

Queensland



ADOPTION OF CHILDREN AMENDMENT ACT 2002

Act No. 21 of 2002

Queensland



ADOPTION OF CHILDREN AMENDMENT ACT 2002

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Queensland



Adoption of Children Amendment Act 2002

Act No. 21 of 2002

An Act to amend the *Adoption of Children Act 1964*, and for other purposes

[Assented to 17 May 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Adoption of Children Amendment Act 2002*.

2 Commencement

Part 2 and schedule 1 commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF ADOPTION OF CHILDREN ACT 1964

3 Act amended in pt 2 and sch 1

This part and schedule 1 amend the *Adoption of Children Act 1964*.

4 Amendment of s 6 (Definitions)

(1) Section 6, definitions “adoption list” and “Commonwealth”—
omit.

(2) Section 6—

insert—

‘ “**adopted child**” see section 7(2).

“**adopter**” or “**adopters**” see section 7(2).

“**adoption list**” means—

- (a) the Special Needs Children’s Adoption List; or
- (b) the Relative Children’s Adoption List.

“**assessment register**” see section 17(7)(d).

“**closure day**” see section 13AB(4)(b).

“**expression of interest register**” see section 17(7)(c).

“**invitation**” means an invitation, made by the chief executive under section 13AB, to express interest in being assessed as suitable to be a prospective adopter.

“**prospective adopter**” see section 13D(2).

“**Relative Children’s Adoption List**” see section 17(7)(b).

“**Special Needs Children’s Adoption List**” see section 17(7)(a).’.

5 Amendment of s 7 (Adoption by order of chief executive)

Section 7(1), from ‘upon an application’—

omit, insert—

‘under this Act.’.

6 Replacement of s 13A (Applications)

Section 13A—

omit, insert—

‘Division 1A—Purpose of division, applications, invitations, expressions of interest, assessment after expression of interest and related matters

‘13A Purposes of division

‘(1) This division’s purposes include making provision for—

- (a) a process for persons to apply to adopt children if an adoption list must be kept for the persons under section 17(1)(a); and
- (b) a process for persons to express an interest in being assessed as suitable to be prospective adopters of children if a register must be kept for the persons under section 17(1)(b); and
- (c) processes for assessing the suitability of persons to become prospective adopters if the persons names are in an adoption list, the expression of interest register or assessment register; and
- (d) processes for deciding about adoptive placements for children.

‘(2) The processes mentioned in subsection (1)(b), (c) and (d) include—

- (a) keeping a register of persons who express an interest in being assessed as suitable to be prospective adopters, and a register of persons who are prospective adopters; and
- (b) moderating the entry of the names of persons in the registers; and
- (c) giving precedence to the needs of children requiring adoptive placements; and
- (d) enabling the chief executive, as the chief executive considers necessary for meeting the placement needs of a particular child when making a decision about the adoption of the child, to consider the suitability of persons named in the assessment register or the expression of interest register.

‘13AA Application for adoption of a special needs child or a child who is a relative

‘(1) A person who wishes to adopt a special needs child, or a child of whom the person is a relative, may apply to the chief executive to become an adoptive parent and to have the person’s name entered in the adoption list relevant to the application.

‘(2) The application must be in the form approved by the chief executive.

‘(3) The applicant is entitled to have the applicant’s name entered in the adoption list relevant to the application.

‘(4) However, the chief executive must remove the person’s name from the adoption list if—

- (a) the person is, as prescribed under a regulation, ineligible to have the person’s name entered in the adoption list; or
- (b) the person does not comply with a requirement prescribed under a regulation.

‘(5) A married couple may make a single application but both of their names must be removed from the adoption list if 1 of their names must be removed from the list under subsection (4).

‘(6) Within 14 days after the removal of a person’s name from the adoption list, the chief executive must give written notice to the person of the removal.

‘(7) The notice must state—

- (a) the reasons for the decision to remove the person’s name; and

- (b) that the person may apply to the tribunal to have the decision reviewed; and
- (c) how the person may apply to the tribunal for the review, including the time by which the person must make the application.

