a prescribed fee relating to an assessment of the person.

Subsection (2) states that the chief executive may remove a person's name from the register if–

- (a) the person does not comply with a notice under section 81 or 114, under which the chief executive may give a notice requiring the person to give any relevant information, by the due day for the notice; or
- (b) the person contravenes section 82 or 115, which requires a person to notify the chief executive of changed or new information in relation to a matter; or
- (c) the person gives information to the chief executive for the Act that is false or misleading in a material particular.

Subsection (3) provides that before removing a person's name from the register under this section, the chief executive must give the person a ***show cause notice*** stating –

- (a) that the chief executive proposes to remove the name; and
- (b) the reason for the proposed removal; and

- (c) that the person may, within a stated time of at least 28 days, give the chief executive a written response to the proposed removal.

Subsection (4) requires the chief executive to consider any response given by the person within the time stated in the show cause notice before deciding whether to remove the person's name from the register.

Subsection (5) states that if the chief executive decides not to remove the person's name from the register, the chief executive must give the person notice of this decision. Subsection (6) provides that if the chief executive subsequently decides to remove the person's name from the register, the chief executive must give the person an information notice for the decision.

The dictionary in schedule 3 explains that an information notice, for a decision, means a written notice stating the reasons for the decision, that the person to whom the notice is given may apply to the tribunal to have the decision reviewed and how the person may apply for the review, including the time by which the application must be made.

Subsection (7) provides that for the requirement in subsection (1)(a) to remove a person's name from the register if the person is not eligible to have his or her name remain in the register, a woman does not become ineligible to have her name remain in the register on the ground of being pregnant unless she is at least 14 weeks pregnant.

### **Chief executive may require further information**

*Clause 81* states that a person with a current expression of interest must give the chief executive any relevant information that the chief executive reasonably requires to decide whether the person is eligible to have his or her name remain in the expression of interest register, or whether the person has complied with division 2.

Subsection (3) states that the chief executive may seek the information by giving the person a notice stating the information that the chief executive requires, the day by which the person must give the information to the chief executive and the consequence under subsection (7) if the information is not given to the chief executive by the due day.

Subsection (4) provides that the due day for giving the information must be reasonable and must be at least 14 days after the notice is given. Subsection (6) enables a later due day to be set for giving the information. On or before the due day, the chief executive may give the person a further notice



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substituting a later due day if satisfied it would be reasonable in all circumstances to do so.

Subsection (5) allows the chief executive to withdraw the requirement, or part of the requirement, at any time.

If the person does not give the chief executive the required information by the due day, subsection (7) states that –

- (a) if the person's name has not been entered in the expression of interest register, the person's expression of interest lapses;
- (b) if the person's name is in the expression of interest register, the chief executive may remove the name under section 80(2)(a);
- (c) if the person's name is in the suitable adoptive parents register, the chief executive may remove the name under section 146(2)(b).

Subsection (8) defines the terms *due day* and *information* as they apply for the section.

### **Obligation to notify chief executive of changed or new information relevant to eligibility**

*Clause 82* applies if –

- (a) the person has given information about a matter to the chief executive under this part or part 6; and
- (b) the person becomes aware that the information has changed or becomes aware of new information relating to the matter; and
- (c) the changed or new information is relevant to whether the person is eligible to have his or her name entered or remain in the expression of interest register.

Subsection (2) requires the person to immediately give the chief executive a notice of the changed or new information.

### **Inclusion in register does not confer entitlement**

*Clause 83* explains that inclusion of a person's name in the expression of interest register does not confer an entitlement on that person to be assessed, or to be selected for assessment, for suitability to be an adoptive parent. This is to reinforce that adoption is about the needs of children who require an adoptive family and that no person has a right to adopt a child.

## **Division 4                    Closing and re-opening expression of interest register**

### **Chief executive may close register**

*Clause 84* provides that the chief executive may close the expression of interest register, or part of it, if satisfied the number of persons listed in the register, having regard to their profiles, is significantly higher than the number needed to meet the anticipated need for adoptive parents. This is can occur because there are significantly more people who express an interest in adoption each year, than there are children who are adopted. Also, it is not uncommon for intercountry adoption programs to slow down, or to close altogether, particularly as countries develop their own local adoption programs and are able to find local families to care for children.

A decision to close the register, or a part of it, as necessary, will reduce the likelihood of unnecessarily raising the expectations of some people that they will be able to adopt a child. In addition, it will mean that the privacy and personal affairs of people who are not likely to be required to meet the needs of children requiring adoption, would not be intruded upon unnecessarily.

Subsection (1) states that the chief executive may act under subsection (1) in relation to –

- (a) the whole of the register; or
- (b) a part of the register relating to—
  - (i) local adoptions; or
  - (ii) intercountry adoptions; or
  - (iii) intercountry adoptions from a stated country; or
  - (iv) adoptions of children with stated characteristics.

Subsection (3) explains that the reference in subsection (1) to the anticipated need for adoptive parents includes, for intercountry adoptions from a particular country, the extent to which applications or expressions of interest from Australian couples are being received at the relevant time by the country's competent authority.

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## **Notice of closure**

*Clause 85* requires the chief executive to publish, at least 30 days before closing the expression of interest register or a part of it, in a newspaper circulating throughout the State, notice of the extent of the closure, the reason for the closure and the last day for giving an expression of interest to the chief executive before the closure.

Subsection (2) provides that the notice may include any other information the chief executive considers appropriate. For example, if there is a time when the chief executive anticipates the register or part of it will be re-opened, the notice may state that time.

Subsection (3) provides that the notice may also be published in other ways the chief executive considers appropriate.

## **Periodic review of closure**

*Clause 86* provides that, at intervals of not more than 6 months after the expression of interest register, or part of it, is closed the chief executive must consider whether the closure remains appropriate .

## **Re-opening the register**

*Clause 87* states that the chief executive may re-open the expression of interest register, or part of it, if satisfied it would be appropriate to do so, having regard to the matters stated in section 84.

Subsection (2) states that the chief executive must publish notice of the re-opening in a newspaper circulating throughout the State and in any other way the chief executive considers appropriate.

## **Division 5            Selections for assessment**

### **Selection to meet anticipated future need**

*Clause 88* provides that from time to time, the chief executive must select persons from the expression of interest register to be assessed for suitability to be an adoptive parent. The purpose of these selections is to ensure the likely future need for adoptive parents that are identified in planning under division 1 may be met.

Subsection (3) provides that the chief executive must select appropriate numbers of persons, with appropriate profiles, according to the likely need relating to local adoptions and the likely need relating to intercountry adoptions for each relevant country.

Subsection (4) provides that the chief executive must be satisfied the persons selected are, based on their profiles, likely to meet the anticipated placement needs of children to be adopted. The placement needs of children to be adopted by an intercountry adoption are determined having regard to matters that include the requirements of the competent authority for the country, that apply to prospective adoptive parents of children from the country. See schedule 3, definition *placement needs*, paragraph (c).

To ensure fairness in the selection process, subsection (5) allows the chief executive, in deciding whom to select, to give priority to –

- (a) a person with the same ethnic background as children to be adopted; or
- (b) a person who has previously adopted a child with similar placement needs as children to be adopted; or
- (c) a person with the earliest relevant expression of interest.

### **Selection to meet needs of particular child**

*Clause 89* applies to the selection process if the chief executive anticipates a particular child will need an adoptive placement. To find the best possible adoptive placement for a child where the child's particular needs are known, the chief executive may select one or persons under this section to be assessed for suitability to be an adoptive parent of the child.

Subsection (3) provides that if the child has an approved carer, the chief executive may select that person for assessment. Subsection (4) provides that if the child has a sibling who has already been adopted, the chief executive may select the person who adopted the child's sibling.

Subsection (5) provides that if the chief executive considers there is no-one listed in the suitable adoptive parents register who is likely to meet the anticipated placement needs of the child, the chief executive may select anyone who the chief executive considers is likely to meet the anticipated placement needs of the child. For example, if the child has a disability, the chief executive may select for assessment a person who has expressed an interest in adopting a child with the disability. Likewise, if the child is an

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Aboriginal person or a Torres Strait Islander, the chief executive may select for assessment a person from the child's community or language group.

The purpose of this selection process is to choose a person for assessment who is most likely to be the best person to be the adoptive parent of a child with particular needs. Therefore, subsection (6) explains that a person may be selected under this section even if the person –

- (a) does not have a conforming expression of interest; or
- (b) is not listed in the expression of interest register; or
- (c) does not have a spouse.

However, a person listed in the expression of interest register who does not have a conforming expression of interest may only be selected if the person agrees to being selected. Where the person the chief executive is considering for assessment is not listed in the expression of interest register, the chief executive may only select the person if –

- (i) the person agrees to being selected; and
- (ii) the person is an adult; and
- (iii) the person is an Australian citizen or has a spouse who is an Australian citizen; and
- (iv) the person is resident or domiciled in Queensland; and
- (v) for a person who has a spouse—
  - (A) the spouse is not the same gender as the person; and
  - (B) the person and the spouse are living together.

*A conforming expression of interest*, in relation to a child, is a current expression of interest that relates to a local adoption or an intercountry adoption from a particular country, whichever is relevant to the child and contains preferences that are consistent with the child's characteristics.

### **Joint selection of spouses**

*Clause 90* states that if a person has a spouse, the chief executive must only select the person for assessment jointly with the person's spouse.

## **Notice of selection and fees**

*Clause 91* provides that immediately after selecting a person for assessment, the chief executive must give the person a notice of the selection, and the notice must include information about the fees payable under section 112 – that is, the fees payable for an assessment.

# **Part 5                      Application by a person wishing to adopt a stepchild**

## **Division 1                Making an application**

### **Who may apply**

*Clause 92* allows a person to apply to the chief executive to arrange an adoption by the person of a stated child if—

- (a) for a continuous period of at least 3 years up to the time of the application, the person is the spouse of a parent of the child (and not of the same gender) and the person, the person's spouse and the child are living together; and
- (b) the person has been granted leave under the *Family Law Act 1975* (Cwlth), section 60G(1); and
- (c) the person is an adult who is resident or domiciled in Queensland and the person or the person's spouse is an Australian citizen; and
- (d) the child is at least 5 years old and has not yet turned 17 years of age.

In relation to criterion (d) above, under the *Family Law Act 1975* (Cwlth), the making of an adoption order in respect of a child extinguishes the parental responsibilities of a person who was the child's parent before the order was made. The exception is where a child has been adopted by his or her step-parent. In that case, the adoption order will only extinguish the parental responsibilities of the child's non-custodial parent if the Family Court first gave leave for adoption proceedings to be commenced under section 60G of that Act.

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The child must be at least 5 years old so the child's relationship with the step-parent can be assessed and the child's views about the step-parent can be ascertained.

Despite the requirement for the child to have not turned 17 years of age at the time of the application, the chief executive may accept an application relating to a child who has turned 17 if the chief executive considers –

- (a) there is enough time to complete the adoption process before the child turns 18; and
- (b) the grounds for making an adoption order in favour of the applicant are likely to exist.

Subsection (3) clarifies that in this section, a reference to a *parent* does not include a guardian.

### **Requirements for application**

*Clause 93* sets out the requirements for an application by a step-parent. The application must be in the approved form; and be signed by the applicant, the applicant's spouse, and each adult member of the applicant's household. In addition, the application must be accompanied by the fee prescribed under a regulation.

### **Refusal of application**

*Clause 94* provides that the chief executive must refuse an application made, or purportedly made, by a person under section 92 if the chief executive is satisfied –

- (a) the person may not make the application under that section; or
- (b) if relevant, the application should not be accepted under section 92(2).

Subsection (2) provides that if the chief executive proposes to refuse the application, the chief executive must give the person a notice (a *show cause notice*) stating—

- (a) why it is proposed to refuse the application; and
- (b) that the person may give the chief executive a written response within a stated time of at least 28 days.

Subsection (3) requires the chief executive to consider any response given by the person within the time stated in the show cause notice before deciding whether to refuse the application.

Subsection (4) states that if the chief executive decides to refuse the application, the chief executive must give the person an information notice for the decision. The dictionary in schedule 3 explains that an information notice, for a decision, means a written notice stating the reasons for the decision, that the person to whom the notice is given may apply to the tribunal to have the decision reviewed and how the person may apply for the review, including the time by which the application must be made.

### **Obligation to notify chief executive of changed or new information relevant to application**

*Clause 95* applies if –

- (a) the person has given information about a matter to the chief executive under this part or part 6; and
- (b) the person becomes aware that the information has changed or becomes aware of new information relating to the matter; and
- (c) the changed or new information is relevant to a matter stated in section 92(1).

Subsection (2) states that the person must immediately give the chief executive a notice of the changed or new information.

## **Division 2            How chief executive must deal with accepted application**

### **Definitions for div 2**

*Clause 96* defines the terms *consent*, *dispensation application* and *parent* as they apply for the division.

### **Application of div 2**

*Clause 97* provides that division 2 applies to an application made under division 1 unless the chief executive decides under section 94 to refuse the application.



## **Obtaining consents**

*Clause 98* provides that the chief executive must take steps to obtain the consent of each parent. If the chief executive obtains the consent of each parent, the chief executive must assess the applicant under part 6.

## **All consents not obtained**

*Clause 99* applies if the chief executive –

- (a) becomes aware that a parent does not wish to give his or her consent;  
or
- (b) can not establish the identity of a parent after making all reasonable enquiries; or
- (c) can not locate a parent after making all reasonable enquiries.

Subsection (2) provides that the chief executive must notify the applicant that, for the relevant reason mentioned above (in subsection (1)(a) to (c)), the chief executive has not obtained the consent of each parent.

Subsection (3) provides that the chief executive must not deal further with the application unless –

- (a) the chief executive becomes aware that the parent wishes to give the consent, or identifies the parent, or locates the parent, whichever is relevant; or
- (b) the applicant makes a dispensation application.

If the applicant makes a dispensation application, then subsection (4) enables the chief executive to proceed to assess the applicant under part 6 (i.e. to have the applicant assessed to decide if he or she is suitable to be the child's adoptive parent), pending the result of the dispensation application, as if each consent had been obtained.

## **Lapsing of application**

*Clause 100* states that if an application under this part has been inactive for 6 months, the application lapses. An application is inactive if the chief executive is not dealing with it and, under section 99 must not deal further with it, or under section 114(6)(b), is not required to deal further with it.

## **Part 6                      Assessment of prospective adoptive parents**

### **Division 1                Preliminary**

#### **Who is assessed**

*Clause 101* provides that the chief executive must assess a person under this part if the person is selected for assessment under part 4, division 5 (i.e. as a consequence of submitting an expression of interest or being selected for assessment in relation to a particular child); or the assessment is required under section 98(2) (i.e. as a consequence of applying to adopt a child who is a step-child of the applicant).

However, subsection (2) provides that this section applies subject to section 112(4) (i.e. the chief executive need not assess the person if the person has not paid a fee that is required to be paid).

Subsection (3) states that the chief executive must not assess a person under this part unless the assessment is required under subsection (1) or allowed under section 99(4) (i.e. because the applicant has made a dispensation application) or division 8 (i.e. reassessment of a person listed in the suitable adoptive parents register).

#### **Suitable adoptive parents register**

*Clause 102* requires the chief executive to keep a register (the *suitable adoptive parents register*) for this part.

#### **This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

*Clause 103* provides that part 6 applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

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## **Division 2            Purpose and scope of assessment**

### **Purpose of assessment**

*Clause 104* explains that the purpose of assessing a person is to decide if he or she is suitable to be an adoptive parent.

### **Scope of assessment – persons selected to meet anticipated future need**

*Clause 105* applies to a person selected for assessment under section 88 to meet the anticipated future need for adoptive parents.

Subsection (2) requires the chief executive to decide the person's suitability to be an adoptive parent generally.

In addition, subsection (3) provides that if the chief executive considers it appropriate, the chief executive may also decide the person's suitability to be an adoptive parent of a child with particular characteristics. In deciding whether this decision would be appropriate, subsection (4) states that the chief executive must consider the person's current expression of interest; and the likely future need for adoptive parents.

### **Scope of assessment – persons selected to meet needs of particular child**

*Clause 106* applies to a person selected for assessment under section 89 in relation to the anticipated placement needs of a particular child (the *relevant child*).

Subsection (2) requires the chief executive to decide the person's suitability to be an adoptive parent of the relevant child.

Subsection (3) states that if the chief executive considers it appropriate, the chief executive may also decide –

- (a) the person's suitability to be an adoptive parent of a child with particular characteristics other than those of the relevant child; or
- (b) the person's suitability to be an adoptive parent generally.

Subsection (4) provides that in deciding whether it would be appropriate to make a decision mentioned in subsection (3), the chief executive must

consider the person's current expression of interest, if any and the likely future need for adoptive parents.

### **Scope of assessment – persons wishing to adopt stepchild**

*Clause 107* applies to the assessment of a person who has made an application under part 5 (i.e. an application to adopt a child who is the person's step-child).

Subsection (2) requires the chief executive to decide the person's suitability to be an adoptive parent of the child who the person wishes to adopt.

## **Division 3            Assessment process**

### **Joint assessment of a couple**

*Clause 108* provides that if a person being assessed has a spouse, the assessment must be made of the person and the person's spouse jointly.

However, subsection (2) explains that this does not apply to a person being assessed after making an application under part 5 (i.e. an application by a step-parent to adopt their step-child).

### **Assessment process**

*Clause 109* states that to assess a person, the chief executive must obtain relevant information under division 4 and assess the person's suitability on the bases stated in division 5. The clause affords natural justice to a person being assessed by requiring the chief executive to give the person a preliminary report about the person's suitability and inviting the person to give the chief executive, within a stated period of at least 28 days, a written response to the report, including corrections or comments about the matters stated in the report. The chief executive must decide whether the person is suitable after considering the person's response to the preliminary report, if any.

Subsection (2) provides that if, in the course of carrying out the assessment of the person's suitability, the chief executive is satisfied there is an unacceptable risk mentioned in section 121 (i.e. an unacceptable risk of harm) the chief executive *must* prepare a preliminary report stating that the person is unsuitable without any further assessment under division 5.

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Likewise, subsection (3) provides that if, in the course of carrying out the assessment of the person's suitability, the chief executive is satisfied the person is unsuitable on any of the other bases stated in division 5 (for example, because the person does not have the health required under section 122), the chief executive *may* prepare a preliminary report stating that the person is unsuitable without any further assessment under division 5.

