

ADOPTION OF CHILDREN ACT.

Act No. 23, 1965.

Elizabeth II, An Act to make provisions with respect to and consequential upon the adoption of children; to amend the Child Welfare Act, 1939, the Registration of Births Deaths and Marriages Act 1899, and certain other Acts; and for purposes connected therewith. [Assented to, 17th December, 1965.]
No. 23, 1965

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Adoption of Children Act, 1965".

Commence-
ment. **2.** This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into
Parts, etc. **3.** This Act is divided into Parts and Divisions as follows :—

PART I.—PRELIMINARY—*ss.* 1-6.

PART II.—JURISDICTION—*ss.* 7-9.

PART III.—PRIVATE ADOPTION AGENCIES—*ss.* 10-16.

PART IV.—ADOPTIONS UNDER THIS ACT—*ss.* 17-43.

DIVISION 1.—*General*—*ss.* 17-25.

DIVISION 2.—*Consents to Adoptions*—*ss.* 26-34.

DIVISION 3.—*Effect of Adoption Orders*—*ss.* 35-40.

DIVISION 4.—*Interim Orders*—*ss.* 41-43.

PART V.—RECOGNITION OF ADOPTIONS—*ss.* 44-47.

PART

PART VI.—OFFENCES—ss. 48-60.

No. 23, 1965

PART VII.—MISCELLANEOUS—ss. 61-73.

PART VIII.—AMENDMENTS TO REGISTRATION OF BIRTHS DEATHS AND MARRIAGES ACT 1899, AS AMENDED BY SUBSEQUENT ACTS—s. 74.

4. (1) The Child Welfare Act, 1939, as amended by subsequent Acts, is amended—
- (a) by omitting from section two the matter relating to Part XIX; Amendment of Act No. 17, 1939.
Sec. 2.
(Parts of Act.)
 - (b) by omitting from subsection one of section four the definition of "Adopting parent" and by inserting in lieu thereof the following definition :— Sec. 4.
(Interpretation.)

"Adopting parent" means a person who has adopted a child under the Adoption of Children Act, 1965, or under any enactments repealed by that Act.
 - (c) by omitting Part XIX. Part XIX.
(Adoption of Children.)
- (2) The Child Welfare (Amendment) Act, 1941, is repealed. Repeal of Act No. 63, 1941.
- (3) The Child Welfare (Further Amendment) Act, 1961, is repealed. Repeal of Act No. 27, 1961.

5. (1) Notwithstanding the provisions of section four of Savings. this Act—

- (a) an order for adoption made under the former Acts and in force at the commencement of this Act continues in force;
- (b) an application for an order for adoption under the former Acts that was pending immediately before the commencement of this Act may be continued and dealt with under the provisions of the former Acts as if this Act had not been passed, but an adoption order made in pursuance of this paragraph shall have effect as if made under this Act.

(2)

Adoption of Children Act.

No. 23, 1965

(2) A consent in writing to the adoption of a child given by a person before the commencement of this Act in accordance with the former Acts shall, for the purposes of proceedings under this Act for the adoption of the child, be deemed to be a sufficient consent of the person giving the consent.

(3) Where a consent referred to in subsection two of this section—

- (a) is not a consent to the adoption of the child by a specified person or by specified persons, the consent shall, for the purposes of this Act, be deemed to be a general consent;
- (b) is a consent to the adoption of the child by a specified person or by specified persons, that person or those persons shall, for the purposes of this Act, be deemed to be a relative, or relatives, as the case may be, of the child.

(4) Subject to subsection five of this section, the provisions of sections thirty-five and thirty-six (subsection four of section thirty-six excepted) of this Act apply, as from the commencement of this Act, in relation to an adoption order made under the former Acts as if this Act had been in force when the order was made and the order had been made under this Act upon its commencement.

(5) In relation to—

- (a) a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act; or
- (b) a devolution of property upon the intestacy of any person who died before the commencement of this Act,

an adoption order referred to in subsection four of this section has the same effect as if the former Acts had continued in operation.

(6)

(6) Notwithstanding any other provision of this Act, No. 23, 1965 where—

- (a) a will made by any person before the commencement of this Act conferred on any person a special power of appointment in respect of any property, the objects of that power being the issue, immediate or remote, or the children, of any specified person;
- (b) that special power of appointment was or is not exercised before the general power of appointment referred to in paragraphs (c) and (d) of this subsection is exercised;
- (c) that will also conferred on any person a general power of appointment in respect of that property; and
- (d) that general power of appointment has been, before that commencement, or is, after that commencement, exercised exclusively in favour of any issue, immediate or remote (including any person or persons who was or were adopted by that specified person under the former Acts) or children (including any such adopted person or persons) of that specified person,

that general power shall, for all purposes, be deemed to be a special power in favour of the issue, immediate or remote, or the children, as the case may be, of that specified person to the extent to which the disposition of that property had not, by virtue of that general power of appointment, taken effect in possession before that commencement.

6. In this Act, unless inconsistent with the context or subject matter— **Interpretation.**

“Adoption order” means an order for the adoption of a child under this Act.

