

South Australia

## **Adoption (General) Regulations 2018**

under the *Adoption Act 1988*

---

### **Contents**

#### **Part 1—Preliminary**

- 1 Short title
- 3 Interpretation

#### **Part 2—Aboriginal and Torres Strait Islander Child Placement Principle**

- 4 Aboriginal and Torres Strait Islander Child Placement Principle

#### **Part 3—Consent to adoption**

- 5 Counselling
- 6 Witnessing

#### **Part 4—Prospective Adoptive Parents Register**

- 7 Prospective Adoptive Parents Register
- 8 Expressions of interest and applications for registration
- 9 Minimum requirements for applicants for registration
- 10 Assessment report
- 11 Registration
- 12 Transfer of registration from another State or Territory
- 13 Conversion of registration into joint registration
- 14 Duration and renewal of registration
- 15 Cancellation of registration
- 16 Additional requirements relating to applications

#### **Part 5—Review**

- 17 Review by Tribunal
- 18 Powers of Tribunal

#### **Part 6—Selection of applicants for adoption orders**

- 19 Order in which registered persons selected to be applicants for adoption orders

#### **Part 7—Proceedings under Act**

- 20 Legal practitioners to comply with this regulation when representing party under 18 years
- 21 Discharge of adoption orders—investigations

#### **Part 8—Register of births**

- 22 Court to notify Registrar of adoption order etc
- 23 Information to be disclosed in extract from register of births

## Part 9—Miscellaneous

- 24 Forms
- 25 Offence to make false or misleading statement
- 26 Evidentiary

## Legislative history

---

# Part 1—Preliminary

## 1—Short title

These regulations may be cited as the *Adoption (General) Regulations 2018*.

## 3—Interpretation

- (1) In these regulations—

*Act* means the *Adoption Act 1988*;

*adoption agency* means a person or organisation approved by the Chief Executive under section 29 of the Act;

*child with special needs* means a child who has, or is likely to have, an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;

*overseas subregister* means the subregister of the register relating to children who are resident in a country outside Australia;

*register* means the *Prospective Adoptive Parents Register* kept under Part 4;

*Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of these regulations, a reference to a person being *convicted* of an offence will be taken to include a reference to—
- (a) a finding of a court under Part 8A of the *Criminal Law Consolidation Act 1935* that the objective elements of an offence are established (whether or not the person was found not guilty of the offence, or was found to be mentally unfit to stand trial, in accordance with Division 2, 3 or 3A of that Part); or
  - (b) any finding of a court of another jurisdiction that corresponds to a finding referred to in paragraph (a).

## **Part 2—Aboriginal and Torres Strait Islander Child Placement Principle**

### **4—Aboriginal and Torres Strait Islander Child Placement Principle**

For the purposes of the Act, the Aboriginal and Torres Strait Islander Child Placement Principle is as follows:

- (a) if an order for adoption of an Aboriginal or Torres Strait Islander child is to be made under the Act or an Aboriginal or Torres Strait Islander child is to be placed for adoption under the Act, if reasonably practicable, the order should be made in favour of, or the child should be placed with, 1 of the following persons (in order of priority):
  - (i) a member of the child's family;
  - (ii) a member of the child's community who has a relationship of responsibility for the child;
  - (iii) a member of the child's community;
  - (iv) a person of Aboriginal or Torres Strait Islander cultural background (as the case requires),  
(determined in accordance with Aboriginal or Torres Strait Islander customary law);
- (b) if—
  - (i) an order for adoption of an Aboriginal or Torres Strait Islander child cannot be made in favour of; or
  - (ii) an Aboriginal or Torres Strait Islander child cannot be placed for adoption with,  
(as the case may be) a person referred to in paragraph (a), or it is not in the best interests of the child to do so, the child should be given the opportunity for continuing contact with their family, community or communities and culture (determined in accordance with Aboriginal or Torres Strait Islander customary law).

