



# Adoption Act 2009

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Queensland

# Adoption Act 2009

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# Adoption Act 2009

[as amended by all amendments that commenced on or before 1 August 2010]

**An Act to make provision about the adoption of children and to make related amendments of the Adoption of Children Act 1964, the Births, Deaths and Marriages Registration Act 2003 and the Child Protection Act 1999 and to make consequential amendments of other Acts as stated in schedule 2**

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

This Act may be cited as the *Adoption Act 2009*.

#### 2 Commencement

This Act, other than part 17 division 1, commences on a day to be fixed by proclamation.

#### 3 Dictionary

The dictionary in schedule 3 defines particular words used in this Act.

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

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

- (1) This 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.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

### **5                      Main object of Act**

The main object of this Act 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.

### **6                      Guiding principles**

- (1) This Act is to be administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount.
- (2) Subject to subsection (1), this Act is to be administered under the following principles—
  - (a) the purpose of an adoption is to provide for a child's long-term care, wellbeing and development by creating a permanent parent-child relationship between the child and the adoptive parents;
  - (b) adoption is an appropriate long-term care option for a child if—

- (i) the child's parents choose adoption for the child's long-term care; or
  - (ii) the child does not have a parent who is willing and able to protect the child from harm and meet the child's need for long-term stable care;
- (c) each of the parties to an adoption or proposed adoption should be given the information he or she reasonably needs to participate effectively in processes under this Act;
- (d) a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;
- (e) the process for a child's adoption should include considering the views of—
  - (i) the child's parents; and
  - (ii) the child, if he or she is able to form and express views about the adoption, having regard to the child's age and ability to understand;
- (f) an adopted child of a particular ethnic or other cultural background should have—
  - (i) access to information about the child's ethnic or cultural heritage; and
  - (ii) opportunities to develop and maintain a connection with the child's ethnicity or culture; and
  - (iii) opportunities to maintain contact with the child's community or language group;
- (g) a child's adoptive parents have the primary responsibility for the child's upbringing, protection and development;
- (h) an adopted child should be cared for in a way that—
  - (i) ensures a safe, stable and nurturing family and home life; and

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- (ii) promotes openness and honesty about the child's adoption; and
- (iii) promotes the development of the child's emotional, mental, physical and social wellbeing;
- (i) the same protection, support and resources should be available to an adopted person regardless of whether the adoption was a local adoption, intercountry adoption or adoption by a step-parent;
- (j) although a final adoption order changes legal relationships, it may be in an adopted child's best interests for—
  - (i) the child's emotional connections with members of the child's birth family to continue; or
  - (ii) the child to have ongoing contact with members of the child's birth family; or
  - (iii) the child or the child's adoptive parents to exchange information with members of the child's birth family.

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

- (1) This Act is also to be administered under the following principles—
  - (a) because adoption (as provided for in this Act) is not part of Aboriginal tradition or Island custom, 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 available option;

*Note—*

Island custom includes 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'.

- 
- (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.
- (2) If the Childrens Court exercises a power under this 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.
- (3) As far as is reasonably practicable, 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 in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

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

- (1) Despite the *Anti-Discrimination Act 1991*, a person may make a decision or do another act that is necessary to comply with, or is specifically authorised by, this Act.
- (2) Without limiting subsection (1), a person may make a decision or do another act under this Act to comply with the main guiding principle under section 6(1).

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

Unless a contrary intention appears, a reference in this Act to a child's wellbeing or best interests is a reference to the child's

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wellbeing or best interests through both childhood and the rest of his or her life.

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

### **10        Who may be adopted**

- (1) A child may be adopted by an order of the Childrens Court under this Act.
- (2) A child may be adopted whether or not the child has been previously adopted.
- (3) An adult may not be adopted.

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

The power to make an adoption order under this Act does not depend on any fact or circumstance not expressly stated in this Act.

## **Division 4                      Custody and guardianship**

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

For this 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.

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

For this 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**

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

This part applies to the proposed adoption of a child other than by an intercountry adoption.

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

A reference in this part, 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 for the person's consent to the child's adoption.

#### **16**        **Requirement for consent**

Section 175 states the requirement for the child's parents to consent under this part to the adoption before the Childrens Court may make an adoption order.

#### **17**        **References to consent**

- (1) In this part—

*consent* means consent freely and voluntarily given by a person with capacity to give the consent.

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- (2) A reference in this part to consent to an adoption is a reference to—
  - (a) for an adoption of a step-child under part 9, division 4—
    - (i) consent to the child’s adoption by the proposed adoptive parent; or
    - (ii) consent to the child’s adoption generally; or
  - (b) otherwise, consent to the child’s adoption generally.

## **Division 2                    Requirements about consent**

### **18            Form of consent**

- (1) A parent’s consent to the child’s adoption must be in the approved form, signed by the parent and witnessed by an authorised person.
- (2) The approved form must include provision for—
  - (a) information to identify the child; and
  - (b) information to identify the parent; and
  - (c) a signed statement by the witness that the witness has sighted the documents, relating to proof of the parent’s identity, prescribed under a regulation.
- (3) The approved form may also include provision for other matters relevant to the child’s adoption that may be, but are not required to be, completed.

*Example of other matters—*

details of another parent of the child to the extent the details are known by the parent giving the consent

- (4) A single document must not contain—
  - (a) consent to the adoption of more than 1 child; or
  - (b) more than 1 parent’s consent to the adoption of the child.
- (5) In this section—

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*authorised person* means a public service employee, or other appropriate person in Queensland or elsewhere, authorised by the chief executive to witness a consent for this Act.

## **19 Time of consent**

A parent's consent to the 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).

## **20 Revocation of consent**

A parent may revoke the parent's consent to the child's adoption only by giving a signed notice to the chief executive within 30 days after the consent is given.

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

### **21 Obligation to enable understanding**

The chief executive must ensure information is given to each of the child's parents under this division, and counselling of the parent is carried out under this division, in a way that enables the parent to understand.

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

The chief executive must give to each of the child's parents—

- (a) a document showing the contents of the approved form for section 18; and

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- (b) a document that the parent may use to revoke consent given by the parent to the child's adoption.

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

- (1) The chief executive must give each of the child's parents a document containing information about the following matters (the *prescribed information*)—
  - (a) options other than adoption for the child's long-term care;
  - (b) support (financial and otherwise) that may be available to the parent whether or not adoption of the child proceeds;
  - (c) possible psychological effects for the parent, both short and long-term, of consenting to the adoption;
  - (d) possible psychological effects for the child, both short and long-term, of being adopted;
  - (e) how and when the parent's consent to the adoption may be revoked;
  - (f) how the parent may give the chief executive the parent's preferences relating to the child's adoption including, for example, preferences about—
    - (i) the child's religious upbringing; or
    - (ii) the characteristics of the child's adoptive parents and adoptive family; or
    - (iii) the degree of openness in the adoption;
  - (g) the adoption process under this Act, including—
    - (i) the consents required for an adoption; and
    - (ii) the process for recruiting, assessing and selecting prospective adoptive parents; and
    - (iii) the chief executive's functions and powers relating to the child's adoption; and
    - (iv) the role of the Childrens Court;

- (h) the legal effect of adoption;
  - (i) the rights and responsibilities of the parties to an adoption, including those relating to—
    - (i) adoption plans; and
    - (ii) access to information about, and contact with, other parties to an adoption throughout the life of the adopted person;
  - (j) the requirement for pre-consent counselling and how it will be arranged;
  - (k) if the child to be adopted is an Aboriginal person or Torres Strait Islander—
    - (i) options other than adoption for the child's long-term care in accordance with Aboriginal tradition or Island custom; and
    - (ii) the importance of the child being cared for in a way that—
      - (A) helps the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
      - (B) preserves and enhances the child's sense of Aboriginal or Torres Strait Islander identity.
- (2) The chief executive must arrange for the prescribed information to be explained to the parent.

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

- (1) The chief executive must arrange for each of the child's parents to receive counselling about the prescribed information under section 23.
- (2) The counselling must be carried out by a counsellor nominated by the chief executive.
- (3) The nominated counsellor may be an officer of the department.

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- (4) However, if the nominated counsellor is an officer of the department, the chief executive must—
  - (a) advise the parent that he or she may ask for further counselling by someone who is not an officer of the department; and
  - (b) if the parent makes a request under paragraph (a), nominate another counsellor who is not an officer of the department to carry out the further counselling.
- (5) 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.
- (6) If the counsellor reasonably suspects the parent does not have capacity to consent to the adoption, the counsellor must notify the chief executive.
- (7) The counsellor may offer to meet with other persons.

*Example—*

The counsellor may offer to meet other family members to help the parent to consider other options for the child's long-term care.

- (8) The counselling may be carried out in 1 or more sessions and by 1 or more counsellors.
- (9) In this section—

***counsellor*** means a person who the chief executive is satisfied has appropriate qualifications or experience to carry out counselling under this section.

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

- (1) This section applies if the child to be adopted is an Aboriginal person or Torres Strait Islander.
- (2) The counselling under section 24 must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom.
- (3) The person who explains the prescribed information mentioned in section 23(1)(k)—

- (a) need not be a counsellor under section 24; but
  - (b) must be an appropriate Aboriginal or Torres Strait Islander person.
- (4) This section does not apply to the counselling of a parent to the extent the parent, by giving the chief executive a signed notice in the approved form, declines to receive counselling in a way, or by a person, required by this section.
- (5) The approved form for subsection (4) must state—
- (a) that the chief executive has offered the parent counselling under this section; and
  - (b) the extent to which the counselling is declined; and
  - (c) that the chief executive has given the parent a document containing the information mentioned in subsection (3).

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

The chief executive must ensure each of the child's parents is told that the parent may wish to seek legal advice and is given the details of at least 1 entity that generally provides free legal services.

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

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

In this division—

*qualified person* means 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.

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

- (1) This section applies if a parent of the child is not an adult.
- (2) Before the parent may consent to the adoption, the chief executive must have a qualified person assess whether the parent has capacity to give the consent.
- (3) The qualified person must not be the same person who counsels the parent under section 24.

**29 Declaration of QCAT whether an adult parent has capacity to consent**

- (1) This section applies to an adult parent of the child if—
  - (a) 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
  - (b) the chief executive otherwise knows or reasonably suspects the parent does not have capacity to consent to the adoption.
- (2) Before the parent may consent to the adoption, the chief executive must apply to QCAT for a declaration about the parent's capacity to give the consent.

*Note—*

See the *Guardianship and Administration Act 2000*, section 146.

- (3) However, if the parent is not in Queensland at the time the parent's consent is proposed to be given, the chief executive must take the following steps instead of making an application under subsection (2)—
  - (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.

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

- (1) This section applies if—
  - (a) QCAT makes a declaration that the parent does not have capacity to give the consent; and
  - (b) the parent does not have a guardian under the *Guardianship and Administration Act 2000* for the matter of dispensation.
- (2) Before the chief executive may make an application under division 6 for an order for dispensation, the chief executive must apply to QCAT for an order appointing a guardian for the matter of the dispensation.
- (3) In this section—

*dispensation* means dispensation with the need for the parent's consent.

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

**31 Application of div 5**

This division applies in relation to the 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.

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

If the chief executive does not know the identity and location of the child's father, the chief executive must take reasonable steps to establish those matters.

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

- (1) If the chief executive knows or reasonably suspects a person is the child's father, the chief executive must give him a notice stating—
  - (a) the other consent or consents to the child's adoption have been given; and
  - (b) how the person may—
    - (i) give consent; or
    - (ii) take steps to establish whether he is the child's father; or
    - (iii) apply under the *Family Law Act 1975* (Cwlth) for a parenting order for the child.
- (2) Subsection (1) does not apply if the chief executive is satisfied—
  - (a) the person is a lineal relative of the child's mother; or
  - (b) the child's conception was a result of an offence committed by the person; or
  - (c) there would be an unacceptable risk of harm to the child or mother if the person were made aware of the child's birth or proposed adoption.

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

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.

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

### **35            Application for dispensation**

- (1) The chief executive, or a person who has made an application to the chief executive under part 5, may apply to the Childrens Court for an order dispensing with the need for the consent of a stated parent of the child (the *relevant parent*) to the child's adoption.
- (2) The application must state the grounds on which it is made.

### **36            Notice of application**

- (1) As soon as practicable after filing the application in the court, the applicant must serve a copy of it on the relevant parent and, if the applicant is not the chief executive, serve a copy on the chief executive.
- (2) A served copy must state where and when the application is to be heard.
- (3) 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.
- (4) The court may dispense with the requirement to serve a copy of the application on the relevant parent if the court is satisfied of any of the following matters—
  - (a) the applicant can not establish the identity of the relevant parent after making all reasonable enquiries;
  - (b) the applicant can not locate the relevant parent after making all reasonable enquiries;
  - (c) the relevant parent is a lineal relative of the child's mother;
  - (d) the child's conception was a result of an offence committed by the relevant parent;

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- (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;
- (f) there are other special circumstances for giving the dispensation.

### **37 Respondent**

- (1) If the relevant parent is served with a copy of the application, he or she is a respondent in the proceeding.
- (2) 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.

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

- (1) The court may hear and decide the application in the absence of the relevant parent only if—
  - (a) the relevant parent 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 relevant parent under section 36(4).
- (2) Subsection (1) does not limit the court's jurisdiction to exclude a person from a proceeding.

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

- (1) The court may make an order dispensing with the need for the relevant parent's consent to the adoption if—
  - (a) the court is satisfied of a matter stated in section 36(4)(a) to (e); or
  - (b) QCAT has made a declaration that the relevant parent does not have capacity to give the consent; or

- 
- (c) the relevant parent is not an adult and the court is satisfied, on the basis of an assessment mentioned in section 28, that the relevant parent does not have capacity to give the consent; or
  - (d) the relevant parent is not in Queensland and the court is satisfied, on the basis of a declaration or assessment mentioned in section 29(3), that the relevant parent does not have capacity to give the consent; or
  - (e) the court is satisfied the relevant parent—
    - (i) is not, and will not be within a time frame appropriate to the child’s age and circumstances, willing and able to protect the child from harm and meet the child’s need for long-term stable care; and
    - (ii) is unreasonably—
      - (A) withholding his or her consent to the adoption; or
      - (B) refusing to engage with the chief executive in relation to the issue of whether to give consent to the adoption; or
  - (f) the court is satisfied there are other special circumstances for giving the dispensation.
- (2) However, if the relevant parent is or is believed to be the child’s father, the court may not give the dispensation—
- (a) within 30 days after notice is given to the relevant parent under section 33; or
  - (b) if the court has reason to believe there is—
    - (i) a current application under the *Status of Children Act 1978*, section 10, by the relevant parent or someone else, 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.

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- (3) Also, 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.
- (4) Without limiting subsection (3)—
  - (a) if the applicant is a person who has made an application under part 5, the court must be satisfied the grounds for making an adoption order in favour of the applicant are likely to exist; and
  - (b) if the child is in the custody or guardianship of the chief executive (child safety) or someone else under the *Child Protection Act 1999*, the court must—
    - (i) have regard to anything in a case plan in force for the child under chapter 2, part 3A of that Act about—
      - (A) adoption as a way of meeting the child's need for long-term stable care; or
      - (B) re-uniting the child with the child's family; and
    - (ii) 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.
- (5) If the child has any views about the relevant parent and is able to express the views, having regard to the child's age and ability to understand, the court must consider the views.

#### **40 Notice of court order**

- (1) This section applies if—
  - (a) the court makes an order dispensing with the need for the relevant parent's consent; and
  - (b) the chief executive was not the applicant for the order.
- (2) The applicant must give the chief executive a copy of the order.

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

- (1) This section applies if—
  - (a) the court makes an order dispensing with the need for the relevant parent’s consent (the *dispensation order*); and
  - (b) a copy of the application for the dispensation order was not served on the relevant parent.
- (2) The relevant parent or the chief executive may apply to the court to discharge the dispensation order.
- (3) The applicant must serve a copy of the application on each party to the proceeding for the dispensation order.
- (4) The court may discharge the dispensation order if—
  - (a) an adoption order for the child has not been made; and
  - (b) the court is satisfied the ground on which the dispensation order was made under section 39(1) does not apply.
- (5) The discharge of the 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**

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

- (1) A complying interstate consent has effect for this Act as if it were given under this part.
- (2) For subsection (1), a person’s consent to the child’s adoption is a *complying interstate consent* if an authorised officer for another State has given the chief executive—
  - (a) a notice stating that the consent was given, by signed writing, under a law of the other State and has not been revoked under that law; and

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(b) a written authorisation to make arrangements for the adoption of the child in Queensland.

(3) In this section—

*authorised officer*, for another State, 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**

### **43            Application of div 8**

This division applies if the child is able to form and express views about the adoption.

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

(1) The chief executive must ensure the child is given the prescribed information before an application for an adoption order for the child is made.

(2) 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.

(3) In this section—

*prescribed information* means information about the following matters—

(a) options other than adoption for the child's long-term care;

(b) possible psychological effects for the child, both short and long-term, of being adopted;

(c) how the child's parents may give the chief executive their preferences relating to the child's adoption including, for example, preferences about—

(i) the child's religious upbringing; or

- (ii) the characteristics of the child's adoptive parents and adoptive family; or
- (iii) the degree of openness in the adoption;
- (d) the adoption process under this Act, including—
  - (i) the consents required for an adoption; and
  - (ii) the process for recruiting, assessing and selecting prospective adoptive parents; and
  - (iii) the chief executive's functions and powers relating to the child's adoption; and
  - (iv) the role of the Childrens Court;
- (e) support that may be available to the child under sections 47, 235 and 236;
- (f) the legal effect of adoption;
- (g) the rights and responsibilities of the parties to an adoption, including those relating to—
  - (i) adoption plans; and
  - (ii) access to information about, and contact with, other parties to an adoption throughout the life of the adopted person;
- (h) the requirement for counselling under section 45 and how it will be arranged;
- (i) if the child to be adopted is an Aboriginal person or Torres Strait Islander—
  - (i) options other than adoption for the child's long-term care in accordance with Aboriginal tradition or Island custom; and
  - (ii) the importance of the child being cared for in a way that—
    - (A) helps the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and

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- (B) preserves and enhances the child's sense of Aboriginal or Torres Strait Islander identity;
- (j) the guiding principles that—
  - (i) the child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand; and
  - (ii) the child's views must be given consideration, having regard to the child's age or ability to understand.

