

Queensland



Subordinate Legislation 1999 No. 161

Adoption of Children Act 1964

**ADOPTION OF CHILDREN REGULATION
1999**

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DICTIONARY

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Adoption of Children Regulation 1999*.

Dictionary

2. The dictionary in schedule 2 defines particular words used in this regulation.

PART 2—ELIGIBILITY TO BE IN ADOPTION LISTS

Division 1—Eligibility generally

Application of div 1

3. This division applies subject to division 2.

Special needs children's adoption list

4. The following are the requirements for a person to be eligible to have the person's name entered in the special needs children's adoption list or remain in the list—

- (a) the person must be resident or domiciled in Queensland;
- (b) the person must be an Australian citizen or married to an Australian citizen;
- (c) the person must not be suffering from a physical or mental condition, or have a physical or mental disability, to an extent that the person could not provide a high level of stable, long-term care for a child.

Foreign children's adoption list

5.(1) The following are the requirements for a person to be eligible to have the person's name entered in the foreign children's adoption list or remain in the list—

- (a) the person must be resident or domiciled in Queensland;
- (b) the person must be an Australian citizen or married to an Australian citizen;
- (c) the person must not be suffering from a physical or mental condition, or have a physical or mental disability, to an extent that the person could not provide a high level of stable, long-term care for a child;
- (d) the person must have been married for at least 2 years;
- (e) there must not be more than 4 children in the custody of the person, the person's spouse or both of them;
- (f) the following age limits must be satisfied at the time the person applies to become an adoptive parent—
 - (i) if neither the person nor the person's spouse is a previous adoptive parent—1 of them must be less than 41 years old and the other must be less than 47 years old;
 - (ii) if either the person or the person's spouse is a previous adoptive parent—1 of them must be less than 43 years old and the other must be less than 47 years old.

(2) A person is a “**previous adoptive parent**” if, on a previous application to become an adoptive parent—

- (a) the person's name was entered in the foreign children's adoption list; and
- (b) an adoption order was made in the person's favour.

Relative children's adoption list

6. The following are the requirements for a person to be eligible to have the person's name entered in the relative children's adoption list or remain in the list—

- (a) the person must be resident or domiciled in Queensland;
- (b) the person must be an Australian citizen or married to an Australian citizen;
- (c) the person must have been married for at least 2 years;
- (d) the person must have custody of the child in relation to whom the person has applied to become an adoptive parent.

General children's adoption list

7. The following are the requirements for a person to be eligible to have the person's name entered in the general children's adoption list or remain in the list—

- (a) the person must be resident or domiciled in Queensland;
- (b) the person must be an Australian citizen or married to an Australian citizen;
- (c) the person must not be suffering from a physical or mental condition, or have a physical or mental disability, to an extent that the person could not provide a high level of stable, long-term term care for a child;
- (d) the person must have been married for at least 2 years;
- (e) there must not be more than 1 child in the custody of the person, the person's spouse or both of them;
- (f) the person must be infertile or married to an infertile person;
- (g) at the time the person applies to become an adoptive parent, the person must be—
 - (i) if the person or the person's spouse has custody of a child—less than 40 years old; or
 - (ii) otherwise—less than 36 years old.

Division 2—Eligibility in special circumstances**Eligibility of person habitually resident in a convention country**

8. To be eligible to have the person's name entered in an adoption list, or remain in the list, a person who is habitually resident in a convention country is not required to be resident or domiciled in Queensland.

Eligibility of person seeking adoption order under s 12(3) of the Act

9.(1) This section applies to a person seeking an adoption order under section 12(3)¹ of the Act.

(2) The following eligibility requirements do not apply to the person—

- (a) for the foreign children's adoption list—section 5(1)(d) to (f);
- (b) for the relative children's adoption list—section 6(c);
- (c) for the general children's adoption list—section 7(d), (e) or (g).

(3) To be eligible to have the person's name entered in the foreign children's adoption list or remain in the list—

- (a) there must not be more than 4 children in the person's custody; and
- (b) at the time the person applies to become an adoptive parent, the person must be—
 - (i) if the person is not a previous adoptive parent—less than 41 years old; or
 - (ii) if the person is a previous adoptive parent—less than 43 years old.

(4) To be eligible to have the person's name entered in the general children's adoption list or remain in the list—

- (a) there must not be more than 1 child in the person's custody; and
- (b) at the time the person applies to become an adoptive parent, the person must be—

¹ Section 12 (Persons in whose favour adoption orders may be made) of the Act

- (i) if the person has custody of a child—less than 40 years old; or
- (ii) otherwise—less than 36 years old.

