NORTHERN TERRITORY OF AUSTRALIA

ADOPTION OF CHILDREN ACT 1994

As in force at 20 June 2018

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 20 June 2018

ADOPTION OF CHILDREN ACT 1994

An Act to provide for the adoption of children and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Adoption of Children Act 1994*.

2 Commencement

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

Aboriginal means a person who is a member of the Aboriginal race of Australia.

adoption list means the record of names of couples kept and maintained under Division 2 of Part 3.

adoptive parent, in relation to a child, means a person in whose favour an order for the adoption of a child has been made (whether before or after the commencement of this Act).

allocation, in respect of the adoption of a child, means the matching of a person or persons wishing to adopt a child and a child who is available for adoption (for the purposes of the adoption of the child) taking into account the interests and welfare of the child and the wishes of the parent or parents of the child and the person or persons wishing to adopt.

approved person means a person, or the holder from time to time of a particular designation or office, approved in writing by the Minister for a purpose under this Act.

care and custody, in relation to a child, means the responsibility for the daily care and control of the child, including making decisions concerning the accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child.

child means a person who is or was available for adoption in respect of whom an order for adoption is yet to be made or has been made.

citizen-child means a child who was born and is domiciled in a State or Territory.

Court means the Local Court.

Department means the department responsible through the Minister for the administration of this Act.

disposition of property includes the grant or exercise of a power of appointment in respect of property.

guardian, in relation to a child, means the person who has the responsibility for the care and custody and the long term welfare of the child (including decisions concerning education, religion, place of residence and the general health of the child) and who has the rights, powers and duties vested by law or custom in the guardian of the child.

marriage means a legal marriage and married has a corresponding meaning.

non-citizen child means a child who has not attained the age of 18 years, who has entered the Territory as a non-citizen for the purposes of being adopted by a permanent resident of Australia and who is intended to become a permanent resident of Australia.

overseas country means a country that is outside the Commonwealth and the Territories of the Commonwealth and includes part of such a country.

parent means birth parent or adoptive parent.

Register of Adoptions, see section 54(1)(a).

registrar, see section 3 of the *Local Court Act 2015*.

relative, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of whole-blood or half-blood or by affinity, and notwithstanding that the relationship depends on the adoption of any person.

relinquishing parent means a parent who has relinquished a child (for the purposes of the adoption of the child) in respect of whom an order for adoption has been made.

spouse, of a person, means any of the following:

(a) a person to whom the person is married;

(b) if the person is an Aboriginal – an Aboriginal with whom the person is in a traditional Aboriginal marriage;

(c) a person who is in a de facto relationship with the person.

traditional Aboriginal marriage means a relationship between an Aboriginal man and woman that is recognised as a traditional marriage by the community or group to which either Aboriginal belongs.

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

(2) If the holder of an office that is established by another Act (***office holder***) is referred to in this Act and the office holder has power to delegate to another person or holder of an office or designation all or any of the office holder's powers and functions under that Act:

(a) the powers and functions that may be so delegated are taken to include the powers and functions under this Act and the powers and functions under this Act may be delegated in the manner provided by that other Act; and

(b) in relation to a power or function so delegated, a reference in this Act to the holder of that office is to be read as including a reference to the delegate.

(3) For the purposes of this Act, ***birth***, in relation to a child or a parent, means as a result of a pregnancy caused:

(a) by sexual relations; or

(b) by a fertilisation procedure within the meaning of Part IIIA of the *Status of Children Act 1978*, parenthood being determined in accordance with that Part.

(4) For the purposes of this Act, a reference to 2 persons or a couple in relation to a joint adoption of a child under this Act is a reference to:

(a) 2 persons who are married; or

(b) 2 Aboriginal persons who are living together in a traditional Aboriginal marriage; or

(c) 2 persons who are in a de facto relationship.

4 Delegation

(1) The Minister may delegate to a person, or the holder from time to time of a particular designation or office, any of the Minister's powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, is deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

Part 2 Jurisdiction

5 Jurisdiction of Local Court

Subject to this Act, the Court has the jurisdiction to hear and determine all proceedings instituted under this Act.

Note for section 5:

In relation to the adoption of children, the Court also has jurisdiction under the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (Cth) for a matter to which a provision of Part 4 of those regulations applies.

6 Cases in which jurisdiction to be exercised

(1) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order:

(a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the Territory; and

(b) the child was present in the Territory.

(2) For the purposes of subsection (1), where the Court is satisfied that an applicant was resident or domiciled in the Territory, or that the child was present in the Territory, on a date within 21 days before the date on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in the Territory, or that the child was present in the Territory, as the case may be, at the time of the

filing of the application in the Court.

7 Rules of private international law not to apply

The jurisdiction of the Court to make an order for adoption is not dependent on any fact or circumstances not expressly specified in this Act.

Part 3 Adoptions under this Act

Division 1 General

8 Welfare and interests of child to be paramount

(1) For the purposes of the administration of this Act, adoption shall be regarded as a service for the child concerned, and the welfare and interests of the child shall be the paramount consideration.

(2) In determining the welfare and interests of a child referred to in subsection (1), regard shall be had, inter alia, to the ethnicity and religion of the birth parents of the child and, in so doing, the matters set out in Schedule 1 shall be taken into account.

9 Responsibilities of Minister

The Minister is responsible for:

(a) the assessment of the suitability of a person or persons to adopt a child (including a non-citizen child); and

(b) the arrangements for and in relation to the allocation of a citizen-child to a person or persons wishing to adopt the child; and

(c) the transfer of the care and custody of a child (including a non-citizen child) to the person or persons who will adopt the child; and

(d) the giving of the Minister's consent to the adoption of a child (including a non-citizen child) of whom the Minister has guardianship.

10 Wishes of child

(1) Subject to this Part, an order for the adoption of a child shall not be made unless the Court is satisfied that, as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them.

(2) Subject to this Part, an order for the adoption of a child who has attained the age of 12 years shall not be made unless:

(a) the child has consented to the adoption; or

(b) notwithstanding that the child has not consented to the adoption, the Court is satisfied that there are special reasons related to the welfare and interests of the child why the order should be made.

(3) Notwithstanding subsections (1) and (2)(b), an order for the adoption of a child who, on the date the order is made, has attained the age of 18 years shall not be made unless the child consents to the adoption.

11 Adoption of Aboriginal child

(1) Where an order for the adoption of an Aboriginal child is to be made, the Court shall satisfy itself that every effort has been made (including consultation with the child's parents, with other persons who have responsibility for the welfare of the child in accordance with Aboriginal customary law and with such Aboriginal welfare organisations as are appropriate in the case of the particular child) to arrange appropriate custody:

(a) within the child's extended family; or

(b) where that cannot be arranged, with Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law.

(2) In making an order for the adoption of an Aboriginal child, where, in the opinion of the Court, the custody referred to in subsection (1) is not possible or would not be consistent with the welfare and interests of the child, the Court shall ensure that a placement is made that is consistent with the best interests and welfare of the child and in so doing shall:

(a) give preference to the adoption of the child by applicants one or both of whom are Aboriginal persons who are, in the opinion of the Minister, suitable to adopt the child;

(b) take into consideration the placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and a responsibility for, the welfare of the child; and

(c) take into consideration undertakings, if any, by the persons who will have the care and custody of the child to encourage and facilitate the maintenance of contact between the child and its own kin and with its own culture.

12 Who may be adopted

(1) Subject to this Act, the Court may, on application, make an order for the adoption of a child who:

(a) had not attained the age of 18 years before the date on which the application was filed in the Court; or

(b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased or estranged spouse of the applicant, as their child.

(2) The Court must not make an order for the adoption of a child who is or has been married, is living or has lived in a de facto relationship or has entered into a traditional Aboriginal marriage.

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

13 Adoption by couple

(1) Except as provided by this section, the Court may make an order for the adoption of a child in favour of 2 persons, who, on the date on which the order is made:

(a) are married to each other and have been so married for not less than 2 years; or

(b) have entered into a relationship that is recognised as a traditional Aboriginal marriage and has been so recognised for not less than 2 years; or

(c) are in a de facto relationship with each other and have been so for not less than 2 years; or

(d) have been living with each other in any combination of the relationships mentioned in paragraphs (a) to (c) and have been so living for not less than 2 years.