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

- (1) 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 for the child is made.
- (2) 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.
- (3) The counselling may be carried out in 1 or more sessions and by 1 or more counsellors.
- (4) In this section—

*counsellor* means a person who the chief executive is satisfied has appropriate qualifications or experience to carry out counselling under this section.

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

- (1) This section applies to the counselling under section 45 if the child is an Aboriginal person or Torres Strait Islander.
- (2) The counselling must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom.

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- (3) A person who, as part of the counselling, explains the information under section 44(3), definition *prescribed information*, paragraph (i)—
    - (a) need not be a counsellor under section 45; but
    - (b) must be an appropriate Aboriginal or Torres Strait Islander person.
  - (4) This section does not apply to the extent the child declines to receive counselling in a way, or by a person, required by this section.

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

- (1) The chief executive may appoint a qualified person to support the child during the adoption process.
- (2) In this section—

*qualified person* 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.

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

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

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

A reference in this division 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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## **49 Meaning of *care agreement***

In this division—

*care agreement* means an agreement under this division between a child's parent and the chief executive (child safety) for the short-term placement of the child in care while consents for the child's adoption are obtained.

## **50 Entering into care agreements**

- (1) This section applies if a parent of a child has asked the chief executive to arrange for the child's adoption or indicated to the chief executive that the parent is considering adoption for the child.
- (2) The chief executive (child safety) may enter into a care agreement with a parent who has custody of the child.
- (3) The agreement must be in the approved form, signed by the parties.
- (4) 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.
- (5) The agreement must 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.

## **51 Effect of care agreement**

- (1) While a care agreement for a child 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.
- (2) The *Child Protection Act 1999*, sections 74, 90 and 162 apply as if a reference in the sections to a care agreement included a care agreement under this Act.

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**52 No agreement against the wishes of a parent**

- (1) 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.
- (2) On receiving a notice under subsection (1)—
  - (a) the chief executive (child safety) must not enter a care agreement for the child with another parent of the child; or
  - (b) 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.

**53 Maximum period of care agreement**

- (1) A care agreement may not be entered into for a child if 1 or more care agreements have already been in force for the child for a total period of 1 year.
- (2) 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 has been in force is 1 year.

**54 Ending of care agreement**

- (1) Unless it ends earlier under this division, a care agreement has effect until the chief executive becomes a guardian of the child under section 57.
- (2) 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.
- (3) A party to a care agreement may end the agreement at any time by giving at least 2 days notice to the other parties.
- (4) A care agreement ends if the chief executive (child safety) obtains custody or guardianship of the child under the *Child Protection Act 1999*.

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*Note—*

If 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.

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

### **55            Application of div 2**

This division applies to the proposed adoption of a child by a local adoption.

### **56            Definitions for div 2**

In this division—

*consent* means consent given under part 2.

*dispense with*, in relation to the need for a parent's consent, means dispense with under section 39.

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

- (1) This section applies when—
  - (a) a parent consents to the child's adoption; or
  - (b) the need for a parent's consent to the child's adoption is dispensed with.
- (2) The parent stops having guardianship of the child.
- (3) The chief executive becomes a guardian of the child under this section.
- (4) No-one else's guardianship of the child is affected.

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**58 Child may be placed in care**

If the chief executive is the child's guardian under section 57, the chief executive may place the child in care under the *Child Protection Act 1999*, chapter 2, part 6, division 4.

**59 Effect of consent or dispensation ending**

- (1) This section applies if—
  - (a) a parent revokes his or her consent to the child's adoption under section 20; or
  - (b) an order dispensing with the need for a parent's consent is overturned on appeal or discharged.
- (2) The parent's guardianship of the child resumes.
- (3) The chief executive's guardianship under section 57, because of the consent or dispensation, ends.
- (4) The chief executive's guardianship under section 57, because of another parent's consent or another dispensation, is not affected.

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

- (1) This section 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—
    - (i) 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
    - (ii) it would otherwise be in the child's best interests to be placed in the care of one or more of the parents under this section; and

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- (d) an interim order is not in force for the child.
- (2) The chief executive may place the child in the care of one or more of the parents by giving each of the child's parents a signed notice.
- (3) On the placement of the child under subsection (2)—
  - (a) the chief executive's guardianship of the child under section 57 ends; and
  - (b) a consent to the child's adoption given by a parent of the child stops having effect.

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

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.

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

Nothing in this 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**

#### **63 Corresponding officers**

In this division—

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*corresponding officer*, for another State, means an officer with powers and functions substantially corresponding to the chief executive's powers and functions under this Act.

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

- (1) This section 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—
    - (i) stating that the corresponding officer wishes to arrange for the child's adoption in the other State; and
    - (ii) asking the chief executive to renounce the chief executive's guardianship of the child.
- (2) 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.
- (3) Immediately after signing a document under 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.
- (4) When the chief executive gives the documents to the corresponding officer, the chief executive stops having guardianship of the child.

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

- (1) This section applies if—
  - (a) the chief executive wishes to arrange for a child's adoption; and

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- (b) a corresponding officer for another State has guardianship of the child under a law of the other State substantially corresponding to section 57.
- (2) The chief executive may ask the corresponding officer to give the chief executive a document under which the officer renounces the officer's guardianship of the child.
- (3) If the chief executive receives the document mentioned in subsection (2), the chief executive becomes guardian of the child.

*Note—*

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**

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

The chief executive must 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).

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

- (1) At least once in each financial year, the chief executive must 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(d).
- (2) In deciding the number of persons it would be reasonable to assess, the chief executive must 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.

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

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

- (1) A couple may make an expression of interest in being assessed for suitability to be adoptive parents.
- (2) A person may not make an expression of interest unless the person has a spouse and makes the expression of interest jointly with the person's spouse.
- (3) A person may not express an interest if—
  - (a) the person's name is already in the expression of interest register or suitable adoptive parents register; or
  - (b) the person has custody of a child under an interim order.

### **69            Form**

- (1) A couple make an expression of interest by giving the chief executive a notice in the approved form.
- (2) The form must 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.
- (3) The information that may be required by the approved form includes 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 this 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

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- (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.
- (4) The approved form must include information about the assessment that will be carried out under part 6 if the couple are selected for assessment under division 5.

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

- (1) An expression of interest must state whether it relates to a local adoption, intercountry adoption or both.
- (2) If a couple's expression of interest relates to an intercountry adoption, it must state each country for which the couple wish to be considered.

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

- (1) A regulation may prescribe requirements with which a couple must comply before or when expressing an interest.
- (2) A regulation may, for example, require 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—
    - (i) an ability of one or both of them to personally care for a child full-time for a stated period after the child is placed with them; or
    - (ii) for an expression of interest relating to an intercountry adoption—an ability to meet the full

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cost of completing the adoption process within a stated period.

- (3) A regulation may set a fee payable for an information session or other thing relating to a requirement under this section.

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

A person may express an interest even though the person has previously expressed an interest, or purported to express an interest, and—

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

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

- (1) A couple with a current expression of interest may, by giving a notice to the chief executive, change—
  - (a) their preferences relating to the characteristics of a child who they are willing to adopt; or
  - (b) for an expression of interest relating to an intercountry adoption, a country for which they wish to be considered.
- (2) A couple with a current expression of interest may notify the chief executive of any other new information or changes in information previously given to the chief executive.

*Note—*

See sections 82 and 115 for the obligations to notify the chief executive of new information, or changes in information previously given to the chief executive, relevant to eligibility or suitability.

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

An expression of interest may not be made while the expression of interest register, or a part of the register to which the expression of interest relates, is closed under division 4.

**Division 3 Expression of interest register**

**75 Expression of interest register**

- (1) The chief executive must keep a register of persons who have made an expression of interest under division 2 (the *expression of interest register*).
- (2) The chief executive may only, and must, enter a person's name in the 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 eligible to have their names entered in the expression of interest register.

**76 Eligibility for inclusion in register**

- (1) A person is eligible to have his or her name entered or remain in the expression of interest register if—
  - (a) the person is an adult; and
  - (b) the person or the person's spouse is an Australian citizen; and
  - (c) the person is resident or domiciled in Queensland; and
  - (d) for a woman, the person is not pregnant; and
  - (e) the person is not undergoing fertility treatment and has not undergone fertility treatment within the previous 6 months; and
  - (ea) the person—

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- (i) is not an intended parent under a surrogacy arrangement within the meaning of the *Surrogacy Act 2010*; and
    - (ii) if the person has been an intended parent for a surrogacy arrangement within the meaning of the *Surrogacy Act 2010*—the surrogacy arrangement ended not less than 6 months earlier; and
  - (f) the person does not have custody of—
    - (i) a child aged less than 1 year; or
    - (ii) a child who has been in the person’s custody for less than 1 year; and
  - (g) the person has a spouse who—
    - (i) is also eligible under paragraphs (a) to (f); and
    - (ii) is not the same gender as the person; and
    - (iii) has been the person’s spouse for at least 2 years; and
  - (h) the person and the person’s spouse—
    - (i) are living together; and
    - (ii) lived together for a continuous period of at least 2 years up to the time they made an expression of interest under division 2.
- (2) Subsection (1)(f) does not include children of whom the person is an approved carer.

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

After entering a couple’s names in the expression of interest register, the chief executive must give them a notice—

- (a) stating that their names have been entered in the register; and
- (b) explaining the selection and assessment processes; and
- (c) containing information about the fees and other costs associated with the adoption process.

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

- (1) This section applies if—
  - (a) a person has made, or has purported to make, an expression of interest under division 2; but
  - (b) the chief executive considers that, under section 75(2), the person's name may not be entered in the expression of interest register.
- (2) The chief executive must give the person a notice (a *show cause notice*) stating—
  - (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.
- (3) The chief executive must 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.
- (4) If the chief executive 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.

**79 Automatic removal from register**

- (1) The chief executive must remove a person's name from the expression of interest register 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

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- (c) the name of the person's spouse is not in the register.
- (2) After removing the person's name under this section, the chief executive must give the person a notice stating—
  - (a) that the person's name has been removed from the register; and
  - (b) the reason for the removal.

*Note—*

Also, if a person is selected for assessment, the person's name is removed from the expression of interest register when the assessment is complete. See section 136.

## **80 Other removal from register**

- (1) The chief executive must remove a person's name from the expression of interest 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.
- (2) The chief executive may remove a person's name from the expression of interest register if—
  - (a) the person does not comply with a notice under section 81 or 114 by the due day for the notice; or
  - (b) the person contravenes section 82 or 115; or
  - (c) the person gives information to the chief executive for this Act that is false or misleading in a material particular.
- (3) Before removing a person's name from the register under this section, 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

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- (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.
  - (4) The chief executive must 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.
  - (5) If the chief executive decides not to remove the person's name, the chief executive must give the person notice of the decision.
  - (6) If the chief executive decides to remove the person's name, the chief executive must give the person an information notice for the decision.
  - (7) For subsection (1)(a), 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.

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

- (1) This section applies to a person with a current expression of interest.
- (2) The person must give the chief executive any relevant information that the chief executive reasonably requires to decide whether the person—
  - (a) is eligible to have his or her name remain in the expression of interest register; or
  - (b) has complied with division 2.
- (3) The chief executive may seek information mentioned in subsection (2) by giving 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 (7) if the information is not given to the chief executive by the due day.

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- (4) The due day must be reasonable and, in any case, at least 14 days after the notice is given.
- (5) The chief executive may withdraw the requirement, or part of the requirement, at any time.
- (6) 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.
- (7) The following applies if the person does not give required information by its due day—
  - (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).
- (8) In this section—

*due day*, for giving information, means the day stated in the notice under subsection (3)(b) or any later day substituted by notice under subsection (6).

*information* includes a document.

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

- (1) This section 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

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- (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.
  - (2) The person must immediately give the chief executive a notice of the changed or new information.

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

Inclusion of a person's name in the expression of interest register does not confer an entitlement on the person to be assessed, or to be selected for assessment, for suitability to be an adoptive parent.

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

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

- (1) The chief executive may close the expression of interest register, or a part of the register, 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.
- (2) 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.
- (3) 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

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expressions of interest from Australian couples are being received at the relevant time by the country's competent authority.

## **85 Notice of closure**

- (1) At least 30 days before closing the expression of interest register or a part of the register, the chief executive must publish, in a newspaper circulating throughout the State, notice of—
  - (a) the extent of the closure; and
  - (b) the reason for the closure; and
  - (c) the last day for giving an expression of interest to the chief executive before the closure.
- (2) The notice may include any other information the chief executive considers appropriate.

*Example—*

If there is a time at which the chief executive anticipates the register or part of the register will be re-opened, the notice may state that time.

- (3) The chief executive may also publish the notice in other ways the chief executive considers appropriate.

## **86 Periodic review of closure**

From time to time while the expression of interest register or a part of the register is closed, at intervals of not more than 6 months, the chief executive must consider whether the closure remains appropriate.

## **87 Re-opening the register**

- (1) The chief executive may re-open the expression of interest register or part of the register if satisfied it would be appropriate to do so, having regard to the matters stated in section 84.

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- (2) 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**

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

- (1) 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.
- (2) The purpose of selections under this section is to ensure the likely future need for adoptive parents identified in planning under division 1 may be met.
- (3) 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.
- (4) 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.

*Note—*

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).

- (5) Subject to subsection (4), the chief executive may, in deciding whom to select, 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.
- (6) In this section—

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*relevant expression of interest*, for a person, means—

- (a) if the person's name has previously been removed from the expression of interest register under section 79(1)(a), the expression of interest for which the person's name had been entered in the register; or
- (b) otherwise, the person's current expression of interest.

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

- (1) This section applies if the chief executive anticipates a particular child will need an adoptive placement.
- (2) To ensure the child's placement needs are met, the chief executive may select 1 or more persons under this section to be assessed for suitability to be an adoptive parent of the child.
- (3) If the child has an approved carer, the chief executive may select the approved carer.
- (4) If a sibling of the child has been adopted, the chief executive may select a person who adopted the sibling.
- (5) 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.

*Examples of persons who may be likely to meet the anticipated placement needs of a child—*

- for a child with a disability, a person who has previously expressed an interest in adopting a child with a disability
  - for an Aboriginal or Torres Strait Islander child, a person from the child's community or language group
- (6) 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.

- (7) However—
- (a) the chief executive may select a person listed in the expression of interest register who does not have a conforming expression of interest only if the person agrees to being selected; and
  - (b) the chief executive may select a person who is not listed in the expression of interest register only 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.
- (8) In this section—
- conforming expression of interest*, in relation to a child, means a current expression of interest that—
- (a) relates to a local adoption or an intercountry adoption from a particular country, whichever is relevant to the child; and
  - (b) contains preferences that are consistent with the child's characteristics.

## 90 Joint selection of spouses

If a person has a spouse, the chief executive may only select the person for assessment jointly with the person's spouse.

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## **91 Notice of selection and fees**

- (1) Immediately after selecting a person for assessment, the chief executive must give the person a notice of the selection.
- (2) The notice must include information about the fees payable under section 112.

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

## **Division 1 Making an application**

### **92 Who may apply**

- (1) A person may apply to the chief executive to arrange an adoption by the person of a stated child if—
  - (a) the person is the spouse of a parent of the child; and
  - (b) the person, the person's spouse and the child are living together; and
  - (c) paragraphs (a) and (b) have applied for a continuous period of at least 3 years up to the time of the application; and
  - (d) the person has been granted leave under the *Family Law Act 1975* (Cwlth), section 60G(1); and
  - (e) the person is an adult; and
  - (f) the person or the person's spouse is an Australian citizen; and
  - (g) the person is resident or domiciled in Queensland; and
  - (h) the person's spouse is not the same gender as the person; and
  - (i) the child is at least 5 years old and has not yet turned 17.

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(2) Despite subsection (1)(i), 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

*Note—*

An adult may not be adopted. See section 10(3).

(b) the grounds for making an adoption order in favour of the applicant are likely to exist.

(3) In this section—

*parent* does not include guardian.

### **93 Requirements for application**

The application must be—

(a) in the approved form; and

(b) signed by the applicant, the applicant's spouse and each adult member of the applicant's household; and

(c) accompanied by the fee prescribed under a regulation.

### **94 Refusal of application**

(1) 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).

(2) 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

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- (b) that the person may give the chief executive a written response within a stated time of at least 28 days.
- (3) The chief executive must consider any response given by the person within the time stated in the show cause notice before deciding whether to refuse the application.
- (4) If the chief executive decides to refuse the application, the chief executive must give the person an information notice for the decision.

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

- (1) This section 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).
- (2) 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**

### **96 Definitions for div 2**

In this division—

*consent* means consent to the proposed adoption given under part 2.

*dispensation application* means an application under part 2, division 6, for an order dispensing with the need for a parent's consent.

*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.

**97 Application of div 2**

This division applies to an application made under division 1 unless the chief executive decides under section 94 to refuse the application.

**98 Obtaining consents**

- (1) The chief executive must take steps to obtain the consent of each parent.
- (2) If the chief executive obtains the consent of each parent, the chief executive must assess the applicant under part 6.

**99 All consents not obtained**

- (1) This section 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.
- (2) The chief executive must notify the applicant that, for the relevant reason mentioned in subsection (1)(a) to (c), the chief executive has not obtained the consent of each parent.
- (3) Then 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.

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- (4) If the applicant makes a dispensation application, the chief executive may proceed to assess the applicant under part 6, pending the result of the dispensation application, as if each consent had been obtained.