‘13AB Chief executive must publicly invite persons to express interest in being assessed as suitable to be prospective adopters

‘(1) This section applies if the chief executive considers it necessary to ensure the placement needs of children are met by increasing the number of persons whose names are entered in the expression of interest register.

‘(2) The chief executive must invite persons to express interest in being assessed as suitable to be prospective adopters.

‘(3) The invitation must be made by notice in a newspaper circulating throughout the State and also may be made in other ways the chief executive considers appropriate.

‘(4) The invitation must state—

- (a) how a person must express the person’s interest; and
- (b) the day by which expressions of interest must be received by the chief executive for the invitation (the “**closure day**”).

‘(5) The chief executive must not include a person’s name in an expression of interest register unless—

- (a) the person, under this Act, expressed an interest in being assessed as suitable to be a prospective adopter in response to an invitation under this section; and
- (b) the person’s expression of interest was received by the closure day for the invitation.

‘(6) Subsection (5) is subject to sections 17(6) and 71.¹

1 Section 17 (Keeping of adoption lists, expression of interest register and assessment register) and 71 (Transfer of names from the General Children’s Adoption List or Foreign Children’s Adoption List)

‘13AC Inclusion of person’s name in expression of interest register

‘(1) A person whose expression of interest is received by the chief executive by the closure day for the relevant invitation is entitled to have the person’s name entered in the expression of interest register.

‘(2) However, the chief executive must remove the person’s name from the register if—

- (a) the person is, as prescribed under a regulation, ineligible to have the person’s name entered in the register; or
- (b) the person does not comply with a requirement prescribed under a regulation.

‘(3) Within 14 days after the removal of a person’s name from the register, the chief executive must give written notice to the person of the removal.

‘(4) The notice must state—

- (a) the reasons for the decision to remove the person’s name; and
- (b) that the person may apply to the tribunal to have the decision reviewed; and
- (c) how the person may apply to the tribunal for the review, including the time by which the person must make the application.

‘13AD Information to be given to each person who expresses interest in being assessed as suitable to be a prospective adopter

‘(1) This section applies to each person—

- (a) who, under an invitation, expresses interest in being assessed as suitable to be a prospective adopter; and
- (b) whose name has not been removed from the expression of interest register as mentioned in section 13AC(2).

‘(2) The chief executive must give to the person a document—

- (a) stating the estimated number and characteristics of children needing adoptive placements; and
- (b) explaining the assessment and selection processes relating to adopters; and
- (c) stating the fees associated with the assessment process.

‘13AE Assessments after person’s name entered in adoption list

‘(1) As soon as practicable after an applicant’s name is entered in an adoption list, the chief executive must make an assessment under section 13B about the applicant.

‘(2) If the applicant has made application to become an adoptive parent of a child of whom the applicant is a relative, the chief executive need not make the assessment until all consents necessary to the making of an adoption order for the child have been obtained or dispensed with or the chief executive has been notified as mentioned in section 25(2A).²

‘(3) If an applicant has applied to become an adoptive parent of a special needs child, or a special needs child of a particular description, the chief executive need not make the assessment until a special needs child, or a special needs child of that particular description, requires an adoption placement.

‘13AF Assessments required to meet anticipated placement needs of children

‘(1) At least once in each financial year, the chief executive must decide the number of persons that, in the chief executive’s opinion, is reasonable to assess in the year (the “**reasonable number**”) to meet the anticipated placement needs of children to which the expression of interest register relates.

‘(2) As the chief executive considers necessary during a financial year, the chief executive may decide another number that is reasonable to assess in the year (also the “**reasonable number**”).

‘(3) In deciding the reasonable number under subsection (1) or (2), the chief executive must have regard to—

- (a) placement needs of children in previous years; and
- (b) information received from other jurisdictions; and
- (c) resources required to ensure the welfare and interests of children are protected; and
- (d) the number of prospective adopters and the diversity of their characteristics; and
- (e) another matter the chief executive considers relevant.

2 Section 25 (Court may dispense with consents)

‘(4) For each financial year, the chief executive must, from the persons whose names are entered in the expression of interest register, assess a sufficient number of persons to ensure there is, at least, the reasonable number of persons for whom there is a favourable assessment.’.