(2) The Court must not make an order for adoption in favour of 2 persons jointly under subsection (1) where one of them is a parent of the child.

14 Adoption by one person

(1) Subject to this section, the Court must not make an order for the adoption of a child in favour of one person (not being a person to whom section 15 applies) unless:

(a) the child is under the guardianship of the Minister; and

(b) it is satisfied that, in the opinion of the Minister, exceptional circumstances exist that make it desirable to do so.

(2) A person mentioned in subsection (1) does not include a person who has a spouse and who is not living separately and apart from the person's spouse.

15 Adoption by spouse of parent or relative

(1) Subject to this section, the Court may make an order for the adoption of a child in favour of:

(a) the spouse of a parent of the child (whether a birth parent or an adoptive parent and whether alive or dead); or

(b) a relative of the child; or

(c) the spouse of a relative of the child; or

(d) a relative of the child and the relative's spouse jointly.

(2) A person mentioned in subsection (1)(b) or (c) does not include a person who has a spouse and who is not living separately and apart from the person's spouse.

(3) The Court may not make an order for the adoption of a child in favour of a person or persons mentioned in subsection (1) unless it is satisfied that:

(a) the making of an order in relation to the guardianship or custody of the child under the *Family Law Act 1975* (Cth) or the *Guardianship of Infants Act 1972* would not make adequate provision for the welfare and interests of the child; and

(b) in the opinion of the Minister, exceptional circumstances exist which make the making of an order for the adoption of the child desirable; and

(c) an order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a).

(4) If the Court makes an order for the adoption of a child in favour of the spouse of a parent of the child, the person in whose favour the order is made is taken to be a parent of the child jointly with the first-mentioned parent and despite anything to the contrary in this Act or any other law in force in the Territory:

(a) the child is not to be treated in law as if the child were not the child of the first-mentioned parent; and

(b) the first-mentioned parent is not to be treated in law as if he or she is not a parent of the child; and

(c) the relationship between the child and the first-mentioned parent is not terminated; and

(d) where the first-mentioned parent had been the guardian of the child, the order does not terminate the guardianship; and

(e) where the child was the adopted child of the first-mentioned parent, the order does not terminate the adoption,

and section 45 otherwise applies.

16 Age of adoptive parents

(1) Subject to this section, the Court may only make an order for the adoption of a child where the person or persons in whose favour it is made:

(a) has or have attained the age of 25 years; and

(b) is or are not less than 25 years older than the child.

(2) Where it is the first child to be adopted by the person or persons in whose favour the order for adoption is to be made and that person does not have, or neither of those persons has, the care and custody of a child (including an adopted child) the Court may make an order for the adoption of a child in favour of that person or those persons only if that person or the older of those persons is not more than 40 years older than the child.

(3) Where the person or persons, or one of those persons, in whose favour the order for adoption is to be made, has or have the care and custody of a child (including an adopted child), the Court may make an order for the adoption of a child in favour of that person or those persons only if that person or the older of those persons is not more than 45 years older than the child.

(4) Notwithstanding this section, the Court may make an order for the adoption of a child in favour of a person who does not comply with this section where, in the opinion of the Minister, exceptional circumstances exist that make such an order desirable.

Division 2 Application and assessment

17 Application and assessment

(1) A person alone or a couple who:

(a) is resident or domiciled in the Territory; and

(b) wishes to adopt a child (including a non-citizen child),

may apply in the prescribed form to the Minister for the purpose of adopting a child.

(2) Where the Minister receives an application under subsection (1), the Minister shall assess or cause to be assessed by an approved person the suitability of the applicant or applicants for the purposes of the adoption of a child (including a non-citizen child).

18 List of persons wishing to adopt a citizen-child

(1) The Minister must, in accordance with this section, establish and maintain a record in any form (including an electronic form) or combination of forms, as the Minister thinks fit, of the names of the couples who have made an application under section 17 in respect of a citizen-child and who are, in the Minister's opinion, suitable to adopt a citizen-child, and that record is to be known as the adoption list.

(2) The Minister must:

(a) keep the adoption list in a form that indicates the chronological order that applications under section 17 were received by the Minister; and

(b) in relation to each couple whose names are included on the adoption list, record on the adoption list the particulars the Minister thinks necessary to assist in the arranging of an adoption, in respect of the couple and the child they wish to adopt.

(3) The names of couples may not be included on, or continue to remain on, the adoption list unless the Minister, having received a report from an approved person in respect of the suitability to adopt of the couple, decides that the couple is suitable, or continues to be suitable to adopt the child.

(4) On making a decision as to the suitability of the couple to adopt, the Minister must give written notice of the decision as soon as practicable to the couple and, where the Minister decides not to approve the inclusion of names of the couple on the list, the Minister must supply reasons for that decision.

19 Persons whose names appear on adoption list of another State

If the Minister is satisfied that any persons applying to have their names included on the adoption list are persons whose names are, or were within one month before the date of the application, included in a similar list kept by a person, officer or authority in accordance with the law of a State or another Territory, the Minister may treat the application as having been received on the date on which the application by virtue of which the names were included in the list kept by that person, officer or authority was received, or was treated as having been received, by that person, officer or authority.

20 Minister to have regard to adoption list

In making arrangements for and in relation to the adoption of a child and in the allocation of the child to a couple, the Minister must, without prejudice to the Minister's duty to consider all other relevant matters (including in particular the welfare and interests of the child and the wishes of the parent or parents of the child and the couple wishing to adopt), have regard to the adoption list and to the chronological order of the names of the persons included on the adoption list.

21 Suitability to adopt non-citizen child

(1) If the assessment of a person alone or a couple who has made an application under section 17 in respect of a non-citizen child has been carried out, the Minister must, having received a report from an approved person in respect of the suitability to adopt of the person or the couple and decided whether in the Minister's opinion the person or the couple is suitable to adopt, give as soon as practicable written notice to the person or the couple of the Minister's decision that:

(a) the person or the couple is suitable to adopt a non-citizen child; or

(b) the person or the couple is not suitable to adopt a non-citizen child and the reasons for that decision.

(2) The Minister must keep records of an assessment of the person or the couple carried out under this section.

(3) On receipt of notice under subsection (1)(a) of the decision of the Minister that a person or a couple is suitable to adopt, the person or the couple may proceed to have arrangements made for the allocation of a non-citizen child to them for adoption under the law in force in the Territory.

Division 3 Review of decision not to approve persons

22 Person aggrieved may seek review

A person or couple who is aggrieved by a decision of the Minister under Division 2 as to the person's or couple's suitability to adopt may, not later than one month after the date of the written notice from the Minister of the decision, or such longer time as the Minister may allow, apply to the Minister for review of that decision on the ground that the assessment of the person or couple was incorrect.

23 Appointment of panel

(1) On receipt of an application for review under section 22, the Minister shall constitute a panel which shall consist of:

(a) a chairperson who is a lawyer; and

(b) 2 other persons (one of whom shall be a person who is an employee within the meaning of the *Public Sector Employment and Management Act 1993* who is employed in the Department) who, in the opinion of the Minister, are qualified and have relevant experience in the field of social work, psychology or child welfare.

(2) A member of a panel shall be appointed by instrument in writing in accordance with subsection (1) in respect of a particular application for review and that appointment shall be automatically terminated on the completion of its inquiry in respect of that review.

24 Role of panel

(1) The role of a panel appointed under section 23 is to conduct an inquiry for the purpose of re-assessing the suitability of a particular person or couple to adopt and, on completion of its inquiry, to make recommendations to the Minister as to whether or not the Minister's decision should be varied.

(2) Subject to this section, the procedure for the conduct of the inquiry by a panel shall be as determined by the panel in each case.

(3) In conducting an inquiry, a panel:

(a) shall act without regard to technicalities and legal form;

(b) is not bound by rules of evidence; and

(c) may inform itself on any matter in such manner as it thinks fit, including the interviewing of a person who applied for the review.

