

- (i) has complied with sub-section (2); or
- (ii) the Court, on the application of the Director-General or principal officer made within two business days after the mother gave consent, dispenses with the requirement to comply with sub-section (2).

(2) Where, under sub-section (1), the Director-General or the principal officer of an approved agency is required to comply with this sub-section because the Director-General or principal officer knows the name or address of a man whom the Director-General or principal officer believes on reasonable grounds may be the father of a child, the Director-General or principal officer shall, within the period of two business days after the mother of the child gave consent to the adoption of the child send to that man by certified mail notice to the effect that the Director-General or principal officer believes the man may be the father and that, unless the father commences proceedings to obtain a declaration of paternity before the end of the period during which the consent of the mother may be revoked, the consent of the father to the adoption of the child will not be required.

(3) Where a man commences, before the end of the period during which the consent of the mother of the child may be revoked, proceedings to obtain a declaration of paternity of the child under section 10 of the *Status of Children Act 1974* any proceedings for the adoption of the child shall be stayed until the proceedings to obtain the declaration are determined or withdrawn and, where a declaration of paternity is made, that man is an appropriate person for the purpose of section 33 (1) notwithstanding that consents have been given by all other appropriate persons and the period during which such consents might be revoked has expired.

Adoption of Aboriginal child.

50. (1) The provisions of this section are enacted in recognition of the principle of Aboriginal self-management and self-determination and that adoption is absent in customary Aboriginal child care arrangements.

(2) Where—

- (a) consent is given to the adoption of a child by a parent—
 - (i) who is an Aborigine; or
 - (ii) who is not an Aborigine but, in the instrument of consent, states the belief that the other parent is an Aborigine—

and who, in the instrument of consent, expresses the wish that the child be adopted within the Aboriginal community; or

- (b) the Court has dispensed with the consent of the parents and the Director-General or principal officer of an approved agency believes on reasonable grounds that the child has

been accepted by an Aboriginal community as an Aborigine and so informs the Court—

the Court shall not make an order for the adoption of the child unless the Court is satisfied as to the matters referred to in section 15 and, where a parent has given consent, is satisfied that the parent has received, or has in writing expressed the wish not to receive, counselling from an Aboriginal agency and—

- (c) that the proposed adoptive parents are members, or at least one of the proposed adoptive parents is a member, of the Aboriginal community to which a parent who gave consent belongs;
- (d) that a person of a class referred to in paragraph (c) is not reasonably available as an adoptive parent and that the proposed adoptive parents, or at least one of the proposed adoptive parents, is a member of an Aboriginal community; or
- (e) that a person of a class referred to in paragraph (c) or (d) is not reasonably available as an adoptive parent and that the proposed adoptive parents are persons approved by or on behalf of the Director-General or the principal officer of an approved agency and by an Aboriginal agency as suitable persons to adopt an Aboriginal child.

(3) In this section, “Aboriginal agency” means an organization declared by Order of the Governor in Council published in the *Government Gazette* to be an Aboriginal agency in accordance with sub-section (4).

(4) An organization shall not be declared under sub-section (3) to be an Aboriginal agency unless the Director-General is satisfied that the organization is managed by Aborigines, that its activities are carried on for the benefit of Aborigines and that it has experience in child and family welfare matters and the declaration includes a statement to that effect.

(5) The Governor in Council may, by Order published in the *Government Gazette*, revoke or vary an order made under sub-section (3).

Order for adoption of non-citizen child.

51. (1) The Court shall not make an order for the adoption of a non-citizen child unless the Court is satisfied as to the matters referred to in section 15 and is satisfied—

- (a) that the person, or persons, in whose favour the order is made is a person who was, or are persons both of whom were, approved by the Director-General or by an authorized agency as a person, or persons, suitable to adopt a non-citizen child before the child came into or was placed in the care of the person or persons; or

(b) that—

- (i) the child has been in the care of the person, or persons, in whose favour the order is made for the preceding twelve months; and
- (ii) during that period, the Director-General or an authorized agency has supervised the welfare and interests of the child.

(2) Where under this section the Director-General supervises the welfare and interests of a child in the care of a person or persons, the Director-General may require payment by that person or those persons of a fee not exceeding the amount prescribed for the purposes of this section.

(3) In this section, “authorized agency” means an approved agency that is authorized by the Director-General under section 23 to make arrangements with prescribed persons or prescribed organizations in places outside Australia for the adoption in Victoria of non-citizen children.

PART III.—ADOPTION ORDERS UNDER THIS ACT

Division 1—General

Certificate of adoption.

52. Where the Court makes an order for the adoption of a child, the Court shall issue to the person or persons in whose favour the order is made a certificate stating the date on which the order was made, the name of the adoptive parent or adoptive parents, the name that, under the order, is the name of the child, the place of birth of the child and such other matters as the Court determines.

Division 2—Effect of Adoption Orders

General effect of adoption orders.

53. (1) Subject to this Act and to the provisions of any other Act that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order—

No. 7147, s. 32.

