

ADOPTION INFORMATION ACT 1990 No. 63

NEW SOUTH WALES



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ADOPTION INFORMATION ACT 1990 No. 63

NEW SOUTH WALES



Act No. 63, 1990

An Act to allow greater access to information relating to adoptions;
and for other related matters. [Assented to 26 October 1990]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Adoption Information Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

- (2) Parts 1 and 5 and sections 15-20 commence on the date of assent.

Objects

3. The objects of this Act are:

- (a) to give adult adopted persons greater access to information concerning their origins; and
- (b) to give the birth parents and adoptive parents of adult adopted persons greater access to information concerning their children; and
- (c) to preserve controls adoptive parents have over the access of adopted children to information concerning their origins while recognising the paramount interests of adopted children; and
- (d) to give the relatives of adopted persons, birth parents and other persons access to information concerning adopted persons' origins in special circumstances; and
- (e) to protect the privacy of adopted persons and birth parents by establishing a system of vetoes against contact with persons identified through access to information concerning persons adopted before the date of assent to this Act; and
- (f) to limit the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy; and
- (g) to make provision for the continued use of the Adopted Persons Contact Register.

Definitions

4. In this Act:

"adopted brother or sister", in relation to an adopted person, means another adopted person who has or had at least one parent (whether biological or adoptive) who is or was a birth parent of the adopted person;

"adopted person" means a person:

- (a) an order for whose adoption was made under the Adoption of Children Act 1965 or a former Act within the meaning of that Act; or
- (b) whose adoption in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having the same effect as if an order for adoption had been made under that Act;

"adoptive parent" means a person who becomes the parent of an adopted person by adoption;

"amended birth certificate", in relation to an adopted person, means a certified copy of the recording relating to the birth of the person based on the registered memorandum relating to the adoption of the person kept under the Registration of Births, Deaths and Marriages Act 1973;

"birth parent" means a biological parent of an adopted person;

"contact veto" means a veto against contact registered under Part 3 and in force;

"Director-General" means the Director-General of the Department of Family and Community Services;

"hospital" means:

- (a) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (b) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929 or a hospital specified in the Fifth Schedule to that Act; or
- (c) a private hospital within the meaning of the Private Hospitals and Day Procedure Centres Act 1988;

"information source" means:

- (a) the Department of Family and Community Services; or
- (b) the Department of Health; or
- (c) a private adoption agency; or
- (d) a hospital; or
- (e) the Office of the Principal Registrar; or
- (f) the Supreme Court; or
- (g) any other institution, body or person prescribed as an information source for the purposes of this Act;

"original birth certificate", in relation to an adopted person, means:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - a certified copy of the recording relating to the birth of the person made under section 11 of that Act; or
- (b) if the person's birth is not so registered - a copy of any similar document relating to the adopted person identifying the birth parents of the person and contained in records relating to the adoption of the person that are held by an information source;

"prescribed information" has the meaning given by section 5;

"Principal Registrar" means the Principal Registrar of Births, Deaths and Marriages;

"private adoption agency" means a charitable organisation for the time being approved as a private adoption agency under Part 3 of the Adoption of Children Act 1965;

"relative" means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person:

- (a) whether the relationship is of the whole blood or half blood or by marriage; and
- (b) whether the relationship is natural or depends on the adoption of a person.

Prescribed information

5. (1) For the purposes of this Act, **prescribed information** is information of a kind prescribed by the regulations.

- (2) Different kinds of information may be prescribed:
 - (a) for different classes of persons to whom the information relates; or
 - (b) for different classes of persons to whom the information is supplied under this Act.
- (3) Subsection (2) does not limit the different kinds of information that may be prescribed.

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

Adopted person's rights

- 6. (1) An adopted person is entitled to receive (subject to this Act):
 - (a) the person's original birth certificate; and
 - (b) any prescribed information relating to the person's birth parents held by an information source; and
 - (c) any prescribed information relating to an adopted brother or sister of the person held by an information source.
- (2) An adopted person who is less than 18 years old is not entitled to receive his or her original birth certificate or prescribed information except with the consent of:
 - (a) his or her surviving adoptive parents and surviving birth parents (as shown on the original birth certificate); or
 - (b) the Director-General if there are no surviving adoptive parents or birth parents (as so shown) or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.
- (3) An adopted person is not entitled to receive any prescribed information held by an information source unless:
 - (a) the adopted person produces to the information source his or her original birth certificate (being a certificate supplied under this Part); or
 - (b) his or her original birth certificate is held by that information source and will be supplied together with the prescribed information.

Adoptive parent's rights

7. (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):

- (a) the adopted person's original birth certificate; and
- (b) any prescribed information relating to the adopted person held by an information source.

(2) The adoptive parent is not entitled to receive the original birth certificate unless the adopted person is 18 or more years old and consents to the adoptive parent receiving it.

Birth parent's rights

8. (1) A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to this Act):

- (a) the amended birth certificate of the adopted person if a memorandum of the adoption of the person is registered under the Registration of Births, Deaths and Marriages Act 1973; and
- (b) any prescribed information relating to the adopted person or the adoptive parents held by an information source.

(2) A man who claims to be the birth parent of an adopted person is not entitled to receive an amended birth certificate or prescribed information under this section unless:

- (a) he is shown on the adopted person's original birth certificate as the person's father; or
- (b) he is, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person.

(3) A birth parent is not entitled to receive any prescribed information held by an information source unless the birth parent produces to the information source the amended birth certificate of the adopted person (being a certificate supplied under this Part).

Access to adoption information by relatives and others after death of adopted person or birth parent

9. (1) The Director-General may:

- (a) supply to a relative, spouse or other person the original or amended birth certificate of, or prescribed information relating to, a deceased adopted person or a deceased birth parent; or

- (b) after such consultation with the Principal Registrar or other information source concerned as the Director-General considers necessary, authorise the Principal Registrar or other information source to supply such a birth certificate or such information to a person nominated by the Director-General.
- (2) The Director-General must not supply a birth certificate or prescribed information to a person other than a relative or spouse (or authorise such action to be taken by an information source) unless:
 - (a) the person had a de facto or other close personal relationship with the deceased person; and
 - (b) the Director-General has taken into account any likely detriment to the welfare and best interests of any adopted person, birth parent, relative or spouse of the deceased person then surviving the deceased person or the other person if the birth certificate or information is supplied.
- (3) An information source so authorised by the Director-General to supply a birth certificate or prescribed information must supply that certificate or information to the person nominated by the Director-General.
- (4) This section does not apply to prescribed information held by the Supreme Court.

Application for supply of birth certificate or prescribed information

10. (1) An application for the supply of an original birth certificate under this Part is to be made in writing to:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - the Principal Registrar; or
 - (b) if the person's birth is not so registered but his or her original birth certificate is held by an information source - that information source.
- (2) An application for the supply of an amended birth certificate under this Part is to be made in writing to the Principal Registrar.
- (3) An application for the supply of prescribed information held by an information source is to be made in writing to the information source.
- (4) The regulations may make provision for or with respect to the making of applications under this Part.

Persons designated to deal with applications

11. (1) An application for the supply of a birth certificate or prescribed information under this Part is to be dealt with by the designated person.

(2) The designated person is required to supply the birth certificate or prescribed information if satisfied that the applicant is entitled under this Act to receive it.

(3) This section does not apply to the Supreme Court.

(4) In this section, "**designated person**" means:

- (a) in relation to the Department of Family and Community Services - the Director-General; or
- (b) in relation to a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986 - the chief executive officer of the area health board for the area health service; or
- (c) in relation to the Department of Health or a hospital specified in the Fifth Schedule to the Public Hospitals Act 1929 - the Director-General of the Department; or
- (d) in relation to an incorporated hospital or a separate institution (within the meaning of the Public Hospitals Act 1929) - the chief executive officer of the hospital or institution; or
- (e) in relation to a private adoption agency - the principal officer (within the meaning of the Adoption of Children Act 1965) of the private adoption agency; or
- (f) in relation to a private hospital (within the meaning of the Private Hospitals and Day Procedure Centres Act 1988) - the licensee of the private hospital; or
- (g) in relation to the Office of the Principal Registrar - the Principal Registrar; or
- (h) in relation to an institution, body or person prescribed as an information source for the purposes of this Act - the person prescribed as the designated person for that institution, body or person,

and includes a person to whom a function under this section has been duly delegated by the designated person and a person authorised by the designated person in accordance with the guidelines prescribed by the regulations.

Discretion to supply prescribed information

12. (1) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information before an entitlement to the certificate or information arises under this Part if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.

(2) The Director-General may act under this section in any case in which an entitlement to prescribed information has not arisen because of the failure to obtain a birth certificate under this Part.

Guidelines for release of prescribed information etc.

13. An information source which supplies any birth certificate or prescribed information pursuant to an application under this Act is required to comply with any relevant guidelines prescribed by the regulations.

Access to court records

14. (1) A person is not entitled to receive prescribed information under this Act from records of proceedings in the Supreme Court relating to the adoption of a person, except as provided by this section.

(2) A person may apply to the Supreme Court for an order for the supply of the information.

(3) The Supreme Court may, if it is satisfied that the person has taken all reasonable steps to obtain the information from other information sources, order that the information be supplied to the person.

(4) Rules of court may be made for or with respect to orders under this section.

Unauthorised disclosure of information

15. (1) A person must not disclose any information relating to an adopted person, birth parent or adoptive parent obtained in connection with the administration or execution of this Act, except:

- (a) in connection with the administration or execution of this Act;
- or

(b) as authorised or required by law.

(2) In any proceedings concerning this Act before any court or tribunal, the court or tribunal may make an order forbidding publication of all or any of the information mentioned in the proceedings relating to an adopted person, birth parent, adoptive parent, relative or other person.

(3) A person must not publish information in breach of an order made under this section.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

PART 3 - CONTACT VETOES

Adopted person or birth parent may lodge contact veto

16. The following persons may lodge a contact veto:

- (a) an adopted person who has reached the age of 17 years and 6 months;
- (b) a birth parent.

