

Queensland



ADOPTION OF CHILDREN ACT 1964

**Reprinted as in force on 24 February 1994
(includes amendments up to Act No. 2 of 1991)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 24 February 1994. As required by section 5 of the Reprints Act 1992, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the Reprints Act 1992, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the Reprints Act 1992, to do the following—

- use citations and references permitted by Division 2 of that Act;
- use updated references permitted by Division 3 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use gender neutral office names as permitted by section 25 of that Act;
- use different spelling consistent with current legislative drafting practice as permitted by section 26(2) of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- reorder definitions as permitted by section 30 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 39 and 40 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act;
- omit the enacting words as permitted by section 42A of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act;
- correct minor errors as permitted by section 44 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



ADOPTION OF CHILDREN ACT 1964

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	7
2	Commencement	7
4	Severability	7
5	Savings	8
5A	Objective of Act	9
5B	Inherent jurisdiction of Supreme Court preserved	9
6	Interpretation	9
PART 2—JURISDICTION CONCERNING ADOPTIONS		
7	Adoption by order of Director	12
7A	Nexus with Queensland	13
7B	Rules of private international law not relevant	14
8	Adoptions Appeals Tribunal	14
8A	Jurisdiction of tribunal	15
9	Appeals to tribunal	16
PART 3—ADOPTIONS UNDER THIS ACT		
<i>Division 1—General</i>		
10	Welfare and interests of child to be paramount	17
11	Who may be adopted	17
12	Persons in whose favour adoption orders may be made	17
13	Age of adopters	18
13A	Applications	19
13B	Director’s assessments	19
13C	Matters to be regarded for assessment	21

Adoption of Children Act 1964

13D	Prospective adopters	21
14	Further assessment of prospective adopters	22
14B	Criminal histories to be disclosed	23
14C	Procedure upon assessments under s 14	24
15	Notice of intention to make adoption order	25
16	Discharge of adoption orders	25

Division 2—Adoption lists

17	Keeping of lists	26
18	General Children’s Adoption List to be ordinarily observed	27
18A	Placement of children with indigenous or ethnic backgrounds	28

Division 3—Consents to adoptions

19	Consents of parents and guardians required to adoptions	28
20	Giving of consents	29
21	Consents given under law of another State or of a Territory of the Commonwealth	30
22	Revocation of consents	30
23	Form of consents	31
24	Defective consents	31
25	Court may dispense with consents	32
25A	Consent not required in certain circumstances	34
26	Consent of child	34
26A	Provisions concerning Court’s jurisdiction—appeals	35
27	Guardianship of child awaiting adoption	36
27A	Register of children for adoption	37
27B	Renunciation of guardianship of child to be adopted in another State or Territory	38
27C	Director may enter into arrangements	39

Division 4—Effect of adoption orders

28	General effect of adoption orders	39
29	Effect of orders as regards dispositions of property etc.	41
29A	Bequest by will to unascertained adopted persons	42
30	Names of adopted child	43

32	Adoption order not to affect the distribution of property by trustees or personal representatives unless notice given	44
	<i>Division 5—Interim orders</i>	
33	Making of interim orders	44
34	Duration of interim orders	45
35	Discharge of interim orders	45
	PART 4—RECOGNITION OF ADOPTIONS	
36	Definition	46
37	Recognition of Australian and New Zealand adoptions	46
38	Recognition of foreign adoptions	46
38A	Director to have limited supervision of adopted children	48
39	Declarations of validity of foreign adoptions	49
	PART 4A—ACCESS TO IDENTIFYING INFORMATION	
39A	Interpretation	50
39AA	Objections	51
39B	Disclosure of certain information	52
39C	Entitlement to certain records etc.	54
39D	Offence to contact etc.	54
39E	Counsellors	55
	PART 5—OFFENCES	
40	Territorial application of Part	55
41	Communication etc. by natural parent with adopted child	55
42	Harbouring child taken from adopters	57
43	Payments in consideration of adoptions etc.	57
44	Restrictions on advertising	58
45	Restrictions on publication of identity of parties	58
46	Penalty for making unauthorised arrangements	59
47	False statements	59
48	Personation	59
49	Presenting forged documents	60
50	Improperly witnessing consent to adoption	60
50A	Undue influence	60
51	Authority to prosecute	61

Adoption of Children Act 1964

52	Summary proceedings	61
53	General penalty	61

PART 6—MISCELLANEOUS

54	Registration of orders	61
55	Adopted Children Register	62
56	Sending of memoranda of orders to other places	62
57	Particulars of orders received from other States and countries	62
57A	Assistance to adopters and adopted children	63
58	Hearings to be in camera	63
59	Confidentiality	64
59A	Protection of persons	66
59B	Disclosure of information authorised in certain cases	67
59C	Disclosure of criminal histories	67
60	Proof of adoptions	68
61	Judicial notice of signatures	68
62	Deputy Director	68
62A	Engagement of agents	69
63	Parties to applications under Act	69
64	Practice and procedure upon applications	69
65	Regulations	70
66	Publication of proclamations etc.	71
67	Service of documents	72

SCHEDULE 2 73**PROVISIONS CONCERNING THE ADOPTIONS APPEALS
TRIBUNAL**

1	Tenure of office	73
2	Acting chairperson	73
3	Vacating office	73
4	Casual vacancies	74
5	Sittings of tribunal	74
6	Conduct of tribunal's proceedings	75
7	Appearance before tribunal	75
8	Decision of tribunal	75

9	Preliminary conferences	76
10	Entitlements of tribunal members	76
11	Report by chairperson	76
12	Registrar	77

ENDNOTES

1	Index to Endnotes	78
2	Date to which amendments incorporated	78
3	List of legislation	78
4	List of annotations	80
5	Table of changed titles	87
6	Table of corrected minor errors	87
7	Table of renumbered provisions	87
8	Transitional and savings provisions	89
9	Provisions that have not commenced and are not incorporated into reprint	90

ADOPTION OF CHILDREN ACT 1964

[as amended by all amendments that commenced on or before 24 February 1994²]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Adoption of Children Act 1964*³⁻⁹.

Commencement

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

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

Severability

4. This Act including every proclamation, order in council and regulation hereunder shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof or provision of any proclamation, order in council or regulation hereunder would but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

Savings

5.(1A) Without limiting the operation of the *Acts Interpretation Act 1954*—

- (a) all books, registers and records kept and maintained under the repealed Acts shall be deemed to be so kept and maintained under this Act, and all entries therein shall be deemed to have been made under this Act;
- (b) all certificates and certified copies of and certified extracts from entries in any register kept and maintained under the repealed Acts and issued under the repealed Acts shall be valid and effectual as if issued under this Act;
- (c) every adoption order made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act and may be discharged in accordance with this Act;
- (d) every interim order of adoption made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act until it expires by effluxion of time or is discharged or otherwise determined under this Act;
- (e) every application for an order for the adoption of a child under the repealed Acts that was pending immediately prior to the commencement of this Act may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with, under the provisions of the repealed Acts as if this Act had not come into operation, but an adoption order made pursuant to this paragraph shall have effect as if made under this Act.

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

(3) Subject to subsection (4), sections 28 and 29 (other than subsection (4)) apply in relation to an adoption order made under the

repealed Acts as if this Act had been in force when the order was made and the order had been made under this Act.

(4) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, or to a devolution of property arising upon the death of a person who in respect of that property died intestate before such commencement, an adoption order referred to in subsection (3) has the same effect as if the repealed Acts had not been repealed.

Objective of Act

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

Inherent jurisdiction of Supreme Court preserved

5B. No provision of this Act shall be construed to restrict or prejudice the jurisdiction of the Supreme Court in relation to persons who have not attained the age of 18 years.