7 Amendment of s 13B (Chief executive’s assessments)

(1) Section 13B(1), (1A), (2) and (2A)—

omit.

(2) Section 13B(3) to (8)—

renumber as section 13B(4) to (9).

(3) Section 13B—

insert—

‘(1) This section applies to an assessment required under section 13AE or 13AF.

‘(2) The assessment must decide whether—

- (a) for a person whose name is in an adoption list—the welfare and interests of a child to be adopted will be promoted by making an adoption order in favour of the person; or
- (b) for a person whose name is in the expression of interest register—the person is of good repute and is a fit and proper person to become an adoptive parent.

‘(3) If a married couple has done either of the following, the chief executive may make 1 assessment of both persons—

- (a) made a joint application;
- (b) jointly expressed an interest in being assessed as suitable to be prospective adopters.’.

(4) Section 13B(4), as renumbered, ‘made under subsection (1) or (1A) to the applicant’—

omit, insert—

‘under this section to the person’.

(5) Section 13B(4), as renumbered, ‘to an applicant or a’—
omit, insert—

‘to the person or’.

(6) Section 13B(5)(a), as renumbered, ‘of the applicants’—
omit, insert—

‘of the couple’.

(7) Section 13B(5)(b), as renumbered—
omit, insert—

‘(b) in the case of a notification to a person who is a spouse—the person or the other spouse;’.

(8) Section 13B(5) and (6), as renumbered, ‘(3)’—
omit, insert—

‘(4)’.

(9) Section 13B(7), as renumbered, from ‘subsection (1)’ to ‘an applicant’—

omit, insert—

‘this section that is unfavourable to a person,’.

(10) Section 13B(7)(b), as renumbered, after ‘application’—
insert—

‘or expression of interest’.

(11) Section 13B(7), as renumbered, from ‘the applicant’ to ‘list’—
omit, insert—

‘the person or, if the assessment relates to a married couple, the names of both of them, to be removed from the adoption list or the expression of interest register’.

(12) Section 13B(8), as renumbered, from ‘of applicants’ to ‘the order’—

omit, insert—

‘of persons whose names are entered in the Relative Children’s Adoption List, the chief executive must try to make the assessment under this section in the order’.

(13) Section 13B(8), as renumbered, from ‘the applicant’ to ‘joint applicants’—

omit, insert—

‘the person due to be assessed so approves or, in the case of a married couple that is’.

(14) Section 13B(9), as renumbered, from ‘an applicant’ to ‘section 17(2)(a)’—

omit, insert—

‘a person named in the Special Needs Children’s Adoption List’.

(15) Section 13B(9), as renumbered, ‘that applicant’—

omit, insert—

‘that person’.

8 Amendment of s 13C (Matters to be regarded for assessment)

(1) Section 13C(b)—

renumber as section 13C(c).

(2) Section 13C(a)—

omit, insert—

‘(a) all matters mentioned in sections 12 and 13³; and

(b) all matters prescribed under a regulation as matters to have regard to in making an assessment of a person named in the relevant adoption list or the expression of interest register; and’.

(3) Section 13C(c), as renumbered, ‘referred to in section 17(2)(a) or (c)’—

omit.

9 Replacement of s 13D (Prospective adopters)

Section 13D—

omit, insert—

3 Sections 12 (Persons in whose favour adoption orders may be made) and 13 (Age of adopters)

‘13D What happens after favourable assessment

‘(1) This section applies if —

- (a) the chief executive has made a favourable assessment under section 13B about—
 - (i) an applicant under section 13AA;⁴ or
 - (ii) a person who expressed interest in being assessed as suitable to be a prospective adopter in response to an invitation; or
- (b) on a review of a decision of the chief executive about a person, the tribunal has, under the *Children Services Tribunal Act 2000*, section 38(1)(b), set aside the decision and substituted its own decision making a favourable assessment about the person.

‘(2) The person about whom the favourable assessment is made is a **“prospective adopter”**.