Contact veto may be lodged only for adoptions before this Act

17. A person may lodge a contact veto only if:

- (a) the order for adoption of the adopted person was made under the Adoption of Children Act 1965 (or a former Act within the meaning of that Act) before the date of assent to this Act; or
- (b) the adoption of the adopted person in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having been effected before the date of assent to this Act.

How contact veto is lodged

18. (1) A person entitled to lodge a contact veto may do so by notifying the Director-General in writing that he or she objects to contact being made with him or her by a person or any class of persons referred to in the notification.

(2) The notification is to be in a form approved by the Director-General.

(3) A contact veto is not duly lodged unless the person provides the Director-General with proof (to the satisfaction of the Director-General) of his or her identity.

Contact Veto Register

19. (1) The Director-General is to establish and maintain a Contact Veto Register.

(2) There is to be entered in the Contact Veto Register:

- (a) the name of each person who has duly lodged a contact veto; and
- (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made; and
- (c) the date and place of birth of the person; and
- (d) the persons or class of persons with whom the person objects to contact; and
- (e) the name and address for notification of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

Director-General to advise Principal Registrar

20. The Director-General is to advise the Principal Registrar of the details of each contact veto entered in the Contact Veto Register.

Principal Registrar etc. to endorse details of contact veto on birth certificates

21. (1) The Principal Registrar is required to endorse details of each contact veto on the original birth certificate or amended birth certificate of the adopted person to whom the contact veto relates that is supplied by the Principal Registrar under this Act.

(2) An information source (other than the Principal Registrar) which is requested to supply an original birth certificate under this Act is required:

- (a) to ascertain from the Director-General whether there is a contact veto relating to the adopted person concerned; and
- (b) if so, to endorse details of the contact veto on the original birth certificate before it is supplied under this Act.

When contact veto takes effect

22. (1) In this section, "**relevant period**" means the period of 5 working days or, if a different period is prescribed by the regulations, that period.

(2) A contact veto takes effect on the expiration of the relevant period after it is duly lodged.

(3) However, a contact veto that is entered in the Contact Veto Register earlier than the relevant period before the commencement of this section takes effect on that commencement.

Expiration of contact veto

23. (1) A contact veto expires if:

- (a) the Contact Veto Register is closed under section 29; or
- (b) the person who lodged the contact veto cancels it by notification in writing to the Director-General; or
- (c) the person who lodged the contact veto dies.

(2) The Director-General is to advise the Principal Registrar of the expiration of a contact veto unless it is caused by a death of which the Director-General is not aware.

Arrangements to confirm, cancel or vary contact veto at request of person seeking contact

24. (1) The Director-General may, at the request of a person who has been refused contact under a contact veto, approach the person who lodged the contact veto and ask the person whether he or she:

- (a) wishes to confirm the contact veto; or
- (b) wishes to cancel the contact veto; or
- (c) wishes to vary the contact veto in so far as it relates to contact with the person who has made the request.

(2) The Director-General is not to approach the person who lodged the contact veto unless the Director-General:

- (a) is of the opinion that circumstances exist that justify the approach in order to promote the welfare and best interests of either or both of the parties concerned; and
- (b) has consulted the Director-General of the Department of Health and any other relevant authority the Director-General

believes may be of assistance in assessing the merits of the request for the person to be approached.

(3) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.

(4) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

Notification to person who lodged contact veto of request for information

25. The Director-General is required to notify a person who has lodged a contact veto of an application under this Act for the supply of a birth certificate or prescribed information made by any person with whom contact is refused, unless the Director-General is unaware of the application or it is not reasonably practicable to notify the person.

Notification to person affected by contact veto of cancellation or variation

26. The Director-General is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Director-General to do so at the time the person receives a birth certificate or information subject to the contact veto.

Undertakings not to contact person who has lodged contact veto

27. (1) The Principal Registrar or other information source is not to supply an original birth certificate or amended birth certificate endorsed with a contact veto against contact by the applicant unless the applicant has signed an undertaking that the applicant will not (while the contact veto remains in force):

- (a) contact or attempt to contact the person who has lodged the contact veto; or
- (b) procure another person to contact or attempt to contact the person.

(2) An information source is not to supply any prescribed information to an adopted person relating to an adopted brother or sister unless the Director-General is notified of the application for the

information and is given an opportunity to ascertain whether a contact veto has been lodged in relation to contact with the adopted person.

(3) If such a contact veto has been lodged, an information source is not to supply the information unless the applicant has signed an undertaking of the kind referred to in subsection (1).

(4) The Director-General may, as a condition of the supply to a person of any certificate or information under section 12 which is subject to a contact veto, require the person to sign an undertaking of the kind referred to in subsection (1).

Veto on contact - offences

28. (1) An information recipient must not:

- (a) contact or attempt to contact the person who lodged a contact veto against contact by the information recipient; or
- (b) procure another person to contact or attempt to contact that person.

(2) An information recipient must not:

- (a) use information obtained under this Act to intimidate or harass the person who lodged a contact veto against contact by the information recipient; or
- (b) procure any other person to intimidate or harass that person by the use of that information.

(3) A person is not to claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to contravening this section.

(4) In this section:

"information recipient" means an adopted person, adoptive parent, birth parent, relative or other person:

- (a) who has received an original birth certificate or amended birth certificate endorsed with a contact veto against contact by him or her (being a contact veto that remains in force); or
- (b) who has had disclosed to him or her prescribed information under this Act and who has knowledge that a contact veto against contact by him or her is then in force.

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

Closure of Contact Veto Register

29. (1) As soon as practicable after the expiration of 10 years after the commencement of this section, the Director-General is to report to the Minister on whether the Contact Veto Register should be closed.

(2) The Director-General is to give notice of the proposed report, and advice as to where and by what date written submissions concerning the matter may be lodged by the public, in at least one newspaper circulating throughout New South Wales.

(3) The Director-General is to make his or her report after:

- (a) considering any written submissions received from the public concerning the matter; and
- (b) consulting the Director-General of the Department of Health and any information source the Director-General believes may be of assistance in assessing the merits of the closure or continuation of the Register.

(4) If the Director-General reports that the Contact Veto Register should be closed, the Minister may, by notice published in the Gazette, order that the Register be closed on the date specified in the notice.

(5) On the closure of the Contact Veto Register any contact veto recorded in the Register expires.

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

Definition

30. In this Part:

"register" means the Reunion Information Register established under this Part.

Reunion Information Register

31. (1) The Director-General is to establish a Reunion Information Register.

(2) There is to be entered in the register the name of every person who has duly applied for entry of his or her name in the register with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption.

(3) Application for entry in the register is to be made in the form approved by the Director-General.

Persons eligible to have their names entered in the register

32. (1) The following persons are eligible to have their names entered in the register:

- (a) an adopted person;
- (b) a birth parent;
- (c) any other person having an interest in an adopted person or birth parent (including a relative) who, in the opinion of the Director-General, ought to have his or her name entered in the register.

(2) A person who is less than 18 years old is not eligible to have his or her name entered in the register, except as provided by this section.

(3) An adopted person who is less than 18 years old is eligible to have his or her name entered in the register if:

- (a) the adopted person is 12 or more years old and the person's adoptive parents have consented in writing to his or her name being entered in the register; or
- (b) the adopted person is 16 or more years old and is living separately and apart from his or her adoptive parents; or
- (c) the adopted person is 12 or more years old and, in the opinion of the Director-General, special circumstances exist which make it desirable that his or her name should be entered in the register.

(4) However, the Director-General is not to enter in the register the name of an adopted person who is less than 18 years old unless the Director-General is of the opinion that to do so will promote the welfare and best interests of the adopted person.

(5) The consent of an adoptive parent is not required under subsection (3) (a) for the entry in the register of the name of an adopted person who is less than 18 years old if the adoptive parent:

- (a) is dead; or
- (b) cannot, after due search and inquiry, be found; or
- (c) is, in the opinion of the Director-General, incapable of giving consent.

(6) The name of a person may not be entered in the register by another person on his or her behalf.

Arrangements for reunion of registered persons

33. (1) If the names of an adopted person and of a birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(2) If the names of an adopted person or birth parent and of a relative or other person having an interest in the adopted person or birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(3) The Director-General is not to arrange a reunion involving an adopted person who is less than 18 years old if an adoptive parent refused to consent to the entry of the name of the adopted person in the register, unless:

- (a) the adoptive parent consents in writing to the reunion; or
- (b) the Director-General gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.

(4) The Director-General must notify any person whose name is entered in the register of the entry in the register of the name of any other person from whom that person has been separated as a consequence of adoption.

Location of persons not registered

34. (1) If the name of an adopted person has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate a birth parent or relative of the adopted person or any other person with whom the adopted person wishes to be reunited, so as to ascertain whether any such person wishes to be reunited with the adopted person.

(2) If the name of a birth parent has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate the adopted person, so as to ascertain whether the adopted person wishes to be reunited with the birth parent.

(3) If the name of a relative or other person having an interest in an adopted person or birth parent has been entered in the register, the Director-General may take such action as is reasonable in the

circumstances to locate the adopted person or birth parent, so as to ascertain whether the adopted person or birth parent wishes to be reunited with the relative or other person.

(4) The Director-General may take action to locate a person under this section only if the Director-General is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so:

- (a) on medical, psychiatric or psychological grounds relating to one of the registered parties; or
- (b) on any other ground relating to unusual or extreme circumstances affecting the interests or welfare of a party.

(4) The Director-General may take action to locate a person under this section even though the person has not, by entering his or her name in the register, expressed a desire to be reunited with the person whose name is entered in the register.

PART 5 - MISCELLANEOUS

Fees and charges

35. (1) The Director-General or other information source may demand fees or charges in respect of the supply of documents or information, or the provision of services, under this Act.

(2) The Director-General is to notify, in the Gazette, the fees or charges payable under this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

(3) The Director-General or other information source may waive or reduce any fees or charges payable under this Act.

(4) The fees or charges for the supply of a birth certificate under this Act are payable to the Director-General and are in addition to any fees or charges payable under the Registration of Births, Deaths and Marriages Act 1973 or to an information source which supplied the certificate.