PART 3—ASSESSMENT OF APPLICANTS

Matters to be regarded for assessment—Act, s 13C(a)

10. This part sets out the matters to which the chief executive must have regard when making an assessment in respect of an applicant under section 13B of the Act.

All adoption lists

11. For an applicant on any adoption list, the chief executive must have regard to the following matters—

- (a) if the applicant is married—the quality of the marriage, including its stability;
- (b) the applicant’s capacity to be an adoptive parent, including—
 - (i) the applicant’s emotional capacity and other personal qualities; and
 - (ii) the applicant’s financial stability and other financial capacity; and
 - (iii) the applicant’s capacity to ensure a child’s safety and wellbeing; and
 - (iv) any other matter relevant to the applicant’s capacity to provide for a child’s emotional, physical, educational, recreational and social needs;
- (c) the applicant’s attitudes to, and understanding of—
 - (i) children and their physical and emotional development; and
 - (ii) the responsibilities and duties of parenthood; and

- (iii) the issues relevant to adoptive parenting, including issues about informing a child of his or her adoption; and
- (iv) the significance of an adopted child's natural parents and their families;
- (d) if the applicant has applied to adopt a child of a particular indigenous, ethnic or cultural background—the applicant's ability and willingness to understand the child's background and to develop or maintain the child's indigenous, ethnic or cultural identity;
- (e) the extent of the applicant's participation in educational programs relevant to adoption, including any programs conducted by the chief executive.

Foreign children's adoption list

12. For an applicant whose name is in the foreign children's adoption list, the chief executive must have regard to the following matters—

- (a) the applicant's understanding of, and interest in, the country from which the child is to be adopted and the culture of that country;
- (b) the applicant's ability and willingness to continue to learn about the country and its culture, after placement of an adoptive child from that country with the applicant, and to help the child to learn about the country and its culture.

Relative children's adoption list

13. For an applicant whose name is in the relative children's adoption list, the chief executive must have regard to the following matters relating to the child in relation to whom the person has applied to become an adoptive parent—

- (a) the nature of the applicant's relationship with the child;
- (b) the circumstances in which the applicant obtained custody of the child;
- (c) the likely effect on the child of separating the child from a parent, sibling or other person with whom the child is, or has been,

living;

- (d) if there is a natural parent who does not have custody of the child—the parent’s views on the making of an adoption order in favour of the applicant, so far as the chief executive is reasonably able to obtain those views.

General children’s adoption list

14.(1) For an applicant whose name is in the general children’s adoption list, the chief executive must have regard to the applicant’s adjustment to, and acceptance of, the infertility of the person or the person’s spouse.

(2) In having regard to the matters mentioned in subsection (1), the chief executive must have regard to whether the infertile person is pursuing fertility treatment.

PART 4—PROCEDURAL MATTERS

Division 1—Dealing with applications

Application fee

15. An application by a person to become an adoptive parent and to have the person’s name entered in an adoption list must be accompanied by the relevant fee specified in schedule 1.

Assessment fee

16.(1) An applicant whose name is included in an adoption list must pay, within the reasonable time required by the chief executive, the relevant fee specified in schedule 1 for an assessment under section 13B of the Act.

(2) The chief executive must not carry out the assessment before receiving the fee.

Provision of relevant documents or information by applicants

17.(1) An applicant must give the chief executive, on request, any documents or information the chief executive reasonably requires to—

- (a) decide the applicant's eligibility to have the applicant's name entered, or remain, in an adoption list; or
- (b) make an assessment under section 13B of the Act in respect of the applicant.

(2) The chief executive may, for example, ask the applicant for any of the following—

- (a) a copy of the applicant's birth certificate;
- (b) a deed poll or other evidence of a change of the applicant's name;
- (c) a copy of the applicant's marriage certificate;
- (d) a copy of a certificate evidencing the applicant's citizenship;
- (e) a document evidencing a decree of dissolution of a marriage of the applicant;
- (f) a document evidencing a parenting order under the *Family Law Act 1975* (Cwlth) or a similar order relating to a child to whom the application relates;
- (g) a medical report addressing the applicant's infertility or another matter concerning the applicant's physical or mental health;
- (h) a reference from a stated person or member of a stated class of persons.

Notice of change in applicant's circumstances

18.(1) This section applies if—

- (a) an applicant has given information to the chief executive about a matter; and
- (b) new information about the matter arises or there is a change in the information given; and
- (c) the new or changed information is relevant to—
 - (i) a decision about the applicant's eligibility to have the

applicant's name entered, or remain, in an adoption list; or

- (ii) an assessment under section 13B of the Act in respect of the applicant.

(2) The applicant must immediately give the new or changed information to the chief executive.

