

accordance with the approval of the Director or in accordance with Division 3 of Part III, communicate in any way with—

- (i) the child until he or she attains the age of 18 years; or
- (ii) a person who, to his or her knowledge, is an adoptive parent of the child.

Penalty: \$5,000 or imprisonment for 6 months.

Approval of communications

92. The Director—

- (a) shall not approve a communication for the purpose of paragraph 91 (b) without the consent of the adoptive parents; and
- (b) may approve the communication generally or subject to specified conditions and restrictions.

Director's report for prosecution

93. In proceedings for an offence against paragraph 91 (b), a court shall—

- (a) require the Director to furnish a report concerning the circumstances of the alleged communication; and
- (b) consider that report.

Payments in consideration of adoptions etc.

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

- (a) the adoption or proposed adoption of a child;
- (b) the signing of an instrument of consent to the adoption of a child;
- (c) the transfer of the custody or control of a child with a view to the adoption of the child; or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of a child.

Penalty: \$50,000 or imprisonment for 5 years.

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

- (a) a payment of legal expenses;
- (b) a payment made by an adoptive parent, with the approval in writing of the Director or with the approval 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 or the child;

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

(3) Subsection (1) does not apply in relation to a payment or reward in connection with an adoption or proposed adoption under a law of a State or another Territory if making the payment or giving the reward, or agreeing to make the payment or give the reward, would have been lawful if it had taken place in that State or other Territory.

Unauthorised arrangements for adoption

95. (1) A person other than the Director or a person acting on behalf of the Director or a private adoption agency shall not—

- (a) conduct negotiations or make arrangements with another person with a view to the adoption of a child by that other person; or
- (b) except in accordance with arrangements made by or on behalf of the Director or a private adoption agency—
 - (i) transfer, or cause to be transferred, the possession, custody or control of a child to another person with a view to the adoption of the child by that other person; or
 - (ii) receive possession, custody or control of a child with a view to adopting the child.

(2) Subsection (1) does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child with a view to the adoption of the child by a relative of the child, or by 2 persons one of whom is a parent or relative of the child.

Penalty: \$20,000 or imprisonment for 2 years.

Unauthorised advertising

96. (1) Subject to this section, a person shall not publish, or cause to be published, by electronic or print media or any other means, any advertisement or other matter indicating (whether or not in relation to a particular child) that—

- (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 or imprisonment for 6 months.

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

Restriction on publication of identity of parties

97. (1) Subject to this section, a person shall not publish, or cause to be published, by electronic or print media or any other means, in relation to—

- (a) an application for an adoption order or for a corresponding order under a law of a State or another Territory;
- (b) the proceedings on such an application; or
- (c) any legal steps taken preparatory to or consequent upon such an application;

the name of an applicant, the child, or a parent or guardian of the child, or any matter reasonably likely to enable any of those persons to be identified.

Penalty: \$20,000 or imprisonment for 2 years.

(2) Subsection (1) does not apply in relation to the publication of any matter with the authorisation of the Court to which the application was made.

(3) An authorisation for the purpose of subsection (2) shall not be given unless the Court is satisfied that publication will not operate to the prejudice of any person and that it is otherwise in the interests of justice to give the authorisation.

False statements

98. A person shall not, whether orally or in writing, wilfully make a false statement for the purpose of or in connection with an application for an adoption order or any other matter arising under this Act.

Penalty: \$20,000 or imprisonment for 2 years.

Personation of person whose consent to an adoption is required

99. 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 under this Act or under a law of a State or another Territory.

Penalty: \$20,000 or imprisonment for 2 years.

Presenting forged consent

100. A person shall not present, or cause to be presented, to the Court in connection with an application for an adoption order a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required under this Act if the signature to

the document was, to the knowledge of the first-mentioned person, forged or obtained by fraud, duress or other improper means.

Penalty: \$20,000 or imprisonment for 2 years.

Improperly witnessing consent

101. A person shall not subscribe his or her name as a witness to the signature of a person on an instrument of consent unless—

- (a) he or she is satisfied that the person who signed the instrument is a parent or guardian of the child;
- (b) he or she takes reasonable steps to satisfy himself or herself that the person who signed the instrument understands the effect of the consent; and
- (c) the instrument bears the date on which it is signed by that person.

Penalty: \$5,000 or imprisonment for 6 months.

Forged approval documents

102. A person shall not forge, or present to the Director, to a private adoption agency or to the Court knowing it to be forged, a document purporting to be an approval to the giving of identifying information concerning an adoption.

Penalty: \$20,000 or imprisonment for 2 years.

PART VIII—MISCELLANEOUS

Delegations

103. The Director or the Community Advocate may, by instrument in writing, delegate to a public servant all or any of his or her powers or functions under this Act.

Registration of orders

104. (1) The Registrar of the Supreme Court shall cause a memorandum, in accordance with the prescribed form, of each adoption order made, and a copy of each order discharging an adoption order, to be sent to the Registrar of Births, Deaths and Marriages.

