

SOUTH AUSTRALIA

ADOPTION OF CHILDREN ACT, 1967

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 31 July 1986.

The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law; they are designed to bring the form and language of the Act into conformity with contemporary standards of good drafting (so far as that object can be achieved without risk of semantic change).

A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

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ADOPTION OF CHILDREN ACT, 1967

being

Adoption of Children Act, 1967, No. 12 of 1967 [Assented to 6 April 1967]¹

as amended by

Age of Majority (Reduction) Act, 1971, No. 15 of 1971 [Assented to 8 April 1971]²;

Adoption of Children Act Amendment Act, 1975, No. 89 of 1975 [Assented to 20 November 1975]³;

Adoption of Children Act Amendment Act, 1976, No. 65 of 1976 [Assented to 25 November 1976];

Adoption of Children Act Amendment Act, 1978, No. 29 of 1978 [Assented to 30 March 1978]⁴;

Statutes Amendment (Change of Name) Act, 1980, No. 69 of 1980 [Assented to 13 November 1980]⁵;

Adoption of Children Act Amendment Act, 1980, No. 79 of 1980 [Assented to 27 November 1980]⁶;

Family Relationships Act Amendment Act, 1984, No. 102 of 1984 [Assented to 20 December 1984]⁷;

and

Statute Law Revision Act, 1986, No. 14 of 1986 [Assented to 20 March 1986]⁸.

An Act to consolidate and amend the law relating to the adoption of children and for related purposes; and to repeal the Adoption of Children Act, 1925.

Long title amended by 14, 1986, s. 3 (1) (1st Sched.).

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Adoption of Children Act, 1967".

Short title.
S. 1 amended by 14, 1986, s. 3 (1) (1st Sched.).

* * * * *

S. 2 amended by 65, 1976, s. 2; repeated by 14, 1986, s. 3 (1) (1st Sched.).

* * * * *

S. 3 repealed by 14, 1986, s. 3 (1) (1st Sched.).

4. (1) In this Act, unless the context otherwise requires—

Interpretation.

"Adopted Children Register" means the Adopted Children Register established and maintained under the repealed Act and continued and kept for the purposes of this Act:

¹ Came into operation 2 November 1967: *Gaz.* 2 November 1967, p. 1964.

² Came into operation 15 April 1971: *Gaz.* 15 April 1971, p. 1598.

³ Came into operation 29 January 1976: *Gaz.* 29 January 1976, p. 356.

⁴ Came into operation 10 August 1978: *Gaz.* 10 August 1978, p. 467.

⁵ Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

⁶ Came into operation 25 July 1985: *Gaz.* 25 July 1985, p. 210.

⁷ Came into operation 14 February 1985: *Gaz.* 14 February 1985, p. 366.

⁸ Came into operation (except Third, Fourth and Sixth Schedules) 31 July 1986: *Gaz.* 17 July 1986, p. 269.

"adoption order" means an order for the adoption of a child under this Act and, where applicable, includes an order for the adoption of a child under the repealed Act:

Def. of "charitable organization" repealed by 65, 1976, s. 3 (a).

Def. amended by 15, 1971, s. 4 (1) (Sched. Part II).

Def. inserted by 89, 1975, s. 3 (a); substituted by 102, 1984, s. 8 (1) (Sched. Part I).

Def. substituted by 65, 1976, s. 3 (d).

Def. of "father" repealed by 89, 1975, s. 3 (b).

Def. of "interim order" repealed by 65, 1976, s. 3 (b).

Def. of "prescribed" repealed by 14, 1986, s. 3 (1) (1st Sched.).

Def. amended by 14, 1986, s. 3 (1) (1st Sched.).

Def. amended by 65, 1976, s. 3 (c).

"child" means a person who has not attained the age of 18 years or a person who has attained that age in respect of whom an adoption order is sought or has been made:

"child born outside marriage" includes a child born to a married woman of which a man other than her lawful spouse is the father:

"country" includes part of a country:

"court", in relation to the making of an adoption order or to proceedings relating to an application for an adoption order, or in relation to proceedings incidental to such an application, means a court of a kind referred to in section 5; and, where applicable, includes a court or other authority of any other State or of a Territory of the Commonwealth which has jurisdiction to make an order for the adoption of a child in that State or Territory:

"the Director-General" means the person for the time being holding, or acting in, the office of Director-General of Community Welfare under the Community Welfare Act, 1972:

"disposition of property" includes the grant or exercise of a power of appointment in respect of property:

"general consent" means a consent of a kind referred to in section 22 (1):

"guardian", in relation to a child, includes—

(a) a person having the custody of the child pursuant to an order of a court of competent jurisdiction made under a law of the Commonwealth or of a State or Territory of the Commonwealth;

and

(b) a person who is, or is deemed to be, the guardian of the child to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory of the Commonwealth:

"principal officer", in relation to a private adoption agency, means the person specified as the principal officer in the application for its approval as a private adoption agency or the person specified as its principal officer in the latest notice given to the Director-General by the agency:

"private adoption agency" means an organization for the time being approved as a private adoption agency under Part VI:

* * * * *

Def. of
"regulations"
repealed by 14,
1986, s. 3 (1) (1st
Sched.).

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of the whole blood or half blood or by affinity:

Def. amended by
89, 1975, s. 3 (c).

"the repealed Act" means the Adoption of Children Act, 1925:

"Territory of the Commonwealth" includes any Territory under the trusteeship of the Commonwealth.

(2) Where the holder of an office that is established by or under any other Act is referred to in this Act and the holder of that office has power (with or without the approval of some person) to delegate to another person all or any of his powers and functions under that Act—

(a) the powers and functions that may be so delegated shall be deemed to include the powers and functions of the holder of that office under this Act, and any of those powers and functions under this Act may be delegated in the manner provided by that other Act;

and

(b) in relation to a power or function so delegated, a reference in this Act to the holder of that office shall be read as including a reference to the delegate.

(3) A person shall not be recognized under this Act as the father of a child born outside marriage unless he is so recognized under the provisions of the Family Relationships Act, 1975.

Subsec. (3)
inserted by 89,
1975, s. 3 (d).

PART II

JURISDICTION

5. Subject to this Act, any of the following courts has jurisdiction to hear and determine an application under this Act for an adoption order:

Jurisdiction.
S. 5 substituted
by 29, 1978, s. 3;
14, 1986, s. 3 (1)
(1st Sched.).

(a) the Children's Court of South Australia constituted of a Judge;

(b) a local court of full jurisdiction;

or

(c) a court of summary jurisdiction constituted of a magistrate and 2 justices (at least 1 of the 3 being a woman and 1 a man).

6. (1) A court shall not make an order under this Act for the adoption of a child unless—

Cases in which
jurisdiction may
be exercised.

(a) at the time of the filing in the court of the application for the order the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the State;

and

(b) the child was present in the court at such time or times during the hearing of the application as required by the court and is present in the State at the time when the adoption order is made.

(2) For the purposes of subsection (1), where the court is satisfied that an applicant was resident or domiciled in the State on a date within 21 days

before the date on which an application was filed in the court, the court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in the State at the time of the filing of the application in the court.

Adoption order not to be made if previously refused except in exceptional circumstances.

7. A court shall not, unless it is satisfied that there are exceptional circumstances which warrant its doing so, make an order under this Act in favour of any person or persons for the adoption of a child if that court or any other court in the State or any court in any other State or in a Territory of the Commonwealth has previously refused to make an order for the adoption of that child by that person or those persons.

Jurisdiction to be founded on the statute rather than common law.

8. The jurisdiction or power of a court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

PART III

ADOPTIONS UNDER THIS ACT

DIVISION 1—GENERAL

Welfare and interests of child to be paramount.

