



New South Wales

Adoption Information Amendment Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to give effect to certain of the recommendations made by the New South Wales Law Reform Commission in their report entitled "Review of the *Adoption Information Act 1990*" and to make other modifications to clarify its operation. The Bill amends the *Adoption Information Act 1990*:

- (a) to provide for administrative arrangements for obtaining access to birth certificates and prescribed information to be rationalised and simplified by enabling the regulations:
 - to prescribe a person other than the Principal Registrar to exercise any function under a provision of the Act relating to access to birth certificates and prescribed information that is currently exercised by the Principal Registrar, and
 - to provide for access to birth certificates and prescribed information to be gained without further inquiry by an information source if authorised to do so by the Director-General,
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- (b) to make provision for a Reunion and Information Register that will incorporate the existing Reunion Information Register and that will facilitate the exchange of messages between persons concerned in or affected by an adoption,
- (c) to establish an advance notice system to delay release of identifying information under the Act for a fixed period at the request of a person who could be identified by it,
- (d) to repeal provisions of the Act providing for the closure, without consideration by Parliament, of the Contact Veto Register,
- (e) to expand the discretionary powers of the Director-General in relation to limiting access to information to a person who would otherwise be entitled to it and releasing information to which no entitlement is given under the Act,
- (f) to clarify provisions relating to the entitlement of birth fathers to receive information under the Act,
- (g) to enable birth parents to obtain certain non-identifying information under the Act concerning a child under 18 years of age without first obtaining a birth certificate,
- (h) to clarify the entitlement of relatives of deceased birth parents and adopted children to receive information under the Act,
- (i) to enable information to be obtained from the Supreme Court without first obtaining information from other sources,
- (j) to provide for internal review of decisions made by the Director-General under the Act,
- (k) to enable persons directed to do so by the Guardianship Board to exercise entitlements under the Act on behalf of disabled persons,
- (l) to make other changes of a minor, consequential or ancillary nature.

The Bill also amends the *Guardianship Act 1987* to enable the Guardianship Board to give certain directions relating to the exercise of entitlements under the *Adoption Information Act 1990* on behalf of disabled persons.

A detailed explanation of each amendment is set out in the Bill after the amendment concerned.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 gives effect to the amendments to the *Adoption Information Act 1990* set out in Schedule 1.

Clause 4 gives effect to the amendments to the *Guardianship Act 1987* set out in Schedule 2.

Clause 5 makes it clear that the explanatory notes contained in the Bill do not form part of the proposed Act.



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No , 1995

A Bill for

An Act to amend the *Adoption Information Act 1990* to establish a Reunion and Information Register and advance notice system and to prevent closure of the Contact Veto Register without Parliament's consideration, to amend the *Guardianship Act 1987* to enable the Guardianship Board to give certain directions relating to the exercise of entitlements under the *Adoption Information Act 1990* on behalf of disabled persons; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Adoption Information Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Adoption Information Act 1990 No 63

The *Adoption Information Act 1990* is amended as set out in Schedule 1.

4 Amendment of Guardianship Act 1987 No 257

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The *Guardianship Act 1987* is amended as set out in Schedule 2.

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedules 1 and 2 does not form part of this Act.

**Schedule 1 Amendment of Adoption Information
Act 1990**

(Section 3)

**1.1 Regulations relating to supply of birth certificates and
prescribed information**

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[1] Section 4 Definitions

Insert in alphabetical order:

primary information source means:

- (a) the Principal Registrar, or
- (b) if another person is prescribed by the regulations for the purpose of the provision in relation to which the expression is used—that person.

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supply authority means an authority to supply a birth certificate or prescribed information issued by the Director-General in accordance with the regulations.

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**[2] Section 10 Application for supply of birth certificate or
prescribed information**

Omit “Principal Registrar” wherever occurring.
Insert instead “primary information source”.

[3] Section 20

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Omit section 20. Insert instead:

20 Director-General to advise primary information source

The Director-General is (unless the Director-General is the relevant primary information source) to advise the primary information source of the details of each contact veto entered in the Contact Veto Register.

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Schedule 1 Amendment of Adoption Information Act 1990

[4] Section 21 Primary information source to endorse details of contact veto on birth certificate

Omit "Principal Registrar" wherever occurring.
Insert instead "primary information source".

[5] Section 21 (3)

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Insert after section 21 (2):

- (3) The regulations may require a primary information source to endorse details of each contact veto on any memorandum of adoption of a person or other document concerning an adopted person to whom the contact veto relates that is supplied by the primary information source. 10

[6] Section 23 Expiration of contact veto

Omit section 23 (2). Insert instead:

- (2) The Director-General is (unless the Director-General is the relevant primary information source) to advise the primary information source of the expiration of a contact veto unless it is caused by a death of which the Director-General is not aware. 15

[7] Section 27 Undertakings not to contact person who has lodged contact veto 20

Omit "Principal Registrar" from section 27 (1).
Insert instead "primary information source".

[8] Section 41 Regulations

Insert after section 41 (2):

- (3) In particular, regulations may be made for or with respect to the exercise of any function conferred on a primary information source under this or any other Act (including, but not limited to, supply of a birth certificate or prescribed information by the primary information source in accordance with a supply authority issued by the Director-General).

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Explanatory note (Schedule 1.1)

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The Act currently requires a person to obtain a birth certificate from the Principal Registrar before being entitled to access prescribed information. The proposed amendments will enable regulations to be made prescribing another person (such as the Director-General) as a person who may exercise functions under the Act in connection with access to birth certificates and prescribed information that are currently exercised by the Principal Registrar. Regulations may also be made affecting the way in which functions may be exercised by the Principal Registrar (or other primary information source). For example, a regulation could be made authorising the Principal Registrar to supply a birth certificate without further inquiry if authorised to do so by the Director-General.

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1.2 Reunion and Information Register**[1] Section 3 Objects**

Omit section 3 (g). Insert instead:

- (g) to make provision for a Reunion and Information Register to facilitate reunions between adopted persons, birth parents and other persons (if desired by the persons concerned) and to facilitate exchange of messages between persons concerned in or affected by an adoption.

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[2] Section 18 How contact veto is lodged

Insert after section 18 (3):

- (4) A person lodging a contact veto may also leave a message for a person concerned in or affected by an adoption with the Director-General for placement on the Reunion and Information Register. 5

[3] Part 4, heading

Omit the heading. Insert instead:

Part 4 Reunion and Information Register

[4] Sections 30–31E 10

Omit sections 30 and 31. Insert instead:

30 Definition

In this Part:

register means the Reunion and Information Register established under this Part. 15

31 Reunion and Information Register

- (1) The Director-General is to establish a Reunion and Information Register.
- (2) There is to be entered in the register:
- (a) the name of every person who is eligible to have his or her name entered in the register and who has duly applied for entry of his or her name with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption, and 20
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- (b) the name of every person who is eligible to have his or her name entered in the register and who has duly applied for entry of his or her name with a view to leaving a message for a person concerned in or affected by an adoption.