## **Part 3—Consent to adoption**

### **5—Counselling**

- (1) An officer authorised by the Chief Executive for the purposes of section 15(5)(b) or 16(2)(c) of the Act to counsel a person before that person consents to an adoption—
  - (a) must give to that person an information brochure approved by the Chief Executive; and
  - (b) must explain the information contained in the brochure to the person and must be satisfied that the person understands that information; and
  - (c) must assist the person in considering the application of that information to the particular circumstances of the person; and

- (d) must, in the case of an adoption of an Aboriginal or Torres Strait Islander child, ensure that the person is aware of the availability of further specialised counselling from Aboriginal or Torres Strait Islander organisations and help the person to obtain such counselling if the person so wishes.
- (2) The information brochure referred to in subregulation (1) must include information relating to—
- (a) the implications of adoption and the consequences of consenting to adoption; and
  - (b) the procedures and time limits for revocation of consent to adoption; and
  - (c) in the case of a brochure to be given to a parent or guardian of a child consenting to adoption of the child—
    - (i) counselling and other support services available to parents or guardians; and
    - (ii) arrangements that may be made for care of a child as alternatives to adoption; and
  - (d) in the case of a brochure to be given to a child consenting to adoption—counselling and other support services available to children.

## **6—Witnessing**

- (1) For the purposes of sections 15(5)(b) and 16(2)(b) of the Act—
- (a) the witness to a consent to adoption must be a person approved by the Chief Executive but cannot be the person who, for the purposes of the Act, counselled the person giving consent; and
  - (b) the witness must, before witnessing a consent to adoption, be satisfied—
    - (i) that the person giving consent understands the nature of the instrument of consent; and
    - (ii) that the instrument of consent has been endorsed by a counsellor in accordance with the Act.
- (2) A witness to an instrument of consent to adoption must, as soon as practicable after the execution of the instrument—
- (a) forward a copy of the instrument to the Chief Executive; and
  - (b) return the instrument to the person giving consent.

## **Part 4—Prospective Adoptive Parents Register**

### **7—Prospective Adoptive Parents Register**

- (1) The *Prospective Adoptive Parents Register* continues in existence.
- (2) The register may be divided into subregisters, each relating to children of a particular kind.
- (3) A subregister may, for example, relate to children of a particular age group, sex or racial origin or to children with special needs.

- (4) Subject to this Part, a subregister will contain the names of persons registered as prospective adoptive parents in the order in which those persons' applications for registration on the subregister were approved by the Chief Executive under regulation 11 in respect of adopting a child of the kind to which the subregister relates.
- (5) If—
  - (a) a person is registered on a particular subregister; and
  - (b) while so registered, the person's application for registration on another subregister is approved by the Chief Executive under regulation 11,the latter registration will be taken to have occurred at the same time as that of the former.
- (6) The register is not available for public inspection.

## **8—Expressions of interest and applications for registration**

- (1) A person may, by notice in writing to the Chief Executive, express an interest in adopting a child.
- (2) An expression of interest under subregulation (1) must specify the kind or kinds of child that the person is interested in adopting.
- (3) The Chief Executive may, from time to time, invite persons who have expressed an interest in adopting a child of a particular kind to apply for registration on the subregister relating to children of that kind.
- (4) The Chief Executive will not invite a person to apply for registration if satisfied that the person does not meet the minimum requirements for applicants for registration set out in regulation 9.
- (5) Subject to subregulation (6), an application for registration cannot be made except in accordance with an invitation given under this regulation.
- (6) Where a person who is living together with another person in a qualifying relationship proposes to make an application for registration, the application must be made jointly with that other person.

## **9—Minimum requirements for applicants for registration**

- (1) A person cannot apply for registration as a prospective adoptive parent unless—
  - (a) the person is resident or domiciled in the State; and
  - (b) the person is a permanent resident of Australia; and
  - (c) the person is an Australian citizen or, in the case of a joint application for registration, at least 1 of the applicants is an Australian citizen.
- (2) A person cannot apply for registration as a prospective adoptive parent if—
  - (a) the person has previously been so registered (whether under these regulations or under the law of another State or a Territory of the Commonwealth) and that registration was cancelled on the ground that it was improperly obtained; or
  - (b) the person is a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*; or

- (c) without limiting paragraph (b), the person has, as an adult, been convicted of—
  - (i) an offence against section 14 of the *Criminal Law Consolidation Act 1935* (criminal neglect); or
  - (ii) any other offence involving violence towards a child, abuse of a child or abduction of a child.
- (3) A person cannot, except with the approval of the Chief Executive, apply for registration as a prospective adoptive parent if a child or young person has, at any time, been removed from the care or custody of the person under the *Children and Young People (Safety) Act 2017*, the *Children's Protection Act 1993* or any other similar law of this State or another State or a Territory of the Commonwealth.
- (4) A person cannot apply for registration on a subregister relating to children who are resident in a country outside Australia unless the person also complies with the minimum requirements of that country for adoption of a child by a person resident in Australia.