Interpretation

6. In this Act—

“**Adopted Children Register**” means the Adopted Children Register made and kept by the Registrar-General under the repealed Acts and continued by and kept under this Act;

“**adoption list**” means any of the lists kept by the Director under section 17;

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

“**assessment**” means an assessment made under this Act by the Director or the Director’s delegate;

“**child**” means a person who had not attained the age of 18 years, or a

person who has attained that age in respect of whom an adoption order has been made;

“Children’s Court” means a Children’s Court constituted under the *Children’s Services Act 1965* by a Magistrate of Children’s Courts, a Stipendiary Magistrate or an acting Stipendiary Magistrate;

“Commonwealth” means the Commonwealth of Australia;

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

- (a) convictions of that person for any offence committed in Queensland or elsewhere not being convictions that have been quashed or set aside; and
- (b) charges made against that person in respect of any offence committed in Queensland or elsewhere that have proceeded to final determination, which has resulted—
 - (i) in respect of an offence committed in Queensland—in the making of a probation order or a community service order under the *Offenders Probation and Parole Act 1980* or legislation repealed by that Act in relation to that person; or
 - (ii) in respect of an offence committed elsewhere—in the making of an order of a description similar to that of the order referred to in subparagraph (i) in relation to that person;

“department” means the department of government responsible for the administration of the *Family Services Act 1987*;

“Director” means the permanent head for the purposes of the *Family Services Act 1987*;

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

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

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

- (a) a person having the custody of the child pursuant to an order of a court made under a law of the Commonwealth or of a State or Territory of the Commonwealth;

(b) a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory of the Commonwealth;

“interim order” means an interim order under Division 5 of Part 3, and, where applicable, includes an interim order of adoption made under the repealed Acts and continued under this Act;

“Minister” means the Minister for Welfare Services or other Minister of the Crown for the time being charged with the administration of this Act, and includes any person who for the time being performs the duties of the Minister;

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

“Public Trustee” means the Public Trustee constituted under the *Public Trustee Act 1978*;

“Registrar-General” means the Registrar-General under the *Registration of Births, Deaths and Marriages Act 1962*, and includes the Deputy Registrar-General under that Act;

“registrar of the Supreme Court” means the registrar of the Supreme Court under the *Supreme Court Act 1867*, and, where applicable, includes the registrar of the Central Court and the registrar of the Northern Court under the *Supreme Court Act 1895*;

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

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

(b) the spouse of a parent of the child, whether natural or adoptive;

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

“Supreme Court” includes a Judge of the Supreme Court;

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

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

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

“**the repealed Acts**” means the Acts and enactments repealed by section 5(1), or any of them;

“**the tribunal**” means the Adoptions Appeals Tribunal from time to time constituted for the purposes of this Act;

PART 2—JURISDICTION CONCERNING ADOPTIONS

Adoption by order of Director

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

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

(3) An application to be authorised to adopt a child made in accordance with the relevant law before the commencement of section 6 of the *Adoption of Children Act Amendment Act 1983* by applicants whose names are included in the adoption list kept by the Director immediately before the commencement of that section shall be deemed to have been made and dealt with in accordance with this Act and such applicants shall be deemed to have become prospective adopters by virtue of their names being transferred to the appropriate list pursuant to section 17(4).

(4) An application to be authorised to adopt a child made in accordance with the relevant law before the commencement of section 6 of the *Adoption of Children Act Amendment Act 1983* by applicants who have not been

considered by the Director to be not fit and proper persons to adopt a child but whose names are not included in the adoption list kept by the Director immediately before the commencement of that section shall be deemed to have been made in accordance with this Act and procedures prescribed by this Act shall be taken in respect of that application.

(5) Where an application to be authorised to adopt a child has been made in accordance with the relevant law before the commencement of section 6 of the *Adoption of Children Act Amendment Act 1983* by a parent, whether natural or adoptive, of the child and the parent's spouse, then, if the applicants so approve—

- (a) the application shall be treated as an application by the applicant who is the parent's spouse; and
- (b) any consent given by the child's other parent, whether natural or adoptive, to the adoption of the child by the applicants jointly shall be deemed to be a consent to the adoption of the child by the applicant who is the parent's spouse; and
- (c) an adoption order may be made in favour of the prospective adopter who is the parent's spouse, alone.

(6) In subsection (5)—

“applicant” or **“applicants”** shall be construed to include an applicant who has become a prospective adopter.

Nexus with Queensland

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

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

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

or, as the case may be, that the child is present in Queensland at the time the order is made.

Rules of private international law not relevant

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

Adoptions Appeals Tribunal

8.(1) There shall be established an Adoptions Appeals Tribunal to be constituted as prescribed.

(2) The tribunal shall be constituted by 3 members of whom 1 shall be the chairperson appointed under subsection (3) and 2 shall be persons appointed to the panel referred to in subsection (3) and selected by the chairperson for the purpose of disposing of a particular matter to be heard by the tribunal.

(3) The Governor in Council may, upon the recommendation of the Minister, by notification published in the Gazette—

- (a) appoint a person to be chairperson of the tribunal; and
- (b) appoint persons, in a number nominated from time to time by the Minister, to constitute a panel of persons to be selected as members of the tribunal.

(3A) A person shall not be appointed under subsection (3) unless the person possesses knowledge or experience appropriate to the proper discharge of the functions as a member of the tribunal.

(4) Except where the Minister otherwise authorises in respect of a particular person, neither the chairperson of the tribunal nor any person appointed to the panel referred to in subsection (3) shall be an officer of the department or a person who in the discharge of the person's duties is accountable to the Director.

(4A) If any person holding an appointment referred to in subsection (3) is an officer of the public service, the person may hold the appointment and act as chairperson or member of the tribunal in addition to any office held by the person in the public service.

(4B) If the chairperson or a member of the tribunal is—

- (a) an officer of the public service; or
- (b) a person who in the discharge of the person's duties is accountable to the Director;

the chairperson or member shall not be accountable in the discharge of his or her duties as such chairperson or member to the Director.

(5) An appointment made under subsection (3) shall be for such period as is specified by the Governor in Council in the appointment.

(5A) Every appointee shall be eligible for reappointment.

(6) The tribunal shall have an official seal and that seal and every order or instrument issued under that seal shall be judicially noticed.

(7) The provisions set out in the Schedule 2 shall govern the tribunal, persons appointed in connection therewith and proceedings thereof so far as those provisions extend.

Jurisdiction of tribunal

8A.(1) The jurisdiction of the tribunal is to hear and determine, subject to this Act, appeals duly made to it in accordance with this Act from assessments and in the exercise of its jurisdiction the tribunal—

- (a) may affirm the assessment; or
- (b) may refer the assessment to the Director for reconsideration, having regard to matters specified by the tribunal; or
- (c) may set aside the assessment and substitute the tribunal's favourable assessment, which shall be deemed to be the assessment of the Director; or
- (d) may, where the tribunal has exercised its jurisdiction under paragraph (c) and the appellant's or appellants' application to become an adoptive parent or adoptive parents relates to a child who is a relative of the appellant or, in the case of 2 appellants, either of them, and subject to subsection (2) order the Director to make an adoption order or an interim order in respect of the child in favour of the appellant or, as the case may be, the appellants;

and the tribunal is hereby invested with the necessary jurisdiction

accordingly.

(2) In the exercise of its jurisdiction under subsection (1) the tribunal is bound by the same prohibitions, restrictions and requirements as bind the Director in the discharge of the Director's functions or duties or the exercise of the Director's powers under this Act and, where necessary, the provisions of this Act shall be construed as if a reference therein to the Director includes a reference to the tribunal.

(3) Where the tribunal has exercised its jurisdiction of subsection (1)(d) no provision of this Act shall apply so as to hinder the Director in giving effect to the tribunal's order.

(4) An order made by the tribunal in exercise of its jurisdiction shall be final and conclusive and, without prejudice to the operation of section 14 where it is appropriate, shall be given effect by the Director and all other persons concerned.

Appeals to tribunal

9.(1) An applicant or a prospective adopter who is aggrieved by an assessment made in respect of the applicant or a prospective adopter under this Act may appeal against that assessment to the tribunal.

(2) Every such appeal shall be instituted within 30 days after notification of the assessment in question is received or is deemed to have been received by the applicant or a prospective adopter who claims to be aggrieved thereby.