Address for notice of revocation of consent—Act, s 22(2)

19. The address prescribed for sending a notice to the chief executive under section 22(2) of the Act is GPO Box 806, Brisbane Q 4001.

Division 2—Removal from adoption list

Withdrawal of application

20.(1) An applicant may withdraw an application at any time by written notice given to the chief executive.

(2) On receiving the withdrawal, the chief executive must remove the applicant's name from the relevant adoption list.

Removal from special needs children's adoption list—Act, s 13B(8)

21. The time prescribed for section 13B(8) of the Act is 2 years from the time the applicant lodges the application with the chief executive.

Removal if application not proceeding

22.(1) The chief executive may remove an applicant's name from an adoption list if the chief executive is reasonably satisfied that the applicant does not intend to proceed with the application.

(2) Without limiting subsection (1), the chief executive may be reasonably satisfied that an applicant does not intend to proceed with the application if the chief executive—

- (a) sends a letter to the applicant, at the last address for the applicant known to the chief executive, asking the applicant to give the chief

- executive a written notice confirming that the applicant wishes to proceed with the application; and
- (b) does not receive a reply from the applicant within 30 days after sending the letter; and
 - (c) makes reasonable enquiries about the applicant's current address; and
 - (d) if, on making the enquiries, the chief executive learns of a different address for the applicant—
 - (i) sends the letter mentioned in paragraph (a) to the address; and
 - (ii) does not receive a reply from the applicant within 30 days after sending the letter; and
 - (e) sends another letter (the “**final letter**”) to the applicant, at the last address for the applicant known to the chief executive, stating that, if the applicant does not give the chief executive a written notice confirming that the applicant wishes to proceed with the application, by a stated day not less than 30 days after the date of the letter, the chief executive will remove the applicant's name from the relevant adoption list; and
 - (f) does not receive a reply from the applicant to the final letter by the stated day.

Notice to applicant of removal

23.(1) On removing an applicant's name from an adoption list, the chief executive must give written notice of the removal to the applicant.

(2) Subsection (1) does not apply if the chief executive can not find the applicant, after making reasonable inquiries.

Division 3—Recording of adoption orders and related matters

Registration of orders—Act, ss 54 and 57

24.(1) This section applies to the registrar general in complying with

section 54(3)² of the Act—

- (a) on receiving from the chief executive, under section 54(1) of the Act, a memorandum of an adoption order; or
- (b) on receiving from the registrar of the Supreme Court, under section 54(2) of the Act, a copy of an order for the discharge of an adoption order.

(2) Also, this section applies to the registrar general in complying with section 57³ of the Act on receiving—

- (a) a memorandum or copy of an adoption order; or
- (b) a memorandum or copy of an order discharging an adoption order; or
- (c) an original or copy of an order or record of adoption; or
- (d) an original or copy of a rescission of an adoption.

(3) The registrar general must make the entries in, alterations to, and notations on, the adopted children register and the register of births, and the indexes to those registers, that the registrar general considers appropriate to evidence the adoption, discharge or rescission.

(4) The registrar general must ensure the appropriate entries, alterations, and notations are also made for any relevant registers or indexes held by a district registrar.

(5) On receiving a document mentioned in subsection (2)(a) or (c), the registrar general must also prepare a schedule, in the approved form, from the information contained in the document.

(6) If an adoption order is made under the Act in relation to a person born in a jurisdiction outside Queensland, the registrar general must give a copy of the order to the appropriate officer responsible for recording births in the jurisdiction.

(7) On receiving a document relating to an order for the discharge of an adoption order, the registrar general must give a copy of the document—

² Section 54 (Registration of orders) of the Act

³ Section 57 (Particulars of orders received from other States and countries) of the Act

- (a) if the adoption order was made under the Act—to the chief executive; and
- (b) if the order relates to a person whose birth is registered in a jurisdiction outside Queensland—to the appropriate officer responsible for recording births in the jurisdiction.

(8) The registrar general is not required to comply with subsection (6) or (7)(b) to the extent compliance would be impracticable in all the circumstances.

Corrections of entries

25.(1) The registrar general or chief executive may make any necessary corrections to the recording of an adoption order, including by amending a document or making, amending or omitting an entry in an adoption register.

(2) If a correction is made under subsection (1), the registrar general must make any necessary correction to the register of births.

PART 5—APPLICATION FOR INFORMATION, CERTIFICATES ETC.

Application for identifying information

26.(1) An application for the disclosure of information under section 39B of the Act must be accompanied by the relevant fee specified in schedule 1.

(2) The chief executive must refund any fee paid by a person for the disclosure of information if the person is not entitled to have the chief executive disclose the information to the person under section 39B of the Act.

