



ANNO TERTIO DECIMO  
ELIZABETHAE SECUNDAE REGINAE

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No. 54 of 1964

**An Act to Consolidate and Amend the Law Relating to the  
Adoption of Children**

[ASSENTED TO 21ST DECEMBER, 1964]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as "*The Adoption of Children Act of 1964.*"

**2. Commencement.** (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*.

(2) Sections one, two, three, four and six, Division 2 of Part III, Part V and sections sixty-four, sixty-five and sixty-six of this Act shall come into operation on the date of publication in the *Gazette* of the Proclamation for the purposes of subsection (1) of this section.

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

PART I—PRELIMINARY (ss. 1–6);

PART II—JURISDICTION (ss. 7–9);

PART III—ADOPTIONS UNDER THIS ACT;

*Division 1—General* (ss. 10–16);

*Division 2—Adoption List* (ss. 17–18);

*Division 3—Consents to Adoptions* (ss. 19–27);

*Division 4—Effect of Adoption Orders* (ss. 28–32);

*Division 5—Interim Orders* (ss. 33–35);

PART IV—RECOGNITION OF ADOPTIONS (ss. 36–39);

PART V—OFFENCES (ss. 40–53); and

PART VI—MISCELLANEOUS (ss. 54–66).

THE SCHEDULE.

**4. Severability.** This Act including every Proclamation, Order in Council and regulation hereunder shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof or provision of any Proclamation, Order in Council or regulation hereunder would but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

**5. Repeals and Savings.** (1) The Acts and enactments set out in the Schedule to this Act are hereby repealed to the extent indicated in the third column of that Schedule:

Provided that, but without limiting the operation of “*The Acts Interpretation Acts, 1954 to 1962*”—

- (a) All books, registers and records kept and maintained under the repealed Acts shall be deemed to be so kept and maintained under this Act, and all entries therein shall be deemed to have been made under this Act;
- (b) All certificates and certified copies of and certified extracts from entries in any register kept and maintained under the repealed Acts and issued under the repealed Acts shall be valid and effectual as if issued under this Act;
- (c) Every adoption order made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act and may be discharged in accordance with this Act;
- (d) Every interim order of adoption made under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force and shall, subject to this Act, be valid and effectual as if made under this Act until it expires by effluxion of time or is discharged or otherwise determined under this Act;
- (e) Every application for an order for the adoption of a child under the repealed Acts that was pending immediately prior to the commencement of this Act may be continued and dealt with, and proceedings incidental to such an application may be

instituted, continued and dealt with, under the provisions of the repealed Acts as if this Act had not come into operation, but an adoption order made pursuant to this paragraph shall have effect as if made under this Act.

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

(3) Subject to subsection (4) of this section, the provisions of sections twenty-eight and twenty-nine (other than subsection (4)) of this Act apply in relation to an adoption order made under the repealed Acts as if this Act had been in force when the order was made and the order had been made under this Act.

(4) In relation to 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, an adoption order referred to in subsection (3) of this section has the same effect as if the repealed Acts had not been repealed.

**6. Interpretation.** Without limiting the operation of "*The Acts Interpretation Acts, 1954 to 1962*," in this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—

"Adopted Children Register"—The Adopted Children Register made and kept by the Registrar-General under the repealed Acts and continued by and kept under this Act;

"Adoption list"—The list kept by the Director under section seventeen of this Act;

"Adoption order"—An order for the adoption of a child under this Act; where applicable the term includes an order for the adoption of a child under the repealed Acts;

"Child"—A person who has not attained the age of twenty-one years, or a person who has attained that age in respect of whom an adoption order is sought or has been made;

"Commonwealth"—The Commonwealth of Australia;

"Director"—The Director of the State Children Department under "*The State Children Acts, 1911 to 1955*"; the term includes the Deputy Director of the State Children Department when, pursuant to those Acts, exercising any power, authority or function, or performing any duty conferred or imposed by those Acts on the Director;

"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—the putative father;

"General consent"—A consent referred to in subsection (1) of section twenty of this Act; where applicable the term includes a consent of a similar nature for the adoption of a child given under the repealed Acts;

