

Adoption of Children Act.

No. 23, 1965

Recognition
of foreign
adoptions.

46. (1) For the purposes of the laws of New South Wales, 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the Territories of the Commonwealth, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as if it were an order for adoption under this Act or the former Acts, as the case may be, made in New South Wales on the date on which it was effected 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 virtue of the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

(3) Notwithstanding the foregoing provisions of this section, a court (including a court dealing with an application under section forty-seven of this Act) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the court 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.

(4)

(4) Where, in any proceedings before a court No. 23, 1965 (including proceedings under section forty-seven of this Act), 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from the evidence, that the adoption complies with the requirements of subsection two of this section and has not been rescinded.

(5) 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 New South Wales.

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

47. (1) A person specified in subsection two of this section may apply to the Court for an order declaring that an adoption of a person was effected (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 forty-six of this Act applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly. Declarations of validity of foreign adoptions.

(2) The persons who may make an application under subsection one of this section in relation to an adoption are 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.

(3) Where an application is made under this section, the Court 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)

Adoption of Children Act.No. 23, 1965

(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 to be established.

(5) For the purposes of the laws of New South Wales, an order under this section binds the Crown in right of New South Wales, 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 a court of competent jurisdiction.

(6) In proceedings in a court of New South Wales, the production of a copy of an order under this section, certified by the Master in Equity to be a true copy, shall—

- (a) where the proceedings relate to a person referred to in paragraph (a) or (b) of subsection five of this section, 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 forty-six of this Act applies.

PART

PART VI.

No. 23, 1965

OFFENCES.

48. This Part does not apply in respect of acts occurring outside New South Wales but, except to the extent to which the contrary intention appears, does apply in respect of acts done in New South Wales in relation to arrangements with a view to the adoption of children in, to the adoption of children in, or children adopted in, another State, a Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth.

Territorial application of Part.

49. (1) A person who was the father or mother or a guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a guardian of the child, and who takes, leads, entices or decoys the child, or counsels, causes or attempts to cause the child to be withdrawn or to abscond or detains the child, with intent to deprive the adopters of the child of possession of the child is guilty of an offence against this Act.

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

(2) A person who receives or harbours a child on behalf of a person who, to his knowledge, has taken, led, enticed or decoyed the child away, or has counselled, caused or attempted to cause the child to be withdrawn or to abscond, or is detaining the child in contravention of subsection one of this section is guilty of an offence against this Act.

50. (1) Subject to this section, a person who (whether before or after the birth of the child concerned) makes, gives or receives, or agrees 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 signing of an instrument of consent, to the adoption of a child;
- (c) the transfer of the possession or control 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.

(2)

Adoption of Children Act.

No. 23, 1965

(2) Subsection one of this section does not apply to or in relation to any of the following payments or rewards in connection with an adoption or proposed adoption under this Act—

- (a) a payment of legal expenses or fees authorised by the regulations;
- (b) a payment made by the adopters, with the approval in writing of the Director or with the approval of the Court, in respect of the hospital and medical 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; and
- (c) any other payment or reward authorised by the Director or by the Court.

(3) Subsection one of this section 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 a Territory of the Commonwealth if the making of the payment or the giving of the reward, or the agreeing to make the payment or give the reward, would have been lawful if it had taken place in that other State or Territory.

Unauthorised arrangements for adoptions.

51. (1) A person, other than the Director, a person acting on behalf of the Director, the principal officer of a private adoption agency, or a person authorised in writing by such a principal officer to act on his behalf, who—

- (a) conducts negotiations or makes arrangements with another person with a view to the adoption of a child by that other person; or
- (b) except in accordance with arrangements made by or on behalf of, or with the written permission of, the Director, transfers, or causes to be transferred, the possession or control of a child to another person with a view to the adoption of the child by that other person,

is guilty of an offence against this Act.

(2)

(2) Subsection one of this section does not apply **No. 23, 1965** in relation to anything done by or on behalf of a parent, guardian or relative of a child with a view to the adoption of the child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

52. (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—

Restriction on advertising, etc.

- (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.

(2) Subsection one of this section does not apply in relation to an advertisement, news item or other matter that has been approved by the Director.

53. (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or periodical, or by means of broadcasting or television, in relation to an application under this Act or under a law of another State or a Territory of the Commonwealth for the adoption of a child or the proceedings on such an application, the name of an applicant, the child, or the father or mother or a guardian 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.

Restriction on publication of identity of parties.

(2) This section does not apply in relation to the publication of any matter with the authority of the Court to which the application was made.

54.

Adoption of Children Act.