25 Minister to review decision

The Minister must, as soon as practicable after receiving the recommendations of a panel in respect of an application for review:

(a) review the Minister's decision, taking into account those recommendations; and

(b) give written notice to the applicant or applicants of the outcome of the review.

Division 4 Consents to adoptions

26 No adoption without consent

Subject to this Act, the Court shall not make an order for the adoption of a child unless:

(a) consent (not being consent that has been revoked) to the adoption is given by the appropriate person or persons ascertained in accordance with this Division; or

(b) the Court has, by order under section 35, dispensed with the giving of a consent to the adoption by such a person.

27 Consents of parents and guardians required

(1) Subject to section 28, in the case of a child who has not previously been adopted, consent to the adoption of the child by each person who is a birth parent or a guardian of the child is required, except that the consent of a birth parent of a child born outside the marriage or the traditional Aboriginal marriage of the child's birth parents is not required unless that birth parent's parenthood of the child is recognised under a law in force in the Territory before the earlier of the following:

(a) the expiration of one month after the day on which an instrument of consent to the adoption of the child was signed by the first-mentioned birth parent or a guardian;

(b) the day on which an order for the dispensation of the giving of a consent to the adoption of the child is made by the Court under section 35.

(2) In the case of a child who has been previously adopted, the consent of every person who is an adoptive parent or a guardian of the child is required.

(3) If a person whose consent is otherwise required under this section is the applicant or one of the applicants for an order for adoption, that person's consent to the adoption is not required.

(4) This section does not apply in the case of a child who has attained the age of 18 years before the order for adoption is made.

28 Birth parent to be given opportunity to consent

(1) In the case of the adoption of a child who has not been adopted before and who was born outside the marriage or the traditional Aboriginal marriage of the child's birth parents and only one birth parent consents to the adoption of the child, where the Minister knows or, after making reasonable inquiry, ascertains the name and last-known address of a person who the Minister reasonably believes to be the other birth parent of the child, the Minister must, by certified mail within 14 days after the first-mentioned birth parent gives consent to the adoption, send to the other birth parent written advice of the first-mentioned birth parent's consent to the adoption of the child.

(2) A birth parent to whom the Minister sends written advice under subsection (1) may, within 7 days after receiving the advice, give notice to the Minister that the birth parent intends to take steps to establish the birth parent's parenthood of the child in accordance with the *Status of Children Act 1978*.

(3) The birth parent mentioned in subsection (2) must, within one month after the giving of notice to the Minister under that subsection:

(a) establish the birth parent's parenthood of the child; or

(b) commence proceedings to establish the birth parent's parenthood of the child under the *Status of Children Act 1978*.

(3A) If the birth parent mentioned in subsection (2) does not comply with subsection (3), the birth parent's consent to the adoption is not required.

(4) If the birth parent mentioned in subsection (2) establishes the birth parent's parenthood of the child, the birth parent's consent to the adoption of the child is required in accordance with this Division.

(5) On application by the Minister within 7 days after receiving the consent of the first-mentioned birth parent mentioned in

subsection (1), the Court may, if it is satisfied that sufficient grounds exist, order that the Minister is not required to comply with subsection (1) and accordingly the Minister must not comply with that subsection.

29 Consent for adoption of non-citizen child

(1) Where an application is made for the adoption of a non-citizen child:

(a) this Division does not apply in relation to the giving of consent to the adoption of the non-citizen child by a parent or a guardian of the non-citizen child; and

(b) the Court must satisfy itself that the Minister consents to the application for the adoption of the non-citizen child before making the order for the adoption.

(2) The Minister's consent referred to in subsection (1) shall be accompanied by a written declaration, signed by the Minister, that the Minister believes on reasonable grounds:

(a) that each parent or guardian of the non-citizen child:

(i) has, before the child commenced the journey to Australia, given consent in accordance with the law of the place of residence of the parent or guardian of the child to the adoption of the child and has not revoked the consent; or

(ii) is dead or cannot, after reasonable inquiry, be found; or

(b) that circumstances exist by reason of which the consent of a parent or guardian, if required under this Act, may be dispensed with.

30 Person consenting to receive counselling

(1) Subject to subsection (4), a person (other than the Minister) who is, under this Division, required to consent to an adoption of a child must not consent to the adoption unless the person has received counselling from an approved person.

(2) The person who gives the counselling mentioned in subsection (1) must, not later than 7 days before consent to an adoption is given, give to the person or persons who propose to consent to the adoption information in the prescribed form in respect of the effect of an order for adoption and the alternatives to adoption.

(3) The Minister may, for the purposes of a proceeding under this Act, certify that subsections (1) and (2) have been complied with and such certification by the Minister is prima facie evidence that subsections (1) and (2) have been complied with.

(4) This section does not apply to a person who proposes to give consent to an adoption and who will have been residing outside the Territory for a continuous period of 2 months at the time of giving the consent.

31 Form of consent

(1) Subject to this section, a consent to an adoption shall be in the prescribed form and shall be:

(a) expressed as consent of the person giving consent to the adoption of the child by the person or persons who the Minister is satisfied is suitable to adopt the child;

(b) signed by the person giving the consent; and

(c) witnessed as prescribed.

(2) Notwithstanding subsection (1)(a), where:

(a) an applicant, whether or not one of joint applicants, for an order for the adoption of a child is a relative of the child, the spouse of a parent of the child or the spouse of a relative of the child; or

(b) the Minister, as guardian, is required to consent to the adoption of the child,

consent to the adoption may be expressed as a consent to the adoption of the child by a particular person or, where joint applicants, particular persons.

(3) Where a consent of the kind referred to in subsection (1) has been relied on in an application for an order for adoption, but the application has been refused by the Court, the consent remains in operation for the purposes of a further application for the adoption of the child unless the Court directs otherwise.

32 Consents given under law of a State or another Territory

If:

(a) a person whose consent to the adoption of a child is required by this Division has, in accordance with the law of a State or of another Territory, duly signed an instrument of consent for the

adoption of a child by any person approved by or on behalf of the officer performing in that State or other Territory functions similar to those of the Minister; and

(b) that officer or a person acting on the officer's behalf, has, in writing, authorised the Minister to make arrangements for the adoption of the child in the Territory; and

(c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that State or other Territory;

that instrument of consent is, for the purposes of this Act, taken to be an instrument executed in accordance with this Division and evidencing a subsisting consent to the adoption of the child.

33 Revocation of consent

(1) A consent to the adoption of a child given for the purposes of this Act by a person other than the child may be revoked by notice in writing served on the Minister before the expiration of one month after the date on which the instrument of consent was signed but may not otherwise be revoked.

(2) Service of a notice of revocation on the Minister under subsection (1) shall be effected by delivering it personally, or by sending it by certified mail, to the appropriate office within the Department.

34 Defective consents

(1) The Court may refuse to make an adoption order where consent to the adoption was given, or is purported to have been given, by a person (not being the child) for the purposes of this Division if it appears to the Court that:

(a) the consent was not given in accordance with this Act;

(b) the consent was obtained by fraud, duress or other improper means;

(c) the instrument of consent has been altered in a material particular without authority; or

(d) the person who gave or purportedly gave the consent was not, at the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent.

(2) The Court shall not make an order for the adoption of a child where the instrument of consent was signed by the birth mother of the child:

(a) before the birth of the child; or

(b) within one month after the birth of the child unless it is proved that, at the time the instrument was signed, the birth mother was in a fit condition to give the consent.

(3) For the purposes of subsection (2)(b):

(a) certificates from 2 medical practitioners each certifying that, at the time when the instrument of consent was signed by the birth mother of the child, the mother was in a fit condition to give the consent; and

(b) a signed report from a person who is an approved person for the purposes of section 30 that the birth mother received counselling and the prescribed information pursuant to that section,

is evidence that that mother was in a fit condition to give the consent.