## **10—Assessment report**

- (1) The Chief Executive must cause an assessment report to be prepared with respect to an application for registration.
- (2) However, an assessment report need not be prepared if—
  - (a) the applicant is not resident in this State while the assessment is being carried out; or
  - (b) in the opinion of the Chief Executive, the assessment cannot be completed due to—
    - (i) the inability to adequately assess the applicant in the applicant's usual home environment; or
    - (ii) the failure of the applicant to participate in workshops, seminars or interviews or to cooperate in the assessment process.
- (3) The assessment report must contain an assessment of the suitability of the applicant to adopt a child of the kind in relation to which registration is sought and the capacity of the applicant to care adequately for such a child.
- (4) An assessment report must be prepared having regard to the following factors:
  - (a) the parenting skills or potential parenting skills of the applicant;
  - (b) the capacity of the applicant to provide, throughout the child's childhood, the standard of care necessary to safeguard and promote the physical, intellectual and emotional welfare of a child of the kind in relation to which registration is sought;
  - (c) if the applicant has the care of any other child—
    - (i) the effect that may have on the best interests, rights and welfare of an adopted child or on the applicant's ability to care for an adopted child; and
    - (ii) the impact that adoption of a child by the applicant may have on that other child;

- (d) the emotional warmth, maturity and stability of the applicant;
  - (e) the physical and mental health of the applicant;
  - (f) the capacity of the applicant to deal with difficult or stressful situations and the familial, social and other support available to the applicant;
  - (g) in the case of a joint application—the length and quality of the relationship between the applicants;
  - (h) the economic position and financial management skills of the applicant;
  - (i) the criminal record (if any) of the applicant;
  - (j) the nature of the childhood experiences of the applicant;
  - (k) if the applicant is infertile—the attitude of the applicant to that infertility or, in the case of a joint application, the attitude of each applicant to that infertility;
  - (l) the attitude of the applicant to children and in particular to the discipline of children;
  - (m) the attitude of the applicant to the status of an adopted child, to the birth parents of an adopted child and to an adopted child's access to information about the child's origin;
  - (n) the attitude to adoption of a child by the applicant of—
    - (i) any children of the applicant; and
    - (ii) any other parent or guardian of any children of the applicant; and
    - (iii) any other person (who is a relative of the applicant, a member of the applicant's household or a close acquaintance of the applicant) with whom the child, if adopted by the applicant, would be likely to come into regular contact;
  - (o) the motivation of the applicant to adopt a child;
  - (p) if the applicant has expressed an interest in adopting a child with special needs—the capacity of the applicant to provide the standard of care required to fulfil the needs of such a child throughout the child's childhood and, if it is likely to be necessary because of the child's special needs, into adulthood;
  - (q) if the applicant has expressed an interest in adopting a child of a particular racial origin—the applicant's understanding of, and interest in, people of that racial origin and the applicant's attitude towards the retention by such a child of the child's cultural heritage.
- (5) A person preparing an assessment report—
- (a) must have regard to any relevant information relating to the applicant held by the administrative unit that is, under a Minister, responsible for the administration of the *Children and Young People (Safety) Act 2017*; and
  - (b) may have regard to any other factor that the person considers relevant in the particular circumstances.

- (6) The Chief Executive may rely on an assessment report prepared by an adoption agency in relation to an application if satisfied that the agency, in preparing that assessment report, has complied with the requirements of this regulation (and in such a case the Chief Executive is not obliged to cause any other assessment report to be prepared in relation to the application).

## **11—Registration**

- (1) A decision on an application must be made within 18 months of the date on which the application was lodged.
- (2) If, after considering an assessment report prepared in relation to an application, the Chief Executive is satisfied that the applicant or, in the case of a joint application, each applicant is a suitable person to adopt a child of the kind in relation to which registration is sought, the Chief Executive will register the applicant or applicants on the appropriate subregister or subregisters.
- (3) If an assessment report has not been prepared in relation to an application for the reasons set out in regulation 10(2), the application may be rejected.
- (4) Before the Chief Executive rejects an application, the applicant must be given an opportunity to make representations on the matter to the Chief Executive.
- (5) Written notice of the Chief Executive's decision under this regulation, together with a copy of the relevant assessment report, must be given to the applicant.
- (6) If the Chief Executive rejects an application, the notice of that decision must inform the applicant of the right to seek a review of the decision and must set out the procedures and time limits that apply in respect of seeking a review.