(3) Where an assessment has been made in respect of a married couple 1 joint appeal only may be instituted against that assessment.

(4) In disposing of an appeal duly instituted to it the tribunal may inform itself on all relevant matters in such manner as it thinks fit, without being bound by rules of evidence, and receive evidence orally or in writing, on oath, affirmation or by declaration.

(5) The Director shall be a party to every appeal under this section.

PART 3—ADOPTIONS UNDER THIS ACT

Division 1—General

Welfare and interests of child to be paramount

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

Who may be adopted

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

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

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

Persons in whose favour adoption orders may be made

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

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

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

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

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

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

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

Age of adopters.

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

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

unless—

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

Applications

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

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

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

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

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

(4) Applicants or prospective adopters referred to in section 7(3) or (4) shall continue to be subject to criteria of eligibility to have their names entered or remain in the adoption list that were applied to them by the Director immediately before the commencement of section 11 of the *Adoption of Children Act Amendment Act 1983* and shall not be affected by any prescribed criterion of eligibility that was not applicable to them at that time.

Director's assessments

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

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

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

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

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

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

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

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

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

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

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

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

cause the name of the applicant or, in the case of an assessment made in respect of a married couple, the names of both applicants to be removed from the adoption list in which the name is or the names are included.

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

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

(9) Subsection (1) or (1A) do not apply in respect of any person deemed to be a prospective adopter pursuant to section 7(3).

Matters to be regarded for assessment

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

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

Prospective adopters

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

- (a) the Director has made a favourable assessment under

section 13B(1); or

- (b) the tribunal has made a favourable assessment on appeal;

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

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

Further assessment of prospective adopters

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

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

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

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

(2) When the Director is about to make an adoption order in favour of any prospective adopter or prospective adopters whose name or names is or are included in an adoption list referred to in section 17(2)(a) or (c) and in the Director’s opinion such time has elapsed since the making of an assessment pursuant to section 13B or since the making of an interim order in favour of the prospective adopter or prospective adopters that, in the

Director's opinion, it is desirable that an assessment should be made pursuant to this subsection, the Director shall first make an assessment of whether the welfare and interests of the child will be promoted by making the adoption order in favour of the prospective adopter or prospective adopters, and the Director shall not make the adoption order unless the assessment is favourable in all respects.

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

Criminal histories to be disclosed

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

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

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

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

the Director may make the assessment on the basis of the criminal history alone.

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

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

Procedure upon assessments under s 14

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

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

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

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

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

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

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

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

Notice of intention to make adoption order

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

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

Discharge of adoption orders

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

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

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

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

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

- (a) the name of the child; or
- (b) the ownership of property; or

- (c) the custody or guardianship of the child; or
- (d) the domicile of the child.

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

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

whilst the adoption order was in force.

Division 2—Adoption lists

Keeping of lists

17.(1) The Director shall, in accordance with this section, keep lists of the names of persons who are entitled as prescribed to have their names included in an adoption list.

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

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

(3) In this Act—

- (a) the list of applicants referred to in subsection (2)(a) is referred to as the “**Special Needs Children’s Adoption List**”; and

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

(4) As soon as is practicable after the commencement of section 14 of the *Adoption of Children Act Amendment Act 1983* the Director shall transfer from the adoption list kept by the Director immediately before the commencement of that section to the appropriate list required by subsection (2) to be kept by the Director the names of all persons whose names are included in that adoption list, preserving as between persons whose names are transferred to the same appropriate list the order held by those persons on that adoption list.

(5) The Director shall—

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

(6) Where the Director is satisfied that a person who has applied to have the person’s name included in an adoption list is a person whose name is or, within 1 month before the date of the application was included in a similar adoption list kept by a person approved for the purposes of the law of another State or a Territory of the Commonwealth, the Director may treat the application as having been lodged with the Director on the date certified in writing by the person having custody of that list to be the date on which the application by virtue of which the name was included in that list was received or was treated pursuant to the law of that State or Territory as having been received by the Director.

General Children’s Adoption List to be ordinarily observed

18. In making arrangements with a view to the adoption of a child in

respect of whom a general consent has been given or dispensed with and who is not a special needs child and, in particular, in determining which prospective adopter or prospective adopters the Director will approve in the case of such a child the Director shall have regard to—

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

Placement of children with indigenous or ethnic backgrounds

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

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

Division 3—Consents to adoptions

Consents of parents and guardians required to adoptions

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

(2) In the case of a child—

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

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

(3) In the case of a child—

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

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

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

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

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

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

Giving of consents

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

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

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

Consents given under law of another State or of a Territory of the Commonwealth

21. Where—

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

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

Revocation of consents

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

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

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

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

Form of consents

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

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

Defective consents

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

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

child—the instrument of consent was signed before the birth of the child.

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

(3) For the purposes of subsection (2), the Director, if satisfied that no legally qualified medical practitioner was readily available to certify as aforesaid, may be satisfied as to the fit condition of the mother to give the consent as required by that subsection upon the production to the Director of a certificate of a person registered as a nurse under the *Nurses Act 1964*, certifying that, at the time when the instrument of consent was signed by the mother of the child, the mother was in a fit condition to give the consent.

Court may dispense with consents

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

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

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

- (d) that the person cannot, after reasonable inquiry, be found; or
- (e) that the person is in such a physical or mental condition as not to be capable of properly considering the question whether the person should give his or her consent; or
- (f) that the person has abandoned, deserted or persistently neglected

or ill-treated the child; or

- (g) that the person has, for a period of not less than 1 year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (h) that the person has failed to reasonably plan for resumption of care of the child whereby integration of the child in its family is unlikely in the foreseeable future; or
- (i) that there are any other special circumstances that in the Court's opinion make it desirable that an order be made;

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

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

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

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

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

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

(3) An order made under subsection (2) may, on the application of the

Director or the person whose consent was dispensed with, be revoked—

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

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

Consent not required in certain circumstances

25A. Subject to section 26, where—

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

no consent to the adoption is required.

Consent of child

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

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

Provisions concerning Court's jurisdiction—appeals

26A.(1) When a proceeding for the purposes of section 25 or 26 has been commenced in the Childrens Court, any party to the proceeding or any person likely to be affected by any order made in the proceeding may make application to the Supreme Court for an order that the proceeding be removed into the Supreme Court and, if the order is made, the proceeding shall be thereupon removed from the jurisdiction of the Childrens Court accordingly.

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

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

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

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

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

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

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

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

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

(b) a reference 'clerk of petty sessions' shall be construed as a reference 'person having custody of the records of the Childrens

Court’.

Guardianship of child awaiting adoption

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

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

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

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

(3) Subsection (1) does not apply—

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

(4) Where the Director becomes guardian of a child pursuant to this section the Director may extend to and in respect of the child such benefits

as the Director might have extended to or in respect of the child if the child were a child in care within the meaning of the *Children's Services Act 1965* or any Act substituted therefor.

Register of children for adoption

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

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

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

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

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

- (a) an adoption order has not been made in respect of that child within 4 months after the child becomes a child whose name is required to be entered in the register; or
- (b) at any time, the Director is of the opinion that because of the special needs of that child there is little prospect of the child being adopted without considering as a prospective adopter or

prospective adopters either a person or persons whose name or names is or are in the adoption list referred to in section 17(2)(a) or a person or persons who may wish to apply to adopt the child.

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

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

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

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

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

(2) Forthwith after signing an instrument of renunciation under subsection (1) the Director shall send the instrument by registered post to such officer in the other State or Territory concerned together with all consents to the adoption of the child obtained to comply with this Act and

held by the Director, and upon receipt thereof by such officer the Director shall cease to be guardian of the child.

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

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

Director may enter into arrangements

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

Division 4—Effect of adoption orders

General effect of adoption orders

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

upon the making of an adoption order—

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

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

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

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

subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

Effect of orders as regards dispositions of property etc.

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

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

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

(3) Where—

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

that person may, notwithstanding that the instrument could not, apart from this subsection, be revoked or varied, by a like instrument vary the first mentioned instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, and to a devolution of property arising upon the death of a person who in respect of that property died intestate before such commencement, an adoption order

made under this Act has effect as if the repealed Acts had not been repealed and the adoption order had been made under the repealed Acts.