35 Court may dispense with certain consents

The Court may, by order, dispense with the consent of a person, other than the Minister or the child, to the adoption of a child if the Court is satisfied that:

(a) after reasonable inquiry, the person cannot be found; or

(b) the person is in such a physical or mental condition as not to be capable of properly considering whether to give consent; or

(c) the person has abandoned, deserted or persistently neglected or ill-treated the child; or

(d) the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or

(e) there are any other special circumstances by reason of which the consent may properly be dispensed with.

Division 5 Guardianship of child awaiting adoption

36 Guardianship of citizen-child awaiting adoption

(1) Subject to subsection (2), in the case of an adoption of a child who was born in a State or a Territory of the Commonwealth, other than an adoption by the spouse of a parent of the child, and:

(a) the persons who are required to consent to the adoption under Division 4 have consented to the adoption of the child; or

(b) the consent of such a person to the adoption of the child has been dispensed with by an order of the Court under section 35,

the child shall be placed in the guardianship of the Minister.

(2) Where the Minister is the guardian of a child who is about to leave or has left the Territory to reside in a State or another Territory of the Commonwealth, the Minister may transfer the guardianship of the child to a person, officer or authority performing functions similar to those of the Minister (in relation to the guardianship of a child under this Act) in accordance with the law of the State or other Territory.

(3) The Minister may, on the request in writing by or on behalf of a person, officer or authority referred to in subsection (2), place a child in respect of whom section 32 applies, and who is about to enter or has entered the Territory, in the guardianship of the Minister.

(4) The guardianship of the Minister referred to in subsection (1) shall continue to the exclusion of all other persons until:

(a) an order for adoption is made in respect of the child;

(b) where the appropriate consent to the adoption has been given, the lawful revocation of the instrument of consent;

(c) the Court, by order, where it considers it necessary for the welfare and interests of the child (including where it considers that an order for adoption in respect of the child would not promote the welfare and interests of the child) transfers the guardianship of the child from the Minister to another person; or

(d) where the child no longer resides in the Territory but in a State or other Territory of the Commonwealth, the Minister transfers the guardianship of the child to a person, officer or authority referred to in subsection (2).

37 Guardianship of non-citizen child awaiting adoption

If a non-citizen child enters or has entered the Territory from a State or another Territory or from an overseas country and the *Immigration (Guardianship of Children) Act 1946* (Cth) no longer applies in relation to the non-citizen child, for so long as the Territory is the normal place of residence of the child:

(a) the guardianship of the child is to be placed with the Minister; and

(b) section 36, to the extent necessary, applies to that child as if the child were born in a State or another Territory.

Division 6 Adoption orders

38 Application for adoption order

Where the Minister is satisfied that a person or persons who wish to adopt a child are in fact suitable to adopt the child, the person or persons seeking the adoption may apply to the Court for an order for the adoption of the child.

39 Notice of intention to apply

(1) If a person or persons mentioned in section 38 intend to apply for an order for the adoption of the child, the person or persons must give the Minister not less than 21 days written notice of the intention to make the application.

(2) On receipt of the notice mentioned in subsection (1), the Minister must, as soon as practicable but not later than 7 days after receipt of the notice, give written notice of the intention to make the application for the order for adoption to each person:

(a) whose consent to the adoption is required under Division 4 (whether or not the person has given consent), unless he or she has previously advised the Minister in writing that the person does not wish to receive notice of the intention to make the application; and

(b) whose name and address is known or may reasonably be ascertained by the Minister;

and each person who receives notice from the Minister may, within 7 days of receipt of the notice, advise the Minister, together with the person's full name and an address for service, whether the person wishes to be a party to the adoption proceedings.

(3) The Minister must, as soon as practicable but not later than 7 days after receipt of the advice mentioned in subsection (2), advise in writing the person or persons intending to apply for an order for adoption of the name and address for service of each person who wishes to be a party to the adoption proceedings.

(4) The Court may, upon application, dispense with the giving of a notice by the Minister under subsection (2) where it considers it reasonable to do so.

(5) If it appears to the Court to be necessary, the Court may direct that notice of an application for an adoption order be given to a person other than a person mentioned in subsection (2).

40 Parties

(1) If an application is made to the Court for an order for the adoption of a child, the following persons may attend and appear before the Court personally or by a legal representative as a party to the proceedings in respect of the application:

(a) an applicant;

(b) a person whose consent to the adoption is required under Division 4, except where the person's consent has been dispensed with under section 35;

(c) the child;

(d) the Minister.

(2) If the Court considers it necessary, the Court may join any person it thinks fit as a party to the proceedings for the purpose of:

(a) opposing the application for an order for the adoption; or

(b) opposing an application to dispense with the consent of a person to the adoption under section 35.

41 Court to be satisfied as to certain matters

(1) The Court shall not make an order for the adoption of a child unless it has received a report in writing from the Minister concerning the proposed adoption and, after considering the report and any other evidence before the Court, it is satisfied that:

(a) the welfare and interests of the child will be promoted by the adoption;

(b) the applicant or applicants are suitable to adopt the child and satisfy the requirements of the Act; and

(c) the Minister has ascertained and taken into account the wishes, if any, of a parent of the child, including wishes in respect of arrangements between the parent or parents and any prospective adoptive parent or adoptive parents in respect of access to the child by, or the giving and receiving of information about the child to, the first-mentioned parent or parents.

(2) Subsection (1) does not apply in relation to an order for the adoption of a child who has attained the age of 18 years before the making of the order, but the Court shall not make an order for the adoption of such a child unless it is satisfied:

(a) that the applicant or applicants are suitable to adopt the child and satisfy the requirements of the Act; and

(b) that exceptional circumstances make it desirable that the child should be adopted.

42 Interim orders

(1) On an application to the Court for an order for the adoption of a child, the Court, having received the Minister's report referred to in section 41, may postpone the determination of the application and make an interim order for the custody of the child in favour of the applicant or applicants for the order for adoption who are thereby entitled to the care and custody of the child during the period the interim order remains in force.

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

(3) Subject to this section, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order and may be extended for such further periods, if any, as the Court from time to time orders, but shall not be continuously in force for periods the aggregate of which is more than 2 years.

(4) An interim order ceases to have effect upon the making of an order for the adoption of the child, whether made in the Territory or in a State or another Territory of the Commonwealth.

(5) Notwithstanding subsection (3), the Court may, at any time, make an order discharging an interim order and make such order, subject to terms and conditions, for the care and custody and guardianship of the child as it thinks fit.

43 Care of child after refusal of an application

Where the Court refuses an application for the order for the adoption of a child, it shall make such order, subject to terms and conditions, for the care and custody and guardianship of the child as it thinks fit.

44 Discharge of adoption orders

(1) Subject to subsection (2), the Minister may apply to the Court for an order discharging an order for the adoption of a child, and the Court may make such an order if it is satisfied that:

(a) the adoption order was obtained by fraud, duress or other improper means; or

(b) a person's consent to the adoption required under Division 4 was obtained by fraud, duress or other improper means.

(2) The Court shall not make an order discharging an order for adoption under this section if it is satisfied that:

(a) the child has attained the age of 18 years; or

(b) the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where:

(a) the Court makes an order discharging an order for adoption under this section; and

(b) that order for adoption was not made in reliance upon the consent of a person or persons that was obtained by fraud, duress or other improper means,

then, unless the Court otherwise orders, the consent of that person remains, or those persons remain, in force for the purposes of a further application for the adoption of the child.

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

(a) the name of the child;

(b) the ownership of property;

(c) the care, custody or guardianship of the child; or

(d) the domicile of the child.