## **100 Lapsing of application**

- (1) If an application under this part has been inactive for 6 months, the application lapses.
- (2) For subsection (1), 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**

### **101 Who is assessed**

- (1) The chief executive must assess a person under this part if—
  - (a) the person is selected for assessment under part 4, division 5; or
  - (b) the assessment is required under section 98(2).
- (2) Subsection (1) applies subject to section 112(4).
- (3) 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) or division 8.

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**102 Suitable adoptive parents register**

The chief executive must keep a register (the *suitable adoptive parents register*) for this part.

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

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**Division 2 Purpose and scope of assessment**

**104 Purpose of assessment**

The purpose of assessing a person is to decide if he or she is suitable to be an adoptive parent.

**105 Scope of assessment—persons selected to meet anticipated future need**

- (1) This section applies to a person selected for assessment under section 88.
- (2) The chief executive must decide the person's suitability to be an adoptive parent generally.
- (3) 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.
- (4) In deciding whether it would be appropriate to make a decision mentioned in subsection (3), the chief executive must consider—
  - (a) the person's current expression of interest; and
  - (b) the likely future need for adoptive parents.

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**106 Scope of assessment—persons selected to meet needs of particular child**

- (1) This section applies to a person selected for assessment under section 89 in relation to the anticipated placement needs of a particular child (the *relevant child*).
- (2) The chief executive must decide the person's suitability to be an adoptive parent of the relevant child.
- (3) 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.
- (4) In deciding whether it would be appropriate to make a decision mentioned in subsection (3), the chief executive must consider—
  - (a) the person's current expression of interest, if any; and
  - (b) the likely future need for adoptive parents.

**107 Scope of assessment—persons wishing to adopt stepchild**

- (1) This section applies to the assessment of a person who has made an application under part 5.
- (2) The chief executive must decide the person's suitability to be an adoptive parent of the child whom the person wishes to adopt.

**Division 3 Assessment process**

**108 Joint assessment of a couple**

- (1) If a person being assessed has a spouse, the assessment must be made of the person and the person's spouse jointly.

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- (2) Subsection (1) does not apply to a person being assessed after making an application under part 5.

## **109 Assessment process**

- (1) To assess a person, the chief executive must—
- (a) obtain relevant information under division 4; and
  - (b) assess the person's suitability on the bases stated in division 5; and
  - (c) prepare a preliminary report about the person's suitability; and
  - (d) give to the person—
    - (i) a copy of the report; and
    - (ii) a notice 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; and
  - (e) after considering the person's response, if any, decide whether the person is suitable.

*Note—*

See division 6 for the steps following the chief executive's decision.

- (2) If, in the course of carrying out the assessment mentioned in subsection (1)(b), the chief executive is satisfied there is an unacceptable risk mentioned in section 121, the chief executive must prepare a preliminary report stating that the person is unsuitable without any further assessment under division 5.
- (3) If, in carrying out the assessment mentioned in subsection (1)(b), 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.

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- (4) The chief executive must comply with subsection (1)(d) and (e) even if the scope of the assessment is limited under subsection (2) or (3).

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

The chief executive may 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 this 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.

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

- (1) The assessment of a person under this part includes an assessment of certain matters relating to members of the person's household.

*Note—*

Under section 121, a person may be unsuitable because of the risk posed by a member of the person's household.

- (2) 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 or in another way.
- (3) 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 to 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.
- (4) 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.

## **112 Fees**

- (1) A regulation may prescribe fees for an assessment under this part.
- (2) 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.
- (3) The requirement must be written and must state—
- (a) the reasonable time within which the required amount must be paid; and
- (b) the consequences of non-payment under this section and section 80(1)(b).
- (4) The chief executive need not assess the person, or continue assessing the person, until the required amount is paid.
- (5) The chief executive must not enter the person's name in the suitable adoptive parents register if the required amount is not paid.
- (6) An amount stops being a required amount to the extent the chief executive waives payment of it.

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

### **113      Application of div 4**

This division applies to a person—

- (a) being assessed under this part; or
- (b) whose name is in the suitable adoptive parents register;  
or
- (c) for whom an interim order is in force.

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

- (1) The person must give the chief executive any relevant information that the chief executive reasonably requires to assess the person's suitability.

*Examples of relevant information—*

- 1 a report about the person's health, in the approved form, completed by a doctor who has examined the person
  - 2 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
  - 3 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
- (2) 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.
- (3) The due day must be reasonable and, in any case, at least 14 days after the requirement is made.
- (4) The chief executive may withdraw the requirement, or part of the requirement, at any time.

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- (5) 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.
- (6) The following applies if the person does not give 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 parents 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.
- (7) In this section—

*due day*, for giving information, means the day stated in the notice under subsection (2)(b) or any later day substituted by notice under subsection (5).

*information* includes a document.

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

- (1) This section applies if—
- (a) the person has given information about a matter to the chief executive under this part or part 4 or 5; and

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- (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.
- (2) The person must immediately give the chief executive a notice of the changed or new information.
- (3) Without limiting subsection (1), the person must give 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.
- (4) A reference in this section to a change in a person's personal history includes, for a person with no personal history, the acquisition of a personal history.

## **116 Police information**

- (1) 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.
- (2) If there is police information about the person or household member, the chief executive may ask the police commissioner for a brief description of—
- (a) the circumstances of a conviction, charge or order mentioned in the police information; or
  - (b) investigative information mentioned in the police information.
- (3) The police commissioner must comply with a request under subsection (1) or (2).

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- (4) However, the duty imposed on the police commissioner to comply with a request for information applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (5) The police commissioner need not give investigative information, or give access to a record containing investigative information, about the person or household member to the chief executive under this section if the police commissioner is reasonably satisfied that giving the information or access may do any of the following—
- (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (c) endanger a person's life or physical safety;
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (6) 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.

## 117 Traffic information

- (1) 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.

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- (2) The chief executive (transport) must comply with the request despite the *Transport Operations (Road Use Management) Act 1995*, section 77.

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

- (1) This section 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.
- (2) The chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person about—
  - (a) Aboriginal tradition or Island custom relating to the child; and
  - (b) the person's suitability.

### **119 Other information gathering**

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;
- (g) obtaining expert advice about relevant health, psychological or social matters;

- (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**

### **120      Application of div 5**

This division states how the chief executive must decide whether a person is suitable to be an adoptive parent.

### **121      Unacceptable risk of harm**

- (1) 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.
- (2) The chief executive must consider, in particular, any personal history of the person or of an adult member of the person's household.
- (3) The chief executive must decide there is an unacceptable risk for subsection (1) if the person or an adult member of the person's 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.
- (4) 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.

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- (5) 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 the following—
- (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).
- (6) 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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## 122 Health

- (1) The chief executive must be satisfied the person has good health to provide stable, high level care for a child until adulthood.
- (2) Without limiting subsection (1), the person does not have good health for subsection (1) if the person has a disqualifying condition.
- (3) If the person has a condition other than a disqualifying condition, the chief executive must 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.
- (4) In this section—

*condition* means—

- (a) a disability or impairment; or
- (b) an illness or anything else that affects a person's health.

*disqualifying condition* means a condition prescribed under a regulation to be a disqualifying condition for this section.

*health* means physical, psychological and mental health.

## 123 Guiding principles

The chief executive must have regard to the guiding principles under section 6.

## 124 Capacity to be adoptive parent generally

The chief executive must have regard to the person's capacity to be an adoptive parent, including—

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- (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.

### **125 Good character**

The chief executive must be satisfied the person is of good character.

### **126 Attitudes to children and parenting**

The chief executive must have regard to the person's attitudes to, and understanding of—

- (a) children and their physical and emotional development; and
- (b) the responsibilities and duties of parenthood.

### **127 Adoptive parenting**

The chief executive must 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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**128 Quality of relationship with spouse**

If the person has a spouse, 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.

**129 Infertility**

If the person is infertile or has a spouse who is infertile, the chief executive must have regard to the person's adjustment to, and acceptance of, the infertility.

**130 Matters relating to step-parent**

- (1) This section 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.
- (2) 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.

**131 Aboriginal or Torres Strait Islander children**

- (1) This section 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.
- (2) 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.

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- (3) 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.

### **132 Other cultural matters**

- (1) This section 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 other cultural background.
- (2) The chief executive must 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.
- (3) 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.

**133 Other prescribed matters**

The chief executive must have regard to any other matters prescribed under a regulation.

**Division 6 Action following decision**

**134 Application of div 6**

This division applies after the chief executive decides whether a person is suitable to be an adoptive parent.

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

- (1) The chief executive must give to the person a notice of the decision.
- (2) The notice must state the reasons for the decision and the information on which it is based.
- (3) 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.
- (4) 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.

**136 Removal from expression of interest register**

If the person's name is in the expression of interest register, the chief executive must remove the name from that register.

**137 Entry in suitable adoptive parents register**

- (1) This section applies 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

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- (c) for a person assessed jointly with the person's spouse, the decision is that the person's spouse is suitable.
- (2) The chief executive must enter the person's name in the suitable adoptive parents register.

### **138 Preparation of report**

- (1) This section applies if—
  - (a) the person was assessed after making an application under part 5; and
  - (b) the decision is that the person is suitable.
- (2) The chief executive must prepare a report for the Childrens Court stating—
  - (a) that the person has been assessed as suitable; and
  - (b) whether the chief executive considers—
    - (i) 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
    - (ii) there are exceptional circumstances that warrant the making of the order.
- (3) 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.
- (4) The chief executive must give the person a copy of the report.

(5) In this section—

*suitable* means suitable to be an adoptive parent of the child whom the person wishes to adopt.

## Division 7 Interstate register

### 139 Registration of person on interstate register

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

(2) The chief executive must enter the person's name in the suitable adoptive parents register.

(3) This Act applies in relation to the person as if—

- (a) the person's application under subsection (1)(a) were the person's current expression of interest; and
- (b) the chief executive assessed the person, after selecting the person from the expression of interest register under section 88 and decided the person was suitable to be an adoptive parent generally.

(4) In this section—

*interstate register* means a register kept under a law of another State substantially corresponding to the suitable adoptive parents register.

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

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

- (1) This section applies to a person listed in the suitable adoptive parents register.
- (2) 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.

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

Subject to this division, this part applies to the re-assessment as if it were an original assessment of the person.

### **142      Re-assessment may be limited**

Having regard to the reason for the re-assessment, the chief executive must decide whether the matters relating to the person's suitability that are to be considered in the re-assessment are—

- (a) all matters that would be considered if the re-assessment were an original assessment of the person; or
- (b) only particular matters relevant to the reason for the re-assessment.

### **143 Notice of re-assessment**

Before starting the re-assessment, the chief executive must give the person a notice stating—

- (a) that the person is being re-assessed; and
- (b) the reasons for the re-assessment; and
- (c) the matters relating to the person's suitability that are to be considered in the re-assessment.

## **Division 9 Removal from suitable adoptive parents register**

### **144 Automatic removal from register**

The chief executive must remove a person's name from the suitable adoptive parents register if—

- (a) a final adoption order is made in favour of the person under this Act; or
- (b) the person is selected from the suitable adoptive parents register as a prospective adoptive parent by the competent authority for another country, under arrangements made between the chief executive and the competent authority, and an adoption order is made in favour of the person in the other country; or
- (c) the person gives the chief executive a written request to remove the person's name from the register.

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## 145 Removal after re-assessment

The chief executive must remove a person's name from the suitable adoptive parents register if, on a re-assessment under division 8, the chief executive decides the person is unsuitable.

*Note—*

Under section 135(4), the person is given a notice of the decision stating the person's right to a review of the decision.

## 146 Other grounds for removal

- (1) The chief executive must 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).
- (2) 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.
- (3) Before removing a person's name from the register under this section, 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

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- (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.
  - (4) The chief executive must 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.
  - (5) If the chief executive decides not to remove the person's name, the chief executive must give the person notice of the decision.
  - (6) If the chief executive decides to remove the person's name, the chief executive must give the person an information notice for the decision.
  - (7) For subsection (1)(a), a woman does not become ineligible to have her name remain in the expression of interest register under section 76 on the ground of being pregnant unless she is at least 14 weeks pregnant.

## Division 10                      Investigative information

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

- (1) The police commissioner may decide under this section that information about a person (the *investigated person*) 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, including—

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- (i) by participating in an interview, or by being asked to participate in an interview, about the alleged offence; or
  - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; 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—
  - (i) the complainant died before the charge was brought; or
  - (ii) either or both of the following applied—
    - (A) the complainant was unwilling to proceed;
    - (B) an adult who, at the relevant time, was the complainant's parent decided that, in the interests of the complainant, the matter should not proceed.
- (2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.
- (3) Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under this section to anyone other than a police officer of at least the rank of superintendent.

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

- (1) This section applies if the police commissioner decides that information about the investigated person is investigative information and gives the information to the chief executive under section 116.
- (2) The police commissioner must give notice to the investigated person that—

- (a) the police commissioner has decided that information about the person is investigative information; and
  - (b) investigative information has been given to the chief executive.
- (3) Within 28 days after being given the notice, the investigated person may appeal to a Magistrates Court about the decision that the information is investigative information.
  - (4) The chief executive and police commissioner must be given a copy of the notice of appeal.
  - (5) QCAT does not have jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the chief executive.

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

- (1) A Magistrates Court hearing an appeal under section 148 is to decide afresh whether the information given to the chief executive as investigative information about the investigated person is investigative information.
- (2) A person who is the relevant complainant under section 147 must not be asked or called on by the investigated person to give evidence in person before the court.
- (3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.
- (4) After hearing the appeal, the court may confirm or set aside the decision.
- (5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.
- (6) The clerk of the court must give notice of the decision to the investigated person and the chief executive.

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## **150 Consequence of successful appeal**

- (1) This section applies if, on appeal, a Magistrates Court sets aside the police commissioner's decision under section 147 that information given to the chief executive about the investigated person (the *relevant information*) is investigative information.
- (2) If the chief executive has decided the person is not suitable, the chief executive must set aside that decision and re-assess the person under this part.
- (3) An assessment of the person under this part must 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**

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

This division applies to a child if the chief executive is the child's guardian under section 57 and all consents required for the child's adoption have been given.

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

- (1) This division applies to a child (whether or not the child is an intercountry adoption child) if—
  - (a) the chief executive selects the child's prospective adoptive parents under division 2; and
  - (b) an interim order is made in favour of the prospective adoptive parents; and

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- (c) the interim order is discharged.
- (2) 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 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).
- (3) A reference in this section to a child's prospective adoptive parents includes, for a proposed adoption by a single person, that person.
- (4) In this section—
- intercountry adoption child* means a child brought to Queensland from another country to be adopted under arrangements made between the chief executive and the competent authority for the other country.

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

- (1) 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.
- (2) 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.

*Note—*

A single person may be selected for assessment under section 89 and subsequently entered in the suitable adoptive parents register.

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

### **154      Application of div 2**

This division states how, in compliance with a requirement under section 153, the chief executive must decide who to select.

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

The chief executive must make the selection that will best promote the child's wellbeing and best interests.

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

The chief executive must have regard to the needs of the child to be adopted, including 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.

### **157      Preferences of parents**

- (1) The chief executive must 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.
- (2) Subsection (1) does not apply to a preference that the chief executive considers is likely to be contrary to the child's wellbeing or best interests.

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

- (1) The chief executive must have regard to any of the characteristics of the persons the chief executive is considering selecting that are relevant to—
  - (a) their willingness and ability to parent a child with the needs of the child to be adopted; or
  - (b) the extent to which they meet the preferences of the child's parents being considered under section 157.
- (2) In this section—

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

## **159 Eligibility**

- (1) The chief executive must be satisfied a person to be selected as a prospective adoptive parent is still eligible.
- (2) For subsection (1), a person is still eligible if—
  - (a) for a person selected for assessment from the expression of interest register—the person is still eligible to have his or her name entered or remain in the expression of interest register under section 76; or
  - (b) for a person selected for assessment under section 89—the person still complies with section 89(7)(b)(i) to (v).
- (3) For subsection (2)(a), a woman does not become ineligible to have her name remain in the expression of interest register under section 76 on the ground of being pregnant unless she is at least 14 weeks pregnant.

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### **160 Placement with sibling**

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.

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

- (1) 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.
- (2) Subsection (1) applies to children in the adoptive family other than any sibling of the child placed with the same family.

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

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.

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

- (1) This section applies if the child to be adopted is an Aboriginal person or Torres Strait Islander.
- (2) The chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person about the selection decision.



## **Part 8                      Adoption plans**

### **Division 1                General**

#### **165    What is an adoption plan**

- (1) An adoption plan is a written plan, agreed to by the parties to the plan, about anything relating to the adopted child's wellbeing or interests.
- (2) 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;

*Examples of matters about which information may be exchanged—*

- the child's development
  - important events in the child's life
  - a medical condition of the child
  - 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.

## **166 Parties**

- (1) The parties to an adoption plan are the prospective adoptive parents or adoptive parents and any birth parent who wishes to be a party.
- (2) 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.
- (3) The chief executive (child safety) must be a party to an adoption plan required under section 171.

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- (4) 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.

## **167 Purpose**

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 (for example, the degree of openness); and
- (b) commit to practical ways to address the matters mentioned in paragraph (a).

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

- (1) 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.
- (2) An adoption plan may not include anything that purports to prevent, restrict or otherwise control the movement of a party.
- (3) An adoption plan has no effect once the child becomes an adult.

## **169 Chief executive to help**

- (1) 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.

- (2) 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**

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

- (1) This section 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.
- (2) An adoption plan must be agreed to, between the birth parent and prospective adoptive parents, that addresses how the contact will happen and the nature and frequency of the contact.

### **171      Child protection order**

- (1) This section applies if a child protection order is, or has been, in force for the child.
- (2) An adoption plan must be agreed to that addresses the matters stated in section 165(2)(a).

