

PART III.

DIVISION I.

Care of
child after
refusal of
application.

19. Where the court refuses an application for an order for the adoption of a child, the court may, if the child is not under the guardianship of the Minister of Social Welfare or the Director, make such order for the care and custody of the child as it thinks fit.

Discharge of
adoption
orders.

20. (1) The Supreme Court may make an order discharging an order made under this Act or under the repealed Act for the adoption of a child if it is satisfied that—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 Supreme 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 Supreme 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order discharging an adoption order that was made in reliance upon a general consent given under this Act or under the repealed Act, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of any further application for the adoption of the child.

(4) Where the Supreme 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 ;
and
- (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 (4) of section 30 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 or anything unlawfully done ;

or

(c) any right or interest that became vested in any person, whilst the adoption order was in force.

DIVISION 2—CONSENTS TO ADOPTIONS.

DIVISION 2.

21. (1) Subject to this Division, a court shall not make an order under this Act 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 court is satisfied that there is no such appropriate person.

Consents of
parents and
guardians
required.

(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 persons are every person who is the mother or a 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 a 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.

22. (1) Subject to subsection (2) of this section, a consent for the purposes of section 21 of this Act, shall be expressed as a consent to the adoption of the child by any person or persons on whose application for an order for the adoption of the child an adoption order may be made under this Act in respect of the child, and every such consent shall be a valid consent notwithstanding that an application in respect of the adoption of

The giving
of consents.

the child has not been made or contemplated or, if an application has been made, that the person who gave the consent does not know the identity of the applicant or applicants.

(2) Where the applicant is a parent or relative of the child or (in the case of joint applicants) at least one of the applicants is a parent or relative of the child, a consent for the purposes of section 21 of this Act 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 in respect of a child, but the application has been refused by the court, the consent remains in operation for the purposes of any further application for the adoption of the child.

Consents given under law of another State or a Territory of the Commonwealth.

23. Where an application is made under this Act by a person for an adoption order in respect of a child, a consent to the adoption of the child given by a person in accordance with the law of another State or of a Territory of the Commonwealth that would be a valid and effective consent under that law if the application had been made in that State or Territory under that law shall, subject to section 7 of this Act, be regarded as a valid and effective consent for the purpose of the application made under this Act.

Revocation of consent.

24. (1) A consent to the adoption of a child given for the purposes of this Act 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 after the day 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 by registered post to him at his office in Adelaide.

Form of consents.

25. (1) Subject to this section, a consent to the adoption of a child for the purposes of the preceding provisions of this Division shall be evidenced by an instrument of consent substantially in accordance with the appropriate form prescribed signed by the person giving the consent and attested in accordance with the regulations.

(2) A consent referred to in subsection (2) of section 22 of this Act has no force or effect unless it is attested by the Director or a person authorized in writing by the Director to attest that consent or generally to attest such consents.

26. (1) A court 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 in respect of whom the adoption order is sought) if it appears to the court that—

Defective consents.

- (a) the consent was not given in accordance with this Act ;
- (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 court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within five days after, the day on which the child was born unless the court is satisfied, on the certificate of a legally qualified medical practitioner or of a person who is a registered nurse within the meaning of the Nurses Registration Act, 1920-1966, or by other adequate evidence, that, at the time the instrument of consent was signed, the mother was in a fit condition to give it.

27. (1) A court may, on application by or on behalf of the Director, or by or on behalf of an applicant for an adoption order, by order dispense with the consent of a person (other than the child) to the adoption of a child where it appears to the court—

Court may dispense with consents.

- (a) that the person cannot, after reasonable inquiry, be found or identified ;
- (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 ;

(c) that the person has abandoned, deserted or persistently neglected or ill-treated the child ;

(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 other circumstances by reason of which the consent may properly be dispensed with.

(2) In order to facilitate the making of arrangements with a view to the adoption of a child, the court may, on application by or on behalf 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 application for an 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.

Consent of
child.

28. (1) Subject to this Division, an order for the adoption of a child who has attained the age of twelve years shall not be made by a court unless the child has consented to the adoption or the court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has not consented to the adoption or that his consent has not been sought.

(2) For the purpose of being satisfied as to any matter mentioned in subsection (1) of this section, the court shall question the child in private, and no parent or guardian of the child, or any applicant for the adoption order, shall then be present.

