



New South Wales

Adoption Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Adoption Act 2000* so as:

- (a) to clarify the circumstances that must exist before the Supreme Court makes an adoption order in relation to an adult, and
- (b) to require adoption plans for Aboriginal and Torres Strait Islander children to make provision for certain matters, and
- (c) to specify the circumstances that must exist before an adoption order may be made so as to enable a child to be adopted by his or her authorised carers, and
- (d) to facilitate the return of children to the parental responsibility of the Director-General of the Department of Community Services, and
- (e) to ensure that the provision of certain documents to adopted children does not contravene the provisions of the *State Records Act 1998*, and
- (f) to provide for the issue of search warrants to facilitate the investigation of suspected offences under the *Adoption Act 2000* and the regulations under that Act, and

- (g) to enable the prescription of adoption services and accreditation standards to be effected by administrative order rather than, as is currently the case, by regulation, and
- (h) to enact savings and transitional provisions, and
- (i) to align certain terminology used in that Act with terminology used in the *Children and Young Persons (Care and Protection) Act 1998*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date on which it is assented to.

Clause 3 is a formal provision that gives effect to the amendments to the *Adoption Act 2000* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* set out in Schedule 3.

Clause 5 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 **Principal amendments to Adoption Act 2000**

Adoption orders for adults

Section 24 (1) specifies who may be the subject of an adoption order. In the case of a child who is over the age of 18 years when the application for the adoption order is made, section 24 (1) requires the child to have been cared for by the applicant. Section 24 (2) (a) states that a child has been cared for if he or she has been brought up, maintained and educated by the applicant for a continuous period of at least 5 years before the application was made. **Schedule 1 [3]** amends section 24 (2) (a) so as to make it clear that the period of 5 years must have occurred before the child reached the age of 18 years. **Schedule 1 [4]** inserts proposed section 24 (3) to make it clear that the Supreme Court may, in exceptional circumstances, make an adoption order even if the child has been brought up, maintained and educated by the applicant for less than that period.

Adoption plans for Aboriginal and Torres Strait Islander children

Section 46 prescribes the matters for which an adoption plan must, and may, make provision. One of the matters for which an adoption plan may make provision in respect of a child is the way in which the child is to be assisted to develop a healthy and positive cultural identity and for the links with his or her heritage to be fostered.

Schedule 1 [5] inserts proposed section 46 (3) which provides that, in the case of an Aboriginal or Torres Strait Islander child to be adopted by persons who are not Aboriginal or Torres Strait Islander persons, that matter is one for which an adoption plan must make provision.

Adoption of children by authorised carers

Section 67 enables the Supreme Court, when considering an application for an adoption order for a child, to dispense with the consent of certain persons (other than the child) in certain circumstances. **Schedule 1 [6]** amends section 67 so as to allow the consent of any person (other than the child) to be dispensed with in the case of an application made by an authorised carer if the Supreme Court is satisfied that the child has established a stable relationship with the authorised carer and the adoption of the child by the authorised carer will promote the child's interests and welfare.

Return of children to parental responsibility of Director-General

Part 6 of Chapter 4 gives guardianship to the Director-General of any child who is awaiting adoption. Section 79 provides for when that guardianship comes to an end. Section 79 (1) (d) provides that guardianship comes to an end if the child is placed in the care of some other person. **Schedule 1 [7]** omits section 79 (1) (d). **Schedule 1 [8]** inserts proposed section 79 (2A) which provides instead that the Director-General's guardianship is merely suspended while the child is so placed. **Schedule 1 [8]** also inserts proposed section 79 (2B) which provides that such a placement may be terminated at any time, and for any reason or no reason. **Schedule 1 [9]** inserts proposed section 79A which enables the Director-General to make an order directing that a child who has left, or been removed from, the care of the Director-General or of any person with whom the child has been placed to be returned to that care.

Provision of documents to adopted persons

Part 2 of Chapter 8 entitles an adopted child to be given certain information (including an original birth certificate and original birth record). In some circumstances, giving such information and documents to the child may contravene the provisions of the *State Records Act 1998*. **Schedule 1 [10]** inserts proposed section 143A so as to ensure that there will be no such contravention.

Search warrants

Schedule 1 [9] inserts proposed section 79B, and **Schedule 1 [11]** inserts proposed section 202A, each of the proposed sections enabling the Director-General or a police officer to apply for a search warrant. A search warrant under proposed section 79B will facilitate the search for missing children for whom the Director-General has parental responsibility. A search warrant under proposed section 202A will facilitate the investigation of alleged offences under the Act or the regulations.