(2) On receiving a memorandum or copy of an order under subsection (1), the Registrar of Births, Deaths and Marriages shall—

- (a) register it, as prescribed, in the register of adoptions; and
- (b) if it relates to a child whose birth is registered in the register of births, make such alterations to, or entries in, that register as are prescribed.

Memoranda of orders interstate

105. Where—

- (a) the Court makes an adoption order, or an order discharging such an order; and
- (b) the Registrar of the Supreme Court has reason to believe that the birth of the child is registered in a State or in another Territory;

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 or her to be a true memorandum or copy, to be sent to such officer of that State or other Territory having functions in relation to registration of births as is prescribed or having functions corresponding to those of the Registrar of Births, Deaths and Marriages.

Particulars of interstate orders

106. Where the Registrar of Births, Deaths and Marriages receives, in relation to a child whose birth is registered in the register of births, a memorandum or copy of an order for the adoption of the child made (whether by a court or not) under a law of a State or another Territory, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorised to certify that under the law of that State or other Territory, the Registrar shall—

- (a) register it, as prescribed, in the register of adoptions; and
- (b) make such alterations to, or entries in, the register of births as are prescribed.

Legal representation of child

107. In proceedings on an application for an adoption order, the Court may make an order for the legal representation of the child.

Notification to parents

108. The Director shall inform a birth parent of a child in writing of—

- (a) the placement of the child with a prospective adopting parent;
- (b) the non-placement of a child at the expiration of 6 months after the instrument of consent was signed;
- (c) any breakdown in placement and the return of the child to the custody of an appropriate authority;
- (d) the making of an adoption order; or
- (e) if the Director becomes aware of it—the death of the child.

Notice of decisions

109. (1) Where the Director makes a decision—

- (a) refusing to include the name of a person on the register of persons seeking the placement of a child for the purpose of adoption under paragraph 16 (1) (a);
- (b) denying access under section 32;
- (c) refusing to declare under section 38 that a child is under his or her guardianship;
- (d) refusing to give information, to request an authority to give information, or to make enquiries under section 62;
- (e) withholding information under subsection 68 (7);
- (f) supplying a document or information under subsection 72 (1) when the applicant has not attended an interview with an approved counsellor;
- (g) refusing to approve a person as a counsellor under subsection 72 (4);
- (h) refusing to grant approval of a private adoption agency under section 82;
- (i) revoking or suspending an approval under section 85;
- (j) denying approval of a communication, or approving a communication subject to conditions or restrictions, under section 92;
- (k) refusing to approve a payment in respect of hospital and medical expenses under paragraph 94 (2) (b);
- (l) refusing to authorise a payment or reward under paragraph 94 (2) (c); or
- (m) refusing to approve advertising or other matter under subsection 96 (1);

he or she shall, within 30 days after the date of the decision, cause notice in writing of the decision to be given to the relevant person.

(2) Where the Registrar of Births, Deaths and Marriages makes a decision under subsection 62 (3) refusing to—

- (a) cause a search to be made in the register of births; and
- (b) issue to the applicant—
 - (i) a copy of, or an extract from, the relevant entry; or
 - (ii) a notification of the result of the search;

as the case requires;

he or she shall, within 30 days after the date of the decision, cause notice in writing of the decision to be given to the applicant.

(3) A notice under subsection (1) or (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates;
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act; and
- (c) if the notice relates to a decision referred to in paragraph (1) (a)—include a statement to the effect that the applicants may request the Director to reconsider the decision under section 17.

(4) The validity of a decision referred to in subsection (1) or (2) shall not be taken to be affected by a failure to comply with subsection (3).

(5) In subsection (1), “relevant person” means—

- (a) in the case of a decision referred to in paragraph (1) (a)—the person or each of the persons who requested a review of the decision;
- (b) in the case of a decision referred to in paragraph (1) (b)—
 - (i) the person who has been denied access to the child;
 - (ii) each person who has custody of the child; and
 - (iii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child;
- (c) in the case of a decision referred to in paragraph (1) (c)—
 - (i) the requesting authority in a State or another Territory;
 - (ii) a person with whom the child has been placed with a view to adoption; and
 - (iii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child;
- (d) in the case of a decision referred to in paragraph (1) (d)—the person who applied for the information;
- (e) in the case of a decision referred to in paragraph (1) (e)—the applicant for the information;

- (f) in the case of a decision referred to in paragraph (1) (f)—the applicant for the document or information;
- (g) in the case of a decision referred to in paragraph (1) (g)—the person refused approval as a counsellor;
- (h) in the case of a decision referred to in paragraph (1) (h) and (i)—the principal officer of the organisation;
- (i) in the case of a decision referred to in paragraph (1) (j)—
 - (i) the person who sought approval to communicate;
 - (ii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child; and
 - (iii) each adoptive parent;
- (j) in the case of a decision referred to in paragraph (1) (k)—
 - (i) each adoptive parent;
 - (ii) the birth mother of the child; and
 - (iii) the person who sought approval of a payment in respect of hospital and medical expenses;
- (k) in the case of a decision referred to in paragraph (1) (l)—
 - (i) each adoptive parent;
 - (ii) the birth mother of the child; and
 - (iii) the person who sought approval of the payment or reward; and
- (l) in the case of a decision referred to in paragraph (1) (m)—
 - (i) the person who sought approval of the advertisement or other matter; and
 - (ii) if the Director considers it appropriate having regard to the age of the child that notice be given to the child—the child.