Subsection (4) requires the chief executive to comply with the natural justice process described above, even if the scope of the assessment is limited under this section.

### **Timing and pace of assessment**

Assessment is a comprehensive and complex process that involves information being gathered from a variety of sources and analysed. Therefore, *clause 110* allows the chief executive to assess a person over the period, and at the rate of progress, that the chief executive considers appropriate, having regard to—

- (a) the need to carry out the assessment efficiently, thoroughly, to a high standard and in compliance with the Act; and
- (b) the need to be fair to the person; and
- (c) whether it would be appropriate to repeat a stage of the assessment process; and
- (d) the timing of a possible application for an adoption order in favour of the person if the person is decided to be suitable.

### **Consent of household members to assessment**

*Clause 111* states that the assessment of a person under this part includes an assessment of certain matters relating to members of the person's household. Note that under section 121, a person may be unsuitable because of the risk posed by a member of the person's household.

Subsection (2) provides that an adult member of the person's household may give written consent to being assessed under this part by signing the person's expression of interest or by signing the person's application under part 5 (i.e. an application by a step-parent to adopt their step-child) or in another way.

Subsection (3) provides that if an adult member of the person's household has not given written consent to being assessed under this part—

- (a) the chief executive may not ask the police commissioner under section 116 for information, or access the police commissioner's records, relating to the household member; and
- (b) the chief executive may not ask the chief executive (transport) under section 117 for a written report about the household member's traffic history.

Subsection (4) provides that if an adult member of the person's household refuses to give written consent to being assessed under this part, section 114(6) applies as if the person had failed to give information required under that section within the required time.

## **Fees**

*Clause 112* provides that a regulation may prescribe fees for an assessment under this part.

Subsection (2) states that a person being, or to be, assessed under this part must pay a prescribed fee, or part of a prescribed fee, (the ***required amount***) when required by the chief executive.

Subsection (3) provides that the requirement to the required amount must be written and must state the reasonable time within which the required amount must be paid and the consequences of non-payment under this section and section 80(1)(b).

Subsections (4) and (5) provide that the chief executive need not assess the person, or continue assessing the person, until the required amount is paid and must not enter the person's name in the suitable adoptive parents register if the required amount is not paid.

Subsection (6) states that an amount stops being a required amount to the extent the chief executive waives payment of it.

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## **Division 4            Information to assess suitability**

### **Application of div 4**

*Clause 113* states that division 4 applies to a person being assessed under this part; or whose name is in the suitable adoptive parents register; or for whom an interim order is in force.

### **Chief executive may require information**

*Clause 114* requires the person to give the chief executive any relevant information that the chief executive reasonably requires to assess the person's suitability. For example, the chief executive may require –

- a report about the person's health, in the approved form, completed by a doctor who has examined the person;
- a further report or opinion, from a specialist or other doctor, about a stated medical condition or other stated aspect of the person's health;
- a copy of a bench charge sheet, trial transcript or other document containing information relating to a charge or conviction of the person or a member of the person's household.

Subsection (2) provides that the chief executive may give the person a notice stating –

- (a) the information that the chief executive requires; and
- (b) the day by which the person must give the information to the chief executive; and
- (c) the consequence under subsection (6) if the person does not give the information to the chief executive by the due day.

Subsection (3) provides that the due day must be reasonable and, in any case, at least 14 days after the requirement is made. Subsection (5) states that, on or before the due day for giving particular information, the chief executive may give the person a further notice substituting a later due day for giving the information, if the chief executive is satisfied it would be reasonable in all the circumstances to do so.

Subsection (4) enables the chief executive to withdraw the requirement, or part of the requirement, at any time.

Subsection (6) provides that if the person does not give the required information by its due day –

- (a) if the person’s name is in the expression of interest register—the chief executive may revoke the selection of the person for assessment and remove the name from the register under section 80(2)(a);
- (b) if the person is an applicant under part 5—the chief executive is not required to deal further with the application;
- (c) if the person’s name is in the suitable adoptive persons register—the chief executive may remove the name from the register under section 146(2)(b);
- (d) if an interim order for the person is in force—the chief executive may have regard to the non-compliance in making a decision about an application to the court relating to the interim order or a final adoption order.

Subsection (7) defines the terms *due day* and *information* for the section.

### **Obligation to notify chief executive of changed or new information relevant to suitability**

*Clause 115* applies if –

- (a) the person has given information about a matter to the chief executive under this part or part 4 or 5; and
- (b) the person becomes aware that the information has changed or becomes aware of new information relating to the matter; and
- (c) the changed or new information is relevant to the person’s suitability to be an adoptive parent.

The person must immediately give the chief executive a notice of the changed or new information. This includes notice of a change in –

- (a) the person’s personal history; or
- (b) the membership of the person’s household; or
- (c) information of which the person is aware, or that the person reasonably suspects, about the personal history of an adult member of the person’s household.

Note that the term *personal history* is defined in the Act’s dictionary to mean criminal history, domestic violence history and traffic history.



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Subsection (4) clarifies that there is a change in a person's personal history if a person with no personal history acquires a personal history.

## **Police information**

*Clause 116* states that the chief executive may ask the police commissioner for information, or for access to the police commissioner's records, to enable the chief executive to learn what police information exists, if any, in relation to the person or an adult member of the person's household.

Subsection (2) provides that if there is police information about the person or household member, the chief executive may ask the police commissioner for a brief description of the circumstances of a conviction, charge or order, or a brief description of the investigative information mentioned in the police information.

The police commissioner must comply with a request under subsection (1) or (2), but only in relation to information in the police commissioner's possession or to which the police commissioner has access.

The police commissioner need not give investigative information, or access to a record containing investigative information, if the commissioner is satisfied that doing so would prejudice the investigation, enable the existence or identity of a confidential source of information to be determined, endanger a person's life or physical safety, or prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

Subsection (6) states that in this section *police information*, about a person, means the following—

- (a) the person's criminal history;
- (b) investigative information about the person;
- (c) the person's domestic violence history;
- (d) information as to whether the person is or has been –
  - (i) the subject of a disqualification order; or
  - (ii) the respondent for an offender prohibition order.

### **Traffic information**

*Clause 117* provides that the chief executive may ask the chief executive (transport) for a written report about the traffic history of the person or an adult member of the person's household.

The chief executive (transport) must comply with the request despite the *Transport Operations (Road Use Management) Act 1995*, section 77 – which restricts the release of Queensland driver licence and traffic history information.

The chief executive (transport) is defined in the Act's dictionary to mean the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

### **Consultation with appropriate Aboriginal or Torres Strait Islander person**

*Clause 118* applies if the person is being assessed for suitability to be an adoptive parent of a child who is, or children who include, an Aboriginal or Torres Strait Islander child.

The chief executive is required to consult with an appropriate Aboriginal or Torres Strait Islander person about Aboriginal tradition or Island custom relating to the child; and about the person's suitability.

### **Other information gathering**

*Clause 119* provides that the chief executive may make enquiries and gather information in other ways the chief executive considers appropriate, including any of the following –

- (a) talking with the person;
- (b) asking the person to attend and participate in a workshop or similar educational activity conducted by the department;
- (c) visiting the person's home;
- (d) talking with members of the person's family or household;
- (e) talking with referees nominated by the person;
- (f) talking with anyone else with information relevant to the person's suitability;

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- (g) obtaining expert advice about relevant health, psychological or social matters (this includes a psychosocial assessment conducted by an adoption contract worker);
  - (h) asking the person to prepare documents, for example, a profile of the person's family;
  - (i) lawfully obtaining information from the department or other departments.

## **Division 5            Bases for deciding suitability**

### **Application of div 5**

*Clause 120* states that division 5 states how the chief executive must decide whether a person is suitable to be an adoptive parent. In making this decision, the chief executive must have regard to a range of matters as set out in division 5.

### **Unacceptable risk of harm**

*Clause 121* provides that the chief executive must decide if the person or any member of the person's household would pose an unacceptable risk of harming a child adopted by the person. Subsection (2) provides that the chief executive must consider, in particular, any personal history of the person or of an adult member of the person's household.

Note that the term *personal history* is defined in the Act's dictionary to mean criminal history, domestic violence history and traffic history.

Subsection (3) requires the chief executive to decide that there is an unacceptable risk of harm if the person, or an adult member of their household –

- (a) has been convicted of a disqualifying offence for which an imprisonment order was imposed; or
- (b) is subject to –
  - (i) reporting obligations under the *Child Protection (Offender Prohibition Order) Act 2008*; or
  - (ii) an offender prohibition order; or

(iii) a disqualification order; or

(c) has been convicted of a serious offence.

However, subsection (3)(c) does not apply if the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of a child to be adopted by the person. Therefore, the chief executive is not obliged to decide that there is an unacceptable risk of harm if satisfied there is an exceptional case in relation to that particular person.

Subsection (5) provides that, subject to subsection (3), if the chief executive is aware that the person or a member of the person's household has been convicted of, or charged with, an offence, the chief executive must have regard to a range of matters as follows –

- (a) in relation to the commission, or alleged commission, of an offence by the person or household member –
  - (i) whether it is a conviction or a charge; and
  - (ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and
  - (iii) when the offence was committed or is alleged to have been committed; and
  - (iv) the nature of the offence and its relevance to adopting children; and
  - (v) in the case of a conviction – the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order, the court's reasons for its decision;
- (b) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the risk mentioned in subsection (1).

Subsection (6) states that if the chief executive is aware of investigative information about the person or a member of the person's household, the chief executive must have regard to the following –

- (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
- (b) anything else relating to the commission of the acts or omissions that the chief executive reasonably considers relevant to the assessment of the risk mentioned in subsection (1).

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## Health

*Clause 122* requires the chief executive to be satisfied the person has good health to provide stable, high level care for a child until adulthood. **Health** is defined broadly to capture any aspect of a person's physical, psychological or mental health, and to ensure the chief executive can give consideration to any condition that may adversely impact a person's health and therefore their capacity to be an adoptive parent. For example, if the person has a particular psychological condition, as opposed to being diagnosed with a mental illness, the chief executive will be able to consider the person's psychological condition and its impact on the person's health.

Subsection (2) provides that the person being assessed does not have the requisite good health if they have a **disqualifying condition** as prescribed under a regulation.

If the person has a condition (other than a disqualifying condition), the chief executive is to have regard to –

- (a) its effect on the level of care the person will be able to provide to an adopted child, without help from someone else, and the time for which the person is likely to be able to provide the care; and
- (b) whether the person needs a carer or is likely to need a carer in the future; and
- (c) whether the condition is likely to have an adverse impact on an adopted child's wellbeing or best interests.

**Condition** is defined to mean a disability, impairment, illness or anything else that affects a person's health.

## Guiding principles

*Clause 123* requires the chief executive to have regard to the guiding principles in section 6. Note the guiding principles include that an adopted child should be cared for in a way that:

- ensures a safe, stable and nurturing family and home life;
- promotes openness and honesty about the child's adoption; and
- promotes the development of the child's emotional, mental, physical and social wellbeing.

## **Capacity to be adoptive parent generally**

*Clause 124* states that the chief executive must have regard to the person's capacity to be an adoptive parent, including –

- (a) the person's psychological capacity and other personal qualities; and
- (b) the person's financial stability and other financial capacity; and
- (c) the person's willingness and ability to ensure a child's safety and wellbeing; and
- (d) anything else relevant to the person's capacity to provide for a child's emotional, physical, educational, recreational and social needs.

## **Good character**

*Clause 125* provides that the chief executive must be satisfied the person is of good character.

## **Attitudes to children and parenting**

*Clause 126* requires the chief executive to have regard to the person's attitudes to, and understanding of children and their physical and emotional development, and the responsibilities and duties of parenthood.

## **Adoptive parenting**

More particularly, *clause 127* requires the chief executive to have regard to the person's attitudes to, and understanding of, the issues relevant to adoptive parenting, including –

- (a) issues about informing a child of his or her adoption; and
- (b) the significance to an adopted child of his or her birth parents and their families; and
- (c) the importance of developing and maintaining relationships with an adopted child's birth parents and their families, through an open adoption arrangement, so far as this is possible and in the child's best interests.

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## Quality of relationship with spouse

If the person has a spouse, *clause 128* provides that the chief executive must have regard to the quality of the person's relationship with his or her spouse, including the duration and stability of the relationship.

## Infertility

If the person is infertile or has a spouse who is infertile, *clause 129* provides that the chief executive must have regard to the person's adjustment to, and acceptance of, the infertility. (See the dictionary in schedule 1 for the meaning of *infertility*.)

## Matters relating to step-parent

*Clause 130* applies if the person is being assessed because the person has made an application under part 5 relating to the proposed adoption of a child of whom the person is a step-parent. The chief executive must have regard to the nature, closeness and quality of the child's relationship with the person and members of the person's household.

## Aboriginal or Torres Strait Islander children

*Clause 131* applies if the chief executive is making a decision about the person's suitability to be an adoptive parent of a child who is, or children who include, an Aboriginal or Torres Strait Islander child. Subsection (2) provides that the chief executive must have regard to the person's ability and willingness to –

- (a) help the child to maintain contact with the child's community or language group; and
- (b) help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
- (c) preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

Subsection (3) provides that if the chief executive is making a decision about the person's suitability to be an adoptive parent of a particular Aboriginal or Torres Strait Islander child, the chief executive must have regard to the person's links with, and standing in, the child's community or language group.

## **Other cultural matters**

*Clause 132* applies if the chief executive is making a decision about the person's suitability to be an adoptive parent of a child who is, or children who include, a child of a particular ethnic or cultural background. Subsection (2) requires the chief executive to have regard to the person's ability and willingness to -

- (a) understand the child's background; and
- (b) help the child to maintain contact with the child's community or language group; and
- (c) help the child to develop and maintain a connection with the child's ethnicity or culture; and
- (d) preserve and enhance the child's sense of ethnic or cultural identity.

Subsection (3) provides that if the person has a current expression of interest that relates to an intercountry adoption from a particular country, the chief executive must have regard to—

- (a) the person's attitudes to, and understanding of, the country and its culture; and
- (b) the person's ability and willingness, if the person adopted a child from the country, to—
  - (i) continue to learn about the country and its culture; and
  - (ii) help the child learn about the country and its culture.

## **Other prescribed matters**

*Clause 133* provides that the chief executive must have regard to any other matters prescribed under a regulation.

## **Division 6            Action following decision**

### **Application of div 6**

*Clause 134* states that division 6 applies after the chief executive decides whether a person is suitable to be an adoptive parent.



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## **Chief executive must give notice of decision**

*Clause 135* requires the chief executive to give the person a notice of the decision. Subsection (2) provides that the notice must state the reasons for the decision and the information on which it is based. Subsection (3) provides that for a person assessed jointly with the person's spouse, the notice must include the decisions for both the person and the person's spouse.

Subsection (4) provides that if the chief executive decides the person is not suitable to be an adoptive parent, the chief executive must give the person an information notice for the decision. The dictionary in schedule 3 explains that an information notice, for a decision, means a written notice stating the reasons for the decision, that the person to whom the notice is given may apply to the tribunal to have the decision reviewed and how the person may apply for the review, including the time by which the application must be made.

## **Removal from expression of interest register**

*Clause 136* provides that if the person's name is in the expression of interest register, the chief executive must remove the name from that register.

## **Entry in suitable adoptive parents register**

*Clause 137* requires the chief executive to enter the person's name in the suitable adoptive parents register if –

- (a) the person was assessed after being selected under part 4, division 5; and
- (b) the decision is that the person is suitable; and
- (c) for a person assessed jointly with the person's spouse, the decision is that the person's spouse is suitable.

The chief executive will look to the pool of people whose names have been entered in the suitable adoptive parents register when it is necessary to select a couple to be the prospective adoptive parents for a child.

## **Preparation of report**

*Clause 138* applies if –

- (a) the person was assessed after making an application under part 5 (i.e. an application by a person wishing to adopt a stepchild); and
- (b) the decision is that the person is *suitable* to be an adoptive parent of the child whom the person wishes to adopt.

Subsection (2) provides that the chief executive must prepare a report for the Childrens Court stating that the person has been assessed as suitable and whether the chief executive considers—

- (a) an order for the child's adoption by the person would better serve the child's interests than an order under the *Family Law Act 1975* (Cwlth), any other court order or no court order; and
- (b) there are exceptional circumstances that warrant the making of the order.

Subsection (3) provides that in deciding a matter under subsection (2)(b), the chief executive must consider –

- (a) the circumstances in which the child came to be living with the person; and
- (b) the likely effect on the child, both through childhood and the rest of his or her life, of permanently ending the parent-child relationship between the child's biological parents and the child (even if the biological parents are no longer living) or another parent-child relationship that would be ended by the making of an adoption order.

Subsection (4) requires the chief executive to give the person a copy of the report.

## **Division 7            Interstate register**

### **Registration of person on interstate register**

*Clause 139* applies if –

- (a) a person gives the chief executive a signed application in the approved form to have the person's name entered in the suitable adoptive parents register; and
- (b) at the time the application is given, the person's name is in an interstate register that substantially corresponds to the suitable adoptive parents register; and

- 
- (c) the person is eligible under section 76 to have his or her name entered in the expression of interest register.

Subsection (2) requires the chief executive to enter the person's name in the suitable adoptive parents register. Subsection (3) sets out how the Act applies in relation to the person.

## **Division 8            Re-assessment of person listed in suitable adoptive parents register**

### **When a person may be re-assessed**

*Clause 140* applies to a person listed in the suitable adoptive parents register.

Subsection (2) provides that the chief executive may re-assess the person if—

- (a) the chief executive becomes aware of further information about the person, or a member of the person's household, or of a change in the person's circumstances, that may be relevant to the person's suitability; or
- (b) because of the time that has passed since the person's assessment, the chief executive considers it would be appropriate to re-assess the person; or
- (c) the re-assessment is required to meet the requirements for an intercountry adoption from a country to which the person's current expression of interest relates; or
- (d) the chief executive is considering selecting the person under part 7 as a child's prospective adoptive parent but considers it would be appropriate to first assess the person's suitability to be an adoptive parent of a child with particular characteristics.

### **Conduct of re-assessment**

*Clause 141* provides that subject to this division, this part applies to the re-assessment as if it were an original assessment of the person.



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## Other grounds for removal

Clause 146 requires the chief executive to remove a person's name from the suitable adoptive parents register if –

- (a) for a person who was selected for assessment from the expression of interest register—the person is not eligible to have his or her name remain in the expression of interest register under section 76; or
- (b) for a person selected for assessment under section 89—the person is not a person mentioned in section 89(7)(b)(ii) to (v).