Prescription of adoption services and accreditation standards

Section 13 (2) enables the regulations to prescribe the adoption services for which an adoption service provider may be accredited and standards that an adoption service provider must comply with in order to be accredited in relation to such a service. **Schedule 1 [1]** amends section 13 (2) so as to provide that such matters are to be prescribed by administrative order. **Schedule 1 [2]** inserts proposed section 13 (3) which will provide for the tabling and disallowance of such an order, and proposed section 13 (4) which requires any prescribed accreditation standards to be posted on the Department's internet website.

Savings and transitional provisions

Schedule 1 [13] inserts proposed Part 3 into Schedule 3. The new Part contains savings and transitional provisions consequent on the enactment of the proposed Act. **Schedule 1 [12]** amends clause 1 of Schedule 3 so as to enable further savings and transitional provisions to be made by regulation.

Schedule 2 Amendments to Adoption Act 2000 in relation to changes in terminology

Schedule 2 amends various provisions of the Act so as:

- (a) to substitute the expression "care responsibility" for the expression "care", and
- (b) to substitute the expression "parental responsibility" for the expression "guardianship", and
- (c) to substitute the expression "authorised carer" for the expression "foster parent".

The Schedule also inserts definitions of *authorised carer* and *care responsibility* into the Dictionary to the Act (**Schedule 2 [55]**).

The purpose of these amendments is to align the concepts used in the Act with concepts used in the *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 3 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 3 amends Schedule 2 so as to include references to proposed sections 79B and 202A of the *Adoption Act 2000*, to be inserted into that Act by **Schedule 1 [9] and [11]**.



New South Wales

Adoption Amendment Bill 2006

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New South Wales

Adoption Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Adoption Act 2000* in relation to the adoption of adults, the adoption of Aboriginal and Torres Strait Islander children and certain other matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Adoption Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Adoption Act 2000 No 75	6
The <i>Adoption Act 2000</i> is amended as set out in Schedules 1 and 2.	7
4 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	8
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended as set out Schedule 3.	9 10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which this Act commences.	13 14
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16

Schedule 1	Principal amendments to Adoption Act 2000	1
		2
	(Section 3)	3
[1]	Section 13 Accreditation of adoption service providers	4
	Omit “The regulations may prescribe” from section 13 (2).	5
	Insert instead “The Director-General may, by order published in the Gazette, establish”.	6
		7
[2]	Section 13 (3) and (4)	8
	Insert after section 13 (2):	9
	(3) Sections 40 and 41 of the <i>Interpretation Act 1987</i> apply to an order referred to in subsection (2) in the same way as they apply to a statutory rule within the meaning of that Act.	10
		11
		12
	(4) A copy of any standards in force under subsection (2) (b) must be kept posted on the Department’s internet website.	13
		14
[3]	Section 24 Who can be adopted?	15
	Omit “before the application was made” from section 24 (2) (a).	16
	Insert instead “prior to the child reaching the age of 18 years”.	17
[4]	Section 24 (3)	18
	Insert after section 24 (2) (after the note):	19
	(3) An adoption order may also be made in relation to a child who was 18 or more years of age when the application for the order was made, but was brought up, maintained and educated by the applicant for less than the period referred to in subsection (2) (a), if the Court is satisfied that there are exceptional circumstances that justify making the order.	20
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[5]	Section 46 What is an adoption plan?	26
	Insert after section 46 (2):	27
	(3) An adoption plan for an Aboriginal child or Torres Strait Islander child to be adopted by persons of whom neither is an Aboriginal or Torres Strait Islander, as the case may be, must make provision of the kind referred to in subsection (2) (a).	28
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[6] Section 67 When can Court dispense with consent of person other than the child?	1
	2
Insert at the end of section 67 (1) (c):	3
	4
, or	4
(d) if an application has been made to the Court for the adoption of the child by one or more persons who are authorised carers for the child:	5
	6
	7
(i) the child has established a stable relationship with those carers, and	8
	9
(ii) the adoption of the child by those carers will promote the child's welfare.	10
	11
[7] Section 79 Duration of parental responsibility	12
Omit section 79 (1) (d).	13
[8] Section 79 (2A) and (2B)	14
Insert after section 79 (2):	15
(2A) The Director-General's parental responsibility for a child under section 75 or 78 is suspended while the child is placed in some other person's care pursuant to subsection (2).	16
	17
	18
(2B) The Director-General may at any time, and for any reason or no reason, make an order terminating a child's placement under subsection (2) and directing that the child be returned to the parental responsibility of the Director-General.	19
	20
	21
	22
[9] Sections 79A and 79B	23
Insert after section 79:	24
79A Children under the parental responsibility of Director-General leaving or being removed from care (cf Children and Young Persons (Care and Protection) Act 1998, section 232)	25
	26
	27
If:	28
(a) a child who is under the parental responsibility of the Director-General, or under the care responsibility of a person under section 79 (2), has, without lawful excuse, left, or been removed from, the care of the Director-General or person, as the case may be, and	29
	30
	31
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	33
(b) the Director-General is of the opinion that the child should be returned to that care,	34
	35
the Director-General may, by order in writing, direct that the child be returned to that care.	36
	37