No. 23, 1965 **54.** A person who, whether orally or in writing, wilfully makes a false statement for the purposes of or in connection with a proposed adoption or any other matter under this Act, is guilty of an offence against this Act.

False statement in application, etc.

55. A person who personates or falsely represents 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 a Territory of the Commonwealth is guilty of an offence against this Act.

Personation of person whose consent to an adoption is required.

56. Where a person presents, or causes to be presented, to the 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 if the signature to the document is or was, to the knowledge of that first-mentioned person, forged or obtained by fraud or duress, that first-mentioned person is guilty of an offence against this Act.

Presenting forged consent.

57. A person who uses or threatens to use any force or restraint or does or threatens to do any injury, or causes or threatens to cause any detriment of any kind to a parent or guardian of a child with a view—

- (a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act; or
- (b) to influencing the parent or guardian in the expression of any wishes contained in an instrument of consent to the adoption of a child,

is guilty of an offence against this Act.

58. A person who subscribes his name as a witness to the signature of a person to an instrument of consent to the adoption of a child—

Improper witnessing of consent.

- (a) without being satisfied that the person signing the instrument is a parent or guardian of the child;
- (b)

- (b) without taking such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; and
- (c) without being satisfied that the instrument bears the date on which it is signed by the person giving the consent,

is guilty of an offence against this Act.

59. Proceedings for an offence against this Act or the regulations shall not be commenced except with the written consent of the Minister. Authority to prosecute.

60. (1) Any person guilty of an offence against this Act is liable to a penalty not exceeding two hundred pounds or to imprisonment for six months. Summary proceedings.

(2) Penalties imposed by this Act or by the regulations may be recovered in a summary manner before a children's court established under the Child Welfare Act, 1939, as amended by subsequent Acts.

(3) A prosecution for an offence against this Act or against the regulations may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later time.

(4) Proof of the time when the commission of an offence came to the knowledge of the complainant shall lie upon the complainant.

PART VII.

MISCELLANEOUS.

61. The Master in Equity shall cause a memorandum, in accordance with the prescribed form, of every adoption order, of every order made under section forty-seven of this Act, and of every order for the discharge of such an adoption order, to be sent to the Registrar-General. Functions of Master in Equity in relation to orders under this Act.

62.

Adoption of Children Act.

No. 23, 1965

Sending of
memo-
randa of
orders to
other States
and
Territories.

62. Where the Court makes an order for the adoption of a child, or an order discharging such an order, and the Master in Equity has reason to believe that the birth or previous adoption of the child is registered in another State or in a Territory of the Commonwealth, the Master 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 other State or Territory having functions in relation to the registration of births as is prescribed.

Particulars
of orders
received
from other
States or
Territories.

63. Where the Master in Equity receives, in relation to a child whose birth or previous adoption is registered in New South Wales, a memorandum or copy of an adoption order made (whether by a court or not) under the law in force in another State or in a Territory of the Commonwealth, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorised so to certify under the law of that other State or Territory, he shall cause a memorandum, in accordance with the prescribed form, of the memorandum or copy so received to be sent to the Registrar-General.

Hearings to
be in
camera.

64. Any proceedings before the Court under this Act or the regulations shall not be heard in open court and persons who are not parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise permitted by the Court, be excluded during the hearing of the proceedings.

Matters
admissible in
evidence.

65. The Court, in the hearing of any proceedings under this Act or the regulations, may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal with the matter of the proceedings whether or not the statement, document, information or matter would be otherwise admissible.

66.

66. Except as the Court otherwise orders, a report to the Court referred to in section twenty-one or thirty-four of this Act shall not be made available to any person, including a party to the proceedings.

No. 23, 1965
 Contents of reports 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 by any person.

Restriction on inspection of records.

68. The Director may appear at the hearing of the proceedings on any application under this Act, and may address the Court, and call, examine and cross-examine witnesses.

Director may appear at hearings.

69. (1) The Director may by order under his hand delegate to any specified officer of the Child Welfare Department all or any of the powers, authorities, duties and functions conferred or imposed on him by this Act or the regulations except this power of delegation.

Delegation.

(2) Where any such power, authority, duty or function is so delegated and its exercise or performance depends upon the opinion, belief or state of mind of the Director, that power, authority, duty or function may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate.

(3) No person shall be concerned to see or inquire whether any act, matter or thing done or performed by any officer of the Child Welfare Department when purporting to act as a delegate of the Director is or is not authorised by the delegation.

70. In any proceedings in a court of New South Wales, the court may receive as evidence of the matters stated in, or appearing from, the document, a document purporting to be either the original or a certified copy or certified extract of an order effecting an adoption (whether in Australia or elsewhere), or an official certificate, entry or record of an adoption (whether effected in Australia or elsewhere).