9. For all purposes of this Part, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Who may be adopted.

10. (1) Subject to this Act, a court may make an order under this Act for the adoption of a person who—

Para. (a) amended by 15, 1971, s. 4 (1) (Sched. Part II).

(a) had not attained the age of 18 years before the date on which the application was filed in the court;

or

Para. (b) amended by 65, 1976, s. 4.

(b) has been brought up, maintained and educated by the applicant or by either or both of the applicants or by the applicant and a deceased spouse of the applicant as his or their child.

Subsec. (2) amended by 14, 1986, s. 3 (1) (1st Sched.).

(2) An order may be made under this Act for the adoption of a child notwithstanding that the child has previously been adopted in the State or elsewhere.

Persons in whose favour adoption orders may be made.

11. (1) Except as provided in this section, an adoption order must be made in favour of a husband and wife jointly.

Subsec. (2) amended by 65, 1976, s. 5.

(2) Subject to subsections (3), (4) and (6), where the court is satisfied that in the particular circumstances of the case it is desirable so to do, the court may make an adoption order in favour of 1 person.

(3) Except as provided in subsection (4), the court shall not make an adoption order in favour of 1 person if that person is married and is not living separately and apart from his or her spouse.

Subsec. (4) amended by 14, 1986, s. 3 (1) (1st Sched.).

(4) Where a person (referred to in this section as "the parent") is a natural parent of a child or a parent of a child by adoption, the spouse of the parent may, solely or jointly with the parent, make an application to a court under this Act for an order for the adoption of the child, and an order may be made by the court for the adoption of the child by the spouse or jointly by the spouse and the parent.

Subsec. (5) amended by 14, 1986, s. 3 (1) (1st Sched.).

(5) When an order is made under subsection (4) for the adoption of the child by the spouse, or jointly by the spouse and the parent, the spouse

shall be deemed to be a parent of the child jointly with the parent as if the child had been born to them in lawful wedlock but, notwithstanding anything contained in section 30—

(a) the child does not cease to be a child of the parent and that parent does not cease to be a parent of the child; Para. (a) amended by 14, 1986, s. 3 (1) (1st Sched.).

(b) the relationship between the child and that parent is not determined; Para. (b) amended by 14, 1986, s. 3 (1) (1st Sched.).

(c) that parent was the guardian of the child, the order does not have the effect of terminating the guardianship; Para. (c) amended by 14, 1986, s. 3 (1) (1st Sched.).

and

(d) if the child was the adopted child of that parent, the order does not have the effect of terminating the adoption. Para. (d) amended by 14, 1986, s. 3 (1) (1st Sched.).

(6) The court shall not make an adoption order under this Act in favour of 1 person if that person is married except with the consent of his or her spouse.

(7) The consent of a spouse as required by subsection (6) shall be given in evidence before the court, the evidence shall be given in private and the applicant shall not then be present.

12. A court shall not make an order under this Act for the adoption of a child in favour of a person who or persons either of whom— Age of adopters.

(a) has not attained the age of 18 years;

or

(b) being a male person, is less than 18 years older than the child or, being a female person, is less than 16 years older than the child, Para. (a) amended by 15, 1971, s. 4 (1) (Sched. Part II).

unless the person, or either of the persons, is a natural parent of the child or the court considers that there are exceptional circumstances that justify the making of the adoption order.

13. (1) A court shall not make an order under this Act for the adoption of a child unless, after considering such report (if any) concerning the proposed adoption as may, under section 16 (2), be made to the court by the Director-General, or some other officer of the Department for Community Welfare, and any other evidence before the court, the court is satisfied that— Court to be satisfied as to certain matters. Subsec. (1) amended by 65, 1976, s. 6 (a), (b).

(a) the applicant or (in the case of joint applicants) each of the applicants is of good repute and is a fit and proper person to have the care and custody of a child and to fulfil the responsibilities of a parent of a child;

(b) the applicant or (in the case of joint applicants) each of the applicants is a suitable person to adopt that child, having regard to all relevant matters, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicant or applicants, and any wishes that have been expressed by a parent or guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child;

and

(c) the welfare and interests of the child will be promoted by the adoption.

Subsec. (2)
amended by 15,
1971, s. 4 (1)
(Sched. Part II);
65, 1976, s. 6 (a),
(b).

(2) Subsection (1) does not apply in relation to an order under section 10 (1) for the adoption of a child who has attained the age of 18 years before the date of the making of the order, but the court shall not make an adoption order in such a case unless, after considering such report (if any) concerning the proposed adoption as may, under section 16 (2), be made to the court by the Director-General or some other officer of the Department for Community Welfare, and any other evidence before the court, the court is satisfied that the applicant (or each of the applicants) is of good repute and that exceptional circumstances make it desirable that the child should be adopted.

Subsec. (3)
amended by 65,
1976, s. 6 (a); 14,
1986, s. 3 (1) (1st
Sched.).

(3) A report on behalf of the Director-General may be made by a person authorized in writing to make such a report (either generally or in a particular case) by the Director-General.

Procedure
governing
applications for
adoption orders.

14. (1) Subject to this Act, a court may make an adoption order under this Act upon application in writing in the appropriate prescribed form.

Subsec. (2)
amended by 14,
1986, s. 3 (1) (1st
Sched.).

(2) Before the court hears an application for an adoption order, the applicant or applicants shall file in the court a statement signed by the applicant or by each of the applicants (as the case may require), setting out such matters as are prescribed.

(3) Where any person or persons intends or intend to make an application for an order for the adoption of a child and that person desires, or those persons desire, that the application be dealt with in such a way that—

- (a) the identities of the child and of the parents and guardians of the child are not to be disclosed to the applicant or applicants;
- (b) the identity or identities of the applicant or applicants is not, or are not, to be disclosed to any parent or guardian of the child;
- or
- (c) the identities of the child and of the parents or guardians of the child and of the applicant or applicants are not to be disclosed to one another,

the application shall be made in such prescribed form and manner as are appropriate.

(4) Where an application for an adoption order is made pursuant to subsection (3)—

Para. (a) amended
by 65, 1976, s. 7;
14, 1986, s. 3 (1)
(1st Sched.).

- (a) the court shall, on the completion of the hearing, seal in an envelope all papers used in connection with the application which contain any information as to the identities of the child and of the parents and guardians of the child and deliver the envelope into the custody of the Director-General, and no person shall thereafter be permitted to inspect any of those papers except by leave of a Judge or master of the Supreme Court;

Para. (b) amended
by 14, 1986, s. 3
(1) (1st Sched.).

- (b) an abridged copy of the order made as nearly as practicable in the prescribed form shall be handed by the court to the applicant or applicants, and no person shall be entitled to have or inspect a full copy of the order except by leave of a Judge or master of the Supreme Court;

and

- (c) no entry shall be made in the Adopted Children Register giving information as to the indentities of the former parents or guardians of the child.

15. (1) A court shall not make an order under this Act for the adoption of a child unless the applicant or the applicants for the adoption order has or have given notice of the application in accordance with the regulations—

Notice of application for adoption order.

- (a) to each person whose consent to the adoption of the child is required under section 21 but whose consent has not been given;

and

- (b) to each person (not being a person whose consent is so required) with whom the child resides or who has the care or custody of the child.

(2) The court may, upon application by or on behalf of the applicant or applicants or by or on behalf of the Director-General, dispense with the giving of a notice under subsection (1).

Subsec. (2) amended by 65, 1976, s. 8.

(3) Where it appears to the court to be necessary in the interests of justice so to do, the court may direct that notice of an application for an adoption order be given to any person.