(5) The regulations may make provision for or with respect to fees and charges payable under this Act.

Appeals to Community Welfare Appeals Tribunal

36. An appeal may be made to the Community Welfare Appeals Tribunal against a refusal or failure of the Director-General:

- (a) to supply any birth certificate or prescribed information to a person, or to authorise the Principal Registrar or another information source to do so under this Act; or
- (b) to enter the name of any person in a register under this Act; or
- (c) to arrange a reunion or take action to locate a person under Part 4; or
- (d) to approach a person who has lodged a contact veto in accordance with a request made under section 24.

Manner of giving notice

37. (1) Any notice required to be given to a person by the Director-General under this Act may be given personally or by post.

(2) If any such person has duly nominated an address at which the person is to be notified, the notice may be given to the person only at that address.

False statement in application etc.

38. (1) A person who makes any statement which the person knows to be false for the purposes of or in connection with:

- (a) an application for the supply of a birth certificate or prescribed information under this Act; or
 - (b) the lodging of a contact veto under Part 3; or
 - (c) an application for entry of the person's name in the Reunion Information Register under Part 4; or
 - (d) any other request under this Act,
- is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) This section applies to statements made in writing or orally.

Impersonation

39. (1) A person who impersonates an adopted person, birth parent, adoptive parent, relative or other person having an interest in an

adopted person in connection with any matter under this Act is guilty of an offence.

(2) A person who impersonates a person engaged in the administration or execution of this Act is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

40. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against section 28 (Veto on contact - offences) may be instituted only with the written consent of the Attorney General.

(3) In any proceedings referred to in subsection (2), a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

Regulations

41. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of regulations relating to Adopted Persons Contact Register

42. Part 5A of the Adoption of Children Regulations is repealed.

Consequential amendment of other Acts

43. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings, transitional and other provisions

44. Schedule 2 has effect.

SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 43)

Adoption of Children Act 1965 No. 23

(1) Section 67 (**Restriction on inspection of records**):

After "regulations", insert "and the Adoption Information Act 1990".

(2) Section 73 (**Regulations**):

Omit section 73 (1) (f1) and (f2) (i).

Freedom of Information Act 1989 No. 5

Schedule 1 (**Exempt documents**):

At the end of clause 20, insert:

; or

- (c) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the Adoption Information Act 1990.

Registration of Births, Deaths and Marriages Act 1973 No. 87

Section 46 (**Copy of recording in register of adoptions**):

(a) Omit section 46 (1) (a), insert instead:

- (a) the person is given the copy in accordance with the Adoption Information Act 1990;

(b) Omit section 46 (2), insert instead:

(2) If a certified copy is authorised to be furnished under subsection (1):

- (a) section 44 (1) does not authorise the Principal Registrar to refuse to furnish the certified copy; and
- (b) section 44 (2) does not authorise the Principal Registrar to furnish instead a certified extract.

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENT ON THE ENACTMENT OF THIS ACT

Definition

2. In this Part:

"**repealed Regulation**" means Part 5A of the Adoption of Children Regulations as in force immediately before its repeal by this Act.

Saving of Adopted Persons Contact Register

3. The Adopted Persons Contact Register established under the repealed Regulation is to form part of the Reunion Information Register established under Part 4 of this Act.

Saving of action commenced under repealed Regulation

4. Anything done or commenced under the repealed Regulation which could have been done or commenced under this Act (if this Act had been in force when it was done or commenced) has effect on or after the repeal of the repealed Regulation as if it had been done or commenced under this Act.

*[Minister's second reading speech made in -
Legislative Assembly on 6 September 1990
Legislative Council on 17 October 1990]*

SECOND PRINT

ADOPTION INFORMATION BILL 1990

NEW SOUTH WALES



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SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1990*

NEW SOUTH WALES



Act No. , 1990

**An Act to allow greater access to information relating to adoptions;
and for other related matters.**

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Adoption Information Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Parts 1 and 5 and sections 15-20 commence on the date of assent.

Objects

3. The objects of this Act are:
 - (a) to give adult adopted persons greater access to information concerning their origins; and
 - (b) to give the birth parents and adoptive parents of adult adopted persons greater access to information concerning their children; and
 - (c) to preserve controls adoptive parents have over the access of adopted children to information concerning their origins while recognising the paramount interests of adopted children; and
 - (d) to give the relatives of adopted persons, birth parents and other persons access to information concerning adopted persons' origins in special circumstances; and
 - (e) to protect the privacy of adopted persons and birth parents by establishing a system of vetoes against contact with persons identified through access to information concerning persons adopted before the date of assent to this Act; and
 - (f) to limit the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy; and
 - (g) to make provision for the continued use of the Adopted Persons Contact Register.

Definitions

4. In this Act:

"adopted brother or sister", in relation to an adopted person, means another adopted person who has or had at least one parent (whether biological or adoptive) who is or was a birth parent of the adopted person;

"adopted person" means a person:

- (a) an order for whose adoption was made under the Adoption of Children Act 1965 or a former Act within the meaning of that Act; or
- (b) whose adoption in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having the same effect as if an order for adoption had been made under that Act;

"adoptive parent" means a person who becomes the parent of an adopted person by adoption;

"amended birth certificate", in relation to an adopted person, means a certified copy of the recording relating to the birth of the person based on the registered memorandum relating to the adoption of the person kept under the Registration of Births, Deaths and Marriages Act 1973;

"birth parent" means a biological parent of an adopted person;

"contact veto" means a veto against contact registered under Part 3 and in force;

"Director-General" means the Director-General of the Department of Family and Community Services;

"hospital" means:

- (a) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (b) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929 or a hospital specified in the Fifth Schedule to that Act; or
- (c) a private hospital within the meaning of the Private Hospitals and Day Procedure Centres Act 1988;

"information source" means:

- (a) the Department of Family and Community Services; or
- (b) the Department of Health; or
- (c) a private adoption agency; or
- (d) a hospital; or
- (e) the Office of the Principal Registrar; or
- (f) the Supreme Court; or
- (g) any other institution, body or person prescribed as an information source for the purposes of this Act;

"original birth certificate", in relation to an adopted person, means:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - a certified copy of the recording relating to the birth of the person made under section 11 of that Act; or
- (b) if the person's birth is not so registered - a copy of any similar document relating to the adopted person identifying the birth parents of the person and contained in records relating to the adoption of the person that are held by an information source;

"prescribed information" has the meaning given by section 5;

"Principal Registrar" means the Principal Registrar of Births, Deaths and Marriages;

"private adoption agency" means a charitable organisation for the time being approved as a private adoption agency under Part 3 of the Adoption of Children Act 1965;

"relative" means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person:

- (a) whether the relationship is of the whole blood or half blood or by marriage; and
- (b) whether the relationship is natural or depends on the adoption of a person.

Prescribed information

5. (1) For the purposes of this Act, **prescribed information** is information of a kind prescribed by the regulations.

- (2) Different kinds of information may be prescribed:
 - (a) for different classes of persons to whom the information relates;
or
 - (b) for different classes of persons to whom the information is
supplied under this Act.
- (3) Subsection (2) does not limit the different kinds of information
that may be prescribed.

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

Adopted person's rights

- 6. (1) An adopted person is entitled to receive (subject to this Act):
 - (a) the person's original birth certificate; and
 - (b) any prescribed information relating to the person's birth
parents held by an information source; and
 - (c) any prescribed information relating to an adopted brother or
sister of the person held by an information source.
- (2) An adopted person who is less than 18 years old is not entitled
to receive his or her original birth certificate or prescribed information
except with the consent of:
 - (a) his or her surviving adoptive parents and surviving birth parents
(as shown on the original birth certificate); or
 - (b) the Director-General if there are no surviving adoptive parents
or birth parents (as so shown) or if they cannot be found or if
there is, in the opinion of the Director-General, any other
sufficient reason to dispense with their consent.
- (3) An adopted person is not entitled to receive any prescribed
information held by an information source unless:
 - (a) the adopted person produces to the information source his or
her original birth certificate (being a certificate supplied under
this Part); or
 - (b) his or her original birth certificate is held by that information
source and will be supplied together with the prescribed
information.

Adoptive parent's rights

7. (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):

- (a) the adopted person's original birth certificate; and
- (b) any prescribed information relating to the adopted person held by an information source.

(2) The adoptive parent is not entitled to receive the original birth certificate unless the adopted person is 18 or more years old and consents to the adoptive parent receiving it.

Birth parent's rights

8. (1) A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to this Act):

- (a) the amended birth certificate of the adopted person if a memorandum of the adoption of the person is registered under the Registration of Births, Deaths and Marriages Act 1973; and
- (b) any prescribed information relating to the adopted person or the adoptive parents held by an information source.

(2) A man who claims to be the birth parent of an adopted person is not entitled to receive an amended birth certificate or prescribed information under this section unless:

- (a) he is shown on the adopted person's original birth certificate as the person's father; or
- (b) he is, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person.

(3) A birth parent is not entitled to receive any prescribed information held by an information source unless the birth parent produces to the information source the amended birth certificate of the adopted person (being a certificate supplied under this Part).

Access to adoption information by relatives and others after death of adopted person or birth parent

9. (1) The Director-General may:

- (a) supply to a relative, spouse or other person the original or amended birth certificate of, or prescribed information relating to, a deceased adopted person or a deceased birth parent; or

- (b) after such consultation with the Principal Registrar or other information source concerned as the Director-General considers necessary, authorise the Principal Registrar or other information source to supply such a birth certificate or such information to a person nominated by the Director-General.
- (2) The Director-General must not supply a birth certificate or prescribed information to a person other than a relative or spouse (or authorise such action to be taken by an information source) unless:
 - (a) the person had a de facto or other close personal relationship with the deceased person; and
 - (b) the Director-General has taken into account any likely detriment to the welfare and best interests of any adopted person, birth parent, relative or spouse of the deceased person then surviving the deceased person or the other person if the birth certificate or information is supplied.
- (3) An information source so authorised by the Director-General to supply a birth certificate or prescribed information must supply that certificate or information to the person nominated by the Director-General.
- (4) This section does not apply to prescribed information held by the Supreme Court.

