

(b) a request that the Director renounce guardianship of the child,

the Director may, if consent to the adoption has become irrevocable or has been dispensed with under section 37 and he is satisfied that it is in the best interests of the child to do so, by instrument in writing under his hand, renounce guardianship of the child.

(2) On signing an instrument of renunciation under subsection (1), the Director shall send it by certified mail to the officer of the other State or Territory from whom the notice referred to in that subsection was received, together with the consent to adoption executed in Tasmania in respect of the child by virtue of which the Director is the guardian of the child unless that consent has been dispensed with by an order under section 37.

(3) On the posting of an instrument of renunciation under subsection (2) together with the consent to adoption of the child (if any) affected by the renunciation, the Director ceases to be the guardian of that child for the purposes of this Act.

(4) Where an application is to be made under this Act for the adoption of a child who is under the guardianship of some officer or person in another State or in a Territory pursuant to any law corresponding with this Act whose powers, functions, and duties correspond with those of the Director under this Act, the Director may notify that officer or person of the application and request him to renounce in writing guardianship of the child and to forward to the Director for use in the proceedings on the application the consent executed in that State or Territory with respect to the child.

(5) On receiving from any such officer or person an instrument in writing executed by him renouncing the guardianship of a child referred to in subsection (4), the Director shall become the guardian of the child in all respects as if the consent to adoption executed outside Tasmania and forwarded with the instrument of renunciation were a consent given in accordance with Division 3 in Tasmania on the day when the consent purports to have been signed and attested outside Tasmania.

(6) Where an application is to be made under this Act for the adoption of a child who, pursuant to the law of another State or a Territory corresponding with this Division, is under the guardianship of an officer in that State or Territory whose powers, functions, and duties correspond with those of the Director under this Act, but the consent to adoption has been dispensed with under a law corresponding with section 37, the requirement of a consent to adoption under this Part is deemed to have been dispensed with under that section.

Guardianship of
non-citizen child.

42—(1) Where—

- (a) a non-citizen child is present in Tasmania;
- (b) the Director is authorized to make arrangements with a view to the adoption of the child; and
- (c) it appears to the Director that there is not a person in Australia who is a guardian of the child,

the Director may make application to the court for an order that the Director shall be the guardian of the child.

(2) Where the court, on an application under subsection (1), makes an order that the Director shall be the guardian of a child, the Director shall be the guardian of the child for all purposes to the exclusion of all other persons as if the Director had become the guardian of the child by reason of the operation of section 40 and shall cease to be the guardian in the same manner as he would cease to be a guardian of a child under that section or section 41.

Miscellaneous
provisions as to
care, control,
placement, &c.,
of child.

43—(1) Where the Director has become and remains for a period of 12 months the guardian of a child under section 40 or 42 or the Director continues to be the guardian of a child as mentioned in subsection (2)—

- (a) the Director shall make a report in writing to the court concerning the welfare and interests of the child; and
- (b) the court shall make such order for the care, control, and custody of the child as it thinks fit.

(2) Without limiting the generality of subsection (1), an order under that subsection may declare the child to be a ward of the State or that the child shall remain under the guardianship of the Director for a further period of 12 months commencing on the date of the order.

(3) Where an order under subsection (2) declares a child to be a ward of the State, it has effect, for all purposes, as if it were an order under the *Child Welfare Act 1960* declaring the child to be a ward of the State made by a children's court established under that Act.

(4) The Director may, on such terms and conditions as he thinks fit, place a child of whom he is the guardian under this Division in the care of a suitable person who has agreed to have the child in his care.

(5) The fact that the Director is the guardian of a child under this Division does not affect the liability of any other person to provide adequate means of support for the child.

44—Where—

- (a) an approved agency has made, or is making, arrangements or negotiations for, towards, or with a view to, the adoption of a child; and
- (b) a period of 9 months has elapsed since the Director has signified his acceptance of guardianship of the child,

Duty of principal officer to report to Director.

the principal officer of that approved agency shall, within 14 days after the expiration of that period, furnish the Director with a report in writing concerning the welfare and interests of the child.

45—(1) A parent of the child who has given consent to the adoption of the child may, notwithstanding that the Director is the guardian of the child under this Division but subject to subsection (2), visit the child during the period during which the consent may be revoked.