Subsection (2) states that the chief executive may remove a person's name from the suitable adoptive parents register if –

- (a) the person gives information to the chief executive for this Act that is false or misleading in a material particular; or
- (b) the person does not comply with a notice under section 114 by the due day for the notice; or
- (c) the person contravenes section 115.

However, before removing a person's name from the register under this section, subsection (3) states that the chief executive must give the person a notice (a *show cause notice*) stating –

- (a) that the chief executive proposes to remove the name; and
- (b) the reason for the proposed removal; and
- (c) that the person may, within a stated time of at least 28 days, give the chief executive a written response to the proposed removal.

Subsection (4) requires the chief executive to consider any response given by the person within the time stated in the show cause notice before deciding whether to remove the person's name.

Subsection (5) states that if the chief executive decides not to remove the person's name, the chief executive must give the person notice of the decision.

Subsection (6) states that if the chief executive decides to remove the person's name, the chief executive must give the person an information notice for the decision. The dictionary in schedule 3 explains what an information notice for a decision is.

Subsection (7) provides that for the requirement in subsection (1)(a) to remove a person's name from the register if the person is not eligible to

have his or her name remain in the register, a woman does not become ineligible to have her name remain in the register on the ground of being pregnant unless she is at least 14 weeks pregnant.

## **Division 10      Investigative information**

### **Police commissioner may decide that information about a person is investigative information**

*Clause 147* provides power for the police commissioner to make a decision about whether information about a person who is being investigated is investigative information. The commissioner can decide that the information is investigative information if -

- (a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a disqualifying offence (the *alleged offence*) by the investigated person against a child or a person who was a child at the time of the offence (each of whom is a *complainant*); and
- (b) the police investigated the alleged offence and the investigated person was formally notified about the investigation; and
- (c) there was sufficient evidence available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because the complainant died before the charge was brought; or the complainant was unwilling to proceed, or an adult who was the complainant's parent decided that, in the interests of the complainant, the matter should not proceed.

Subsection (4) makes it clear that the police commissioner can not delegate this power to anyone other than a police officer of at least the rank of superintendent.

### **Appeal from decision that information is investigative information**

*Clause 148* requires the police commissioner to notify the investigated person that the commissioner has decided the information about the person is investigative information and has been given to the chief executive.

The person may appeal this decision to a Magistrates Court within 28 days of having been given the notice from the police commissioner.

Subsection (5) explains that the tribunal does not have power to review the police commissioner's decision that the information is investigative information, or that the information may be given to the chief executive.

### **Court to decide matters afresh**

*Clause 149* provides that a Magistrates Court hearing an appeal under section 148 may decide afresh whether the information about the person is investigative information. The court must have regard to the same matters that the police commissioner had regard to when making the original decision. However, the investigated person can not ask, or call upon, the relevant complainant to give evidence in person before the court. This does not prevent documentary evidence being tendered and received in evidence by the court.

After hearing the appeal, the court may confirm or set aside the police commissioner's decision. Subsection (6) provides that the clerk of the court must give notice of the court's decision to the investigated person and also to the chief executive.

### **Consequence of successful appeal**

*Clause 150* provides that if the Magistrates Court sets aside the police commissioner's decision under section 147, and if the chief executive has decided the person is not suitable, then the chief executive must set aside that decision and must re-assess the person. The assessment must then be carried out without regard to the relevant information.

## **Part 7                      Selection of prospective adoptive parents**

### **Division 1                Requirement to select persons as prospective adoptive parents**

#### **Application of div 1 for initial selection for local adoptions**

*Clause 151* provides that this division applies if the chief executive is the child's guardian under section 57 and all consents required for the child's adoption have been given.

#### **Application of div 1 when further selection required**

*Clause 152* sets out the further circumstances, other than a child's initial placement with prospective adoptive parents, in which the chief executive is required to select prospective adoptive parents for a child. These circumstances relate to where the initial placement for a child, whether for a local adoption or an intercountry adoption after the child has arrived in Queensland, has broken down and will not result in a final adoption order being made for the child in relation to the initial prospective adoptive parents.

Subsection (1) states that division 1 applies to a child (whether or not the child is an intercountry adoption child) if the chief executive selects the child's prospective adoptive parents, an interim order is made in favour of the prospective adoptive parents and the interim order is discharged.

Subsection (2) provides that this division applies to an intercountry adoption child if the persons who were the child's prospective adoptive parents stop having custody of the child, either because -

- (a) the chief executive, as the child's guardian under a delegation from the responsible Minister under the *Immigration (Guardianship of Children) Act 1946* (Cwlth), removes the child from their custody; or
- (b) the Childrens Court makes an order under section 194(1)(a).

Subsection (3) provides that a reference in this section to a child's prospective adoptive parents includes, for a proposed adoption by a single person, that person.



## **Chief executive must select prospective adoptive parents**

*Clause 153* requires that the chief executive must select a couple or single person from the suitable adoptive parents register to be the child's prospective adoptive parents or parent.

However, subsection (1) states that the chief executive must select a couple unless satisfied that, in the particular circumstances, it would best promote the child's wellbeing and best interests to select a particular person from the suitable adoptive parents register who is a single person. It should be noted that a single person may be selected for assessment under section 89 and subsequently entered in the suitable adoptive parents register.

## **Division 2            How selection must be made**

### **Application of div 2**

*Clause 154* specifies that division 2 states how the chief executive must decide who to select to be the prospective adoptive parents for a child.

### **Child's wellbeing and best interests generally**

*Clause 155* provides that the chief executive must make the selection that will best promote the child's wellbeing and best interests.

### **Child's particular needs**

*Clause 156* states that the chief executive must have regard to the needs of the child to be adopted. This includes, for instance any needs relating to the following matters —

- (a) the child's age and gender;
- (b) any Aboriginal, Torres Strait Islander or other cultural background of the child;
- (c) any existing or possible future medical condition or disability of the child;
- (d) the child's education;
- (e) whether the child has a sibling who has been adopted or is proposed to be adopted;

- (f) the child's social background.

### **Preferences of parents**

*Clause 157* requires the chief executive to have regard to any preferences of the child's parents including, for example, preferences about –

- (a) the child's religious upbringing; or
- (b) the characteristics of the child's adoptive parents and adoptive family; or
- (c) the degree of openness in the adoption.

However, subsection (2) makes it clear that the chief executive is not required to have regard to a preference expressed by a birth parent where the chief executive considers is likely to be contrary to the child's wellbeing or best interests.

### **Characteristics of persons who may be selected**

*Clause 158* requires that the chief executive is to have regard to any of the characteristics of the persons the chief executive is considering selecting that are relevant to their willingness and ability to parent a child with the needs of the child to be adopted, or the extent to which they meet the preferences expressed by the child's parents.

Considering the *characteristics* of a person includes considering the matters relating to the person's suitability decided by the chief executive on an assessment under part 6.

### **Eligibility**

*Clause 159* states that the chief executive must be satisfied a person to be selected as a prospective adoptive parent is still eligible.

Subsection (2) explains how it is to be determined whether a person is still eligible.

Subsection (3) provides that for the requirement in subsection (2)(a) for a person to remain eligible to have his or her name remain in the expression of interest register, a woman does not become ineligible to have her name remain in the register on the ground of being pregnant unless she is at least 14 weeks pregnant.

### **Placement with sibling**

*Clause 160* provides that the chief executive must have regard to the consideration that it would ordinarily be in a child's best interests to be placed with the same family as any sibling of the child who is also to be adopted or has previously been adopted.

### **Other children in adoptive family**

*Clause 161* states that the chief executive must have regard to the considerations that it would ordinarily be in a child's best interests –

- (a) to be the youngest child in the adoptive family, by at least 2 years, at the time of the placement; and
- (b) for no other children to join the adoptive family for at least 1 year after the placement, whether by birth, adoption, placement under the *Child Protection Act 1999* or in another way.

However, this consideration does not apply to a sibling of the child placed with the same family.

### **Initial period of full-time personal care by adoptive parents**

*Clause 162* specifies that the chief executive must have regard to the consideration that it would ordinarily be in a child's best interests to receive full-time care, provided personally by one or both of the persons with whom the child is placed, for at least 1 year after the placement.

### **Additional provisions relating to Aboriginal or Torres Strait Islander children**

*Clause 163* is the provision that will enshrine the Aboriginal and Torres Strait Islander child placement principle into Queensland adoption law. It provides that, if the child to be adopted is an Aboriginal person or Torres Strait Islander, the chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person when deciding who to select as prospective adoptive parents for a child and must give proper consideration to selecting, in order of priority –

- (a) a member of the child's community or language group; or
- (b) another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or

(c) another Aboriginal person or Torres Strait Islander.

Subsection (3) clarifies that this section does not limit the application of the other provisions of the division to the selection of prospective adoptive parents for the child.

## **Division 3            Facilitating matters between parents and selected persons**

### **Facilitating agreement or adoption plan**

*Clause 164* applies after the chief executive has selected the child's prospective adoptive parents under division 2. Subsection (2) states that the chief executive must act as intermediary between the child's parents and the prospective adoptive parents to –

- (a) facilitate an agreement between them about the degree of openness there will be in the adoption; and
- (b) facilitate preparation of an adoption plan, if a plan is required under the Act or is proposed by any of them.

It should be noted that open adoption does not mean any single type of practice, nor does it refer to only one part of the adoption process. Instead, it recognises that –

- adopted children have birth parents and adoptive parents, whose interests deserve equal respect in the adoption process;
- adoption does not remove the existence of children's birth parents from their lives;
- children benefit from knowing about their birth parents and the circumstances of their adoption; and
- adoption results in children having one set of legal parents who are their adoptive parents. Importantly, open adoption does not create a joint care arrangement between adoptive parents and birth parents.

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## Part 8 Adoption plans

### Division 1 General

#### What is an adoption plan

The nature of an open adoption arrangement, and the parties' agreement about the extent of the relationship they wish to develop, or contact they wish to have, can be set out in an adoption plan. Therefore, *clause 165* states that an adoption plan is a written plan, agreed to by parties to the plan, about anything relating to the adopted child's wellbeing or interests.

Subsection (2) provides further detail to explain that an adoption plan may for example, address any of the following matters –

- (a) the degree of openness there will be in the adoption, including—
  - (i) when a party will communicate with another party; and
  - (ii) how a party will communicate with another party, including whether the communication will be through the mailbox service or in another way that does not identify the first party; and
  - (iii) the matters about which information will be exchanged such as information about the child's development, important events in the child's life, a medical condition of the child or the medical history of the child's biological family.
- (b) the adoptive parents' commitment to telling the child about the adoption and helping the child understand the circumstances of the adoption;
- (c) if the child is an Aboriginal or Torres Strait Islander child, how the adoptive parents will –
  - (i) help the child to maintain contact with the child's community or language group; and
  - (ii) help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
  - (iii) preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity;

- (d) if the child has a particular ethnic or other cultural background, how the adoptive parents will –
  - (i) help the child to maintain contact with the child’s community or language group; and
  - (ii) help the child to develop and maintain a connection with the child’s ethnicity or culture; and
  - (iii) preserve and enhance the child’s sense of ethnic or cultural identity.

## **Parties**

*Clause 166* states that the parties to an adoption plan are the prospective adoptive parents or adoptive parents and any birth parent who wishes to be a party.

Subsection (2) states that the parties to an adoption plan may also include –

- (a) the child, if the chief executive considers it would be appropriate having regard to all the circumstances including the child’s age and maturity; or
- (b) a representative for the child; or
- (c) for an intercountry adoption-the competent authority for the relevant country, the chief executive or another appropriate entity.

Subsection (3) specifies that the chief executive (child safety) must be a party to an adoption plan required under section 171.

Subsection (4) specifies that if no birth parent wishes to be a party to an adoption plan required under section 172, the chief executive must be a party to the plan.

## **Purpose**

*Clause 167* provides that the purpose of an adoption plan is to contribute to the success of the adoption by ensuring parties to the adoption –

- (a) properly consider –
  - (i) the matters that may affect the child’s wellbeing and interests; and

- 
- (ii) the consequences of entering into the particular arrangements for the adoption (e.g. the degree of openness); and
  - (b) commit to practical ways to address the matters mentioned in paragraph (a).

### **Nature of plan and limitations on operation**

*Clause 168* explains that an adoption plan –

- (a) is not enforceable; and
- (b) does not limit the primary responsibility of the adoptive parents for the child’s upbringing; and
- (c) does not entitle a member of the child’s birth family or anyone else to interfere in the child’s upbringing or the relationship between the child and adoptive parents.

Subsection (2) states that an adoption plan may not include anything that purports to prevent, restrict or otherwise control the movement of a party.

Subsection (3) provides that an adoption plan has no effect once the child becomes an adult.

### **Chief executive to help**

*Clause 169* provides that on request by the parties to a proposed adoption or adoption, the chief executive must help them to prepare an adoption plan, for example, by making an officer of the department available to act as an intermediary.

Subsection (2) states that if an adoption plan is required under section 172, the chief executive must arrange for an appropriate Aboriginal or Torres Strait Islander person to be available to help the parties to prepare the plan.

## **Division 2            When is plan required**

### **In-person contact between child and birth family**

*Clause 170* applies if a birth parent and a prospective adoptive parent have advised the chief executive that they wish there to be in-person contact, after the adoption, between the child and the child’s birth family.

Subsection (2) states that an adoption plan must be agreed, between the birth parent and the prospective adoptive parents, that addresses how the contact will happen and the nature and frequency of the contact. Therefore, in this circumstance, the preparation of an agreement to an adoption plan is compulsory.

### **Child protection order**

*Clause 171* applies if a child protection order is, or has been, in force for the child. Subsection (2) provides that an adoption plan must be agreed to that addresses the matters stated in section 165(2)(c), which relate to the degree of openness there will be in the adoption. These matters include how and when the parties will communicate with each other and the matters about which information will be exchanged.

### **Particular Aboriginal or Torres Strait Islander placements**

*Clause 172* applies if the child is an Aboriginal or Torres Strait Islander child and the prospective adoptive parents are not from the child's community or language group.

Subsection (2) specifies that an adoption plan must be agreed to that addresses the matters stated in section 165(2)(c). These matters relate to how the adoptive parents will –

- (i) help the child to maintain contact with the child's community or language group; and
- (ii) help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
- (iii) preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

### **Adoption plans otherwise not compulsory**

*Clause 173* states that unless required under sections 170 to 172, an adoption plan need not be prepared – that is, it is not compulsory.



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## **Part 9                      Adoption orders**

### **Division 1                General matters**

#### **Court may make adoption orders**

*Clause 174* provides that on an application under part 9, the Childrens Court may make an adoption order for the adoption of a child by the person or persons named in the application.

#### **Consents and pre-consent counselling and information**

*Clause 175* does not apply to a parent if the need for the parent's consent to the child's adoption has been dispensed with under section 39.

Subsection (2) provides that the court must not make an adoption order unless it is satisfied each parent has given consent to the adoption, under part 2, at least 30 days before the making of the order. This is the provision that establishes the requirement for whose consent is required for a child to be adopted.

Subsection (3) states that the court must not make an adoption order unless the documents specified in the subsection for each parent are produced to the court. These documents are to assist the court to determine whether the requirements of part 2 have been met in relation to each parent who has given consent to the child's adoption.

Subsection (4) makes it clear that the court only need be satisfied once that the consents required for a child's adoption have been given. If an interim order is in force for the child, the court must have been satisfied the required consents have all been given, so the court is not required to reconsider these matters a second time when considering making a final adoption order for the child.

In addition, subsection (5) states that subsection (3) does not apply to a parent for whom a complying interstate consent under section 42 is in force. Subsection (6) states that this section does not apply to an intercountry adoption.

## **Particular documents not to be served on prospective adoptive parents**

*Clause 176* provides that in a proceeding under this part –

- (a) the chief executive must not serve, on a prospective adoptive parent, a copy of a document mentioned in section 175(3); and
- (b) a party must not serve, on a prospective adoptive parent, a copy of a document relating to the giving of consent by a parent of the child.

This clause is to preserve the privacy of the child's parents in relation to giving their consent to their child's adoption, particularly if there are sensitive matters relating to an assessment of the parent's capacity to give the consent.

Subsection (2) clarifies that this applies despite a rule of court or other law.

## **Proceedings about whether parents have consented**

*Clause 177* provides that the chief executive may apply to the Childrens Court for a declaration that a parent (the *relevant parent*) of a child has given consent to the child's adoption. The application may be made before, or at the same time, as an application is made for an adoption order for the child.

Subsection (3) provides that if the court is hearing an application for an interim adoption order under division 2, or for a final adoption order under section 188, and the court considers a proceeding about the issue of consent should first be heard and decided under this section, the court may direct the chief executive to make an application under this section.

Subsection (4) requires the chief executive to serve a copy of the application on the relevant parent. However, subsection (5) provides that the court may dispense with the requirement to serve a copy of the application on the relevant parent if the court is satisfied the chief executive can not locate the relevant parent after making all reasonable enquiries. Subsection (6) provides that a copy of the application served on the relevant parent must state that the application may be heard and decided even though the relevant parent does not appear in court.

Subsections (7) and (8) state that the prospective adoptive parents are not respondents in the proceeding, they must not be served with a copy of the application and the court must hear and decide the application, in the absence of the prospective adoptive parents, separately to a proceeding in

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which the court hears and decides an application for an adoption order for the child. This is a further measure to preserve the privacy of child's parents in relation to giving their consent.

Subsection (9) states the circumstances in which the court may hear and decide the application in the absence of the relevant parent. Subsections (8) and (9) do not limit the court's jurisdiction to exclude a person from a proceeding.

### **Child subject to child protection order**

*Clause 178* applies if the child is in the custody or guardianship of the chief executive (child safety) or someone else under the *Child Protection Act 1999*.

Subsection (2) provides the court must not make an adoption order unless a document, signed by the chief executive (child safety), is produced to the court stating that the chief executive (child safety) considers the adoption is an appropriate way of meeting the child's need for long-term stable care.

### **Child able to form and express views**

*Clause 179* requires the court to consider the views of a child who is able to form and express views about his or her adoption before deciding whether to make an adoption order for the child.

It should be noted that under sections 235 and 236, someone may be appointed to give separate legal representation or support to the child.