79B	Power of search for and removal of children in need of care and protection (cf Children and Young Persons (Care and Protection) Act 1998, section 233)	1 2 3
(1)	The Director-General or a police officer may apply to an authorised officer for a search warrant if the Director-General or police officer has reasonable grounds for believing that:	4 5 6
	(a) a child whom the Director-General has placed in some other person's care responsibility pursuant to section 79 (2), or	7 8 9
	(b) a child the subject of an order in force under section 79 (2B) or 79A,	10 11
	may be found in any premises.	12
(2)	An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.	13 14 15
(3)	A search warrant authorises the person named in the warrant:	16
	(a) to enter the premises (if any) specified in the warrant, and	17
	(b) to search the premises (if any) or elsewhere, or at large, for the presence of the child referred to in subsection (1) (a) or (b), and	18 19 20
	(c) to remove the child, and	21
	(d) to return the child to, or to place the child in, the custody of the Director-General or the person having care responsibility for the child under section 79 (2), as the case requires.	22 23 24 25
(4)	An application for a warrant or warrant may specify one or more addresses or other descriptions of premises. However, it is not necessary to specify an address or other description of premises in an application for a warrant or in a warrant.	26 27 28 29
(5)	It is not necessary in any search warrant issued under this section to name any particular child.	30 31
(6)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	32 33 34
(7)	In this section, authorised officer has the same meaning as it has in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	35 36

[10] Section 143A	1
Insert after section 143:	2
143A Application of State Records Act 1998	3
(1) This Part has effect despite the provisions of the <i>State Records Act 1998</i> .	4 5
(2) Accordingly, the provision of information or documents in accordance with this Part does not constitute an offence under that Act.	6 7 8
[11] Section 202A	9
Insert after section 202:	10
202A Entry and inspection under search warrant	11
(1) The Director-General or a police officer may apply to an authorised officer for a search warrant if the Director-General or police officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.	12 13 14 15 16
(2) An authorised officer to whom such an application is made may issue a search warrant if satisfied that there are reasonable grounds for doing so.	17 18 19
(3) A search warrant authorises the person named in the warrant:	20
(a) to enter the premises, and	21
(b) to inspect the premises for evidence of a contravention of this Act or the regulations.	22 23
(4) Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	24 25 26
(5) In this section, authorised officer has the same meaning as it has in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	27 28
[12] Schedule 3 Savings, transitional and other provisions	29
Insert at the end of clause 1 (1):	30
<i>Adoption Amendment Act 2006</i>	31

[13] Schedule 3, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Adoption Amendment Act 2006	3 4
13 Definition	5
In this Part:	6
<i>the 2006 amending Act</i> means the <i>Adoption Amendment Act 2006</i> .	7 8
14 Accreditation standards	9
The accreditation standards prescribed by the regulations under section 13, as in force immediately before that section was amended by the 2006 amending Act, are taken to have been established by the Director-General under that section, as amended by that Act, and may accordingly be varied or revoked under that section as so amended.	10 11 12 13 14 15
15 Who can be adopted?	16
Section 24, as amended by the 2006 amending Act, extends to any adoption order arising from an application for adoption made before the commencement of the amendments made to that section by that Act.	17 18 19 20
16 What is an adoption plan?	21
Section 46, as amended by the 2006 amending Act, does not apply to any adoption plan that accompanied an application for an adoption order that was made before the commencement of the amendment made to that section by that Act.	22 23 24 25
17 When can Court dispense with consent of person other than the child?	26 27
Section 67, as amended by the 2006 amending Act, extends to proceedings on an application for an adoption order that was made before the commencement of the amendment to that section made by Schedule 1 [6] to that Act.	28 29 30 31