(5) On the making of an order discharging an order for the adoption of a child under this section, but subject to Division 7 and any order made under subsection (4), the rights, privileges, duties, liabilities and relationships under the law of the Territory of the child and of all other persons affected by the order for adoption of the child shall be the same as if the adoption order had not been made, but without prejudice to:

(a) anything lawfully done;

(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 7 Effect of adoption orders

45 General effect of adoption orders

(1) For the purposes of the laws of the Territory, but subject to this Act and to the provisions of any other law in force in the Territory that expressly distinguishes in any way between birth children and adopted children, on the making of an order for the adoption of a child:

(a) the child becomes a child of the adoptive parent or adoptive parents, and the adoptive parent becomes, or adoptive parents become, the parent or parents of the child as if that parent or those parents were the birth parent or parents of that child;

(b) the child ceases to be a child of any person who was a parent of the child before the making of the adoption order, and such person ceases to be a parent of the child;

(c) the relationship to one another of all persons affected by the order for the adoption of the child (including the child and a former parent of the child) shall be determined on the basis of the provisions of paragraphs (a) and (b) so far as they are relevant;

(d) an existing appointment of a person, by will or deed or otherwise in accordance with a law in force in the Territory, as guardian of the adopted child ceases to have effect; and

(e) a previous adoption of the child (whether effected under a law in force in the Territory or otherwise) ceases to have effect.

(2) Notwithstanding subsection (1), for the purposes of any law of the Territory 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 is deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to the adoption order or by virtue of the discharge of the adoption order.

46 Effect of orders as regards dispositions of property, &c.

(1) Section 45(1) has 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 that subsection does not affect a disposition of property:

(a) by a person who, or by persons any of whom, died; and

(b) that has taken effect in possession,

before the commencement of this Act.

(2) Section 45(1) does 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;

(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 the person to include adopted children as objects of the disposition,

the 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) Nothing in section 45 or in this section affects the operation of a 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.

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

(1) Notwithstanding any other provision of this Act, trustees or other 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) 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.

48 Names of adopted child

(1) On the making of an order for the adoption of a child, the surname of the child shall be:

(a) where there are 2 adoptive parents who have the same surname, that surname;

(b) where there is one adoptive parent, the surname of that adoptive parent; or

(c) where there are 2 adoptive parents who have different surnames, one of those surnames,

that surname having been specified in the application for the order for the adoption as the proposed surname of the child and approved by the Court, or such other surname as the Court approves in the adoption order.

(2) On the making of an order for the adoption of a child the forename or forenames of the child shall be such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or parents.

(3) The Court shall not approve a name as a surname or forename of a child under this section unless it is satisfied that, as far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.

(4) Nothing in this section prevents the changing of any name of a child in accordance with a law in force in the Territory after the making of an order for the adoption of the child.

Part 4 Recognition of adoptions

49 Recognition of Australian adoptions

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

50 Recognition of foreign adoptions

(1) Subject to this Part, where a child has been adopted (whether before or after the commencement of this Act) in an overseas country and:

(a) the adoption remains effective according to the law of that country;

(b) in consequence of the adoption, the adoptive parent or adoptive parents had, immediately following the adoption, a right superior to that of a birth parent of the child alone, or of the birth parents of the child jointly, in respect of the custody of the child;

(c) under the law of that country the adoptive parent or adoptive parents of the child were, by the adoption, placed generally in the position of a birth parent or birth parents in relation to the child; and

(d) either:

(i) the adoptive parent or adoptive parents had been continuously residing in that country for a period of not less than 12 months immediately before commencing proceedings for the adoption; or

(ii) the Minister had, before the completion of the adoption, decided that the adoptive parent or adoptive parents is or are suitable to adopt a non-citizen child,

then the adoption has, for the purposes of the law in force in the Territory, the same effect as an order for adoption made under this Act, and has no other effect.

(2) Notwithstanding subsection (1), a court of competent jurisdiction (including the Court dealing with proceedings under section 52):

(a) shall, where the question arises whether an adoption is one to which this section applies, presume that the adoption complies with the requirements of subsection (1) unless the contrary appears from the evidence before it; or

(b) 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 was not fair and just.

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

51 Minister may approve countries for adoption purposes

(1) Where the Minister is satisfied that proceedings for adoption in an overseas country are fair, the Minister may, by notice in the *Gazette*, determine that an adoption of a child in that country, in accordance with the law of that country, shall so long as it remains in force under that law, have the same effect (and no other effect) as an adoption made in a State or another Territory of the Commonwealth has under section 49, and such an adoption shall have that effect.

(2) The approval of the Minister referred to in subsection (1) may be subject to such terms and conditions as the Minister thinks fit.

(3) A decision of the Minister whether to approve an overseas country for the purposes of subsection (1) is not reviewable.

52 Declarations of validity of foreign adoptions

(1) A person who is:

(a) an adopted child;

(b) an adoptive parent;

(c) a person tracing a relationship by virtue of an adoption through or to an adopted child,

may apply to the Court for an order declaring that an adoption of a child was effected (whether before or after the commencement of this Act) under the law of an overseas country and that the adoption is one to which section 50 applies.

(2) A person making an application under subsection (1) shall serve a copy of the application on the Minister.

(3) The Court may hear and determine an application made under subsection (1) and may, if it thinks fit:

(a) direct that notice of the application be given to such persons (including the Attorney-General) as the Court thinks fit;

(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 in determination of the application, it may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parent or adoptive parents as it finds to be established.

(5) For the purposes of the laws in force in the Territory, an order under this section binds the Crown in right of the Territory, whether or not notice was given to the Attorney-General, but, subject to subsection (6), 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.

(6) In proceedings in a court of competent jurisdiction of the Territory, being proceedings relating to the rights of a person other than a person referred to in subsection (5)(a), the production of a copy of an order made under this section, certified by a registrar 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 50 applies.

53 Supervision of non-citizen child whether or not adoption recognised

(1) Subject to this section, if:

(a) a non-citizen child has been adopted in accordance with the law of an overseas country, whether or not the adoption is an adoption which, under this Act, has the same effect (and no other effect) as an order for adoption under this Act; and

(b) the adoption of the child has been in force for not more than 12 months; and

(c) no adoptive parent, whether there is one or 2, was a national or citizen of that overseas country at the time the adoption was made; and

(d) the child is present in the Territory;

the Minister may supervise the welfare and interests of the child for a period not exceeding 12 months commencing on the date the child arrives in the Territory and an approved person has a right of access to the child at all reasonable times during that period.

(2) If a child whose welfare and interests may be supervised under subsection (1) by the Minister has, after being adopted but before arriving in the Territory, been resident in a State or another Territory, the period during which the child is subject to the supervision of the Minister is reduced by that period of residence in the State or other Territory.

(3) The Minister may, in the Minister's discretion, exempt a child, to whom subsection (1) would otherwise apply, from the application of that subsection and accordingly that subsection does not apply to or in relation to that child.

Part 5 Registration of adoptions

54 Registration of orders

(1) A registrar must, as soon as practicable after every order for adoption, or every order discharging an order for adoption, is made by the Court under this Act, send a memorandum, in accordance with the prescribed form, of the order for adoption, or a copy of the order discharging an order for adoption, to the Registrar of Births, Deaths and Marriages, who must:

(a) register it, as prescribed, in a register kept by the Registrar and known as the ***Register of Adoptions***; and

(b) if it relates to a child whose birth is, or is required by the Regulations to be, registered in the Register of Births kept by the Registrar, make any alterations to, or entries in, that register as are prescribed or, if not prescribed, as the Registrar thinks fit.

(2) If, under a law at any time in force in the Territory before the commencement of this Act, an order for the adoption of a child was made by a court of competent jurisdiction and a record of that order is held in the Territory, the Registrar of Births, Deaths and Marriages may, in the Registrar's discretion, require the person who has custody or control of the records of the court making the order to forward to the Registrar a copy of, or a memorandum relating to, the order and of any order for the discharge of the order.

(3) On receipt of a document forwarded to the Registrar of Births, Deaths and Marriages under subsection (2), the Registrar may, in the Registrar's discretion:

(a) register it, as prescribed, in the Register of Adoptions; and

(b) if it relates to a child whose birth is, or is required by the Regulations to be, registered in a register kept by the Registrar, make any alterations to, or entry in, that register as are prescribed or, if not prescribed, as the Registrar thinks fit.

(4) For the purposes of this section, the Registrar of Births, Deaths and Marriages may make any enquiries the Registrar thinks appropriate to satisfy the Registrar that an order for adoption was made or discharged.