- (a) the adopted child shall be treated in law as a child of the adoptive parent or adoptive parents, and the adoptive parent or adoptive parents shall be treated in law as the parent or parents of the child, as if the child had been born to the adoptive parent or, where the adoptive parents are persons who are married to each other, to the adoptive parents or, where the adoptive parents are not married to each other, to each of the adoptive parents in lawful wedlock;
- (b) the adopted child shall be treated in law as if the adopted child were not a child of any person who was a parent

- (whether natural or adoptive) of the child before the making of the adoption order, and any such person shall be treated in law as if the person were not 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 of the adopted child) shall be determined on the basis of the foregoing provisions of this sub-section so far as they are relevant;
 - (d) any guardianship of the adopted child ceases to have effect; and
 - (e) any previous adoption of the child (whether effected under the law of Victoria or otherwise) ceases to have effect.

(2) Notwithstanding sub-section (1), for the purposes of any law 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 sub-section in relation to that adoption order or by virtue of the discharge of that adoption order.

Effect of orders as regards dispositions of property, &c.

No. 7147, s. 33.

54. (1) The provisions of section 53 (1) have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of the *Adoption of Children Act 1964*, 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 that Act; and
- (b) those provisions do not affect a disposition of property that took effect in possession before the commencement of that Act.

(2) The provisions of section 53 (1) do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of the *Adoption of Children Act 1964*.

(3) Where—

- (a) before the commencement of the *Adoption of Children Act 1964*, a person made, by an instrument other than a will, a disposition of property;
- (b) the disposition had not taken effect in possession before the commencement of that 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 sub-section or a corresponding previous enactment, be revoked or varied, by a like instrument 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 the *Adoption of Children Act* 1964 an adoption order made under that Act or this Act shall have effect as if neither that Act nor this Act had been passed.

(5) Nothing in section 53 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) that expressly distinguishes a beneficiary or class of beneficiaries from another beneficiary or class.

Bequest by will to unascertained adopted person.

55. (1) Where, under a will made after the commencement of this section—

- (a) a disposition of property, or of an interest in property, is expressed to be made by the testator to a person who is not named but who is described as a child of the testator or of a spouse, parent, child, brother or sister of the testator, being a person who was adopted by another person; and
- (b) the personal representatives of the testator are unable to ascertain the name and address of the adopted person—

the personal representatives shall give to the Public Trustee a copy of the will and a statement that they are unable to ascertain the name and address of the adopted person.

(2) Where the Public Trustee is given a copy of a will under sub-section (1), the Public Trustee shall, by notice in writing given to the Director-General, request the Director-General to make arrangements for ascertaining and giving to the Public Trustee the name and address of the adopted person.

(3) Where the Director-General receives a request under sub-section (2), the Director-General shall cause such reasonable enquiries to be made of records in possession of the Director-General as will show the name and enable the address or, if the adopted person has died, the date of the death, of the adopted person to be ascertained or, if it appears that the information cannot be obtained from enquiries of those records, seek to obtain the information from enquiries of an approved agency or other body or person.

(4) If the Director-General ascertains the name of the adopted person the Director-General shall take such steps as are necessary to ascertain the address or, if the adopted person has died, the date of death, of the adopted person and shall inform the Public Trustee of that name and address or date.

(5) If the Director-General is unable to ascertain the name of the adopted person the Director-General shall so inform the Public Trustee.

(6) Where the adopted person cannot be found, the property, or interest in property to which, under the will, the adopted person was entitled, belongs to the Crown as *bona vacantia*.

(7) After receiving information from the Director-General, the Public Trustee shall give notice in writing to the personal representatives of the testator stating whether or not the name and address of the adopted person has been ascertained or, if the adopted person has died, the date of death of the adopted person.

(8) Where the Public Trustee—

(a) is, by reason of sub-section (9), to be deemed to be a trustee for an adopted person, who is a beneficiary under a will; and

(b) gives to the personal representatives of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the property, or interest in property to which the adopted person was entitled under that will—

that statement is, for the purposes of the administration of the estate by the personal representatives, conclusive evidence that the adopted person has disclaimed the property or interest in the property.

(9) Unless the adopted person predeceased the testator or, for any other reason known to the personal representatives, is not entitled to an interest under the will, the Public Trustee shall be deemed to be a trustee for the adopted person upon the trusts set out in or arising under the will and, if the personal representatives transfer the property or interest in the property to the Public Trustee as trustee for the adopted person, the personal representatives shall be deemed to have transferred the property or interest to the adopted person.

Names of adopted child.

No. 7147, s. 34.

56. (1) Upon the making of an adoption order—

(a) the surname of the adopted child shall be—

(i) where there is one adoptive parent, the surname of the adoptive parent;

(ii) where there are two adoptive parents who have the same surname, that surname; or

(iii) where there are two adoptive parents who have different surnames, one of those surnames—

where that surname was specified in the application for the adoption order as the proposed surname of the child and is approved by the Court or such other surname as the Court approves in the adoption order; and

(b) the forename or forenames of the adopted child shall be such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or adoptive parents.

(2) The Court shall not approve a name as a surname or forename of a child unless the Court is satisfied that so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.