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

- (1) This section 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.
- (2) An adoption plan must be agreed to that addresses the matters stated in section 165(2)(c).

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

Unless required under sections 170 to 172, an adoption plan need not be prepared.

## **Part 9 Adoption orders**

### **Division 1 General matters**

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

On an application under this part, the Childrens Court may make an adoption order for the adoption of a child by the person or persons named in the application.

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

- (1) This section 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.
- (2) 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.
- (3) A court must not make an adoption order unless the following documents for each parent are produced to the court—
  - (a) a document, sworn by an officer of the department, stating that the officer gave a document containing the prescribed information to the parent under section 23 on a stated day;
  - (b) a document, sworn by a counsellor, stating that the counsellor counselled the parent under section 24 on a stated day or days;

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- (c) if the parent is not an adult or section 29(3)(b) applies—a document, sworn by a qualified person, stating that—
    - (i) the qualified person assessed the parent on a stated day or days; and
    - (ii) in the qualified person’s opinion, the parent had capacity to give the consent;
  - (d) if section 29(2) applies to the parent—a declaration by QCAT that the parent has capacity to give the consent;
  - (e) if the chief executive made an application mentioned in section 29(3)(a)—a declaration made on the application that the parent has capacity to give the consent.
- (4) Subsections (2) and (3) do not apply to the making of a final adoption order if an interim order is in force for the child.
  - (5) Also, subsection (3) does not apply to a parent for whom a complying interstate consent under section 42 is in force.
  - (6) This section does not apply to an intercountry adoption.

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

- (1) 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.
- (2) Subsection (1) applies despite a rule of court or other law.

**177 Proceedings about whether parents have consented**

- (1) The chief executive may apply to the Childrens Court for a declaration that a parent (the *relevant parent*) of a child has given consent under part 2 to the child’s adoption.

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- (2) The application may be made before or at the same time as an application is made for an adoption order for the child.
- (3) 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.
- (4) The chief executive must serve a copy of the application on the relevant parent.
- (5) However, 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.
- (6) 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.
- (7) The prospective adoptive parents are not respondents in the proceeding and must not be served with a copy of the application.
- (8) The court must hear and decide the application, in the absence of the prospective adoptive parents, separately to a proceeding in which the court hears and decides an application for an adoption order for the child.
- (9) The court may hear and decide the application in the absence of the relevant parent only if—
  - (a) the relevant parent 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 relevant parent under subsection (5).
- (10) Subsections (8) and (9) do not limit the court's jurisdiction to exclude a person from a proceeding.

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**178 Child subject to child protection order**

- (1) This section 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*.
- (2) 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.

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

- (1) This section applies in relation to a child who is able to form and express views about his or her adoption.
- (2) The court must consider the child's views before deciding whether to make an adoption order for the child.

*Note—*

Under sections 235 and 236, someone may be appointed to give separate legal representation or support to the child.

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

## **180 References to prospective adoptive parents**

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**

### **181 Application of div 2**

This division 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.

### **182 Application for interim order**

- (1) The chief executive may apply to the Childrens Court for an interim order for the adoption of the child by the prospective adoptive parents.
- (2) The chief executive must serve a copy of the application on the prospective adoptive parents.
- (3) The chief executive must give notice of the application to each person who has given consent to the child's adoption under part 2.
- (4) Subsection (3) does not apply to a person whom the chief executive can not locate after making all reasonable enquiries.
- (5) The prospective adoptive parents are respondents in the proceeding.
- (6) 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.

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

- (1) The court may make an interim order only if it is satisfied of the following matters—

- (a) the child is present in Queensland;
  - (b) the proposed order will promote the child's wellbeing and best interests;
  - (c) the chief executive selected the prospective adoptive parents in compliance with part 7, division 2;
  - (d) each of the prospective adoptive parents—
    - (i) is an adult; and
    - (ii) is an Australian citizen or has a spouse who is an Australian citizen; and
    - (iii) is resident or domiciled in Queensland; and
    - (iv) is suitable, having regard to the matters stated in part 6, division 5;
  - (e) for a female prospective adoptive parent, she is not pregnant;
  - (f) any adoption plan required under part 8, division 2—
    - (i) has been agreed; or
    - (ii) has been substantially developed.
- (2) This section does not apply if the prospective adoptive parents are habitually resident in a convention country.

*Note—*

For the matters applying if the prospective adoptive parents are habitually resident in a convention country, see section 213.

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

An interim order remains in force until the Childrens Court discharges it or makes a final adoption order for the child.

## **185 Effect of interim order**

- (1) While an interim order is in force for the adoption of a child by a person, the person has custody of the child.

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- (2) An interim order does not affect the chief executive's guardianship of the child.
- (3) While an interim order is in force, the chief executive must supervise the child's wellbeing and interests.

### **186 Discharge of interim order**

- (1) The chief executive may apply to the Childrens Court to discharge an interim order.
- (2) The chief executive must serve a copy of the application on the prospective adoptive parents.
- (3) The court may discharge an interim order for a child—
  - (a) on an application under subsection (1); or
  - (b) on an application under section 187 for a final adoption order for the child.
- (4) 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, having regard to the relevant matters.
- (5) Also, on an application under section 187 for a final adoption order, the court may discharge the interim order if the court—
  - (a) is not satisfied of the relevant matters; and
  - (b) considers the relevant matters are not likely to be satisfied within an appropriate time.
- (6) The discharge of an interim order does not affect the chief executive's guardianship of the child.
- (7) In this section—

*relevant matters* means the matters under section 189 of which the court must be satisfied before it may make a final adoption order.

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

- (1) This section 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.
- (2) 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.
- (3) The chief executive must serve a copy of the application on the prospective adoptive parents.
- (4) The prospective adoptive parents may apply to the court for a final adoption order if—
  - (a) the child has been in their custody under the interim order for at least 1 year and 30 days; and
  - (b) the chief executive has neither applied for a final adoption order nor applied to discharge the interim order.
- (5) If the prospective adoptive parents apply for a final adoption order, they must serve a copy of the application on the chief executive.
- (6) A person served with a copy of the application under subsection (3) or (5) is a respondent in the proceeding.

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

- (1) This section applies if the child's prospective adoptive parents are, and have been for at least 1 year, approved carers of the child.
- (2) 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.
- (3) The chief executive must serve a copy of the application on the prospective adoptive parents.

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- (4) The chief executive must give notice of the application to each person who has given consent to the child's adoption under part 2.
- (5) Subsection (4) does not apply to a person whom the chief executive can not locate after making all reasonable enquiries.
- (6) The prospective adoptive parents are respondents in the proceeding.
- (7) 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.

### **189 Requirements for making final adoption order**

- (1) The court may make a final adoption order for the child only if it is satisfied of the following matters—
  - (a) the child is present in Queensland;
  - (b) the proposed order will promote the child's wellbeing and best interests;
  - (c) each of the prospective adoptive parents—
    - (i) is an adult; and
    - (ii) is an Australian citizen or has a spouse who is an Australian citizen; and
    - (iii) is resident or domiciled in Queensland; and
    - (iv) is suitable, having regard to the matters stated in part 6, division 5;
  - (d) any adoption plan required under part 8, division 2 has been agreed;
  - (e) while the child has been in their custody, the prospective adoptive parents have demonstrated—
    - (i) their willingness and ability to meet the child's needs; and

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- (ii) their commitment to any adoption plan mentioned in paragraph (d); and
  - (iii) if the child has a particular ethnic or other cultural background, their willingness and ability 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 ethnicity or culture; and
    - (C) preserve and enhance the child’s sense of ethnic or cultural identity.
- (2) Also, 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.
- (3) This section does not apply if the prospective adoptive parent is a person habitually resident in a convention country.

*Note—*

For the matters applying if the prospective adoptive parents are habitually resident in a convention country, see section 213.

## **190 Notice of order**

- (1) 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 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.
- (2) 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**

### **191     Application of div 3**

This division 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).

### **192     Custody and guardianship if no guardian under Commonwealth Act**

- (1) This section applies if there is no guardian of the child under the *Immigration (Guardianship of Children) Act 1946* (Cwlth).
- (2) From the child's arrival in Queensland—
  - (a) the chief executive has guardianship of the child; and
  - (b) the prospective adoptive parents have custody of the child, subject to an order under section 194.

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

- (1) This section applies if an interim order is made in favour of the prospective adoptive parents under this division.
- (2) While the interim order is in force, the prospective adoptive parents have custody of the child.

- (3) The interim order does not affect the chief executive's guardianship of the child.

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

- (1) 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.
- (2) The chief executive must serve a copy of the application on the prospective adoptive parents.
- (3) 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 relevant matters.

*Note—*

The court may also make an order discharging the interim order under section 201.

- (4) An order under this section does not affect the chief executive's guardianship of the child.
- (5) In this section—

*relevant matters* means the matters under section 200 of which the court must be satisfied before it may make a final adoption order.

### **195 Application for interim order**

- (1) This section applies if—
  - (a) the Childrens Court makes an order under section 194(1); and

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- (b) the chief executive selects new prospective adoptive parents from the suitable adoptive parents register.

*Note—*

See section 152(2).

- (2) The chief executive may apply to the Childrens Court for an interim order for the adoption of the child by the prospective adoptive parents.
- (3) The chief executive must serve a copy of the application on the prospective adoptive parents and the competent authority.
- (4) The prospective adoptive parents are respondents in the proceeding.

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

The court may make an interim order only if it is satisfied of the following matters—

- (a) the child is present in Queensland;
- (b) 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;
- (c) the competent authority has advised the chief executive that arrangements for the adoption have been made—
  - (i) under the law of the country; and
  - (ii) if the country is a convention country, under the Hague convention;
- (d) the competent authority for the country has agreed to the adoption;
- (e) the proposed adoption order will promote the child's wellbeing and best interests;

- (f) if the prospective adoptive parents were selected by the chief executive, they were selected in compliance with part 7, division 2;
- (g) each of the prospective adoptive parents—
  - (i) is an adult; and
  - (ii) is an Australian citizen or has a spouse who is an Australian citizen; and
  - (iii) is resident or domiciled in Queensland; and
  - (iv) is suitable, having regard to the matters stated in part 6, division 5;
- (h) for a female prospective adoptive parent, she is not pregnant.

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

An interim order remains in force until the Childrens Court discharges it or makes a final adoption order for the child.

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

- (1) This section applies while the child is in the custody of the prospective adoptive parents—
  - (a) under section 192; or
  - (b) 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.
- (2) The chief executive must supervise the child's wellbeing and interests.

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- (3) The chief executive may, by written notice, require the prospective adoptive parents to pay the fee prescribed under a regulation for the supervision.
- (4) The notice must state the time, not less than 30 days after the notice is given, by which the fee must be paid.

### **199 Application for final adoption order**

- (1) This section applies if the child has been in the custody of the prospective adoptive parents, for at least 1 year, as mentioned in section 198(1).
- (2) 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.
- (3) The chief executive must serve a copy of the application on the prospective adoptive parents.
- (4) 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.
- (5) If the prospective adoptive parents apply for a final adoption order, they must serve a copy of the application on the chief executive.
- (6) A person served with a copy of the application under subsection (3) or (5) is a respondent in the proceeding.

### **200 Requirements for making final adoption order**

The court may make a final adoption order only if it is satisfied of the following matters—

- (a) the child is present in Queensland;

- (b) 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;
- (c) the competent authority has advised the chief executive that arrangements for the adoption have been made—
  - (i) under the law of the country; and
  - (ii) if the country is a convention country, under the Hague convention;
- (d) the competent authority for the country has agreed to the adoption;
- (e) the proposed adoption order will promote the child's wellbeing and best interests;
- (f) each of the prospective adoptive parents—
  - (i) is an adult; and
  - (ii) is an Australian citizen or has a spouse who is an Australian citizen; and
  - (iii) is resident or domiciled in Queensland; and
  - (iv) is suitable, having regard to the matters stated in part 6, division 5;
- (g) while the child has been in their custody, the prospective adoptive parents have demonstrated—
  - (i) their willingness and ability to meet the child's needs; and
  - (ii) if the child has a particular ethnic or other cultural background, their willingness and ability 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 ethnicity or culture; and

- (C) preserve and enhance the child's sense of ethnic or cultural identity.

## **201 Discharge of interim order on application for final order**

- (1) This section applies if, on an application for a final adoption order, the court is not satisfied of the relevant matters and considers the relevant matters are not likely to be satisfied within an appropriate time.
- (2) The court may make an order discharging the interim order in favour of the prospective adoptive parents.
- (3) In this section—

*relevant matters* means the matters under section 200 of which the court must be satisfied before it may make a final adoption order.

## **202 Notice of order**

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**

### **203 Meaning of *suitability report***

In this division—

*suitability report* means a report prepared for the Childrens Court by the chief executive under section 138(2).

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## **204 Application by step-parent**

- (1) This section applies if a person (the *step-parent*)—
  - (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.
- (2) The step-parent may apply to the Childrens Court for a final adoption order for the adoption of the child by the step-parent.
- (3) The application must be made jointly with the step-parent's spouse.

## **205 Notice of application**

- (1) 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.
- (2) Subsection (1)(b) does not apply to a parent whom the applicant can not locate after making all reasonable enquiries.

## **206 Respondents**

- (1) The chief executive is a respondent in the proceeding.
- (2) 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.

## **207 Chief executive must file report**

After being served with a copy of the application, the chief executive must file the relevant suitability report in the court.

## **208 Requirements for making final adoption order**

The court may make a final adoption order only if it is satisfied of the following matters—

- (a) the child is present in Queensland;
- (b) the step-parent—
  - (i) is an adult; and
  - (ii) is resident or domiciled in Queensland;
- (c) the step-parent or his or her spouse is an Australian citizen; and
- (d) the step-parent is suitable, having regard to the matters stated in part 6, division 5;
- (e) an order for the child's adoption by the step-parent would better promote the child's wellbeing and best interests than an order under the *Family Law Act 1975* (Cwlth), any other court order or no court order;
- (f) there are exceptional circumstances that warrant the making of the order.

## **209 Notice of order**

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.

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## **Division 5                      Adoptions by residents of a convention country**

### **210      Application of div 5**

This division applies to an adoption order under division 2 if the prospective adoptive parents are habitually resident in a convention country.

### **211      Selection of prospective adoptive parents**

Despite section 181, an adoption order may be made under division 2 even if the prospective adoptive parents are not selected under part 7.

### **212      Application for final adoption order**

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.

### **213      Requirements for making adoption order**

The court may make an adoption order only if it is satisfied of the following matters—

- (a) the child is present in Queensland;
- (b) the child is not prevented from leaving Australia—
  - (i) under a law of the Commonwealth or a State; or
  - (ii) by an order of a court of the Commonwealth or a State;
- (c) arrangements for the adoption have been made under the Hague convention and under the law of the convention country;

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- (d) the competent authority for the country has agreed to the adoption;
- (e) the child is not prevented by a law of the convention country from residing permanently in that country;
- (f) each of the prospective adoptive parents is an adult;
- (g) the proposed order will promote the child's wellbeing and best interests.

## **Division 6                      Effect of final adoption order**

### **214      Effect on relationships**

- (1) This section applies on the making of a final adoption order for the adoption of a child (the *adopted child*) by a person (the *adoptive parent*).
- (2) The adopted child becomes a child of the adoptive parent and the adoptive parent becomes a parent of the adopted child.
- (3) The adopted child stops being a child of a former parent and a former parent stops being a parent of the adopted child.
- (4) Other relationships are determined in accordance with subsections (2) and (3).
- (5) A former guardian stops being a guardian of the adopted child.
- (6) A former adoption order stops having effect.
- (7) Despite subsections (3) to (6), if the final adoption order is for the adopted child's adoption by the spouse of a parent of the adopted child, the relationship between the adopted child and that parent is not affected.
- (8) Also despite subsections (3) to (6), for the purpose of a law relating to a sexual offence for which relationships are relevant, a former relationship continues, despite the final adoption order, in addition to other relationships created by the order.

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- (9) This section applies subject to another law that expressly distinguishes between adopted children and other children.
- (10) In this section—

***former adoption order*** means an order for the adoption of the adopted child, made under this Act or another law of Queensland or another jurisdiction, in force immediately before the making of the final adoption order.

***former guardian*** means a person who was a guardian of the adopted child immediately before the making of the final adoption order.

***former parent*** means a person who was a parent of the adopted child immediately before the making of the final adoption order.

***former relationship*** means a relationship between the adopted child and another person that existed immediately before the making of the final adoption order.

*Note—*

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)(j) for a guiding principle about the continuance of emotional connections and interactions with birth family members.

## 215 Child's name

- (1) 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.

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- (2) The court must make the order that will best promote the child's wellbeing and best interests.
- (3) The court must have regard to the child's right to preserve his or her identity.
- (4) The court must consider whether the child is generally known by, or identifies with, any of the child's existing names.
- (5) 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.
- (6) This section does not prevent a change of the child's name under another law after the final adoption order is made.

## **216 Effect of adoption orders in relation to property**

- (1) 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.
- (2) However, section 214 does not affect the operation of a will or other instrument that distinguishes between adopted children and children other than adopted children.
- (3) This section applies subject to section 346.

## **217 Bequest by will to an unascertained adopted person**

- (1) This section 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.

- (2) The personal representative must 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.
- (3) 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.
- (4) 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.
- (5) If the chief executive finds out the name, address or date of death, the chief executive must give the information to the public trustee.
- (6) If the chief executive is unable to find out the name, address or date of death, the chief executive must advise the public trustee.
- (7) 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.
- (8) The public trustee is a trustee for the adopted person on the trusts stated in, or arising under, the will.
- (9) 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.
- (10) 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.

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- (11) 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.
- (12) This section applies only to a will made after the commencement of the repealed Act, section 29A.

## **218 Transfer or distribution of property by trustee or personal representative**

- (1) 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.
- (2) 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.
- (3) 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.
- (4) In this section—

*notice* means written notice or other notice.