Application for supply of birth certificate or prescribed information

10. (1) An application for the supply of an original birth certificate under this Part is to be made in writing to:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - the Principal Registrar; or
 - (b) if the person's birth is not so registered but his or her original birth certificate is held by an information source - that information source.
- (2) An application for the supply of an amended birth certificate under this Part is to be made in writing to the Principal Registrar.
- (3) An application for the supply of prescribed information held by an information source is to be made in writing to the information source.
- (4) The regulations may make provision for or with respect to the making of applications under this Part.

Persons designated to deal with applications

11. (1) An application for the supply of a birth certificate or prescribed information under this Part is to be dealt with by the designated person.

(2) The designated person is required to supply the birth certificate or prescribed information if satisfied that the applicant is entitled under this Act to receive it.

(3) This section does not apply to the Supreme Court.

(4) In this section, "**designated person**" means:

- (a) in relation to the Department of Family and Community Services - the Director-General; or
- (b) in relation to a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986 - the chief executive officer of the area health board for the area health service; or
- (c) in relation to the Department of Health or a hospital specified in the Fifth Schedule to the Public Hospitals Act 1929 - the Director-General of the Department; or
- (d) in relation to an incorporated hospital or a separate institution (within the meaning of the Public Hospitals Act 1929) - the chief executive officer of the hospital or institution; or
- (e) in relation to a private adoption agency - the principal officer (within the meaning of the Adoption of Children Act 1965) of the private adoption agency; or
- (f) in relation to a private hospital (within the meaning of the Private Hospitals and Day Procedure Centres Act 1988) - the licensee of the private hospital; or
- (g) in relation to the Office of the Principal Registrar - the Principal Registrar; or
- (h) in relation to an institution, body or person prescribed as an information source for the purposes of this Act - the person prescribed as the designated person for that institution, body or person,

and includes a person to whom a function under this section has been duly delegated by the designated person and a person authorised by the designated person in accordance with the guidelines prescribed by the regulations.

Discretion to supply prescribed information

12. (1) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information before an entitlement to the certificate or information arises under this Part if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.

(2) The Director-General may act under this section in any case in which an entitlement to prescribed information has not arisen because of the failure to obtain a birth certificate under this Part.

Guidelines for release of prescribed information etc.

13. An information source which supplies any birth certificate or prescribed information pursuant to an application under this Act is required to comply with any relevant guidelines prescribed by the regulations.

Access to court records

14. (1) A person is not entitled to receive prescribed information under this Act from records of proceedings in the Supreme Court relating to the adoption of a person, except as provided by this section.

(2) A person may apply to the Supreme Court for an order for the supply of the information.

(3) The Supreme Court may, if it is satisfied that the person has taken all reasonable steps to obtain the information from other information sources, order that the information be supplied to the person.

(4) Rules of court may be made for or with respect to orders under this section.

Unauthorised disclosure of information

15. (1) A person must not disclose any information relating to an adopted person, birth parent or adoptive parent obtained in connection with the administration or execution of this Act, except:

- (a) in connection with the administration or execution of this Act;
- or

(b) as authorised or required by law.

(2) In any proceedings concerning this Act before any court or tribunal, the court or tribunal may make an order forbidding publication of all or any of the information mentioned in the proceedings relating to an adopted person, birth parent, adoptive parent, relative or other person.

(3) A person must not publish information in breach of an order made under this section.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

PART 3 - CONTACT VETOES

Adopted person or birth parent may lodge contact veto

16. The following persons may lodge a contact veto:

- (a) an adopted person who has reached the age of 17 years and 6 months;
- (b) a birth parent.

Contact veto may be lodged only for adoptions before this Act

17. A person may lodge a contact veto only if:

- (a) the order for adoption of the adopted person was made under the Adoption of Children Act 1965 (or a former Act within the meaning of that Act) before the date of assent to this Act; or
- (b) the adoption of the adopted person in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having been effected before the date of assent to this Act.

How contact veto is lodged

18. (1) A person entitled to lodge a contact veto may do so by notifying the Director-General in writing that he or she objects to contact being made with him or her by a person or any class of persons referred to in the notification.

(2) The notification is to be in a form approved by the Director-General.

(3) A contact veto is not duly lodged unless the person provides the Director-General with proof (to the satisfaction of the Director-General) of his or her identity.

Contact Veto Register

19. (1) The Director-General is to establish and maintain a Contact Veto Register.

(2) There is to be entered in the Contact Veto Register:

- (a) the name of each person who has duly lodged a contact veto; and
- (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made; and
- (c) the date and place of birth of the person; and
- (d) the persons or class of persons with whom the person objects to contact; and
- (e) the name and address for notification of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

Director-General to advise Principal Registrar

20. The Director-General is to advise the Principal Registrar of the details of each contact veto entered in the Contact Veto Register.

Principal Registrar etc. to endorse details of contact veto on birth certificates

21. (1) The Principal Registrar is required to endorse details of each contact veto on the original birth certificate or amended birth certificate of the adopted person to whom the contact veto relates that is supplied by the Principal Registrar under this Act.

(2) An information source (other than the Principal Registrar) which is requested to supply an original birth certificate under this Act is required:

- (a) to ascertain from the Director-General whether there is a contact veto relating to the adopted person concerned; and
- (b) if so, to endorse details of the contact veto on the original birth certificate before it is supplied under this Act.

When contact veto takes effect

22. (1) In this section, "relevant period" means the period of 5 working days or, if a different period is prescribed by the regulations, that period.

(2) A contact veto takes effect on the expiration of the relevant period after it is duly lodged.

(3) However, a contact veto that is entered in the Contact Veto Register earlier than the relevant period before the commencement of this section takes effect on that commencement.

Expiration of contact veto

23. (1) A contact veto expires if:

- (a) the Contact Veto Register is closed under section 29; or
- (b) the person who lodged the contact veto cancels it by notification in writing to the Director-General; or
- (c) the person who lodged the contact veto dies.

(2) The Director-General is to advise the Principal Registrar of the expiration of a contact veto unless it is caused by a death of which the Director-General is not aware.

Arrangements to confirm, cancel or vary contact veto at request of person seeking contact

24. (1) The Director-General may, at the request of a person who has been refused contact under a contact veto, approach the person who lodged the contact veto and ask the person whether he or she:

- (a) wishes to confirm the contact veto; or
- (b) wishes to cancel the contact veto; or
- (c) wishes to vary the contact veto in so far as it relates to contact with the person who has made the request.

(2) The Director-General is not to approach the person who lodged the contact veto unless the Director-General:

- (a) is of the opinion that circumstances exist that justify the approach in order to promote the welfare and best interests of either or both of the parties concerned; and
- (b) has consulted the Director-General of the Department of Health and any other relevant authority the Director-General

believes may be of assistance in assessing the merits of the request for the person to be approached.

(3) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.

(4) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

Notification to person who lodged contact veto of request for information

25. The Director-General is required to notify a person who has lodged a contact veto of an application under this Act for the supply of a birth certificate or prescribed information made by any person with whom contact is refused, unless the Director-General is unaware of the application or it is not reasonably practicable to notify the person.

Notification to person affected by contact veto of cancellation or variation

26. The Director-General is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Director-General to do so at the time the person receives a birth certificate or information subject to the contact veto.

Undertakings not to contact person who has lodged contact veto

27. (1) The Principal Registrar or other information source is not to supply an original birth certificate or amended birth certificate endorsed with a contact veto against contact by the applicant unless the applicant has signed an undertaking that the applicant will not (while the contact veto remains in force):

- (a) contact or attempt to contact the person who has lodged the contact veto; or
- (b) procure another person to contact or attempt to contact the person.

(2) An information source is not to supply any prescribed information to an adopted person relating to an adopted brother or sister unless the Director-General is notified of the application for the

information and is given an opportunity to ascertain whether a contact veto has been lodged in relation to contact with the adopted person.

(3) If such a contact veto has been lodged, an information source is not to supply the information unless the applicant has signed an undertaking of the kind referred to in subsection (1).

(4) The Director-General may, as a condition of the supply to a person of any certificate or information under section 12 which is subject to a contact veto, require the person to sign an undertaking of the kind referred to in subsection (1).

Veto on contact - offences

28. (1) An information recipient must not:

- (a) contact or attempt to contact the person who lodged a contact veto against contact by the information recipient; or
- (b) procure another person to contact or attempt to contact that person.

(2) An information recipient must not:

- (a) use information obtained under this Act to intimidate or harass the person who lodged a contact veto against contact by the information recipient; or
- (b) procure any other person to intimidate or harass that person by the use of that information.

(3) A person is not to claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to contravening this section.

(4) In this section:

"information recipient" means an adopted person, adoptive parent, birth parent, relative or other person:

- (a) who has received an original birth certificate or amended birth certificate endorsed with a contact veto against contact by him or her (being a contact veto that remains in force); or
- (b) who has had disclosed to him or her prescribed information under this Act and who has knowledge that a contact veto against contact by him or her is then in force.

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

Closure of Contact Veto Register

29. (1) As soon as practicable after the expiration of 10 years after the commencement of this section, the Director-General is to report to the Minister on whether the Contact Veto Register should be closed.

(2) The Director-General is to give notice of the proposed report, and advice as to where and by what date written submissions concerning the matter may be lodged by the public, in at least one newspaper circulating throughout New South Wales.

(3) The Director-General is to make his or her report after:

- (a) considering any written submissions received from the public concerning the matter; and
- (b) consulting the Director-General of the Department of Health and any information source the Director-General believes may be of assistance in assessing the merits of the closure or continuation of the Register.

(4) If the Director-General reports that the Contact Veto Register should be closed, the Minister may, by notice published in the Gazette, order that the Register be closed on the date specified in the notice.

(5) On the closure of the Contact Veto Register any contact veto recorded in the Register expires.

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

Definition

30. In this Part:

"register" means the Reunion Information Register established under this Part.