‘(3) For each prospective adopter, the chief executive must—

- (a) make an appropriate notation in the adoption list in which the person is named that states the person is a prospective adopter; or
- (b) enter the person’s name in the assessment register as a prospective adopter.

‘(4) If the chief executive enters a person’s name in the assessment register as a prospective adopter, the chief executive must remove the person’s name from the expression of interest register.

‘13E Ineligibility after person’s name entered in assessment register

‘(1) This section applies to a person at any time after the person’s name is entered in the assessment register as a prospective adopter and before an adoption order is made relating to the person.

‘(2) The chief executive must remove the person’s name from the assessment register if—

- (a) the person is, as prescribed under a regulation, ineligible to have the person’s name remain in the register; or

4 Sections 13B (Chief executive’s assessments) and 13AA (Application for adoption of a special needs child or a child who is a relative)

- (b) the person does not comply with a requirement prescribed under a regulation.

‘(3) Within 14 days after the removal of a person’s name from the register, the chief executive must give written notice to the person of the removal.

‘(4) The notice must state—

- (a) the reasons for the decision to remove the person’s name; and
(b) that the person may apply to the tribunal to have the decision reviewed; and
(c) how the person may apply to the tribunal for the review, including the time by which the person must make the application.’

10 Amendments of s 14 (Further assessment of prospective adopters)

(1) Section 14(1), from ‘in an adoption list’ to ‘or (d)’—

omit, insert—

‘in the assessment register’.

(2) Section 14(2), ‘referred to in section 17(2)(a) or (c)’—

omit.

11 Amendments of s 14B (Criminal histories to be disclosed)

(1) Section 14B(1)—

omit, insert—

‘(1) This section applies to each of the following persons—

- (a) a person who has applied, under section 13AA,⁵ to become an adoptive parent and to have the person’s name entered in an adoption list but who has not been assessed as a prospective adopter;
(b) a person who expressed an interest in being assessed as suitable to be a prospective adopter;

5 Section 13AA (Application for adoption of a special needs child or a child who is a relative)

- (c) a person who is a prospective adopter and whose name is in an adoption list or the assessment register.

‘(1A) A person to whom this section applies must, if asked by the chief executive, disclose to the chief executive the person’s criminal history to the extent the chief executive considers is necessary to enable a proper assessment to be made of the person as a prospective adopter or under section 14.’

(2) Section 14B(3)(a), ‘an adoption list referred to in section 17(2)(b) or (d)’—

omit, insert—

‘the expression of interest register’.

(3) Section 14B(3)(b), ‘referred to in section 17(2)(a) or (c)’—

omit.

(4) Section 14B—

insert—

‘(5) The chief executive must destroy a person’s criminal history if the chief executive considers it is no longer necessary for this Act.’

12 Amendment of s 14C (Procedure upon assessments under s 14)

(1) Section 14C(3), from ‘to the prospective adopter’ to ‘the chief executive shall’—

omit, insert—

‘to a person, the chief executive must’.

(2) Section 14C(3), from ‘name of the prospective adopter’ —

omit, insert—

‘person’s name or, in the case of a married couple, both their names to be removed from the adoption list or assessment register in which the person’s name or persons’ names were entered.’

13 Amendment of s 14D (Reviews by tribunal about adoption lists and assessments)

(1) Section 14D, heading, after ‘adoption lists’—

insert—

‘, expression of interest register, assessment register’.

(2) Section 14D(1)(a)—

omit, insert—

- ‘(a) makes a decision that is the ground for the removal of a person’s name from an adoption list, the expression of interest register or the assessment register, other than the removal of a person’s name from the expression of interest register under section 13D(4);⁶ or’.

14 Replacement of pt 3, div 2, hdg

Part 3, division 2, heading—

omit, insert—

‘Division 2—Adoption lists, expression of interest register and assessment register’.

15 Amendment of s 17 (Keeping of lists)

(1) Section 17, heading—

omit, insert—

‘17 Keeping of adoption lists, expression of interest register and assessment register’.

(2) Section 17(1)—

omit, insert—

‘(1) The chief executive must, under this section, keep—

- (a) lists of the names of persons who are entitled, as prescribed, to have their names entered in an adoption list; and
- (b) registers of the names of persons who are entitled, as prescribed, to have their names entered in the expression of interest register or the assessment register.’.