Proof of adoptions.

71.

Adoption of Children Act.

No. 23, 1965

Judicial
notice of
signatures.

71. (1) In proceedings 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, the office of Director, or the corresponding office in another State or in a Territory of the Commonwealth, 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.

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

72. The provisions of section ninety-four of the Equity Act, 1901, as amended by subsequent Acts, extend to authorising the making of rules for the purposes of this Act.

Regulations.

73. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—

- (a) the forms to be used for the purposes of this Act;
- (b) the fees to cover administrative and other expenses payable to the Director or to a private adoption agency in any case where the Director or the principal officer of a private adoption agency makes, on behalf of an applicant, any application under this Act and the waiving of any such fees;
- (c) the conduct of private adoption agencies;
- (d) the keeping of registers by the Director of persons approved by him as fit and proper persons to adopt children and the order in which persons whose names are included in any such list may be selected to be applicants for adoption orders;
- (e) the making of appeals to the Court against the exclusion of the name of any person from any register referred to in paragraph (d) of this subsection and the jurisdiction of the Court to hear and determine those appeals;

(f)

- (f) notifying the Director of the giving of a general No. 23, 1965 consent to the adoption of a child;
- (g) imposing penalties, not exceeding fifty pounds, for offences against the regulations; and
- (h) prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session and, if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House disallowing any regulation or part thereof, that regulation or part thereupon ceases to have effect.

PART VIII.

AMENDMENTS TO REGISTRATION OF BIRTHS DEATHS AND MARRIAGES ACT 1899, AS AMENDED BY SUBSEQUENT ACTS.

74. (1) The Registration of Births Deaths and Marriages Act 1899, as amended by subsequent Acts, is amended—

Amendment
of Act
No. 17,
1899.

- (a) by inserting in section one after the matter relating to Part V the following new matter :—

Sec. 1.
(Short title
and division
into Parts.)

PART VA.—Provisions as to Registration of Adoptions—s. 26A.

(b)

Adoption of Children Act.**No. 23, 1965**

Sec. 11.
(General
Registry
indexes.)

(b) by omitting paragraph (d) of subsection one of section eleven and by inserting in lieu thereof the following paragraph :—

(d) an index of all adoptions registered in pursuance of the Adoption of Children Act, 1965, or of provisions made by or under any previous enactment;

Sec. 16.
(Correction
of errors.)

(c) by omitting from subsection one of section sixteen the words “or death” and by inserting in lieu thereof the words “, death or adoption”;

Sec. 23A.
(Registration
of change
of name.)

(d) (i) by inserting in subsection one of section 23A after the word “births” the words “or that the adoption of that person is registered in the register of adoptions”;

(ii) by omitting from subsection two of the same section the words “In any such case” and by inserting in lieu thereof the words “Except where the entry made by the Registrar-General under subsection one of this section is made in the register of adoptions,”;

New Part
VA.

(e) by inserting next after Part V the following new Part :—

PART VA.*Provisions as to Registration of Adoptions.*

Registration
of adoption.

26A. As soon as practicable after the receipt of any memorandum sent to him under section sixty-one or sixty-three of the Adoption of Children Act, 1965, the Registrar-General shall—

(a) register it in the register of adoptions to be kept by him;

(b) if it relates to a person whose birth is registered in the register of births kept by him, make in that register on the page on which the entry of birth was registered a note of the registration of that memorandum and shall forthwith forward to the district registrar,

registrar, if any, having the custody of the register in which the birth was originally registered such information as may be necessary and the district registrar shall likewise note the entry of birth made in his register and inform the Registrar-General that the note has been made; and

- (c) if it relates to a person in respect of whom a memorandum under section sixty-one or sixty-three of the Adoption of Children Act, 1965, has previously been registered in the register of adoptions kept by him, make in that register on the page on which the previous memorandum was registered a note of the registration of the subsequent memorandum.

(2) The Registration of Births Deaths and Marriages Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Registration of Births, Deaths, and Marriages Act, 1899-1965.

**BUSH FIRES AND FIRE BRIGADES
(AMENDMENT) ACT.**

Act No. 24, 1965.

An Act to make further provisions with respect to the declaration of bush fire danger periods and the fighting of fires in New South Wales by members of certain fire brigades established outside New South Wales; for these and other purposes to amend the Bush Fires Act, 1949, the Fire Brigades Act, 1909, and certain other Acts; and for purposes connected therewith. [Assented to, 17th December, 1965.]

Elizabeth II,
No. 24, 1965

BE

The statutes of New South Wales (public and private) passed during the session of... [electronic resource]

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