Subsection (3) provides that for an adoption other than an intercountry adoption, the court may make an adoption order only if the following documents have been produced to the court –

- (a) a document, sworn by an officer of the department, stating that the officer gave the information under section 44 to the child on a stated day;
- (b) a document, sworn by a counsellor under section 45, stating that the counsellor counselled the child under that section on a stated day or days.

Subsection (4) clarifies that subsection (3) does not apply to the making of a final adoption order if an interim order is already in force for the child.

## **References to prospective adoptive parents**

*Clause 180* states that a reference in this part to a child's prospective adoptive parents includes, for a proposed adoption by a single person, that person.

## **Division 2            Local adoptions**

### **Application of div 2**

*Clause 181* provides that division 2 applies if the chief executive is a child's guardian under section 57 and has selected the child's prospective adoptive parents under part 7.

### **Application for interim order**

*Clause 182* provides that the chief executive may apply to the Childrens Court for an interim order for the adoption of the child by the prospective adoptive parents.

The chief executive must serve a copy of the application on the prospective adoptive parents and the prospective adoptive parents are respondents in the proceeding.

Subsections (3) and (4) require the chief executive to give notice of the application to each person who has given consent to the child's adoption under part 2, unless the chief executive cannot locate the person after making all reasonable enquiries.

Subsection (6) provides that a person who has given consent to the child's adoption but wishes to contest the application may apply to the court to be included as a respondent in the proceeding.

### **Requirements for making interim order**

*Clause 183* sets out the matters the court must be satisfied about before the court may make an interim order.

Subsection (2) provides that this section does not apply if the prospective adoptive parents are habitually resident in a convention country. See section 213 for the matters applying if the prospective adoptive parents are habitually resident in a convention country.

### **Period of operation of interim order**

*Clause 184* states that an interim order remains in force until the Childrens Court discharges it or makes a final adoption order for the child.

### **Effect of interim order**

*Clause 185* provides that while an interim order is in force for the adoption of a child by a person, the person has custody of the child and the chief executive must supervise the child's wellbeing and interests.

The chief executive continues to be the child's guardian because the interim order does not affect the chief executive's guardianship.

### **Discharge of interim order**

*Clause 186* provides that the chief executive may apply to the Childrens Court to discharge an interim order and the court may discharge the interim order if satisfied it would be contrary to the child's wellbeing or best interests to be adopted by the prospective adoptive parents. In making this decision, the court is to have regard to the matters of which the court must be satisfied before it may make a final adoption order.

Subsection (2) requires the chief executive to serve a copy of the application on the prospective adoptive parents.

The court may discharge an interim order for a child on the application of the chief executive or when considering an application under section 187 for a final adoption order for the child if the court is not satisfied of the matters of which the court must be satisfied before it may make a final adoption order and considers these matters are not likely to be satisfied within an appropriate time.

Subsection (6) states that the discharge of an interim order does not affect the chief executive's guardianship of the child.

### **Application for final adoption order if interim order is in force**

*Clause 187* applies if an interim order is in force and the child has been in the custody of the prospective adoptive parents under the order for at least 1 year.

The chief executive may apply to the Childrens Court for a final adoption order for the adoption of the child by the prospective adoptive parents. The

chief executive must serve a copy of the application on the prospective adoptive parents.

If the chief executive has not applied for a final adoption order or for a discharge of the interim order, and the child has been in the custody of the prospective parents under the interim order for at least 1 year and 30 days, then subsection (4) enables the prospective adoptive parents to apply to the court for a final adoption order. If they make this application, the prospective adoptive parents must serve a copy of the application on the chief executive.

Subsection (6) states that a person served with a copy of the application under subsection (3) or (5) (i.e. either the prospective adoptive parents or the chief executive as the case may be) is a respondent in the proceeding.

### **Application for final adoption order in favour of approved carers**

*Clause 188* applies if the child's prospective adoptive parents are, and have been for at least 1 year, approved carers of the child.

Subsection (2) provides that the chief executive may apply to the Childrens Court for a final adoption order for the adoption of the child by the prospective adoptive parents. As the child has been in the prospective adoptive parents' care for at least 1 year as approved carers of the child, there is no requirement for an interim order to have been in place before the chief executive can apply for a final adoption order.

The chief executive must serve a copy of the application on the prospective adoptive parents and the prospective adoptive parents are respondents in the proceeding.

Subsections (4) and (5) provide that the chief executive must give notice of the application to each person who has given consent to the child's adoption under part 2, unless the chief executive can not locate the person after making all reasonable enquiries.

Subsection (7) provides that if no interim order is in force, a person who has given consent to the child's adoption but wishes to contest the application may apply to the court to be included as a respondent in the proceeding.

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## Requirements for making final adoption order

*Clause 189* sets out the matters the court must be satisfied about in order to make a final adoption order for the child.

Subsection (2) also provides that if an interim order is not in force for the child, the court must be satisfied that the chief executive selected the prospective adoptive parents in compliance with part 7, division 2.

Subsection (3) states that this section does not apply if the prospective adoptive parent is a person habitually resident in a convention country. See section 213 for the matters applying if the prospective adoptive parents are habitually resident in a convention country.

## Notice of order

*Clause 190* provides that as soon as practicable after an adoption order is made, the chief executive must –

- (a) give to the parties to the proceeding a copy of the order; and a notice explaining its terms and effect; and
- (b) give to each person who consented to the adoption under part 2 a notice stating that the order has been made and explaining its terms and effect.

Subsection (2) states that subsection (1)(b) does not apply to a person whom the chief executive can not locate after making all reasonable enquiries.

## Division 3            Intercountry adoptions

### Application of div 3

*Clause 191* provides that division 3 applies if –

- (a) a child is brought to Queensland from another country to be adopted under arrangements made between the chief executive and the competent authority for the other country; and
- (b) the child's prospective adoptive parents, whose names were on the suitable adoptive parents register, were selected –
  - (i) by the competent authority, under the arrangements; or

- (ii) by the chief executive, in the circumstances mentioned in section 152(2).

### **Custody and guardianship if no guardian under Cwlth Act**

*Clause 192* provides that this section applies if there is no guardian of the child under the *Immigration (Guardianship of Children) Act 1946* (Cwlth). From the child's arrival in Queensland, the law operates to automatically vest guardianship of the child and custody of the child in the prospective adoptive parents. The prospective adoptive parent's custody continues subject to an order under section 190.

If the *Immigration (Guardianship of Children) Act 1946* (Cwlth) does provide that the child is in the guardianship of the Minister responsible for that Act, then the *Immigration (Guardianship of Children) Act 1946* makes provision for the guardian to place the child in a person's custody. The Minister for the *Immigration (Guardianship of Children) Act 1946* has delegated the responsibilities of guardianship to the chief executive, which allows the chief executive to place the child in the custody of the prospective adoptive parents.

### **Custody and guardianship if interim order in force**

*Clause 193* provides that this section applies if an interim order is made in favour of the prospective adoptive parents under this division. See clause 191 for the circumstances in which an application would be made for an interim order for an intercountry adoption.

Subsection (2) provides that while the interim order is in force, the prospective adoptive parents have custody of the child. However, subsection (3) specifies that the interim order does not affect the chief executive's guardianship of the child.

### **Order ending custody or discharging interim order**

*Clause 194* provides that the chief executive may apply to the Childrens Court for either of the following orders –

- (a) if the child is in the custody of the prospective adoptive parents under section 192 – an order ending their custody of the child; or
- (b) if an interim order in favour of the prospective adoptive parents is in force under this division – an order discharging the interim order.



Subsection (2) requires that the chief executive must serve a copy of the application on the prospective adoptive parents.

Subsection (3) specifies that the court may make the relevant order if satisfied it would be contrary to the child's wellbeing or best interests to be adopted by the prospective adoptive parents, having regard to the matters under section 200 of which the court must be satisfied before it may make a final adoption order. Note – the court may also make an order discharging the interim order under section 201.

Subsection (4) provides that an order under this section does not affect the chief executive's guardianship of the child.

### **Application for interim order**

*Clause 195* provides that this section applies if the Childrens Court makes an order under section 194 ending the prospective adoptive parent's custody that was automatically conferred by section 192; and the chief executive selects new prospective adoptive parents from the suitable adoptive parents register. Note - see section 152(2).

Subsection (2) specifies that the chief executive may apply to the Childrens Court for an interim order for the adoption of the child by the prospective adoptive parents.

Subsection (3) requires the chief executive to serve a copy of the application on the prospective adoptive parents and the competent authority. The prospective adoptive parents are respondents in the proceeding.

### **Requirements for making interim order**

*Clause 196* sets out the matters of which the court must be satisfied to make an interim order.

### **Period of operation of interim order**

*Clause 197* provides that an interim order remains in force until the Childrens Court discharges it or makes a final adoption order for the child.

## **Chief executive to supervise the child's wellbeing and best interests**

*Clause 198* requires the chief executive to supervise the child's wellbeing and interests while the child is in the custody of the prospective adoptive parents-

- (a) under section 192; or
- (b) if because an interim order in favour of the prospective adoptive parents is in force under this division; or
- (c) because the chief executive, as the child's guardian under a delegation from the responsible Minister under the *Immigration (Guardianship of Children) Act 1946* (Cwlth), placed the child in their custody.

## **Application for final adoption order**

*Clause 199* applies if the child has been in the custody of the prospective adoptive parents, for at least 1 year for the reasons mentioned in the previous section.

Subsection (2) provides that the chief executive may apply to the Childrens Court for a final adoption order for the adoption of the child by the prospective adoptive parents.

Subsection (3) requires the chief executive to serve a copy of the application on the prospective adoptive parents.

Subsection (4) provides that the prospective adoptive parents may apply to the court for a final adoption order if-

- (a) the child has been in their custody, as mentioned in section 198(1), for at least 1 year and 30 days; and
- (b) the chief executive has neither applied for a final adoption order nor applied for an order under section 194.

Subsection (5) provides that if the prospective adoptive parents apply for a final adoption order, they must serve a copy of the application on the chief executive.

Subsection (6) states that a person served with a copy of the application under subsection (3) or (5) is a respondent in the proceeding.

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## Requirements for making final adoption order

*Clause 200* sets out the matters of which the court must be satisfied to make a final adoption order for an intercountry adoption.

## Discharge of interim order on application for final order

*Clause 201* applies if, on an application for a final adoption order, the court is not satisfied of the matters under section 200 of which the court must be satisfied before it may make a final adoption order and considers these matters are not likely to be satisfied within an appropriate time. In these circumstances, the court may make an order discharging the interim order in favour of the prospective adoptive parents.

## Notice of order

*Clause 202* provides that as soon as practicable after an adoption order is made, the chief executive must –

- (a) give to the parties to the proceeding –
  - (i) a copy of the order; and
  - (ii) a notice explaining the terms and effect of the order; and
- (b) give a copy of the order to the competent authority.

## Division 4            Adoptions by step-parent

### Meaning of *suitability report*

*Clause 203* provides that in division 4, *suitability report* means a report prepared for the Childrens Court by the chief executive under section 138(2).

### Application by step-parent

*Clause 204* allows a person (the *step-parent*) to apply to the Childrens Court for a final adoption order in relation to the person's step-child if the step-parent has–

- (a) has made an application under part 5, division 1; and
- (b) has been assessed as suitable under part 6; and

- (c) has received, from the chief executive, a suitability report for the proposed adoption.

Subsection (3) states that the application must be made jointly with the step-parent's spouse. It should be noted that the spouse (i.e. the child's natural parent) is not applying to adopt the child, but is applying that the child be adopted by the step-parent. This requirement for the application to be made jointly provides a further assurance to the court that the spouse of the step-parent continues to support the proposed adoption of their child by the step-parent.

### **Notice of application**

*Clause 205* provides that after making an application under section 204, the applicant must –

- (a) serve a copy of the application on the chief executive; and
- (b) give notice of the application to each parent of the child who has given consent to the proposed adoption under part 2.

However, subsection (2) states that subsection (1)(b) does not apply to a parent whom the applicant can not locate after making all reasonable enquiries.

### **Respondents**

*Clause 206* provides that the chief executive is a respondent in the proceeding. Subsection (2) provides that a person who has given consent to a proposed adoption under part 2 but wishes to contest the application may apply to the court to be included as a respondent in the proceeding.

### **Chief executive must file report**

*Clause 207* provides that after being served with a copy of the application, the chief executive must file the relevant suitability report in the court. This is the way that the court is informed of the matters considered by the chief executive in assessing the step-parent's suitability to adopt the child and the chief executive's view about the necessity for the order.

## **Requirements for making final adoption order**

*Clause 208* sets out the matters of which the court must be satisfied before making a final adoption order for the step-parent to adopt the child of his or her spouse.

The matters the court must be satisfied of that are specific to the adoption of a child by a step parent are:

- an order for the child's adoption by the step-parent would better promote the child's wellbeing and best interest than an order under the *Family law Act 1975* (Cwth), any other court order or not court order; and
- there are exceptional circumstances that warrant the making of the order.

These grounds reinforce that the adoption of a child by a step-parent is not a routine matter, but an exceptional matter.

## **Notice of order**

*Clause 209* provides that as soon as practicable after a final adoption order is made, the chief executive must –

- (a) give to the parties to the proceeding –
  - (i) a copy of the order; and
  - (ii) a notice explaining the terms and effect of the order; and
- (b) give a notice explaining the terms and effect of the order to each person who has given consent to the adoption under part 2.

## **Division 5                      Adoptions by residents of a convention country**

### **Application of div 5**

*Clause 210* provides that division 5 applies to an adoption order under division 2 if the prospective adoptive parents are habitually resident in a convention country

## **Selection of prospective adoptive parents**

*Clause 211* provides that, despite section 181, an adoption order may be made under division 2 even if the prospective adoptive parents are not selected under part 7.

## **Application for final adoption order**

*Clause 212* provides that, despite section 187(1), an application for a final adoption order may be made under that section whether or not an interim order is in force and whether or not the child has been in the custody of the prospective adoptive parents for at least 1 year.

## **Requirements for making adoption order**

*Clause 213* sets out the matters of which the court must be satisfied to make an adoption order under this division.

## **Division 6            Effect of a final adoption order**

### **Effect on relationships**

*Clause 214* provides that the effect of a final adoption order for the adoption of a child (the ***adopted child***) by a person (the ***adoptive parent***) is:

- the adopted child becomes a child of the adoptive parent and the adoptive parent becomes a parent of the adopted child;
- the adopted child stops being a child of a former parent and a former parent stops being a parent of the adopted child;
- other relationships, such as grandparent-child and aunt-niece, are determined in accordance with the above;
- a former guardian stops being a guardian of the adopted child; and
- a former adoption order stops having effect.

Subsection (7) explains that in the case of step-parent adoptions, the final adoption order for the adopted child's adoption by the spouse of the child's parent does not affect the relationship between the adopted child and that parent.

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Also, subsection (8) provides that, despite the final adoption order, a former relationship continues in addition to other relationships created by the order, for the purpose of a law relating to a sexual offence for which relationships are relevant. An example of such an offence is the offence of incest.

Subsection (9) states that this section applies subject to another law that expressly distinguishes between adopted children and other children.

Subsection (10) defines particular terms used in the section.

It should be noted that this section deals with the legal effect of a final adoption order on an adopted child's relationship to other persons. See section 6(2)(i) for a guiding principle about the continuance of emotional connections and interactions with birth family members.

## **Child's name**

*Clause 215* provides that a final adoption order for a child may include –

- (a) an order that the child keep the child's existing surname or have the same surname as an adoptive parent; and
- (b) an order that the child –
  - (i) keep an existing given name; or
  - (ii) have another given name agreed by the child's adoptive parents as well as an existing given name; or
  - (iii) have another given name agreed by the child's adoptive parents instead of an existing given name.

The court is required to make the order that will best promote the child's wellbeing and best interests and, in doing so, must have regard to the child's right to preserve his or her identity and whether the child is generally known by, or identifies with, any of the child's existing names.

Subsection (5) states that the court must not make an order under subsection (1)(b)(iii) unless satisfied it would harm the child's wellbeing or best interests to keep the existing given name. For example, the child's name, while common in the child's own language, may have offensive or negative connotations in the English language.

Subsection (6) provides that this section does not prevent a change of the child's name under another law after the final adoption order is made. The benefit of requiring the court to consider the child's best interests and right

to preserve his or her identity, even though the child's name can be changed in another way, is that the adoption order including the child's name will be registered and create a record that the child will be able to search at a later time.

### **Effect of adoption orders in relation to property**

*Clause 216* provides that section 214 has effect in relation to –

- (a) dispositions of property whether by will or otherwise; and
- (b) devolutions of property in respect of which a person dies intestate.

However, subsection (2) states that section 214 does not affect the operation of a will or other instrument that distinguishes between adopted children and children other than adopted children.

Subsection (3) provides that this section applies subject to section 346; that is, it does not affect the disposition of property in relation to a death that occurred prior to the commencement of the *Adoption of Children Act 1964*.

### **Bequest by will to an unascertained adopted person**

*Clause 217* applies if –

- (a) under a will, the testator makes a disposition of property to a person who is described –
  - (i) as being a child of the testator or of another person; and
  - (ii) as having been adopted by another person; and
- (b) the personal representative of the testator is unable to find out the name and address of the adopted person.

Subsection (2) requires the personal representative to give the public trustee a copy of the will and a notice stating that the personal representative is unable to find out the name and address of the adopted person.

Subsection (3) provides that on receipt of the copy of the will, the public trustee must give the chief executive a notice asking the chief executive to take steps to find out the name and address of the adopted person.

Subsection (4) provides that on receipt of the request, the chief executive must take steps to find out the name and address of the adopted person and, if the adopted person has died, the date of the death by –



- (a) checking the chief executive's records; and
- (b) asking the registrar.

Subsection (5) provides that if the chief executive finds out the name, address or date of death, the chief executive must give the information to the public trustee.

Subsection (6) provides that if the chief executive is unable to find out the name, address or date of death, the chief executive must advise the public trustee.

Subsection (7) provides that on receiving information or advice from the chief executive under subsection (5) or (6), the public trustee must give a notice to the personal representative stating –

- (a) whether the name or address has been ascertained; or
- (b) if it has been ascertained that the adopted person has died, the date of death.

Subsection (8) provides that the public trustee is a trustee for the adopted person on the trusts stated in, or arising under, the will.

Subsection (9) provides that if the personal representative transfers property to the public trustee as trustee for the adopted person, the personal representative is taken to have transferred the property to the adopted person.