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

Bequest by will to unascertained adopted persons

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

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

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

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

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

(4) If the Director ascertains the name of the adopted person, the Director shall take such steps as are reasonably practicable to ascertain the address or, if the adopted person has died, the date of death of the adopted person and

shall inform the Public Trustee of that name and address or date.

(5) If the Director is unable to ascertain the name of the adopted person, the Director shall so inform the Public Trustee.

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

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

(8) Where the Public Trustee—

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

that statement is, for the purposes of the administration of the estate by the personal representative, conclusive evidence that the adopted person has disclaimed the property.

Names of adopted child

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

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

child's surname.

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

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

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

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

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

Division 5—Interim orders

Making of interim orders

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

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

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

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

Duration of interim orders

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

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

Discharge of interim orders

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

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

PART 4—RECOGNITION OF ADOPTIONS

Definition

36. In this Part—

“country” includes a part of a country.

Recognition of Australian and New Zealand adoptions

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

Recognition of foreign adoptions

38.(1) For the purposes of the laws of Queensland, the adoption of a person (whether before or after the commencement of this Act) in a country (other than New Zealand) outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order under this Act.

(2) This section applies to an adoption in a country if—

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

(3) The Governor in Council may by order in council declare that, in relation to all adoptions or to a particular adoption under the law of a country that is outside the Commonwealth and the Territories of the Commonwealth

and is specified in the order in council, it shall be conclusively presumed that the conditions referred to in subsection (2)(c) or (d) are satisfied.

(3A) Whilst such an order in council subsists, effect shall be given to it according to its tenor.

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

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

(6) A document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority in a country outside the Commonwealth and the Territories of the Commonwealth shall, upon its production, in the absence of proof to the contrary, be sufficient evidence—

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

(7) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country (other than New Zealand) outside the Commonwealth and the Territories of the Commonwealth does not have effect for the purposes of the laws of Queensland.

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

Director to have limited supervision of adopted children

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

- (a) a child is adopted in a country (other than New Zealand) outside

the Commonwealth and the Territories of the Commonwealth, whether or not the adoption is one that pursuant to this Act has the same effect as an adoption order under this Act; and

- (b) the adoption of that child has been in force for a period not exceeding 12 months; and
- (c) the adopter or 1 of the adopters was not, at the time of making the order of adoption in relation to that child, a national or citizen of the country in which the order was made; and
- (d) that child is present in Queensland;

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

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

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

Declarations of validity of foreign adoptions

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

- (2) The persons who may make an application under subsection (1) in

relation to an adoption are the adopted child, the adoptive parent or either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

(3) Where an application is made under this section, a copy of the application shall be served, 21 days at the least before the date fixed for the hearing of the application, on the Director who shall be entitled to intervene in and to become a party to the proceedings concerning the application.

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

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

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

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

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

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

(7) In proceedings in a court in Queensland, being proceedings relating to the rights of a person other than a person referred to in subsection (6)(a)(i) or (ii), the production of a copy of an order made under this section, certified by the Registrar of the Supreme Court to be a true copy, shall be

evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 38 applies.

PART 4A—ACCESS TO IDENTIFYING INFORMATION

Interpretation

39A. In this Part—

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

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

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

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

(a) but for the adoption would be—

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

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

(iii) a grandparent;

of the adopted person;

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

Objections

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

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

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

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

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

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

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

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

(8) A person must not publish or broadcast—

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

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

Maximum penalty—40 penalty units.

Disclosure of certain information

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

- (a) the name of the adopted person's birth parent as at the date

consent to the adoption of the adopted person was given or dispensed with; and

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

the name and the address of the other adopted person last known to the Director;

- (d) if the birth parent has not made an objection under section 39AA(2)(a) that is in force and the birth parent has so requested in writing—the name and the address of the birth parent last known to the Director.

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

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

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

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

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

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

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

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

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

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

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

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

Entitlement to certain records etc.

39C. An adoptive person, adoptive parent, birth parent, or relative who

has received information in respect of a person under section 39B, or has participated in a reunion pursuant to section 39G (being section 39G repealed by the *Adoption of Children Act Amendment Act 1990*), shall be entitled to receive from the Registrar-General, upon presentation to the Registrar-General of an authorisation supplied by the Director and payment of the fees prescribed under the *Registration of Births, Deaths and Marriages Act 1962*—

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

Offence to contact etc.

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

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

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

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

(3) A person shall not claim to act on behalf of or hold himself or herself

out as being willing to act on behalf of another person with a view to contravening subsection (1) or (2).

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

Counsellors

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

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

PART 5—OFFENCES

Territorial application of Part

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

Communication etc. by natural parent with adopted child

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

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

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

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

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

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

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

(5) In this section—

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

Harbouring child taken from adopters

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

Payments in consideration of adoptions etc.

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

- (a) the adoption or proposed adoption of a child; or
- (b) the giving of consent, or the signing of an instrument of consent,

to the adoption of a child; or

- (c) the transfer of possession or custody of a child with a view to the adoption of the child; or
- (d) the making of arrangements with a view to the adoption of a child.

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

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

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

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

Restrictions on advertising

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

- (a) a parent or guardian of a child wishes to have the child adopted; or

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

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

Restrictions on publication of identity of parties

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

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

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

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

Penalty for making unauthorised arrangements

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

(2) Subsection (1) shall not be taken to refer to or include the preparation of an application under this Act for the adoption of a child or any arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by a relative of the child.

False statements

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

Personation

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

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

Presenting forged documents

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

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

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

Improperly witnessing consent to adoption

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

the Commonwealth) unless—

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

Undue influence

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

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

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

Authority to prosecute

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

Summary proceedings

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

(2) A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within

6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

General penalty

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

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

PART 6—MISCELLANEOUS

Registration of orders

54.(1) The Director shall cause a memorandum, in accordance with the prescribed form, of every adoption order made under this Act to be sent to the Registrar-General.

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

(3) Upon receipt of a memorandum or copy of an order sent to the Registrar-General under the preceding provisions of this section, the Registrar-General shall—

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

Adopted Children Register

55. The ‘Adopted Children Register’ made and kept by the Registrar-General under the repealed Acts shall continue and shall be the Adopted Children Register under this Act.

Sending of memoranda of orders to other places

56. Where under this Act an adoption order or an order for the discharge of an adoption order has been made, and the Registrar-General has reason to believe that the birth of the child is registered in another State or in a Territory of the Commonwealth, New Zealand, or in a country specified in a subsisting order in council made under section 38(3), the Register-General shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by the Register-General to be a true memorandum or copy, to be sent to such officer of that State or Territory or country having functions in relation to the registration of births as is prescribed.

Particulars of orders received from other States and countries

57. Where the Registrar-General receives, in relation to a child whose birth is registered in Queensland—

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

the Register-General shall—

- (c) register it, as prescribed, in the Adopted Children Register; and
- (d) make such alterations to, or entries in, the appropriate registers of births as are prescribed.

Assistance to adopters and adopted children

57A.(1) Where an adoption order has been made and it appears to the

Director that the welfare or interests of the child to whom the order relates requires that assistance be given to the adopter or adopters (or either of them) in whose favour the order was made or to such child, the Director may in the Director's discretion give such assistance in such form and for such period as the Director considers appropriate.

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

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

Hearings to be in camera

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

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

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

Confidentiality

59.(1) Every officer of the department engaged in giving effect to this Act and every person engaged by the Director in giving effect to this Act shall, as soon as is practicable after the commencement of section 31 of the *Adoption of Children Act Amendment Act 1983* or, if the officer or person first becomes a person of that description after the commencement of that section, within 7 days after the officer or person becomes a person of that description, take and subscribe the prescribed oath of confidentiality or make the prescribed affirmation of confidentiality and abide by his or her oath or affirmation.

(1A) An oath or affirmation referred to in subsection (1) may be

administered or, as the case may be, taken by any justice of the peace.

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

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

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

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

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

who has been adopted.