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

31A Message may be left

Any person whose name is entered on the register may leave a message for any other person entitled (subject to this Act) to have his or her name entered in the register.

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31B Director-General may refuse to enter name or take message

The Director-General may refuse to enter the name of a person in the register or to accept a message from any person if, in the opinion of the Director-General, the person is not eligible to have the person's name entered in the register or has not duly applied for entry of his or her name in the register.

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31C Circumstances in which Director-General may open, inspect and copy message

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- (1) The Director-General may open, inspect and copy any message left under this Part for an adopted person who is less than 18 years old.
- (2) The Director-General may, at the request of a person whose name is entered in the register or of the person for whom a message has been left under this Part, open and inspect the message.

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31D Director-General may delay delivery of message

The Director-General may delay giving a person a message that the Director-General has been requested to open and inspect if the Director-General is of the opinion that the content of the message is likely to be so

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distressing for the person that it should be made available to the person only in the presence of appropriate counsellors or other persons able to assist the person.

31E Regulations

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The regulations may make provision for or with respect to the leaving and delivery of messages under this Part.

[5] Section 32 Persons eligible to have their names entered in the register

Insert after section 32 (1) (b):

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(b1) an adoptive parent,

[6] Sections 33 Arrangements for reunion of registered persons and 34 Location of persons not registered

Insert "under section 31 (2) (a)" after "register" wherever occurring in sections 33 (1)–(3) and 34 (1)–(3).

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[7] Section 33 (4)

Insert "under section 31 (2) (a)" after "register" where firstly occurring.

[8] Section 38 False statement in application etc

Omit "the Reunion Information Register" from section 38 (1) (c).
Insert instead "the Reunion and Information Register".

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Explanatory note (Schedule 1.2)

Items [1]–[8] make amendments to establish a Reunion and Information Register and to facilitate the leaving of messages for persons concerned in or affected by an adoption. The existing Reunion Information Register is to be subsumed in the new register. Provision is made for the circumstances in which the Director-General may open, read and copy messages left on the new register. The Director-General may delay giving a person a message until the recipient can read it with appropriate counselling or other support. The Director-General will be protected from liability in respect of the exercise of functions in good faith and with reasonable care under section 75 of the *Community Welfare Act 1987*.

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Schedule 1.12 [2] contains a provision (clause 5) to continue in operation the existing Reunion Information Register.

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1.3 Advance notice system

[1] Section 4 Definitions

Insert in alphabetical order:

advance notice request means an advance notice request lodged under Part 2A. 5

advance notice registration means an advance notice request registered under Part 2A and in force.

[2] Part 2A, sections 15A–15J

Insert after section 15:

Part 2A Advance notice 10

15A Object of Part

The object of this Part is to establish an advance notice system to enable the release of personal information under the Act to be delayed for a fixed period to give the person requesting the delay the opportunity to prepare for the release and any impact this might have on the person or the person's family or associates. 15

15B Definitions

In this Part:

advance notice period means: 20

- (a) the period after an application for personal information relating to a person is made (not being greater than 3 months) prescribed by the regulations for the purposes of this paragraph, or
- (b) if the Director-General so directs in relation to a particular advance notice request, such longer period (not being greater than the period (if any) prescribed by the regulations) after an application for personal information relating to a person is made as is specified by the Director-General. 25 30

nominated contact address means the address entered on the Advance Notice Register under section 15E (2) (b).

personal information relating to a person means:

- (a) the person's original birth certificate or amended birth certificate, or
- (b) prescribed information relating to the person, or
- (c) if the regulations authorise supply of a birth certificate or prescribed information relating to the person on issue of a supply authority—such a supply authority. 5

15C Who may lodge an advance notice request?

A person is entitled to lodge a request to be given advance notice before personal information relating to the person is given to another person if the person seeking to lodge the request is: 10

- (a) an adopted person who has reached the age of 17 years and 6 months, or 15
- (b) a birth parent, or
- (c) an adoptive parent.

15D How advance notice request is lodged

- (1) A person entitled to lodge an advance notice request may do so by advising the Director-General in writing that he or she wishes to be notified if a particular person or a person within a class of persons entitled to receive the personal information concerned specified in the advice makes an application for personal information relating to the person lodging the advance notice request. 20 25
- (2) The advice is to be in a form approved by the Director-General.
- (3) An advance notice request 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. 30
- (4) A person lodging an advance notice request may also leave a message for a person concerned in or affected by an adoption with the Director-General for placement on the Reunion and Information Register. 35

15E Advance Notice Register

- (1) The Director-General is to establish and maintain an Advance Notice Register.
- (2) There is to be entered in the Advance Notice Register:
 - (a) the name of each person who has duly lodged an advance notice request, and 5
 - (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 10
 - (c) the date and place of birth of the person, and
 - (d) the persons or class of persons affected by the request, and
 - (e) the advance notice period.
- (3) The Director-General (unless the Director-General is the primary information source) is to advise the relevant primary information source of each entry made in the Advance Notice Register. 15
- (4) A person whose name is entered in the Advance Notice Register is to advise the Director-General of any change in his or her nominated contact address. 20

15F Primary information source to delay issue of supply authority or prescribed information

The primary information source is to delay the supply of personal information affected by an advance notice registration until the expiration of the advance notice period unless the registration is waived or cancelled under section 15I. 25

15G Endorsement of details of advance notice request

The primary information source is to advise the applicant for the supply of the personal information that it will not be supplied until the expiration of the advance notice period and of the reasons for the delay. 30

15H Expiration of advance notice registration

An advance notice registration expires:

- (a) on expiration of the advance notice period, or
- (b) if the person who lodged the request for registration cancels it by notification in writing to the Director-General, or 5
- (c) if the person who lodged the request dies, or
- (d) if a contact veto is lodged by the person who lodged the request, or
- (e) if the person who lodged the request fails to notify the Director-General in writing of any change in his or her nominated contact address, 10

whichever is the sooner.

15I Arrangements to waive advance notice period

- (1) The Director-General may, at the request of a person seeking supply of personal information that is affected by an advance notice registration, ask the person who lodged the advance notice request whether he or she wishes to waive or cancel the registration. 15
- (2) The Director-General is not to do so unless the Director-General: 20
 - (a) is of the opinion that the personal information is required urgently and that circumstances exist that justify asking the person to waive or cancel the registration in order to promote the welfare and best interests of either or both of the parties concerned, and 25
 - (b) has consulted any person or body that the Director-General believes may be of assistance in assessing the merits of the request. 30
- (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. 35

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

15J Notification to person who lodged advance notice request

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- (1) The Director-General is to notify a person who has lodged an advance notice request at the person's nominated contact address of an application under this Act for the supply of personal information affected by the registration, unless it is not reasonably practicable to notify the person. 10
- (2) The Director-General is entitled to rely on the address shown in the Advance Notice Register for this purpose and is not subject to any action, liability, claim or demand in respect of any notification given in good faith at that address. 15

Explanatory note (Schedule 1.3)

The proposed amendments establish an advance notice system. A person who could be identified by the release of personal information may request the Director-General to delay supply of the personal information for a period to be prescribed (not exceeding 3 months). The Director-General is to notify a person who has lodged such a request at the person's nominated contact address unless it is not reasonably practicable to do so. The system will, for example, enable the person to prepare for the release of information that might impact on personal or family relationships. 20
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1.4 Contact vetoes

[1] Section 22 When contact veto takes effect

Omit "after it is duly lodged" from section 22 (2).