## **12—Transfer of registration from another State or Territory**

- (1) A person who has been registered as a prospective adoptive parent under the law of another State or a Territory of the Commonwealth that substantially corresponds to the Act and these regulations may apply to the Chief Executive to have that registration transferred to this State.
- (2) If a person who is so registered duly applies for transfer of that registration under subregulation (1), the Chief Executive must enter the applicant's name in the register if satisfied that the applicant—
  - (a) is registered under that other law; and
  - (b) meets the minimum requirements for applicants for registration set out in regulation 9; and
  - (c) is a suitable person to adopt a child of the kind in relation to which registration is sought; and
  - (d) has given notice of the application for transfer of registration, in writing, to the authority administering the other law.
- (3) The Chief Executive may require a person transferring registration in accordance with this regulation to provide such information as is necessary to determine which subregister or subregisters the person's name should be entered in.

- (4) Where a person who has been registered under another law becomes registered in accordance with this regulation, the entry in the register will be taken to have been made on the day on which the person was registered under the other law.

### **13—Conversion of registration into joint registration**

- (1) A person who is registered as a single prospective adoptive parent and who, following registration, commences living together with another person in a qualifying relationship may, if the other person meets the minimum requirements for applicants for registration set out in regulation 9, apply jointly with that other person to the Chief Executive to have the registration converted into joint registration.
- (2) The Chief Executive will treat an application for conversion of registration under this regulation in all respects as if it were a joint application for registration made under regulation 8.
- (3) Where a person's initial registration is converted into joint registration in accordance with this regulation, the entry in the register relating to that joint registration will be taken to have been made on the day on which the person's initial registration occurred.

### **14—Duration and renewal of registration**

- (1) Registration of a person as a prospective adoptive parent—
  - (a) has effect, subject to these regulations, for a period of 3 years; and
  - (b) may be renewed from time to time in accordance with this regulation; and
  - (c) ceases—
    - (i) on written notice of withdrawal being given to the Chief Executive by the registered person or, in the case of persons with joint registration, on the written notice of either of the registered persons; or
    - (ii) on the death of the registered person; or
    - (iii) on cancellation of the registration by the Chief Executive under these regulations.
- (2) Subject to subregulation (3), an application for renewal of registration must be lodged with the Chief Executive not more than 3 months and not less than 1 month before the period of registration expires.
- (3) The Chief Executive may, in the Chief Executive's discretion, accept a late application for renewal of registration.
- (4) A person may only apply for renewal of registration if the person meets the minimum requirements for applicants for registration set out in regulation 9.
- (5) On receipt of an application for renewal of registration, the Chief Executive must cause the assessment report relating to the applicant to be reviewed having regard to any changes in circumstances of the applicant in the period since that report was prepared or was last reviewed.
- (6) However, an assessment report need not be reviewed if—
  - (a) the applicant is not resident in this State while the review is being carried out; or

- (b) in the opinion of the Chief Executive, the review cannot be completed due to—
  - (i) the inability to adequately review the assessment of the applicant in the applicant's usual home environment; or
  - (ii) the failure of the applicant to participate in workshops, seminars or interviews or to cooperate in the review process.
- (7) If an assessment report has not been reviewed for the reasons set out in subregulation (6), the application for renewal of registration may be rejected.
- (8) The Chief Executive may rely on a review of an assessment report undertaken by an adoption agency if satisfied that the agency, in undertaking the review, has had proper regard to any changes in circumstances of the applicant in the period since that report was prepared or was last reviewed.
- (9) If, after considering the review of the assessment report, the Chief Executive is satisfied that the applicant or, in the case of a joint application, each applicant is still a suitable person to adopt a child of the kind in relation to which renewal of registration is sought, the Chief Executive will renew the registration for a further period of 3 years.
- (10) Before the Chief Executive rejects an application for renewal of registration, the applicant must be given an opportunity to make representations on the matter to the Chief Executive.
- (11) Written notice of the Chief Executive's decision under this regulation, together with a copy of the review of the assessment report, must be given to the applicant.
- (12) If the Chief Executive rejects an application for renewal of registration, the notice of that decision must inform the applicant of the right to seek a review of the decision and must set out the procedures and time limits that apply in respect of seeking a review.