Review by Administrative Appeals Tribunal

110. (1) Subject to subsection (2), application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in section 109.

(2) An application for a review of a decision referred to in paragraph 109 (1) (a) shall not be made unless the Director has reconsidered and confirmed that decision under subsection 17 (4).

(3) Where—

- (a) a request has been made under subsection 17 (1) for a reconsideration of a decision referred to in paragraph 109 (1) (a); and
- (b) at the expiration of the period of 14 days after the day on which the request was made the persons who made the request have not been informed in writing by the Director of the result of his or her reconsideration;

for the purpose of subsection (2), the Director shall be taken to have reconsidered and confirmed that decision on the expiration of that period.

(4) For the purpose of section 27 of the *Administrative Appeals Tribunal Act 1989*, a decision referred to in paragraph 109 (1) (a) shall be taken to have been made on the date on which the Director reconsidered and confirmed that decision, or is by virtue of subsection (3) to be taken to have reconsidered and confirmed that decision, under subsection 17 (4).

Authority to prosecute

111. Proceedings for an offence against this Act or against the regulations shall not be commenced except by, or with the written consent of, the Minister.

Hearings to be *in camera*

112. (1) Proceedings on an application for an adoption order or ancillary proceedings shall not be heard in open court.

(2) Persons other than parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise permitted by the Court, be excluded during the hearing of the proceedings.

Contents of reports not to be disclosed

113. Except as the Court otherwise orders, a report to the Court under section 19 shall not be made available to a party to the proceedings or any other person.

Restriction on inspection of records

114. Except as provided by the regulations, the records of any proceedings under this Act shall not be open to public inspection.

Director may appear at hearings

115. (1) The Director, or a person appointed for the purpose by the Director, may appear at the hearing of the proceedings on an application for an adoption order, and may address the Court, and call, examine and cross-examine witnesses.

(2) For the purpose of subsection (1), the Director is a party to the proceedings.

Proof of adoptions

116. 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 adoption order; or
- (b) an official certificate, entry or record of an adoption;

(whether effected in Australia or elsewhere) is evidence of the facts stated in, and matters appearing from, the document.

Judicial notice of signatures

117. In proceedings under this Act judicial notice shall be taken of the signature of a person who is or was the Director or his or her delegate, or holds or has held a corresponding office in a State or another Territory appearing on a document and of the fact that, at the time the document was signed, he or she held, or was acting in, that office.

Determination of fees

118. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Fees payable

119. A fee determined under section 118 is payable to the Territory in relation to the relevant matter specified in the notice referred to in that section.

Transitional provisions

120. (1) Notwithstanding the repeal effected by section 3—

- (a) an adoption order or interim order made under the repealed laws and in force immediately before the commencement of this Act continues in force; and
- (b) proceedings on an application to the Court for an order under the repealed laws that were pending immediately before the commencement of this Act may be continued and dealt with, and incidental proceedings may be instituted, continued and dealt with, under the provisions of this Act as if this Act had been in operation when the application was made and an adoption order may be made under this Act accordingly.

(2) An instrument of consent to the adoption of a child given by a person before the commencement of this Act in accordance with the repealed laws and duly attested and verified shall, for the purpose of proceedings

under this Act for the adoption of the child, be deemed to be a sufficient consent of the person giving the consent.

(3) Subject to subsection (4), the provisions of sections 43 and 44 (other than subsection 44 (4)) apply in relation to an adoption order made under the repealed laws as if this Act had been in force when the order was made and the order had been made under this Act.

(4) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order referred to in subsection (3) has the same effect as if the repealed laws had continued in operation.

Regulations

121. The Executive may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, making provision for or in relation to—

- (a) the forms to be used for the purposes of this Act;
- (b) the keeping of lists by the Director and by private adoption agencies of persons approved for the placement of a child for the purposes of adoption;
- (c) the prohibition or regulation of access to the register of adoptions;
- (d) the furnishing of copies of, or extracts from, entries included in the register of adoptions;
- (e) the making, correction or cancellation of entries relating to adopted children in the register of births; and
- (f) penalties, not exceeding a fine of \$500, for offences against the regulations.

[Presentation speech made in Assembly on 18 November 1992]

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