*trustee* includes a personal representative.

## **Division 7 Discharge of final adoption order**

### **219 Grounds for discharge**

- (1) 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.
- (2) For this section, a person used *undue influence* on another person if the first person—
- (a) used or threatened to use force or restraint against the other person; or
  - (b) caused or threatened to cause injury to the other person; or
  - (c) caused or threatened to cause any other detriment to the other person.

## **220 Who may apply**

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.

## **221 How to apply**

- (1) An application for the discharge of a final adoption order must be made to the Supreme Court.
- (2) The application must state the ground on which it is made.

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- (3) 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.
- (4) A served copy must state where and when the application is to be heard.
- (5) 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.
- (6) 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 the applicant—
  - (a) can not establish the person's identity after making all reasonable enquiries; or
  - (b) can not locate the person after making all reasonable enquiries.

## **222 Respondent**

- (1) A person, other than the chief executive, served with a copy of the application is a respondent in the proceeding.
- (2) 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.

## **223 Hearing not to be in public**

- (1) The hearing for the proceeding is not open to the public.
- (2) However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice.

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## **224 Hearing of application in absence of party**

- (1) The court may not hear or decide the application unless the adopted person or a lawyer representing the adopted person appears in the proceeding.
- (2) 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).
- (3) Subsections (1) and (2) do not limit the court's jurisdiction to exclude a person from a proceeding.

## **225 Court orders**

- (1) The court may discharge the final adoption order only if satisfied of a ground mentioned in section 219.
- (2) 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.
- (3) The order may be discharged even if the adopted person is an adult.
- (4) 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.
- (5) 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

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- (c) if the adopted person is a child, custody or guardianship of the child.

## **226 Effect of discharge**

- (1) 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.
- (2) However, 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.
- (3) The discharge order does not affect a consent given to the child's adoption unless the court decides otherwise.
- (4) 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.
- (5) This section applies subject to an order under section 225(5).

# **Part 10 Court proceedings**

## **Division 1 Preliminary**

### **227 Application of pt 10**

This part applies to a proceeding under this Act.

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## **Division 2                      Constitution of court and procedural provisions**

### **228      Court's constitution**

When exercising its jurisdiction under this Act, the Childrens Court may not be constituted under the *Childrens Court Act 1992*, section 5(3)(c).

### **229      Court's paramount consideration**

In exercising its jurisdiction or powers, the Childrens Court must regard the wellbeing and best interests of the child as paramount.

### **230      Evidence**

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an 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.

### **231      Court to ensure parties understand proceeding**

- (1) The Childrens Court must, as far as practicable, ensure the parties to a proceeding understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.
- (2) If a party to a proceeding has a difficulty communicating in English or a disability that prevents him or her from understanding or taking part in the proceeding, the Childrens Court must not hear the proceeding without an interpreter to translate things said in the proceeding or a person to facilitate his or her taking part in the proceeding.

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### **232 Expert help**

- (1) In a proceeding, the Childrens Court may appoint a person having a special knowledge or skill to help the court.
- (2) The court may act under subsection (1) on the court's own initiative or on the application of a party to the proceeding.

### **233 Right of appearance and representation**

- (1) The parties to a proceeding may appear in person or be represented by a lawyer.
- (2) Also, if a child's parents for any reason can not appear in person in a proceeding concerning the child, another person appointed in writing by the parents may, with the leave of the court, present their views and wishes.
- (3) In this section—  
*party*, for a proceeding on an application for an adoption order, includes the child.

### **234 Right of appearance of departmental coordinators**

- (1) A coordinator may appear in a proceeding.
- (2) In this section—  
*coordinator* means an officer or employee of the department who is authorised in writing by the chief executive to appear in proceedings under this Act.

### **235 Separate legal representation of child**

- (1) This section applies in a proceeding on an application for an order under this Act.
- (2) If the Childrens Court considers it is in the child's best interests for the child to be separately represented by a lawyer, the court may—
  - (a) order that the child be separately represented by a lawyer; and

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- (b) make the other orders it considers necessary to secure the child's separate legal representation.
  - (3) Without limiting subsection (2), the court must consider making orders about the child's separate legal representation if—
    - (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; 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 13.
  - (4) The lawyer must—
    - (a) act in the child's best interests regardless of any instructions from the child; and
    - (b) as far as possible, present the child's views and wishes to the court.
  - (5) In this section—

*child* means—

    - (a) the child whom it is proposed to adopt; and
    - (b) any birth parent who is not an adult.

## **236 Support for child**

- (1) In a proceeding on an application for an adoption order, the Childrens Court may order the chief executive to appoint a qualified person to support the child if the court considers it is necessary in the child's best interests.
- (2) In this section—

*qualified person* see section 47(2).

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**237 Legal representation of more than 1 child**

- (1) A lawyer may represent more than 1 child in the same proceeding.
- (2) However, if the court considers a lawyer should not represent more than 1 child because of a conflict of interest, or a possible conflict of interest, the court may order that a child be represented by another lawyer.

**238 Child can not be compelled to give evidence**

- (1) In a proceeding, a child may only be called to give evidence with the leave of the Childrens Court.
- (2) The court may grant leave only if the child—
  - (a) is at least 12 years; and
  - (b) is represented by a lawyer; and
  - (c) agrees to give evidence.
- (3) If the child gives evidence, he or she may be cross-examined only with the leave of the court.

**239 Court may hear submissions from non-parties to proceeding**

- (1) In a proceeding, the Childrens Court may hear submissions from the following persons—
  - (a) a member of the family of the child to whom the proceeding relates;
  - (b) anyone else the court considers is able to inform it on any matter relevant to the proceeding.
- (2) A submission may be made by a person's lawyer.

**240 Transfer of proceedings**

- (1) 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

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magistrate may order that the proceeding be transferred to the court constituted by a magistrate at the other place.

- (2) A magistrate may act under subsection (1) on the magistrate's own initiative or on the application of a party to the proceeding.

### **241 Hearing of applications together**

- (1) 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.
- (2) Subsection (1) applies even though the parties, or all of the parties, to the proceedings are not the same.

### **242 Costs**

The parties to a proceeding in the Childrens Court for an order must pay their own costs of the proceeding.

## **Division 3 Appeals**

### **243 Who may appeal**

A party to the proceeding for an application for any of the following orders may appeal to the appellate court against a decision on the application—

- (a) an order dispensing with the need for a parent's consent to an adoption;
- (b) an interim order;
- (c) an order discharging an interim order;
- (d) an order under section 194(1)(a) ending a person's custody of a child;

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- (e) a final adoption order, but only if the decision is to refuse the application;
- (f) an order, included in a final adoption order, about the adopted child's name;
- (g) an order under section 275 that the chief executive must not give particular information to a particular person.

#### **244 How to start appeal**

- (1) The appeal is started by filing a notice of appeal with the registrar of the appellate court.
- (2) The appellant must serve a copy of the notice on the other persons entitled to appeal against the decision.
- (3) The notice of appeal must be filed within 28 days after the decision is made.
- (4) The court may at any time extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

#### **245 Stay of operation of decisions**

If a person appeals against a decision under this division, the decision is stayed until the end of the appeal.

#### **246 Hearing procedures**

- (1) An appeal must be decided on the evidence and proceedings before the Childrens Court.
- (2) However, the appellate court may order that the appeal be heard afresh, in whole or part.

#### **247 Powers of appellate court**

In deciding an appeal, the appellate court may—

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- (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**

#### **248      Identifying information**

- (1) A reference in this part to information that *identifies* a person includes information that is likely to lead to the identification of the person.
- (2) Information may identify a person, if given to another person, because of other information that the other person has or is able to obtain.

*Example—*

A person's first name may identify the person if given to someone else who is able to obtain information about the person's family and the area in which the person lives.

#### **249      Meaning of *relative***

- (1) In this part—  
*relative* means a spouse, parent, sibling or child.
- (2) To remove any doubt, it is declared that a reference in this part 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.

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## **250 References to birth parent—who is a biological father**

For the purpose of a reference in this part 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.

## **251 Application to persons who have died**

- (1) A reference in this part to an adult, in relation to a request for information, includes a person who has died and who, but for the death, would be an adult at the time of the request.
- (2) A reference in this part to a person who is a child, in relation to a request for information, includes a person who has died and who, but for the death, would still be a child at the time of the request.
- (3) Without limiting subsections (1) and (2), a reference in this part to information about a person includes information about a person who has died.
- (4) A reference in this part to a person who has a particular relationship or connection with an adopted person includes a person who has the relationship or connection with an adopted person who has died.

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## 252 Prescribed documents

A *prescribed document*, relating to an adoption, is a copy of any of the following given or made under this Act, the repealed Act or an Act repealed by the repealed Act—

- (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.

## 253 Release of altered documents

- (1) This section 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.
- (2) The chief executive may give the document after altering it so the restricted information can not be read.

## 254 How request for information is made

- (1) 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.
- (2) 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

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information or producing a particular document for the chief executive's inspection.

## **Division 2                      Access to particular identifying information while adopted person is a child**

### **255      Application of div 2**

This division applies in relation to an adopted person who is a child.

### **256      Request by, or on behalf of, adopted child**

- (1) 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;
  - (b) the adopted child, but only with the consent of an adoptive parent.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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 the consent.
- (7) 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.

## **257 Request by birth parent**

- (1) A birth parent of the adopted child may ask the chief executive for information about the adopted child.
- (2) 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.

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- (3) 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.
- (4) 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.
- (5) 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 name and address.
- (6) 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.
- (7) 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.
- (8) If a birth parent of the adopted child has died, an adult relative of the birth parent may make a request under subsection (1) in place of the birth parent.
- (9) If a birth parent of the adopted child 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.
- (10) 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.

## **258 Taking steps to obtain consent to disclosure**

- (1) This section applies if a person's consent is required under this division.
- (2) The chief executive must take steps to contact the person and ask if the person wishes to give the consent.
- (3) 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.

## **259 Support for persons involved in disclosure of information**

- (1) 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.
- (2) The purpose of providing the information, support or counselling to a person is to help the person decide whether to seek the information, or consent to the disclosure of the information, at that time.
- (3) 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.

## **260 Adoption plan may include consent or request not to be asked for consent**

- (1) 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.

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(2) Subsection (1) does not limit the ways a person may give an information consent or non-contact request to the chief executive.

(3) In this section—

*information consent*, of a person, means the person's consent to the giving of information under this division.

*non-contact request*, by a person, means a request to the chief executive not to contact the person for the purpose of asking the person if he or she wishes to consent to the giving of information under this division.

## **261 Access to information is subject to court order**

This division applies subject to section 275.

## **Division 3 Access to particular information when adopted person is an adult**

### **262 Application of div 3**

This division applies in relation to an adopted person who is an adult.

### **263 Request by adopted person**

- (1) The adopted person may ask the chief executive for pre-adoption information about the person.
- (2) 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 birth 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.
- (3) If a person's consent is required under subsection (2)(c)(iii) or (d)(iii) but the person has died, an adult relative of the person may give the consent.
- (4) If a person's consent is required under subsection (2)(c)(iii) or (d)(iii) but the person does not have capacity to consent, a guardian or adult relative of the person may give the consent.

#### **264 Request by adult relative in place of adopted person**

- (1) This section applies if the adopted person has died or does not have capacity to ask for information.
- (2) An adult relative of the adopted person may make a request under section 263 for pre-adoption information about the adopted person.

#### **265 Request by birth parent**

- (1) A birth parent of the adopted person may ask the chief executive for information about the adopted person.
- (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 person—
    - (i) the person's name immediately after the adoption;

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- (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.
- (3) If the adopted person has died, an adult relative of the person may give the consent required under subsection (2)(a)(ii).
- (4) 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).

## **266 Request by adult relative in place of birth parent**

- (1) This section applies if a birth parent of an adopted person has died or does not have capacity to ask for information.
- (2) An adult relative of the birth parent may make a request under section 265 for information about the adopted person.

## **267 Request by pre-adoption sibling**

- (1) 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.
- (2) The chief executive may give information in compliance with the request only if written consent is given by the adopted person.
- (3) 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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- (4) 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.
  - (5) If an adopted person gives consent, it may relate to all the information under subsection (4) or to all the information other than the adopted person's last known name and address.
  - (6) If an adopted person has died, an adult relative of the person may give the consent.
  - (7) If an adopted person does not have capacity to consent, a guardian or adult relative of the person may give the consent.

## **268 Limitations on access to information**

This division applies subject to division 4 and section 275.

## **Division 4 Contact statements and related matters**

### **269 Contact statements**

- (1) 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.
- (2) A contact statement may state that—
  - (a) the person does not wish to be contacted by another stated person; or
  - (b) the person wishes any contact with another stated person to happen only in a stated way.

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*Examples—*

- contact is to happen only by telephone
  - in-person contact is to happen only at a neutral place in the presence of a mediator
- (3) 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.

## **270 Contact statement obligations for post-June 1991 adoptions**

- (1) 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.
- (2) 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.

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**271 Contact statement obligations for pre-June 1991 adoptions**

- (1) 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.
- (2) 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.
- (3) 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—

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- (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.
- (4) 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.
- (5) The chief executive may offer the applicant or second person other information, counselling or support that the chief executive considers appropriate (before or after the chief executive discloses the information).
- (6) In this section—

***qualified officer*** means an officer of the department who the chief executive is satisfied has appropriate qualifications or experience to carry out interviews under this section.

***telephone*** includes any technology allowing reasonably contemporaneous and continuous communication between 2 or more persons.

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## 272 Offence about contact for pre-June 1991 adoptions

- (1) 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 attempts to contact the other person;
    - (ii) arranges or attempts to arrange contact with the other person;
    - (iii) procures someone else to contact or arrange contact with the other person.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) 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

*Examples—*

- 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 statement mentioned in subsection (1)(a) was given to the chief executive.

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- (b) the contact is a continuation of, or equivalent to, the previous contact.

### **273 Currency and revocation of contact statements**

- (1) This section applies to a contact statement given by a person to the chief executive.
- (2) The contact statement continues in force until it is revoked by the person or the person dies.
- (3) The person may revoke the contact statement by giving the chief executive a signed notice of revocation in the approved form.

### **274 Persons making contact statements presumed to be living**

- (1) This section applies if a person has given the chief executive a contact statement and has not revoked it.
- (2) In the absence of evidence to the contrary, the chief executive must presume the person is still alive.
- (3) The chief executive must take steps to find out whether the person is still alive if—
  - (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.
- (4) Otherwise, the chief executive is not required to take steps at any time to determine whether the person is still alive.

*Note—*

Under the *Births, Deaths and Marriages Registration Act 2003*, section 48D, the chief executive and the registrar may enter into an arrangement for giving information about whether a person giving a contact statement has died.

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## Division 5                      Miscellaneous

### 275      Court order restricting access to information

- (1) An application may be made to the Childrens Court for an order that the chief executive must not give stated information to a stated person (the *relevant person*) under division 2 or 3.
- (2) The application may be made by an adopted person, a birth parent or adoptive parent of an adopted person or the chief executive.
- (3) As soon as practicable after filing the application in the court, the applicant must serve a copy of it on the relevant person and, if the applicant is not the chief executive, serve a copy on the chief executive.
- (4) A served copy must state where and when the application is to be heard.
- (5) The court may dispense with the requirement to serve a copy of the application on the relevant person if the court is satisfied of any of the following matters—
  - (a) the applicant can not locate the relevant person after making all reasonable enquiries;
  - (b) there would be an unacceptable risk of harm to the applicant (other than the chief executive) or someone else if the relevant person were made aware of the application;
  - (c) there are other special circumstances for giving the dispensation.
- (6) 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.
- (7) The application may be made and dealt with during proceedings for an adoption order or after an adoption order is made.

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- (8) While the application is pending, the chief executive may withhold the information from release under division 2 or 3.

**276 Chief executive may obtain or disclose non-identifying medical information**

- (1) The chief executive may contact a biological parent of an adopted person for the purpose of obtaining information about the medical history of the biological parent or another biological relative of the adopted person.
- (2) The chief executive may disclose, to an adopted person, information about the medical history of a biological relative of the adopted person.
- (3) 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.
- (4) The chief executive may disclose information to a person that is likely to identify an adopted person or biological relative only if—
- (a) the chief executive—
    - (i) could give the information to the person on a request under this part; and
    - (ii) has not been asked by 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 is justified.
- (5) 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.
- (6) At the request of a person who is an adopted person or biological relative of an adopted person, the chief executive

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may, instead of giving the information to the person, give the information to a medical practitioner nominated by the person.

- (7) Information that may be given to an adopted person under this section may, for an adopted person who is a child, be given to a parent of the adopted person.
- (8) A person is not required to give or receive information under this section.
- (9) In this section—  
*biological relative*, of an adopted person, means—
  - (a) a biological parent of the adopted person; or
  - (b) another person related to the adopted person other than a person related only because of a marriage.

## **277 Intercountry adoption**

- (1) This section 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.
- (2) If the information or document is for the adoptive parents, the chief executive must give it to the adoptive parents.
- (3) 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 the adoptive parents;  
or
  - (b) if the adopted person is an adult—to the adopted person.

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## Division 6                      Mailbox service

### 278      What is the mailbox service

- (1) The *mailbox service* is a service conducted by the chief executive to enable parties to an adoption and other particular persons to exchange information.
- (2) The information may be—
  - (a) non-identifying, where the persons—
    - (i) would not otherwise be able to exchange the information because of this part; 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.

### 279      Other definitions for div 6

In this division—

*concerning matter* see section 284(3)(b).

*document* includes any item, other than money, that the chief executive considers it would be reasonably practicable to pass on through the mailbox service.

*exchange* means give or receive by way of the chief executive.

*identifying information*, in relation to an adoption—

- (a) means information that identifies a party to an adoption; and

*Note*—

See section 248.

- (b) includes a photograph of a party to the adoption taken when the party was at least 2 years old, other than a

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photograph to which an approval under section 287 applies.