## **15—Cancellation of registration**

- (1) The registration of a person as a prospective adoptive parent will be cancelled if a child is placed for adoption with that person.
- (2) The registration of a person as a prospective adoptive parent will be cancelled by the Chief Executive if—
  - (a) the person ceases to be resident or domiciled in this State; or
  - (b) the person ceases to be permanently resident in Australia; or
  - (c) the person ceases to be an Australian citizen and, in the case of joint registration, the person with whom they are jointly registered is not an Australian citizen; or
  - (d) a child is removed from the care or custody of that person under the *Children and Young People (Safety) Act 2017*, the *Children's Protection Act 1993*, or any other similar law of this State or another State or a Territory of the Commonwealth; or
  - (e) the person is a prohibited person within the meaning of section 15 of the *Child Safety (Prohibited Persons) Act 2016*; or

- (f) without limiting paragraph (e), the person has, as an adult, been convicted of—
    - (i) an offence against section 14 of the *Criminal Law Consolidation Act 1935* (criminal neglect); or
    - (ii) any other offence involving violence towards a child, abuse of a child or abduction of a child; or
  - (g) the person's registration is transferred to another State or a Territory of the Commonwealth; or
  - (h) the registration was improperly obtained.
- (3) If a person is registered on a subregister relating to children who are resident in a country outside Australia and the person ceases to satisfy the minimum requirements of that country for adoption of a child by a person resident in Australia, the person's registration on that subregister will be cancelled by the Chief Executive.
- (4) If the registration of a person is cancelled or otherwise ceases in accordance with these regulations, the Chief Executive will, unless satisfied that special reasons exist for not doing so, cancel the registration of a person jointly registered with that person.
- (5) If persons who are jointly registered cease living together in a qualifying relationship, the Chief Executive will cancel the registration of both persons, unless satisfied that special reasons exist for not doing so in which case the Chief Executive—
- (a) may determine that the registration of either or both of the persons remains in effect; and
  - (b) will cancel the registration of the person (if any) whose registration does not remain in effect under paragraph (a).
- (6) A person registered as a prospective adoptive parent must—
- (a) within 28 days of the person's registration becoming liable to cancellation under this regulation, inform the Chief Executive of that fact; and
  - (b) as soon as is reasonably practicable after any other significant change in the person's circumstances that—
    - (i) in the case of a jointly registered person—might affect the suitability of either person to adopt a child of the kind in relation to which they are registered; or
    - (ii) in any other case—might affect the suitability of the person to adopt a child of the kind in relation to which the person is registered,inform the Chief Executive of the change.

Maximum penalty: \$5 000.

**Note—**

The following are examples of a significant change in a person's circumstances that might affect the suitability of the person to adopt a child:

- if the person suffers a deterioration in health; or
- if the person is likely to have another child residing with the person within the next 12 months.

- (7) It is a defence to a charge of an offence under subregulation (6)(a) for the defendant to prove that—
- (a) the defendant's registration only became liable to cancellation because, due to a change in the law of a country outside Australia, the person ceased to satisfy the minimum requirements of that country for adopting a child; and
  - (b) the defendant did not know that the law of that country had so changed.
- (8) The Chief Executive may, at any time, review the registration of a person and may, if the Chief Executive finds that the person is no longer a suitable person to adopt a child of the kind in relation to which the person is registered or, in the case of joint registration, that either person is no longer a suitable person to adopt such a child, cancel the registration of the person or persons.
- (9) Before the Chief Executive cancels the registration of a person under this regulation (other than under subregulation (1) or (2)), the person must be given an opportunity to make representations on the matter to the Chief Executive.
- (10) Written notice of the Chief Executive's decision to cancel registration under this regulation, together with a brief description of the reasons for that decision, must be given to each person affected by the decision.
- (11) A notice under subregulation (9) must inform the person of the right (if any) to seek a review of the decision and must set out the procedures and time limits that apply in respect of seeking a review.
- (12) A decision to cancel the registration of a person under subregulation (1) or (2) may not be the subject of an application for a review under regulation 17.

## **16—Additional requirements relating to applications**

The Chief Executive may, for the purposes of determining an application under this Part, require the applicant—

- (a) to provide further information on any matter specified; or
- (b) to participate in specified workshops or seminars; or
- (c) to provide a medical report as to any specified matter from a medical practitioner nominated by the Chief Executive; or
- (d) to provide written consent authorising a third party to release information relating to the applicant to the Chief Executive.

## **Part 5—Review**

### **17—Review by Tribunal**

A person who is dissatisfied with a decision of the Chief Executive under Part 4 may, within 30 days of receipt of the notice of the decision, apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision.