(3) The court may, before or after so questioning the child, exercise any of the powers conferred on a court by section 35 of this Act, and may, after the exercise of any such power, again question the child as provided in subsection (2) of this section.

29. (1) Subject to this section, where every person whose consent to the adoption of a child is required under section 21 of this Act has consented to the adoption of the child by means of a general consent 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 21 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 where a person has so consented to the adoption, the instrument of consent is lawfully revoked ;
 - (c) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child ;
- or
- (d) the child becomes a State child within the meaning of the Social Welfare Act, 1926-1965.

(2) Subsection (1) of this section does not apply to a State child within the meaning of the Social Welfare Act, 1926-1965, except to the extent necessary for the purposes of paragraph (d) of that subsection.

(3) The Director may, upon such terms and conditions as he thinks fit, place any child of whom he is the guardian by virtue of subsection (1) of this section in the care of any person whom he considers suitable and who has agreed to have the child in his care.

(4) The fact that the Director is the guardian of a child under this section does not affect the liability of any person to make adequate provision for the maintenance of the child.

DIVISION 3—EFFECT OF ADOPTION ORDERS.

DIVISION III.

30. (1) For the purposes of the laws of this State, but subject to this Act and to the provisions of any law of this State that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order—

General
 effect of
 adoption
 orders.

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

- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent or former adoptive parent of the adopted child) shall be determined on the basis of the foregoing provisions of this subsection, so far as they are relevant ;
 - (d) any existing guardianship of the adopted child, except as provided in subsection (5) of this section, ceases to have effect ;
- and
- (e) any previous adoption of the child (whether effected under the law of this State or otherwise) ceases to have effect.

(2) The provisions of subsection (1) of this section do not have effect so as to deprive an adopted child of any vested or contingent proprietary right acquired by the child before the making of the adoption order.

(3) Where—

- (a) one of the natural parents of a legitimate child, or one of the adoptive parents of an adopted child, has died ;
 - (b) the surviving parent remarries ;
- and
- (c) the child is adopted by the surviving parent's spouse or by the surviving parent and that parent's spouse,

any property of any collateral or lineal next-of-kin of the deceased parent who dies intestate shall, notwithstanding subsection (1) of this section, devolve in all respects as if the child had not been so adopted.

(4) Notwithstanding subsection (1) of this section, for the purposes of any law of this State relating to a sexual offence, being a law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order, as the case may be, had not been made, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

(5) Where—

- (a) immediately before the making of an adoption order the child in respect of whom the adoption order is sought

was a State child within the meaning of the Social Welfare Act, 1926-1965 ;

and

(b) the guardianship of the child was accordingly vested in the Minister of Social Welfare under that Act,

the guardianship of the child so vested in that Minister shall cease to have effect and the child shall cease to be a State child within the meaning of that Act on the making of the adoption order unless before the adoption order is made, the Minister of Social Welfare has, at the request of the applicant or applicants for the adoption order, agreed with the applicant or applicants that the guardianship of the child so vested in that Minister shall not cease to have effect on the making of the adoption order, in which case that Minister shall after the making of the adoption order continue to be the guardian of the child and, for the purposes of the Social Welfare Act, 1926-1965, the child shall, until he ceases to be a State child under that Act, continue to be a State child and the provisions of that Act shall apply and have effect accordingly.

31. (1) The provisions of subsection (1) of section 30 of this Act have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, except that—

Effect of order as to disposition of property, etc.

(a) those provisions do not affect a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act ;

and

(b) those provisions do not affect a disposition of property that has taken effect in possession before the commencement of this Act.

(2) The provisions of subsection (1) of section 30 of this Act do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Act.

(3) Where—

(a) before the commencement of this Act, a person made, by an instrument other than a will, a disposition of property ;

(b) the disposition had not taken effect in possession before the commencement of this Act ;

and

(c) it did not appear from the instrument that it was the intention of that person to include adopted children as objects of the disposition,

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that person may, notwithstanding that the instrument could not, apart from this subsection, be revoked or varied, by a like instrument vary the first-mentioned instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order made under this Act has the same effect as if the repealed Act had continued in force and the adoption order had been made under that Act.

(5) Nothing in section 30 of this Act or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement of this Act) distinguishing between adopted children and children other than adopted children.

Names of
adopted
child.