(5) The person who has custody or control of the records relating to an adoption order must comply with a requirement of the Registrar of Births, Deaths and Marriages made under subsection (2) and must assist the Registrar with all reasonable enquiries made under subsection (4).

55 Registration of overseas birth and adoption order

(1) If an order is made under section 52, a registrar must forward a copy of the order to the Registrar of Births, Deaths and Marriages.

(2) If an adoption of a child which took place in an overseas country is one that the Minister, by *Gazette* notice under section 51, determines is to have the same effect as if an adoption made in a State or another Territory:

(a) the adoptive parent or parents in respect of the adoption may apply to the Minister for a prescribed certificate that the adoption is an adoption to which section 51 applies; and

(b) the Minister must, as soon as practicable after preparing the certificate, forward a copy of the certificate to the Registrar of Births, Deaths and Marriages.

(3) On receipt of a copy of the order forwarded in accordance with subsection (1) or of a copy of a certificate forwarded in accordance with subsection (2), the Registrar of Births, Deaths and Marriages must:

(a) register it, as prescribed, in the Register of Adoptions; and

(b) if it relates to a child whose birth is, or is required by the Regulations to be, registered in a register kept by the Registrar, make any alterations to, or entry in, that register as are prescribed or, if not prescribed, as the Registrar thinks fit.

56 Sending of memoranda or order to States and other Territories

(1) This section applies if the Court makes an order for the adoption of a child, or an order discharging an adoption order, and a registrar has reason to believe that the birth of the child is registered in a State or another Territory.

(2) The registrar must, as soon as practicable, send to the appropriate officer of that State or other Territory who has functions in relation to the registration of births:

(a) a memorandum of the adoption order, in the prescribed form; or

(b) a copy of the discharging order.

(3) A memorandum or copy mentioned in subsection (2) must be certified in writing by the registrar to be a true memorandum or copy.

57 Particulars of orders received from other States

If the Registrar of Births, Deaths and Marriages receives, in relation to a child whose birth is registered in the Territory, a memorandum or copy of an order for adoption made in accordance with the law in

force in a State or another Territory, or an order discharging an adoption 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 other Territory, the Registrar must:

(a) register it, as prescribed, in the Register of Adoptions; and

(b) make any alterations to, or entries in, the Register of Births, kept by the Registrar, as are prescribed or, if not prescribed, the Registrar thinks appropriate.

Part 6 Access to information

58 Definition

For the purposes of this Part, unless the contrary intention appears, ***adopted person*** means a person in respect of whom an order for adoption has been made (whether made before or after the commencement of this Act) under a law in force in the Territory.

59 Records of adoption

The Minister must, in any form (including an electronic form) or combination of forms as the Minister thinks fit, keep and maintain a record of all information acquired under this Act for and in relation to the adoption of a child under this Act.

60 Restriction on access to records, &c.

(1) Except as provided by this Act or the Regulations, records or copies of records kept and maintained in accordance with section 59, and all records or copies of records of proceedings of the Court under this Act, shall not be open to inspection by, or otherwise available to, any person whomsoever (including a party to proceedings under the Act).

(2) The Minister may cause a copy of a report made under this Act to be given to the person the subject of the report.

61 Person may apply for information

(1) Subject to and in accordance with this Part:

(a) an adopted person;

(b) a relinquishing parent; or

(c) an adoptive parent,

may apply to the Minister requesting information relating to the adoption of the adopted person.

(2) Where a person referred to in subsection (1)(a), (b), or (c) has died, a relative, being a mother, father, brother, sister or a child of the person, may apply under subsection (1) in the place of that person.

62 Minister to provide information

(1) If a person makes an application under section 61, the Minister must, subject to and in accordance with this Part, provide the person with the following information relating to the adoption:

(a) the names (including a name given at birth) and last known address of a person specified in the application;

(b) if the last known address is not known or is incorrect, any information that may assist in ascertaining the whereabouts of a person specified in the application; or

(c) details of a notice of prohibition against the provision of information (if any) that has been lodged with the Minister under section 65.

(2) The information that the Minister provides to a person under this Part must:

(a) be information contained in the records kept and maintained under section 59 or the records of proceedings of the Court which resulted in an order for the adoption of a child being made; and

(b) not be information that relates to the personal affairs of a person other than the applicant.

(3) The Minister must not provide information to a person under this Part if the Minister is satisfied that there are reasonable grounds for believing that the personal safety of another person may be endangered as a result of the provision of the information.

(4) The Minister may, for the purpose of the provision of information under this Part, if the Minister thinks appropriate:

(a) make inquiries and give assistance as may reasonably be made or given in the circumstances of the case for the purpose of facilitating the provision of the information; or

(b) apply to the Court to have access to the records of proceedings of the Court (which resulted in the making of an order for the adoption of a child) for the purpose of obtaining information the Minister reasonably believes to be contained in the records.

63 Counselling

(1) A person who applies for information under this Part must not be supplied with that information until the person has received counselling from an approved person.

(2) Any other person affected by this Part may seek to receive counselling from an approved person.

64 Release of information in relation to adoption under this Act

(1) Subject to subsection (2), if an order for adoption was made after the commencement of this Act, a person mentioned in section 61 may apply to the Minister for the information specified in section 62(1) in respect of an adopted person, a relinquishing parent or the adoptive parent and the Minister must provide the information as requested.

(2) An adopted person who is the subject of an order for adoption made after the commencement of this Act and who has not attained the age of 16 years, is not entitled to apply under subsection (1) for information concerning one or both of the person's relinquishing parents except if the person's adoptive parent or (if more than one) adoptive parents consents or consent in writing to the making of the application.

65 Release of information in relation to adoptions under repealed legislation

(1) If an order for adoption was made before the commencement of this Act:

(a) the adopted person may only apply to the Minister under section 61 for the information specified in section 62(1) in respect of one or both of the adopted person's relinquishing parents, except that, where the adopted person has not attained the age of 16 years, the adopted person may only apply for the information if the adopted person's adoptive parent or (if more than one) adoptive parents has or have consented in writing to the making of the application for information; and

(b) an adoptive parent may only apply to the Minister under section 61 for the information specified in section 62(1) in

respect of one or both of the relinquishing parents, except that the information provided to the adoptive parent must not identify the relinquishing parent or the relinquishing parents or their whereabouts; and

(c) a relinquishing parent may only apply to the Minister under section 61 for the information specified in section 62(1) in respect of the person who the relinquishing parent relinquished for adoption and one or both of the adoptive parents, except that, if the adopted person has not yet attained the age of 18 years, that information must not identify the adopted person or one or both of the adoptive parents or their whereabouts;

and the Minister must, subject to subsection (3), provide the information requested in the application.

(2) A relinquishing parent or an adopted person mentioned in subsection (1) may lodge with the Minister a notice of prohibition in the prescribed form that disallows the provision of information that would identify the relinquishing parent or adopted person.

(3) If a person has lodged a notice of prohibition with the Minister under subsection (2), the Minister must not provide information as specified in the notice of prohibition.

(4) A notice of prohibition under subsection (2) remains in force for the period, not exceeding 3 years, specified in the prohibition, but may, on application in writing, be reinstated for further periods each of which must not exceed 3 years.

66 Advice of death of child

(1) If an adopted person who was adopted after the commencement of this Act dies before attaining the age of 18 years, the adoptive parent or parents of the person must advise the Minister in writing of the death of the person.

(2) On receipt of advice of the death of an adopted person, the Minister must advise each relinquishing parent whose last-known address the Minister has or may reasonably ascertain of that person's death.

Part 7 Offences

67 Application of Part

This Part does not apply in respect of acts or omissions occurring outside the Territory but, except to the extent to which the contrary intention appears, does apply in respect of acts done in the

Territory in relation to the adoption of children in, or to children adopted in, a State or another Territory of the Commonwealth, or an overseas country.

68 Taking away of adopted child by parent or guardian

(1) A person who was a parent, or a guardian, of a child but who has, by reason of an adoption of the child, ceased to be the parent or guardian of the child must not take, lead, entice or decoy the child away, or detain the child, with the intent to deprive the adoptive parent or adoptive parents of the child or of care and custody of the child.