16. (1) The court to which an application is made under this Act by any person other than the Director-General shall cause notice of the application to be given to the Director-General at least 3 weeks before the hearing of the application.

Notice of application for adoption order to be given to Director-General.

Subsec. (1) amended by 65, 1976, s. 9 (a).

(2) The Director-General or some other officer of the Department for Community Welfare authorized in writing by the Director-General may, before the conclusion of the hearing of any application for an adoption order, make a report in writing to the court concerning the proposed adoption, and may appear at the hearing of any application made to a court under this Act and any proceedings relating to the application and may tender evidence, and may call, examine and cross-examine witnesses and address the court before which the application is heard or the proceedings are held on the whole of the evidence.

Subsec. (2) amended by 65, 1976, s. 9 (a), (b).

17. Where an application is made to a court for an adoption order or for an order to dispense with the consent of any person, the court may permit such persons as the court thinks fit to be joined as parties to the proceedings for the purpose of opposing the application.

Parties.

18. Before making an adoption order under this Act, the court—

Powers of court.

- (a) may compel the attendance before it of any witness and, for that purpose, may issue and cause to be served upon the witness a summons in the prescribed form;

- (b) shall take oral or written evidence, on oath or by declaration made before any justice, in proof of, or concerning, any fact, matter or thing required by this Act or by the court to be proved;

Para. (b) amended by 14, 1986, s. 3 (1) (1st Sched.).

and

- (c) may require to be produced to the court a certificate of a legally qualified medical practitioner as to the results of a general

medical examination of the child sought to be adopted, the applicant or applicants for the adoption order, the spouse of the applicant, or any of them, if the certificate was issued at any time within 3 months before the hearing of the application, or may require any such examination to be made and the certificate of the legally qualified medical practitioner by whom the examination is made to be produced to the court.

Care of child
after refusal of
application.
S. 19 amended by
65, 1976, s. 10.

19. Where the court refuses an application for an order for the adoption of a child, the court may, if the child is not under the guardianship of the Minister or the Director-General, make such order for the care and custody of the child as it thinks fit.

Discharge of
adoption orders.
Subsec. (1)
amended by 65,
1976, s. 11.

20. (1) The Supreme Court may make an order discharging an order made under this Act or under the repealed Act for the adoption of a child if it is satisfied that—

Para. (a) amended
by 15, 1971, s. 4
(1) (Sched. Part
II).

(a) the child has not attained the age of 18 years;

and

(b) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means.

(2) The Supreme Court shall not make an order under this section if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where the Supreme Court makes an order discharging an adoption order that was made in reliance upon a general consent given under this Act or under the repealed Act, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of any further application for the adoption of the child.

(4) Where the Supreme Court makes an order under this section, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the child, including orders relating to—

(a) the name of the child;

(b) the ownership of property;

(c) the custody or guardianship of the child;

and

(d) the domicile of the child.

Para. (d) amended
by 79, 1980, s. 3.

(5) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under subsection (4) and to section 30 (4), the rights, privileges, duties, liabilities and relationships of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

(a) anything lawfully done;

(b) the consequences or anything unlawfully done;

or

(c) any right or interest that became vested in any person,

while the adoption order was in force.

DIVISION 2—CONSENTS TO ADOPTIONS

21. (1) Subject to this Division, a court shall not make an order under this Act for the adoption of a child unless consent (not being a consent that has been revoked) to the adoption has been given by the appropriate person or persons ascertained in accordance with the following provisions of this section, or the court is satisfied that there is no such appropriate person.

Consents of parents and guardians required.

(2) In the case of a child who has not previously been adopted, the consent of every person who is a parent or guardian of the child is required but, subject to subsection (3), the consent of the father of a child born outside marriage is not required unless his paternity of the child is recognized under the law of this State before—

Subsec. (2) substituted by 89, 1975, s. 4.

(a) the expiration of 30 days after the day on which an instrument of consent to the adoption was signed by the mother;

or

(b) the day on which an order for the adoption of the child is made, whichever is the earlier.

(3) Where a court before which an order for the adoption of a child is sought is satisfied, on the application of a person claiming to be the father of the child, that he has commenced proceedings under the Family Relationships Act, 1975, for a declaration that he is the father of the child—

Subsec. (3) substituted by 89, 1975, s. 4.

(a) the court shall stay the proceedings for a reasonable period to enable the proceedings under the Family Relationships Act, 1975, to be determined;

and

(b) if, during that period, the person claiming paternity of the child is adjudged under the Family Relationships Act, 1975, to be the father of the child, his consent is, subject to this Division, required for the adoption of the child.

(4) In the case of a child who has previously been adopted, the consent of every person who is an adoptive parent or a guardian of the child is required.

Subsec. (4) substituted by 89, 1975, s. 4.

(5) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the adoption order.

(6) This section does not apply in the case of a child who has attained the age of 18 years before the making of the adoption order.

Subsec. (6) amended by 15, 1971, s. 4 (1) (2nd Sched. Part II).

22. (1) Subject to subsection (2), a consent for the purposes of section 21 shall be expressed as a consent to the adoption of the child by any person or persons on whose application for an order for the adoption of the child an adoption order may be made under this Act in respect of the child, and every such consent shall be a valid consent notwithstanding that an application in respect of the adoption of the child has not been made or contemplated or, if an application has been made, that the person who gave the consent does not know the identity of the applicant or applicants.

The giving of consents.

(2) Where the applicant is a parent or relative of the child or (in the case of joint applicants) at least 1 of the applicants is a parent or relative of the child, a consent for the purposes of section 21 may be a consent to the adoption of the child by the applicant or applicants only.

(3) Where a consent of the kind referred to in subsection (1) has been relied on in an application for an adoption order in respect of a child but the application has been refused by the court, the consent remains in operation for the purposes of any further application for the adoption of the child.

Consents given
under law of
another State or a
Territory of the
Commonwealth.

23. Where an application is made under this Act by a person for an adoption order in respect of a child, a consent to the adoption of the child given by a person in accordance with the law of another State or of a Territory of the Commonwealth that would be a valid and effective consent under that law if the application had been made in that State or Territory under that law shall, subject to section 7, be regarded as a valid and effective consent for the purpose of the application made under this Act.

Revocation of
consent.
Subsec. (1)
amended by 65,
1976, s. 12.

24. (1) A consent to the adoption of a child given for the purposes of this Act by a person other than the child may be revoked, by notice in writing served on the Director-General, before—

(a) the expiration of 30 days after the day on which the instrument of consent was signed;

or

(b) the day on which an order for the adoption of the child is made,

whichever is the earlier, but may not otherwise be revoked.

Subsec. (2)
amended by 65,
1976, s. 12.

(2) Service of a notice on the Director-General under subsection (1) shall be effected by delivering it to him personally or by sending it by registered post to him at his office in Adelaide.

Form of consents.

25. (1) Subject to this section, a consent to the adoption of a child for the purposes of this Division shall be evidenced by an instrument of consent, substantially in accordance with the appropriate prescribed form signed by the person giving the consent and attested in accordance with the regulations.

Subsec. (2)
amended by 68,
1976, s. 13.

(2) A consent referred to in section 22 (2) has no force or effect unless it is attested by the Director-General or a person authorized in writing by the Director-General to attest that consent or generally to attest such consents.

Defective
consents.

26. (1) A court shall not make an adoption order in reliance on a consent given, or purporting to have been given, by a person (other than the child in respect of whom the adoption order is sought) if it appears to the court that—

(a) the consent was not given in accordance with this Act;

(b) the consent was obtained by fraud, duress or other improper means;

(c) the consent was revoked at a time when it had not become irrevocable;

(d) the instrument of consent has been altered in a material particular without authority;

(e) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent;

or

- (f) in the case of the consent of a mother to the adoption of her child, the instrument of consent was signed before the birth of the child.