“Charitable organisation” means an organisation, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent or philanthropic purposes, but does not include an organisation formed or carried on for the purpose of trading or securing a pecuniary profit to its members or an incorporated hospital or separate

Adoption of Children Act.

No. 23, 1965

separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts.

“Child” means a person who has not attained the age of twenty-one years, or a person who has attained that age and in respect of whom an adoption order is sought or has been made.

“Commonwealth” means the Commonwealth of Australia.

“Court” means the Supreme Court of New South Wales in its equitable jurisdiction.

“Director” means the Director of the Child Welfare Department.

“Disposition of property” includes the grant or exercise of a power of appointment in respect of property.

“Father”, in relation to a child who is illegitimate, means the putative father.

“General consent” means a consent to the adoption of a child other than the consent referred to in subsection two of section twenty-seven of this Act.

“Guardian”, in relation to a child, includes—

- (a) a person having the custody of the child under a court order; 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 another State or a Territory of the Commonwealth.

“Interim order” means an interim order under Division 4 of Part IV of this Act.

“Prescribed” means prescribed by this Act or the regulations.

“Principal officer”, in relation to a private adoption agency, means the person specified as the principal officer in the application by virtue of which the private adoption agency was approved under this Act,

Act, or the person specified as the principal officer **No. 23, 1965**
in the latest notice given to the Director by the
private adoption agency under subsection two of
section twelve of this Act.

“Private adoption agency” means a charitable organisation for the time being approved as a private adoption agency under Part III of this Act.

“Regulations” means regulations under this Act.

“Relative”, in relation to a child, means a grandparent, uncle or aunt of the child, whether the relationship is of the whole blood or half-blood or by affinity, and notwithstanding that the relationship is traced through, or to, an illegitimate person or depends upon the adoption of any person.

“Territory of the Commonwealth” includes a Territory under the trusteeship of the Commonwealth.

“the former Acts” means all or any of the enactments referred to in section four of this Act.

PART II.

JURISDICTION.

7. Jurisdiction is conferred on the Court in proceedings instituted in the Court in accordance with this Act. Jurisdiction of Supreme Court.

8. (1) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order— Cases in which jurisdiction may be exercised.

(a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in New South Wales; and

(b) the child was present in New South Wales.

Adoption of Children Act.

No. 23, 1965

(2) For the purposes of subsection one of this section, where the Court is satisfied that an applicant was resident or domiciled in New South Wales, or that the child was present in New South Wales, on a date within twenty-one 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 New South Wales, or that the child was present in New South Wales, as the case may be, at the time of the filing in the Court of the application.

Rules of private international law not to apply.

9. The jurisdiction of the Court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

PART III.
PRIVATE ADOPTION AGENCIES.

Application for approval of adoption agency.

10. A charitable organisation 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 for approval as a private adoption agency.

Director may grant or refuse application.

11. (1) The Director—

- (a) may grant or refuse an application under section ten of this Act; 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 organisation.

(2) Without limiting the generality of subsection one of this section, the Director shall refuse an application if it appears to him that the applicant is not a charitable organisation 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

character and number of the persons taking part, or proposing to take part, in the management or control of the organisation, or engaged or proposed to be engaged, on behalf of the organisation, in the conducting of such negotiations or the making of such arrangements. No. 23, 1965

(3) Every approval of 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, in any particular case, thinks fit and specifies in the notice given to its principal officer under subsection one of this section.

12. (1) Before making an application under section ten of this Act, a charitable organisation shall appoint a person resident in New South Wales to be its principal officer in New South Wales for the purposes of this Act in the event of the granting of the application. Principal officer of private adoption agency.

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

(3) An application under section ten of this Act shall specify the name of the principal officer, and the address of the principal office in New South Wales, of the charitable organisation making the application.

(4) For the purposes of subsection two of this section, the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in New South Wales.

(5) Anything done 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 by the private adoption agency.

13.

No. 23, 1965

Revocation
or suspen-
sion of
approval.

13. (1) The Director may, at any time, revoke or suspend the approval of 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 eleven of this Act; or
- (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it or any additional condition or requirement referred to in subsection three of section eleven of this Act or subsection three of section fourteen of this Act.

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

Appeal
against
refusal, revo-
cation or
suspension.

14. (1) Where the Director—

- (a) **refuses an application of an organisation under section ten of this Act;**
- (b) approves of such an application subject to additional conditions or requirements referred to in subsection three of section eleven of this Act; or
- (c) revokes or suspends the approval of a charitable organisation as a private adoption agency in accordance with the provisions of section thirteen of this Act,

the organisation may appeal to the Court against the decision of the Director.

(2) Notice in writing of intention to appeal and the general grounds of the appeal shall be given on behalf of the organisation to the Master in Equity and the Director within twenty-one days after the service of notice of the decision.

(3)

(3) On the hearing of an appeal under this section, **No. 23, 1965** the Court shall review the decision of the Director and may order that the decision of the Director be confirmed, or order that the organisation 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 Court thinks fit and specifies in its order.