Maximum penalty: 40 penalty units.

(2) A person must not receive or harbour a child on behalf of another person if the person knows, or could with reasonable diligence ascertain, that the other person has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of subsection (1).

Maximum penalty: 40 penalty units.

69 Payments in consideration of adoptions, &c.

(1) Subject to this section, a person shall not, whether before or after the birth of a child, 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 the child;

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

(c) the transfer of the control 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.

Maximum penalty: 40 penalty units.

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

(a) a payment of legal expenses;

(b) a payment made by the adoptive parent or adoptive parents, with the approval in writing of the Minister or of the Court, in

respect of the hospital and medical expenses reasonably incurred in connection with the birth of the child or the ante-natal or post-natal care and treatment of the mother of the child or of the child; and

(c) any other payment or reward authorised by the Minister or by the Court.

(3) 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 a State or another Territory of the Commonwealth or in an overseas country, if the making of the payment or the giving of the reward, or the agreeing to make the payment or give the reward, would have been lawful if it had taken place in that State or other Territory or overseas country.

70 Restriction on advertising, &c.

(1) A person shall not (whether or not in relation to a particular child, born or unborn) publish, or cause to be published, in a newspaper or periodical, or by any other means whatsoever including broadcasting, television or public exhibition, an advertisement, news item or other matter indicating:

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

(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.

Maximum penalty: 40 penalty units.

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

71 Restriction on publication of identity of parties

(1) A person shall not, in relation to the adoption of a child, publish or distribute, or cause to be published or distributed, by any means whatsoever, the name, address or other matter reasonably likely to enable the identification of a person who intends to adopt a child, a child who is available for adoption or the parent or guardian of such a child.

Maximum penalty: 40 penalty units.

(2) This section does not apply where the Minister or the Court has approved the publication or distribution of information in relation to the adoption of a child.

72 Secrecy to be observed

(1) Subject to this Act, a person must not, directly or indirectly, except in the performance of the person's duties, or in the exercise of the person's powers or the performance of the person's functions, under this Act (while the person is holding or after the person has ceased to hold the relevant office or designation), make a record of, or disclose or communicate to any person, information in respect of the affairs or identity of another person (whether living or dead), acquired by the person in the performance of the person's duties or in the exercise of the person's powers or the performance of the person's functions under this Act.

Maximum penalty: 40 penalty units.

(2) This section does not apply where a person:

(a) is required to produce a document that has come into the person's possession or under the person's control in a court; or

(b) is required to disclose or communicate a matter or thing that has come to the person's notice or is within the person's knowledge to a court; or

(c) discloses information or records to a person to whom the information or records relate or to a person who, in the opinion of the Minister, is expressly or impliedly authorised to obtain the information or records by the person to whom the information relates; or

(d) discloses information or records in connection with the administration of this Act or for a purpose or to a person that the Minister directs.

73 Destruction of records

(1) A person must not, except in the performance of the person's duties, or in the exercise of the person's powers or the performance of the person's functions, under this Act, conceal, destroy or remove a document that has come into the person's possession or under the person's control in the performance of the person's duties or in the exercise of the person's powers or the performance of the person's functions under this Act.

Maximum penalty: 40 penalty units.

(2) This section does not apply if the Minister approves in writing the destruction of a document.

74 Penalty for making unauthorised arrangements

(1) A person, other than the Minister, who:

(a) arranges or causes to be arranged the transfer of the care and custody of a child to another person or persons with a view to the adoption of the child by that person or those persons; or

(b) except where arranged by the Minister, has the care and custody of a child with a view to adopting the child;

is guilty of an offence.

Maximum penalty: 40 penalty units.

(2) This section does not apply to any arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by:

(a) the spouse of a parent of the child; or

(b) a relative of the child; or

(c) the spouse of a relative of the child; or

(d) a relative of the child and the relative's spouse jointly.

75 False statement in application, &c.

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

Maximum penalty: 40 penalty units.

76 Impersonation of person who must consent to adoption

A person must not impersonate or falsely represent that the person is a person whose consent to the adoption of a child is required by this Act or by the law of a State or other Territory.

Maximum penalty: 40 penalty units.

77 Witnessing of consent

A person must not subscribe the person's name as a witness to the signature of another person (the ***signatory***) to an instrument of consent to the adoption of a child unless:

(a) the person is satisfied as to the identity of the signatory; and

(b) the person takes the prescribed steps to satisfy the person that the signatory understands the effect of the consent; and

(c) the instrument bears the date on which the person signed the person's name as a witness.

Maximum penalty: 40 penalty units.

78 Authority to prosecute

Proceedings for an offence against this Act or against the Regulations shall not be commenced except by the Director of Public Prosecutions or with the written consent of the Solicitor for the Northern Territory.

Part 8 Miscellaneous

79 Hearings to be in camera

An application to the Court under this Act shall not be heard in open court and persons who are not the parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise permitted by the Court, be excluded during the hearing of such an application.

80 Separate representation of child

Where, in proceedings under this Act, it appears to the Court that a child ought to be separately represented, the Court may of its own motion or on the application of the child, the Minister, an organisation concerned with the welfare of children or any other person, order that the child be separately represented, and the Court may make such other orders as it thinks necessary for the purpose of securing that separate representation.

81 Orders as to costs

In proceedings under this Act, the Court shall not make orders as to costs or security for costs unless it is satisfied that special circumstances exist which make it desirable to do so.

82 Proof of adoption

In any proceedings in a court of the Territory, a document purporting to be:

(a) the original or a certified copy or certified extract of an order effecting an adoption (wherever effected); or

(b) a certified copy of an entry in a public official record of the adoption of a child (wherever kept), or an extract giving particulars of the entry, signed by the person having custody of the record,

is prima facie evidence of the adoption and of the facts stated therein.

83 Judicial notice of signatures

In proceedings under this Act, judicial notice is to be taken of the signature of a person who holds or has held, or is acting or has acted in, the office of Minister, or the corresponding office in a State or another Territory or of a delegate of such a person, appearing on a document and of the fact that, at the time the document was signed by the person, the person held, or was acting in, that office.

84 Fees for services

(1) The Minister may, by notice in the *Gazette*, determine fees to be paid for a service provided to a person for the purposes of this Act.

(2) A fee payable under this section is a debt due to the Territory.

(3) The Minister may waive the payment of a fee under this section by a person or class of persons.

85 Financial and other assistance

The Minister may, in the Minister's discretion, provide financial assistance, or another form of assistance, on the terms and conditions determined by the Minister by instrument in writing, to a person or persons for the purposes of the adoption of a child, including a person or persons with whom a child awaiting adoption has been placed, an adoptive parent or adoptive parents or a child (who has been or is likely to be adopted and who has special care requirements on account of an intellectual or physical disability or illness).

86 Mediation

(1) Where an order for the adoption of a child has been made and there is an arrangement in place in respect of access to the child by, or the giving and receiving of information about the child to, the relinquishing parent or parents and a dispute arises between the relinquishing parent or parents and the adoptive parent or parents concerning the access to the child or the giving and receiving of information, one or more of those parents may request the Minister to provide counselling or mediation for the purposes of resolving the dispute.

(2) On receipt of a request under subsection (1), the Minister shall take steps to comply with the request.

87 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

but Regulations shall not be made in respect of a matter in respect of which the Court may make rules under section 48 of the *Local Court Act 2015*.

(2) Without limiting the generality of subsection (1), the Regulations may provide for and in relation to:

(a) the Forms to be used for the purposes of this Act;

(b) the manner and form of the witnessing of a consent to an adoption;

(c) the making, correction or cancellation of entries in the Register of Adoptions;

(d) the making, correction or cancellation of entries relating to adopted children in the Register of Births kept under the law of the Territory;

(e) the furnishing of copies of, or extracts from, matters included in the Register of Adoptions, and

(f) penalties for an offence against the Regulations.

88 Repeal

The Acts specified in Schedule 2 are repealed.

Part 9 Transitional matters for Adoption of Children Act 1994

89 Definitions

In this Part:

commencement means the commencement of section 88.

repealed Act means the *Adoption of Children Act 1994* as in force immediately before the commencement of this Act.