32. (1) Subject to subsection (2) of this section, upon the making of an adoption order, the adopted child shall have as his surname the surname of the adoptive parent or adoptive parents and shall have as his forename or forenames such name or names as the court, in the adoption order, approves on the application of the adoptive parent or parents.

(2) Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the court, on the application of the adoptive parent or adoptive parents, may, in the adoption order, order that the child shall have that name as his surname.

(3) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with the law of the State.

Effect of
order on
domicile.

33. (1) Subject to subsection (2) of this section, upon the making of an adoption order, the adopted child acquires the domicile of the adoptive parent or parents at the date of the adoption order and the child's domicile thereafter shall be determined as if the child had been born in lawful wedlock to that parent or those parents.

(2) The domicile acquired, upon the making of the order, by the child under subsection (1) of this section shall be deemed to be also the child's domicile of origin.

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34. (1) Notwithstanding any other provision of this Act, a trustee or personal representative 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, or an adoption order has been made, by virtue of which a person is or is not entitled to an interest in the property.

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

(2) A trustee or personal representative who conveys, transfers or distributes real or personal property in the manner referred to in subsection (1) of this section shall not be liable to a person claiming directly or indirectly by virtue of an adoption or an adoption order unless the trustee or personal representative has notice of the claim before the time of the conveyance, transfer or distribution.

(3) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

DIVISION 4.—INTERIM ORDERS.

DIVISION IV.

35. (1) Where an application has been made to a court under this Act 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 applicant or applicants.

Making of interim orders.

(2) An interim order may be made subject to such terms and conditions relating to the maintenance, education and welfare of 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 or persons unless the court could lawfully make an order for the adoption of that child by that person or those persons.

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

(5) The court shall not make an interim order in respect of a child who is a State child within the meaning of the Social Welfare Act, 1926-1965.

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

Duration of interim orders.

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

Discharge
of interim
orders.

37. (1) A court may, at any time, make an order discharging an interim order made under this Division or discharging a direction given under section 8 of the repealed Act and may make such further order for the care and control of the child in respect of whom the interim order was made or the direction was given as the court thinks fit.

(2) An interim order or a direction given under section 8 of the repealed Act ceases to have effect upon the making of an adoption order in respect of the child, whether made in this State or in another State or in a Territory of the Commonwealth.

PART IV.**PART IV.****RECOGNITION OF ADOPTIONS.**

Recognition
of
Australian
adoptions.

38. For the purposes of the laws of this State, the adoption of a person (whether before or after the commencement of this Act) in another State or in a Territory of the Commonwealth in accordance with the law of that other State or Territory has, so long as it has not been rescinded under the law in force in that other State or Territory, the same effect as if it were an order for the adoption of that person made in this State on the date on which such adoption became effective, and has no other effect.

Recognition
of foreign
adoptions.

39. (1) For the purposes of the laws of this State, 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 of that person made in this State on the date on which such adoption became effective, 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 the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

(3) The Governor may, from time to time, by proclamation, declare that all or any adoptions under the law of a particular country outside the Commonwealth and the Territories of the Commonwealth and specified in the proclamation shall be conclusively presumed to comply with the conditions specified in paragraphs (c) and (d) of subsection (2) of this section.

(4) On and after the making of such declaration and until such declaration is cancelled by a subsequent proclamation, which the Governor is hereby empowered to make, effect shall be given to the declaration in accordance with the tenor thereof.

(5) Notwithstanding the foregoing provisions of this section any court or other tribunal acting judicially (including the Supreme Court dealing with an application under section 40 of this Act) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the court or tribunal 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.

(6) Where, in any proceedings before a court or other tribunal (including proceedings under section 40 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 conditions specified in subsection (2) of this section and has not been rescinded.

(7) 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 this State.

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

Declarations
of validity
of foreign
adoptions.

40. (1) A person specified in subsection (2) of this section may apply to the Supreme 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 39 of this Act applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The persons who may make an application under subsection (1) of this section in relation to an adoption are the adopted child or a guardian of 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 or a guardian of any such person.

(3) Where an application is made under this section, the Court shall, if it appears to the Court that the Director has not received notice thereof, direct that notice thereof be given to the Director and 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) 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) In relation to any proceedings under this section, the Court may make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the Court thinks just.

(6) For the purposes of the laws of this State, an order under this section binds the Crown in right of the State, 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