(3) In subsection (3)—

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

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

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

except—

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

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

(5) Subsections (3) to (4) do not operate so as to prejudice the entitlement of any person referred to in subsection (2) to access to records of the Director or the tribunal.

(6) A person who—

- (a) permits access to the records of the Director or the tribunal to any person except one authorised by this Act to have such access; or
- (b) not being authorised by this Act to have access to the records of the Director or the tribunal or to a particular part thereof, inspects

any part of those records or, as the case may be, that part or attempts so to do; or

(c) makes a disclosure that is in contravention of this section;

commits an offence against this Act.

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

Protection of persons

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

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

Disclosure of information authorised in certain cases

59B. Notwithstanding the provisions of section 59 or any other provision of this Act, where the Director has entered into working arrangements with—

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

for the purpose of facilitating the adoption in Queensland of children from that country, the Director or any officer of the department authorised by the Director in that behalf either generally or in any particular case may give,

supply or transmit to such government or a person or authority acting under the authority of such government or, as the case may be, to such authority or person with whom the working arrangements subsist any information, report or document that is to be given, supplied or transmitted by the Director to that government, authority or person under the terms of such working arrangements.

Disclosure of criminal histories

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

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

Proof of adoptions

60. In any proceedings in any court in Queensland—

- (a) a document purporting to be either the original or a certified copy of or certified extract from an order effecting an adoption (whether in Queensland or elsewhere); or
- (b) a certified copy of an entry in any public official record of the adoption of children (whether kept in Queensland or elsewhere) or a certificate or extract giving particulars of such an entry and purporting to be signed by the person having the custody of such record;

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

Judicial notice of signatures

61. In proceedings under this Act, or affecting any matter under this Act,

judicial notice shall be taken of the signature of a person who holds or has held or is acting or has acted in any of the following offices, that is to say—

- (a) the Director of the Department of Children's Services;
- (b) the Deputy Director of the Department of Children's Services;
- (c) the permanent head for the purposes of the *Family Services Act 1987*;

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

Deputy Director

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

Engagement of agents

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

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

Parties to applications under Act

63.(1) Where an application is made to the Court under section 16, 25, or 26 the Court may permit such persons as it thinks fit to be joined as parties

to the proceedings for the purpose of opposing the application.

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

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

Practice and procedure upon applications

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

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

Regulations

65.(1) The Governor in Council may, from time to time, make such regulations, not inconsistent with this Act, prescribing all matters and things that are necessary or convenient for carrying out or giving effect to this Act, and without limiting the generality of the foregoing provisions of this subsection, in particular, making provision for or in relation to—

- (a) matters of practice, procedure or evidence in or in connection with proceedings under this Act;
- (b) matters of practice or procedure in or in connection with consents to be used for the purposes of this Act;
- (ba) matters to be regarded in making assessments under this Act;

- (c) forms to be used under this Act and the respective purposes for which such forms or forms to the like effect shall be used and the verification of such forms by means of a statutory declaration under and in accordance with the *Oaths Act 1867*;
- (d) fees payable for the purposes of this Act and waiver of the payment of such fees, wholly or partly;
- (da) fees and expenses payable to witnesses called by the tribunal in proceedings before it;
- (e) the keeping of the adoption lists and the eligibility of persons to have their names entered or remain in those lists, notification to the Director of changes in circumstances that might affect such eligibility and removal of names from those lists as prescribed in the event of—
 - (i) the withdrawal or lapsing of an application to become an adoptive parent; or
 - (ii) the Director's having reasonable cause to believe that any applicant or applicants does not or do not intend to proceed with an application made under this Act;
- (f) the prohibition or regulation of access to the Adopted Children Register or to the register kept by the Registrar-General intituled 'RECORD OF CHILDREN whose Births have been registered in the State of Queensland and who have been transferred under Deed of Adoption' or to entries relating to adopted persons in the registers of births kept under the law of Queensland;
- (g) the inspection of the records of any proceedings under this Act;
- (h) the furnishing of copies or certificates of, or extracts from, matters included in either of the first 2 registers referred to in paragraph (f);
- (i) the making, correction or cancellation of entries relating to persons who have been adopted in the registers of births kept under the law of Queensland;
- (j) penalties, not exceeding 20 penalty units or imprisonment for 3 months, for offences against the regulations.

(2) Regulations may be made under this Act at any time after the passing hereof.

Publication of proclamations etc.

66.(1) Every proclamation, order in council and regulation made under this Act shall—

- (a) be published in the Gazette; and
- (b) upon its publication in the Gazette, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein; and
- (c) take effect from the date of such publication unless, in the case of any such regulation, a later date is specified in that or in any other regulation for its commencement when in such event it shall take effect from that later date; and
- (d) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and, if not, then within 14 sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such proclamation, order in council or regulation has been laid before it disallowing such proclamation, order in council or regulation or part thereof, that proclamation, order in council or regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further proclamation, order in council or regulation.

Service of documents

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

- (a) it is served personally on the person to whom it is directed or, in the case of a notification directed to a married couple, it is served personally on 1 of them or, in either case, on a person authorised by a person to be served, either generally or in a particular case to accept service of documents on the person's behalf;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;

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

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

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

SCHEDULE 2

PROVISIONS CONCERNING THE ADOPTIONS APPEALS TRIBUNAL

Tenure of office

1. The appointment of the chairperson of the tribunal and of a person to the panel of persons from whom may be selected a member of the tribunal—

- (a) shall commence on the date specified in the notification by which it is made; and
- (b) shall, unless it is sooner terminated by vacation of the office in question as prescribed, continue until the expiration of the period for which the chairperson was appointed.

Acting chairperson

2.(1) The Governor in Council may upon the recommendation of the Minister, by notification published in the Gazette, appoint a person whose name is on the panel referred to in clause 1 to act as chairperson of the tribunal during the absence, incapacity or unavailability of the tribunal's chairperson.

(2) Any such appointment may be for a definite or indefinite period (however expressed in the notification of appointment) and shall commence as prescribed by clause 1 with respect to appointments referred to therein and may be revoked by the Governor in Council upon the recommendation of the Minister at any time.

(3) For so long as an appointee acts as chairperson the appointee shall have the functions and duties and may exercise the powers of the chairperson.

Vacating office

3. The office of an appointee referred to in clause 1 or 2 shall become vacant if the appointee—

SCHEDULE 2 (continued)

- (a) attains the age of 65 years or sooner dies;
- (b) resigns office by writing given to the Minister;
- (c) becomes bankrupt, compounds with creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
- (d) is convicted in Queensland of an indictable offence or is convicted elsewhere than in Queensland in respect of an act or omission that if done or made in Queensland would have constituted an indictable offence;
- (e) is removed from office as such appointee by the Governor in Council by notification published in the Gazette on the ground of mental or physical incapacity to discharge the duties of a member of the tribunal or of conduct that in the opinion of the Governor in Council shows the appointee to be unfit to be a member of the tribunal.

Casual vacancies

4.(1) If a casual vacancy occurs in the office of an appointee referred to in clause 1 or 2 during the appointee's term of appointment another person may be appointed to fill the vacancy.

(2) Notwithstanding any other provision of this Act, the appointment of a person to fill a casual vacancy shall be for the balance of the term of appointment of the person's predecessor.

(3) The office of an appointee to a casual vacancy is liable to be vacated as prescribed by clause 3.

Sittings of tribunal

5. The tribunal shall sit at such times and places as are appointed by the chairperson by notice given to the persons who are to constitute the tribunal at the sittings.

SCHEDULE 2 (continued)

Conduct of tribunal's proceedings

6.(1) The chairperson shall preside at every sitting of the tribunal.

(2) A proceeding before the tribunal shall be instituted and conducted in accordance with this Act, so far as it so provides, or, where this Act does not so provide or does not sufficiently so provide, in accordance with directions given by the chairperson either generally or in a particular case.