⁶ Section 13D(4) states—

(4) If the chief executive enters the person’s name in the assessment register as a prospective adopter, the chief executive must remove the person’s name from the expression of register.

(3) Section 17(2)(b) and (d)—

omit.

(4) Section 17(2)(c)—

renumber as section 17(2)(b).

(5) Section 17(3)—

omit, insert—

‘(3) For children other than children mentioned in subsection (2)(a) and (b)—

- (a) a register must be kept of persons who, under this Act, have expressed an interest in being assessed as suitable to be prospective adopters; and
- (b) a register must be kept of persons for whom there have been favourable assessments by the chief executive, under section 13B or 14, or by the tribunal on reviews, that the persons are of good repute and fit and proper persons to become adoptive parents.’

(6) Section 17(5)(b)—

omit, insert—

- ‘(b) keep, for each adoption list and register, the particulars the chief executive considers necessary about each person whose name is entered in the list or register and a description of children that the person’s application or expression of interest relates to.’

(7) Section 17(5)—

renumber as section 17(4).

(8) Section 17(6)—

omit, insert—

‘(5) If—

- (a) a person makes an application under section 13AA; and
- (b) the person’s name is or, within 1 month before the date of the application, was included in a similar list (the “**interstate list**”) kept by a person approved for the purposes of the law of another State or a Territory of the Commonwealth;

the application is taken to be an application made to the chief executive on the day certified, in writing, by the person having custody of the interstate

list to be the day on which the person's application to be included in the interstate list was received or was treated, under the interstate law, as having been received.

(6) If—

- (a) a person expresses interest in being assessed as suitable to be a prospective adopter even though the person's expression of interest is not in response to an invitation; and
- (b) the person's name is or, within 1 month before the date of the expression of interest, was included in a similar register, kept by a person approved for the purposes of the law of another State or a Territory of the Commonwealth;

the expression of interest is taken to be an expression of interest received by the chief executive in response to an invitation with a closure day that is the day after the day on which the chief executive received the expression of interest.

(7) In this Act—

- (a) the list of applicants mentioned in subsection (2)(a) is the **“Special Needs Children's Adoption List”**; and
- (b) the list of applicants mentioned in subsection (2)(b) is the **“Relative Children's Adoption List”**; and
- (c) the register of persons mentioned in subsection (3)(a) is the **“expression of interest register”**; and
- (d) the register of persons mentioned in subsection (3)(b) is the **“assessment register”**.

16 Amendment of s 18 (General Children's Adoption List to be ordinarily observed)

(1) Section 18, heading—

omit, insert—

‘18 Matters to be considered if general consent given, or dispensed with, for adoption of child other than a special needs child’.

(2) Section 18(a) and (b)—

omit, insert—

- ‘(a) the needs of the child that are known to the chief executive at the time of making the arrangements; and
- (b) the characteristics of the prospective adopters; and
- (c) expressed preferences of the child’s parent or guardian; and
- (d) other matters the chief executive considers, on reasonable grounds, relevant.’.

(3) Section 18—

insert—

‘**(2)** In having regard to the child’s needs, the chief executive must consider—

- (a) the child’s age and gender; and
- (b) the child’s indigenous or cultural background; and
- (c) the child’s medical needs, including, for example, known medical conditions, disabilities or potential future health conditions or disabilities; and
- (d) the educational needs of the child; and
- (e) the principle that the child should ordinarily be the youngest child in the adoptive family at the time of the adoption order.

‘**(3)** In having regard to the characteristics of the prospective adopters, the chief executive must consider—

- (a) the age and gender of a child the prospective adopters have been assessed as having the capacity to parent; and
- (b) whether the prospective adopters have been assessed as having the capacity to parent children who are siblings; and
- (c) the prospective adopters’ religion, if any; and
- (d) the prospective adopters’ indigenous or cultural background; and
- (e) whether the prospective adopters are willing and have been assessed as having the capacity—
 - (i) to parent a child with known medical conditions, disabilities or potential future health conditions or disabilities; and
 - (ii) to parent a child from a particular social background; and

(iii) to participate in exchanging non-identifying correspondence, through the department, with the child's birth family after an adoption order has been made; and

(f) the age of other children in the prospective adopters' family.

