

## Adoption of Children

- (b) if it relates to a child whose birth is registered in a register kept by him or her, make such alterations to, or entry in, that register as are prescribed or, if not prescribed, as he or she thinks fit.

### 56. SENDING OF MEMORANDA OR ORDER TO STATES AND OTHER TERRITORIES

Where the Court makes an order for the adoption of a child, or an order discharging such an order, and the Registrar has reason to believe that the birth of the child is registered in a State or another Territory of the Commonwealth, the Registrar shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to the appropriate officer of that State or other Territory having functions in relation to the registration of births.

### 57. PARTICULARS OF ORDERS RECEIVED FROM OTHER STATES

Where 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 of the Commonwealth, or an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorised so to certify under the law of that State or other Territory, he or she shall -

- (a) register it, as prescribed, in the Register of Adoptions kept by him or her; and
- (b) make such alterations to, or entries in, the Register of Births, kept by him or her, as are prescribed or, if not prescribed, as he or she thinks fit.

## 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.

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### 59. RECORDS OF ADOPTION

The Minister shall, in such form (including an electronic form) or combination of forms as he or she thinks fit, keep and maintain or cause to be kept and maintained, 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) Where a person makes an application under section 61, the Minister shall, 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 he or she specifies in the application;
- (b) where the last known address is not known or is incorrect, any information that may assist in ascertaining the whereabouts of a person he or she specifies in the application; or

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- (c) details of a notice of prohibition against the provision of information (if any) that has been lodged with the Minister pursuant to section 65.
- (2) The information that the Minister provides to a person under this Part shall -
- (a) be information contained in the records kept and maintained in pursuance of 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 shall not provide information to a person under this Part where he or she 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, where he or she thinks fit -
- (a) make such inquiries and give such 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 shall not be supplied with that information until he or she 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), where an order for adoption was made after the commencement of this Act, a person referred to 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 shall provide the information as requested.

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(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, shall not apply under subsection (1) for information concerning one or both of his or her relinquishing parents except where his or her 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) Where 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 his or her relinquishing parents, except that, where the adopted person has not attained the age of 16 years, he or she may only apply for the information if his or her adoptive parent or (if more than one) adoptive parents has or have consented in writing to the making of his or her application for information;
- (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 shall not be of such a nature that it identifies the relinquishing parent or the relinquishing parents or his, her 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 he or she relinquished for adoption and one or both of the adoptive parents, except that, where the adopted person has not yet attained the age of 18 years, that information shall not be of such a nature that it identifies the adopted person or one or both of the adoptive parents or his, her or their whereabouts,

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

(2) A relinquishing parent or an adopted person referred to in subsection (1) may lodge with the Minister a notice of prohibition in the prescribed form that will disallow the provision of information that would identify him or her.

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

(4) A notice of prohibition under subsection (2) shall remain 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 shall not exceed 3 years.

### 66. ADVICE OF DEATH OF CHILD

(1) Where 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 shall 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 shall advise each relinquishing parent whose last-known address he or she 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, &c., 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 shall 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.

(2) A person shall not receive or harbour a child on behalf of another person where he or she 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).

Penalty: \$5,000.

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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.

Penalty: \$5,000.

(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 -

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- (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.

Penalty: \$5,000.

(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.

Penalty: \$5,000.

(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 shall not, directly or indirectly, except in the performance of his or her duties, or in the exercise of his or her powers or the performance of his or her functions, under this Act (while he or she is holding or after he or she 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 him or her in the performance of his or her duties or in the exercise of his or her powers or the performance of his or her functions under this Act.

Penalty: \$5,000.

- (2) This section does not apply where a person -
  - (a) is required to produce a document that has come into his or her possession or under his or her control in a court;
  - (b) is required to disclose or communicate a matter or thing that has come to his or her notice or is within his or her knowledge to a court;

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- (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 such 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 such purposes or to such persons as the Minister directs.

### 73. DESTRUCTION, &c., OF RECORDS

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

Penalty: \$5,000.

(2) This section does not apply where 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.

Penalty: \$5,000.

(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;
- (b) a relative of the child;
- (c) the spouse of a relative of the child; or
- (d) a relative of the child and his or her spouse jointly.

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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.

Penalty: \$5,000.

76. PERSONATION OF PERSON WHO MUST CONSENT TO ADOPTION

A person shall not personate or falsely represent himself or herself to be 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 of the Commonwealth.

Penalty: \$5,000.

77. WITNESSING OF CONSENT

A person shall not subscribe his or her name as a witness to the signature of a person to an instrument of consent to the adoption of a child unless -

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

Penalty: \$5,000.

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.

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### 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 shall 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 of the Commonwealth 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 him or her, he or she 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.

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

### 85. FINANCIAL, &c., ASSISTANCE

The Minister may, in his or her discretion, provide financial assistance, or another form of assistance, on such terms and conditions as the Minister determines 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.

(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;

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- (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 - SAVINGS AND TRANSITIONAL

89. DEFINITIONS

In this Part -

"commencement" means the commencement of section 88

"repealed Act" means the *Adoption of Children Act* 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;

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- (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.
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### SCHEDULE 1

Section 8(2)

#### MATTERS OF ETHNICITY AND RELIGION

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;

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- (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.

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### SCHEDULE 2

Section 88

#### REPEALED ACTS

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

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NORTHERN TERRITORY OF AUSTRALIA  
ADOPTION OF CHILDREN REGULATIONS  
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SCHEDULE

Acts [electronic resource]

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