Natural parent's right of access after consent.

(2) The Director or the principal officer of an approved agency may, by notice in writing given to a parent who has given consent to the adoption of a child, restrict the occasions on which or times at which that parent may, under this section, visit the child.

Division 5—Adoption of non-citizen children

Orders for
adoption of non-
citizen children.

46—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 24 and is also satisfied—

- (a) that the persons in whose favour the order is made are persons both of whom were approved by the Director as persons suitable to adopt a non-citizen child before the child came into, or was placed in, the care of those persons and that the placement of the child with a view to adoption by those persons has been approved by the Director; or
- (b) that the child has been in the care of the persons in whose favour the order is made for the preceding 12 months and that, during that period, the Director has supervised the welfare and interests of the child.

Supervision of
certain children
adopted overseas.

47—(1) Subject to subsection (2), where—

- (a) a child is adopted in a country, other than New Zealand, outside Australia, whether or not the adoption has, under this Act, the same effect as an adoption order under this Act;
- (b) the adoption in relation to the child has been in force for a period not exceeding 12 months;
- (c) either of the adoptive parents of the child had not been resident in the country in which the order was made for a continuous period of 12 months immediately before the making of that order; and
- (d) the child is present in Tasmania,

the Director may supervise the welfare and interests of the child—

- (e) for a period not exceeding 12 months commencing on the date of the arrival of the child in Tasmania; and
- (f) if, on the expiration of that period, the child remains subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, until an adoption order is made in respect of the child or the child otherwise ceases to be subject to that Act.

(2) The Director may exempt a child to whom subsection (1) would otherwise apply from the application of that subsection.

48—(1) Subject to subsection (2), where a non-citizen child is in the care of prospective adoptive parents with a view to adoption by them, the Director may supervise the welfare and interests of the child—

Supervision of certain non-citizen children.

(a) for a period not exceeding 12 months commencing on the date on which the Director is notified of the placement of the child in their care; and

(b) if, on the expiration of that period, the child remains subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, until an adoption order is made in respect of the child or the child otherwise ceases to be subject to that Act.

(2) The Director may exempt a child to whom subsection (1) would otherwise apply from the application of that subsection.

(3) A person authorized by the Director for the purpose has a right of access to a child referred to in section 47 (1) or in subsection (1) of this section at all reasonable times during the period when the Director may supervise the welfare and interests of the child.

PART III

ADOPTION ORDERS

Division 1—Certificates of adoption

49—On making an adoption order, the court shall issue to the persons in whose favour the order is made a certificate stating the date on which the order was made, the name of the adoptive parents, the name that, under the order, is the name of the adopted person, the place and date of birth of that person and such other matters as the court determines.

Certificates of adoption.

Division 2—Effect of adoption orders

General effect of
adoption orders.

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

- (a) the adopted person shall be treated in law as a child of the adoptive parents and the adoptive parents shall be treated in law as the parents of the adopted person;
- (b) the adopted person shall be treated in law as if the adopted person were not a child of any person who was a parent (whether natural or adoptive) of the adopted person 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 adopted person;
- (c) the relationship to one another of all persons, including the adopted person and an adoptive parent or former parent of the adopted person, shall be determined in accordance with this section;
- (d) any guardianship of the adopted person ceases to have effect; and
- (e) any previous adoption of the adopted person, whether effected under the law of Tasmania or otherwise, ceases to have effect.

(2) Notwithstanding subsection (1), where the relationship between persons is relevant for the purposes of any law relating to a sexual offence—

- (a) an adoption order, or the discharge of an adoption order, does not cause the cessation of a relationship that would have existed if the adoption order, or the discharge of an adoption order, as the case may be, had not been made; and
- (b) any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

51—(1) Subsection (1) of section 50 has effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of the repealed Act, except that that subsection does not affect—

Effect of orders in relation to dispositions of property.

- (a) a disposition of property by a person who, or by persons any of whom, died before that commencement; or
- (b) a disposition of property that took effect in possession before that commencement.

(2) Section 50 (1) does not apply to, or in relation to, an agreement or instrument made or executed before the commencement of the repealed Act, unless the agreement or instrument effects a disposition of property.