(2) The court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within 5 days after, the day on which the child was born unless the court is satisfied, on the certificate of a legally qualified medical practitioner or of a registered nurse, or by other adequate evidence, that, at the time the instrument of consent was signed, the mother was in a fit condition to give it.

Subsec. (2) amended by 14, 1986, s. 3 (1) (1st Sched.).

27. (1) A court may, on application by or on behalf of the Director-General, or by or on behalf of an applicant for an adoption order, by order, dispense with the consent of a person (other than the child) to the adoption of a child where it appears to the court—

Court may dispense with consents.
Subsec. (1) amended by 65, 1976, s. 14 (a).

- (a) that the person cannot, after reasonable enquiry, be found or identified;
- (b) that the person is in such a physical or mental condition as not to be capable of properly considering the question whether he should give his consent;
- (c) that the person has abandoned, deserted or persistently neglected or ill-treated the child;
- (d) that the person has, for a period of not less than 1 year, failed, without reasonable cause, to discharge the obligations of a parent or guardian (as the case may be) of the child;
- or
- (e) that there are other circumstances by reason of which the consent may properly be dispensed with.

(1a) Where—

Subsec. (1a) inserted by 65, 1976, s. 14 (b).

- (a) an application for an adoption order is supported by the Director-General;
- (b) the Director-General has certified in writing that the child in respect of whom the order is sought entered Australia otherwise than in the charge of a parent or adult relative who proposed to care for the child while in Australia;
- (c) the child has been in the care of the applicant or applicants for an adoption order for at least 12 months;
- and
- (d) the making of an adoption order in favour of the applicant or applicants would be in the best interests of the child,

no consent to the adoption is required.

(2) In order to facilitate the making of arrangements with a view to the adoption of a child, the court may, on application by or on behalf of the Director-General, make an order under this section dispensing with the consent of a person whose consent is required to the adoption of the child before an application for an adoption order has been made in respect of the child, and any such order under this section has effect for the purposes of any application for an adoption order that may subsequently be made under this Act.

Subsec. (2) amended by 65, 1976, s. 14 (c).

Subsec. (3)
amended by 65,
1976, s. 14 (c).

(3) An order made by virtue of subsection (2) may, on the application of the Director-General or of the person whose consent was dispensed with, be revoked by the court at any time before the making of an adoption order in respect of the child.

Consent of child.

28. (1) Subject to this Division, an order for the adoption of a child who has attained the age of 12 years shall not be made by a court unless the child has consented to the adoption or the court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has not consented to the adoption or that his consent has not been sought.

(2) For the purpose of being satisfied as to any matter mentioned in subsection (1), the court shall question the child in private, and no parent or guardian of the child, or any applicant for the adoption order, shall then be present.

Subsec. (3)
repealed by 65,
1976, s. 15.

* * * * *

Guardianship of
child awaiting
adoption.
Subsec. (1)
amended by 65,
1976, s. 16 (a)-(c);
14, 1986, s. 3 (1)
(1st Sched.).

29. (1) Subject to this section, where every person whose consent to the adoption of a child (not being a child under the guardianship of the Minister) is required under section 21 has consented to the adoption of the child by means of a general consent or his consent has been dispensed with under this Act, or where the Director-General becomes the guardian of a child in pursuance of subsection (2), the Director-General shall be the guardian of the child for all purposes (other than the purposes of section 21 to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child;
 - (b) in the case where a person has so consented to the adoption, the instrument of consent is lawfully revoked;
 - (c) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child;
 - (d) the child is placed under the guardianship of the Minister;
- or
- (e) the child is placed in the custody of a parent of the child by the Director-General.

Para. (d)
substituted by 65,
1976, s. 16 (c);
14, 1986, s. 3 (1)
(1st Sched.).

Para. (e) inserted
by 65, 1976, s. 16
(c).

Subsec. (2)
substituted by 65,
1976, s. 16 (d).

(2) Where—

- (a) an officer of another State or of a Territory whose functions correspond to those of the Director-General under this Act has become the guardian of a child under a law of that State or Territory corresponding to this section;
- (b) the consent to the adoption of the child held by that officer cannot be lawfully revoked by the person or persons by whom it was given;
- (c) the Director-General is satisfied that the child is present in South Australia;
- (d) that officer has requested the Director-General to accept, and the Director-General has, by an instrument in writing forwarded to that officer, agreed to accept, guardianship of the child;

and

- (e) under that law, that officer ceases, upon the execution by him of an instrument renouncing his guardianship of the child, to be the guardian of the child,

the Director-General, upon the execution of that instrument, becomes the guardian of the child.

(2a) Where—

Subsec. (2a)
inserted by 65,
1976, s. 16 (d).

- (a) the Director-General is the guardian of a child under this section;
- (b) the consent to the adoption of the child cannot be lawfully revoked by the person or persons by whom it was given;
- (c) the Director-General is satisfied that the child is present in another State or in a Territory of the Commonwealth;
- (d) the Director-General has requested an officer of that State or Territory whose functions correspond to those of the Director-General under this Act to accept, and that officer has, by an instrument in writing forwarded to the Director-General, agreed to accept, guardianship of the child;

and

- (e) under the law of that other State or Territory, that officer will, upon the execution by the Director-General of an instrument in writing renouncing the Director-General's guardianship of the child, become the guardian of the child,

the Director-General may execute an instrument in writing renouncing guardianship of the child and, where he does so, shall forthwith forward the instrument to that officer.

(3) The Director-General may, upon such terms and conditions as he thinks fit, place any child of whom he is the guardian by virtue of this section in the care of any person whom he considers suitable and who has agreed to have the child in his care.

Subsec. (3)
amended by 65,
1976, s. 16 (e);
14, 1986, s. 3 (1st
Sched.).

(4) The fact that the Director-General is the guardian of a child under this section does not affect the liability of any person to make adequate provision for the maintenance of the child.

Subsec. (4)
amended by 65,
1976 s. 16 (e).

DIVISION 3—EFFECT OF ADOPTION ORDERS

30. (1) For the purposes of the laws of this State, but subject to this Act, upon the making of an adoption order—

General effect of
adoption orders.

- (a) the adopted child becomes a child of the adopter or adopters, and the adopter becomes a parent, or the adopters become the parents, of the child as if the child had been born to the adopter or adopters in lawful wedlock;
- (b) the adopted child ceases to be a child of any person who was a parent (whether a natural parent or a parent by adoption) of the child before the making of the adoption order, and any such person ceases to be a parent of the child;
- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent or former adoptive parent of the adopted child) shall be determined on the basis of the foregoing provisions of this subsection, so far as they are relevant;

Subsec. (1)
amended by 65,
1976, s. 17 (a),
(b).

Para. (d) amended
by 65, 1976, s. 17
(b).

(d) any existing guardianship of the adopted child ceases to have effect;

and

(e) any previous adoption of the child (whether effected under the law of this State or otherwise) ceases to have effect.

Subsec. (2)
substituted by 14,
1986, s. 3 (1) (1st
Sched.).

(2) The provisions of subsection (1)—

(a) apply in relation to adoption orders whether made before or after the commencement of this Act;

but

(b) do not have effect so as to deprive an adopted child of any vested or contingent proprietary right acquired by the child before the making of the adoption order.

(3) Where—

Para. (a)
substituted by 89,
1975, s. 5 (a).

(a) one of the natural or adoptive parents of a child (whether born within or outside marriage) dies;

Para. (b) amended
by 89, 1975, s. 5
(b).