- “Guardian”, in relation to a child includes—
- (a) a person having the custody of the child pursuant to an order of a court made under a law of the Commonwealth or of a State or Territory of the Commonwealth;
  - (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;
- “Interim order”—An interim order under Division 5 of Part III of this Act; where applicable the term includes an interim order of adoption made under the repealed Acts and continued under this Act;
- “Minister”—The Minister for Labour and Industry or other Minister of the Crown for the time being charged with the administration of this Act;
- “Registrar-General”—The Registrar-General under “*The Registration of Births, Deaths and Marriages Act of 1962*”; the term includes the Deputy Registrar-General under that Act;
- “Registrar of the Supreme Court”—The Registrar of the Supreme Court under “*The Supreme Court Act of 1867*”; where applicable the term includes the Registrar of the Central Court and the Registrar of the Northern Court under “*The Supreme Court Act of 1895*”;
- “Relative”, in relation to a child—A grandparent, brother, sister, 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;
- “Supreme Court” or “the Court”—The Supreme Court of Queensland or a Judge thereof; where applicable the term includes the Central Court and the Northern Court or a Judge thereof;
- “The commencement of this Act”—The commencement of the provisions of this Act other than the provisions specified in subsection (2) of section two of this Act;
- “The repealed Acts”—The Acts and enactments repealed by subsection (1) of section five of this Act, or any of them;
- “Territory of the Commonwealth” includes any Territory under the trusteeship of the Commonwealth.

## PART II—JURISDICTION

**7. Adoption by order of the Director.** (1) Upon an application made as prescribed by any person or persons desirous of being authorised to adopt a child, the Director may, in accordance with this Act, make an order (in this Act referred to as an “adoption order”) authorising the applicant or applicants to adopt the child.

(2) A person or persons so authorised to adopt a child and a child so authorised to be adopted are in this Act referred to as an “adopter” or the “adopters”, and an “adopted child” respectively.

**8. Cases in which adoption orders may be made.** (1) The Director shall not make an order for the adoption of a child unless, at the time of the making of the order—

- (a) the applicant, or (in the case of joint applicants) each of the applicants, is resident or domiciled in Queensland; and
- (b) the child is present in Queensland.

(2) For the purposes of subsection (1) of this section, where the Director is satisfied that an applicant was resident or domiciled in Queensland, or that the child was present in Queensland, on a date within twenty-one days before the date of the making of the order, he may, in the absence of information to the contrary, presume that the applicant is resident or domiciled in Queensland, or that the child is present in Queensland, as the case may be, at the time of the making of the order.

**9. Rules of private international law not to apply.** The power of the Director 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

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

**11. Who may be adopted.** (1) Subject to this Act, the Director may make an order for the adoption of a person who—

- (a) had not attained the age of twenty-one years before the date on which the application was made; or
- (b) has 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 under a *de facto* adoption.

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

(3) 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 Queensland or elsewhere, previously been adopted.

**12. Persons in whose favour adoption orders may be made.** (1) Except as provided by subsection (2) of this section an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to subsection (3) of this section, where the Director is satisfied that exceptional circumstances make it desirable so to do, he may make an adoption order in favour of one person.

(3) The Director 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.

(4) The Director may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child.

**13. Age of adopters.** The Director shall not make an order for the adoption 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 of the child or the Director considers that there are exceptional circumstances that justify making the adoption order.

**14. Director to be satisfied as to certain matters.** (1) The Director shall not make an order for the adoption of a child unless he is satisfied that—

- (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 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, physical appearance, 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.

(2) Subsection (1) of this section does not apply in relation to an order, in accordance with subsection (1) of section eleven of this Act, for the adoption of a child who has attained the age of twenty-one years before the date of the making of the order, but the Director shall not make an adoption order in such a case unless he is satisfied that—

- (a) the applicants are of good repute; and
- (b) exceptional circumstances make it desirable that the child should be adopted.