'(4) In having regard to the expressed preferences of a parent or guardian, particularly preferences stated in the instrument of consent to the adoption of the child, the chief executive must consider—

(a) the child's religious upbringing; and

(b) characteristics of prospective adopters and adoptive family composition; and

(c) the parent's or guardian's wishes to participate in the voluntary exchange of non-identifying correspondence through the department; and

(d) specific preferences the chief executive considers, on reasonable grounds, promote the child's welfare and best interests.

'(5) In this section—

"prospective adopters" includes a sole prospective adopter.'

17 Insertion of new s 18AA

Part 3, division 2A—

insert—

'18AA Definition of application for div 2A

'In this division—

"application" includes an expression of interest to be assessed as suitable to be a prospective adopter in response to an invitation.'

18 Omission of s 62 (Deputy director)

Section 62—

omit.

19 Amendment of s 65 (Regulation-making power)

Section 65(1A)—

insert—

‘(ea) the keeping of the expression of interest register and the assessment register, the eligibility of persons to have their names entered in or remain in the registers, notice to the chief executive of changes in circumstances that might affect a person’s eligibility and removal of names from the registers;’.

20 Insertion of new pt 7, div 3

Part 7—

insert—

‘Division 3—Provisions for Adoption of Children Amendment Act 2002

‘70 Definitions for div 3

‘In this division—

“adoption list” means an adoption list existing immediately before the commencement.

“commencement” means commencement of this section.

“deferred” means a decision of the chief executive to defer the matter of an application as mentioned in pre-amended section 13B(6)(b).

“favourable assessment” means a favourable assessment under pre-amended section 13B or by the tribunal on a review of a decision made under that section.

“Foreign Children’s Adoption List” means the Foreign Children’s Adoption List as it existed immediately before the commencement.

“General Children’s Adoption List” means the General Children’s Adoption List as it existed immediately before the commencement.

“pre-amended”, in relation to a section, means the section as in force immediately before the commencement.

‘71 Transfer of names from the General Children’s Adoption List or Foreign Children’s Adoption List

‘(1) This section’s purpose is to provide for persons—

- (a) who, under section 13A as in force before the commencement, applied for their names to be entered in an adoption list but whose names were not entered in the adoption list before the commencement; or
- (b) whose names were, before the commencement, entered in an adoption list.

‘(2) If, before the commencement, a person applied to become an adoptive parent and to have the person’s name entered in the appropriate adoption list but the person’s name has not been entered in the appropriate list before the commencement, the person’s application is to be dealt with only as follows—

- (a) if the application related to a special needs child or a child of whom the person is a relative—the application is an application under section 13AA;
- (b) otherwise—the application is an expression of interest in response to an invitation that is received by the chief executive before the closure day for the invitation.

‘(3) If, immediately before the commencement, a person is named in the General Children’s Adoption List or Foreign Children’s Adoption List and an assessment of the person has not begun, or was begun but was deferred, the chief executive must transfer all information about the person to the expression of interest register.

‘(4) If, immediately before the commencement, a person is named in the General Children’s Adoption List or Foreign Children’s Adoption List and an assessment of the person has begun and has not been deferred or completed, the chief executive must—

- (a) transfer all information about the person to the expression of interest register; and
- (b) continue with the assessment.

‘(5) If, immediately before the commencement, a person is named in the General Children’s Adoption List or Foreign Children’s Adoption List and a favourable assessment has been made about the person, the chief executive must transfer all information about the person to the assessment register.

‘(6) If, immediately before the commencement, a person is named in the Special Needs Children’s Adoption List or Relative Children’s Adoption List, the person’s name continues to be entered in the relevant adoption list together with a notation about the person made in the list.

‘72 Persons on the Foreign Children’s Adoption List

‘(1) This section applies to assessing persons, as mentioned in section 13AF(4),⁷ as suitable to be prospective adopters for children who are resident in another country.