*money* includes a gift card, cheque or money order.

*non-identifying information* means information other than identifying information.

*notice of intention* means a notice under section 283.

*participant* means a person who—

- (a) is eligible to take part in the mailbox service under section 280; and
- (b) has given the chief executive a notice of intention.

## **280 Who is eligible to take part**

- (1) A party to an adoption may take part in the mailbox service.
- (2) However, while an adopted person is a child, he or she may take part only with the written consent of an adoptive parent.
- (3) An adult relative of a birth parent who is not a party to the adoption may take part if the birth parent gives consent, does not have capacity to give consent or has died.
- (4) A consent under this section may be limited to exchanging non-identifying information.

## **281 Exchanging non-identifying information**

A participant in the mailbox service may exchange non-identifying information with another participant.

## **282 Exchanging identifying information**

- (1) A participant may exchange identifying information with another participant only if—
  - (a) either—

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- (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.
- (2) 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.

### **283 Notice of intention to take part**

- (1) A person who wishes to take part in the mailbox service, and who is eligible to take part, must—
- (a) give the chief executive a signed notice in the approved form; and
  - (b) produce for the chief executive's inspection the documents prescribed under a regulation relating to the person's identity.
- (2) The notice must state whether the person wishes to exchange identifying information.
- (3) The notice may also include other information necessary or convenient to enable the person's participation.

*Examples—*

- 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.

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## 284 Receipt and review of documents

- (1) A participant (the *sender*) may give a document to the chief executive to pass on to another participant (the *addressee*).
- (2) Unless, under section 282, the sender may exchange identifying information with the addressee, the chief executive must review the document to ensure it contains only non-identifying information.
- (3) 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 (*concerning matter*).

## 285 Document with no identifying information or concerning matter

- (1) This section 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.
- (2) 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.
- (3) 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.

*Example—*

The chief executive may arrange for an officer of the department to pass on the document personally and give support to the addressee.

- (4) If the chief executive is not able to pass it on as requested, the chief executive must—

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- (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.

## **286 Document with identifying information or concerning matter**

- (1) This section applies if the chief executive considers a document received under section 284 contains—
  - (a) identifying information that it may not contain; or
  - (b) any concerning matter.
- (2) The chief executive must notify the sender why the document may not be passed on in that form.
- (3) On request by the sender, 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; or

*Example of alteration—*

blocking out parts of a letter containing identifying information so those parts can not be read

- (c) return the document to the sender; or
  - (d) destroy or otherwise deal with the document.
- (4) If the sender does not make a request under subsection (3), the chief executive may keep the document or return it to the sender.

## **287 Photographs of persons more than 2 years old**

- (1) A photograph of a person aged more than 2 years, exchanged between participants through the mailbox service, is taken to be information that identifies the person in the photograph

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unless the chief executive has given an approval for the participants—

- (a) to exchange that photograph; or
  - (b) to exchange photographs generally.
- (2) A participant may apply to the chief executive for an approval to exchange a stated photograph, or to exchange photographs generally, with another stated participant.
- (3) If the chief executive gives the approval, it must state each participant (*relevant participant*) who may exchange the relevant photograph or exchange photographs generally.
- (4) The chief executive may give the approval if—
- (a) the chief executive is satisfied an exchange of the particular photograph or of photographs generally by the relevant participants 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 agreeing 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.
- (5) 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 for subsection (5)—40 penalty units.

## Part 12 Registration of adoptions

### 288 Definitions for pt 12

In this part—

*adopted children register* means the register, maintained under the *Births, Deaths and Marriages Registration Act 2003*, section 40, for adoptions under this Act.

*closed entry* means an entry that has been closed under the *Births, Deaths and Marriages Registration Act 2003*, section 14, 41A or 41B.

*entry* includes a closed entry.

### 289 Chief executive must notify registrar

- (1) This section applies if—
  - (a) the Childrens Court makes a final adoption order; or
  - (b) the Supreme Court makes an order discharging a final adoption order.
- (2) As soon as practicable after the order is made, the chief executive must give notice of the order to the registrar.

### 290 Entitlement to certificate, information or source document relating to particular entries

- (1) This section applies to—
  - (a) a person who has been given information under part 11, division 2 or 3 about another person; or
  - (b) a birth parent of an adopted person; or
  - (c) another person prescribed under a regulation.
- (2) 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.
- (3) However, 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.

- (4) The person may make an application under the *Births, Deaths and Marriages Registration Act 2003*, section 44, 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 (the ***requested information***).
- (5) The registrar must grant the application if it relates to an entry for the adopted person in the register of births.
- (6) Also, 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.
- (7) A certificate or copy of a source document given under subsection (6), or given under this section and relating to a closed entry, 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**

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

- (1) For the purposes of the laws of Queensland, the adoption of a person in another State under the law of that State, that has not been rescinded under the law of that State, has the same effect as an adoption order made in Queensland under this Act, and has no other effect.
- (2) Subsection (1) applies to an adoption whether it happened before or after the commencement of this Act.
- (3) In this section—  
*State* includes New Zealand.

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

- (1) This section applies to an adoption granted in a convention country if—
  - (a) when the adoption is granted—
    - (i) the adopted child is habitually resident in a convention country; and
    - (ii) the adoptive parent is habitually resident in a convention country, Australia or New Zealand; and
  - (b) an adoption compliance certificate, issued in the convention country in which the adoption is granted, is in force for the adoption.
- (2) The adoption has effect as if it were an adoption order made under this Act.

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- (3) However, subsection (2) does not apply if the Childrens Court makes a declaration of non-recognition of the adoption.
  - (4) The Childrens Court may make a declaration of non-recognition of the adoption if satisfied the adoption is manifestly contrary to public policy, taking into account the child's wellbeing and best interests.
  - (5) An interested person may apply to the Childrens Court for a declaration of non-recognition of the adoption.
  - (6) Before applying for the declaration, the person must give written notice—
    - (a) if the person is the chief executive—to the Commonwealth central authority; or
    - (b) otherwise—to the chief executive.
  - (7) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.
  - (8) If the chief executive is given a notice under subsection (6)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.
  - (9) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.
  - (10) This section is subject to division 2.
  - (11) In this section—

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

***interested person***, for an adoption, means—
    - (a) the chief executive; or
    - (b) an adoptive parent; or
    - (c) the adopted child.

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

- (1) This section applies to an adoption in a non-convention country if—
  - (a) the adoption was effective according to the law of that country; and
  - (b) at the time at which the legal steps that resulted in the adoption were commenced, the 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.
- (2) For the purposes of the laws of Queensland, the adoption has the same effect as an adoption order under this Act.
- (3) 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.
- (4) However, 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.

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- (5) 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—
- (a) that the adoption was made in that country and is effective under the law of that country; and
  - (b) that the adoption has not been rescinded.
- (6) 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.
- (7) 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

### 294      Definitions for div 2

In this division—

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

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

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

*interested person*, for an adoption, means—

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

*simple adoption* means an adoption granted in a convention country that, under the law of that country, does not end the legal relationship between the adopted child and the

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individuals who were, immediately before the adoption, the child's parents.

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

Despite section 292(2), 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.

## **296 Conversion of simple adoption in convention country**

- (1) If a simple adoption is converted in a convention country, the adoption is taken to be a full adoption.
- (2) However, subsection (1) does not apply if the Childrens Court makes a declaration of non-recognition of the conversion.
- (3) 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.
- (4) An interested person may apply to the Childrens Court for a declaration of non-recognition of the conversion.
- (5) Before applying for the declaration, the person must give a notice—
  - (a) if the person is the chief executive—to the Commonwealth central authority; or
  - (b) otherwise—to the chief executive.
- (6) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.
- (7) If the chief executive is given a notice under subsection (5)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.
- (8) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.

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**297 Conversion of simple adoption by Childrens Court**

- (1) 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.
- (2) The applicant must serve a copy of the application on the chief executive.
- (3) The served copy must state the applicant's reasons for the application.
- (4) The chief executive must give a copy of the application to the Commonwealth central authority.
- (5) The chief executive is entitled to be joined as a party to the proceedings concerning the application.
- (6) The 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.

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- (7) If the court makes the order, the adoption has effect as a full adoption.

## **Division 3                      Other matters concerning overseas adoptions**

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

- (1) This section 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.
- (2) 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.
- (3) If the chief executive carries out the supervision, the chief executive may, by written notice, require the child's adoptive parents to pay the fee prescribed under a regulation for the supervision.
- (4) The notice must state the time, not less than 30 days after the notice is given, by which the fee must be paid.
- (5) A person must allow an authorised officer reasonable access to the child to carry out the supervision.
- (6) 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.
- (7) In this section—

*authorised officer* means an officer of the department, or adoption contract worker, authorised by the chief executive to carry out supervision under this section.

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*prescribed period* means a period of 1 year less the length of any period, after the child's adoption but before the child's arrival in Queensland, for which the child was resident in a State, other than Queensland, or in New Zealand.

## **299 Declarations of validity of overseas adoptions**

- (1) 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.
- (2) 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.
- (3) The applicant must serve a copy of the application on the chief executive at least 21 days before the day fixed for the hearing of the application.
- (4) The chief executive is entitled to be joined as a party to the proceedings.
- (5) 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.
- (6) 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.
- (7) The court may make the orders about costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

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- (8) 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 (9), 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.
- (9) In proceedings in a court in Queensland relating to the rights of a person other than a person mentioned in subsection (8)(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

### 300      Definitions for pt 14

In this part—

*for*, the adoption of a child, includes towards, or with a view to, the adoption of the child.

*publish* means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

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### 301 Territorial application

This part applies in relation to—

- (a) the adoption of children in Queensland or children adopted in Queensland; and
- (b) acts done in Queensland relating to the adoption of children outside Queensland or children adopted outside Queensland.

### 302 False representation about arranging adoption

A person (the *first person*) who is not performing a function under or relating to this Act must not falsely represent to another person that the first person is arranging or is able to arrange—

- (a) the adoption of a child by the other person; or
- (b) the adoption by someone of a child of the other person.

Maximum penalty—

- (a) for an individual—150 penalty units or 18 months imprisonment; or
- (b) for a corporation—1000 penalty units.

### 303 Giving or receiving consideration

- (1) A person must not 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.

Maximum penalty—

- (a) for an individual—150 penalty units or 18 months imprisonment; or

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- (b) for a corporation—1000 penalty units.
- (2) Subsection (1) applies before or after the birth of the relevant child.
- (3) It is immaterial whether the adoption happens or may lawfully happen.

### **304 Advertisements and other published matters**

- (1) A person must not publish 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.

Maximum penalty—

- (a) for an individual—150 penalty units or 18 months imprisonment; or
- (b) for a corporation—1000 penalty units.
- (2) Subsection (1) applies whether or not the statement relates to a particular child and whether or not the statement relates to a child who has been born.

### **305 False or misleading information**

- (1) A person (the *first person*) must not give information under this Act, to the chief executive or another person performing functions under or relating to the administration of this Act, that the first person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to information given in a document if the first 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.

### **306 Improperly witnessing a consent**

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.

Maximum penalty—40 penalty units.

### **307 Fraud or undue influence**

- (1) A person must not act fraudulently or use undue influence on another person to—
  - (a) induce a parent of a child to—
    - (i) offer or refrain from offering the child for adoption; or

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- (ii) give or revoke the parent's consent to the adoption of the child; or
    - (iii) 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.
- Maximum penalty—150 penalty units or 18 months imprisonment.
- (2) For this section, a person uses *undue influence* on another person 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.
  - (3) It is immaterial whether the adoption happens or may lawfully happen.

## Part 14A Proceedings before QCAT

### Division 1 Preliminary

#### 307A Application of pt 14A

This part applies to a proceeding before QCAT for a review of a reviewable decision under this Act (an *adoption proceeding*).

*Note—*

See section 319 for particular decisions under this Act that may reviewed by QCAT.

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### **307B Definitions for pt 14A**

In this part—

*president* means the president under the QCAT Act.

*registrar* means the principal registrar under the QCAT Act.

*review application* means an application made, as provided under the QCAT Act, for review of a reviewable decision by the tribunal.

*separate representative* see section 307I(2).

*support person* means a person allowed by the tribunal under the QCAT Act, section 91 to attend a hearing for the purpose of supporting a party or witness.

*tribunal* means QCAT.

### **307C Object of pt 14A**

The object of this part is to provide for the tribunal—

- (a) to make decisions, in a review about the eligibility or suitability of a prospective adoptive parent, that promote the welfare and interests of children who may be adopted by them; and
- (b) to conduct adoption proceedings in a way that uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances; and
- (c) to foster an atmosphere of review that enhances the delivery of adoption services to children.

### **307D Principles for tribunal in matters relating to this Act**

When exercising its jurisdiction, functions or powers in relation to this Act, the tribunal must have regard to the principles mentioned in sections 6 and 7.

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## **Division 2                      Notice for proceedings**

### **307E    Government entity may nominate decision-maker**

The department may give the registrar a notice nominating an officer or employee of the department, or the holder for the time being of an office in the department, as the decision-maker for an assessment or decision to be reviewed by the tribunal.

## **Division 3                      Proceedings**

### **307F    Constitution of tribunal and hearing of compulsory conference**

- (1) For an adoption proceeding, the tribunal must be constituted by 3 members, at least 1 of whom is a legally qualified member.
- (2) A compulsory conference relating to an adoption proceeding must be heard by at least 2 members, at least 1 of whom is a legally qualified member.
- (3) If a child to which an adoption proceeding relates is Aboriginal or Torres Strait Islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.
- (4) The president may choose a member to constitute the tribunal for an adoption proceeding only if the president considers the member—
  - (a) is committed to the principles mentioned in sections 6 and 7; and
  - (b) has extensive professional knowledge and experience of children; and
  - (c) has demonstrated a knowledge of and has experience in 1 or more of the fields of administrative review, child care, child protection, child welfare, community

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services, education, health, indigenous affairs, law, psychology or social work.

- (5) A member is ineligible to be a constituting member for a review of a reviewable decision if—
- (a) the member's name is in the expression of interest register or suitable adoptive parents register; or
  - (b) the member has made an application under part 5, division 1 that the chief executive is required to deal with under part 5, division 2; or
  - (c) a decision mentioned in section 319 has been made in relation to the member (whether or not the member has applied to the tribunal for a review of the decision).
- (6) In this section—

*legally qualified member* has the meaning given by the QCAT Act.

*member* has the meaning given by the QCAT Act.

### **307G Hearing must usually be held in private**

- (1) A hearing of an adoption proceeding must be held in private.
- (2) However, the following are entitled to be present at the proceeding—
  - (a) each party to the proceeding;
  - (b) if, under an Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
  - (c) a separate representative representing a child in the proceeding;
  - (d) a witness while giving evidence;
  - (e) a support person for a witness, while the witness is giving evidence;
  - (f) a person allowed to be present by the tribunal.

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- (3) This section is subject to section 307N(3) and the QCAT Act, section 220.

*Editor's note—*

QCAT Act, section 220 (Tribunal may exclude person)

## **Division 4                      Children in proceedings**

### **307H Requirements about ensuring proper understanding of tribunal proceedings**

The tribunal must take all reasonable steps to ensure each child taking part in an adoption proceeding understands the tribunal's procedures.

*Note—*

See also the QCAT Act, section 29 (Ensuring proper understanding and regard).

### **307I Separate representation of children**

- (1) This section applies if an adoption proceeding is about the suitability of a person to be an adoptive parent of a particular child.
- (2) The tribunal must consider whether it would be in the child's best interests for the child to be separately represented before the tribunal by a lawyer (a *separate representative*).
- (3) If the tribunal considers it would be in the child's best interests for the child to be separately represented before the tribunal by a lawyer, the tribunal must order that the child be represented by a separate representative.
- (4) A separate representative may represent more than 1 child in the same proceeding before the tribunal.
- (5) A separate representative must—
- (a) act in the child's best interests having regard to any expressed views or wishes of the child; and

- 
- (b) as far as possible, present the child's views and wishes to the tribunal.
- (6) For the QCAT Act, a separate representative has the same rights and obligations as a party to the review.

### **307J Children must not be compelled to give evidence**

- (1) A child must not be compelled to give evidence in an adoption proceeding.
- (2) Without limiting subsection (1), the tribunal may not require a child to do either of the following under the QCAT Act, section 97(1)—
  - (a) attend a hearing of an adoption proceeding to give evidence;
  - (b) produce a stated document or other thing to the tribunal.
- (3) Before a child gives evidence in an adoption proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

### **307K Child's right to express views to tribunal**

- (1) This section applies if an adoption proceeding is about the suitability of a person to be an adoptive parent of a particular child.
- (2) Whether or not the child appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

### **307L Children giving evidence or expressing views to tribunal**

- (1) This section applies if a child is giving evidence or expressing the child's views to the tribunal.
- (2) Only the following persons may be present while the child gives evidence or expresses the child's views—
  - (a) the members constituting the tribunal for the proceeding;

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- (b) the lawyer, if any, representing the child;
  - (c) the separate representative, if any, for the child;
  - (d) the child's support person if the child has a support person and agrees to that person's presence.
- (3) Despite subsection (2), the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child—
- (a) is 12 years or more; and
  - (b) is represented by a lawyer or a separate representative.

### **307M Questioning of children**

- (1) A child giving evidence or expressing the child's views in an adoption proceeding must not be cross-examined.
- (2) Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in an adoption proceeding—
  - (a) the members constituting the tribunal for the proceeding;
  - (b) the lawyer, if any, representing the child;
  - (c) the separate representative, if any, for the child.