Reunion Information Register

31. (1) The Director-General is to establish a Reunion Information Register.

(2) There is to be entered in the register the name of every person who has duly applied for entry of his or her name in the register with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption.

(3) Application for entry in the register is to be made in the form approved by the Director-General.

Persons eligible to have their names entered in the register

32. (1) The following persons are eligible to have their names entered in the register:

- (a) an adopted person;
- (b) a birth parent;
- (c) any other person having an interest in an adopted person or birth parent (including a relative) who, in the opinion of the Director-General, ought to have his or her name entered in the register.

(2) A person who is less than 18 years old is not eligible to have his or her name entered in the register, except as provided by this section.

(3) An adopted person who is less than 18 years old is eligible to have his or her name entered in the register if:

- (a) the adopted person is 12 or more years old and the person's adoptive parents have consented in writing to his or her name being entered in the register; or
- (b) the adopted person is 16 or more years old and is living separately and apart from his or her adoptive parents; or
- (c) the adopted person is 12 or more years old and, in the opinion of the Director-General, special circumstances exist which make it desirable that his or her name should be entered in the register.

(4) However, the Director-General is not to enter in the register the name of an adopted person who is less than 18 years old unless the Director-General is of the opinion that to do so will promote the welfare and best interests of the adopted person.

(5) The consent of an adoptive parent is not required under subsection (3) (a) for the entry in the register of the name of an adopted person who is less than 18 years old if the adoptive parent:

- (a) is dead; or
- (b) cannot, after due search and inquiry, be found; or
- (c) is, in the opinion of the Director-General, incapable of giving consent.

(6) The name of a person may not be entered in the register by another person on his or her behalf.

Arrangements for reunion of registered persons

33. (1) If the names of an adopted person and of a birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(2) If the names of an adopted person or birth parent and of a relative or other person having an interest in the adopted person or birth parent have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(3) The Director-General is not to arrange a reunion involving an adopted person who is less than 18 years old if an adoptive parent refused to consent to the entry of the name of the adopted person in the register, unless:

- (a) the adoptive parent consents in writing to the reunion; or
- (b) the Director-General gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.

(4) The Director-General must notify any person whose name is entered in the register of the entry in the register of the name of any other person from whom that person has been separated as a consequence of adoption.

Location of persons not registered

34. (1) If the name of an adopted person has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate a birth parent or relative of the adopted person or any other person with whom the adopted person wishes to be reunited, so as to ascertain whether any such person wishes to be reunited with the adopted person.

(2) If the name of a birth parent has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate the adopted person, so as to ascertain whether the adopted person wishes to be reunited with the birth parent.

(3) If the name of a relative or other person having an interest in an adopted person or birth parent has been entered in the register, the Director-General may take such action as is reasonable in the

circumstances to locate the adopted person or birth parent, so as to ascertain whether the adopted person or birth parent wishes to be reunited with the relative or other person.

(4) The Director-General may take action to locate a person under this section only if the Director-General is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so:

- (a) on medical, psychiatric or psychological grounds relating to one of the registered parties; or
- (b) on any other ground relating to unusual or extreme circumstances affecting the interests or welfare of a party.

(4) The Director-General may take action to locate a person under this section even though the person has not, by entering his or her name in the register, expressed a desire to be reunited with the person whose name is entered in the register.

PART 5 - MISCELLANEOUS

Fees and charges

35. (1) The Director-General or other information source may demand fees or charges in respect of the supply of documents or information, or the provision of services, under this Act.

(2) The Director-General is to notify, in the Gazette, the fees or charges payable under this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

(3) The Director-General or other information source may waive or reduce any fees or charges payable under this Act.

(4) The fees or charges for the supply of a birth certificate under this Act are payable to the Director-General and are in addition to any fees or charges payable under the Registration of Births, Deaths and Marriages Act 1973 or to an information source which supplied the certificate.

(5) The regulations may make provision for or with respect to fees and charges payable under this Act.

Appeals to Community Welfare Appeals Tribunal

36. An appeal may be made to the Community Welfare Appeals Tribunal against a refusal or failure of the Director-General:

- (a) to supply any birth certificate or prescribed information to a person, or to authorise the Principal Registrar or another information source to do so under this Act; or
- (b) to enter the name of any person in a register under this Act; or
- (c) to arrange a reunion or take action to locate a person under Part 4; or
- (d) to approach a person who has lodged a contact veto in accordance with a request made under section 24.

Manner of giving notice

37. (1) Any notice required to be given to a person by the Director-General under this Act may be given personally or by post.

(2) If any such person has duly nominated an address at which the person is to be notified, the notice may be given to the person only at that address.

False statement in application etc.

38. (1) A person who makes any statement which the person knows to be false for the purposes of or in connection with:

- (a) an application for the supply of a birth certificate or prescribed information under this Act; or
- (b) the lodging of a contact veto under Part 3; or
- (c) an application for entry of the person's name in the Reunion Information Register under Part 4; or
- (d) any other request under this Act,

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) This section applies to statements made in writing or orally.

Impersonation

39. (1) A person who impersonates an adopted person, birth parent, adoptive parent, relative or other person having an interest in an

adopted person in connection with any matter under this Act is guilty of an offence.

(2) A person who impersonates a person engaged in the administration or execution of this Act is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

40. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against section 28 (Veto on contact - offences) may be instituted only with the written consent of the Attorney General.

(3) In any proceedings referred to in subsection (2), a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

Regulations

41. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of regulations relating to Adopted Persons Contact Register

42. Part 5A of the Adoption of Children Regulations is repealed.

Consequential amendment of other Acts

43. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings, transitional and other provisions

44. Schedule 2 has effect.

SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 43)

Adoption of Children Act 1965 No. 23

(1) Section 67 (Restriction on inspection of records):

After "regulations", insert "and the Adoption Information Act 1990".

(2) Section 73 (Regulations):

Omit section 73 (1) (f1) and (f2) (i).

Freedom of Information Act 1989 No. 5

Schedule 1 (Exempt documents):

At the end of clause 20, insert:

; or

- (c) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the Adoption Information Act 1990.

Registration of Births, Deaths and Marriages Act 1973 No. 87

Section 46 (Copy of recording in register of adoptions):

(a) Omit section 46 (1) (a), insert instead:

- (a) the person is given the copy in accordance with the Adoption Information Act 1990;

(b) Omit section 46 (2), insert instead:

(2) If a certified copy is authorised to be furnished under subsection (1):

- (a) section 44 (1) does not authorise the Principal Registrar to refuse to furnish the certified copy; and
(b) section 44 (2) does not authorise the Principal Registrar to furnish instead a certified extract.

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENT ON THE ENACTMENT OF THIS ACT

Definition

2. In this Part:

"**repealed Regulation**" means Part 5A of the Adoption of Children Regulations as in force immediately before its repeal by this Act.

Saving of Adopted Persons Contact Register

3. The Adopted Persons Contact Register established under the repealed Regulation is to form part of the Reunion Information Register established under Part 4 of this Act.

Saving of action commenced under repealed Regulation

4. Anything done or commenced under the repealed Regulation which could have been done or commenced under this Act (if this Act had been in force when it was done or commenced) has effect on or after the repeal of the repealed Regulation as if it had been done or commenced under this Act.

FIRST PRINT

ADOPTION INFORMATION BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to give adult adopted persons greater access to information concerning their origins; and
- (b) to give the birth parents and adoptive parents of adult adopted persons greater access to information concerning their children; and
- (c) to preserve controls adoptive parents have over the access of adopted children to information concerning their origins while recognising the paramount interests of adopted children; and
- (d) to give the relatives of adopted persons, birth parents and other persons access to information concerning adopted persons' origins in special circumstances; and
- (e) to protect the privacy of adopted persons and birth parents by establishing a system of vetoes against contact with persons identified through access to information concerning persons adopted before the date of assent to this Act; and
- (f) to limit the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy; and
- (g) to make provision for the continued use of the Adopted Persons Contact Register.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. Certain provisions are to be commenced on the date of assent to enable the system of contact vetoes

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to be established and give persons affected the opportunity to lodge contact vetoes before the provisions relating to access to information take effect.

Clause 3 states the objects of the proposed Act.

Clauses 4 and 5 contain definitions used in the proposed Act.

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

The proposed Part sets out the entitlements of adopted persons, adoptive parents, birth parents, relatives and others to access information. Two categories of information are recognised - birth certificates and prescribed information. Two forms of birth certificate are involved - the original birth certificate (which indicates the birth parents of the adopted person) and the amended birth certificate (which indicates the adoptive parents of the adopted person). Prescribed information is information of a type prescribed by the regulations that is held by the Department of Family and Community Services and information sources such as the Supreme Court, hospitals and private adoption agencies. Examples of types of information that may be prescribed in respect of the entitlement of a particular group of persons to information include the age of birth parents, the general physical appearance of birth parents, the existence of any other child or children born to the birth parents and the reasons why a child was placed for adoption.

The proposed Act requires a person in most instances to obtain a birth certificate before being entitled to access prescribed information because contact vetoes are to be endorsed on the certificate.

Clause 6 sets out the entitlement of an adopted person to access information. An adopted person who is 18 or more years old (and in limited cases an adopted person under that age) will be entitled to receive a copy of his or her original birth certificate and prescribed information relating to his or her birth parents held by an information source. Any such adopted person will also be entitled to obtain prescribed information relating to any brothers or sisters who have been adopted.

The clause preserves the existing controls adoptive parents have in relation to the access to information of adopted persons who are less than 18 years old.

Clause 7 sets out the entitlement of an adoptive parent to access information. An adoptive parent of a person who is 18 or more years old is entitled to receive a copy of the person's original birth certificate provided that the parent has the consent of the adopted person. An adoptive parent is also entitled to prescribed information relating to the adopted person.

Clause 8 sets out the entitlement of a birth parent to access information. A birth parent of an adopted person is entitled to receive a copy of the amended birth certificate of the adopted person (if the adopted person is 18 or more years old) and prescribed information relating to the adopted person or the adoptive parents held by an information source.