Insert instead "or after details of the contact veto are endorsed on the original birth certificate or amended birth certificate concerned, whichever occurs sooner". 30

[2] Section 23 Expiration of contact veto

Omit section 23 (1) (a).

[3] Section 29 Closure of Contact Veto Register

Omit the section.

Explanatory note (Schedule 1.4)

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Item [1] clarifies the time at which a contact veto takes effect.

Items [2] and [3] repeal section 29 of the Act (which provides for closure of the Contact Veto Register without consideration by Parliament) and make a consequential amendment to section 23.

1.5 Powers of Director-General

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[1] Section 4 Definitions

Insert in alphabetical order:

sibling of an adopted person means a brother or sister of the person, whether the relationship is of the whole blood or half blood.

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[2] Section 12 Discretion to supply birth certificate or prescribed information

Omit "this section" from section 12 (2).

Insert instead "subsection (1)".

[3] Section 12 (3)

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Insert after section 12 (2):

- (3) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information to a sibling of an adopted person or any other person who is not entitled under this Act to receive the birth certificate or prescribed information under this Part if, in the opinion of the Director-General, it is appropriate to do so because of exceptional circumstances affecting the interests or welfare of any person.

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[4] Section 12A

Insert after section 12:

- 12A Discretion to withhold supply (or authorise the withholding of supply), to supply information or to supply it subject to conditions** 5
- (1) The following persons may request the Director-General to act under this section:
- (a) an adopted person who is 18 or more years old,
 - (b) a birth parent,
 - (c) an adoptive parent of a person who is less than 18 years old, 10
 - (d) an adoptive parent of a person who is 18 or more years old and who has consented to the request being made.
- (2) The Director-General may, at the request of a person referred to in subsection (1): 15
- (a) refuse to supply (or, if the regulations provide for the issue of a supply authority, to issue a supply authority authorising an information source to supply) any birth certificate or prescribed information to which an entitlement arises under this Part, or 20
 - (b) supply such a certificate or information subject to conditions specified in writing by the Director-General, or 25
 - (c) if the regulations provide for the issue of a supply authority, issue a supply authority authorising an information source only to supply, subject to compliance with conditions specified by the Director-General, any birth certificate or prescribed information. 30
- (3) The Director-General may refuse to supply a birth certificate or prescribed information under this section only if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned. 35

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- (4) Conditions that may be imposed by the Director-General under this section include conditions requiring the person entitled to the birth certificate or prescribed information to undergo counselling by a person specified by the Director-General before the certificate or information is supplied. 5
- (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.
- (6) An information source must not supply any birth certificate or prescribed information the subject of a supply authority imposing conditions on its supply unless the conditions are complied with. 10
- (7) The Director-General may not (despite section 5 of the *Community Welfare Act 1987*) delegate to another person the exercise of any function of the Director-General under this section. 15

Explanatory note (Schedule 1.5)

Items [1]–[3] will enable the Director-General to supply, or authorise an information source to supply, birth certificates or prescribed information in situations outside the existing statutory entitlements in exceptional circumstances. 20

Item [4] will enable the Director-General to refuse to supply (or to authorise an information source to supply), or supply subject to conditions, a birth certificate or prescribed information that might, in identifying a person, cause serious harm to a person concerned. The discretion might be used, for example, if a person might be endangered if identified by the information supplied. 25

1.6 Review of certain decisions

[1] Section 35A

Insert after section 35: 30

35A Internal review

- (1) A person who is aggrieved by a decision of the Director-General made under or for the purposes of this Act on or after the commencement of this section may apply for review of the decision. 35

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- (2) An application for a review is to be in a form approved by the Director-General.
 - (3) On receipt of an application to review a decision, the Director-General is to review the decision and to notify the applicant of confirmation or otherwise of the decision. 5
 - (4) In reviewing a decision, the Director-General is to consider any material submitted by the applicant.
 - (5) The Director-General is taken to have reviewed a decision if the applicant is not notified of the outcome of the review within 30 days after the application for review was duly made. 10
 - (6) This section applies whether or not the decision concerned is one that may be the subject of an appeal to the Community Services Appeals Tribunal. 15
 - (7) The regulations may prescribe requirements to be observed in relation to a review under this section.

[2] Section 36 Appeals to Community Services Appeals Tribunal

Insert after section 36 (3):

- (4) An appeal may not be made to the Community Services Appeals Tribunal against a decision of the Director-General under this section until the decision has been reviewed under section 35A. 20

Explanatory note (Schedule 1.6)

Proposed section 35A (item [1]) enables the internal review of decisions under or for the purposes of the Act. Internal review may be sought in relation to decisions that are not able to be appealed about to the Community Services Appeals Tribunal. 25

However, if an appeal is available to the Tribunal an internal review must have been obtained before the appeal is made (item [2]). Schedule 1.12 [2] contains a savings provision (clause 6) that makes it clear that an internal review is not necessary if an appeal has been made to the Tribunal before the commencement of the proposed amendments. 30

1.7 Fees and charges

[1] Section 35 Fees and charges

Insert after section 35 (2):

- (2A) A notice under subsection (2) may specify the minimum fees or charges payable in respect of the supply of any documents or information, or provision of any service, under this Act. 5

[2] Section 35 (3)

Insert "(other than a minimum fee or charge referred to in subsection (2A))" after "charges" in section 35 (3). 10

Explanatory note (Schedule 1.7)

The proposed amendments will enable the Director-General to set a minimum fee or charge in respect of the supply of documents or information, or the provision of services, under the Act. Where a minimum charge or fee is set it will not be able to be waived or reduced. 15

1.8 Entitlements of disabled persons

[1] Section 25 Notification to person who lodged contact veto of request for information

Insert at the end of section 25:

- (2) This subsection applies where a person is directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987* to make an application for supply of a birth certificate or prescribed information on behalf of a person with a disability with whom contact is refused. The Director-General is required to notify the person who lodged the contact veto if such an application is made. 20
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[2] Section 27 Undertakings not to contact person who has lodged contact veto

Insert after section 27 (4):

- (5) This section does not apply to an applicant who has been directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987* to make the application on behalf of a person with a disability.

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[3] Section 36A

Insert after section 36:

36A Entitlements of disabled persons

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- (1) In this section a reference to a person with a disability is a reference to a person:

- (a) who is intellectually, physically, psychologically or sensorily disabled, or
- (b) who is of advanced age, or
- (c) who is a mentally ill person within the meaning of Chapter 3 of the *Mental Health Act 1990*, or
- (d) who is otherwise disabled,

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and who, because of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social rehabilitation.