## **Division 5 Confidentiality**

### **307N Confidentiality order**

- (1) The tribunal may, by order (a *confidentiality order*), prohibit or restrict the disclosure to a party to an adoption proceeding of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review.
- (2) Subsection (3) applies for the purpose of the tribunal—
  - (a) deciding whether to make a confidentiality order; or

- (b) giving effect to a confidentiality order.
- (3) The tribunal may—
  - (a) exclude a party, and any representative of the party, from part of an adoption proceeding; or
  - (b) deal with a document in a way that ensures it is not disclosed to a party.
- (4) The tribunal may make a confidentiality order only if it is satisfied that if it does not do so—
  - (a) a child is likely to be harmed; or
  - (b) the safety of another person is likely to be endangered; or
  - (c) there would be undue interference with the privacy of a child or another person.
- (5) The tribunal may act under subsection (1) on its own initiative or on application by a party to an adoption proceeding.
- (6) A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in an adoption proceeding.

### **307O Limited access to tribunal's register of proceedings**

- (1) This section applies to the register of proceedings kept by the principal registrar under the QCAT Act, section 229(1).
- (2) Despite the QCAT Act, section 229(2) the principal registrar must ensure that part of the register which relates to adoption proceedings is not available for inspection by the public.
- (3) The QCAT Act, section 229(4) does not apply to that part of the register which relates to adoption proceedings.

### **307P Limited access to tribunal's record of proceedings**

- (1) This section applies to a record kept under the QCAT Act, section 230 for an adoption proceeding.

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- (2) Despite the QCAT Act, section 230(3) a person who is not a party to the proceeding may not inspect, or obtain a copy of, the record or a part of the record.

### **307Q Certain information not to be published**

- (1) A person must not publish—
- (a) information given in evidence or otherwise in an adoption proceeding; or
  - (b) information that is likely to identify a person who—
    - (i) appears as a witness before the tribunal in an adoption proceeding; or
    - (ii) is a party to an adoption proceeding; or
    - (iii) is mentioned, or otherwise involved, in an adoption proceeding.

Maximum penalty—

- (a) for a corporation—1000 penalty units; or
  - (b) for an individual—100 penalty units or 2 years imprisonment.
- (2) Subsection (1)(a) does not apply to—
- (a) a person if the tribunal or the president of the tribunal consents to the publication of the information by the person; or
  - (b) the tribunal publishing its final decision in an adoption proceeding, with or without the reasons for the decision.
- (3) The tribunal or the president may only consent to the publication as mentioned in subsection (2) if the tribunal or the president is satisfied the publication of the information—
- (a) is in the public interest; and
  - (b) does not conflict with the best interests of the child.
- (4) In this section—
- information* includes—

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- (a) a matter contained in a document filed with, or received by, the tribunal; and
  - (b) the tribunal's decision or reasons for a decision.

***publish***, for information, means to publish it to the public by way of the internet, newspaper, radio, television or other form of communication.

## **Part 15                      General**

### **Division 1                      Matters about offences and proceedings**

#### **308      Types of offences**

- (1) An offence against this Act for which the maximum penalty of imprisonment is 2 years is an indictable offence that is a misdemeanour.
- (2) Otherwise, an offence against this Act is a summary offence.

#### **309      Proceedings for indictable offence**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceeding under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate believes the charge should be prosecuted on indictment.

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- (3) If subsection (2) applies—
- (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).

### **310 Limitation on who may summarily hear indictable offence**

- (1) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) 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*.

### **311 Limitation on time for starting summary proceeding**

A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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**312 Evidentiary provisions for proceedings under this Act**

- (1) This section applies to a proceeding under this Act.
- (2) A signature purporting to be the signature of any of the following persons is evidence of the signature it purports to be—
  - (a) the chief executive;
  - (b) an authorised officer for another State under section 42;
  - (c) another officer of a jurisdiction outside the State corresponding to the chief executive;
  - (d) the responsible Minister under the *Immigration (Guardianship of Children) Act 1946* (Cwlth).
- (3) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) a stated document is a notice, authorisation or approval given or decision made under this Act;
  - (b) a stated document is an extract from a register kept under this Act;
  - (c) a stated document is a copy of a document mentioned in paragraph (a) or (b);
  - (d) on a stated day, a stated person was given a stated notice or approval under this Act;
  - (e) the identity of a child's father could not be ascertained after stated reasonable inquiries;
  - (f) the location of a stated person could not be ascertained after stated reasonable inquiries;
  - (g) a stated entity is a recognised entity for consultation about a matter relating to the adoption of a particular Aboriginal or Torres Strait Islander child;

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- (h) a stated individual is an appropriate Aboriginal or Torres Strait Islander person in relation to a particular Aboriginal or Torres Strait Islander child;
- (i) another matter prescribed under a regulation.

### **313 Proof of adoptions**

- (1) This section applies to a proceeding in a court in Queensland.
- (2) 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.
- (3) 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.
- (4) In this section—

*adoption order* includes any court order relating to an adoption.

*appropriate officer*, in relation to a register relating to adoptions under a law of another jurisdiction, means an officer in that jurisdiction with responsibility under the law for keeping the register.

## **Division 2 Confidentiality**

### **314 Confidentiality of information obtained by persons involved in administration of Act**

- (1) This section applies to a person who—
  - (a) is, or has been, any of the following persons performing functions under or relating to the administration of this Act or the repealed Act—
    - (i) a public service employee;

- (ii) an adoption contract worker, counsellor or other person engaged by the chief executive;
  - (iii) an approved carer;
  - (iv) an appropriate Aboriginal or Torres Strait Islander person;
  - (v) a recognised entity or member of a recognised entity;
  - (vi) a person authorised to use information for research under section 324; and
- (b) in that capacity, acquired protected information about another person or has access to, or custody of, protected information about another person.
- (2) The person must not use the information or disclose the information to anyone else except to the extent the use or disclosure is required or permitted under this Act or necessary to perform the person's functions under or relating to this Act.
- Maximum penalty—100 penalty units or 2 years imprisonment.
- (3) The information may be used or disclosed if the use or disclosure is otherwise required or permitted under another law.
- (4) To the extent that the information is about a person (the *relevant person*), it may be disclosed to the relevant person or to someone else with the relevant person's consent.
- (5) However, if the information is information that may be requested from the chief executive by the relevant person under part 11, subsection (4) applies to the disclosure of information by or on behalf of the chief executive only to the extent the information may be disclosed under that part.
- (6) To the extent the chief executive is satisfied it would not be an unreasonable breach of privacy, the chief executive may disclose—

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- (a) non-identifying information about an adopted person, adoptive parent or other relative of an adopted person to a birth parent of the adopted person; or
- (b) non-identifying information about a birth parent of an adopted person or relative of the birth parent to the adopted person or an adoptive parent of the adopted person.

*Examples of non-identifying information about a person—*

- general information about the person's characteristics or social background
  - the person's given name (unless it is distinctive)
- (7) The chief executive may disclose information about a person to the police commissioner or the public trustee if satisfied the disclosure—
    - (a) is for a reasonable purpose in the circumstances; and
    - (b) is not likely to allow the identification of a party to an adoption by another party to the adoption.
  - (8) Information about a person who has a current expression of interest made jointly with the person's spouse, or is being assessed under part 6 jointly with the person's spouse, may be disclosed to the person's spouse.
  - (9) 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.
  - (10) In this section—
    - disclose* includes give access to.
    - information* includes a document.
    - protected information*, about a person, means information about the person's personal history or the person's affairs.

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### 315 Publishing identifying material

- (1) 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.
- (2) A person must not publish identifying material unless—
  - (a) the publication is made with the written approval of the chief executive; or
  - (b) written consent to the publication has been given, for each identified person, by—
    - (i) for an identified person who is an adult—that person; or
    - (ii) for an identified person who is a child other than a proposed adoptee—a parent of the child; or
    - (iii) for an identified person who is a proposed adoptee in the custody of a person under an interim order or under part 9, division 3—the person with custody of the child; or
    - (iv) for an identified person who is a proposed adoptee other than as mentioned in subparagraph (iii)—the chief executive.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1000 penalty units.
- (3) 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.

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(4) In this section—

*adoption* includes proposed adoption.

*identified person*, in relation to published material, means a person identified by the material as a person mentioned in subsection (1)(a) to (c).

*publish* means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

### **316 Disclosure to other jurisdictions**

For the purpose of facilitating the adoption under this Act of children from another country, the chief executive may—

- (a) enter into an arrangement with an appropriate entity of that country with responsibility under the law of that country for adoptions; and
- (b) under the arrangement, disclose information obtained under this Act or the repealed Act to the entity.

## **Division 3 Miscellaneous**

### **317 Adoption contract workers**

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.

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**318 Meaning of *appropriate Aboriginal or Torres Strait Islander person***

- (1) 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—
- (a) the child’s community or language group; and
  - (b) Aboriginal tradition or Island custom relating to the child.

*Note—*

Sections 7(2), 25(3), 46(3), 118, 163 and 169(2) contain obligations involving an appropriate Aboriginal or Torres Strait Islander person.

- (2) In making a decision for subsection (1), the chief executive must consult with—
- (a) an elder or other respected person of the child’s community; or
  - (b) a recognised entity; or
  - (c) an entity that has a function of providing services to Aboriginal or Torres Strait Islander persons; or
  - (d) a member of an entity mentioned in paragraph (b) or (c).
- (3) 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 this Act about confidentiality.

**319 Right of review against particular decisions**

A person may apply to QCAT to have any of the following decisions reviewed—

- (a) a decision under section 78 that the person’s name may not be entered in the expression of interest register;
- (b) a decision under section 80 to remove the person’s name from the expression of interest register;

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- (c) a decision under section 94 that the person is not a person who may make an application under section 92;
- (d) a decision under section 109 that a person is not suitable to be an adoptive parent;
- (e) a decision under section 146 to remove the person's name from the suitable adoptive parents register.

### **320 Delegation**

- (1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer or employee of the department.
- (2) In this section—  
*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

### **321 Protection from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) a public service employee; or
  - (b) an adoption contract worker, counsellor or other person engaged by the chief executive; or
  - (c) an approved carer; or
  - (d) a recognised entity or member of a recognised entity.

### **322 Convention countries**

- (1) Each of the following is a *convention country* for this Act—

- 
- (a) a country prescribed under a regulation to be a convention country;
  - (b) another country for which the Hague convention has entered into force, under article 46 of the Hague convention, other than—
    - (i) Australia; or
    - (ii) New Zealand; or
    - (iii) a country to whose accession Australia has raised an objection under article 44 of the Hague convention.
- (2) However, subsection (1) applies to a country subject to a declaration under article 45 of the Hague convention.

### **323 State central authority**

The Minister is the central authority for the State for the purpose of the Hague convention, article 6.2.

*Note—*

This designation of the Minister is made for the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth), section 8(1).

### **324 Research**

- (1) The chief executive may authorise a qualified person to use information obtained under this Act for approved research.
- (2) If a qualified person is authorised to use information under subsection (1), the information must be collected for the research to enable its use in a way that could not reasonably be expected to result in the identification of any of the individuals to whom it relates.
- (3) The chief executive may contact persons affected by adoption to ask if they would like to participate in approved research being conducted by a qualified person.
- (4) In this section—

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***approved research*** means research approved by—

- (a) a human research ethics committee under the *Public Health Act 2005*; or
- (b) an ethics committee established by a university and concerned, wholly or partly, with research involving humans; or
- (c) an ethics committee established by the National Health and Medical Research Council.

***qualified person***, in relation to particular research, means an officer of the department, or other person, who the chief executive is satisfied has appropriate qualifications or experience to carry out the research.

### **325 Assistance to adoptive parents and others**

- (1) The chief executive may make payments, or give other assistance, to an adoptive parent or other person if the chief executive considers it is necessary to do so to ensure the wellbeing and best interests of an adopted child.
- (2) Subsection (1) has effect, in relation to paying an amount, subject to appropriation by Parliament of an amount for the purpose.

### **326 Approved forms**

The chief executive may approve forms for use under this Act.

### **327 Review of Act**

- (1) The Minister must ensure the operation of this Act is reviewed as soon as practicable after the day that is 5 years after the commencement of this section.
- (2) The review must include a review of the effect of this Act on parties to adoptions and their families.
- (3) The Minister must table in the Legislative Assembly a report on the outcome of the review.

**328 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees, including refunding or waiving fees, for this Act.

**Part 16 Repeal, savings and transitional provisions**

**Division 1 Repeal**

**329 Repeal of Adoption of Children Act 1964**

The Adoption of Children Act 1964, No. 54 is repealed.

**Division 2 Savings and transitional**

**330 Meaning of *commencement day***

In this division—

*commencement day* means the day on which the provision in which the term is used commences.

**331 Adoption orders**

- (1) 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.
- (2) Without limiting subsection (1), the order may be discharged under part 9, division 7.

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### **331A Interim orders**

An interim order in force under the repealed Act immediately before the commencement day continues to have effect—

- (a) in the case of an interim order for a child who is not a non-citizen child—as if it were an interim order made under part 9, division 2; or
- (b) in the case of an interim order for a non-citizen child—as if it were an interim order made under part 9, division 3.

### **332 Correction of adoption orders**

The chief executive may amend an adoption order continued in force under section 331 to correct the name, date of birth or another particular of a person mentioned in the order.

### **333 Application by step-parent**

- (1) 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.
- (2) 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.

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**334 Special Needs Children's Adoption List**

- (1) This section applies to a person whose name was in the Special Needs Children's Adoption List immediately before the commencement day.
- (2) 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.
- (3) Otherwise, the person's name must be listed in the expression of interest register.
- (4) 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.

**335 Review of decision to remove name from adoption list**

- (1) This section applies if—
  - (a) under the repealed Act, section 13AA(4), the chief executive removed a person's name from an adoption list; and
  - (b) a person applied to QCAT for a review of the decision to remove the person's name; and
  - (c) immediately before the commencement day, the application had not been finally dealt with.
- (2) QCAT must decide the application under the repealed Act.
- (3) If QCAT decides the person's name should not be removed from the adoption list, the person's name is, for section 333 or 334, taken to have been in the adoption list immediately before the commencement day.

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### **336 Expression of interest register**

- (1) This section applies to a person who, immediately before the commencement day, was listed in the expression of interest register under the repealed Act.
- (2) The person's name must be listed in the expression of interest register under this Act.
- (3) For section 79(1)(a), 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.

### **337 Uncompleted review of decision to remove persons from expression of interest register**

- (1) This section applies if—
  - (a) a person applied to QCAT 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
  - (b) immediately before the commencement day, the application had not been finally dealt with.
- (2) The application has no further effect.
- (3) The person's name must be listed in the expression of interest register under this Act.
- (4) For section 79(1)(a), 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.

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**338 Suitable adoptive parents register**

- (1) This section applies to each person who, immediately before the commencement day, was a prospective adopter under the repealed Act, section 13D.
- (2) The person's name must be listed in the suitable adoptive parents register under this Act.

**339 Current applications to Supreme Court or Childrens Court**

- (1) This section applies to an application under the repealed Act that, immediately before the commencement day, had not been finally dealt with.
- (2) If the application was made under the repealed Act, section 16, it must be dealt with as if it were an application under part 9, division 7, to discharge the adoption order.
- (3) If the application was made under the repealed Act, section 25, the Supreme Court or Childrens Court may continue to hear and decide the application under that section despite the repeal.
- (4) If the application was made under the repealed Act, section 37A(5), it must be dealt with as if it were an application under section 292(5).
- (5) If the application was made under the repealed Act, section 38AC(4), it must be dealt with as if it were an application under section 296(4).
- (6) If the application was made under the repealed Act, section 39(1), it must be dealt with as if it were an application under section 299(1).

**340 Consents to adoption**

A person's consent to the adoption of a child under the repealed Act, in force immediately before the commencement day, continues in force as if the consent had been given under part 2.

[s 341]

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### **341 Chief executive's guardianship**

- (1) If, immediately before the commencement day, the chief executive was a child's guardian under the repealed Act, section 27, the chief executive's guardianship continues in force under section 57.
- (2) If, immediately before the commencement day, the chief executive was a child's guardian under the repealed Act, section 27B(4), the chief executive's guardianship continues in force under section 65.

### **342 Current applications to chief executive to convert simple adoption**

- (1) This section applies to an application made to the chief executive under the repealed Act, section 38AD(1) that, immediately before the commencement day, had not been finally dealt with.
- (2) The chief executive may decide the application under that section despite the repeal.

### **343 Particular objections continue in force as contact statements for pt 11**

- (1) This section 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.
- (2) 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 persons, until it is withdrawn or otherwise ends under this Act.

- (3) In this section—

*current objection* means an objection in force under the repealed Act, section 39AA immediately before the commencement day.

**344 Current application to chief executive to disclose particular information**

- (1) This section applies to an application made to the chief executive under the repealed Act, section 39B that, immediately before the commencement day, had not been finally dealt with.
- (2) To the extent the application could be 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.

**345 Entitlement to particular records**

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 section 290.

**346 Transitional—effect of adoption orders in relation to property**

- (1) Section 216 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.
- (2) Section 216 does not affect a disposition of property that took effect in possession before the commencement of the repealed Act.

## **Schedule 1      Hague convention**

schedule 3, definition *Hague convention*

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

The States signatory to the present Convention,

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

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

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

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

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

Have agreed upon the following provisions—

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## CHAPTER I—SCOPE OF THE CONVENTION

### *Article 1*

The objects of the present Convention are—

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

### *Article 2*

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

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

### *Article 3*

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

## CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

### *Article 4*

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

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

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

### *Article 5*

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

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

## **CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES**

### *Article 6*

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

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

### *Article 7*

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

2 They shall take directly all appropriate measures to—

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

### *Article 8*

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

### *Article 9*

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

- a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b* facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c* promote the development of adoption counselling and post-adoption services in their States;
- d* provide each other with general evaluation reports about experience with intercountry adoption;

- e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

### *Article 10*

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

### *Article 11*

An accredited body shall—

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

### *Article 12*

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

### *Article 13*

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

## **CHAPTER IV—PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

### *Article 14*

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

### *Article 15*

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

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

### *Article 16*

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

- a* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c* ensure that consents have been obtained in accordance with Article 4; and

- d* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

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

### *Article 17*

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

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

### *Article 18*

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

### *Article 19*

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

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

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

### *Article 20*

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

### *Article 21*

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

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

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

### *Article 22*

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

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or person who—

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

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

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

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

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

### *Article 23*

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

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

### *Article 24*

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

### *Article 25*

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

### *Article 26*

- 1 The recognition of an adoption includes recognition of—
- a* the legal parent-child relationship between the child and his or her adoptive parents;

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

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

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

### *Article 27*

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

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

2 Article 23 applies to the decision converting the adoption.

## **CHAPTER VI—GENERAL PROVISIONS**

### *Article 28*

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

### *Article 29*

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

### *Article 30*

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

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

### *Article 31*

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

### *Article 32*

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

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

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

### *Article 33*

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

### *Article 34*

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

### *Article 35*

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

### *Article 36*

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

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

- c* any reference to the competent authorities or to be public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

### *Article 37*

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

### *Article 38*

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

### *Article 39*

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

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

***Article 40***

No reservation to the Convention shall be permitted.