Schedule 2	Amendments to Adoption Act 2000 in relation to changes in terminology	1
		2
	(Section 3)	3
[1]	Section 10 Adoption services to be provided by or on behalf of Director-General	4
	Omit “care of” from section 10 (2) (c).	5
	Insert instead “care responsibility for”.	6
[2]	Section 10 (2) (d)	7
	Omit “guardianship”. Insert instead “parental responsibility”.	8
[3]	Section 24 Who can be adopted?	9
	Omit “or custody” from section 24 (2) (b).	10
	Insert instead “responsibility”.	11
[4]	Section 49 Notice to be given of adoption plan	12
	Omit “care of”. Insert instead “care responsibility for”.	13
[5]	Section 52 Consent of parents and persons who have parental responsibility generally required	14
	Omit “guardian of” from section 52 (a) (ii).	15
	Insert instead “person who has parental responsibility for”.	16
[6]	Section 52 (b)	17
	Omit “parent or guardian of”.	18
	Insert instead “parent of, or person who has parental responsibility for,”.	19
[7]	Section 53 Ways in which parent or person who has parental responsibility can give consent	20
	Omit “parent or guardian of” from section 53 (1).	21
	Insert instead “parent of, or person who has parental responsibility for,”.	22
[8]	Section 53 (1) (b) (iv)	23
	Omit “a foster parent who has had care of”.	24
	Insert instead “an authorised carer who has had care responsibility for”.	25
		26
		27
		28

[9] Section 54 When consent of parent or person who has parental responsibility not required	1
	2
Omit “guardian” from section 54 (1) (c).	3
Insert instead “person who has parental responsibility”.	4
[10] Section 54 (2)	5
Omit “in the care of”. Insert instead “cared for by”.	6
[11] Section 56 Birth father to be given opportunity to consent	7
Omit “guardian” wherever occurring in section 56 (1) (a) and (2) (a).	8
Insert instead “person who has parental responsibility”.	9
[12] Section 67 When can Court dispense with consent of person other than the child?	10
	11
Omit “a parent or guardian of” from section 67 (1) (c).	12
Insert instead “a parent of, or person who has parental responsibility for,”.	13
[13] Section 67 (1) (c)	14
Omit “the parent or guardian”.	15
Insert instead “the parent or person who has parental responsibility”.	16
[14] Section 73 Revocation of consent	17
Omit “guardianship of” wherever occurring in section 73 (5) and (6).	18
Insert instead “parental responsibility for”.	19
[15] Part 6, heading	20
Omit “Guardianship of”. Insert instead “Parental responsibility for”.	21
[16] Part 6, note to Part	22
Omit “guardianship of”. Insert instead “parental responsibility for”.	23
[17] Part 6, note to Part	24
Omit “Guardianship”. Insert instead “Parental responsibility”.	25
[18] Part 6, note to Part	26
Omit “foster parents”. Insert instead “authorised carers”.	27

[19] Section 75 Parental responsibility for citizen child awaiting adoption	1
Omit “ Guardianship ” and “ guardianship ” wherever occurring in section 75 (1) and (7).	2 3
Insert instead “ Parental responsibility ” and “ parental responsibility ”, respectively.	4 5
[20] Section 75 (1)	6
Omit “is guardian of”. Insert instead “has parental responsibility for”.	7
[21] Section 75 (5), (8) (c) and (11)	8
Omit “guardianship of” wherever occurring.	9
Insert instead “parental responsibility for”.	10
[22] Section 75 (6)	11
Omit “guardianship”. Insert instead “parental responsibility”.	12
[23] Section 75 (7)	13
Omit “becomes the guardian of”.	14
Insert instead “takes parental responsibility for”.	15
[24] Section 75 (7)	16
Omit “is the child’s guardian”.	17
Insert instead “has parental responsibility for the child”.	18
[25] Section 75 (7) and (8) (c)	19
Omit “guardianship renunciation” wherever occurring.	20
Insert instead “parental responsibility renunciation”.	21
[26] Section 75 (9)	22
Omit “is guardian”. Insert instead “has parental responsibility”.	23
[27] Section 75 (11)	24
Omit “ <i>guardianship</i> ” from the definition of <i>guardianship renunciation instrument</i> .	25 26
Insert instead “ <i>parental responsibility</i> ”.	27