(3) Where—

- (a) before the commencement of the repealed Act, a person made a disposition of property by an instrument other than a will;
- (b) the disposition had not taken effect in possession before that commencement; 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, but for this subsection or a corresponding previous enactment, be revoked or varied, by a similar 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 repealed Act, an adoption order made under that Act or this Act has effect as if the *Adoption of Children Act 1920* were still in force.

(5) Nothing in section 50 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 the repealed Act, distinguishing between adopted children and children other than adopted children.

Bequest by will
to **unascertained**
adopted **person.**

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

- (a)* a disposition of 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;
- (b)* the person so described was adopted by another person; and
- (c)* the personal representative of the testator is unable to ascertain the name and address of the adopted person,

the personal representative shall give to the Public Trustee a copy of the will and a statement that he is unable to ascertain the name and address of the adopted person.

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

(3) Where the Director receives a request under subsection (2), he shall cause such reasonable inquiries to be made of records in his possession 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 inquiries of those records, seek to obtain the information from inquiries of an agency, other body, or person.

(4) If the Director ascertains the name of the adopted person, he shall take such steps as are reasonably practicable 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 is unable to ascertain the name of the adopted person, he shall so inform the Public Trustee.

(6) After receiving information from the Director under this section, the Public Trustee shall give notice in writing to the personal representative 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.

(7) Unless the adopted person predeceased the testator or, for any other reason known to the personal representative, is not entitled to an interest under the will, the Public Trustee shall be deemed to be a trustee for the adopted person on the trusts specified in, or arising under, the will and, if the personal representative transfers the property to the Public Trustee as trustee for the adopted person, the personal representative shall be deemed to have transferred the property to the adopted person.

(8) Where the Public Trustee—

(a) is, under subsection (7), deemed to be a trustee for an adopted person who is a beneficiary under a will; and

(b) gives the personal representative of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the 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 representative, conclusive evidence that the adopted person has disclaimed the property.

53—(1) Notwithstanding any other provision 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.

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

(2) A trustee or personal representative conveying, transferring, or distributing real or personal property in the manner referred to in subsection (1) is not liable to a person claiming directly or indirectly by virtue of an adoption 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.

Names of
adopted person.

54—(1) On the making of an adoption order—

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

- (i) where there is one adoptive parent, the surname of the adoptive parent;
- (ii) where there are 2 adoptive parents who have the same surname, that surname; or
- (iii) where there are 2 adoptive parents who have different surnames, one or both of those surnames,

where that surname or each of those surnames, as the case may be, was specified in the application for the adoption order as the proposed surname of the person 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 person shall be such name or names as the court, in the adoption order, approves on the application of the adoptive parents.

(2) Where, before the making of an adoption order, the adopted person has been generally known by a particular surname, the court may, in the adoption order, order that the person shall have that name as his surname.

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

(4) Nothing in this section prevents the changing of a name of an adopted person, after the making of the adoption order, in accordance with any other Act or law.

Effect of
adoption order
on domicile.

55—The domicile of an adopted child shall be determined in accordance with the *Domicile Act 1980*.

Division 3—Interim orders

Making of
interim orders.

56—(1) On 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 prospective adoptive parents.

(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, a person in whose favour the order is made is entitled to the care, control, and custody of the child.

57—(1) Subject to this Division, an interim order remains in force for such period, not exceeding 12 months, as the court specifies in the order and for such further periods, if any, as the court may from time to time order. Duration of interim orders.

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

58—(1) The court may, at any time, make an order discharging an interim order and may make such order as it thinks fit for the care, control, and custody of the child to whom the interim order relates. Discharge of interim orders.

(2) An interim order ceases to have effect on the making of an order for the adoption of the child to whom it relates, whether made in Tasmania, in another State, or in a Territory.

PART IV

RECOGNITION OF ADOPTIONS

59—For the purposes of the law of Tasmania, the adoption of a person, whether before or after the commencement of this section, in another State, 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 under this Act and has no other effect. Recognition of Australasian adoptions.

Recognition of
foreign
adoptions.