(3) If, after the commencement of a sitting of the tribunal but before the sitting is concluded by the giving of a decision—

- (a) the office of the chairperson or a member constituting the tribunal becomes vacant under clause 1 or 3, the chairperson or member is to be taken to have continued in office for the purpose only of the completion of the sitting and the giving of a decision;
- (b) the chairperson or a member is unable, by reason of illness, to continue as a member of the tribunal, the remaining members of the tribunal, notwithstanding section 8(2), may continue to sit in that proceeding if they are satisfied that—
 - (i) not continuing to sit in that proceeding will put the parties, or one of them, to unnecessary expense; and
 - (ii) a decision in the proceeding can be reached.

Appearance before tribunal

7.(1) Persons concerned in any proceeding before the tribunal may appear in person and not otherwise.

(2) However, the Director may appear in person or by the Director's nominee who shall not be either counsel or solicitor.

Decision of tribunal

8. A decision of the tribunal shall be that of the majority of its members, shall be given in writing and shall be furnished through the registrar of the tribunal.

SCHEDULE 2 (continued)

Preliminary conferences

9.(1) Before the matter of any proceeding instituted in the tribunal proceeds to a hearing a preliminary conference, presided over by the registrar of the tribunal, shall be held between the parties to the proceeding with a view to—

- (a) establishing the issues between the parties; or
- (b) expediting the hearing of the matter by the tribunal; or
- (c) assisting in the settlement of the matter.

(2) The registrar of the tribunal shall cause to be done all acts and things that are directed to giving effect to all matters arising from the preliminary conference or that are required by the regulations to be done consequent upon a preliminary conference.

Entitlements of tribunal members

10.(1) Persons who constitute a tribunal shall be entitled to such fees and remunerations for attending at sittings of the tribunal as the Governor in Council from time to time approves.

(2) However, if the person is an officer of the public service the person shall not be entitled to any fee or remuneration for attending at sittings of the tribunal during the person's ordinary hours of work.

(2) Persons who constitute a tribunal shall be entitled to be reimbursed such out-of-pocket expenses necessarily incurred by them in performing the duties of a tribunal member as are approved by the chairperson.

Report by chairperson

11. The chairperson of the tribunal shall from time to time—

- (a) report to the Minister when requested by the Minister with respect to the operations of the tribunal; and
- (b) report to the Minister with respect to such matters as the chairperson thinks fit concerning the administration of this Act in respect of matters that are the concern of the tribunal.

SCHEDULE 2 (continued)

Registrar

12.(1) There shall be a registrar of the tribunal who shall have such functions and duties and may exercise such powers as are prescribed.

(2) Every appointment as registrar of the tribunal shall be made by the Governor in Council upon the recommendation of the Minister by notification published in the Gazette.

(2A) The Minister may appoint a person to act as registrar during the absence, incapacity or unavailability of the registrar.

(3) Except where the Minister otherwise authorises in respect of a particular person, the registrar shall not be an officer of the department or a person who in the discharge of the person's duties is accountable to the Director.

(3A) If the registrar is—

- (a) an officer of the public service; or
- (b) a person who in the discharge of the person's duties is accountable to the Director;

the registrar shall not be accountable in the discharge of the registrar's duties as such registrar to the Director.

(4) If an officer of the public service is appointed as registrar of the tribunal the officer may hold that office in addition to any office held by the officer in the public service.

ENDNOTES**1 Index to Endnotes**

	Page
2 Date to which amendments incorporated	78
3 List of legislation	78
4 List of annotations	80
5 Table of changed titles	87
6 Table of corrected minor errors	87
7 Table of renumbered provisions	88
8 Transitional and savings provisions	89
9 Provisions that have not commenced and are not incorporated into reprint . .	90

2 Date to which amendments incorporated

This is the reprint date mentioned in section 5(c) of the Reprints Act 1992. Accordingly, this reprint includes all amendments that commenced operation on or before 24 February 1994. Future amendments of the Adoption of Children Act 1964 may be made in accordance with this reprint under section 49 of the Reprints Act 1992.

3 List of legislation**Adoption of Children Act 1964 No. 54**

date of assent 21 December 1964

ss 1–4, 6, Div 2 of Pt 3, Pt 5 and ss 64–6 commenced 3 July 1985 (see s 2(2))

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

as amended by—

Children’s Services Act 1965 No. 42 s 154 Sch 2

date of assent 23 November 1965

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

Adoption of Children Acts Amendment Act 1967 No. 14

date of assent 5 April 1967

commenced 1 August 1965 (see s 2)

Adoption of Children Act Amendment Act 1972 No. 17

date of assent 19 December 1972

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

Age of Majority Act 1974 No. 57 s 8 Sch

date of assent 27 September 1974

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

Status of Children Act 1978 No. 30 s 14 Sch

date of assent 8 June 1978

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

Adoption of Children Act Amendment Act 1979 No. 22

date of assent 17 May 1979

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

Adoption of Children Act Amendment Act 1981 No. 42

date of assent 12 June 1981

ss 1–2 commenced on date of assent

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

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

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

Adoption of Children Act Amendment Act 1983 No. 26 (as amended by Act No. 35 of 1986 Pt 3; Act No. 6 of 1987; Act No. 32 of 1987 s 69(1), (4) Sch cls 22–5)

date of assent 19 April 1983

ss 1–2 commenced on date of assent

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

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

Adoption of Children Acts and Another Act Amendment Act 1986 No. 35 Pt 2 (as amended by Act No. 32 of 1987 s 69(1), (5) Sch cls 26–7)

date of assent 5 September 1986

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

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

Family Services Act 1987 No. 32 s 69(1) and (3), Sch cls 18–21 (as amended by Act No. 47 of 1988 s 3 Sch 1)

date of assent 30 April 1987

s 69(1), (3) Sch cls 18, 20 and 21 commenced 9 June 1987 (proc pubd Gaz 30 May 1987 p 846)

s 69(1), (3) Sch cl 19 not yet proclaimed into force

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

date of assent 12 May 1988

commenced on date of assent

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

date of assent 25 October 1989
 commenced on date of assent

Adoption of Children Act Amendment Act 1990 No. 8 (as amended by 1991 No. 2 Pt 2)

date of assent 25 May 1990
 s 17 commenced 1 September 1990 (see s 2(2))
 ss 4–5, 15–16, 18, 23–25(a) commenced 1 June 1991 (see s 2(3))
 remaining provisions commenced on date of assent

Adoption Legislation Amendment Act 1991 No. 2 Pt 3

date of assent 28 February 1991
 ss 7–10 commenced 1 June 1991 (see s 1(2))
 remaining provisions commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Parts

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

Savings

s 5 amd 1967 No. 14 s 3

Objective of Act

s 5A ins 1983 No. 26 s 4

Inherent jurisdiction of Supreme Court preserved

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

Interpretation

- s 6** def “**adoption list**” sub 1983 No. 26 s 5(a)
 def “**assessment**” ins 1983 No. 26 s 5(b)
 def “**child**” amd 1974 No. 57 s 8 Sch; 1990 No. 8 s 6(a)
 def “**Children’s Court**” ins 1986 No. 35 s 5(a)
 def “**criminal history**” ins 1986 No. 35 s 5(b)
 def “**department**” ins 1987 No. 32 s 69(1) Sch cl 18
 amd 1988 No. 47 s 3(1) Sch 1
 def “**Director**” sub 1965 No. 42 s 154 Sch 2; 1987 No. 32 s 69(1) Sch
 amd 1988 No. 47 s 3(1) Sch 1
 def “**Father**” om 1978 No. 30 s 14 Sch
 def “**Minister**” sub 1983 No. 26 s 5(c)
 def “**non-citizen child**” ins 1990 No. 8 s 6(b)
 def “**Public Trustee**” ins 1990 No. 8 s 6(b)
 def “**relative**” amd 1978 No. 30 s 14 Sch
 sub 1983 No. 26 s 5(d)
 def “**special needs child**” ins 1983 No. 26 s 5(e) (as sub 1986 No. 35
 s 17(a))
 amd 1990 No. 8 s 6(c)
 def “**Supreme Court**” sub 1983 No. 26 s 5(f) (as sub 1986 No. 35
 s 17(b))
 def “**the Court**” sub 1983 No. 26 s 5(f) (as sub 1986 No. 35 s 17(b))
 def “**the tribunal**” ins 1983 No. 26 s 5(g) (as ins 1986 No. 35 s 17(b))