90 Savings and transitional

Notwithstanding the repeal effected by section 88, except as expressly or by necessary implication provided by this Act:

(a) an adoption or interim order made or continued in force under the repealed Act and in force immediately before the commencement continues in force under this Act as if the order was made under this Act, and this Act applies accordingly;

(b) an application to the Supreme Court of the Northern Territory for an adoption order under the repealed Act that was pending immediately before the commencement may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with, under the repealed Act and an order, direction or other decision made in respect of the application shall have effect as if it were an order, direction or decision made under this Act;

(c) a consent in writing to the adoption of a child given by a person before the commencement in accordance with the repealed Act and duly attested is, for the purposes of proceedings under this Act for the adoption of the child by the person or persons specified in the consent, deemed to be a sufficient consent of the person giving consent for the purposes of this Act;

(d) 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 or to a devolution of property arising on the death of a person who in respect of that property died intestate before the commencement, an adoption order made

under this Act has the same effect as if made under the repealed Act;

(e) a right, privilege, duty, liability or relationship that was acquired or vested in a person or came into being under a law in force in the Territory before the commencement continues to be a right, privilege, duty, liability or relationship of that person as if acquired or vested in that person or came into being under this Act;

(f) the Register of Adoptions kept and maintained under the repealed Act shall, on the commencement, become part of the Register of Adoptions kept under this Act; and

(g) an adoption list kept and maintained under the repealed Act shall, on the commencement, become part of the adoption list maintained under this Act.

Part 10 Transitional matters for Adoption of Children Amendment Act 2006

91 Application of amendments

(1) The amendments made to this Act by sections 4 and 5 of the *Adoption of Children Amendment Act 2006* have effect in relation to an adoption made before, on or after the commencement of that Act.

(2) Subsection (1) has effect subject to the Regulations.

Part 11 Transitional matters for Adoption of Children Legislation Amendment (Equality) Act 2018

92 Definitions

In this Part:

amending Act means the *Adoption of Children Legislation Amendment (Equality) Act 2018*.

commencement means the commencement of section 5(1) of the amending Act.

93 Applications under section 17

(1) This section applies if, before the commencement:

(a) a person or couple had made an application to the Minister under section 17(1); and

(b) the Minister had not made a decision on the application.

(2) The Minister must assess and decide the application in accordance with this Act as amended by the amending Act.

94 Offence provisions – before and after commencement

(1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.

(2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.

(3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(4) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

Schedule 1 Matters of ethnicity and religion

section 8(2)

With regard to the matters of ethnicity and religion in determining the welfare and interests of a child, the Minister and the Court shall take into account the following principles:

(1) it is preferable that the child should be placed with a family that has the same ethnic and cultural origins as the child's birth parents in order to facilitate an environment that will promote the child's cultural heritage and identity;

(2) where the child is an Aboriginal child, recognition is to be given to:

(i) the absence of adoption in customary Aboriginal child care arrangements, arrangements for the custody and guardianship of the child being made within the child's extended family or with other Aboriginal people who have the correct relationship under customary Aboriginal law; and

(ii) the desire and effort of the Aboriginal community to preserve the integrity of its culture and kinship relationships so that efforts must be made to find placements within families, kin groups or ethnic communities as appropriate;

(3) there should be appropriate consultation with the child's parents or other relatives, or representatives of appropriate associations, organisations or groups, in order to ascertain what is the best course of action to promote the ethnic welfare and development of the child;

(4) where it is the express wish of the birth parents of a child that the child be placed with a family that has particular religious convictions, preference is to be given to the placement of the child with such a family.

Schedule 2 Repealed Acts

section 88

Adoption of Children Ordinance 1964	No. 67, 1964
Adoption of Children Ordinance 1967	No. 6, 1967
Adoption of Children Ordinance 1968	No. 20, 1968
Adoption of Children Ordinance 1969	No. 30, 1969
Adoption of Children Ordinance 1976	No. 42, 1976
Adoption of Children Act 1979	No. 63, 1979
Adoption of Children Amendment Act 1984	No. 26, 1984
Adoption of Children Amendment Act 1986	No. 10, 1986
Adoption of Children Amendment Act 1991	No. 73, 1991

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Adoption of Children Act 1994* (Act No. 17, 1994)**

Assent date	18 April 1994
Commenced	3 May 1994 (*Gaz* S32, 3 May 1994)

***Statute Law Revision Act (No. 2) 1995* (Act No. 42, 1995)**

Assent date	13 October 1995
Commenced	13 October 1995

***Adoption of Children Amendment Act 2006* (Act No. 6, 2006)**

Assent date	26 April 2006
Commenced	26 April 2006

***Legal Profession (Consequential Amendments) Act 2007* (Act No. 7, 2007)**

Assent date	17 May 2007
Commenced	s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3); rem: 17 May 2007

***Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011* (Act No. 28, 2011)**

Assent date	31 August 2011
Commenced	21 September 2011 (*Gaz* G38, 21 September 2011, p 4)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

***Adoption of Children Legislation Amendment (Equality) Act 2018* (Act No. 4, 2018)**

Assent date	19 April 2018
Commenced	20 April 2018 (s 2)

Statute Law Revision Act 2018 **(Act No. 10, 2018)**

Assent date 23 May 2018
Commenced 20 June 2018 (*Gaz* S41, 20 June 2018)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3, 15, 23, 28, 87 and 89.

4 LIST OF AMENDMENTS

s 3	amd No. 8, 2016, s 45; No. 4, 2018, s 4
s 4	amd No. 4, 2018, s 9
s 5	amd No. 6, 2006, s 3
s 9	amd No. 4, 2018, s 9
s 12	amd No. 4, 2018, s 9
s 13	amd No. 4, 2018, s 5
ss 14 – 15	amd No. 4, 2018, s 9
s 16	amd No. 42, 1995, s 5
s 18	amd No. 4, 2018, s 6
ss 19 – 22	amd No. 4, 2018, s 9
s 23	amd No. 7, 2007 s 16
s 25	amd No. 4, 2018, s 9
ss 27 – 28	amd No. 4, 2018, s 9
s 30	amd No. 4, 2018, s 9
s 32	amd No. 4, 2018, s 9; No. 10, 2018, s 6
s 35	amd No. 4, 2018, s 9
s 37	amd No. 4, 2018, s 9
ss 39 – 40	amd No. 4, 2018, s 9
s 52	amd No. 8, 2016, s 45
s 53	amd No. 4, 2018, s 9
pt 5 hdg	amd No. 4, 2018, s 9
s 54	amd No. 6, 2006, s 4; No. 8, 2016, s 45; No. 4, 2018, s 9
s 55	amd No. 6, 2006, s 5; No. 8, 2016, s 45; No. 4, 2018, s 9
s 56	amd No. 8, 2016, s 45 sub No. 4, 2018, s 7
s 57	amd No. 4, 2018, s 9
s 59	amd No. 4, 2018, s 9
ss 62 – 66	amd No. 4, 2018, s 9
s 68	amd No. 28, 2011, s 3; No. 4, 2018, s 9
ss 69 – 71	amd No. 28, 2011, s 3
s 72	amd No. 28, 2011, s 3; No. 4, 2018, s 9; No. 10, 2018, s 6
ss 73 – 74	amd No. 28, 2011, s 3; No. 4, 2018, s 9
s 75	amd No. 28, 2011, s 3
s 76	amd No. 28, 2011, s 3; No. 4, 2018, s 9
s 77	amd No. 28, 2011, s 3; No. 4, 2018, s 9; No. 10, 2018, s 6
s 83	amd No. 4, 2018, s 9
s 85	amd No. 4, 2018, s 9
s 87	amd No. 8, 2016, s 45
pt 9 hdg	sub No. 6, 2006, s 6
pt 10 hdg	ins No. 6, 2006, s 7
s 91	ins No. 6, 2006, s 7
pt 11 hdg	ins No. 4, 2018, s 8
ss 92 – 94	ins No. 4, 2018, s 8