

(4) For the purposes of subsection (3) the Court may inform itself in such manner as it thinks fit.

Cessation of condition

42. An adoption order ceases to be subject to a condition referred to in section 40—

- (a) when the condition is revoked; or
- (b) when the adopted child attains the age of 18 years;

whichever first occurs.

Division 4—Effect of adoption orders

General effect

43. (1) Subject to this Act and to the provisions of any law of the Territory that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order, for all purposes—

- (a) the adopted child becomes in contemplation of law a child of the adoptive parents, and the adoptive parents become in contemplation of law the parents of the child as if the child had been born to the adoptive parents;
- (b) the adopted child ceases to be a child of the birth parents or of any person who was an adoptive parent before the making of the adoption order, and any such person ceases to be a parent of the child;
- (c) if the order is made in favour of a person referred to in subsection 18 (2)—the relationship of the child with the parent referred to in that subsection is not affected;
- (d) the relationship to one another of all persons (including the adopted child and the adoptive parents, birth parents or any former adoptive parent) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant;
- (e) any existing appointment of a person as guardian of the adopted child ceases to have effect; and
- (f) any previous adoption of the child (whether under the law of the Territory or otherwise) ceases to have effect.

(2) Where—

- (a) 1 of the birth or former adoptive parents of a child has died; and
- (b) an adoption order is made in favour of a person referred to in subsection 18 (2) after that death;

the adoption does not exclude any right of inheritance that the child might otherwise have from or through the deceased person.

(3) Notwithstanding subsection (1), for the purposes of any law of the Territory relating to a sexual offence, being a law under which the relationship between persons is relevant, an adoption order, or an order discharging an adoption order, shall not be taken to cause the cessation of any relationship that would otherwise have existed, and any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection or by virtue of the discharge of the adoption order.

Disposition of property

44. (1) Subsection 43 (1) has 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 the subsection does not effect a disposition of property—

- (a) by a person who, or by persons any of whom, died before the commencement of this Act; or
- (b) that has taken effect in possession before the commencement of this Act.

(2) Subsection 43 (1) does 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 an adopted child as an object of the disposition;

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 an adopted child (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 laws had continued in force and the adoption order had been made under those laws.

(5) Nothing in section 43 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

45. (1) Subject to subsection (2), upon the making of an adoption order, the adopted child shall have as his or her surname—

- (a) if both parents are known by the same surname—that surname; or
- (b) in any other case—
 - (i) the maiden name or other surname of the child's mother;
 - (ii) the surname of the child's father; or
 - (iii) a surname formed by combining the mother's maiden name or other surname and the father's surname;

whichever the Court, on the application of either of the adoptive parents, approves in the adoption order.

(2) Subject to subsection (3), upon the making of an adoption order, the adopted child shall have as his or her forename or forenames such name or names as, on the application of the adoptive parents, the Court approves in the adoption order.

(3) Where, before the making of an adoption order, the adopted child had been generally known by a particular name, the Court may, in the adoption order, order that the child shall have that name.

(4) 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 Territory.

Effect of order on domicile

46. (1) Upon the making of an adoption order, the adopted child acquires the domicile of the adoptive parents at the date on which the adoption order was made and after that date the child's domicile shall be determined as if the child had been born to the adoptive parents.

(2) The domicile acquired under subsection (1) by an adopted child shall for all purposes be deemed to be also the child's domicile of origin.

Distribution of property by trustee or personal representative

47. (1) Notwithstanding any other provision of this Act, a trustee or personal representative may, subject to this section, convey, transfer or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption order has

been made as a consequence of which a person is or is not entitled to an interest in the property.

(2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in subsection (1) shall not be liable to a person claiming directly or indirectly by virtue of the making of an adoption order unless the trustee or personal representative had 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 *bona fide* purchaser for value without notice, who has received it.

Bequest by will to unascertained adopted person

48. (1) Where, under a will made after the commencement of this Act—

- (a) a disposition of property or of an interest in property (in this section called a “bequest”) is expressed to be made by the testator to a person (in this section called the “beneficiary”) 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, being a person who was adopted by another person; and
- (b) the personal representative of the testator is unable to ascertain the name and address of the beneficiary;

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

(2) Where the Public Trustee is given a copy of a will under subsection (1), the Public Trustee shall, in writing, request the Director to ascertain and give to the Public Trustee the name and address of the beneficiary.