**15. Notice of intention to make adoption order.** The Director, before making an order for the adoption of a child, may give notice of his intention to make the order—

- (a) to any person (not being a person whose consent to the adoption of the child is required under section nineteen of this Act) with whom the child resides or who has the care or custody of the child; and
- (b) where it appears to the Director to be desirable so to do, to any other person.

**16. Discharge of adoption orders.** (1) The Director may apply to the Supreme Court for an order discharging an order for the adoption of a child made under this Act or under the repealed Acts, and the Court may make such an order if it is satisfied that—

- (a) the child has not attained the age of twenty-one 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, or that there is some other exceptional reason why, subject to the welfare and interests of the child, the adoption order should be discharged.

(2) The 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 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 Acts, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of a further application for the adoption of the child.

(4) Where the 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; or
- (d) the domicile (including the domicile of origin) of the child.

(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) of this section and to subsection (2) of section twenty-eight of this Act, 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 of anything unlawfully done; or
- (c) any right or interest that became vested in any person,

whilst the adoption order was in force.

#### *Division 2—Adoption List*

**17. Adoption List.** (1) The Director shall, in accordance with this section, keep a list of the names of married couples resident or domiciled in Queensland who wish to adopt children and who have applied to have their names included in the list, being persons whom he considers to be fit and proper persons to adopt children.

(2) The Director shall—

- (a) keep the adoption list in a form that indicates the order in which the applications by virtue of which names were included in the list were received by him; and
- (b) keep, in connection with the adoption list, such particulars as he thinks necessary of each married couple whose names are included in the list and of the description of child that they wish to adopt.

(3) The Director shall, in such manner as he thinks appropriate, incorporate in the adoption list kept under this Division the list or record that was kept before the commencement of this Division of the names of married couples wishing to adopt children and regarded as fit and proper persons to do so.

(4) Where the Director is satisfied that any persons applying to have their names included in the adoption list kept by him are persons whose names are, or were within one month before the date of the application, included in a similar adoption list kept by an officer of another State or of a Territory of the Commonwealth, the Director may treat the application as having been received by him on the date certified in writing by that officer to be the date on which the application by virtue of which the names were included in the list kept by that officer was received, or was treated as having been received, by that officer.

**18. Director to have regard to adoption list.** In making arrangements with a view to the adoption of a child and, in particular, in determining the person or persons whose application for an adoption order he will approve in the case of a child in respect of whom a general consent has been given under this Act or under the repealed Acts, the Director shall, without prejudice to his duty to consider all other relevant matters, have regard to the adoption list and to the order in which the persons whose names are on the adoption list made application for the inclusion of their names on that list.

#### *Division 3—Consents to Adoptions*

##### **19. Consents of parents and guardians required to adoptions.**

(1) Subject to this Division, the Director shall not make an order 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 succeeding provisions of this section, or the Director is satisfied that there is no such appropriate person.

(2) In the case of a legitimate child who has not previously been adopted, the appropriate persons are every person who is a parent or guardian of the child.

(3) In the case of an illegitimate child who has not previously been adopted, the appropriate person is every person who is the mother or guardian of the child.

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

(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 twenty-one years before the making of the adoption order.

(7) Notwithstanding section twenty-three of this Act, where the Director is, pursuant to "*The State Children Acts, 1911 to 1955*," the guardian of the child, it shall not be necessary for the Director's consent to the adoption of the child to be evidenced by an instrument of consent.



**20. Giving of consents.** (1) Subject to this section a consent for the purposes of section nineteen of this Act shall be expressed as a consent to the adoption of the child by any person or persons whose application for an adoption order in respect of the child is approved by the Director, 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 application has been so made, that the person giving the consent does not know the identity of the applicant or applicants.

(2) Where the applicant or (in the case of joint applicants) at least one of the applicants, is a relative of the child, a consent for the purposes of subsection (1) of this section 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) of this section has been relied on in an application for an adoption order, but the application has been refused by the Director, the consent remains in operation for the purposes of a further application for the adoption of the child.