## 18—Powers of Tribunal

Without limiting the operation of section 37(1) of the *South Australian Civil and Administrative Tribunal Act 2013*, on a review, the Tribunal may make such incidental or ancillary orders as it considers appropriate relating to—

- (a) entries in the register; or
- (b) the assessment report relevant to the person who sought the review; or
- (c) the documentation to be sent overseas for the purposes of adoption.

## Part 6—Selection of applicants for adoption orders

### 19—Order in which registered persons selected to be applicants for adoption orders

- (1) Subject to this regulation, persons whose names are included in the register will be selected to be applicants for an adoption order in the order in which the persons' names appear in the subregister relating to children of the same kind as the child to be adopted.
- (2) A person is excluded from selection as an applicant for an order for adoption of a particular child in accordance with the order prescribed by subregulation (1) if the Chief Executive is satisfied that—
  - (a) the adoption of the child by the person would be inconsistent with a limitation of the consent to the adoption of a parent or guardian of the child; or
  - (b) the adoption of the child by the person would be contrary to—
    - (i) the wishes of the child's birth parent or guardian; or
    - (ii) in relation to a child who is resident in a country outside Australia—the requirements of the law of that country governing the adoption of children; or
  - (c) the adoption of the child by another person whose name is included in the register would, in the particular circumstances of the child, better safeguard and promote the best interests, rights and welfare of the child; or
  - (d) the registration of the person on the register is liable to cancellation; or
  - (e) the person is living together with another person in a qualifying relationship but the other person is not jointly registered with the person as a prospective adoptive parent; or
  - (f) the person is lawfully married but not living together with the person's spouse and the spouse does not consent to the adoption; or
  - (g) the Court is unlikely to make an adoption order in favour of the person on a ground set out in the Act.
- (3) A person who—
  - (a) is not resident or domiciled in this State; or
  - (b) is not living together with another person in a qualifying relationship; or

- (c) is in a qualifying relationship with another person but has only been living together with that other person for a continuous period of less than 3 years, is excluded from selection as an applicant for an order for adoption of a particular child in accordance with the order prescribed by subregulation (1) unless the Chief Executive is satisfied that there are special circumstances that would justify the making of an adoption order in favour of the person.
- (4) If a person—
- (a) has a child residing with him or her and the child has so resided for a period of less than the immediately preceding 12 months; or
  - (b) will or is likely to have any other child residing with him or her in the period of 2 years following selection as an applicant for an adoption order under this regulation,
- the Chief Executive must, before selecting the person as an applicant for an order for adoption of a particular child in accordance with this regulation, have regard to—
- (c) the effect that having the care of another child may have on the best interests, rights and welfare of the particular child proposed to be adopted or on the person's ability to care for that child; and
  - (d) the impact that the adoption of the particular child by the person may have on that other child.
- (5) In the case of selection of applicants for an adoption order from the overseas subregister—
- (a) subject to any requirements of the overseas country, the order of selection will be as follows:
    - (i) the Chief Executive will invite those persons on the subregister, in the order in which the persons' names appear in the subregister, to submit documentation for forwarding to the relevant authority of an overseas country; and
    - (ii) the documentation will be forwarded to the overseas country in the order in which the completed documentation has been received by the Chief Executive; and
  - (b) subregulations (2) to (4) (inclusive) apply if a relevant authority of an overseas country proposes the adoption of a particular child.
- (6) The selection of a person under this regulation as an applicant for an order for adoption of a child may be cancelled if the Chief Executive becomes aware of circumstances that, if known or in existence at the time of the selection, would have resulted in the person being excluded from selection as an applicant for the order.
- (7) If the selection of a person is cancelled under subregulation (6), the Chief Executive must notify the person in writing of the cancellation.

## **Part 7—Proceedings under Act**

### **20—Legal practitioners to comply with this regulation when representing party under 18 years**

- (1) In acting for a party to proceedings under the Act who is less than 18 years of age, a legal practitioner must, to the extent that it is consistent with the legal practitioner's duty to the Court to do so, comply with the following provisions:
  - (a) the legal practitioner must, as far as is reasonably practicable, act in accordance with any instructions given by the party;
  - (b) to the extent that the party has not given, or is not capable of giving, instructions, the legal practitioner must act in accordance with the legal practitioner's own view of the best interests of the party;
  - (c) the legal practitioner must, in a manner appropriate to the capacity of the party to understand, explain to the party the nature of the legal practitioner's role in relation to them (including any limitations on the legal practitioner's ability to act in accordance with their instructions);
  - (d) in any proceedings before the Court, the legal practitioner must explain to the Court the basis on which submissions are made, having regard to the preceding paragraphs.
- (2) A legal practitioner cannot, in complying with this regulation, be held to have breached any code of professional ethics or etiquette, or to have departed from any accepted form of professional conduct.