(3) Where the Director receives a request under subsection (2), the Director shall examine the records in the possession of the Director and, if necessary, make enquiries of a private adoption agency or other body or person in an endeavour to ascertain the name and address of the beneficiary or, if the beneficiary has died, the date of the death, and the Director shall inform the Public Trustee of the results of the examination and enquiries.

(4) If the information received from the Director does not disclose the name and address of the beneficiary, or discloses that the beneficiary has died, the Public Trustee shall inform the personal representative accordingly.

(5) If the information received from the Director discloses the name and address of the beneficiary, the Public Trustee shall, if the beneficiary has attained the age of 18 years—

- (a) ascertain whether the beneficiary wishes to accept the bequest;
- (b) if the beneficiary does not wish to accept the bequest—inform the personal representative accordingly;
- (c) if the beneficiary does wish to accept the bequest—inform the personal representative that the proceeds of the bequest should be transferred to the Public Trustee on behalf of the beneficiary; and
- (d) on receiving the proceeds of the bequest—transmit the proceeds to the beneficiary.

(6) If the information received from the Director discloses the name and address of the beneficiary, the Public Trustee shall, if the beneficiary has not attained the age of 18 years—

- (a) inform the personal representative that the proceeds of the bequest should be transferred to the Public Trustee to be held in trust for the beneficiary;
- (b) hold the proceeds of the bequest in trust for the beneficiary upon the trusts (if any) set out in or arising under the will until the beneficiary attains the age of 18 years; and
- (c) on the beneficiary attaining the age of 18 years—transfer the proceeds of the bequest to the beneficiary (unless the beneficiary then disclaims the bequest).

(7) Where the personal representative transfers the proceeds of a bequest to the Public Trustee under this section, the personal representative shall be taken to have transferred the bequest to the beneficiary.

(8) Where the Public Trustee gives to the personal representative a statement in writing to the effect that the beneficiary has disclaimed a bequest to which the beneficiary was entitled under the will that statement is, for the purpose of the administration of the estate by the personal representative, conclusive evidence that the beneficiary has disclaimed the bequest.

(9) The Public Trustee shall not, in information conveyed to a personal representative under this section, include particulars that identify or tend to identify the adopted person.

Gifts *inter vivos*

49. (1) Section 48 applies in relation to a deed executed after the commencement of this Act by which a gift of money is expressed to be made by a person (in this section referred to as the “donor”) to a person who is not named but who is described as the child of the donor or of a spouse,

parent, child, brother or sister of the donor, being a person who has been adopted by another person.

(2) In the application of section 48 by virtue of subsection (1), that section has effect as if—

- (a) a reference in that section to a will were a reference to the deed of gift;
- (b) a reference in that section to the testator or to a personal representative were a reference to the donor; and
- (c) a reference in that section to property or to an interest in property were a reference to the money that is the subject of the gift.

Division 5—Interim orders

Making of order

50. (1) On an application to the Court for an adoption order, the Court may postpone the determination of the application and make an interim order in favour of the applicants for the custody of the child.

(2) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the Court thinks fit.

(3) An interim order shall not be made in favour of any person unless an adoption order in respect of the child could be made in favour of the person.

Duration

51. (1) Subject to subsection (2) and to section 52, an interim order remains in force for such period, not exceeding 1 year, as the Court specifies in the order and for such further periods, if any, as the Court by order from time to time determines.

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

Discharge

52. (1) The Court may, at any time, make an order discharging an interim order, and may make such order for the custody of the child as the Court thinks fit.

(2) An interim order ceases to have effect upon the making of an adoption order in respect of the child, whether made in the Territory, a State or another Territory.

PART IV—RECOGNITION OF ADOPTIONS

Interpretation

53. In this Part—

“country” means a country other than Australia and includes a part of a country.

Australian adoptions

54. For the purposes of the law of the Territory, the adoption of a person (whether before or after the commencement of this Act) in a State or another Territory in accordance with the law of that State or other Territory has, so long as it has not been rescinded under the law of that State or other Territory, the same effect as an adoption order made under this Act.