***Article 41***

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

***Article 42***

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

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

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

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

### *Article 44*

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

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

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

### *Article 45*

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

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

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

### *Article 46*

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

2 Thereafter the Convention shall enter into force—

- a* for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the

expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

- b* for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

### *Article 47*

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

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

### *Article 48*

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

- a* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b* the accessions and objections raised to accessions referred to in Article 44;
- c* the date on which the Convention enters into force in accordance with Article 46;
- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

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

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

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## Schedule 3 Dictionary

### section 3

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

***adoption contract worker*** means a person engaged as an adoption contract worker under section 317.

***adoption order*** means a final adoption order or interim order.

***adoption plan*** means an adoption plan in force under part 8.

***adoption proceeding***, for part 14A, see section 307A.

***adoptive parent*** means—

- (a) for part 13, a person who has adopted someone else under the relevant adoption mentioned in that part; or
- (b) otherwise, a person who has adopted someone else under a final adoption order.

***appellate court*** means—

- (a) for a decision made by the Childrens Court constituted by a judge—the Court of Appeal; or
- (b) for a decision made by the Childrens Court constituted in another way—the Childrens Court constituted by a judge.

***appropriate Aboriginal or Torres Strait Islander person*** see section 318.

***approved carer***, of a child, means an approved carer under the *Child Protection Act 1999* in whose care the child has been placed under that Act.

***approved form***, for a purpose, means the form approved for the purpose under section 326.

***biological father***, of a child, includes a man presumed to be the child's father under the *Status of Children Act 1978*, part 3, division 2.

**biological mother**, of a child, includes a woman presumed to be the child's mother under the *Status of Children Act 1978*, part 3, division 2.

**biological parent** means a biological father or biological mother.

**birth parent** of an adopted person—

- (a) means a person who was a parent of the adopted person at any time before the adoption, including—
  - (i) a biological parent of the adopted person; and
  - (ii) someone who was a parent of the adopted person under a previous adoption; and
- (b) for part 11, includes a man to the extent provided under section 250.

**brother** includes a half-brother.

**capacity**, to consent to an adoption, means capability to—

- (a) understand the nature and effect of the adoption; and
- (b) freely and voluntarily make decisions about the adoption; and
- (c) communicate the decisions in some way.

**care agreement**, for part 3, division 1, see section 49.

**central authority**, of a convention country, means the entity designated under article 6 of the Hague convention as the central authority of the country.

**charge**, of an offence, means a charge in any form, including, for example, the following—

- (a) a charge on an arrest;
- (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 382;
- (c) a complaint under the *Justices Act 1886*;
- (d) a charge by a court under the *Justices Act 1886*, section 42(1A), or another provision of an Act;
- (e) an indictment.

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**chief executive (child safety)** means the chief executive of the department in which the *Child Protection Act 1999* is administered.

**chief executive (transport)** means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

**child protection order** means a child protection order under the *Child Protection Act 1999*.

**commencement day**, for part 16, division 2, see section 330.

**Commission for Children Act** means the *Commission for Children and Young People and Child Guardian Act 2000*.

**Commonwealth central authority** means the Commonwealth Central Authority under the Commonwealth regulation.

**Commonwealth regulation** means the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cwlth).

**competent authority** means—

- (a) for a convention country—a central authority for the country; or
- (b) for a non-convention country—an entity in the country responsible for approving the adoption of children.

**concerning matter**, for part 11, division 6, see section 284(3)(b).

**consent**, to an adoption, see section 17.

**contact statement** see section 269(1).

**convention country** see section 322.

**conviction** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

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

**couple** means a person and the person's spouse.

**criminal history**, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

***current expression of interest***—

- (a) means an expression of interest made by a person if, in relation to the expression of interest—
  - (i) the chief executive has not yet decided whether to enter the person's name in the expression of interest register; or
  - (ii) the person's name is in the expression of interest register or the suitable adoptive parents register; and
- (b) includes any changes notified to the chief executive under part 4.

***disqualification order*** means—

- (a) an order under the Commission for Children Act, section 357; or
- (b) a disqualification order under the *Child Protection (Offender Prohibition Order) Act 2008*, section 25.

***disqualifying offence*** see the Commission for Children Act, section 168.

***document***, for part 11, division 6, see section 279.

***domestic violence history***, of a person, means the history of domestic violence orders made against the person under the *Domestic and Family Violence Protection Act 1989*.

***exchange***, for part 11, division 6, see section 279.

***expression of interest register*** see section 75(1).

***father***, of a child, means—

- (a) if the child has not been adopted—the child's biological father; or

- (b) if the child has been adopted—the child’s current adoptive father.

***fertility treatment***—

- (a) means anything done as a treatment or part of a treatment for infertility, including—
- (i) an assisted reproductive technology procedure; and
  - (ii) a medical investigation, test or other procedure; and
  - (iii) the use of hormones, drugs or other medication; and
  - (iv) the harvesting of genetic material for future use in an assisted reproductive technology procedure; and
- (b) does not include the mere storage of genetic material for future use in an assisted reproductive technology procedure.

***final adoption order*** means a final adoption order under part 9.

***for***, the adoption of a child, for part 14, see section 300.

***guardian***, of a person in relation to a particular matter, means the person’s guardian under the *Guardianship and Administration Act 2000*, or a corresponding law of another State, for the matter.

***Hague convention*** means 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 which is set out in schedule 1.

***harm***, to a person, means any detrimental effect of a significant nature on the person’s physical, psychological or emotional wellbeing.

***identifies***, for part 11, see section 248.

***identifying information***, for part 11, division 6, see section 279.

***imprisonment order***—

- (a) means either of the following orders—
  - (i) an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, whether wholly or partially suspended;
  - (ii) an intensive correction order under the *Penalties and Sentences Act 1992* or an order of another jurisdiction that substantially corresponds to an intensive correction order; but
- (b) does not include an order of imprisonment that is imposed as a consequence of a breach of a community service order or probation order within the meaning of the *Penalties and Sentences Act 1992*.

***infertility*** means—

- (a) for a woman—
  - (i) an inability, for a reason beyond her control, to conceive; or
  - (ii) a genetically transmitted disorder giving rise to a significant risk that, if she had a child, the child would not survive or the child's health would be seriously impaired; or
  - (iii) a condition giving rise to a significant risk that, if she fell pregnant, the child would not be carried until the child could be delivered alive; or
  - (iv) a condition giving rise to a significant risk that, if she fell pregnant, she would not survive or her health would be seriously impaired; or
- (b) for a man—
  - (i) an inability, for a reason beyond his control, to cause a woman to conceive; or
  - (ii) a genetically transmitted disorder giving rise to a significant risk that, if he fathered a child, the child would not survive or the child's health would be seriously impaired.

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**information notice** means a notice complying with the QCAT Act, section 157(2).

**intercountry adoption** means an adoption of a child—

- (a) under arrangements, between the chief executive and the competent authority for another country, made while the child is resident in the other country; and
- (b) that is effected—
  - (i) under this Act, after the child is brought to Queensland for the purpose of the adoption; or
  - (ii) under a law of the other country, after which the child is brought to Queensland.

**interim order** means an interim order under part 9.

**investigative information** means information decided under part 6, division 10 to be investigative information.

**local adoption** means an adoption of a child under this Act other than—

- (a) an intercountry adoption; or
- (b) an adoption under part 9, division 4.

**mailbox service** see section 278(1).

**money**, for part 11, division 6, see section 279.

**mother**, of a child, means—

- (a) if the child has not been adopted—the child's biological mother; or
- (b) if the child has been adopted—the child's current adoptive mother.

**National Health and Medical Research Council** means the National Health and Medical Research Council established by the *National Health and Medical Research Council Act 1992* (Cwlth).

**non-citizen child** see the *Immigration (Guardianship of Children) Act 1946* (Cwlth), section 4.

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

***non-identifying information***, for part 11, division 6, see section 279.

***notice*** means written notice.

***notice of intention***, for part 11, division 6, see section 279.

***offender prohibition order*** means an offender prohibition order under the *Child Protection (Offender Prohibition Order) Act 2008*.

***parent***, of a child, means—

- (a) the child's mother or father; and
- (b) anyone else, other than the chief executive (child safety) or a corresponding officer of another jurisdiction, with the right to have the child's daily care, and the right and responsibility to make decisions about the child's daily care, under—
  - (i) a law of the State other than this Act; or
  - (ii) a law of the Commonwealth or another State; or
  - (iii) a court order other than an order under this Act.

*Note—*

For the narrower definition *parent* applying to some provisions, see sections 15, 48 and 96.

***participant***, for part 11, division 6, see section 279.

***party***—

- (a) to an adoption, means the adopted child, the persons who were the child's parents immediately before the adoption and the child's adoptive parents; or
- (b) to a proposed adoption, means a person who would be a person mentioned in paragraph (a) if the adoption were completed; or
- (c) to an adoption plan, means a person who may be a party to the plan under section 166 and who agrees to the plan.

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***personal history*** means criminal history, domestic violence history and traffic history.

***placement needs***, of a child, means the child's particular needs relating to an adoptive placement, having regard to—

- (a) the child's characteristics; and
- (b) the preferences of the child's parents; and
- (c) for an intercountry adoption, the requirements of the competent authority for the country that apply to prospective adoptive parents of children from the country.

***police commissioner*** means the commissioner of the Queensland Police Service.

***prescribed document***, for part 11, see section 252.

***prescribed overseas jurisdiction*** means a jurisdiction prescribed under the *Family Law Act 1975* (Cwlth), section 111C(3).

***president***, for part 14A, see section 307B.

***profile***, of a person, means the person's characteristics and preferences relevant to adopting a child.

***publish***, for part 14, see section 300.

***qualified person***, for part 2, division 4, see section 27.

***recognised entity***, for consultation about a matter relating to the adoption of an Aboriginal or Torres Strait Islander child, means an entity on the list kept under the *Child Protection Act 1999*, section 246I that the chief executive is satisfied is an appropriate entity to consult.

***registrar***, for part 14A, see section 307B.

***registrar*** means the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

***relative***, for part 11, see section 249.

***relevant parent***, for part 2, division 6, see section 35(1).

***repealed Act*** means the repealed *Adoption of Children Act 1964*.

***review application***, for part 14A, see section 307B.

***separate representative***, for part 14A, see section 307B.

***serious offence*** see the Commission for Children Act, section 99C.

***sibling*** means a brother or sister.

***sister*** includes a half-sister.

***suitability report***, for part 9, division 4, see section 203.

***suitable adoptive parents register*** see section 102.

***support person***, for part 14A, see section 307B.

***traffic history*** of a person means the person's traffic history under the *Transport Operations (Road Use Management) Act 1995*.

***tribunal***, for part 14A, see section 307B.

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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 August 2010. Future amendments of the Adoption Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	2009 Act No. 48 2009 Act No. 49	1 February 2010	
1A	2010 Act No. 5	1 April 2010	
1B	2010 Act No. 2	1 June 2010	
1C	—	1 August 2010	s 76(1)(e) commenced

### 5 List of legislation

#### Adoption Act 2009 No. 29

date of assent 26 August 2009

ss 1–2, pt 17 div 1 commenced on date of assent (see s 2)

s 76(1)(e) commenced 1 August 2010 (2009 SL No. 217)

remaining provisions commenced 1 February 2010 (2009 SL No. 217)

amending legislation—

**State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 ss 1, 2(2), ch 4 pt 3**

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2010 immediately after the commencement of the Adoption Act 2009 provisions that commenced on that day (2009 SL No. 275 and 2009 SL No. 217)

**Fair Work (Commonwealth Powers) and Other Provisions Act 2009 No. 49 ss 1–2, pt 5**

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 31 January 2010 (2009 SL No. 289)

**Surrogacy Act 2010 No. 2 ss 1–2, ch 6 pt 2**

date of assent 16 February 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 2010 (2010 SL No. 86)

**Criminal History Screening Legislation Amendment Act 2010 No. 5 pt 1, s 248 sch 3**

date of assent 4 March 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 April 2010 (2010 SL No. 53)

## 6 List of annotations

**Declaration of QCAT whether an adult parent has capacity to consent**

**prov hdg** amd 2009 No. 48 s 115 (1)

**s 29** amd 2009 No. 48 s 115(2)

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

**s 30** amd 2009 No. 48 s 116

**Court may dispense with need for consent**

**s 39** amd 2009 No. 48 s 117

**Eligibility for inclusion in register**

**s 76** amd 2010 No. 2 s 67

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

**s 148** amd 2009 No. 48 s 118

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

**s 175** amd 2009 No. 48 s 119

**Separate legal representation of child**

**s 235** amd 2010 No. 5 s 248 sch 3

**PART 14A—PROCEEDINGS BEFORE QCAT**

**pt hdg** ins 2009 No. 48 s 120

**Division 1—Preliminary**

**div 1 (ss 307A–307D)** ins 2009 No. 48 s 120

**Division 2—Notice for proceedings**

**div 2 (s 307E)** ins 2009 No. 48 s 120

**Division 3—Proceedings**

**div 3 (ss 307F–307G)** ins 2009 No. 48 s 120

**Division 4—Children in proceedings**

**div 4 (ss 307H–307M)** ins 2009 No. 48 s 120

**Division 5—Confidentiality**

**div 5 (ss 307N–307Q)** ins 2009 No. 48 s 120

**Right of review against particular decisions**

**s 319** amd 2009 No. 48 s 121

**Interim orders**

**s 331A** ins 2009 No. 49 s 107

**Review of decision to remove name from adoption list**

**s 335** amd 2009 No. 48 s 122

**Uncompleted review of decision to remove persons from expression of interest register**

**s 337** amd 2009 No. 48 s 123

**SCHEDULE 3—DICTIONARY**

def “**adoption proceeding**” ins 2009 No. 48 s 124(2)

def “**disqualification order**” amd 2010 No. 5 s 248 sch 3

def “**disqualifying offence**” amd 2010 No. 5 s 248 sch 3

def “**Guardianship and Administration Tribunal**” om 2009 No. 48 s 124(1)

def “**information notice**” sub 2009 No. 48 s 124

def “**president**” ins 2009 No. 48 s 124(2)

def “**registrar**”, for part 14A, ins 2009 No. 48 s 124(2)

def “**review application**” ins 2009 No. 48 s 124(2)

def “**separate representative**” ins 2009 No. 48 s 124(2)

def “**support person**” ins 2009 No. 48 s 124(2)

def “**tribunal**” sub 2009 No. 48 s 124

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## 7 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 1 Version 1—General consent of parent to adoption**

pubd gaz 5 February 2010 p 293

**Form 2 Version 1—Consent of parent to adoption by a step parent**

pubd gaz 5 February 2010 p 293

**Form 3 Version 1—Revocation of consent to the adoption of a child**

pubd gaz 5 February 2010 p 293

**Form 4 Version 1—Parent declines counselling from Aboriginal or Torres Strait Islander**

pubd gaz 5 February 2010 p 293

**Form 5 Version 1—Care agreement not to be entered into**

pubd gaz 5 February 2010 p 293

**Form 6 Version 1—Adoption expression of interest**

pubd gaz 5 February 2010 p 293

**Form 7 Version 2—Application to adopt step-child**

pubd gaz 16 April 2010 p 950

**Form 9 Version 1—Request to transfer expression of interest from another state or territory**

pubd gaz 5 February 2010 p 293

**Form 10 Version 2—Application for adoption information (adopted person is a child): Birth parent**

pubd gaz 16 April 2010 p 950

**Form 11 Version 2—Application for adoption information: Adopted person (child) or adoptive parent**

pubd gaz 16 April 2010 p 950

**Form 12 Version 1—Application and consent by adult person who was adopted adoption information**

pubd gaz 16 April 2010 p 950

**Form 13 Version 2—Application for adoption information: Birth parent**

pubd gaz 16 April 2010 p 950

**Form 14 Version 2—Application for adoption information: Relative or guardian**

pubd gaz 16 April 2010 p 950

**Form 15 Version 2—Application for adoption information: Pre-adoption sibling**  
pubd gaz 16 April 2010 p 950

**Form 16 Version 2—Contact statement: Birth parent**  
pubd gaz 16 April 2010 p 950

**Form 17 Version 2—Contact statement: Adopted person**  
pubd gaz 16 April 2010 p 950

**Form 18 Version 1—Acknowledge no contact request pre June 1991 adoption**  
pubd gaz 5 February 2010 p 293

**Form 19 Version 1—Revocation of a contact statement**  
pubd gaz 5 February 2010 p 293

**Form 20 Version 1—Mailbox Authority form Birth parent**  
pubd gaz 5 February 2010 p 293

**Form 21 Version 1—Mailbox authority form adoptive parent**  
pubd gaz 5 February 2010 p 293

**Form 22 Version 1—Mailbox authority form birth relative**  
pubd gaz 5 February 2010 p 293

**Form 25 Version 2—Adoption Care Agreement**  
pubd gaz 16 April 2010 p 950