### **21—Discharge of adoption orders—investigations**

- (1) In conducting an investigation under section 14(2) of the Act, the Chief Executive and, if relevant, the nominee of the Attorney-General, must—
  - (a) make reasonable efforts to obtain information (in so far as their powers to obtain information allow) about the circumstances relating to the application for the discharge order in accordance with any direction of the Court; and
  - (b) for the purposes of section 14(4) of the Act, take reasonable steps to ascertain the views of the other parties to the adoption in relation to the application.
- (2) In connection with subregulation (1)(b), if a party to the adoption is deceased or mentally or physically incapable of expressing their views, the Chief Executive and, if relevant, the nominee of the Attorney-General, must take reasonable steps to ascertain the views of members of the person's family considered appropriate for the purposes of the investigation.

## **Part 8—Register of births**

### **22—Court to notify Registrar of adoption order etc**

- (1) The Court must, on making an adoption order, give notice of the order to the Registrar.

- (2) The Court must, on making any order subsequent to an adoption order declaring the name by which the adopted child is to be known, give notice of that order to the Registrar.
- (3) The Court must, on making an order under section 14 of the Act discharging an adoption order, give notice to the Registrar of the order and any orders consequential or ancillary to the discharge order relevant to the Registrar's functions.

### **23—Information to be disclosed in extract from register of births**

- (1) If the Registrar issues a copy of, or extract from, an entry in the register of births that has been cancelled in accordance with old section 41 of the Act (as defined in section 41A(5) of the Act), the copy or extract must show that the entry has been cancelled, unless the copy or extract is issued in accordance with subregulation (2)(a).
- (2) If, in accordance with the Act, the Registrar issues a copy of, or extract from, an entry in the register of births relating to an adopted person, the copy or extract may show—
  - (a) the entry with the names of the adoptive parents in addition to the other information in the entry; or
  - (b) the entry with only the names of the adoptive parents of the adopted person, in accordance with the wishes of the person seeking that copy or extract.

## **Part 9—Miscellaneous**

### **24—Forms**

A notice, application or renewal required under these regulations must be in a form determined by the Chief Executive and must be accompanied by such further documentation as is required by the Chief Executive.

### **25—Offence to make false or misleading statement**

A person must not, in a notice, application or renewal lodged under these regulations—

- (a) make a statement that is, to the person's knowledge, false or misleading; or
- (b) omit or authorise the omission from any such document a particular which is, to the person's knowledge, a material particular.

Maximum penalty: \$5 000.

### **26—Evidentiary**

- (1) In any proceedings under the Act, an apparently genuine document purporting to be a consent to adoption given under these regulations will, in the absence of proof to the contrary, be taken to be a valid consent to adoption given under these regulations.
- (2) In any proceedings under the Act, an apparently genuine document purporting to be signed by—
  - (a) the Chief Executive; or
  - (b) a person to whom functions and powers of the Chief Executive under the Act or these regulations have been delegated; or

- (c) a person who, under the law of another State or a Territory of the Commonwealth, is entitled to exercise functions and powers corresponding to functions and powers of the Chief Executive under the Act or these regulations,

will, in the absence of proof to the contrary, be taken to have been so signed.

- (3) In any proceedings under the Act, a certificate as to a delegation apparently signed by the Chief Executive will be accepted, in the absence of proof to the contrary, as proof of the delegation.

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Adoption (General) Regulations 2018* revoked the following:

*Adoption Regulations 2004*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2018	227	<i>Gazette 29.11.2018 p4059</i>	15.12.2018: r 2
<b>2019</b>	<b>208</b>	<b><i>Gazette 19.9.2019 p3329</i></b>	<b>19.9.2019: r 2</b>
2020	174	<i>Gazette 4.6.2020 p3031</i>	1.7.2020: r 2

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>19.9.2019</i>
Pt 4		
r 15		
r 15(5)	substituted by 208/2019 r 4	19.9.2019
Sch 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>19.9.2019</i>