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- (2) If a person with a disability:

- (a) has an entitlement to receive a birth certificate or prescribed information, or may lodge a contact veto or advance notice request, under this Act, and
- (b) is unable, because of the disability, to do anything required by this Act that must be done if the person is to receive the birth certificate or prescribed information or lodge the contact veto or advance notice request,

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another person may, if so directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987*, do any such act on behalf of the person with the disability.

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(3) The Director-General may:

- (a) refuse to supply (or, if the regulations provide for the issue of a supply authority, to issue a supply authority authorising an information source to supply) any birth certificate endorsed with a contact veto to a person acting on behalf of a person with a disability, or 5

- (b) direct an information source not to supply any such birth certificate,

if the Director-General is of the opinion that the person will be unable to ensure that the person with the disability will not contact or attempt to contact the person who lodged the contact veto. 10

Explanatory note (Schedule 1.8)

Proposed section 36A enables persons directed to do so by the Guardianship Board to exercise entitlements to receive a birth certificate or prescribed information, or to lodge a contact veto or advance notice request, on behalf of persons who because of a disability are unable to do so (item [3]). A person exercising such an entitlement on behalf of a person with whom contact has been refused by a contact veto will not be required to sign an undertaking under section 27 before supply of the birth certificate or information (item [2]). However, the Director-General must notify the person who lodged the contact veto of the application (item [1]). Schedule 2 amends the *Guardianship Act 1987* to enable the Guardianship Board to give the necessary direction. 15
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1.9 Information concerning deceased birth parents and adopted children 25

[1] Section 9 Access to adoption information by relatives and others after death of adopted person or birth parent

Omit section 9 (1) (a). Insert instead:

- (a) supply to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, the original or amended birth certificate of the adopted person or birth parent, or 30

- (a1) supply to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, any prescribed information relating to, or which an adopted person or birth parent is entitled to receive relating to, the adopted person or birth parent, or 5

[2] Section 9 (2)

Omit section 9 (2). Insert instead:

- (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 the person had a de facto or other close personal relationship with the deceased person. 10

[3] Section 9 (2A) 15

Insert after section 9 (2):

- (2A) The Director-General must not supply a birth certificate or prescribed information to any person (or authorise such action to be taken by an information source) unless 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 or the other person if the birth certificate or information is supplied. 20

Explanatory note (Schedule 1.9) 25

Proposed section 9 (1) (a), (a1) and (2) (items [1] and [2]) expand the classes of adoption information to which relatives and spouses of, and other persons close to, deceased adopted persons and deceased birth parents have access under the Act. The amendments make it clear that, for example, a relative (such as any child whether or not given up for adoption) of a deceased birth parent will be able to access any information concerning the adopted person that might be accessed by a birth parent. 30

Proposed section 9 (2A) (item [3]) will prevent the supply under section 9 of the Act of a birth certificate or prescribed information to any person unless the Director-General has taken into account any likely detriment to the welfare and best interests of all parties concerned. At present, the Director-General need only take this into account where a person other than a relative or spouse is seeking supply of the adoption information. 35

1.10 Access to Supreme Court records

[1] Section 14 Access to court records

Omit "for an order" from section 14 (2).

[2] Section 14 (3)

Omit section 14 (3). Insert instead:

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- (3) The Supreme Court or a proper officer of the Court may supply the information to the person.

Explanatory note (Schedule 1.10)

At present, a person is entitled to access information in the Supreme Court 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 sources. The proposed amendments remove this latter requirement and enable a person to obtain the information from a court officer without the need to obtain an order.

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1.11 Birth parents

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[1] Section 8 Birth parent's rights

Omit section 8 (2). Insert instead:

- (2) A man who claims to be the birth parent of an adopted person is entitled to receive an amended birth certificate or prescribed information if:

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- (a) he is shown on the adopted person's original birth certificate as the person's father, or
- (b) he is a person whom the Director-General, Principal Registrar or other information source is entitled to presume, under any law (including a law of another State or Territory or the Commonwealth), to be the person's father.

25

[2] Section 8 (3)

Insert "except as provided by subsection (4)" after "Part)" in section 8 (3).

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[3] Section 8 (4) and (5)

Insert after section 8 (3):

- (4) A designated person may supply a birth parent with prescribed information held by an information source about an adopted child who is less than 18 years old without production of the amended birth certificate of the adopted person if, in the opinion of the designated person, the information could not be used to identify the adopted person or his or her adoptive parents. 5
- (5) In this section: 10
- designated person* has the same meaning as it has in section 11.

Explanatory note (Schedule 1.11)

Item [1] of the proposed amendments will clarify the entitlement of birth fathers to obtain an amended birth certificate or prescribed information. The entitlement may arise either from being acknowledged as the father on the original birth certificate or in records of an information source or because of presumptions such as those as to parenthood arising out of marriage and co-habitation or out of paternity acknowledgments arising out of Acts such as the *Family Law Act 1975* of the Commonwealth and the *Children (Equality of Status) Act 1976* (or any Act replacing that Act) or a similar Act of another State or Territory. 15

At present a birth parent may only obtain prescribed information held by an information source if the birth parent first obtains an amended birth certificate. Items [2] and [3] of the proposed amendments will enable birth parents to obtain non-identifying information about a child who is less than 18 years old without first obtaining a birth certificate. 20 25

1.12 Savings and transitional provisions**[1] Schedule 2 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 30
- the *Adoption Information Act 1990*
- the *Adoption Information Amendment Act 1995*

[2] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on the enactment of
the Adoption Information Amendment Act
1995**

5

5 Saving of Reunion Information Register

The Reunion Information Register established under this Act as in force immediately before the commencement of the amendments to Part 4 made by the *Adoption Information Amendment Act 1995* is taken to form part of the Reunion and Information Register, established under Part 4, as amended.

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6 Internal review

Section 36 (4) does not apply to an appeal made to the Community Services Appeals Tribunal before the commencement of Schedule 1.6 [2] to the *Adoption Information Amendment Act 1995*.

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Explanatory note (Schedule 1.12)

The proposed amendments will enable the making of savings and transitional regulations consequent on the enactment of the proposed Act (item [1]). Provision is also made for the continuance of the existing Reunion Information Register (item [2]) and a savings provision is included in relation to internal reviews (item [2]).

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Schedule 2 Amendment of Guardianship Act 1987

(Section 4)

Part 4A

Insert after Part 4:

Part 4A Adoption information directions

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31A Definitions

In this Part:

adoption information action means an action that is required by the *Adoption Information Act 1990* to be taken if a person with an entitlement to receive a birth certificate or prescribed information, or lodge a contact veto or advance notice request, under that Act is to receive the birth certificate or prescribed information or lodge the contact veto.

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31B Applications

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An application may be made to the Board by any person for directions as to adoption information actions that may be taken by that or another person on behalf of a person who has a disability and who is unable because of that disability to take any such action.

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31C Service of applications

- (1) The applicant for directions must, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on:

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- (a) the person who has a disability, and
- (b) the Public Guardian.