(b) the surviving parent marries or remarries;

and

(c) the child is adopted by the surviving parent's spouse or by the surviving parent and that parent's spouse,

any property of any collateral or lineal next-of-kin of the deceased parent who dies intestate shall, notwithstanding subsection (1), devolve in all respects as if the child had not been so adopted.

(4) Notwithstanding subsection (1), for the purposes of any law of this State relating to a sexual offence, being a law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order or the discharging order, as the case may be, had not been made, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

Subsec. (5)
substituted by 65,
1976, s. 17 (c);
29, 1978, s. 4.

(5) Where—

(a) a child suffers from some physical or mental disability;

or

(b) the physical, mental or emotional attributes or characteristics of a child are such that it requires special care,

the Minister may enter into an arrangement with the prospective adoptive parents of the child under which he will contribute to the support of the child after its adoption.

Effect of order as
to disposition of
property, etc.

31. (1) The provisions of section 30 (1) have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, except that—

(a) those provisions do not affect a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act;

and

- (b) those provisions do not affect a disposition of property that has taken effect in possession before the commencement of this Act.

(2) The provisions of section 30 (1) do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Act.

(3) Where—

- (a) before the commencement of this Act, a person made, by an instrument other than a will, a disposition of property;

Subsec. (3)
amended by 14,
1986, s. 3 (1) (1st
Sched.).

- (b) the disposition had not taken effect in possession before the commencement of this Act;

and

- (c) it did not appear from the instrument that it was the intention of that person to include adopted children as objects of the disposition,

that person may, notwithstanding that the instrument could not, apart from this subsection, be revoked or varied, vary the first mentioned instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order made under this Act or the repealed Act has the same effect as if the repealed Act had continued in force and the adoption order had been made under that Act.

Subsec. (4)
amended by 14,
1986, s. 3 (1) (1st
Sched.).

(5) Nothing in section 30 or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Act) distinguishing between adopted children and children other than adopted children.

32. (1) Subject to subsection (2), upon the making of an adoption order, the adopted child—

- (a) shall have as his forename or forenames such name or names as the court, upon the application of the adoptive parent or adoptive parents, approves and specifies in the adoption order;

Names of
adopted child.
Subsec. (1)
amended by 65,
1976, s. 18 (a);
substituted by 69,
1980, s. 42.

and

- (b) shall have as his surname—

- (i) where there is only 1 adoptive parent and that person is not married—the surname of that adoptive parent;
- (ii) where there is only 1 adoptive parent and that person is married to a natural parent of the child—the surname of the adoptive parent, the surname of the natural parent, or a combined form of those surnames, whichever is nominated by those parents;
- (iii) where there are 2 adoptive parents—the surname of the adoptive mother, the surname of the adoptive father, or a combined form of those surnames, whichever is nominated by those parents;

or

- (iv) in default of a nomination under subparagraph (ii) or (iii)—such surname as the court may specify in the adoption order.

(2) Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the court, on the application of the adoptive parent or adoptive parents, may, in the adoption order, order that the child shall have that name as his surname.

Subsec. (2a)
inserted by 65,
1976, s. 18 (b).

(2a) Where, before the making of the adoption order, the adopted child has been generally known by a particular forename, or particular forenames, and the child is of or above the age of 12 years, the court shall not approve any change in that forename or those forenames unless the child consents to that change.

(3) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with the law of the State.

S. 33 repealed by
79, 1980, s. 4.

Adoption order
not to affect the
distribution of
property by
trustees or
personal
representatives
unless notice
given.

34. (1) Notwithstanding any other provision of this Act, a trustee or personal representative may, subject to this section, convey, transfer or distribute real or personal property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption has been effected, or an adoption order has been made, by virtue of which a person is or is not entitled to an interest in the property.

(2) A trustee or personal representative who conveys, transfers or distributes real or personal property in the manner referred to in subsection (1) is not liable to a person claiming directly or indirectly by virtue of an adoption or an adoption order unless the trustee or personal representative had notice of the claim before the time of the conveyance, transfer or distribution.

(3) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

Heading repealed
by 65, 1976, s. 19.

Ss. 35-37 repealed
by 65, 1976, s. 19.

PART IV

RECOGNITION OF ADOPTIONS

Recognition of
Australian
adoptions.

38. For the purposes of the laws of this State, the adoption of a person (whether before or after the commencement of this Act) in another State or in a Territory of the Commonwealth in accordance with the law of that other State or Territory has, so long as it has not been rescinded under the law in force in that other State or Territory, the same effect as if it were an order for the adoption of that person made in this State on the date on which the adoption became effective, and has no other effect.

Recognition of
foreign adoptions.

39. (1) For the purposes of the laws of this State, the adoption of a person (whether before or after the commencement of this Act) in a country

outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as if it were an order for adoption of that person made in this State on the date on which the adoption became effective, and has no other effect.

(2) This section applies to an adoption in a country if—

- (a) the adoption was effective according to the law of that country;
- (b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters, was resident or domiciled in that country;
- (c) in consequence of the adoption, the adopter or adopters had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the adopted person;

and

- (d) under the law of that country the adopter or adopters were, by the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

(3) The Governor may, from time to time, by proclamation, declare that all or any adoptions under the law of a particular country outside the Commonwealth and the Territories of the Commonwealth and specified in the proclamation shall be conclusively presumed to comply with the conditions specified in subsection (2) (c) and (d).

(4) On and after the making of such declaration and until such declaration is cancelled by a subsequent proclamation (which the Governor is hereby empowered to make) effect shall be given to the declaration in accordance with its terms.

Subsec. (4)
amended by 14,
1986, s. 3 (1) (1st
Sched.).

(5) Notwithstanding the foregoing provisions of this section, any court or other tribunal acting judicially (including the Supreme Court dealing with an application under section 40) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the court or tribunal that the procedure followed, or the law applied, in connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.

(6) Where, in any proceedings before a court or other tribunal (including proceedings under section 40), the question arises whether an adoption is one to which this section applies, it shall be presumed, unless the contrary appears from the evidence, that the adoption complies with the conditions specified in subsection (2) and has not been rescinded.

(7) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country outside the Commonwealth and the Territories of the Commonwealth does not have effect for the purposes of the laws of this State.

(8) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.

40. (1) A person specified in subsection (2) may apply to the Supreme Court for an order declaring that an adoption of a person was effected

Declaration of
validity of foreign
adoptions.

(whether before or after the commencement of this Act) under the law of a country outside the Commonwealth and the Territories of the Commonwealth, and that the adoption is one to which section 39 applies; and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The persons who may make an application under subsection (1) in relation to an adoption are the adopted child or a guardian of the adopted child, the adoptive parent or either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child or a guardian of any such person.

Subsec. (3)
amended by 65,
1976, s. 20.

(3) Where an application is made under this section, the Court shall, if it appears to the Court that the Director-General has not received notice of the application, direct that notice be given to the Director-General and may—

(a) direct that notice of the application be given to such persons (including the Attorney-General) as the Court thinks fit;

(b) direct that a person be made a party to the application;

or

(c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

(4) Where the Court makes an order upon the application, it may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the Court finds established.

(5) In relation to any proceedings under this section, the Court may make such orders as to costs and security for costs (whether by way of interlocutory order or otherwise) as the Court thinks just.

(6) For the purposes of the laws of this State, an order under this section binds the Crown in right of the State, whether or not notice was given to the Attorney-General, and any person who was—

(a) a party to the proceedings for the order or a person claiming through such a party;

or

(b) a person to whom notice of the application for the order was given or a person claiming through such a person,

but does not affect—

(c) the rights of any other person;

or

(d) an earlier judgment, order or decree of any court of competent jurisdiction.