(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 any other Act or law.

Effect of order on domicile.

57. The domicile of an adopted child shall be determined in accordance with the *Domicile Act 1978*. No. 7147, s. 35.

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

58. (1) Notwithstanding any other provisions of this Act, trustees or personal representatives 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 by virtue of which a person is or is not entitled to an interest in the property. No. 7147, s. 36.

(2) A trustee or personal representative conveying, transferring or distributing real or personal property in the manner referred to in sub-section (1) shall not be liable to a person claiming directly or indirectly by virtue of an adoption unless the trustee or personal representative has 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.

Division 3—Adoption Orders Subject to Conditions**Certain adoption orders subject to condition.**

59. (1) Where the consent of a parent to the adoption of an Aboriginal child was given subject to a condition in accordance with section 37, the adoption order may, subject to and in accordance with consents given to the adoption, be made subject to a condition that a parent or the parents, relatives of the child and members of the Aboriginal community to which the child belongs have such right to have access to the child as is specified in the order.

(2) Where the Court is satisfied—

- (a)** that circumstances exist which make it desirable so to do, whether by reason of the age of the child or otherwise; and
- (b)** that the parent or parents and the adoptive parent or adoptive parents have, after consent to the adoption was given, agreed that the adoption order should be made subject to certain conditions—

the adoption order may be made subject to either or both of the following conditions:

- (c)** A condition that a parent or both parents or such other relatives of the child as are specified in the order or both the parent or parents and relatives so specified have such right to have access to the child as is specified in the order;
- (d)** A condition that the adoptive parent or adoptive parents of the child provide information about the child to the Director-General or principal officer of an approved agency to be given to the parent or parents at such periods and in accordance with such terms as are specified in the order.

Variation, &c., of condition.

60. (1) Where the Court is satisfied that it is in the best interests of the welfare of an adopted child that a condition referred to in section 59 to which the adoption order is subject be varied or revoked, the Court shall, on application by an adoptive parent of the adopted child, a parent who gave consent to the adoption of the child or by or on behalf of the adopted child, by order vary or revoke the condition.

(2) An application under sub-section (1) shall be accompanied by a report from an approved counsellor.

(3) A variation of a condition shall not be made so as to grant to a person greater rights of access to an adopted child unless the adoptive parent or, where there are two adoptive parents, both adoptive parents agree and the Court is satisfied that so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them having regard to the age and understanding of the child.

Cessation of condition.

61. An adoption order ceases to be subject to a condition referred to in section 59—

(a) when the condition is revoked; or

(b) when the adopted child attains the age of eighteen years—
whichever first occurs.

Division 4—Interim Orders**Making of interim orders.**

62. (1) Upon an application to the Court for an order for the adoption of a child, the Court may postpone the determination of the application and make an interim order for the custody of the child in favour of the applicants.

No. 7147, s. 37.

(2) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of, and access to, the child as the Court thinks fit.

(3) The Court shall not make an interim order in respect of a child in favour of any person unless the Court could lawfully make an order for the adoption of that child by that person.

(4) While an interim order remains in force in respect of a child, the person in whose favour the order is made is entitled to the care and custody of the child.

Duration of interim orders.

63. (1) Subject to this Division, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order and for such further periods, if any, as the Court may from time to time order.

No. 7147, s. 38.

(2) An interim order shall not be in force for periods exceeding in the aggregate two years.

Discharge of interim orders.

64. (1) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under any corresponding previous enactment, and may make such order for the care and control of the child as it thinks fit.

No. 7147, s. 39.

(2) An interim order shall cease to have effect upon the making of an order for the adoption of the child, whether made in Victoria or in another State or in a Territory.

PART IV.—RECOGNITION OF ADOPTIONS

Definition.

No. 7147, s. 40.

65. In this Part, “country” includes a part of a country.

Recognition of Australasian adoptions.

No. 7147, s. 41.

66. For the purposes of the laws of Victoria, the adoption of a person (whether before or after the commencement of this Act) in another State, or in a Territory or in New Zealand, in accordance with the law of that State, Territory or country has, so long as it has not been rescinded under the law in force in that State, Territory or country, the same effect as an adoption order made in Victoria, and has no other effect.

Recognition of foreign adoptions.

No. 7147, s. 42.

67. (1) For the purposes of the laws of Victoria, the adoption of a person (whether before or after the commencement of this Act) in a country, other than New Zealand, outside the Commonwealth and the Territories, 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 an adoption order under this Act.

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

- (a) the adoption was effective according to the law of that country;
- (b) in consequence of the adoption, the adoptive parent or adoptive parents 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
- (c) under the law of that country the adoptive parent or adoptive parents were, by the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

(3) The Governor in Council may by proclamation published in the *Government Gazette* declare that all or any adoptions under the law of a particular country, other than New Zealand, outside the Commonwealth and the Territories shall be conclusively presumed to comply with the conditions specified in paragraphs (b) and (c) of sub-section (2).

(4) The Governor in Council may by the like proclamation revoke or vary any proclamation made under sub-section (3).

(5) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority in any country, other than New Zealand,