- (2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Board on the application.

31D Board may give directions

- (1) After conducting a hearing into any application made under this Part, the Board may give directions as to the adoption information actions that may be taken on behalf of the person with a disability. 5
- (2) In considering such an application, the Board is to have regard to: 10
- (a) the views (if any) of:
- (i) the person with a disability, and
- (ii) the applicant, and
- (b) the objects of the *Adoption Information Act 1990*.
- (3) If the Board gives a direction under this section, it is to cause a copy of the direction to be forwarded to the Public Guardian. 15

31E Restrictions on Board's power to give directions

A direction is not to be given in respect of a person with a disability who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, unless the Supreme Court consents to the making of the direction. 20

31F Limitation of liability

No proceedings lie against any person for or on account of any act, matter or thing done or omitted to be done by the person in good faith and in accordance with the direction given under this Part. 25

31G Jurisdiction of the Supreme Court not affected

Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the guardianship of persons.

Explanatory note (Schedule 2)

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Proposed Part 4A will enable the Guardianship Board to direct a person to take any action on behalf of a disabled person that is required by the *Adoption Information Act 1990* to be taken if the disabled person is to be able to exercise an entitlement under that Act to receive a birth certificate or prescribed information or to lodge a contact veto or advance notice request.

10



New South Wales

Adoption Information Amendment Act 1995 No 61

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New South Wales

Adoption Information Amendment Act 1995 No 61

Act No 61, 1995

An Act to amend the *Adoption Information Act 1990* to establish a Reunion and Information Register and advance notice system and to prevent closure of the Contact Veto Register without Parliament's consideration, to amend the *Guardianship Act 1987* to enable the Guardianship Board to give certain directions relating to the exercise of entitlements under the *Adoption Information Act 1990* on behalf of disabled persons; and for other purposes.
[Assented to 12 December 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Adoption Information Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Adoption Information Act 1990 No 63

The *Adoption Information Act 1990* is amended as set out in Schedule 1.

4 Amendment of Guardianship Act 1987 No 257

The *Guardianship Act 1987* is amended as set out in Schedule 2.

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedules 1 and 2 does not form part of this Act.

Schedule 1 Amendment of Adoption Information Act 1990

(Section 3)

1.1 Regulations relating to supply of birth certificates and prescribed information

[1] Section 4 Definitions

Insert in alphabetical order:

primary information source means:

- (a) the Principal Registrar, or
- (b) if another person is prescribed by the regulations for the purpose of the provision in relation to which the expression is used—that person.

supply authority means an authority to supply a birth certificate or prescribed information issued by the Director-General in accordance with the regulations.

[2] Section 10 Application for supply of birth certificate or prescribed information

Omit “Principal Registrar” wherever occurring.
Insert instead “primary information source”.

[3] Section 20

Omit section 20. Insert instead:

20 Director-General to advise primary information source

The Director-General is (unless the Director-General is the relevant primary information source) to advise the primary information source of the details of each contact veto entered in the Contact Veto Register.

[4] Section 21 Primary information source to endorse details of contact veto on birth certificate

Omit "Principal Registrar" wherever occurring.
Insert instead "primary information source".

[5] Section 21 (3)

Insert after section 21 (2):

- (3) The regulations may require a primary information source to endorse details of each contact veto on any memorandum of adoption of a person or other document concerning an adopted person to whom the contact veto relates that is supplied by the primary information source.

[6] Section 23 Expiration of contact veto

Omit section 23 (2). Insert instead:

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

[7] Section 27 Undertakings not to contact person who has lodged contact veto

Omit "Principal Registrar" from section 27 (1).
Insert instead "primary information source".

[8] Section 41 Regulations

Insert after section 41 (2):

- (3) In particular, regulations may be made for or with respect to the exercise of any function conferred on a primary information source under this or any other Act (including, but not limited to, supply of a birth certificate or prescribed information by the primary information source in accordance with a supply authority issued by the Director-General).

Explanatory note (Schedule 1.1)

The Act currently requires a person to obtain a birth certificate from the Principal Registrar before being entitled to access prescribed information. The proposed amendments will enable regulations to be made prescribing another person (such as the Director-General) as a person who may exercise functions under the Act in connection with access to birth certificates and prescribed information that are currently exercised by the Principal Registrar. Regulations may also be made affecting the way in which functions may be exercised by the Principal Registrar (or other primary information source). For example, a regulation could be made authorising the Principal Registrar to supply a birth certificate without further inquiry if authorised to do so by the Director-General.

1.2 Reunion and Information Register

[1] Section 3 Objects

Omit section 3 (g). Insert instead:

- (g) to make provision for a Reunion and Information Register to facilitate reunions between adopted persons, birth parents and other persons (if desired by the persons concerned) and to facilitate exchange of messages between persons concerned in or affected by an adoption.

[2] Section 18 How contact veto is lodged

Insert after section 18 (3):

- (4) A person lodging a contact veto may also leave a message for a person concerned in or affected by an adoption with the Director-General for placement on the Reunion and Information Register.

[3] Part 4, heading

Omit the heading. Insert instead:

Part 4 Reunion and Information Register

[4] Sections 30–31E

Omit sections 30 and 31. Insert instead:

30 Definition

In this Part:

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

31 Reunion and Information Register

- (1) The Director-General is to establish a Reunion and Information Register.
- (2) There is to be entered in the register:
- (a) the name of every person who is eligible to have his or her name entered in the register and who has duly applied for entry of his or her name with a view to a reunion with a person from whom he or she has been separated as a consequence of an adoption, and

-
- (b) the name of every person who is eligible to have his or her name entered in the register and who has duly applied for entry of his or her name with a view to leaving a message for a person concerned in or affected by an adoption.
 - (3) Application for entry in the register is to be made in a form approved by the Director-General.

31A Message may be left

Any person whose name is entered on the register may leave a message for any other person entitled (subject to this Act) to have his or her name entered in the register.

31B Director-General may refuse to enter name or take message

The Director-General may refuse to enter the name of a person in the register or to accept a message from any person if, in the opinion of the Director-General, the person is not eligible to have the person's name entered in the register or has not duly applied for entry of his or her name in the register.

31C Circumstances in which Director-General may open, inspect and copy message

- (1) The Director-General may open, inspect and copy any message left under this Part for an adopted person who is less than 18 years old.
- (2) The Director-General may, at the request of a person whose name is entered in the register or of the person for whom a message has been left under this Part, open and inspect the message.

31D Director-General may delay delivery of message

The Director-General may delay giving a person a message that the Director-General has been requested to open and inspect if the Director-General is of the opinion that the content of the message is likely to be so

distressing for the person that it should be made available to the person only in the presence of appropriate counsellors or other persons able to assist the person.

31E Regulations

The regulations may make provision for or with respect to the leaving and delivery of messages under this Part.

[5] Section 32 Persons eligible to have their names entered in the register

Insert after section 32 (1) (b):

(b1) an adoptive parent,

[6] Sections 33 Arrangements for reunion of registered persons and 34 Location of persons not registered

Insert “under section 31 (2) (a)” after “register” wherever occurring in sections 33 (1)–(3) and 34 (1)–(3).