Subsec. (7)
amended by 14,
1986, s. 3 (1) (1st
Sched.).

(7) In any proceedings in any court in this State, the production of a copy of an order under this section, certified by a master of the Supreme Court, to be a true copy, shall—

(a) where the proceedings relate to a person referred to in subsection (6) (a) or (b), be conclusive evidence;

and

(b) where the proceedings relate to the rights of any other person, be evidence,

that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 39 applies.

PART V OFFENCES

41. This Part does not apply in respect of acts occurring outside this State but, except to the extent to which the contrary intention appears, does apply in respect of acts done in this State in relation to the adoption or the proposed adoption of children in, and to children adopted or to be adopted in, another State or a Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth.

Territorial application of Part.

42. A person who was the father or mother or a guardian of a child but has, by reason of the adoption of the child, ceased to be the father or mother or guardian of the child shall not take, lead, entice or decoy the child away, or detain the child, with intent to deprive the adopter or adopters of possession of the child.

Taking away, etc., of adopted child by natural parent.

Penalty: \$400 or imprisonment for 6 months.

43. A person shall not receive or harbour a child on behalf of a person who, to his knowledge, has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of section 42.

Harbouring child taken from adopters.

Penalty: \$400 or imprisonment for 6 months.

44. (1) Subject to this section, a person who (whether before or after the birth of the child concerned) makes, gives or receives, or agrees or offers to make, give or receive, a payment or reward for, or in consideration of, or in relation to—

Payments in consideration of adoptions, etc.

(a) the adoption or proposed adoption of a child;

(b) the giving of consent, or the revocation of consent, to the adoption of a child;

Para. (b) substituted by 65, 1976, s. 21 (a).

(c) the transfer of possession or custody of a child with a view to the adoption of the child;

or

(d) the conduct of negotiations or the making of arrangements with a view to the adoption of a child,

is guilty of an offence against this Act and liable, on conviction, to a penalty not exceeding \$400 or imprisonment not exceeding 6 months.

(2) The references in subsection (1) to the adoption or proposed adoption of a child shall be read as including references to the adoption or proposed adoption of a child under the law of any place (whether in or outside the Commonwealth and the Territories of the Commonwealth).

(3) Subsection (1) does not apply to, or in relation to, either of the following payments or rewards in connection with an adoption or a proposed adoption under this Act:

(a) a payment made by the adopter or adopters, with the approval of the Director-General, in respect of the hospital and medical

Para. (a) amended by 65, 1976, s. 21 (b).

expenses reasonably incurred in connection with the birth of the child or the ante-natal or post-natal care and treatment of the mother of the child or of the child;

or

Para. (b) amended
by 65, 1976, s. 21
(b).

(b) any other payment or reward authorized in writing by the Director-General or by a court.

(4) Subsection (1) does not apply to, or in relation to, a payment or reward in connection with an adoption or proposed adoption under the law of another State or of a Territory of the Commonwealth or of a country outside the Commonwealth and the Territories of the Commonwealth if the making of the payment or the giving of the reward, or any agreement so to do, would have been lawful if it had taken place in that State, Territory or country.

Restriction on
advertising, etc.

45. (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or periodical or by means of broadcasting, television or public exhibition, any advertisement, news item or other matter indicating (whether or not in relation to a particular child, born or unborn) that—

(a) a parent or guardian of a child wishes to have the child adopted;

(b) a person wishes to adopt a child;

or

(c) a person is willing to make arrangements with a view to the adoption of a child,

is guilty of an offence against this Act and liable, on conviction, to a penalty not exceeding \$400 or imprisonment not exceeding 6 months.

Subsec. (2)
amended by 65,
1976, s. 22.

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

Restriction on
publication of
identity of
parties.

46. (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or periodical or by means of broadcasting, television or public exhibition, in relation to any application under this Act or under a law of another State or of a Territory of the Commonwealth for the adoption of a child or for the discharge of an order for the adoption of a child, or in relation to the proceedings on any such application, the name of the applicant or applicants or of the child, the father or mother or a guardian of the child, or, where applicable, the name of the adopter or adopters of the child, or any matter reasonably likely to enable any of those persons to be identified is guilty of an offence against this Act and liable, on conviction, to a penalty not exceeding \$400 or imprisonment not exceeding 6 months.

(2) Subsection (1) does not apply to the publication of any matter with the authority of the court to which the application was made.

Penalty for
making
unauthorized
arrangements for
adoptions.
Subsec. (1)
substituted by 65,
1976, s. 23 (a).

47. (1) Subject to subsections (2) and (3), any person who, without being authorized in writing to do so by, or on behalf of, the Director-General—

(a) conducts, or attempts to conduct, any negotiations or makes, or attempts to make, any arrangement with a parent or guardian of a child with a view to the adoption of the child;

(b) transfers, or causes to be transferred, the possession, custody or control of the child to some other person or persons with a view to the adoption of the child;

or

(c) receives a child into his possession, custody or control with a view to the adoption of the child,

shall be guilty of an offence and liable to a penalty not exceeding \$400 or imprisonment for 6 months.

(2) The provisions of subsection (1) do not apply to any negotiations or arrangements made by, or on behalf of, a parent, guardian or relative of a child for the adoption of the child by a parent or relative of the child or to any negotiations or arrangements made by the principal officer of a private adoption agency, or a person authorized in writing by such a principal officer to act on his behalf, with a view to the adoption of a child by any other person.

(3) The Director-General may, in writing, generally or in any special case, and subject to such terms and conditions as are approved by the Minister, authorize any person or persons approved by the Minister to conduct any negotiation, or make any arrangement, with a parent or guardian of a child for, or towards, or with a view to, the adoption of the child, or to transfer the possession, custody or control of a child to some other person or persons with a view to the adoption of the child by that person or those persons.

Subsec. (3)
amended by 65,
1976, s. 23 (b).

48. A person shall not, whether orally or in writing, wilfully make a false statement for the purposes of, or in connection with, a proposed adoption or any other matter under this Act.

False statements
in applications,
etc.

Penalty: \$400 or imprisonment for 6 months.

49. A person shall not impersonate, or falsely represent himself to be, a person whose consent to the adoption of a child is required by this Act or by the law of another State or of a Territory of the Commonwealth.

Impersonation:

Penalty: \$400 or imprisonment for 6 months.

50. A person shall not present, or cause to be presented, to any court in connection with an application for an order for the adoption of a child under this Act a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required by this Act, knowing that the signature to the document is or was forged or obtained by fraud or duress.

Presenting forged
consent.

Penalty: \$400 or imprisonment for 6 months.

51. A person shall not subscribe his name as a witness to the signature of a person to an instrument of consent to the adoption of a child (whether under this Act or under the law of another State or of a Territory of the Commonwealth) unless—

Improperly
witnessing
consent.

(a) he is satisfied that the person signing the instrument is a parent or guardian of the child;

(b) he takes such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent;

and

(c) the instrument bears the date on which he subscribes his name as a witness.

Penalty: \$400 or imprisonment for 6 months.

Authority to
prosecute.

52. Proceedings for an offence against this Act shall not be commenced except with the written consent of the Minister.

General penalty.

53. Any person guilty of an offence against this Act for which no penalty is expressly provided shall be liable to a penalty of not more than \$400 or to imprisonment for a term of not more than 6 months.

Summary
proceedings.

54. Proceedings for any offence against this Act shall be disposed of summarily.

PART VI

MISCELLANEOUS

Adopted Children
Register.

55. The Adopted Children Register established and maintained under the repealed Act shall, subject to this Act, be continued and kept by the Principal Registrar of Births, Deaths and Marriages who shall cause such entries as are prescribed to be made in the Register.