Subsection (10) states that subsections (8) and (9) do not apply if the adopted person died before the testator or, for another reason, is not entitled to an interest under the will.

Subsection (11) states that if the public trustee gives the personal representative a notice that the adopted person has disclaimed property to which the adopted person was entitled under the will, the notice is, for the purpose of administering the estate, sufficient evidence that the adopted person has disclaimed the property.

Subsection (12) states that this section applies only to a will made after the commencement of the repealed Act, section 29A.

### **Transfer or distribution of property by trustee or personal representative**

*Clause 218* provides that, subject to this section, a trustee may transfer or distribute property to persons who appear entitled to it without finding out

whether or not an adoption has happened because of which a person is or is not entitled to an interest in the property.

Subsection (2) provides that a trustee who transfers or distributes property under subsection (1) is not liable to a person claiming directly or indirectly because of an adoption unless the trustee has notice of the claim before the transfer or distribution.

Subsection (3) states that this section does not affect a person's right to follow property into the hands of a person, other than a purchaser for value, who has received it.

## **Division 6            Discharge of final adoption order**

### **Grounds for discharge**

*Clause 219* provides that a final adoption order may be discharged on any of the following grounds –

- (a) the order was made or something was done for the purpose of making the order –
  - (i) because of a false or misleading document or representation; or
  - (ii) because a person acted fraudulently or used undue influence on another person; or
  - (iii) in another improper way;
- (b) a consent required for the adoption was not given freely and voluntarily by a person with capacity to give the consent;
- (c) there are other exceptional circumstances that warrant the discharge.

### **Who may apply**

*Clause 220* provides that any of the following persons may apply for a final adoption order to be discharged –

- (a) the adopted person, if he or she is an adult;
- (b) a birth parent of the adopted person;
- (c) an adoptive parent of the adopted person;
- (d) the chief executive.

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## **How to apply**

*Clause 221* provides that an application for the discharge of a final adoption order must be made to the Supreme Court and must state the ground on which it is made.

Subsection (3) provides that as soon as practicable after filing the application in the court, the applicant must serve a copy of it on each party to the adoption and, if the applicant is not the chief executive, on the chief executive. A served copy must state where and when the application is to be heard.

Subsection (5) requires that a copy served on a person who is a party to the adoption, other than the adopted person, must also state that the application may be heard and decided even though the person does not appear in court.

Subsection (6) provides that the court may dispense with the requirement to serve a copy of the application on a person who is a party to the adoption, other than the adopted person, if the court is satisfied that the applicant can not establish the person's identity or location after making all reasonable enquiries.

## **Respondent**

*Clause 222* provides that a person, other than the chief executive, served with a copy of the application is a respondent in the proceeding. Subsection (2) states that if the chief executive is not the applicant, the chief executive may apply to the court to be included as a respondent in the proceeding.

## **Hearing not to be in public**

*Clause 223* provides that the hearing for the proceeding is not open to the public. However, subsection (2) provides that the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice.

## **Hearing of application in absence of a party**

*Clause 224* provides that the court may not hear or decide the application unless the adopted person, or a lawyer representing the adopted person, appears in the proceeding.

Otherwise, the court may hear and decide the application in the absence of a person who is a party to the adoption only if –

- (a) the person has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing; or
- (b) the court dispenses with the requirement to serve a copy of the application on the person under section 221(6).

Subsection (3) states that subsection (1) does not limit the court's jurisdiction to exclude a person from a proceeding.

### **Court orders**

*Clause 225* provides that the court may discharge the final adoption order only if satisfied of a ground mentioned in section 219.

Subsection (2) states that if the applicant is not the adopted person, the court must not discharge the order if it considers the discharge is likely to be contrary to the adopted person's wellbeing and best interests. Subsection (3) provides that the order may be discharged even if the adopted person is an adult.

Subsection (4) provides that if the adopted person is a child and has any views about the proposed discharge and is able to express the views, having regard to the child's age or ability to understand, the court must consider the views.

Subsection (5) states that if the court makes an order discharging the final adoption order, it may also make any other order it considers appropriate in the interests of justice or to ensure the adopted person's wellbeing and best interests including, for example, an order about –

- (a) the ownership of property; or
- (b) the adopted person's name; or
- (c) if the adopted person is a child, custody or guardianship of the child.

### **Effect of discharge**

*Clause 226* provides that on the making of an order discharging the final adoption order (the ***discharge order***), the rights, privileges, duties, liabilities and relationships of the child and all other persons are the same as if the final adoption order had not been made.

However, subsection(2) provides that the making of the discharge order does not affect –

- (a) anything lawfully done, or the consequences of anything lawfully done, while the final adoption order was in force; or
- (b) a right, privilege or liability acquired, accrued or incurred while the final adoption order was in force.

Subsection (3) provides that the discharge order does not affect a consent given to the child's adoption unless the court decides otherwise.

Subsection (4) provides that for the purpose of a law relating to a sexual offence for which relationships are relevant, a relationship between a child and another person that existed immediately before the making of the discharge order continues, despite the discharge order, in addition to other relationships that exist because of the discharge order.

Subsection (5) states that this section applies subject to an order under section 225(5).

## **Part 10            Court Proceedings**

### **Division 1            Preliminary**

#### **Application of pt 10**

*Clause 227* states that part 10 applies to a proceeding under the Act.

### **Division 2            Constitution of court and procedural provisions**

#### **Court's constitution**

*Clause 228* provides that when exercising its jurisdiction under the Act the Childrens Court may not be constituted under the *Childrens Court Act 1992*, section 5(3)(c). That is, it may not be constituted by 2 justices of the peace.

## **Court's paramount consideration**

*Clause 229* provides that the Childrens Court's paramount consideration in exercising its jurisdiction or powers must be to have regard to the wellbeing and best interests of the child. This means having regard to the child's wellbeing and best interests for the rest of his or her life (as stated in section 9).

## **Evidence**

*Clause 230* provides detail of how evidence is to be treated in proceedings before the Childrens Court and to what degree the Childrens Court need satisfy itself of a matter when considering an application for an order. Specifically, subsection (1) stipulates that in a proceeding the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate. Subsection (2) stipulates that if, on application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

## **Court to ensure parties understand proceeding**

*Clause 231* specifies the efforts which the Childrens Court must make to ensure that parties to a proceeding understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court. Specifically, subsection (2) states that where a party may have difficulty communicating, either through language difficulties or because of a disability, the Childrens Court must not hear the proceeding without making the necessary arrangements, such as having an interpreter to translate things that are said, or having a person to facilitate so that the party may communicate and participate adequately in the proceeding.

## **Expert help**

*Clause 232* provides that a person having special knowledge or skill may be appointed by the Childrens Court in a proceeding, either on the court's own initiative or on application of a party to the proceeding, so as to assist the court.

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## **Right of appearance and representation**

*Clause 233* provides that a party to a proceeding, including the child where the proceeding is on an application for an adoption order, may appear in person or be represented by a lawyer.

Subsection (2) specifies that if there is any reason that the child's parents can not appear in person in a proceeding concerning the child then another person appointed in writing by the parents may, with the leave of the court, present the child's parents view and wishes.

## **Right of appearance of departmental co-ordinators**

*Clause 234* specifies that a co-ordinator may appear in a proceeding and subsection (2) specifies that a co-ordinator means an officer or employee of the department who is authorised in writing by the chief executive to appear in proceedings under the Act.

## **Separate legal representation of child**

*Clause 235* applies in a proceeding on an application for an order under the Act. If the Childrens Court considers it is in the child's best interests for the child, whether the child is the child to be adopted or a birth parent who is not an adult, to be separately represented by a lawyer, subsection (2) provides that the court may order that the child be separately represented by a lawyer; and make the other orders it considers necessary to secure the child's separate legal representation.

Without limiting subsection (2), subsection (3) states that the court must consider making orders about the child's separate legal representation for the following matters –

- (a) the application for the order is contested by a birth parent; or
- (b) the child opposes the application; or
- (c) the application for the order is made under part 9, division 4 (adoptions by step-parent); or
- (d) the child is or was a child in the child safety system within the meaning given by the Commission for Children Act, section 11A.

Subsection (4) states that the lawyer must act in the child's best interests regardless of any instructions from the child and as far as possible, present the child's views and wishes to the court.

## **Support for child**

*Clause 236* specifies that in a proceeding on an application for an adoption order, if the Childrens Court considers it is necessary in the child's best interests, the court may order the chief executive to appoint a qualified person to support the child.

For this section, subsection (2) refers to section 47(2) for the meaning of *qualified person*, which states that this means a social worker, lawyer or other person who the chief executive is satisfied has the necessary expertise or experience to give the relevant support and who is not an employee of the department.

## **Legal representation of more than 1 child**

*Clause 237* provides that a lawyer may represent more than 1 child in the same proceeding. However, subsection (2) clarifies that if the court considers there is a conflict of interest and as such the lawyer should not represent more than 1 child, then the court may order that a child be represented by another lawyer.

## **Child can not be compelled to give evidence**

*Clause 238* specifies that in a proceeding a child may only be called to give evidence with the leave of the Childrens Court.

Subsection (2) clarifies that the court may grant such leave only if the child is at least 12 years of age; is represented by a lawyer and agrees to give evidence.

Subsection (3) provides that if the child gives evidence then he or she may be cross examined only with the leave of the court.

## **Court may hear submissions from non-parties to proceeding**

*Clause 239* provides that in a proceeding the Childrens Court may hear submissions from a member of the family of the child to whom the proceeding relates; and anyone else the court considers is able to inform it on any matter relevant to the proceeding. Subsection (2) specifies that such a submission may be made by a person's lawyer.



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## **Transfer of proceedings**

*Clause 240* provides that if a magistrate constituting the Childrens Court is of the opinion a proceeding before the magistrate should be heard by the court constituted by a magistrate at another place, the magistrate may order that the proceeding be transferred to the court constituted by a magistrate at the other place. Subsection (2) provides that a magistrate may act under subsection (1) on the magistrate's own initiative or on the application of a party to the proceeding.

## **Hearing of applications together**

*Clause 241* provides that the Childrens Court may hear 2 or more applications for orders together if, before any of the applications are decided, a party to the proceeding for any of the applications asks that the applications be heard together and the court considers it is in the interests of justice that the applications be heard together. Subsection (2) states that this applies even though the parties, or all of the parties, to the proceedings are not the same.

## **Costs**

*Clause 242* stipulates that the parties to a proceeding in the Childrens Court for an order must pay their own costs of the proceeding.

## **Division 3            Appeals**

### **Who may appeal**

*Clause 243* specifies that a party to the proceeding for an application for any of the orders listed in the provision may appeal to the appellate court against a decision on an application listed in the section.

Significantly, a decision on an application for a final adoption order can only be appealed if the decision is to refuse the application. A decision to make a final adoption order cannot be appealed.

### **How to start appeal**

*Clause 244* provides that an appeal is started by filing a notice of appeal with the registrar of the appellate court within 28 days after the decision is

made. Subsection (2) requires the appellant to serve a copy of the notice of appeal on the other persons entitled to appeal against the decision. Subsection (4) provides that the court may at any time extend the period for filing the notice of appeal. Subsection (5) states that the notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **Stay of operation of decisions**

*Clause 245* provides that if a person appeals against a decision under this division, the decision is stayed until the end of the appeal.

### **Hearing procedures**

*Clause 246* provides that an appeal must be decided on the evidence and proceedings before the Childrens Court, however the appellate court may order that the appeal be heard afresh, in whole or part.

### **Powers of appellate court**

*Clause 247* provides those powers that the appellate court may exercise in deciding an appeal. The appellate court may –

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision and substitute another decision; or
- (d) set aside the decision appealed against and remit the matter to the Childrens Court that made the decision.

## **Part 11                      Access to adoption information**

### **Division 1                      Preliminary**

#### **Identifying information**

*Clause 248* provides that a reference in this part to information that *identifies* a person includes information that is likely to lead to the identification of the person. Subsection (2) specifies that information may

identify a person, if given to another person, because of other information that the other person has or is able to obtain.

### **Meaning of *relative***

*Clause 249* provides that in part 11, *relative* means a spouse, parent, sibling or child.

To remove any doubt, subsection (2) declares that a reference in part 11 to a relative of an adopted person or birth parent does not include a person who was his or her parent, sibling or child before the adoption but is not his or her parent, sibling or child after the adoption.

### **References to birth parent – who is a biological father**

*Clause 250* states that for the purpose of a reference in part 11 to a birth parent of an adopted person, a man is the adopted person's biological father only if –

- (a) the man is shown as the adopted person's father in the register of births under the *Births, Deaths and Marriages Registration Act 2003*; or
- (b) the man consented to the adoption, or the need for his consent was dispensed with under the law in force at the relevant time; or
- (c) the chief executive holds a record or other sufficient evidence that the man accepted paternity of the adopted person before or at the time of the adoption; or
- (d) the chief executive is otherwise satisfied, on the balance of probabilities, the man is the adopted person's biological father.

### **Application to persons who have died**

*Clause 251* sets out how part 11 applies in relation to a person who has died.

### **Prescribed documents**

*Clause 252* provides that a prescribed document, relating to an adoption, is a copy of any of the following –

- (a) a parent's consent to the adoption;

- (b) an order dispensing with the need for a parent's consent to the adoption;
- (c) an adoption order made under this Act, the repealed Act or an Act repealed by the repealed Act .

### **Release of altered documents**

*Clause 253* applies if –

- (a) the chief executive is required to give a particular document to a person in response to a request under division 2 or 3; and
- (b) the document contains information (*restricted information*) that the chief executive must not give the person because of another provision of this Act to which division 2 or 3 is subject.

Subsection (2) provides that the chief executive may give the document after altering it so the restricted information can not be read.

### **How request for information is made**

*Clause 254* provides that a request for information under division 2 or 3 must be made by –

- (a) giving the chief executive a signed request in the approved form; and
- (b) producing for the chief executive's inspection the documents prescribed under a regulation relating to the person's identity.

Subsection (2) provides that before granting a person's request for information about another person, the chief executive may also require the first person to produce reasonable proof of his or her relationship to the other person by giving the chief executive particular information or producing a particular document for the chief executive's inspection.

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## **Division 2            Access to particular identifying information while adopted person is a child**

### **Application of div 2**

*Clause 255* provides that division 2 applies in relation to an adopted person who is a child.

### **Request by, or on behalf of, adopted child**

*Clause 256* provides that either of the following persons (the *applicant*) may ask the chief executive for pre-adoption information about the adopted child –

- (a) an adoptive parent of the adopted child; or
- (b) the adopted child, but only with the consent of an adoptive parent.

Subsection (2) provides that the chief executive may give information in compliance with the request only if written consent is given by each birth parent who is identified by the information.

However, subsection (3) provides that a birth parent is taken to have given consent for subsection (2), if the birth parent has asked for, and received, information about the adopted child under section 257.

Subsection (4) provides that subject to subsection (2), the chief executive must comply with the request by giving the applicant any of the following held by the chief executive –

- (a) the adopted child's name before the adoption;
- (b) a prescribed document;
- (c) in relation to a birth parent of the adopted child –
  - (i) the birth parent's name at the time of the adoption;
  - (ii) the birth parent's date of birth;
  - (iii) the birth parent's last known name and address.
- (d) in relation to any other adopted person who is an adult and who has at least 1 birth parent who is also a birth parent of the adopted child –
  - (i) the person's date of birth;

- (ii) the person's name immediately after the person's adoption;
- (iii) the person's last known name and address, but only with the person's written consent.

Subsection (5) provides that if a birth parent gives consent, it may relate to all the information under subsection (4) or to all the information other than the birth parent's last known name and address.

Subsection (6) provides that if a person's consent is required under subsection (2) or (4)(d)(iii), but the person has died, an adult relative of the person may give consent.

Subsection (7) provides that if a person's consent is required under subsection (2) or (4)(d)(iii), but the person does not have capacity to consent, a guardian or adult relative of the person may give the consent.

### **Request by birth parent**

*Clause 257* provides that a birth parent of the adopted child may ask the chief executive for information about the adopted child.

Subsection (2) states that the chief executive may give information in compliance with the request only if -

- (a) written consent is given by an adoptive parent of the child; and
- (b) the chief executive has considered the adopted child's views, if the child is able to form and express views; and
- (c) the chief executive is satisfied that giving the information is not likely to be contrary to the child's wellbeing and best interests.

Subsection (3) provides that an adoptive parent is taken to have given consent for subsection (2) if the adoptive parent has asked for, or given consent for the adopted child to ask for, information about the birth parent under section 256 and information was given under that section.

Subsection (4) provides that subject to subsection (2), the chief executive must comply with the request by giving the birth parent any of the following held by the chief executive -

- (a) in relation to the adopted child -
  - (i) his or her name immediately after the adoption;
  - (ii) his or her last known name and address;

- 
- (b) the name, at the time of the adoption, of an adoptive parent of the adopted child;
  - (c) a prescribed document.

Subsection (5) provides that if an adoptive parent gives consent, it may relate to all the information under subsection (4) or to all the information other than the adopted child's last known named and address.

Subsection (6) provides that if the adopted child no longer has an adoptive parent, a parent of the child at the time the request is made may give the consent.

Subsection (7) provides that if an adoptive parent of the child does not have capacity to consent to the information being given, a guardian of the adoptive parent or a parent of the child at the time the request is made may give the consent.

Subsection (8) provides that if a birth parent has died, an adult relative of the birth parent may make a request under subsection (1) in place of the birth parent.

Subsection (9) provides that if a birth parent does not have capacity to ask for information, a guardian or adult relative of the birth parent may make a request under subsection (1) in place of the birth parent.

Subsection (10) provides that in this section, *parent*, of a child, includes the chief executive (child safety), or a corresponding officer in another jurisdiction, who is a guardian of the child.

### **Taking steps to obtain consent to disclosure**

*Clause 258* provides that this section applies if a person's consent is required under this division.

Subsection (2) provides that the chief executive must take steps to contact the person and ask if the person wishes to give the consent. However, subsection (3) specifies that subsection (2) does not apply to a person who the chief executive is aware does not wish to give the consent or to be contacted for the purpose of asking for the consent.

### **Support for persons involved in disclosure of information**

*Clause 259* provides that the chief executive must provide the information, support or counselling that the chief executive considers appropriate to

persons seeking information and persons whose consent to the disclosure of information is sought.