15. (1) The Director shall cause to be published in the Gazette notice of the approval of any charitable organisation as a private adoption agency under this Part and of the revocation or suspension of any such approval. Notice of approval to be published in Gazette.

(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.

16. The regulations may prescribe 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 of persons acting for or on behalf of private adoption agencies. Regulations relating to private adoption agencies.

PART IV.

ADOPTIONS UNDER THIS ACT.

DIVISION 1.—*General.*

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

18. (1) Subject to this Act, the Court may, on application, make an order for the adoption of a person who— Who may be adopted.

- (a) had not attained the age of twenty-one years before the date on which the application was filed in the Court; or

(b)

Adoption of Children Act.

No. 23, 1965

(b) had attained that age before that date and—

- (i) had been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or their child; or
- (ii) had, as a ward within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts, been boarded-out or placed out as an adopted boarder with the applicant or applicants or with the applicant and a deceased spouse of the applicant.

(2) Except where the applicant is a person, or the applicants are persons, in whose favour a consent referred to in subsection two of section twenty-seven of this Act has been given, the Court shall not make an adoption order unless the application is made on behalf of the applicant, or applicants, by the Director or by the principal officer of a private adoption agency.

(3) An application for an adoption order by a person, or by persons, in whose favour a consent referred to in subsection two of section twenty-seven of this Act has been given may be made on behalf of the applicant, or applicants, by the Director.

(4) The Court shall not make an order for the adoption of a person who is, or has been, married.

(5) Subject to this Act, an order may be made under this Act for the adoption of a child notwithstanding that the child has, whether before or after the commencement of this Act, and whether in New South Wales or elsewhere, previously been adopted.

Persons in whose favour adoption orders may be made.

19. (1) Except as provided by subsection two of this section, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2)

(2) Subject to subsection three of this section, where **No. 23, 1965** the Court is satisfied that exceptional circumstances make it desirable so to do, the Court may make an adoption order in favour of one person.

(3) The Court shall not make an adoption order in favour of one person if that person is married and is not living separately and apart from his or her spouse unless that person's spouse consents in writing to the application for the adoption order.

(4) The Court may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent, or that they are the natural parents, of the child.

20. The Court shall not make an order for the adoption Age of adopters.
of a child in favour of a person who or persons either of whom—

- (a) has not attained the age of twenty-one years; or
- (b) being a male person, is less than eighteen years older than the child, or, being a female person, is less than sixteen years older than the child,

unless the applicant, or at least one of the applicants, is a natural parent or relative of the child or the Court considers that there are exceptional circumstances that make it desirable to make the adoption order.

21. (1) The Court shall not make an order for the adoption of a child unless— Court to be satisfied as to certain matters.

- (a) the Director has made a report in writing to the Court concerning the proposed adoption;
- (b) where the application for the order is made on behalf of the applicant or applicants by the principal officer of a private adoption agency, that principal officer has also made such a report; and
- (c)

Adoption of Children Act.

No. 23, 1965

(c) the Court, after considering any such report and any other evidence before the Court, is satisfied that—

(i) in the case where the child had not attained the age of twenty-one years before the date on which the application for the order was filed in the Court—

(a) the applicant or each of the applicants is of good repute and is a fit and proper person to fulfil the responsibilities of a parent; and

(b) the applicant or each of the applicants is a suitable person to adopt that child, having regard to all relevant considerations, 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; or

(ii) in the case where the child had attained the age of twenty-one years before the date on which the application was filed in the Court—

(a) the applicant or each of the applicants is of good repute; and

(b) exceptional circumstances make it desirable that the child should be adopted by the applicant or applicants,

and in either case the welfare and interests of the child will be promoted by the adoption.

(2)

(2) Where the regulations provide for the keeping **No. 23, 1965** by the Director of a register of persons approved by him as fit and proper persons to adopt children, the Court may refuse to make an adoption order in relation to a child referred to in subparagraph (i) of paragraph (c) of subsection one of this section—

- (a) if, in the case of a sole applicant, his name is not included in that register or, in the case of joint applicants, neither of their names is included in that register; or
- (b) where the name of the applicant or of either applicant or the names of both of the applicants, as the case may be, is or are included in that register—if the Court is satisfied that some other person whose name is included in that register, is entitled under the regulations to be selected by the Director or by the principal officer of a private adoption agency, as the case may be, to be an applicant for an adoption order in priority to the applicant or applicants for the adoption order and that other person is suitable as an adoptive parent of that child.

(3) Subsection two of this section does not apply in any case where the applicant, or either of the applicants, for the adoption order is a parent of the child or is a relative of the child in whose favour a consent referred to in subsection two of section twenty-seven of this Act has been given.

22. (1) The Court shall not make an order for the adoption of a child unless at least fourteen days' notice of the application for the order has been given or sent by registered post— **Notice of application for adoption orders.**

- (a) to any person whose consent to the adoption of the child is required under section twenty-six of this Act but whose consent has not been given; and
- (b) to any 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)