PART 2—JURISDICTION CONCERNING ADOPTIONS

Pt hdg sub 1983 No. 26 s 6

Adoption by order of Director

s 7 sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(a))

Nexus with Queensland

s 7A ins 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(b))

Rules of private international law not relevant

s 7B ins 1983 No. 26 s 6

Adoptions Appeals Tribunal

prov hdg amd 1983 No. 35 s 6 (as amd 1986 No. 35 s 18(c)(i))

s 8 sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(c)(ii)–(iii); 1987 No. 32
 s 69(1) Sch)

Jurisdiction of tribunal

s 8A ins 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(d))

Appeals to tribunal

s 9 sub 1983 No. 26 s 6 (as amd 1986 No. 35 s 18(e))

Welfare and interests of child to be paramount

s 10 amd 1983 No. 26 s 7

Who may be adopted

s 11 amd 1974 No. 57 s 8 Sch; 1983 No. 26 s 8 (as sub 1986 No. 35 s 19); 1990
 No. 8 s 7

Persons in whose favour adoption orders may be made

s 12 sub 1983 No. 26 s 9 (as amd 1986 No. 35 s 20)

Age of adopters

s 13 sub 1983 No. 26 s 10 (as amd 1986 No. 35 s 21)

Applications

s 13A ins 1983 No. 26 s 11 (as amd 1986 No. 35 s 22(a))

Director's assessments

s 13B ins 1983 No. 26 s 11 (as amd 1986 No. 35 s 22(b))

Matters to be regarded for assessment

s 13C ins 1983 No. 26 s 11 (as sub 1986 No. 35 s 22(c))

Prospective adopters

s 13D ins 1983 No. 26 s 11 (as ins 1986 No. 35 s 22(d))

Further assessment of prospective adopters

s 14 amd 1974 No. 57 s 8 Sch
sub 1983 No. 26 s 12 (as amd 1986 No. 35 s 23)

Special assessment for adoption of mature person

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

Criminal histories to be disclosed

s 14B prev s 14B renum as s 14C 1983 No. 26 s 13 (as amd 1986 No. 35 s 24(c))
pres s 14B ins 1983 No. 26 s 13 (as ins 1986 No. 35 s 24(d))

Procedure upon assessments under s 14

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

Discharge of adoption orders

s 16 amd 1974 No. 57 s 8 Sch; 1981 No. 42 s 3

Division 2—Adoption lists

Div hdg sub 1983 No. 26 s 14

Keeping of lists

s 17 sub 1983 No. 26 s 14 (as amd 1986 No. 35 s 25)

General Children's Adoption List to be ordinarily observed

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

Placement of children with indigenous or ethnic backgrounds

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

Consents of parents and guardians required to adoptions

s 19 amd 1965 No. 42 s 154 Sch 2; 1978 No. 30 s 14 Sch; 1979 No. 22 s 3;
1990 No. 8 s 10

Giving of consents

s 20 amd 1983 No. 26 s 16 (as sub 1986 No. 35 s 27)

Form of consents

s 23 amd 1983 No. 26 s 16A (as ins 1986 No. 35 s 28)

Court may dispense with consents

s 25 amd 1983 No. 26 s 17 (as amd 1986 No. 35 s 29)

Consent not required in certain circumstances

s 25A ins 1979 No. 22 s 4
 amd 1986 No. 35 s 6; 1990 No. 8 s 11

Consent of child

s 26 amd 1983 No. 26 s 18 (as sub 1986 No. 35 s 30)

Provisions concerning court's jurisdiction—appeals

s 26A ins 1983 No. 26 s 19 (as sub 1986 No. 35 s 31)

Guardianship of child awaiting adoption

s 27 amd 1965 No. 42 s 154 Sch 2
 sub 1972 No. 17 s 3
 amd 1983 No. 26 s 20

Register of children for adoption

s 27A prev s 27A renum as s 27B 1983 No. 26 s 22
 pres s 27A ins 1983 No. 26 s 21 (as amd 1986 No. 35 s 32; 1987 No. 6 s 5)

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

s 27B pres s 27B (prev s 27A) ins 1972 No. 17 s 4
 renum as s 27B 1983 No. 26 s 22

Director may enter into arrangements

s 27C ins 1990 No. 8 s 12

General effect of adoption orders

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

Effect of orders as regards dispositions of property etc.

s 29 amd 1967 No. 14 s 4

Bequest by will to unascertained adopted persons

s 29A ins 1990 No. 8 s 13

Effect of order on domicile

s 31 om 1981 No. 42 s 4

Making of interim orders

s 33 amd 1983 No. 26 s 24 (as amd 1986 No. 35 s 34)

Discharge of interim orders

s 35 amd 1965 No. 42 s 154 Sch 2; 1983 No. 26 s 25; 1989 No. 103 s 3 Sch

Recognition of Australian and New Zealand adoptions

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

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

Recognition of foreign adoptions

s 38 amd 1972 No. 17 s 6; 1981 No. 42 s 5; 1990 No. 8 s 14

Director to have limited supervision of adopted children

s 38A ins 1981 No. 42 s 6

Declarations of validity of foreign adoptions

s 39 amd 1981 No. 42 s 7

PART 4A—ACCESS TO IDENTIFYING INFORMATION

Pt hdg ins 1986 No. 35 s 7

sub 1990 No. 8 s 15

Interpretation

39A ins 1986 No. 35 s 7

def “**adopted person**” amd 1990 No. 8 s 16(b)

def “**adoptive parent**” amd 1989 No. 103 s 3 Sch

def “**register**” om 1990 No. 8 s 16(a)

def “**relative**” sub 1990 No. 8 s 16(c)

Objections

s 39AA ins 1990 No. 8 s 17

sub 1991 No. 2 s 6(1)

Disclosure of certain information

39B ins 1986 No. 35 s 7 (as amd 1987 No. 32 s 69(1) Sch)

sub 1990 No. 8 s 18

amd 1991 No. 2 s 7

Entitlement to certain records etc.

39C ins 1986 No. 35 s 7

sub 1990 No. 8 s 18

amd 1991 No. 2 s 8

Offence to contact etc.

39D ins 1986 No. 35 s 7

sub 1990 No. 8 s 18

amd 1991 No. 2 s 9

Counsellors

s 39E ins 1986 No. 35 s 7

sub 1990 No. 8 s 18

Crown, etc., not liable

39F ins 1986 No. 35 s 7

sub 1990 No. 8 s 18

om 1991 No. 2 s 10

Arrangement of reunions

s 39G ins 1986 No. 35 s 7

om 1990 No. 8 s 18

Arrangement of reunions in absence of adoptive parents’ particulars

s 39H ins 1986 No. 35 s 7

om 1990 No. 8 s 18

Modes of reunion

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

Court orders affecting matters within purview of this Part

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

Revocation of order under s 39J(2)

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

Territorial application of Part

s 40 amd 1990 No. 8 s 19

Communication etc. by natural parent with adopted child

prov hdg sub 1990 No. 8 s 20(a)
s 41 sub 1972 No. 17 s 7
amd 1983 No. 26 s 26; 1986 No. 35 s 10; 1990 No. 8 s 20(b)–(c)

Restriction on placing or receiving child with a view to adoption

s 41A ins 1987 No. 32 s 69(1) Sch

Harbouring child taken from adopters

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

Payments in consideration of adoptions etc.

s 43 amd 1972 No. 17 s 12; 1986 No. 35 s 10

Restrictions on advertising

s 44 amd 1972 No. 17 s 12; 1986 No. 35 s 10

Restrictions on publication of identity of parties

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

Penalty for making unauthorised arrangements

s 46 amd 1972 No. 17 s 12; 1986 No. 35 s 10

False statements

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

Personation

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

Presenting forged documents

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

Improperly witnessing consent to adoption

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

Undue influence

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

General penalty

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

Sending of memoranda of orders to other places

- prov hdg** amd 1972 No. 17 s 8(a)
s 56 amd 1972 No. 17 s 8(b)