Clause 9 enables relatives and other persons to access information concerning adopted persons and birth parents, but only after they have died. The information is to be accessed (in the case of a person other than a relative or spouse) only if a

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de facto or other close personal relationship between the parties is established and the Director-General of the Department of Family and Community Services has taken into account the implications for the welfare of surviving persons who are involved.

Clause 10 specifies the procedure to be followed in applying for access to information.

Clause 11 specifies the persons who are to deal with an application for access to information.

Clause 12 enables the Director-General to give access (or to authorise an information source to give access) to information before an entitlement to it arises if disclosure of the information would promote the welfare and best interests of the parties involved.

Clause 13 requires information sources to comply with prescribed guidelines in disclosing information from records held by them.

Clause 14 provides that a person is entitled to access information in Supreme Court records only if the Court so orders. The Court may only make such an order if satisfied that the person has taken all reasonable steps to obtain the information from other information sources.

Clause 15 makes it an offence to disclose certain information obtained in connection with the administration or execution of the proposed Act without proper authority or to publish information disclosed in proceedings before a court or tribunal in contravention of an order of the court or tribunal.

PART 3 - CONTACT VETOES

The proposed Part provides the framework for the system of vetoes against contact to protect the privacy of persons adopted before the date of assent to the proposed Act and of their birth parents. Contact vetoes may be lodged by adopted persons who are 17 years 6 months or more and the birth parents of adopted persons.

Clause 16 specifies the persons who may lodge a contact veto.

Clause 17 limits contact vetoes to existing adoptions.

Clause 18 sets out the manner of lodging a contact veto.

Clause 19 provides for the establishment of the Contact Veto Register and sets out the details to be shown on it.

Clause 20 requires the Director-General to advise the Principal Registrar of Births, Deaths and Marriages of the entry of a contact veto by an adopted person so that the adopted person's birth certificate may be endorsed to indicate the existence of the contact veto.

Clause 21 requires the Principal Registrar to register details of the contact veto on the relevant birth certificates.

Clause 22 provides for contact vetoes to generally take effect 5 working days after being registered. Provision is also made for contact vetoes lodged before the

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commencement of the section to take effect on the commencement so as to enable persons to lodge contact vetoes to take effect when the provisions of the proposed Act relating to access come into operation.

Clause 23 provides for the expiration of a contact veto on closure of the Contact Veto Register unless sooner cancelled or unless the person who lodged it dies.

Clause 24 enables the Director-General to approach a person who has lodged a contact veto at the request of a person who has been refused contact to determine whether the person wishes to confirm, cancel or vary the contact veto.

Clauses 25 and 26 require the Director-General to give certain notifications relating to the accessing of information.

Clause 27 requires a person obtaining a birth certificate endorsed with a contact veto to sign an undertaking against contact. Undertakings in other circumstances may also be required.

Clause 28 makes it an offence to contact or attempt to contact a person contrary to a contact veto. The clause also makes it an offence to use information supplied under the proposed Act to intimidate or harass a person who lodged a contact veto.

Clause 29 requires consideration to be given to the closing of the Contact Veto Register. The Register is to be closed after a period of 10 years if this appears to be appropriate after taking into account written submissions received from the public.

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

The proposed Part restates (with some modifications) provisions currently contained in Part 5A of the Adoption of Children Regulations. Provision is made for adopted persons and birth parents to enter their names in an Adopted Persons Contact Register so that reunions may be arranged with other persons whose names are so registered. Action may, in limited circumstances, be taken to locate persons whose names are not registered to ascertain their wishes concerning reunions.

Clause 30 defines "register" for the purposes of the proposed Part.

Clause 31 provides for the entry of persons' names in the register.

Clause 32 specifies the persons eligible to have their names entered in the register. In the case of an adopted person who is less than 18 years old the Director-General may generally enter the person's name only with the consent of the person's adoptive parents but may do so without consent in certain circumstances.

Clause 33 provides for the Director-General to arrange for the reunion of an adopted person with another person whose name is entered on the register. If the adopted person is less than 18 years old a reunion will generally not be arranged without the consent of the person's adoptive parents.

Clause 34 enables the Director-General (in limited circumstances) to locate persons whose names are not included on the register to ascertain their wishes concerning reunion with a person whose name is on the register.

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PART 5 - MISCELLANEOUS

Clause 35 authorises fees and charges to be set.

Clause 36 provides for appeals to the Community Welfare Appeals Tribunal (constituted under Part 6 of the Community Welfare Act 1987) against certain decisions of the Director-General under the proposed Act.

Clause 37 provides for the manner of giving notice under the Act.

Clause 38 makes it an offence to make false statements in applications etc. under the proposed Act.

Clause 39 makes it an offence to impersonate certain persons.

Clause 40 provides for proceedings for an offence under the proposed Act to be disposed of summarily before a Local Court. Proceedings for the offence of breaking a contact veto may be instituted only with the consent of the Attorney General.

Clause 41 enables the making of regulations.

Clause 42 repeals Part 5A of the Adoption of Children Regulations.

Clauses 43 and 44 are machinery provisions relating to the Schedules to the Act.

Schedule 1 makes consequential amendments to the following Acts:

Adoption of Children Act 1965

Freedom of Information Act 1989

Registration of Births, Deaths and Marriages Act 1973

Schedule 2 enacts savings, transitional and other provisions.

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ADOPTION INFORMATION BILL 1990

NEW SOUTH WALES



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ADOPTION INFORMATION BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

**An Act to allow greater access to information relating to adoptions;
and for other related matters.**

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Adoption Information Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

- (2) Parts 1 and 5 and sections 15-20 commence on the date of assent.

Objects

3. The objects of this Act are:

- (a) to give adult adopted persons greater access to information concerning their origins; and
- (b) to give the birth parents and adoptive parents of adult adopted persons greater access to information concerning their children; and
- (c) to preserve controls adoptive parents have over the access of adopted children to information concerning their origins while recognising the paramount interests of adopted children; and
- (d) to give the relatives of adopted persons, birth parents and other persons access to information concerning adopted persons' origins in special circumstances; and
- (e) to protect the privacy of adopted persons and birth parents by establishing a system of vetoes against contact with persons identified through access to information concerning persons adopted before the date of assent to this Act; and
- (f) to limit the disclosure of information concerning the personal affairs of persons that might unduly intrude on their privacy; and
- (g) to make provision for the continued use of the Adopted Persons Contact Register.

Definitions

4. In this Act:

"adopted brother or sister", in relation to an adopted person, means another adopted person who has or had at least one parent (whether biological or adoptive) who is or was a birth parent of the adopted person;

"adopted person" means a person:

- (a) an order for whose adoption was made under the Adoption of Children Act 1965 or a former Act within the meaning of that Act; or
- (b) whose adoption in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having the same effect as if an order for adoption had been made under that Act;

"adoptive parent" means a person who becomes the parent of an adopted person by adoption;

"amended birth certificate", in relation to an adopted person, means a certified copy of the recording relating to the birth of the person based on the registered memorandum relating to the adoption of the person kept under the Registration of Births, Deaths and Marriages Act 1973;

"birth parent" means a biological parent of an adopted person;

"contact veto" means a veto against contact registered under Part 3 and in force;

"Director-General" means the Director-General of the Department of Family and Community Services;

"hospital" means:

- (a) a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986; or
- (b) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929 or a hospital specified in the Fifth Schedule to that Act; or
- (c) a private hospital within the meaning of the Private Hospitals and Day Procedure Centres Act 1988;

"information source" means:

- (a) the Department of Family and Community Services; or
- (b) the Department of Health; or
- (c) a private adoption agency; or
- (d) a hospital; or
- (e) the Office of the Principal Registrar; or
- (f) the Supreme Court; or
- (g) any other institution, body or person prescribed as an information source for the purposes of this Act;

"original birth certificate", in relation to an adopted person, means:

- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - a certified copy of the recording relating to the birth of the person made under section 11 of that Act; or
- (b) if the person's birth is not so registered - a copy of any similar document relating to the adopted person identifying the birth parents of the person and contained in records relating to the adoption of the person that are held by an information source;

"prescribed information" has the meaning given by section 5;

"Principal Registrar" means the Principal Registrar of Births, Deaths and Marriages;

"private adoption agency" means a charitable organisation for the time being approved as a private adoption agency under Part 3 of the Adoption of Children Act 1965;

"relative" means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of an adopted person:

- (a) whether the relationship is of the whole blood or half blood or by marriage; and
- (b) whether the relationship is natural or depends on the adoption of a person.

Prescribed information

5. (1) For the purposes of this Act, **prescribed information** is information of a kind prescribed by the regulations.

- (2) Different kinds of information may be prescribed:
 - (a) for different classes of persons to whom the information relates;
or
 - (b) for different classes of persons to whom the information is
supplied under this Act.
- (3) Subsection (2) does not limit the different kinds of information
that may be prescribed.

PART 2 - ACCESS TO BIRTH CERTIFICATES AND OTHER INFORMATION

Adopted person's rights

- 6. (1) An adopted person is entitled to receive (subject to this Act):
 - (a) the person's original birth certificate; and
 - (b) any prescribed information relating to the person's birth
parents held by an information source; and
 - (c) any prescribed information relating to an adopted brother or
sister of the person held by an information source.
- (2) An adopted person who is less than 18 years old is not entitled
to receive his or her original birth certificate or prescribed information
except with the consent of:
 - (a) his or her surviving adoptive parents and surviving birth parents
(as shown on the original birth certificate); or
 - (b) the Director-General if there are no surviving adoptive parents
or birth parents (as so shown) or if they cannot be found or if
there is, in the opinion of the Director-General, any other
sufficient reason to dispense with their consent.
- (3) An adopted person is not entitled to receive any prescribed
information held by an information source unless:
 - (a) the adopted person produces to the information source his or
her original birth certificate (being a certificate supplied under
this Part); or
 - (b) his or her original birth certificate is held by that information
source and will be supplied together with the prescribed
information.

Adoptive parent's rights

7. (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):

- (a) the adopted person's original birth certificate; and
- (b) any prescribed information relating to the adopted person held by an information source.