The purpose of providing the information, support or counselling is to help the person decide whether to seek the information, or consent to the disclosure of the information, at that time.

Subsection (3) states that the information that the chief executive may give to a person making a decision mentioned in subsection (2) includes personal information about another person that may influence the decision.

### **Adoption plan may include consent or request not to be asked for consent**

*Clause 260* provides that a person may give an information consent or non-contact request to the chief executive by signing an adoption plan that includes the consent or request and giving a copy of the plan to the chief executive. However, subclause (2) states that this does not limit the ways a person may give an information consent or non-contact request to the chief executive.

Subsection (3) specifies meaning of the terms *information consent* and *non-contact request* for this section.

### **Access to information is subject to court order**

*Clause 261* provides that this division applies subject to section 275.

## **Division 3            Access to particular information when adopted person is an adult**

### **Application of div 3**

*Clause 262* provides that division 3 applies in relation to an adopted person who is an adult.

### **Request by adopted person**

*Clause 263* provides that the adopted person may ask the chief executive for pre-adoption information about the person.



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The chief executive must comply with the request by giving the person any of the following held by the chief executive –

- (a) the person's name before the adoption;
- (b) a prescribed document;
- (c) in relation to a birth parent of the person –
  - (i) the birth parent's name at the time of the adoption;
  - (ii) the birth parent's date of birth;
  - (iii) the birth parent's last known name and address, but only with his or her written consent;
- (d) in relation to any other adopted person who is an adult and who has at least 1 parent who is also a birth parent of the first adopted person –
  - (i) the person's date of birth;
  - (ii) the person's name immediately after the person's adoption;
  - (iii) the person's last known name and address, but only with the person's written consent.

Subsection (3) provides that if a person whose consent is required under subsection (2)(c)(iii) or (d)(iii) has died, an adult relative of the person may give the consent.

Subsection (4) provides that if a person whose consent is required under subsection (2)(c)(iii) or (d)(iii) does not have capacity to consent, a guardian or adult relative of the person may give the consent.

### **Request by adult relative in place of adopted person**

*Clause 264* applies if the adopted person has died or does not have capacity to ask for information. An adult relative of the adopted person may make a request under section 263 for pre-adoption information about the adopted person.

### **Request by birth parent**

*Clause 265* provides that a birth parent of the adopted person may ask the chief executive for information about the adopted person.

The chief executive must comply with the request by giving the birth parent any of the following held by the chief executive –

- (a) in relation to the adopted person –
  - (i) the person’s name immediately after the adoption;
  - (ii) the person’s last known name and address, but only with the person’s written consent;
- (b) the name, at the time of the adoption, of an adoptive parent of the adopted person;
- (c) a prescribed document.

Subsection (3) provides that if the adopted person has died, an adult relative of the person may give the consent required under subsection (2)(a)(ii).

Subsection (4) provides that if the adopted person does not have capacity to consent, a guardian or adult relative of the person may give the consent required under subsection (2)(a)(ii).

### **Request by adult relative in place of birth parent**

*Clause 266* applies if a birth parent of an adopted person has died or does not have capacity to ask for information. An adult relative of the birth parent may make a request under section 265 for information about the adopted person.

### **Request by pre-adoption sibling**

*Clause 267* provides that an adult person (the *applicant*) may ask the chief executive for information about the adopted person if –

- (a) the applicant would be a sibling of the adopted person if the adoption had not happened; and
- (b) the applicant is not also an adopted person.

The chief executive may give information in compliance with the request only if written consent is given by the adopted person.

However, subsection (3) provides that the chief executive must not give information in compliance with the request if –

- (a) the adoption happened before 1 June 1991; and
- (b) a birth parent of the adopted person has made a contact statement that the birth parent does not wish to be contacted by the adopted person.

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Subsection (4) provides that, subject to subsections (2) and (3), the chief executive must comply with the request by giving the person any of the following held by the chief executive –

- (a) the adopted person’s date of birth;
- (b) the adopted person’s last known name and address;
- (c) a prescribed document.

Subsection (5) provides that if an adopted person gives consent, it may relate to all information under subsection (4) or to all the information other than the adopted person’s last known name and address.

Subsections (6) and (7) provide that if an adopted person has died, an adult relative of the person may give the consent; or if an adopted person does not have capacity to consent, a guardian or adult relative of the person may give the consent.

### **Limitations on access to information**

*Clause 268* specifies that this division applies subject to division 4 and section 275.

## **Division 4                      Contact statements and related matters**

### **Contact statements**

*Clause 269* provides that an adopted person who is at least 17 years and 6 months old, or a birth parent of an adopted person, may give the chief executive a signed document in the approved form (a **contact statement**) stating the person’s wish about being contacted by another stated person who may ask for information about the person under division 3.

Subsection (2) specifies that a contact statement may state that-

- (a) the adopted person does not wish to be contacted by another stated person; or
- (b) the person wishes any contact by another stated person to happen only in a stated way.

For example contact is to happen only by telephone; in-person contact is to happen only at a neutral place in the presence of a mediator.

Subsection (3) specifies that a contact statement may also state the person's wishes about being contacted by the chief executive in relation to giving consent to the disclosure of information about the person under division 2 or 3.

### **Contact statement obligations for post-June 1991 adoptions**

*Clause 270* provides that this section applies if -

- (a) a person (the ***applicant***) asks the chief executive, under division 3, for information about another person (the ***second person***) who is an adopted person or a birth parent of an adopted person; and
- (b) the second person has given the chief executive a contact statement concerning contact with the applicant; and
- (c) the adoption happened on or after 1 June 1991.

Subsection (2) provides that before giving any of the requested information to the applicant, the chief executive must pass on to the applicant-

- (a) the contents of the contact statement; and
- (b) if the contact statement is that the second person does not wish to be contacted by the applicant –
  - (i) the explanation for that wish (except to the extent that the chief executive knows the second person does not want the explanation to be passed on); or
  - (ii) if the chief executive is not aware of the explanation, reasons that are typically given by persons who do not wish to be contacted.

### **Contact statement obligations for pre-June 1991 adoptions**

*Clause 271* provides for contact statement obligations for pre-June 1991 adoptions as follows -

Subsection (1) states that this section applies if -

- (a) a person (the ***applicant***) asks the chief executive, under division 3, for information about another person (the ***second person***) who is an adopted person or a birth parent of an adopted person; and

- 
- (b) the second person has given the chief executive a contact statement concerning contact with the applicant; and
  - (c) the adoption happened before 1 June 1991.

Subsection (2) specifies that before giving any of the requested information to the applicant, the chief executive must pass on the contents of the contact statement to the applicant.

Subsection (3) specifies that if the contact statement is that the second person does not wish to be contacted by the applicant, the chief executive must not give any of the requested information about the second person to the applicant unless -

- (a) a qualified officer speaks with the applicant, in person or by telephone, to –
  - (i) advise of the second person's wish not to be contacted; and
  - (ii) pass on the explanation for the second person's wish not to be contacted (except to the extent that the chief executive knows the second person does not want the explanation to be passed on) or, if the chief executive is not aware of the explanation, reasons that are typically given by persons who do not wish to be contacted; and
  - (iii) explain the offence under section 272; and
- (b) the applicant gives the chief executive a signed statement, in the approved form, that –
  - (i) on a stated day, a qualified officer spoke with the applicant about the matters stated in paragraph (a); and
  - (ii) the applicant acknowledges –
    - (A) the second person's wish not to be contacted; and
    - (B) that it is an offence for the applicant to do a thing stated in section 272(1)(d) in the circumstances stated in that section.

Subsection (4) provides that if the chief executive considers it appropriate, the chief executive may delay giving the applicant the requested information for the reasonable period required for the chief executive to –

- (a) advise the second person that the applicant has asked the chief executive for the information; and

- (b) offer the second person an opportunity to give the chief executive information, or further information, about why the second person does not wish to be contacted by the applicant; and
- (c) if information is given under paragraph (b), pass it on to the applicant to help the applicant better understand the second person's wishes about contact.

Subsection (5) provides that the chief executive may offer the applicant other information, counselling or support that the chief executive considers appropriate (before or after the chief executive discloses the information).

Subsection (6) provides defines the terms *qualified officer* and *telephone* for the section.

### **Offence about contact for pre-June 1991 adoptions**

*Clause 272* provides that a person (the *first person*) commits an offence if -

- (a) the first person knows that another person (the *second person*) has given the chief executive a contact statement stating that the second person does not wish to be contacted by the first person; and
- (b) the contact statement is current; and
- (c) the second person is an adopted person, or a birth parent of an adopted person, for an adoption that happened before 1 June 1991; and
- (d) the first person does any of the following in relation to another person, knowing that the other person is the second person or a relative of the second person-
  - (i) contacts or attempt to contact the person; or
  - (ii) arranges or attempts to arrange contact with the other person; or
  - (iii) procures someone else to contact or arrange contact with the other person.

Maximum penalty—100 penalty units or 2 years imprisonment.

Subsection (2) provides that it is a defence for a person charged with an offence against subsection (1), in relation to contact with another person to prove -

- (a) the person had contact with the other person (the *previous contact*) before the person acquired the knowledge mentioned in subsection (1)(a) and (d); and

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(Examples of this are as follows –

1. The person had contact with the other person in the course of the person's employment before knowing the other person was the second person or a relative of the second person.
2. The person had contact with the other person before the contact wish mentioned in subsection (1)(a) was given to the chief executive.)

(b) the contact is a continuation of, or equivalent to, the previous contact.

### **Currency and revocation of contact statements**

*Clause 273* provides that the contact statement continues in force until it is revoked by the person or the person dies. The person may revoke the contact statement by giving the chief executive a signed notice of revocation in the approved form.

### **Persons making contact statements presumed to be living**

*Clause 274* applies if a person has given the chief executive a contact statement and has not revoked it. In the absence of evidence to the contrary, the chief executive must presume the person is still alive.

The chief executive is not required to take steps to determine whether the person is still alive unless –

- (a) the chief executive receives a request from someone (the *applicant*) for information about the person under division 3; and
- (b) the contact statement is that the person does not wish to be contacted by the applicant; and
- (c) the chief executive is aware of information indicating the person has died or may have died.

It should be noted that under section 48D of the *Births, Deaths and Marriages Registration Act 2003*, the chief executive and the registrar may enter into an arrangement for giving information about whether a person giving a contact statement has died.

## **Division 5            Miscellaneous**

### **Court order restricting access to information**

*Clause 275* provides that an adopted person, a birth parent or adoptive parent of an adopted person or the chief executive may apply to the Childrens Court for an order that the chief executive must not give stated information to a stated person under division 2 or 3.

The court may make the order if satisfied there would be an unacceptable risk of harm to the applicant (other than the chief executive) or someone else if the information were given.

Subsection (4) provides that the application may be made and dealt with during proceedings for an adoption order or after an adoption order is made.

Subsection (5) provides that while the application for the order is pending, the chief executive may withhold the information from release under division 2 or 3.

### **Chief executive may obtain or disclose medical information**

*Clause 276* provides that the chief executive may obtain or disclose non-identifying medical information as follows -

Subsection (1) specifies that the chief executive may contact a biological parent of an adopted person for the purpose of obtaining information about the medical history of a biological relative of the adopted person.

Subsection (2) specifies that the chief executive may disclose, to an adopted person, information about the medical history of a biological relative of the adopted person.

Subsection (3) provides that the chief executive may disclose, to a biological relative of an adopted person, information about the adopted person's medical history that relates to a condition that may have been inherited from a biological relative.

Subsection (4) provides that the chief executive may disclose information to a person under subsection (2) or (3) that is likely to identify an adopted person or biological relative only if -

- (a) the chief executive could give the information to the person on a request under this part, and the chief executive has not been asked by



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the biological relative or adopted person not to disclose the information; or

- (b) the chief executive is satisfied there is an unacceptable risk that a person's health may be significantly adversely affected if the information is not given or there are other exceptional circumstances in which the disclosure of the information is justified.

Subsection (5) specifies that it does not matter for this section whether a person who is contacted, or to whom information is given, or to whom information relates, is a person who has made a contact statement not to be contacted.

Subsection (6) enables a person who is an adopted person or biological relative of an adopted person, to request the chief executive to give the information to a medical practitioner nominated by the person, instead of giving the information to the person.

Subsection (7) explains that a person is not obliged to give or receive information under this section.

Subsection (8) defines the term *biological relative*, of an adopted person, for purposes of the section.

## **Intercountry adoption**

*Clause 277* applies to an intercountry adoption if the relevant competent authority or a birth family member has given information or a document to the chief executive for the purpose of giving it to the adopted person or his or her adoptive parents.

If the information or document is for the adoptive parents, the chief executive must give it to the adoptive parents.

If the information or document is for the adopted person, the chief executive must, subject to any instructions from the competent authority or birth family member, give the information or document -

- (a) if the adopted person is a child - to adoptive parents; or  
(b) if the adopted person is an adult - to the adopted person.

## **Division 6            Mailbox service**

### **What is the mailbox service**

*Clause 278* provides that the *mailbox service* is a service conducted by the chief executive to enable parties to an adoption and other particular persons to exchange information.

The information that can be exchanged may be -

- (a) non-identifying, where the persons -
  - (i) would not otherwise be able to exchange the information because of part 11; or
  - (ii) are able to obtain identifying information about each other but choose to communicate on a non-identifying basis; or
- (b) identifying, where the persons have identifying information about each other and choose to use the service to exchange information.

### **Other definitions for div 6**

*Clause 279* defines particular terms used in division 6.

### **Who is eligible to take part**

*Clause 280* provides that a party to an adoption may take part in the mailbox service. However, subsection (2) specifies that while an adopted person is a child, he or she may take part only with the written consent of an adoptive parent.

In addition to parties to the adoption being eligible to take part in the mailbox service, an adult relative of a birth parent who is not a party to the adoption may also take part if the birth parent gives consent, does not have capacity to consent or has died.

Subsection (4) explains that a consent given under this section may be limited to exchanging non-identifying information.

### **Exchanging non-identifying information**

*Clause 281* provides that a participant in the mailbox service may exchange non-identifying information with another participant.

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## Exchanging identifying information

*Clause 282* provides participants may exchange identifying information only if—

- (a) either—
  - (i) the chief executive has given identifying information to each participant on an application under division 2 or 3; or
  - (ii) the participants are parties to an intercountry adoption or their participation relates to an intercountry adoption; and
- (b) each participant has given a notice of intention stating that he or she wishes to exchange identifying information.

Subsection (2) provides that for an adult relative of a birth parent who is a participant under section 280(3), subsection (1)(a) applies as if the birth parent were the participant instead of the adult relative.

## Notice of intention to take part

*Clause 283* provides that a person who wishes to take part in the mailbox service, and who is eligible to take part, must give the chief executive a signed notice in the approved form and produce for the chief executive's inspection the documents prescribed under a regulation relating to the person's identity.

The notice must state whether the person wishes to exchange identifying information. The notice may also include other information necessary or convenient to enable the person's participation. For example -

1. If the person wishes to exchange only non-identifying information, the person may state a name that he or she would like to use in correspondence.
2. The person may state whether the person wishes the chief executive to forward letters to the person as soon as they are received or to hold any letters until the person asks for them to be forwarded or collects them in person.

## Receipt and review of documents

*Clause 284* provides that a participant (the *sender*) may give a document to the chief executive to pass on to another participant (the *addressee*).

Subsection (2) specifies that unless, under section 282, the sender may exchange identifying information about the addressee, the chief executive must review the document to ensure it contains only non-identifying information. The chief executive must also review the document to ensure it does not contain anything the chief executive considers -

- (a) may be distressing for the addressee; or
- (b) is abusive, offensive or intended to intimidate, harass or threaten the addressee (this would be a *concerning matter*).

### **Document with no identifying information or concerning matter**

*Clause 285* applies if the chief executive is satisfied a document received under section 284 does not contain -

- (a) identifying information that it may not contain; or
- (b) any concerning matter.

Subject to subsection (3), if the chief executive is able to pass it on as requested, the chief executive must do so and then notify the sender that it has been passed on.

Subsection (3) specifies that if the document contains information that may be distressing for the addressee (for example, news of someone's death), the chief executive may pass on the document in a way, and at a time, that the chief executive considers may minimise the possible distress. For example, the chief executive may arrange for an officer of the department to pass on the document personally and give support to the addressee.

Subsection (4) provides that if the chief executive is not able to pass a document on as requested, the chief executive must -

- (a) notify the sender that it is not currently possible to pass on the document; and
- (b) hold the document until it is possible to pass it on, subject to any other request from the sender.

### **Document with identifying information or concerning matter**

*Clause 286* applies if the chief executive considers a document received under section 284 contains -

- (a) identifying information that it may not contain;

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(b) or any concerning matter.

The chief executive must notify the sender why the document may not be passed on in that form. On request by the sender under subsection (3), the chief executive must –

- (a) pass on a part of the document that does not contain the identifying information or concerning matter; or
- (b) pass on the document after altering it so it does not contain the identifying information or concerning matter; (e.g. blocking out parts of a letter containing identifying information so those parts cannot be read); or
- (c) return the document to the sender; or
- (d) destroy or otherwise deal with the document.

Subsection (4) states that if the sender does not make a request under subsection (3), the chief executive may keep the document or return it to the sender.

### **Photographs of persons more than 2 years old**

*Clause 287* provides that a photograph of a person aged more than 2 years, and exchanged between participants through the mailbox service, is taken to be information that identifies the person in the photograph unless the chief executive has given an approval for the participants to exchange the photograph, or exchange photographs generally.

Subsection (2) provides that a participant may make application to the chief executive for approval to exchange a stated photograph, or exchange photographs generally with another stated participant. If the chief executive gives the approval, it must state each of the participants (the *relevant participants*) who are approved to exchange the photograph or exchange photographs generally.

Subsection (4) provides that the chief executive may give approval if -

- (a) the chief executive is satisfied an exchange of the particular photograph, or of photographs generally, is unlikely to -
  - (i) harm the relevant adopted person's wellbeing or best interests; or
  - (ii) enable a relevant participant to identify or locate another relevant participant or party to the adoption; and

- (b) each relevant participant has given to the chief executive a signed notice by which the participant agrees not to use, or attempt to use, a photograph to which the approval relates, to identify or locate another relevant participant or party to the adoption.

Subsection (5) provides that if a person gives the chief executive a notice under subsection (4)(b) and is given, through the mailbox service, a photograph to which the approval relates, the person must not use, or attempt to use, the photograph to identify or locate another relevant participant or party to the adoption.