[7] Section 33 (4)

Insert “under section 31 (2) (a)” after “register” where firstly occurring.

[8] Section 38 False statement in application etc

Omit “the Reunion Information Register” from section 38 (1) (c).
Insert instead “the Reunion and Information Register”.

Explanatory note (Schedule 1.2)

Items [1]–[8] make amendments to establish a Reunion and Information Register and to facilitate the leaving of messages for persons concerned in or affected by an adoption. The existing Reunion Information Register is to be subsumed in the new register. Provision is made for the circumstances in which the Director-General may open, read and copy messages left on the new register. The Director-General may delay giving a person a message until the recipient can read it with appropriate counselling or other support. The Director-General will be protected from liability in respect of the exercise of functions in good faith and with reasonable care under section 75 of the *Community Welfare Act 1987*.

Schedule 1.12 [2] contains a provision (clause 5) to continue in operation the existing Reunion Information Register.

1.3 Advance notice system

[1] Section 4 Definitions

Insert in alphabetical order:

advance notice request means an advance notice request lodged under Part 2A.

advance notice registration means an advance notice request registered under Part 2A and in force.

[2] Part 2A, sections 15A–15J

Insert after section 15:

Part 2A Advance notice

15A Object of Part

The object of this Part is to establish an advance notice system to enable the release of personal information under the Act to be delayed for a fixed period to give the person requesting the delay the opportunity to prepare for the release and any impact this might have on the person or the person's family or associates.

15B Definitions

In this Part:

advance notice period means:

- (a) the period after an application for personal information relating to a person is made (not being greater than 3 months) prescribed by the regulations for the purposes of this paragraph, or
- (b) if the Director-General so directs in relation to a particular advance notice request, such longer period (not being greater than the period (if any) prescribed by the regulations) after an application for personal information relating to a person is made as is specified by the Director-General.

nominated contact address means the address entered on the Advance Notice Register under section 15E (2) (b).

personal information relating to a person means:

- (a) the person's original birth certificate or amended birth certificate, or
- (b) prescribed information relating to the person, or
- (c) if the regulations authorise supply of a birth certificate or prescribed information relating to the person on issue of a supply authority—such a supply authority.

15C Who may lodge an advance notice request?

A person is entitled to lodge a request to be given advance notice before personal information relating to the person is given to another person if the person seeking to lodge the request is:

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

15D How advance notice request is lodged

- (1) A person entitled to lodge an advance notice request may do so by advising the Director-General in writing that he or she wishes to be notified if a particular person or a person within a class of persons entitled to receive the personal information concerned specified in the advice makes an application for personal information relating to the person lodging the advance notice request.
- (2) The advice is to be in a form approved by the Director-General.
- (3) An advance notice request 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.
- (4) A person lodging an advance notice request may also leave a message for a person concerned in or affected by an adoption with the Director-General for placement on the Reunion and Information Register.

15E Advance Notice Register

- (1) The Director-General is to establish and maintain an Advance Notice Register.
- (2) There is to be entered in the Advance Notice Register:
 - (a) the name of each person who has duly lodged an advance notice request, 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 affected by the request, and
 - (e) the advance notice period.
- (3) The Director-General (unless the Director-General is the primary information source) is to advise the relevant primary information source of each entry made in the Advance Notice Register.
- (4) A person whose name is entered in the Advance Notice Register is to advise the Director-General of any change in his or her nominated contact address.

15F Primary information source to delay issue of supply authority or prescribed information

The primary information source is to delay the supply of personal information affected by an advance notice registration until the expiration of the advance notice period unless the registration is waived or cancelled under section 15I.

15G Endorsement of details of advance notice request

The primary information source is to advise the applicant for the supply of the personal information that it will not be supplied until the expiration of the advance notice period and of the reasons for the delay.

15H Expiration of advance notice registration

An advance notice registration expires:

- (a) on expiration of the advance notice period, or
- (b) if the person who lodged the request for registration cancels it by notification in writing to the Director-General, or
- (c) if the person who lodged the request dies, or
- (d) if a contact veto is lodged by the person who lodged the request, or
- (e) if the person who lodged the request fails to notify the Director-General in writing of any change in his or her nominated contact address,

whichever is the sooner.

15I Arrangements to waive advance notice period

- (1) The Director-General may, at the request of a person seeking supply of personal information that is affected by an advance notice registration, ask the person who lodged the advance notice request whether he or she wishes to waive or cancel the registration.
- (2) The Director-General is not to do so unless the Director-General:
 - (a) is of the opinion that the personal information is required urgently and that circumstances exist that justify asking the person to waive or cancel the registration in order to promote the welfare and best interests of either or both of the parties concerned, and
 - (b) has consulted any person or body that the Director-General believes may be of assistance in assessing the merits of the request.
- (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.

15J Notification to person who lodged advance notice request

- (1) The Director-General is to notify a person who has lodged an advance notice request at the person's nominated contact address of an application under this Act for the supply of personal information affected by the registration, unless it is not reasonably practicable to notify the person.
- (2) The Director-General is entitled to rely on the address shown in the Advance Notice Register for this purpose and is not subject to any action, liability, claim or demand in respect of any notification given in good faith at that address.

Explanatory note (Schedule 1.3)

The proposed amendments establish an advance notice system. A person who could be identified by the release of personal information may request the Director-General to delay supply of the personal information for a period to be prescribed (not exceeding 3 months). The Director-General is to notify a person who has lodged such a request at the person's nominated contact address unless it is not reasonably practicable to do so. The system will, for example, enable the person to prepare for the release of information that might impact on personal or family relationships.

1.4 Contact vetoes

[1] Section 22 When contact veto takes effect

Omit "after it is duly lodged" from section 22 (2).

Insert instead "or after details of the contact veto are endorsed on the original birth certificate or amended birth certificate concerned, whichever occurs sooner".

[2] Section 23 Expiration of contact veto

Omit section 23 (1) (a).

[3] Section 29 Closure of Contact Veto Register

Omit the section.

Explanatory note (Schedule 1.4)

Item [1] clarifies the time at which a contact veto takes effect.

Items [2] and [3] repeal section 29 of the Act (which provides for closure of the Contact Veto Register without consideration by Parliament) and make a consequential amendment to section 23.

1.5 Powers of Director-General

[1] Section 4 Definitions

Insert in alphabetical order:

sibling of an adopted person means a brother or sister of the person, whether the relationship is of the whole blood or half blood.

[2] Section 12 Discretion to supply birth certificate or prescribed information

Omit "this section" from section 12 (2).

Insert instead "subsection (1)".

[3] Section 12 (3)

Insert after section 12 (2):

- (3) The Director-General may supply (or authorise an information source to supply) any birth certificate or prescribed information to a sibling of an adopted person or any other person who is not entitled under this Act to receive the birth certificate or prescribed information under this Part if, in the opinion of the Director-General, it is appropriate to do so because of exceptional circumstances affecting the interests or welfare of any person.