[28] Section 75 (11)	1
Omit “be guardian of” from the definition of <i>guardianship renunciation instrument</i> .	2
	3
Insert instead “have parental responsibility for”.	4
[29] Section 76 Renunciation of parental responsibility for child present in another State	5
	6
Omit “guardianship renunciation” wherever occurring in section 76 (1), (2) and (3).	7
	8
Insert instead “parental responsibility renunciation”.	9
[30] Section 76 (1)	10
Omit “is the guardian of”. Insert instead “has parental responsibility for”.	11
[31] Section 76 (1) (c) and (d) and (4)	12
Omit “guardianship of” wherever occurring.	13
Insert instead “parental responsibility for”.	14
[32] Section 76 (2)	15
Omit “be guardian of”. Insert instead “have parental responsibility for”.	16
[33] Section 76 (4), definition of “guardianship renunciation instrument”	17
Omit “ <i>guardianship</i> ”. Insert instead “ <i>parental responsibility</i> ”.	18
[34] Section 77 Parental responsibility for certain non-citizen children awaiting adoption	19
	20
Omit “is the guardian of” from section 77 (2).	21
Insert instead “has parental responsibility for”.	22
[35] Section 77, note	23
Omit “guardianship”. Insert instead “parental responsibility”.	24
[36] Section 78 Parental responsibility reports—citizen and non-citizen children	25
	26
Omit “is guardian” from section 78 (1).	27
Insert instead “has parental responsibility”.	28

[37] Section 78 (1)	1
Omit “becoming guardian”.	2
Insert instead “taking over parental responsibility”.	3
[38] Section 78 (1)	4
Omit “be guardian”. Insert instead “have parental responsibility”.	5
[39] Section 78 (2)	6
Omit “guardianship or other”.	7
[40] Section 78 (3) (b)	8
Omit “remain guardian of”.	9
Insert instead “continue to have parental responsibility for”.	10
[41] Section 79 Duration of parental responsibility	11
Omit “be guardian of” wherever occurring in section 79 (1).	12
Insert instead “have parental responsibility for”.	13
[42] Section 79 (1) (c) and (f) and (4)	14
Omit “guardianship of” wherever occurring.	15
Insert instead “parental responsibility for”.	16
[43] Section 79 (2)	17
Omit “of whom the Director-General is guardian”.	18
Insert instead “for whom the Director-General has parental responsibility”.	19
[44] Section 79 (2)	20
Insert “responsibility” after “in the care”.	21
[45] Section 79 (3)	22
Omit “is guardian of”. Insert instead “has parental responsibility for”.	23
[46] Section 92 Care of child after refusal of an application	24
Omit “for the care and custody of”.	25
Insert instead “in relation to the parental responsibility for”.	26

[47] Section 93 Discharge of adoption orders	1
Omit “custody or guardianship of” from section 93 (7) (c).	2
Insert instead “parental responsibility for”.	3
[48] Section 96 Effect of adoption order on parental responsibility and previous adoption	4
Omit “guardianship of” from section 96 (1) (a).	5
Insert instead “parental responsibility for”.	6
[49] Section 176 Definitions	8
Omit “parent or guardian of” from paragraph (a) of the definition of <i>prohibited adoption advertising</i> .	9
Insert instead “parent of, or person who has parental responsibility for,”.	10
[50] Section 180 Restriction on publication of identity of parties	12
Omit “guardian of” from section 180 (1) (a).	13
Insert instead “person who has parental responsibility for”.	14
[51] Section 184 Undue influence	15
Omit “parent or guardian of” from section 184 (1).	16
Insert instead “parent of, or person who has parental responsibility for,”.	17
[52] Section 184 (1) (a)–(c)	18
Omit “guardian” wherever occurring.	19
Insert instead “person who has parental responsibility”.	20
[53] Section 185 Improper witnessing of consent	21
Omit “parent or guardian of” from section 185 (a).	22
Insert instead “parent of, or person who has parental responsibility for,”.	23
[54] Dictionary	24
Omit “care and custody of” from paragraph (c) of the definition of <i>adoption service</i> .	25
Insert instead “care responsibility of or parental responsibility for”.	26
	27

[55] Dictionary	1
Insert in alphabetical order:	2
<i>authorised carer</i> means any person who:	3
(a) has care and responsibility for a child under out-of-home care arrangements made under the <i>Children and Young Persons (Care and Protection) Act 1998</i> , or	4
(b) has responsibility for the day-to-day care, welfare and development of a child under the <i>Family Law Act 1975</i> of the Commonwealth.	5
<i>care responsibility</i> has the same meaning as in section 157 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	6
[56] Dictionary, definition of “decision”	7
Omit “care and custody of” from paragraph (c).	8
Insert instead “care responsibility of or parental responsibility for”.	9
[57] Dictionary, definition of “decision”	10
Omit “guardianship or other” from paragraph (d).	11
[58] Dictionary, definitions of “foster parent” and “guardian”	12
Omit the definitions.	13
	14
	15
	16
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	18

Adoption Amendment Bill 2006

Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 3

Schedule 3	Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002	1
		2
		3
	(Section 4)	4
Schedule 2 Search warrants under other Acts		5
Insert in alphabetical order of Acts:		6
	<i>Adoption Act 2000</i> , sections 79B and 202A	7