Maximum penalty—40 penalty units.

## **Part 12                      Registration of adoptions**

### **Definitions for pt 12**

*Clause 288* defines the terms *adopted children register*, *closed entry* and *entry* for the purposes of part 12.

### **Chief executive must notify registrar**

*Clause 289* applies if the Childrens Court makes a final adoption order, or if the Supreme Court makes an order discharging a final adoption order. The clause provides that as soon as practicable after the order is made, the chief executive must give notice of the order to the registrar.

### **Entitlement to certificate, information or source document relating to particular entries**

*Clause 290* applies to a person who has been given information under part 11, division 2 or 3 about another person; or a birth parent of an adopted person; or another person prescribed under a regulation. On request by the person, the chief executive must give the person an authorisation to obtain a certificate, information or a document under this section.

However, subsection (3) specifies that, the authorisation -

- (a) must not relate to any information that the chief executive may not disclose to the person on a request under part 11; and

- 
- (b) may exclude information if the chief executive is satisfied that allowing access to the information would be an unreasonable invasion of a person's privacy or otherwise unreasonably harm a person's interests.

Example-

The authorisation may exclude a part of a document showing the adopted person's birth was the result of a sexual offence.

Subsection (4) enables the person to make an application under section 44 of the *Births, Deaths and Marriages Registration Act 2003*, accompanied by an authorisation from the chief executive, for a certificate, information or copy of a source document mentioned in that section to which the authorisation relates.

Subsection (5) requires the registrar to grant the application if it relates to an entry for the adopted person in the register of births.

Also, subsection (6) states that the registrar must grant the application if –

- (a) it relates to an entry for the adopted person in the adopted children register; and
- (b) the applicant is a birth parent or a relative of a birth parent.

Subsection (7) requires that if a certificate or copy of a source document is given under subsection (6), or given under this section and relating to a closed entry, it must be endorsed 'Not to be used for official purposes'.

## **Part 13                      Recognition of adoptions and related matters**

### **Division 1                      Recognition of interstate and overseas adoptions**

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

*Clause 291* provides that adoption of a person in another State (State includes New Zealand) under the law of that State, unless rescinded under

the law of that State, has the same effect as an adoption order made in Queensland under the *Adoption Act 2009* and has no other effect.

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

*Clause 292* provides recognition of adoptions granted in convention countries as if they were adoption orders made under the *Adoption Act 2009* if, when the adoption is granted the adopted child is habitually resident in a convention country and the adoptive parent is habitually resident in a convention country, Australia or New Zealand and an adoption compliance certificate, issued in the convention country in which the adoption is granted, is in force for the adoption. However, the adoption is not effective for the purposes of the *Adoption Act 2009* if the Childrens Court makes a declaration of non-recognition.

Subsection (4) specifies that if the Childrens Court is satisfied the adoption, taking into account the child's wellbeing and best interests, is manifestly contrary to public policy the Court may make a declaration of non-recognition of the adoption.

Subsection (5) states that an interested person may apply to the Childrens Court for a declaration of non-recognition of the adoption. Subsection (11) provides that 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 the *Adoption Act 2009* and that ***interested person***, for an adoption, means – (a) the chief executive; or (b) an adoptive parent; or (c) the adopted child. Therefore, the chief executive, or the adoptive parent, or the adopted child may apply to the Supreme Court for a declaration of non-recognition of the adoption.

Subsection (6) states that before applying for the declaration, the person must give written notice to the Commonwealth central authority if the person is the chief executive, or otherwise the person must give written notice to the chief executive.

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

Subsection (8) provides that 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.



Subsection (9) states that 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.

Subsection (10) states that this section is subject to division 2 (Simple adoptions).

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

*Clause 293* provides for recognition of adoptions granted in non-convention countries 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 adoptive parent, or each of the adoptive parents, was resident or domiciled in that country and had been resident or domiciled in that country for at least 1 year; and
- (c) in consequence of the adoption, the adoptive parent or adoptive parents 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 biological parent of the adopted person in respect of the custody of the adopted person; and
- (d) under the law of that country the adoptive parent or adoptive parents were, by the adoption, placed generally in relation to the adopted person in the position of a parent or parents; and
- (e) the adoption has not been rescinded under the law of that country.

Subsection (2) provides that for the purposes of the laws of Queensland, the adoption has the same effect as an adoption order under the *Adoption Act 2009*.

Subsection (3) specifies that if an issue relating to an adoption in a non-convention country arises in a proceeding before a court, it must be presumed, in the absence of evidence to the contrary, that the adoption is one to which this section applies. However, subsection (4) provides that a court 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.

Subsection (5) specifies that 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 is, in the absence of proof to the contrary sufficient evidence that the adoption was made in that country and is effective under the law of that country; and sufficient evidence that the adoption has not been rescinded.

Subsection (6) clarifies that 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.

Subsection (7) clarifies that nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of the repealed Act.

## **Division 2            Simple adoptions**

### **Definitions for div 2**

*Clause 294* defines particular terms used in division 2.

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

*Clause 295* provides that despite section 292(2) (Recognition of adoptions granted in convention countries), 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**

*Clause 296* provides that if a simple adoption is converted in a convention country, the adoption is taken to be a full adoption unless the Childrens Court makes a declaration of non-recognition of the conversion.

Subsection (3) provides that the Childrens 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.

Subsection (4) specifies that an interested person (4) may apply to the Childrens Court for a declaration of non-recognition of the conversion.

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Subsection (5) states that before applying for the declaration, the person must give notice to the Commonwealth central authority if the person is the chief executive, or otherwise the person must give notice to the chief executive.

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

Subsection (7) provides that 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.

Subsection (8) states that 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 Childrens Court**

*Clause 297* provides that an adoptive parent of a child under a simple adoption may apply to the Childrens Court for an order declaring the adoption to have effect as a full adoption.

Subsections (2) and (3) provide that the applicant must serve a copy of the application on the chief executive, stating the applicant's reasons for the application. The chief executive must give a copy of the application to the Commonwealth central authority.

Subsection (5) specifies that the chief executive is entitled to be joined as a party to the proceedings concerning the application.

Subsection (6) provides that the Childrens Court may make the order only if 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 adoptive parent 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 court 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.

Subsection (7) provides that if the court makes the order, the adoption has effect as a full adoption.

### **Division 3            Other matters concerning overseas adoptions**

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

*Clause 298* applies if –

- (a) a child is adopted in a country other than Australia or New Zealand, under arrangements made between the chief executive and the competent authority for the other country; and
- (b) the adoption has been in force for less than 1 year; and
- (c) the child is present in Queensland.

The clause provides that the chief executive may supervise the wellbeing and interests of the child for the prescribed period, starting on the day the child arrives in Queensland. A person must allow an authorised officer reasonable access to the child to carry out the supervision.

Subsection (4) provides that it does not matter for subsection (1)(a) whether the adoption is one that, under this Act, has the same effect as an adoption order under this Act.

Subsection (5) defines the terms *authorised officer* and *prescribed period* for the section.

#### **Declarations of validity of overseas adoptions**

*Clause 299* provides for declarations of validity of foreign adoptions.

Subsection (1) provides that on application made by a person mentioned in subsection (2), the Childrens Court may make an order declaring that an adoption is one to which section 292 or 293 applies.

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Subsection (2) states that any of the following persons may make the application –

- (a) the adopted child;
- (b) an adoptive parent;
- (c) a person tracing a relationship because of the adoption, through or to the adopted child.

Subsection (3) provides that the applicant must serve a copy of the application on the chief executive at least 21 days before the day fixed for hearing of the application.

Subsection (4) provides that the chief executive is entitled to be joined as a party to the proceedings.

Subsection (5) provides that the court may -

- (a) direct that notice of the application be given to the Attorney-General or any other person the court considers appropriate; 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 be joined as a party to the proceedings.

If the court grants the application, it may include in the order any particulars relating to the adoption, the adopted child or an adoptive parent as the court finds to be established. The court may also make the orders about costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

Subsection (8) provides that for the purposes of the laws of Queensland, an order under this section binds the State, whether or not notice was given to the Attorney-General, but, except as provided in subsection (7), does not affect –

- (a) the rights of a person other than –
  - (i) a party to the proceedings for the order; and
  - (ii) a person to whom notice of the application for the order was given; and
  - (iii) a person claiming through a person mentioned in subparagraph (i) or (ii); or

- (b) an earlier judgment, order or decree of a court of competent jurisdiction.

Subsection (9) provides that in proceedings in a court in Queensland relating to the rights of a person other than a person mentioned in subsection (6)(a)(i) to (iii), a copy of an order made under this section, certified by the registrar of the Supreme Court to be a true copy, is evidence that an adoption –

- (a) was effected in accordance with the particulars contained in the order; and
- (b) is an adoption to which section 292 or 293 applies.

## **Part 14                      Offences**

### **Definitions for part 14 Offences**

*Clause 300* defines particular terms for the purposes of part 14.

### **Territorial application**

*Clause 301* provides that the offences in part 14 apply in relation to the adoption of children in Queensland or children adopted in Queensland and acts done in Queensland relating to the adoption of children outside Queensland or children adopted outside Queensland.

### **False representation about arranging adoption**

*Clause 302* makes it an offence for a person (the *first person*) who is not performing a function under or relating to the Act to represent to another person that they are arranging, or able to arrange, the adoption of a child by the other person, or the adoption by someone else of a child of the other person.

The maximum penalty for this offence is 150 penalty units or 18 months imprisonment for an individual or 1000 penalty units for a corporation.

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## **Giving or receiving consideration**

*Clause 303* specifies that it is an offence for a person to give or receive, or agree to give or receive, a payment or other reward in consideration of –

- (a) the adoption or proposed adoption of a child; or
- (b) the giving of consent to the adoption of a child; or
- (c) the transfer of a child's care or custody with a view to the child's adoption; or
- (d) a negotiation or arrangement for a child's adoption.

An offence will occur whether the action mentioned in subsection (1) happens before or after the birth of the relevant child and whether the adoption happens or may lawfully happen.

The maximum penalty for this offence is 150 penalty units or 18 months imprisonment for an individual or 1000 penalty units for a corporation.

## **Advertisements and other published matters**

*Clause 304* creates an offence if a person publishes an advertisement, news item or other material stating that –

- (a) a parent 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 negotiate, or make an arrangement, for the adoption of the child.

Subsection (2) clarifies that the offence is created irrespective of whether or not the published statement relates to a particular child and whether or not the statement relates to a child who has been born.

The maximum penalty for this offence is 150 penalty units or 18 months imprisonment for an individual or 1000 penalty units for a corporation.

## **False or misleading information**

*Clause 305* specifies that it is an offence for a person to provide information to another person under the Act which is false or misleading in a material particular (that is, such that it unduly influences the outcome). However, the offence does not apply to information given in a document if the person, when giving the document –

- (a) informs the person being given the document, to the best of the first person's ability, how the information is false or misleading; and
- (b) if the first person has, or can reasonably obtain, the correct information – gives the correct information.

The maximum penalty for an offence under this section is 40 penalty units.

### **Improperly witnessing a consent**

*Clause 306* provides that a person (the *witness*) must not witness a person's form of consent to the adoption of a child if –

- (a) the form of consent is in the approved form under section 18 and the witness has not sighted the documents prescribed for section 18(2)(c); or
- (b) the witness knows, or ought to know, the other person –
  - (i) is not the person named in the form of consent; or
  - (ii) is not a parent of the child; or
  - (iii) does not understand the effect of giving consent and effect of adoption; or
  - (iv) does not have capacity to give the consent; or
  - (v) is not giving consent freely and voluntarily; or
- (c) the witness is not present when the other person signs the form of consent; or
- (d) the form of consent does not show the correct date for the day on which the consent is given.

The maximum penalty for an offence under this section is 40 penalty units.

### **Fraud or undue influence**

*Clause 307* provides that a person must not act fraudulently or use undue influence on another person to –

- (a) induce a parent of a child to offer or refrain from offering the child for adoption, give or revoke the parent's consent to the adoption of the child, or transfer a child's care or custody with a view to the child's adoption; or



- 
- (b) influence the preferences expressed by a parent of a child relating to the adoptive placement of the child.

The maximum penalty is 150 penalty units or 18 months imprisonment.

Subsection (2) provides that a person uses *undue influence* on another person for this section if the first person—

- (a) uses or threatens to use force or restraint against the other person; or
- (b) causes or threatens to cause injury or another detriment to the other person.

Subsection (3) provides that it is immaterial whether the adoption happens or may lawfully happen.

## **Part 15            General**

### **Division 1            Matters about offences and proceedings**

#### **Types of offences**

*Clause 308* specifies that an offence against the Act for which the maximum penalty of imprisonment is 2 years is an indictable offence that is a misdemeanour, otherwise an offence against the Act is a summary offence.

#### **Proceedings for indictable offence**

*Clause 309* provides that a proceeding for an indictable offence against the Act may be taken, at the election of the prosecution, by way of summary proceeding under the *Justices Act 1886* or on indictment.

Subsection (2) provides that a magistrate must not hear an indictable offence summarily if the defendant asks at the start of the hearing that the charge be prosecuted on indictment or the magistrate believes the charge should be prosecuted on indictment. In these circumstances, subsection (3) provides that -

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

### **Limitation on who may summarily hear indictable offence**

*Clause 310* provides that a proceeding for the summary conviction of a person on a charge for an indictable offence; or an examination of witnesses for a charge for an indictable offence, must be before a magistrate. However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **Limitation on time for starting summary proceeding**

*Clause 311* provides that a proceeding for a summary offence against the Act by way of summary proceeding under the *Justices Act 1886* must start within 1 year after the commission of the offence; or within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **Evidentiary provisions for proceedings under this Act**

*Clause 312* provides that for a proceeding under the Act there are certain evidentiary provisions to be met. These evidentiary provisions are specified in subsections (2) and (3).

Subsection (2) provides the evidentiary requirements of a signature, in particular that evidence of a signature purporting to be the signature of any of the persons listed in the subsection is evidence of the signature it purports to be.

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Subsection (3) provides that the matters listed can be evidenced by a certificate purporting to be signed by the chief executive stating any of those matters.

### **Proof of adoptions**

*Clause 313* provides that, for a proceeding in a court of Queensland, there are certain certificates which will be accepted as evidence for proof of adoptions.

Subsection (2) provides that a certificate purporting to be signed by a registrar of a court in Queensland or elsewhere stating that a stated document is an adoption order of the court, or a copy of or extract from an adoption order of the court, is evidence of the matter.

Subsection (3) provides that a certificate purporting to be signed by an appropriate officer stating that a stated document is a copy of an entry in a register relating to adoptions under a law of another jurisdiction, or an extract from the register or statement of information recorded in the register, is evidence of the matter.

Subsection (4) specifies the meaning of the terms *adoption order* and *appropriate officer* for the section.

## **Division 2            Confidentiality**

### **Confidentiality of information obtained by persons involved in administration of Act**

*Clause 314* provides for the confidential treatment of protected information obtained by persons involved in the administration of the Act. The section applies to a person who is, or has been, any of the following persons performing functions under or relating to the administration of the Act or the repealed Act –

- (a) a public service employee;
- (b) an adoption contract worker, counsellor or other person engaged by the chief executive;
- (c) an approved carer;
- (d) an appropriate Aboriginal or Torres Strait Islander person;

- (e) a recognised entity or member of a recognised entity; and
- (f) a person authorised to use information for research under section 324.

The section further applies if any of the above persons acquired, or have access to or custody of, protected information about another person.

It is an offence for the person to use the information, or disclose it, to anyone else except to the extent necessary to perform the person's functions under or relating to the Act.

A maximum penalty of 100 penalty units or 2 years imprisonment applies.

However, subsection (3) specifies that the information may be used or disclosed if this is otherwise required or permitted under another law.

Subsection (4) provides that to the extent to which the information is about a person, it may be disclosed to that person or another person (with the first person's consent). However, if the information can be requested from the chief executive under part 11, then subsection (4) only permits the information to be disclosed to the extent that it may be disclosed under part 11.

The chief executive may also disclose non-identifying information about an adopted person, adoptive parent, birth parent or relative, if satisfied it would not be an unreasonable breach of privacy.

Subsection (7) enables the chief executive to disclose information to the police commissioner or public trustee if it is for a reasonable purpose, or if doing so is not likely to allow the identification of a party to an adoption by another party to the adoption.

Subsection (8) provides for situations where the person has a current expression of interest made jointly with the person's spouse, or is being assessed under part 6 (Assessment of prospective adoptive parents) jointly with the person's spouse. In this situation the information may be disclosed to the person's spouse.

Subsection (9) explains that a reference in subsection (1)(a)(ii) to a person engaged by the chief executive includes an employee or contractor of a person engaged by the chief executive.

Subsection (10) provides the meaning of the terms *disclose, information* and *protected information*.

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## Publishing identifying material

*Clause 315* prohibits the publication of identifying material without the consent of the chief executive or every person, or on behalf of every person who is a child, who is identified by the material. Subsection (1) specifies that this section applies to material (***identifying material***) that identifies, or is likely to lead to the identification of, a person as –

- (a) a party, or relative of a party, to an adoption; or
- (b) a party, or relative of a party, to a court proceeding relating to an adoption; or
- (c) a person whose consent to an adoption is or was required.

Subsection (2)(b) specifies who must give written consent to the publication for each person identified, including who must give the consent for a proposed adoptee, if the publication is not made with the written approval of the chief executive.

The maximum penalty for an offence under this section is 100 penalty units or 2 years imprisonment for an individual, or 1000 penalty units for a corporation.

Subsection (3) defines the term ***proposed adoptee*** for this section. A child is a ***proposed adoptee*** if consent to the child's adoption has been given by each person whose consent is required before the proposed adoption order may be made.

Subsection (4) defines further terms used in this section, namely ***adoption***, ***identified person*** and ***publish***. Publish is defined broadly to mean publish to the public by television, radio, the Internet, newspaper, periodical, notice, circular or other form of communication.

## Disclosure to other jurisdictions

For the purpose of facilitating the adoption under the Act of children from another country, *clause 316* makes provision for the chief executive to enter into an arrangement with an appropriate entity of another country with responsibility under the law of that country for adoptions. The clause further provides that under the arrangement the chief executive may disclose information obtained under the Act or the repealed Act to the entity.