[4] Section 12A

Insert after section 12:

12A Discretion to withhold supply (or authorise the withholding of supply), to supply information or to supply it subject to conditions

- (1) The following persons may request the Director-General to act under this section:
 - (a) an adopted person who is 18 or more years old,
 - (b) a birth parent,
 - (c) an adoptive parent of a person who is less than 18 years old,
 - (d) an adoptive parent of a person who is 18 or more years old and who has consented to the request being made.
- (2) The Director-General may, at the request of a person referred to in subsection (1):
 - (a) refuse to supply (or, if the regulations provide for the issue of a supply authority, to issue a supply authority authorising an information source to supply) any birth certificate or prescribed information to which an entitlement arises under this Part, or
 - (b) supply such a certificate or information subject to conditions specified in writing by the Director-General, or
 - (c) if the regulations provide for the issue of a supply authority, issue a supply authority authorising an information source only to supply, subject to compliance with conditions specified by the Director-General, any birth certificate or prescribed information.
- (3) The Director-General may refuse to supply a birth certificate or prescribed information under this section only if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned.

- (4) Conditions that may be imposed by the Director-General under this section include conditions requiring the person entitled to the birth certificate or prescribed information to undergo counselling by a person specified by the Director-General before the certificate or information is supplied.
- (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.
- (6) An information source must not supply any birth certificate or prescribed information the subject of a supply authority imposing conditions on its supply unless the conditions are complied with.
- (7) The Director-General may not (despite section 5 of the *Community Welfare Act 1987*) delegate to another person the exercise of any function of the Director-General under this section.

Explanatory note (Schedule 1.5)

Items [1]–[3] will enable the Director-General to supply, or authorise an information source to supply, birth certificates or prescribed information in situations outside the existing statutory entitlements in exceptional circumstances.

Item [4] will enable the Director-General to refuse to supply (or to authorise an information source to supply), or supply subject to conditions, a birth certificate or prescribed information that might, in identifying a person, cause serious harm to a person concerned. The discretion might be used, for example, if a person might be endangered if identified by the information supplied.

1.6 Review of certain decisions

[1] Section 35A

Insert after section 35:

35A Internal review

- (1) A person who is aggrieved by a decision of the Director-General made under or for the purposes of this Act on or after the commencement of this section may apply for review of the decision.

-
- (2) An application for a review is to be in a form approved by the Director-General.
 - (3) On receipt of an application to review a decision, the Director-General is to review the decision and to notify the applicant of confirmation or otherwise of the decision.
 - (4) In reviewing a decision, the Director-General is to consider any material submitted by the applicant.
 - (5) The Director-General is taken to have reviewed a decision if the applicant is not notified of the outcome of the review within 30 days after the application for review was duly made.
 - (6) This section applies whether or not the decision concerned is one that may be the subject of an appeal to the Community Services Appeals Tribunal.
 - (7) The regulations may prescribe requirements to be observed in relation to a review under this section.

[2] Section 36 Appeals to Community Services Appeals Tribunal

Insert after section 36 (3):

- (4) An appeal may not be made to the Community Services Appeals Tribunal against a decision of the Director-General under this section until the decision has been reviewed under section 35A.

Explanatory note (Schedule 1.6)

Proposed section 35A (item [1]) enables the internal review of decisions under or for the purposes of the Act. Internal review may be sought in relation to decisions that are not able to be appealed about to the Community Services Appeals Tribunal.

However, if an appeal is available to the Tribunal an internal review must have been obtained before the appeal is made (item [2]). Schedule 1.12 [2] contains a savings provision (clause 6) that makes it clear that an internal review is not necessary if an appeal has been made to the Tribunal before the commencement of the proposed amendments.

1.7 Fees and charges

[1] Section 35 Fees and charges

Insert after section 35 (2):

- (2A) A notice under subsection (2) may specify the minimum fees or charges payable in respect of the supply of any documents or information, or provision of any service, under this Act.

[2] Section 35 (3)

Insert "(other than a minimum fee or charge referred to in subsection (2A))" after "charges" in section 35 (3).

Explanatory note (Schedule 1.7)

The proposed amendments will enable the Director-General to set a minimum fee or charge in respect of the supply of documents or information, or the provision of services, under the Act. Where a minimum charge or fee is set it will not be able to be waived or reduced.

1.8 Entitlements of disabled persons

[1] Section 25 Notification to person who lodged contact veto of request for information

Insert at the end of section 25:

- (2) This subsection applies where a person is directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987* to make an application for supply of a birth certificate or prescribed information on behalf of a person with a disability with whom contact is refused. The Director-General is required to notify the person who lodged the contact veto if such an application is made.

[2] Section 27 Undertakings not to contact person who has lodged contact veto

Insert after section 27 (4):

- (5) This section does not apply to an applicant who has been directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987* to make the application on behalf of a person with a disability.

[3] Section 36A

Insert after section 36:

36A Entitlements of disabled persons

- (1) In this section a reference to a person with a disability is a reference to a person:
- (a) who is intellectually, physically, psychologically or sensorily disabled, or
 - (b) who is of advanced age, or
 - (c) who is a mentally ill person within the meaning of Chapter 3 of the *Mental Health Act 1990*, or
 - (d) who is otherwise disabled,

and who, because of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social rehabilitation.

- (2) If a person with a disability:
- (a) has an entitlement to receive a birth certificate or prescribed information, or may lodge a contact veto or advance notice request, under this Act, and
 - (b) is unable, because of the disability, to do anything required by this Act that must be done if the person is to receive the birth certificate or prescribed information or lodge the contact veto or advance notice request,

another person may, if so directed by the Guardianship Board under Part 4A of the *Guardianship Act 1987*, do any such act on behalf of the person with the disability.

(3) The Director-General may:

- (a) refuse to supply (or, if the regulations provide for the issue of a supply authority, to issue a supply authority authorising an information source to supply) any birth certificate endorsed with a contact veto to a person acting on behalf of a person with a disability, or
- (b) direct an information source not to supply any such birth certificate,

if the Director-General is of the opinion that the person will be unable to ensure that the person with the disability will not contact or attempt to contact the person who lodged the contact veto.

Explanatory note (Schedule 1.8)

Proposed section 36A enables persons directed to do so by the Guardianship Board to exercise entitlements to receive a birth certificate or prescribed information, or to lodge a contact veto or advance notice request, on behalf of persons who because of a disability are unable to do so (item [3]). A person exercising such an entitlement on behalf of a person with whom contact has been refused by a contact veto will not be required to sign an undertaking under section 27 before supply of the birth certificate or information (item [2]). However, the Director-General must notify the person who lodged the contact veto of the application (item [1]). Schedule 2 amends the *Guardianship Act 1987* to enable the Guardianship Board to give the necessary direction.