**21. Consents given under law of another State or of a Territory of the Commonwealth.** Where—

(a) a person whose consent to the adoption of a child is required by section nineteen of this Act has, in accordance with the law of another State or of a Territory of the Commonwealth, duly signed an instrument of consent to the adoption of the child by any person approved by or on behalf of the officer empowered in that other State or in that Territory to approve persons as fit and proper persons to adopt children;

(b) that officer, or a person acting on his behalf, has, by writing under his hand, authorised the Director to make arrangements for the adoption of the child in Queensland; and

(c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that other State or of that Territory,

that instrument of consent shall, for the purposes of this Act, be deemed to be an instrument executed in accordance with this Division evidencing a subsisting consent, in accordance with subsection (1) of section nineteen of this Act, to the adoption of the child.

**22. Revocation of consents.** (1) A consent to the adoption of a child given for the purposes of this Act or the repealed Acts by a person other than the child may be revoked by notice in writing served on the Director before—

(a) the expiration of thirty days from the date 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.

(2) Service of a notice on the Director under subsection (1) of this section shall be effected by delivering it to him personally or by sending it to him by registered post at such address as is prescribed.

**23. Form of consents.** (1) Subject to this section, a consent for the purposes of the preceding provisions of this Division shall be evidenced by an instrument of consent substantially in accordance with the prescribed form signed by the person giving the consent and attested as prescribed.

(2) A consent referred to in subsection (2) of section twenty of this Act has no force or effect unless it is attested by the Director or a person authorised in writing by the Director to attest that consent or generally to attest such consents.

**24. Defective consents.** (1) The Director 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) if it appears to the Director that—

- (a) the consent was not given in accordance with this Act, or (where applicable) the repealed Acts;
- (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 Director shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child within five days after the birth of the child unless he is satisfied, on the certificate of a legally qualified medical practitioner or on other adequate evidence, that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

(3) For the purposes of subsection (2) of this section, the Director, if satisfied that no legally qualified medical practitioner was readily available to certify as aforesaid, may be satisfied as to the fit condition of the mother to give the consent as required by that subsection upon the production to him of a Certificate of a person registered as a nurse under "*The Nurses Act of 1964*," certifying that, at the time when the instrument of consent was signed by the mother of the child, the mother was in a fit condition to give the consent.

**25. Court may dispense with consents.** (1) The Supreme Court may, on the application of the Director, by order, dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied—

- (a) that the person cannot, after reasonable inquiry, be found; or
- (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; or
- (c) that the person has abandoned, deserted or persistently neglected or ill-treated the child; or
- (d) that the person has, for a period of not less than one 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 any other special circumstances by reason of which the consent may properly be dispensed with.

(2) In order to facilitate the making of arrangements by the Director with a view to the adoption of a child, the Court may, on the application of the Director, 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 adoption order that may subsequently be made under this Act.

(3) An order made by virtue of subsection (2) of this section may, on the application of the Director, 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.

**26. Consent of child.** Subject to this Division, an order for the adoption of a child who has attained the age of twelve years shall not be made unless the child has consented to the adoption:

Provided that the Court may, on the application of the Director, where the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why an order of adoption of the child should be made, notwithstanding that the child has refused to consent to the adoption or that his consent has not been sought, by order, dispense with the consent of the child.

**27. Guardianship of child awaiting adoption.** (1) Where every person whose consent to the adoption of a child is required under section nineteen of this Act has consented to the adoption of the child or his consent has been dispensed with under this Act, the Director shall be the guardian of the child for all purposes (other than the purposes of section nineteen of this Act) to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child;
- (b) in the case of any consent so given, the instrument of consent is lawfully revoked; or
- (c) a Court of competent jurisdiction, by order, makes other provision for the guardianship of the child.

(2) Subsection (1) of this section does not apply to a child for whose guardianship provision is made by "*The State Children Acts, 1911 to 1955.*"

#### *Division 4—Effect of Adoption Orders*

**28. General effect of adoption orders.** (1) For the purposes of the laws of Queensland but 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—

- (a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or 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 natural or adoptive) of the child before the making of the adoption order, and any such person ceases to be a parent of the child;