(2) The adoptive parent is not entitled to receive the original birth certificate unless the adopted person is 18 or more years old and consents to the adoptive parent receiving it.

Birth parent's rights

8. (1) A birth parent of an adopted person who is 18 or more years old is entitled to receive (subject to this Act):

- (a) the amended birth certificate of the adopted person if a memorandum of the adoption of the person is registered under the Registration of Births, Deaths and Marriages Act 1973; and
- (b) any prescribed information relating to the adopted person or the adoptive parents held by an information source.

(2) A man who claims to be the birth parent of an adopted person is not entitled to receive an amended birth certificate or prescribed information under this section unless:

- (a) he is shown on the adopted person's original birth certificate as the person's father; or
- (b) he is, under the Children (Equality of Status) Act 1976, to be presumed to be the father of the adopted person.

(3) A birth parent is not entitled to receive any prescribed information held by an information source unless the birth parent produces to the information source the amended birth certificate of the adopted person (being a certificate supplied under this Part).

Access to adoption information by relatives and others after death of adopted person or birth parent

9. (1) The Director-General may:

- (a) supply to a relative, spouse or other person the original or amended birth certificate of, or prescribed information relating to, a deceased adopted person or a deceased birth parent; or

- (b) after such consultation with the Principal Registrar or other information source concerned as the Director-General considers necessary, authorise the Principal Registrar or other information source to supply such a birth certificate or such information to a person nominated by the Director-General.
- (2) The Director-General must not supply a birth certificate or prescribed information to a person other than a relative or spouse (or authorise such action to be taken by an information source) unless:
 - (a) the person had a de facto or other close personal relationship with the deceased person; and
 - (b) the Director-General has taken into account any likely detriment to the welfare and best interests of any adopted person, birth parent, relative or spouse of the deceased person then surviving the deceased person or the other person if the birth certificate or information is supplied.
- (3) An information source so authorised by the Director-General to supply a birth certificate or prescribed information must supply that certificate or information to the person nominated by the Director-General.
- (4) This section does not apply to prescribed information held by the Supreme Court.

Application for supply of birth certificate or prescribed information

10. (1) An application for the supply of an original birth certificate under this Part is to be made in writing to:
- (a) if the person's birth is registered under the Registration of Births, Deaths and Marriages Act 1973 - the Principal Registrar; or
 - (b) if the person's birth is not so registered but his or her original birth certificate is held by an information source - that information source.
- (2) An application for the supply of an amended birth certificate under this Part is to be made in writing to the Principal Registrar.
- (3) An application for the supply of prescribed information held by an information source is to be made in writing to the information source.
- (4) The regulations may make provision for or with respect to the making of applications under this Part.

Persons designated to deal with applications

11. (1) An application for the supply of a birth certificate or prescribed information under this Part is to be dealt with by the designated person.

(2) The designated person is required to supply the birth certificate or prescribed information if satisfied that the applicant is entitled under this Act to receive it.

(3) This section does not apply to the Supreme Court.

(4) In this section, "designated person" means:

- (a) in relation to the Department of Family and Community Services - the Director-General; or
- (b) in relation to a hospital or other health service under the control of an area health service constituted under the Area Health Services Act 1986 - the chief executive officer of the area health board for the area health service; or
- (c) in relation to the Department of Health or a hospital specified in the Fifth Schedule to the Public Hospitals Act 1929 - the Director-General of the Department; or
- (d) in relation to an incorporated hospital or a separate institution (within the meaning of the Public Hospitals Act 1929) - the chief executive officer of the hospital or institution; or
- (e) in relation to a private adoption agency - the principal officer (within the meaning of the Adoption of Children Act 1965) of the private adoption agency; or
- (f) in relation to a private hospital (within the meaning of the Private Hospitals and Day Procedure Centres Act 1988) - the licensee of the private hospital; or
- (g) in relation to the Office of the Principal Registrar - the Principal Registrar; or
- (h) in relation to an institution, body or person prescribed as an information source for the purposes of this Act - the person prescribed as the designated person for that institution, body or person,

and includes a person to whom a function under this section has been duly delegated by the designated person and a person authorised by the designated person in accordance with the guidelines prescribed by the regulations.

Discretion to supply prescribed information

12. (1) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information before an entitlement to the certificate or information arises under this Part if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.

(2) The Director-General may act under this section in any case in which an entitlement to prescribed information has not arisen because of the failure to obtain a birth certificate under this Part.

Guidelines for release of prescribed information etc.

13. An information source which supplies any birth certificate or prescribed information pursuant to an application under this Act is required to comply with any relevant guidelines prescribed by the regulations.

Access to court records

14. (1) A person is not entitled to receive prescribed information under this Act from records of proceedings in the Supreme Court relating to the adoption of a person, except as provided by this section.

(2) A person may apply to the Supreme Court for an order for the supply of the information.

(3) The Supreme Court may, if it is satisfied that the person has taken all reasonable steps to obtain the information from other information sources, order that the information be supplied to the person.

(4) Rules of court may be made for or with respect to orders under this section.

Unauthorised disclosure of information

15. (1) A person must not disclose any information relating to an adopted person, birth parent or adoptive parent obtained in connection with the administration or execution of this Act, except:

- (a) in connection with the administration or execution of this Act;
- or

(b) as authorised or required by law.

(2) In any proceedings concerning this Act before any court or tribunal, the court or tribunal may make an order forbidding publication of all or any of the information mentioned in the proceedings relating to an adopted person, birth parent, adoptive parent, relative or other person.

(3) A person must not publish information in breach of an order made under this section.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

PART 3 - CONTACT VETOES

Adopted person or birth parent may lodge contact veto

16. The following persons may lodge a contact veto:

- (a) an adopted person who has reached the age of 17 years and 6 months;
- (b) a birth parent.

Contact veto may be lodged only for adoptions before this Act

17. A person may lodge a contact veto only if:

- (a) the order for adoption of the adopted person was made under the Adoption of Children Act 1965 (or a former Act within the meaning of that Act) before the date of assent to this Act; or
- (b) the adoption of the adopted person in another State or Territory of the Commonwealth or in a country outside the Commonwealth and the Territories is recognised under the Adoption of Children Act 1965 as having been effected before the date of assent to this Act.

How contact veto is lodged

18. (1) A person entitled to lodge a contact veto may do so by notifying the Director-General in writing that he or she objects to contact being made with him or her by a person or any class of persons referred to in the notification.

(2) The notification is to be in a form approved by the Director-General.

(3) A contact veto is not duly lodged unless the person provides the Director-General with proof of his or her identity at the time the notification is lodged.

Contact Veto Register

19. (1) The Director-General is to establish and maintain a Contact Veto Register.

(2) There is to be entered in the Contact Veto Register:

- (a) the name of each person who has duly lodged a contact veto; and
- (b) the address nominated by the person as the address at which any personal or postal contact by the Director-General with the person should be made; and
- (c) the date and place of birth of the person; and
- (d) the persons or class of persons with whom the person objects to contact; and
- (e) the name and address for notification of each person who has duly requested under this Act that he or she be notified of the cancellation or variation of a contact veto.

Director-General to advise Principal Registrar

20. The Director-General is to advise the Principal Registrar of the details of each contact veto entered in the Contact Veto Register.

Principal Registrar etc. to endorse details of contact veto on birth certificates

21. (1) The Principal Registrar is required to endorse details of each contact veto on the original birth certificate or amended birth certificate of the adopted person to whom the contact veto relates that is supplied by the Principal Registrar under this Act.

(2) An information source (other than the Principal Registrar) which is requested to supply an original birth certificate under this Act is required:

- (a) to ascertain from the Director-General whether there is a contact veto relating to the adopted person concerned; and
- (b) if so, to endorse details of the contact veto on the original birth certificate before it is supplied under this Act.

When contact veto takes effect

22. (1) In this section, "relevant period" means the period of 5 working days or, if a different period is prescribed by the regulations, that period.

(2) A contact veto takes effect on the expiration of the relevant period after it is duly lodged.

(3) However, a contact veto that is entered in the Contact Veto Register earlier than the relevant period before the commencement of this section takes effect on that commencement.

Expiration of contact veto

23. (1) A contact veto expires if:

- (a) the Contact Veto Register is closed under section 29; or
- (b) the person who lodged the contact veto cancels it by notification in writing to the Director-General; or
- (c) the person who lodged the contact veto dies.

(2) The Director-General is to advise the Principal Registrar of the expiration of a contact veto unless it is caused by a death of which the Director-General is not aware.

Arrangements to confirm, cancel or vary contact veto at request of person seeking contact

24. (1) The Director-General may, at the request of a person who has been refused contact under a contact veto, approach the person who lodged the contact veto and ask the person whether he or she:

- (a) wishes to confirm the contact veto; or
- (b) wishes to cancel the contact veto; or
- (c) wishes to vary the contact veto in so far as it relates to contact with the person who has made the request.

(2) The Director-General is not to approach the person who lodged the contact veto unless the Director-General:

- (a) is of the opinion that circumstances exist that justify the approach in order to promote the welfare and best interests of either or both of the parties concerned; and
- (b) has consulted the Director-General of the Department of Health and any other relevant authority the Director-General

believes may be of assistance in assessing the merits of the request for the person to be approached.

(3) The Director-General may arrange for either or both of the parties concerned in a request under this section to be provided with such counselling as the Director-General believes is necessary to assist them and the Director-General in the matter.

(4) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.

Notification to person who lodged contact veto of request for information

25. The Director-General is required to notify a person who has lodged a contact veto of an application under this Act for the supply of a birth certificate or prescribed information made by any person with whom contact is refused, unless the Director-General is unaware of the application or it is not reasonably practicable to notify the person.

Notification to person affected by contact veto of cancellation or variation

26. The Director-General is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Director-General to do so at the time the person receives a birth certificate or information subject to the contact veto.

Undertakings not to contact person who has lodged contact veto

27. (1) The Principal Registrar or other information source is not to supply an original birth certificate or amended birth certificate endorsed with a contact veto against contact by the applicant unless the applicant has signed an undertaking that the applicant will not (while the contact veto remains in force):

- (a) contact or attempt to contact the person who has lodged the contact veto; or
- (b) procure another person to contact or attempt to contact the person.