1.9 Information concerning deceased birth parents and adopted children

[1] Section 9 Access to adoption information by relatives and others after death of adopted person or birth parent

Omit section 9 (1) (a). Insert instead:

- (a) supply to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, the original or amended birth certificate of the adopted person or birth parent, or

-
- (a1) supply to a relative or spouse of a deceased adopted person or of a deceased birth parent, or to another person, any prescribed information relating to, or which an adopted person or birth parent is entitled to receive relating to, the adopted person or birth parent, or

[2] Section 9 (2)

Omit section 9 (2). Insert instead:

- (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 the person had a de facto or other close personal relationship with the deceased person.

[3] Section 9 (2A)

Insert after section 9 (2):

- (2A) The Director-General must not supply a birth certificate or prescribed information to any person (or authorise such action to be taken by an information source) unless 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 or the other person if the birth certificate or information is supplied.

Explanatory note (Schedule 1.9)

Proposed section 9 (1) (a), (a1) and (2) (items [1] and [2]) expand the classes of adoption information to which relatives and spouses of, and other persons close to, deceased adopted persons and deceased birth parents have access under the Act. The amendments make it clear that, for example, a relative (such as any child whether or not given up for adoption) of a deceased birth parent will be able to access any information concerning the adopted person that might be accessed by a birth parent.

Proposed section 9 (2A) (item [3]) will prevent the supply under section 9 of the Act of a birth certificate or prescribed information to *any* person unless the Director-General has taken into account any likely detriment to the welfare and best interests of all parties concerned. At present, the Director-General need only take this into account where a person other than a relative or spouse is seeking supply of the adoption information.

1.10 Access to Supreme Court records

[1] Section 14 Access to court records

Omit "for an order" from section 14 (2).

[2] Section 14 (3)

Omit section 14 (3). Insert instead:

- (3) The Supreme Court or a proper officer of the Court may supply the information to the person.

Explanatory note (Schedule 1.10)

At present, a person is entitled to access information in the Supreme Court 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 sources. The proposed amendments remove this latter requirement and enable a person to obtain the information from a court officer without the need to obtain an order.

1.11 Birth parents

[1] Section 8 Birth parent's rights

Omit section 8 (2). Insert instead:

- (2) A man who claims to be the birth parent of an adopted person is entitled to receive an amended birth certificate or prescribed information if:
- (a) he is shown on the adopted person's original birth certificate as the person's father, or
 - (b) he is a person whom the Director-General, Principal Registrar or other information source is entitled to presume, under any law (including a law of another State or Territory or the Commonwealth), to be the person's father.

[2] Section 8 (3)

Insert "except as provided by subsection (4)" after "Part)" in section 8 (3).

[3] Section 8 (4) and (5)

Insert after section 8 (3):

- (4) A designated person may supply a birth parent with prescribed information held by an information source about an adopted child who is less than 18 years old without production of the amended birth certificate of the adopted person if, in the opinion of the designated person, the information could not be used to identify the adopted person or his or her adoptive parents.

- (5) In this section:

designated person has the same meaning as it has in section 11.

Explanatory note (Schedule 1.11)

Item [1] of the proposed amendments will clarify the entitlement of birth fathers to obtain an amended birth certificate or prescribed information. The entitlement may arise either from being acknowledged as the father on the original birth certificate or in records of an information source or because of presumptions such as those as to parenthood arising out of marriage and co-habitation or out of paternity acknowledgments arising out of Acts such as the *Family Law Act 1975* of the Commonwealth and the *Children (Equality of Status) Act 1976* (or any Act replacing that Act) or a similar Act of another State or Territory.

At present a birth parent may only obtain prescribed information held by an information source if the birth parent first obtains an amended birth certificate. Items [2] and [3] of the proposed amendments will enable birth parents to obtain non-identifying information about a child who is less than 18 years old without first obtaining a birth certificate.

1.12 Savings and transitional provisions

[1] Schedule 2 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the *Adoption Information Act 1990*

the *Adoption Information Amendment Act 1995*

[2] Schedule 2, Part 3

Insert after Part 2:

Part 3 Provisions consequent on the enactment of the Adoption Information Amendment Act 1995

5 Saving of Reunion Information Register

The Reunion Information Register established under this Act as in force immediately before the commencement of the amendments to Part 4 made by the *Adoption Information Amendment Act 1995* is taken to form part of the Reunion and Information Register, established under Part 4, as amended.

6 Internal review

Section 36 (4) does not apply to an appeal made to the Community Services Appeals Tribunal before the commencement of Schedule 1.6 [2] to the *Adoption Information Amendment Act 1995*.

Explanatory note (Schedule 1.12)

The proposed amendments will enable the making of savings and transitional regulations consequent on the enactment of the proposed Act (item [1]). Provision is also made for the continuance of the existing Reunion Information Register (item [2]) and a savings provision is included in relation to internal reviews (item [2]).

Schedule 2 Amendment of Guardianship Act 1987

(Section 4)

Part 4A

Insert after Part 4:

Part 4A Adoption information directions

31A Definitions

In this Part:

adoption information action means an action that is required by the *Adoption Information Act 1990* to be taken if a person with an entitlement to receive a birth certificate or prescribed information, or lodge a contact veto or advance notice request, under that Act is to receive the birth certificate or prescribed information or lodge the contact veto.

31B Applications

An application may be made to the Board by any person for directions as to adoption information actions that may be taken by that or another person on behalf of a person who has a disability and who is unable because of that disability to take any such action.

31C Service of applications

- (1) The applicant for directions must, as soon as practicable after the application has been made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on:
 - (a) the person who has a disability, and
 - (b) the Public Guardian.

- (2) Failure to serve a copy of an application in accordance with this section does not vitiate the decision of the Board on the application.

31D Board may give directions

- (1) After conducting a hearing into any application made under this Part, the Board may give directions as to the adoption information actions that may be taken on behalf of the person with a disability.
- (2) In considering such an application, the Board is to have regard to:
 - (a) the views (if any) of:
 - (i) the person with a disability, and
 - (ii) the applicant, and
 - (b) the objects of the *Adoption Information Act 1990*.
- (3) If the Board gives a direction under this section, it is to cause a copy of the direction to be forwarded to the Public Guardian.

31E Restrictions on Board's power to give directions

A direction is not to be given in respect of a person with a disability who is the subject of an order made by the Supreme Court, in the exercise of its jurisdiction with respect to the guardianship of persons, unless the Supreme Court consents to the making of the direction.

31F Limitation of liability

No proceedings lie against any person for or on account of any act, matter or thing done or omitted to be done by the person in good faith and in accordance with the direction given under this Part.

31G Jurisdiction of the Supreme Court not affected

Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the guardianship of persons.

Explanatory note (Schedule 2)

Proposed Part 4A will enable the Guardianship Board to direct a person to take any action on behalf of a disabled person that is required by the *Adoption Information Act 1990* to be taken if the disabled person is to be able to exercise an entitlement under that Act to receive a birth certificate or prescribed information or to lodge a contact veto or advance notice request.

[Minister's second reading speech made in—

Legislative Council on 15 November 1995

Legislative Assembly on 23 November 1995]