‘(2) The chief executive must—

- (a) assess only prior applicants until each prior applicant has been removed from the expression of interest register; and
- (b) assess the prior applicants in the order in which their names were included in the Foreign Children’s Adoption List.

‘(3) However, despite subsection (2)(a), for responding to the placement needs of children resident in another country, the chief executive may assess other persons if the chief executive considers it is necessary to assess those other persons because of the overseas criteria of the other country.

‘(4) Also, despite subsection (2)(b), the chief executive may assess prior applicants other than in the order in which their names were included in the Foreign Children’s Adoption List if—

- (a) each prior applicant due to be assessed before the prior applicant or prior applicants that the chief executive proposes to assess agrees to the postponement of the assessment; or
- (b) the chief executive considers it is necessary to depart from the order to respond to the placement needs of children resident in another country because of—
 - (i) the welfare and interests of children resident in the other country; or
 - (ii) the overseas criteria of the other country.

Example of paragraph (b)(i)—

A prior applicant previously adopted a child from Hong Kong and applied to adopt a second child from Hong Kong. Hong Kong advises

⁷ Section 13AF (Assessments required to meet anticipated placement needs of children)

that the previously adopted child has a sibling who also requires an adoptive family. It would be for the welfare and in the interests of the child in Hong Kong (and the previously adopted child in Australia) to assess the prior applicant before other prior applicants.

‘(5) In this section—

“**another country**” means a country outside of the Commonwealth and the Territories of the Commonwealth.

“**other persons**” means persons whose names are entered in the expression of interest register but who are not prior applicants.

“**overseas criteria**” means criteria, preferences or requirements given to the chief executive by an entity with functions about adoption in another country, relating to adopting a child from that other country, including—

- (a) the number of prospective adopters about which the chief executive may send information to the entity at any one time; or
- (b) the characteristics that the other country or entity requires of prospective adopters in relation to the placement needs of children resident in that other country.

“**prior applicants**” means persons about whom information is, under section 71(3), transferred to the expression of interest register because, immediately before the commencement, the persons’ names are entered in the Foreign Children’s Adoption List.

‘73 **Right to apply for review, and reviews not completed, before commencement**

‘(1) If a person was, immediately before the commencement, entitled to apply for a review of a reviewable matter, the person’s right to apply for a review continues as if the amendment Act had not commenced.

‘(2) If a person had, before the commencement, applied to the tribunal for a review of a reviewable matter, the tribunal must continue to deal with the application for the review as if the amendment Act had not commenced.

‘(3) If, as a result of an application to the tribunal for a review of a reviewable matter as mentioned in subsection (1) or (2) or an application or appeal to a court relating to the reviewable matter, the person’s name is not to be removed from an adoption list or a favourable assessment of the person is made, section 71 applies in relation to the entry of the person’s

name in the adoption list as if that entry existed immediately before the commencement of section 71.

‘(4) In this section—

“**amendment Act**” means the *Adoption of Children Amendment Act 2002*.

“**reviewable matter**” means a decision or assessment that may be the subject of an application for a review of the decision or assessment under pre-amended section 14D.

‘74 Expectations not otherwise dealt with under ss 71, 72 and 73

‘(1) If, immediately before the commencement, a person has—

- (a) an expectation in relation to the chief executive assessing persons under the pre-amended section 13B(1); or
- (b) an expectation in relation to the chief executive assessing persons, as mentioned in pre-amended section 13B(7), in the order in which names are included in the Foreign Children’s Adoption List or the General Children’s Adoption List;

the expectations are extinguished.

‘(2) If, immediately before the commencement, a person has an expectation in relation to the chief executive having regard to the order of names in the General Children’s Adoption List as mentioned in pre-amended section 18, the expectation is extinguished.

‘(3) In this section—

“**expectation**” includes right, privilege, entitlement and eligibility.

‘75 Chief executive may ask for criminal histories in limited cases

‘(1) This section applies to a person if—

- (a) the chief executive was entitled, before the commencement of this section, to request a person to disclose the person’s criminal history and the chief executive has not done so; and
- (b) the person’s name is, under section 71(3), (4) and (5), entered in the expression of interest register or assessment register or continues to be entered in an adoption list.