Registration of
adoption orders.

56. (1) Every court in this State which makes an adoption order shall cause a memorandum, in accordance with the appropriate prescribed form of the adoption order to be sent to the Principal Registrar of Births, Deaths and Marriages.

Subsec. (2)
amended by 14,
1986, s. 3 (1) (1st
Sch.).

(2) The Registrar of the Supreme Court shall cause a copy of every order discharging an adoption order to be sent to the Principal Registrar of Births, Deaths and Marriages.

(3) On receipt of a memorandum referred to in subsection (1) or of a copy of an order referred to in subsection (2), the Principal Registrar of Births, Deaths and Marriages shall—

(a) register it, as prescribed, in the Adopted Children Register;

and

(b) if it relates to a child whose birth is registered in the register of births kept by him, make such alterations to, or entries in, the appropriate registers as are prescribed.

Sending of
memoranda of
orders to other
States and to
Territories of the
Commonwealth.

57. Where an order for the adoption of a child or an order discharging such an order is made and the Principal Registrar of Births, Deaths and Marriages has reason to believe that the birth of the child is registered in another State or in a Territory of the Commonwealth, he shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to such officer of that State or Territory having functions in relation to the registration of births as is prescribed.

Particulars of
orders received
from other States.
S. 58 amended by
65, 1976, s. 24
(a), (b).

58. Where the Principal Registrar of Births, Deaths and Marriages receives, in relation to a child whose birth is registered in this State, a

memorandum or copy of an adoption order made under the law in force in another State or in a Territory of the Commonwealth or in a country outside Australia, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorized so to certify under the law of that State, Territory or country, he shall—

(a) register it, as prescribed, in the Adopted Children Register;

and

(b) make such alteration to, or entries in, the appropriate registers of births as are prescribed.

59. (1) An organization carrying on, or desiring to carry on, the activity of conducting negotiations and making arrangements with a view to the adoption of children may apply in writing to the Director-General for approval as a private adoption agency.

Application for approval of adoption agency. S. 59 amended by 65, 1976, s. 25 (a), (b); redesignated s. 59 (1) by 65, 1976, s. 25 (c).

(2) An application shall not be made by an organization formed for the purpose of profit.

Subsec. (2) inserted by 65, 1976, s. 25 (c).

60. (1) The Director-General—

Director-General may grant or refuse application.

(a) may grant or refuse an application made under section 59;

Subsec. (1) amended by 65, 1976, s. 26 (a).

and

(b) shall give notice in writing served personally or by registered post of his decision to the person specified in the application as the principal officer of the organization.

(2) Without limiting the generality of subsection (1), the Director-General shall refuse an application if it appears to him that the applicant is not entitled to apply for approval or is not suited to carrying on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the conducting of such negotiations or the making of such arrangements.

Subsec. (2) amended by 65, 1976, s. 26 (a), (b).

(3) Every approval of an organization as a private adoption agency shall be subject to such conditions and requirements as may be prescribed, and to such additional conditions and requirements as the Director-General, in any particular case, thinks fit and specifies in the notice given to its principal officer under subsection (1).

Subsec. (3) amended by 65, 1976, s. 26 (c), (d).

61. (1) Before making an application under section 59, an organization shall appoint a person resident in South Australia to be its principal officer in South Australia for the purposes of this Act in the event of the granting of the application.

Principal officer of private adoption agency. Subsec. (1) amended by 65, 1976, s. 27 (a).

(2) If the application is granted, the private adoption agency shall, within 7 days after the occurrence of a vacancy in the office of principal officer, appoint a person resident in South Australia to fill the vacancy and give notice in writing to the Director-General of the appointment.

Subsec. (2) amended by 65, 1976, s. 27 (b).

(3) An application under section 59 shall specify the name of the principal officer, and the address of the principal office in South Australia, of the organization making the application.

Subsec. (3) amended by 65, 1976, s. 27 (c).

(4) For the purposes of subsection (2), the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in South Australia.

(5) Anything done or omitted by the principal officer of a private adoption agency, or with his approval, shall, for the purposes of this Part and any regulations relating to private adoption agencies but without prejudice to any personal liability of the principal officer, be deemed to be done or omitted by the private adoption agency.

Revocation or suspension of approval.
Subsec. (1) amended by 65, 1976, s. 28 (a), (b).

62. (1) The Director-General may, at any time, revoke or suspend the approval of an organization as a private adoption agency under this Part—

- (a) at the request of the agency;
- (b) on the ground that the agency is no longer suited to carrying on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the matters referred to in section 60 (2);

or

- (c) on the ground that the agency or any of its officers has contravened, or failed to comply with, a provision of this Act that is applicable to it or him or any additional condition or requirement referred to in section 60 (3) or 63 (3).

Subsec. (2) amended by 65, 1976, s. 28 (c).

(2) Where the Director-General has revoked or suspended the approval of a private adoption agency under subsection (1), he shall give notice in writing served personally or by registered post on the principal officer of the private adoption agency of the revocation or suspension.

Appeal against refusal: revocation or suspension.
Subsec. (1) amended by 65, 1976, s. 29 (a), (b).

63. (1) Where the Director-General—

- (a) refuses an application of an organization under section 60;
- (b) approves of such an application subject to additional conditions or requirements referred to in section 60 (3);

or

Para. (c) amended by 65, 1976, s. 29 (b).

- (c) revokes or suspends the approval of an organization as a private adoption agency in accordance with section 62,

the organization may appeal to the Supreme Court against the decision of the Director-General.

Subsec. (2) amended by 65, 1976, s. 29 (a); 14, 1986, s. 3 (1) (1st Sched.).

(2) Notice in writing of intention to appeal and the general grounds of the appeal shall be given on behalf of the organization to the Registrar of the Supreme Court and the Director-General within 21 days after the service of notice of the decision.

Subsec. (3) amended by 65, 1976, s. 29 (a).

(3) On the hearing of an appeal under this section, the Supreme Court shall review the decision of the Director-General and may order that the decision of the Director-General be confirmed, or may order that the organization be approved as a private adoption agency subject to such conditions and requirements as may be prescribed and to such additional conditions and requirements as the Supreme Court thinks fit and specifies in its order, or may annul the revocation or suspension of the approval of the organization as a private adoption agency.

64. (1) The Director-General shall cause to be published in the *Gazette* notice of—

Notice of approval to be published in *Gazette*.

(a) the approval of any organization as a private adoption agency under this Part;

Subsec. (1) amended by 65, 1976, s. 30 (a), (b); substituted by 14, 1986, s. 3 (1) (1st Sched.).

(b) the revocation or suspension of any such approval;

and

(c) the annulment of the revocation or suspension of any such approval.

(2) Every such notice shall specify the address of the principal office of the agency concerned and the full name of the principal officer of the agency.

65. (1) An application under this Act shall not be heard in open court, and persons who are not parties to the proceedings and their counsel, solicitors and representatives shall, except as otherwise directed by the court and subject to section 16, be excluded during the hearing of such an application.

Hearing to be in camera.

(2) The court may, at the hearing of an application under this Act—

(a) order a child to leave the room or other place in which the court is hearing the application at any time during the hearing, if it is of the opinion that such a direction should be given in the interests of the child;

and

(b) order any person to leave that room or other place during the examination of a witness.

66. A report to the court under section 16, or any part of such a report, shall not be made available to any person (including a party to the proceedings) unless, upon application made by that person to a judge of the Supreme Court, the judge is satisfied, having regard to all relevant matters, that the report, or part of the report, ought to be made available to that person and has made an order that it be made available accordingly.

Contents of report not to be disclosed.