Searches and copies

27.(1) A person may make any of the following applications to the registrar general—

- (a) in relation to an adoption order, or a memorandum or copy of an adoption order, entered in the adopted children register—
 - (i) if there is a schedule to the order, memorandum or copy—an application for a certificate, in the approved form, containing the particulars stated in the schedule; or
 - (ii) otherwise—an application for a certificate, in the approved form, containing the particulars stated in the order, memorandum or copy;
- (b) in relation to the register kept by the registrar general titled ‘Record of Children whose Births have been registered in the State of Queensland and who have been transferred under Deed of Adoption’—an application for a certificate, in the approved form, containing the information about an adoption recorded in the register;
- (c) an application for the registrar general to search the adoption registers for information that would be contained in a certificate mentioned in paragraph (a) or (b);
- (d) an application for an extract from an entry in an adoption register, containing the particulars that, under the Registration Act, the extract is required to contain.

(2) The application must be accompanied by the relevant fee prescribed under the Registration Act.

(3) Section 22⁴ of the Registration Act applies to the application as if it were made under that Act.

(4) Subject to section 39C⁵ of the Act, a person is not entitled to search, or to obtain a copy of, or extract from, an entry relating to an adopted person in the register of births, other than under an order of the Supreme Court.

(5) In this section—

“Registration Act” means the *Registration of Births, Deaths and Marriages Act 1962*.

⁴ *Registration of Births, Deaths and Marriages Act 1962*, section 22 (Searches and copies)

⁵ Section 39C (Entitlement to certain records etc.) of the Act

PART 6—MISCELLANEOUS

Access to registers

28. The registrar general must ensure a person does not have access to a register kept under the Act unless the person is a public service employee, or other person, performing functions under or in relation to the administration of the Act.

Waiver of fees

29.(1) The chief executive may waive payment of a fee for a person if the chief executive is satisfied payment of the fee by the person would impose unjustifiable hardship on the person.

(2) Subsection (1) does not apply to a fee payable under section 27.

Chief executive may approve forms

30.(1) The chief executive may approve forms for use under the Act.

(2) The prescribed form for a purpose under the Act is the form approved for the purpose by the chief executive.

Transitional—forms

31. A form approved by the chief executive for a purpose under section 6 of the expired regulation is taken to have been approved for the purpose under section 30.

SCHEDULE 1

FEES

sections 15, 16 and 26

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1. For an application to have the person's name entered in the special needs children's adoption list—	
(a) application fee	nil
(b) assessment fee	nil
2. For an application to have the person's name entered in the foreign children's adoption list—	
(a) application fee	53.00
(b) assessment fee	641.00
3. For an application to have the person's name entered in the relative children's adoption list—	
(a) application fee	53.00
(b) assessment fee	133.00
4. For an application to have the person's name entered in the general children's adoption list—	
(a) application fee	53.00
(b) assessment fee	443.00
5. Application for identifying information—	
(a) for an applicant receiving a prescribed Commonwealth pension	nil
(b) for any other person	50.00

SCHEDULE 2**DICTIONARY**

section 2

“adoption registers” means—

- (a) the adopted children register; and
- (b) the register kept by the registrar general titled ‘Record of Children whose Births have been registered in the State of Queensland and who have been transferred under Deed of Adoption’.

“applicant” includes prospective adopter.

“approved form” means a form approved under section 30.

“expired regulation” means the *Adoption of Children Regulation 1988*.

“infertile” means—

- (a) for a woman—
 - (i) an inability, for a reason beyond her control, to conceive; or
 - (ii) having a genetically transmitted disorder giving rise to a significant risk that, if she had a child, the child would not survive or the child’s health would be seriously impaired; or
 - (iii) having a condition giving rise to a significant risk that, if she fell pregnant, the child would not be carried until the child could be delivered alive; or
 - (iv) having a condition giving rise to a significant risk that, if she fell pregnant, she would not survive or her health would be seriously impaired; or
- (b) for a man—
 - (i) an inability, for a reason beyond his control, to cause a woman to conceive; or

SCHEDULE 2 (continued)

- (ii) having a genetically transmitted disorder giving rise to a significant risk that, if he fathered a child, the child would not survive or the child's health would be seriously impaired.

“prescribed Commonwealth pension” means a pension payable under a Commonwealth Act on the grounds of a person's age, physical impairment, service in the defence force or status as a single parent, widow or widower.

“previous adoptive parent” see section 5(2).

“reasonably satisfied” means satisfied on reasonable grounds.

ENDNOTES

1. Made by the Governor in Council on 1 July 1999.
2. Notified in the gazette on 2 July 1999.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Families, Youth and Community Care.