Particulars of orders received from other States and countries

- s 57** sub 1972 No. 17 s 9

Assistance to adopters and adopted children

- s 57A** ins 1981 No. 42 s 8

Hearings to be in camera

- s 58** sub 1983 No. 26 s 30 (as amd 1986 No. 35 s 38)

Confidentiality

- s 59** sub 1972 No. 17 s 10
 amd 1983 No. 26 s 31 (as sub 1986 No. 35 s 39; as amd 1987 No. 6 s 6;
 1987 No. 32 s 69(1) Sch)

Protection of persons

- prov hdg** amd 1983 No. 26 s 32(a) (as sub 1986 No. 35 s 40)
s 59A ins 1972 No. 17 s 11
 amd 1983 No. 26 s 32(b)–(d) (as sub 1986 No. 35 s 40)

Disclosure of information authorised in certain cases

- s 59B** ins 1979 No. 22 s 5
 sub 1981 No. 42 s 9
 amd 1987 No. 32 s 69(1) Sch

Disclosure of criminal histories

- s 59C** ins 1986 No. 35 s 11 (as amd 1987 No. 32 s 69(1) Sch)

Judicial notice of signatures

- s 61** amd 1965 No. 42 s 154 Sch 2; 1987 No. 32 s 69(1) Sch; 1988 No. 47
 s 3(1) Sch 1

Deputy Director

- s 62** amd 1965 No. 42 s 154 Sch 2

Engagement of agents

- s 62A** ins 1986 No. 35 s 12
 amd 1990 No. 8 s 23

Parties to applications under Act

- s 63** sub 1983 No. 26 s 33 (as sub 1986 No. 35 s 41)
 amd 1990 No. 8 s 24

Practice and procedure upon applications

- s 64** sub 1986 No. 35 s 13

Regulations

s 65 amd 1981 No. 42 s 10; 1983 No. 26 s 34 (as sub 1986 No. 35 s 42; as amd 1987 No. 6 s 7; 1987 No. 32 s 69(1) Sch); 1990 No. 8 s 25

Service of documents

s 67 ins 1983 No. 26 s 35

SCHEDULE 1—REPEAL

om (see s 40 RA)

SCHEDULE 2—PROVISIONS CONCERNING THE ADOPTIONS APPEALS TRIBUNAL

ins 1983 No. 26 s 36 (as amd 1986 No. 35 s 43; 1987 No. 32 s 69(1) Sch) amd 1989 No. 103 s 3 Sch; 1990 No. 8 s 26

5 Table of changed titles

TABLE OF CHANGED TITLES
under section 23A of the Reprints Act 1992

Old	New	Reference provision
the Children's Court	the Childrens Court	s 28 Childrens Court Act 1992
Commissioner of Police	Commissioner of the Police Service	s 11.1(1)(b) Police Service Administration Act 1990
member of the police force	police officer	s 11.1(1)(c) Police Service Administration Act 1990 (see also s 1.4)

6 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS
under section 44 of Reprints Act 1992

Provision	Description
s 17(4)	ins 'the' before 'Adoption of Children Act Amendment Act 1983'
s 39B(7)	om 'section (1)' ins 'subsection (1),'

7 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under section 43 of Reprints Act 1992

Previous	Renumbered as
5(1) (2nd sentence)	5(1A)
7(5) (2nd sentence)	7(6)
8(3) (2nd sentence)	8(3A)
8(4) (2nd sentence)	8(4A)
8(4) (3rd sentence)	8(4B)
8(5) (2nd sentence)	8(5A)
13B(1) (2nd sentence)	13B(1A)
13B(2) (2nd sentence)	13(2A)
13B(3) (2nd sentence)	13(3A)
14(1) (2nd sentence)	14(1A)
14C(1) (2nd sentence)	14C(1A)
25(1) (1st unnum para)	25(1)(a)
25(1) (2nd unnum para)	25(1)(b)
25(1) (3rd unnum para)	25(1)(c)
25(1)(a)	25(1)(d)
25(1)(b)	25(1)(e)
25(1)(c)	25(1)(f)
25(1)(d)	25(1)(g)
25(1)(e)	25(1)(h)
25(1)(f)	25(1)(i)
26 (1st sentence)	26(1)
26 (2nd sentence)	26(2)
26A (2nd sentence)	26A(1A)
26A(2) (2nd sentence)	26A(2A)
26A(3) (2nd sentence)	26A(3A)
26A(3) (3rd sentence)	26A(3B)
27(2) (2nd sentence)	27(2A)
38(3) (2nd sentence)	38(3A)
39(3) (2nd sentence)	39(3A)
53 (1st sentence)	53(1)
53 (2nd sentence)	53(2)
59(1) (1st sentence)	59(1A)
59(3) (2nd sentence)	59(3A)
59(4) (2nd sentence)	59(4A)
59A (1st sentence)	59A(1)
59A (2nd sentence)	59A(2)
64 (1st sentence)	64(1)
64 (2nd sentence)	64(2)
65(1)(d) (2nd part)	65(1)(da)

Schedule	
2 (1st sentence)	2(1)
2 (2nd sentence)	2(2)
2 (3rd sentence)	2(3)
4 (1st sentence)	4(1)
4 (2nd sentence)	4(2)
4 (3rd sentence)	4(3)
7 (1st sentence)	7(1)
7 (2nd sentence)	7(2)
9(1) (1st unnum para)	9(1)(a)
9(1) (2nd unnum para)	9(1)(b)
9(1) (3rd unnum para)	9(1)(c)
10(1) (2nd sentence)	10(1A)
12(3) (2nd sentence)	12(3A)

8 Transitional and savings provisions

Section 4 of the Adoption of Children Act Amendment Act 1990 provides—

Transitional

4.(1) Where, pursuant to Part 4A of the Principal Act, prescribed particulars in relation to a person were entered in the Adoption Contact Register before 1 March, 1991—

- (a) in the Director within the meaning of the Principal Act, if he is satisfied that a reunion could have been arranged immediately before 1 March, 1991, in accordance with that Part, notwithstanding the repeal of sections 39G, 39H and 39I of the Principal Act, may continue to arrange a reunion as provided for in those sections as if those sections had continued in force;
- (b) except as provided in paragraph (a), a person whose prescribed particulars are so entered shall, on or after 1 March, 1991, only be entitled to have disclosed to him information of the kind referred to in section 39B as provided for in section 18 of this Act on application made in accordance with that section 39B.

(2) Except as provided in subsection (1), the Director within the meaning of the Principal Act is under no duty to arrange a reunion in accordance with the repealed section 39G of the Principal Act.

(3) Section 20 of the *Acts Interpretation Act 1964–1989* is to be read and construed subject to subsection (1) and (2).

Section 6(2) of the Adoption Legislation Amendment Act 1991 provides—

(2) A notification lodged, or purporting to have been lodged, under section 39AA(2) of the Principal Act before the commencement of this section has effect after that commencement as if it were an objection made under section 39AA(2)(a) of the Principal Act as amended by this Part.

9 Provisions that have not commenced and are not incorporated into reprint

The following provision is not incorporated in this reprint because it had not commenced before the reprint date (see s 5(c) Reprints Act 1992).

Section 69(1), (3) Schedule (so far as it inserts section 41A) of the Family Services Act 1987 reads as follows—

New s. 41A. Restriction on placing or receiving child with a view to adoption.

19. Insert after section 41 the following section—

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

‘41A.(1) A person who, for the time being, has a child in that person’s care whether by virtue of being a father, mother, relative or guardian of the child or otherwise, shall not place the child in the care of any other person with a view to the adoption of the child by that other person unless—

- (a) the Director has first approved thereof; or
- (b) that other child is a father, mother or relative of the child.

(2) A person shall not receive into his care a child with a view to the adoption of the child by that person unless—

- (a) the Director has first approved thereof; or
- (b) the person is a father, mother or relative of the child.’.