(2) An information source is not to supply any prescribed information to an adopted person relating to an adopted brother or sister unless the Director-General is notified of the application for the

information and is given an opportunity to ascertain whether a contact veto has been lodged in relation to contact with the adopted person.

(3) If such a contact veto has been lodged, an information source is not to supply the information unless the applicant has signed an undertaking of the kind referred to in subsection (1).

(4) The Director-General may, as a condition of the supply to a person of any certificate or information under section 12 which is subject to a contact veto, require the person to sign an undertaking of the kind referred to in subsection (1).

Veto on contact - offences

28. (1) An information recipient must not:

- (a) contact or attempt to contact the person who lodged a contact veto against contact by the information recipient; or
- (b) procure another person to contact or attempt to contact that person.

(2) An information recipient must not:

- (a) use information obtained under this Act to intimidate or harass the person who lodged a contact veto against contact by the information recipient; or
- (b) procure any other person to intimidate or harass that person by the use of that information.

(3) A person is not to claim to act on behalf of or hold himself or herself out as being willing to act on behalf of another person with a view to contravening this section.

(4) In this section:

"information recipient" means an adopted person, adoptive parent, birth parent, relative or other person:

- (a) who has received an original birth certificate or amended birth certificate endorsed with a contact veto against contact by him or her (being a contact veto that remains in force); or
- (b) who has had disclosed to him or her prescribed information under this Act and who has knowledge that a contact veto against contact by him or her is then in force.

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

Closure of Contact Veto Register

29. (1) As soon as practicable after the expiration of 10 years after the commencement of this section, the Director-General is to report to the Minister on whether the Contact Veto Register should be closed.

(2) The Director-General is to give notice of the proposed report, and advice as to where and by what date written submissions concerning the matter may be lodged by the public, in at least one newspaper circulating throughout New South Wales.

(3) The Director-General is to make his or her report after:

- (a) considering any written submissions received from the public concerning the matter; and
- (b) consulting the Director-General of the Department of Health and any information source the Director-General believes may be of assistance in assessing the merits of the closure or continuation of the Register.

(4) If the Director-General reports that the Contact Veto Register should be closed, the Minister may, by notice published in the Gazette, order that the Register be closed on the date specified in the notice.

(5) On the closure of the Contact Veto Register any contact veto recorded in the Register expires.

PART 4 - REUNION OF ADOPTED PERSONS AND OTHER PERSONS

Definition

30. In this Part:

"register" means the Adopted Persons Contact Register established under this Part.

Adopted Persons Contact Register

31. (1) The Director-General is to establish an Adopted Persons Contact Register.

(2) There is to be entered in the register the name of every person who has duly applied for entry of his or her name in the register with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption.

(3) Application for entry in the register is to be made in the form approved by the Director-General.

Persons eligible to have their names entered in the register

32. (1) The following persons are eligible to have their names entered in the register:

- (a) an adopted person;
- (b) a birth parent;
- (c) any other person having an interest in an adopted person (including a relative) who, in the opinion of the Director-General, ought to have his or her name entered in the register.

(2) A person who is less than 18 years old is not eligible to have his or her name entered in the register, except as provided by this section.

(3) An adopted person who is less than 18 years old is eligible to have his or her name entered in the register if:

- (a) the adopted person is 12 or more years old and the person's adoptive parents have consented in writing to his or her name being entered in the register; or
- (b) the adopted person is 16 or more years old and is living separately and apart from his or her adoptive parents; or
- (c) the adopted person is 12 or more years old and, in the opinion of the Director-General, special circumstances exist which make it desirable that his or her name should be entered in the register.

(4) However, the Director-General is not to enter in the register the name of an adopted person who is less than 18 years old unless the Director-General is of the opinion that to do so will promote the welfare and best interests of the adopted person.

(5) The consent of an adoptive parent is not required under subsection (3) (a) for the entry in the register of the name of an adopted person who is less than 18 years old if the adoptive parent:

- (a) is dead; or
- (b) cannot, after due search and inquiry, be found; or
- (c) is, in the opinion of the Director-General, incapable of giving consent.

(6) The name of a person may not be entered in the register by another person on his or her behalf.

Arrangements for reunion of registered persons

33. (1) If the names of an adopted person and of a birth parent (or relative or other person having an interest in the adopted person) have been entered in the register, the Director-General may make arrangements for a reunion between the persons so registered.

(2) The Director-General is not to arrange a reunion involving an adopted person who is less than 18 years old if an adoptive parent refused to consent to the entry of the name of the adopted person in the register, unless:

- (a) the adoptive parent consents in writing to the reunion; or
- (b) the Director-General gives the adoptive parent not less than 90 days notice of the intention to arrange the reunion.

(3) The Director-General must notify any person whose name is entered in the register of the entry in the register of the name of any other person from whom that person has been separated as a consequence of adoption.

Location of persons not registered

34. (1) If the name of an adopted person has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate a birth parent or relative of the adopted person or any other person with whom the adopted person wishes to be reunited, so as to ascertain whether any such person wishes to be reunited with the adopted person.

(2) If the name of a birth parent, relative or other person having an interest in an adopted person has been entered in the register, the Director-General may take such action as is reasonable in the circumstances to locate the adopted person, so as to ascertain whether the adopted person wishes to be reunited with the birth parent, relative or other person.

(3) The Director-General may take action to locate a person under this section only if the Director-General is satisfied that it will promote the welfare and best interests of the parties concerned and it is appropriate to do so:

- (a) on medical, psychiatric or psychological grounds relating to one of the registered parties; or
 - (b) on any other ground relating to unusual or extreme circumstances affecting the interests or welfare of a party.
- (4) The Director-General may take action to locate a person under this section even though the person has not, by entering his or her name in the register, expressed a desire to be reunited with the person whose name is entered in the register.

PART 5 - MISCELLANEOUS

Fees and charges

35. (1) The Director-General or other information source may demand fees or charges in respect of the supply of documents or information, or the provision of services, under this Act.

(2) The Director-General is to notify, in the Gazette, the fees or charges payable under this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

(3) The Director-General or other information source may waive or reduce any fees or charges payable under this Act.

(4) The fees or charges for the supply of a birth certificate under this Act are payable to the Director-General and are in addition to any fees or charges payable under the Registration of Births, Deaths and Marriages Act 1973 or to an information source which supplied the certificate.

(5) The regulations may make provision for or with respect to fees and charges payable under this Act.

Appeals to Community Welfare Appeals Tribunal

36. An appeal may be made to the Community Welfare Appeals Tribunal against a refusal or failure of the Director-General:

- (a) to supply any birth certificate or prescribed information to a person, or to authorise the Principal Registrar or another information source to do so under this Act; or
- (b) to enter the name of any person in a register under this Act; or
- (c) to arrange a reunion or take action to locate a person under Part 4; or

- (d) to approach a person who has lodged a contact veto in accordance with a request made under section 24.

Manner of giving notice

37. (1) Any notice required to be given to a person by the Director-General under this Act may be given personally or by post.

(2) If any such person has duly nominated an address at which the person is to be notified, the notice may be given to the person only at that address.

False statement in application etc.

38. (1) A person who makes any statement which the person knows to be false for the purposes of or in connection with:

- (a) an application for the supply of a birth certificate or prescribed information under this Act; or
- (b) the lodging of a contact veto under Part 3; or
- (c) an application for entry of the person's name in the Adopted Persons Contact Register under Part 4; or
- (d) any other request under this Act,

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) This section applies to statements made in writing or orally.

Impersonation

39. (1) A person who impersonates an adopted person, birth parent, adoptive parent, relative or other person having an interest in an adopted person in connection with any matter under this Act is guilty of an offence.

(2) A person who impersonates a person engaged in the administration or execution of this Act is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

40. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against section 28 (Veto on contact - offences) may be instituted only with the written consent of the Attorney General.

(3) In any proceedings referred to in subsection (2), a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

Regulations

41. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of regulations relating to Adopted Persons Contact Register

42. Part 5A of the Adoption of Children Regulations is repealed.

Consequential amendment of other Acts

43. Each Act specified in Schedule 1 is amended as set out in that Schedule.

Savings, transitional and other provisions

44. Schedule 2 has effect.

SCHEDULE 1 - CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 43)

Adoption of Children Act 1965 No. 23

(1) Section 67 (Restriction on inspection of records):

After "regulations", insert "and the Adoption Information Act 1990".

(2) Section 73 (Regulations):

Omit section 73 (1) (f1) and (f2) (i).

Freedom of Information Act 1989 No. 5

Schedule 1 (Exempt documents):

At the end of clause 20, insert:

; or

- (c) matter relating to the receipt of an amended or original birth certificate or of prescribed information under the Adoption Information Act 1990.

Registration of Births, Deaths and Marriages Act 1973 No. 87

Section 46 (Copy of recording in register of adoptions):

(a) Omit section 46 (1) (a), insert instead:

- (a) the person is given the copy in accordance with the Adoption Information Act 1990;

(b) Omit section 46 (2), insert instead:

(2) If a certified copy is authorised to be furnished under subsection (1):

- (a) section 44 (1) does not authorise the Principal Registrar to refuse to furnish the certified copy, and
(b) section 44 (2) does not authorise the Principal Registrar to furnish instead a certified extract.

SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENT ON THE ENACTMENT OF THIS ACT

Definition

2. In this Part:

"repealed Regulation" means Part 5A of the Adoption of Children Regulations as in force immediately before its repeal by this Act.

Saving of Adopted Persons Contact Register

3. The Adopted Persons Contact Register established under the repealed Regulation is to form part of the Adopted Persons Contact Register established under Part 4 of this Act.

Saving of action commenced under repealed Regulation

4. Anything done or commenced under the repealed Regulation which could have been done or commenced under this Act (if this Act had been in force when it was done or commenced) has effect on or after the repeal of the repealed Regulation as if it had been done or commenced under this Act.