60—(1) For the purposes of the law of Tasmania, the adoption of a person, whether before or after the commencement of this section, in a country, other than New Zealand, outside Australia, that is 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 made 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) that country was the usual place of residence of each of the adoptive parents at the time of the commencement of the legal proceedings that resulted in the adoption and for a continuous period of at least 12 months before that time;

(c) in consequence of the adoption, the 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

(d) under the law of that country the adoptive parents were, by the adoption, placed generally in the position of parents in relation to the adopted person.

(3) 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 a country, other than New Zealand, outside Australia shall, in the absence of proof to the contrary, be sufficient evidence—

(a) that the adoption was made in that country and is effective according to the law of that country; and

(b) that the adoption has not been rescinded.

(4) Notwithstanding this section, a court, including the Supreme Court hearing an application under section 61, 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.

(5) Where, in any proceedings before a court, including the Supreme Court hearing an application under section 61, 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 (2) and has not been rescinded.

(6) Except as provided in this section, the adoption of a person, whether before or after the commencement of this section, in a country, other than New Zealand, outside Australia does not have effect for the purposes of the law of Tasmania.

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

61—(1) In this section, “the Court” means the Supreme Court.

Declarations of
validity of
foreign
adoptions.

(2) A person specified in subsection (4) 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 section, under the law of a country, other than New Zealand, outside Australia, and that the adoption is an adoption to which section 60 applies.

(3) The Court may hear and determine an application under subsection (2) and, if it thinks fit, make an order accordingly.

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

(5) Where an application is made to the Court under this section, the Court shall direct that notice of the application be given to the Director and may—

(a) direct that notice of the application be given to such other persons, who may include the Attorney-General, as the Court thinks fit;

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

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

(6) Where the Court makes an order on an application under this section—

(a) it may include in the order such particulars in relation to the adoption, the adopted person, and the adoptive parents as the Court finds to be established; and

(b) it shall issue to the adoptive parents a certificate stating the date on which the order was made, the name of the adoptive parents, the name of the adopted person, and such other matters as the Court determines.

(7) For the purposes of the law of Tasmania, an order under this section binds the Crown in right of Tasmania, but, except as provided in subsection (8), does not affect—

(a) the rights of another person unless that person was—

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

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

(b) an earlier judgment, order, or decree of a court of competent jurisdiction.

(8) In proceedings in any court relating to the rights of a person other than a person referred to in subsection (7) (a) (i) or (ii), the production of a copy of an order made under this section, certified by the Registrar of the Court to be a true copy, is evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is an adoption to which section 60 applies.

PART V

REGISTRATION OF ORDERS

Memorandum of adoption order, &c., to be sent to the Registrar-General.

62—As soon as is reasonably practicable after the making of an adoption order or of an order for the discharge of an adoption order, the magistrate constituting the court by which the order was made shall cause a memorandum of the order in accordance with the prescribed form to be sent to the Registrar-General.

63—(1) The special record formerly kept under section 22F of the *Registration of Births and Deaths Act 1895* shall, notwithstanding the amendments made by section 121, continue in force for the purposes of this Part and shall be kept by the Registrar-General.

Record of adoptions and endorsements, &c., to be made in birth registers in relation to adopted person.

(2) Where the Registrar-General receives—

- (a) a memorandum of an adoption order under section 62 in respect of a person whose birth is registered in Tasmania; or
- (b) a memorandum under a law of another State or a Territory corresponding to section 66 relating to the making in that State or Territory of an order for the adoption of any such person,

the Registrar-General shall re-register the birth in accordance with this section and the particulars specified in that memorandum.

(3) Where—

- (a) a person whose birth is registered in Tasmania has been adopted in a place outside Australia; and
- (b) the order for adoption is an order to which section 60 applies,

the Registrar-General shall—

- (c) on application by the adopted person or a person in favour of whom the order was made; and
- (d) on production of a document purporting to be the relevant adoption order or some other document relating to an adoption order in respect of that person made in a place outside Australia,

re-register the birth in accordance with this section and the particulars specified in that document.

(4) A re-registration of the birth of an adopted person for the purposes of this section shall be made—

- (a) by an entry in the prescribed form in the special record and by endorsing that entry with—
 - (i) a reference to this section; and
 - (ii) a reference in the prescribed form identifying the entry of birth of that person as shown in the register of births kept by the Registrar-General;

- (b) by endorsing the entry of the birth of the adopted person as shown in that register of births with—

- (i) a reference to this section; and