‘(2) The person is a person to whom section 14B⁸ applies and the chief executive may, under that section, ask the person to disclose the person’s criminal history.’.

PART 3—AMENDMENT OF OTHER ACTS

21 Amendment of Acts in sch 2

Schedule 2 amends the Acts mentioned in it.

8 Section 14B (Criminal histories to be disclosed)

SCHEDULE 1**CONSEQUENTIAL AMENDMENT OF ADOPTION OF CHILDREN ACT 1964**

section 3

- 1 Section 16(3), ‘application for the’—**
omit.
- 2 Section 20(1), from ‘or prospective adopters’ to ‘a child’—**
omit.
- 3 Section 20(3), from ‘applicant’ to ‘adoptive parents’—**
omit, insert—
‘person or particular persons’.
- 4 Section 25(1), ‘its consent’—**
omit, insert—
‘the child’s consent’.
- 5 Section 25(2), from ‘before’ to ‘with the chief executive’—**
omit.
- 6 Section 25(2A), from ‘the assessment’ to ‘subsection (2)’—**
omit, insert—
‘an assessment of a person under section 13B that the chief executive considers necessary.’.

SCHEDULE 1 (continued)

7 Section 25(2A)(a) and (b), ‘applicant or applicants’—*omit, insert—*

‘person or persons’.

8 Section 27B(3), from ‘Where’ to ‘adoption of a child’—*omit, insert—*

‘If the chief executive wishes to make an adoption order relating to a child’.

9 Section 27B(3), ‘the application’—*omit, insert—*

‘the adoption’.

10 Section 45(1)(a), after ‘tribunal’—*insert—*

‘or an expression of interest in being assessed as suitable to be a prospective adopter’.

11 Section 45(1)(c)—*omit, insert—*

(c) the proceedings relating to an application or an expression of interest mentioned in paragraph (a), or an application mentioned in paragraph (b);’.

12 Section 45(1), after ‘applicant,’—*insert—*

‘the person who expressed interest in being assessed as suitable to be a prospective adopter.’.

SCHEDULE 1 (continued)

13 Section 46(2), after ‘adoption of a child’—*insert—*

‘, an expression of interest in being assessed as suitable to be a prospective adopter.’.

14 Section 49(a) and (b), after ‘application’—*insert—*

‘, expression of interest in being assessed as suitable to be a prospective adopter.’.

15 Section 59A(1), from ‘has applied’ to ‘an adoptive parent’—*omit, insert—*

‘made an application under section 13AA or expressed interest in being assessed as suitable to be a prospective adopter’.

SCHEDULE 2**AMENDMENT OF OTHER ACTS**

section 21

CHILD CARE ACT 1991**1 Section 3—***insert—*

‘**“approved form”** means a form approved by the chief executive under section 82B.’.

2 Sections 10(a), ‘in a form and way approved by the chief executive’—*omit, insert—*

‘in the approved form’.

3 Sections 36(2), ‘in a way and form approved by the chief executive’—*omit, insert—*

‘in the approved form’.

4 Sections 62(3)(b) and 79(2), ‘in a form approved by the chief executive’—*omit, insert—*

‘in the approved form’.

5 After section 82A—*insert—*

SCHEDULE 2 (continued)

‘82B Chief executive may approve forms

‘The chief executive may approve forms for this Act.’.

6 Insertion of new s 89

After section 88—

insert—

‘89 Forms approved under s 73G before commencement of s 82B

‘The chief executive’s purported approval of a form for section 73G before the commencement of this section is valid⁹ and a consent given on the form is as valid as if it had been given on a form approved under section 82B.’

CHILD PROTECTION ACT 1999**1 Section 190(2)(c), before ‘the period’—**

insert—

‘by stating’.

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9 Form 18 (Consent to Criminal History Check, Independent Home-Based Care) purportedly was approved under the *Child Care Act 1991*, section 73G and notice of the approval appeared in the gazette on 9 February 2001 at page 506.