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

Restriction on inspection of records.

68. In proceedings in any court under this Act, the court may, subject to the regulations, make such orders as to costs and security for costs, (whether by way of interlocutory order or otherwise) as the court thinks just.

Costs.

68a. No application under this Act shall be refused by reason only of the fact that the date of birth of the child to whom the proceedings relate is not known.

Uncertainty as to date of birth no bar to proceedings under this Act. S. 68a inserted by 65, 1976, s. 31.

69. In proceedings in any court in this State—

(a) a document purporting to be either the original, or a certified copy of, or a certified extract from, an order effecting an adoption (whether made in this State or elsewhere);

or

Proof of adoptions.

- (b) a certified copy of an entry in any public official record of the adoption of children (whether kept in this State or elsewhere) or a certificate or extract giving particulars of such an entry and purporting to be signed by the person having the custody of the record,

shall be *prima facie* evidence of the making of the order and of the facts stated in the document, copy, certificate or extract.

Judicial notice of signatures.

70. (1) In proceedings under this Act or affecting any matter under this Act, judicial notice shall be taken of the signature of a person who holds or has held, or is acting or has acted, in any of the following offices, that is to say:

- (a) the office of the Director-General;

Para. (a) substituted by 65, 1976, s. 32 (a).

Para. (b) repealed by 65, 1976, s. 32 (a).

* * * * *

and

- (c) any office in another State or in a Territory of the Commonwealth corresponding with the office of the Director-General,

Para. (c) amended by 65, 1976, s. 32 (b).

appearing on a document and of the fact that, at the time the document was signed by him, he held, or was acting in, that office.

Subsec. (2) amended by 65, 1976, s. 32 (c).

(2) In proceedings under this Act or affecting any matters under this Act, judicial notice shall also be taken of the signature of a person to whom any of the powers, functions or duties of the Director-General have been delegated (whether under this Act or otherwise).

S. 71 repealed by 14, 1986, s. 3 (1) (1st Sched.).

Establishment of Adoption Panel. S. 71a inserted by 29, 1978, s. 5.

71a. (1) There shall be a panel entitled the "South Australian Adoption Panel".

(2) The panel shall consist of 9 members appointed by the Minister of whom—

- (a) one shall be a clinical psychologist;
- (b) one shall be a legally qualified medical practitioner registered as a specialist in gynaecology;
- (c) one shall be a legally qualified medical practitioner registered as a specialist in pediatrics;
- (d) one shall be a legally qualified medical practitioner registered as a specialist in psychiatry;
- (e) one shall be a legal practitioner;
- (f) one shall be a social worker;
- (g) one shall be the nominee of the Director-General;
- (h) two shall be members of the public with special interest in the field of adoption of children.

(3) The Minister shall, as occasion requires, appoint a chairman from amongst the members of the panel.

(4) The members of the panel shall hold office at the pleasure of the Minister.

(5) The members of the panel shall be entitled to receive such allowances and expenses as may be determined by the Minister.

71b. (1) The functions of the panel are as follows:

Functions of panel.
S. 71b inserted by
29, 1978, s.5.

(a) to make recommendations to the Minister generally upon matters relating to the adoption of children;

(b) to keep under review the prescribed criteria in accordance with which the Director-General is to determine who are eligible to be approved as fit and proper persons to adopt children and to recommend to the Minister any changes to those criteria that the panel considers desirable;

(c) to recommend to the Minister procedures for evaluation of, and research into, adoptions;

(d) to make recommendations to the Minister on matters referred by the Minister to the panel for advice;

and

(e) to undertake such other functions as may be assigned to the panel by regulation.

(2) Before making a recommendation under subsection (1) (b), the panel shall give—

(a) private adoption agencies;

(b) persons who have been approved as fit and proper persons to adopt children;

and

(c) any other persons who have, in the opinion of the panel, a proper interest in the matter,

a reasonable opportunity to make representations in relation to the proposed recommendation.

72. The Governor may make such regulations, not inconsistent with this Act, as may be necessary or convenient for the purpose of carrying out, or giving effect to, this Act or its objects, including (but without limiting the generality of the foregoing) regulations prescribing, or making provision for—

Regulations.

(a) matters of practice, procedure or evidence in or in connection with proceedings under this Act before a court which has jurisdiction to make adoption orders;

(b) the respective forms to be used for purposes of this Act;

(c) the keeping of registers of orders made under this Act and the manner in which such orders are to be registered;

Para. (c)
substituted by 14,
1986, s. 3 (1) (1st
Sch.).

(d) fees to be paid in respect of proceedings and orders for the adoption of children and in respect of any matter provided for by or under this Act, and the waiving of any such fees;

(e) the form and manner in which any application for an adoption order is to be made and dealt with where the applicant or applicants desires or desire that the application be dealt with in such a way that—

- (i) the identities of the child and of the parents and guardians of the child are not to be disclosed to the applicant or applicants;
 - (ii) the identity or identities of the applicant or applicants is not or are not to be disclosed to any parent or guardian of the child;
- or
- (iii) the identities of the child and of the parents or guardians of the child and of the applicant or applicants are not to be disclosed to one another;
- (f) the practice and procedure to be followed in obtaining and giving notice of any consent required for the purposes of this Act;
 - (g) the payment of witnesses' expenses in connection with proceedings under this Act;
 - (h) the prohibition or regulation of access to the Adopted Children Register;
 - (i) matters to be included in or excluded from the Adopted Children Register, and the correction, alteration or cancellation of any entries in the Register;
 - (j) the furnishing of copies of or extracts from matters included in the Adopted Children Register;
 - (k) the making, correction, alteration or cancellation of entries relating to adopted children in the registers of births kept under the law of this State;
 - (l) the conduct of private adoption agencies and the conditions and requirements to be observed, and facilities to be provided, by private adoption agencies, including conditions and requirements with respect to the qualifications and experience necessary for persons acting for or employed by private adoption agencies;
- Para. (la) substituted by 65, 1976, s. 33 (a); 29, 1978, s. 6 (a).
- (la) the criteria on which the eligibility of persons for approval by the Director-General as fit and proper persons to adopt children will be determined;
- Para. (m) amended by 65, 1976, s. 33 (b); substituted by 29, 1978, s. 6 (b).
- (m) the—
 - (i) keeping of registers of persons approved by the Director-General as fit and proper persons to adopt children;
 - (ii) order in which persons whose names are included in a register may be selected to be applicants for adoption orders;
- and
- (iii) removal of names from a register;
- Para. (n) substituted by 29, 1978, s. 6 (c).
- (n) the institution, hearing and determination of proceedings to review—
 - (i) any decision of the Director-General refusing to approve a person as being a fit and proper person to adopt children;

(ii) any decision by the Director-General to remove the name of a person from the register of persons whom he has approved as fit and proper persons to adopt children;

or

(iii) any other decision of the Director-General under this Act of a kind specified in the regulations;

(na) constituting adoption boards for the purpose of hearing and determining those proceedings, prescribing the practice and procedure of those boards and conferring on those boards—

Para. (na) inserted by 29, 1978, s. 6 (c).

(i) power to vary or reverse any decision of the Director-General in respect of which proceedings for review have been brought;

and

(ii) any incidental or ancillary powers;

(o) all matters which ought to be prescribed or provided for in order to carry out the objects of, or to give effect to, this Act;

(p) all other matters and things arising under and consistent with this Act, not expressly provided for;

and

(q) penalties, not exceeding \$300 in each case, for offences under, or breaches of, the regulations.

Para. (q) amended by 29, 1978, s. 6 (d).

* * * * * The Schedule¹

¹ The Schedule, being now exhausted, has not been reproduced in this reprint.