## **Division 3            Miscellaneous**

### **Adoption contract workers**

*Clause 317* states that the chief executive may engage a person as an adoption contract worker for any of the following purposes, if the chief executive is satisfied the person has the necessary expertise or experience -

- (a) to help the chief executive assess a person under part 6;
- (b) to supervise a child's wellbeing and interests while an interim order for the adoption of the child is in force;
- (c) to help the chief executive provide information, support or counselling to persons seeking information, or about whom information is sought, or whose consent to the disclosure of information is sought, under part 11.

### **Meaning of *appropriate Aboriginal or Torres Strait Islander person***

*Clause 318* states that an Aboriginal or Torres Strait Islander person is an ***appropriate Aboriginal or Torres Strait Islander person***, in relation to a particular Aboriginal or Torres Strait Islander child, if the chief executive considers the person to have appropriate knowledge about the child's community or language group, and Aboriginal tradition or Island custom relating to the child.

It should also be noted that sections 7(2), 25(3), 46(3), 118, 163 and 169(2) of the Act contain obligations involving an appropriate Aboriginal or Torres Strait Islander person.

In deciding who is an appropriate Aboriginal or Torres Strait Islander person for a child, subsection (2) obliges the chief executive to consult with—

- (a) an elder or other respected person of the child's community; or
- (b) a recognised entity or a member of a recognised entity; or
- (c) an entity that has a function of providing services to Aboriginal or Torres Strait Islander persons or a member of the entity.

The child's parent's privacy is to be respected in the consultation process and obligations under this Act are to be complied with in any such

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consultation process. As such, subsection (3) specifies that subsection (2) applies to the chief executive only to the extent the chief executive is able to carry out the consultation while respecting the privacy of the child's parents and complying with obligations under the Act about confidentiality.

### **Right of review against particular decisions**

*Clause 319* specifies the decisions that a person may apply to the tribunal to have reviewed.

### **Delegation**

*Clause 320* provides that chief executive's power under the Act may be delegated to an appropriately qualified officer or employee of the department. Subsection (2) clarifies that *appropriately qualified* includes having the qualifications or experience or standing appropriate to exercise the power.

### **Protection from liability**

*Clause 321* provides for protection of an official from civil liability for an act done, or omission made, honestly and without negligence under the Act. Subsection (2) specifies that instead of civil liability attaching to the official in such circumstances the liability attaches to the State.

Subsection (3) defines the term *official* for the purposes of the section.

### **Convention countries**

*Clause 322* defines what is meant by the term *convention country* as used in the Act.

### **State central authority**

*Clause 323* provides that the Minister is the central authority for the State for the purposes of the Hague convention, article 6.2. Note that this designation is made for the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth), section 8(1).

## **Research**

*Clause 324* allows the chief executive to authorise a qualified person to use information obtained under the Act for approved research. Subsection (2) provides that if a qualified person is authorised to use information under subsection (1), the information must be collected for the research in a way that could not reasonably be expected to result in the identification of any individuals to whom it relates.

Subsection (3) permits the chief executive to contact persons affected by adoption to ask if they would like to participate in approved research being conducted by a qualified person.

Subsection (4) defines the terms *approved research* and *qualified person* as they are used in this section.

## **Assistance to adoptive parents and others**

*Clause 325* provides that the chief executive may make payments, or give other assistance, to an adoptive parent or another person if the chief executive considers it is necessary to do so to ensure the wellbeing and best interests of an adopted child. However, subsection (2) specifies that this has effect, in relation to paying an amount, subject to appropriation by Parliament of an amount for the purpose.

## **Approved forms**

*Clause 326* provides power for the chief executive to approve forms for use under the Act.

## **Review of Act**

*Clause 327* provides that the Minister must ensure the operation of the Act is reviewed as soon as practicable after the day that is 5 years after the commencement of this section. The review must include a review of the effect of the Act on the parties to adoptions and their families, and the Minister must table a report on the outcome of the review in the Legislative Assembly.

## **Regulation-making power**

*Clause 328* provides that the Governor in Council may make regulations under the Act, including a regulation about fees.



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## **Part 16                      Repeal, savings and transitional provisions**

### **Division 1                      Repeal**

#### **Repeal of Adoption of Children Act 1964**

*Clause 329* provides for the repeal of the Adoption of Children Act 1964 No. 54.

### **Division 2                      Savings and transitional**

#### **Meaning of *commencement day***

*Clause 330* provides that, for division 2, *commencement day* means the day on which the provision in which the term is used commences.

#### **Adoption orders**

*Clause 331* specifies that an adoption order in force under the repealed Act immediately before the commencement day continues to have effect as if it were a final adoption order made under this Act and that without limiting this, the order may be discharged under part 9, division 7.

#### **Correction of adoption orders**

*Clause 332* provides that the chief executive may amend an adoption order continued in force under section 331 in order to correct the name, date of birth or another particular of a person mentioned in the order.

#### **Application by step-parent**

*Clause 333* provides for the transition of an application by a step-parent.

Subsection (1) specifies that this section applies if –

- (a) immediately before the commencement day –

- (i) an application under the repealed Act, section 13AA, to have a person's name entered in the Relative Children's Adoption List had not been finally dealt with; or
  - (ii) a person's name was in the Relative Children's Adoption List; and
- (b) the person is a person who may apply to adopt the relevant child under section 92.

Subsection (2) specifies that the person is taken to have made an application under that section to the chief executive to arrange an adoption by the person of the child.

### **Special Needs Children's Adoption List**

*Clause 334* applies to a person whose name was in the Special Needs Children's Adoption List immediately before the commencement day.

Subsection (2) provides that if there was a notation in the list, made under the repealed Act, section 13D(3)(a), stating the person is a prospective adopter, the person's name must be listed in the suitable adoptive parents register. Subsection (3) specifies that otherwise, the person's name must be listed in the expression of interest register.

Subsection (4) specifies that for section 79(1)(a), a name listed in the expression of interest register under subsection (3) is taken to have been entered in that register on the later of the following days –

- (a) the day the name was entered in the Special Needs Children's Adoption list under the repealed Act;
- (b) 1 year before the commencement day.

### **Review of decision to remove name from adoption list**

*Clause 335* applies if –

- (a) under the repealed Act, section 13AA(4), the chief executive removed a person's name from an adoption list (i.e. because the person was ineligible to have the person's name entered in the adoption list or because the person did not comply with a requirement prescribed under a regulation); and
- (b) a person applied to the tribunal for a review of the decision to remove the person's name; and

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- (c) immediately before the commencement day, the application for the review of the decision had not been finally dealt with.

Subsection (2) provides that the tribunal must decide the application under the repealed Act.

Subsection (3) provides that if the tribunal decides the person's name should not be removed from the adoption list, the person's name is, for section 333 (Application by step-parent) or 334 (Special Needs Children's Adoption List), taken to have been in the adoption list immediately before the commencement day.

### **Expression of interest register**

*Clause 336* applies to a person whose name was listed in the expression of interest register under the repealed Act immediately before the commencement day. Subsection (2) provides that person's name must be listed in the expression of interest under the *Adoption Act 2009*.

Subsection (3) specifies that for section 79(1)(a) (Automatic removal from register), the person's name is taken to have been entered in the register on the later of the following days –

- (a) the day the name was entered in the expression of interest register under the repealed Act;
- (b) 1 year before the commencement day.

### **Uncompleted review of decision to remove persons from expression of interest register**

*Clause 337* applies if a person applied to the tribunal for a review of a decision under the repealed Act, section 13AC, to remove the person's name from the expression of interest register and immediately before the commencement day, the application had not been finally dealt with.

Subsection (2) provides that the application has no further effect, and subsection (3) states that the person's name must be listed in the expression of interest register under this Act.

Subsection (4) provides that, for section 79(1)(a) (Automatic removal from register), the person's name is taken to have been entered in the register on the later of the following days –

- (a) the day the name was entered in the expression of interest register under the repealed Act (before the removal mentioned in subsection (1));
- (b) 1 year before the commencement day.

### **Suitable adoptive parents register**

*Clause 338* provides that if a person who, immediately before the commencement day, was a prospective adopter under the repealed Act, section 13D then the person's name must be listed in the suitable adoptive parents register under the *Adoption Act 2009*.

### **Current applications to Supreme Court or Childrens Court**

*Clause 339* provides how applications to the Supreme Court or Childrens Court, commenced under various provisions of the repealed Act, and not finally dealt with immediately before the commencement day, are to be dealt with.

### **Consents to adoption**

*Clause 340* provides that if a person had given their consent to the adoption of a child under the repealed Act, and that consent was still in force immediately before the commencement day, the consent continues in force as if it had been given under part 2 of the *Adoption Act 2009*.

### **Chief executive's guardianship**

*Clause 341* provides that if, immediately before the commencement day, the chief executive was a child's guardian under section 27 or 27B respectively of the repealed Act, the chief executive's guardianship continues in force under section 57 or 65 respectively of this Act.

### **Current applications to chief executive to convert simple adoption**

*Clause 342* provides how applications to the chief executive, commenced under the repealed Act, section 38AD(1) and not finally dealt with immediately before the commencement day, are to be dealt with.

Subsection (2) specifies that the chief executive may decide the application under that section, despite the repeal.

## **Particular objections continue in force as contact statements for pt 11**

*Clause 343* applies to a current objection to the extent it relates to contact being made with the objector by a stated person or class of persons.

Subsection (2) provides that the objection continues in force as a contact statement for part 11, that the person does not wish to be contacted by the stated person or class of person, until it is withdrawn or otherwise ends under this Act.

Subsection (3) defines *current objection* to mean an objection in force under the repealed Act, section 39AA immediately before the commencement day.

## **Current application to chief executive to disclose particular information**

*Clause 344* provides how applications to the chief executive under the repealed Act, section 39B, to disclose particular information, are to be dealt with if they had not been finally dealt with before the commencement day.

To the extent that the application could have been made after the commencement as a request under a provision of part 11, division 3, it is taken to be a request under that provision.

## **Entitlement to particular records**

*Clause 345* provides that an authorisation from the chief executive in force under the repealed Act, section 39C immediately before the commencement day continues to have effect as if it were an authorisation under the section 290.

## **Transitional-effect of adoption orders in relation to property**

*Clause 346* provides that section 216 (Effect of adoption orders in relation to property) does not affect a disposition of property by a person who, or by persons any of whom, died before the commencement of the repealed Act.

Subsection (2) specifies that section 216 does not affect a disposition of property that took effect in possession before the commencement of the repealed Act.

## **Part 17                      Amendments**

### **Division 1                      Amendment of Adoption of Children Act 1964**

#### **Act amended**

*Clause 347* provides that division 1 amends the *Adoption of Children Act 1964*. The amendments in this division will take effect when the *Adoption Act 2009* receives Assent (see section 2) and will continue in effect until the *Adoption of Children Act 1964* is repealed by section 329.

#### **Amendment of s 19 (Consents of parents and guardians required to adoptions)**

*Clause 348* amends section 19 of the *Adoption of Children Act 1964* to provide that, in the case of a child who has not previously been adopted, the appropriate persons whose consents are required before the chief executive can make an adoption order for a child under section 19(1) of that Act are every person who is a parent or guardian of the child.

This amendment removes the requirement for a child's father to be married to the child's mother at the time of the child's conception, or subsequently, for the father to be an appropriate person whose consent for the child's adoption is required for subsection 19(1) of the *Adoption of Children Act 1964*.

#### **Amendment of s 29A (Bequest by will to unascertained adopted persons)**

*Clause 349* makes a technical amendment to section 29A(1)(a) of the *Adoption of Children Act 1964*.

#### **Insertion of new s 59D**

*Clause 350* inserts a new section 59D (Chief executive may obtain or disclose non-identifying medical information) into the *Adoption of Children Act 1964* which allows the chief executive to contact a natural parent of an adopted person for the purpose of obtaining information about the medical history of a natural relative of the adopted person. The new

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section also allows the chief executive to disclose information about the natural relative's medical history to the adopted person and information about a medical condition an adopted person may have inherited from a natural relative to a natural relative.

The information must be provided in a non-identifying way and whether or not a person contacted, or to whom information is given, or to whom information relates, is a person who has made an objection under part 4A.

Subsection (7) of the new section 59D makes it clear that a person is not required to give or receive information under the section.

### **Insertion of new pt 7, div 4**

*Clause 351* inserts a new part 7, division 4 into the *Adoption of Children Act 1964*. The new division contains new section 76 (Who is a birth parent for pt 4A), which applies in relation to a father's consent that was purportedly given or dispensed with under the *Adoption of Children Act 1964*, even though the child's parents were not married to each other at the time of the child's conception or when the consent was purportedly given or dispensed with.

In the circumstances in which the section applies, the consent is taken to have been validly given or dispensed with as though the consent was required for the child's adoption, for the purpose of determining whether the child's father falls within the definition of *birth parent* in section section 39A of the *Adoption of Children Act 1964*. Section 39A defines who is an adopted person's birth parent for part 4A, which provides for access to certain adoption information and related matters.

## **Division 2            Amendment of Births, Deaths and Marriages Registration Act 2003**

### **Act amended in div 2**

*Clause 352* provides that division 2 amends the *Births, Deaths and Marriages Registration Act 2003*.

### **Amendment of s 3 (Objects)**

*Clause 353* amends section 3 of the *Births, Deaths and Marriages Registration Act 2003* to update references in the objects for that Act to reflect the repeal of the *Adoption of Children Act 1964*.

### **Amendment of s 14 (Reregistering a birth or adoption)**

*Clause 354* amends section 14 of the *Births, Deaths and Marriages Registration Act 2003* to replace references to the *Adoption of Children Act 1964* with references to the *Adoption Act 2009*.

### **Amendment of s 41 (Registering events in register)**

*Clause 355* amends section 41 of the *Births, Deaths and Marriages Registration Act 2003* so section 41 of that Act no longer applies the registration of adoptions.

### **Insertion of new ss 41A-41C**

*Clause 356* inserts new sections 41A-41C into the *Births, Deaths and Marriages Registration Act 2003*.

New section 41A sets out what the registrar must do to register an adoption after receiving notice of the making of a final adoption order from the chief executive (child safety) under section 289 of the *Adoption Act 2009*. The registrar must also register an adoption made in another jurisdiction, where the birth or previous adoption of the person adopted is registered in Queensland, in the same way after receiving an original or other copy, or notice, of the order mentioned in subsection (2)(a).

The registrar registers the adoption by incorporating the notice or copy of the order of the adoption into the adopted children register. The registrar must also close the adopted person's birth entry and any previous adoption entry by making appropriate notations on the previous entry and the new adoption entry.

New section 41B sets out how the registrar must amend the birth and adoption orders on receiving notice of the making of an order of the Supreme Court discharging a final adoption order. The obligations in section 41B also apply where the registrar receives notice that a similar order has been made in another jurisdiction in relation to a person with an entry in the adopted children register.



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New section 41C applies where the registrar receives notice of a final adoption order or an order discharging a final adoption order under the *Adoption Act 2009* and knows, or reasonably suspects there is an entry of the adopted person's birth or adoption in a register kept under the law of another state (including New Zealand). The registrar must give a notice of the making of the order to the appropriate office in that state with responsibility for keeping the register.

### **Amendment of s 44 (Obtaining information from the registrar)**

*Clause 357* amends section 44 (Obtaining information from the registrar) to provide that, in relation to an application made under that section, the registrar may only give information requested relating to a closed entry under section 41A to the extent allowed under the *Adoption Act 2009*, section 290. An entry about a person in the birth register or adopted children register is closed under section 41A when the registrar registers an adoption.

### **Insertion of new s 48D**

*Clause 358* inserts a new section 48D (Arrangement for giving information about persons making contact statements under *Adoption Act 2009*) into the *Births, Deaths and Marriages Registration Act 2003* to allow the chief executive and the registrar to exchange information to establish whether certain persons referred to in the section have died. The new section 48D also allows the chief executive and the registrar to enter into a written arrangement for giving information under the section.

### **Insertion of new s 57B**

*Clause 359* inserts a new section 57B into the *Births, Deaths and Marriages Registration Act 2003* to continue the Adopted Child Register, provided for in section 55 of the to-be-repealed *Adoption of Children Act 1964* as the adopted children register under the *Births, Deaths and Marriages Registration Act 2003*.

### **Amendment of sch 2 (Dictionary)**

*Clause 360* amends the dictionary in schedule 2 of the *Births, Deaths and Marriages Registration Act 2003* to update the meaning of certain words used in that Act.

## **Division 3                      Amendment of Child Protection Act 1999**

### **Act Amended in div 3**

*Clause 361* provides that division 3 amends the *Child Protection Act 1999*.

### **Amendment of s 51ZI (Ending an agreement)**

*Clause 362* amends section 51ZI of that Act to provide for a care agreement referred to in the section to end if the chief executive otherwise gains custody of the child under the *Adoption Act 2009*.

### **Amendment of s 186 (Confidentiality of notifiers of harm or risk of harm)**

*Clause 363* amends section 186 of the *Child Protection Act 1999* to acknowledge the disclosure of the identify of a notifier referred to in that section is lawful if the disclosure is made for the performance by the chief executive (adoptions) of his or her functions under the *Adoption Act 2009*.

### **Amendment of s 187 (Confidentiality of information obtained by persons involved in administration of Act)**

*Clause 364* amends section 187 of the *Child Protection Act 1999* to authorise people the use, disclosure or giving of access under that section where it is for the performance by the chief executive (adoptions) of his or her functions under the *Adoption Act 2009*.

### **Amendment of sch 3 (Dictionary)**

*Clause 365* amends the dictionary in schedule 3 of the *Child Protection Act 1999* to include a definition of ***chief executive (adoptions)***, which is defined to mean the chief executive of the department in which the *Adoption Act 2009* is administered.

## **Division 4            Amendment of other Acts**

### **Consequential amendments**

*Clause 366* makes consequential amendments to other Acts as mentioned in Schedule 2.

### **Schedule 1            Hague Convention**

*Schedule 1* sets out the English text of the Hague convention, for the purposes of the definition of the term *Hague convention* in schedule 3 of the Act.

### **Schedule 2            Consequential amendments**

*Schedule 2* provides for consequential amendments to be made to a number of Acts to replace references to the *Adoption of Children Act 1964*, which is to be repealed by section 329, with references to the *Adoption Act 2009*. Where necessary, the consequential amendments also include replace reference to sections of the Act to be repealed with references to the corresponding sections of the *Adoption Act 2009*.

### **Schedule 3            Dictionary**

*Schedule 3* defines particular words used in the Act.