Overseas adoptions

55. (1) For the purposes of the law of the Territory, the adoption of a person (whether before or after the commencement of this Act) in another country, 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 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)** either—
 - (i)** that country was the usual place of residence of the adoptive parents for a continuous period of not less than 12 months, or such lesser period as a court considers reasonable in the circumstances of the case, immediately before the commencement of the proceedings for the adoption; or
 - (ii)** the Director or the principal officer of a private adoption agency has, before the adoption in that other country, agreed to the placement of the adopted child with the adoptive parents and the child is placed in accordance with the conditions of approval of the adoptive parents;
- (c)** in consequence of the adoption, the adoptive parents had, or would have had if the adopted child had been under the age of 18 years, under the law of that country, a right superior to that of any birth parent in respect of the custody of the adopted child; and
- (d)** under the law of that country the adoptive parents were, by virtue of the adoption, placed generally in the position of parents in relation to the adopted child.

(3) Notwithstanding subsections (1) and (2), a court (including a court dealing with an application under section 57) may refuse to recognise 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 otherwise failed to do justice.

(4) Where, in any proceedings before a court (including proceedings under section 57), the question arises whether an adoption is one to which this section applies, it shall be presumed that the requirements of subsection (2) were satisfied and the adoption has not been rescinded, but that presumption is rebuttable.

(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 Australia does not have effect for the purposes of the law of the Territory.

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

Support of adopted children

56. (1) Subject to this section, where—

- (a) a child is adopted in the Territory or elsewhere, whether or not the adoption is an adoption that 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; and
- (c) the child is present in the Territory;

the Director may promote the welfare and interests of the child by providing support for a period not exceeding 12 months commencing on—

- (d) if the child was adopted in the Territory—the date of the adoption;
or
- (e) if the child arrived in the Territory after having been adopted—the date of the arrival;

and any person authorised in writing by the Director for that purpose has a right of access to the child during that period—

- (f) at times agreed between that person and the adoptive parents; or
- (g) in the absence of such agreement—at times specified by the Minister by notice in writing given to the adoptive parents.

(2) Where a child whose welfare and interests may be promoted by the Director under subsection (1) has, after being adopted but before arriving in the Territory, been resident in a State or in another Territory, the period

during which the child may receive support from the Director is reduced proportionately to the period of such residence in that State or other Territory.

(3) In this section—

‘support’, in relation to an adopted child, means the Director or a person authorised in writing by the Director visiting the child and the family in the child’s home environment, but does not include financial support.

Declarations of validity of overseas adoptions

57. (1) On an application by a person specified in subsection (2), the Court may make an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of another country, and that the adoption is one to which section 55 applies.

(2) The persons who may make an application under subsection (1) are the adopted child, an adoptive parent or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

(3) On an application under subsection (1), the Court may—

- (a) direct that notice of the application be given to such persons 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 under subsection (1), the Court may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parents as the Court finds to be established.

(5) Except as provided in subsection (6), an order under subsection (1) 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.

(6) In proceedings in a court of the Territory, being proceedings relating to the rights of a person other than a person referred to in

subparagraph (5) (a) (i) or (ii), the production of a copy of an order under subsection (1), certified by the Registrar of the Supreme Court to be a true copy, shall 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 55 applies.

PART V—ACCESS TO INFORMATION

Division 1—General

Interpretation

58. In this Part, unless the contrary intention appears—

“adoptive relative” means a person who is a relative within the meaning of this Act as a consequence of an adoption;

“associated person”, in relation to an adoption, means—

- (a) the adopted child;
- (b) an adoptive parent;
- (c) a birth parent or birth relative of the adopted child; or
- (d) a child or other descendant of the adopted child;

“birth parent”—

- (a) in relation to an adopted child who had a guardian before being adopted, includes the person who was that guardian; and
- (b) does not include the father unless he is presumed to be the father under the *Birth (Equality of Status) Act 1988*;

“birth relative”, in relation to an adopted child, means a person who was a relative within the meaning of this Act before the child was adopted;

“identifying information”, in relation to an adoption, means—

- (a) a copy of, or an extract from, an entry in a register of births relating to the adopted child; or
- (b) information from which a birth parent, a birth relative or the adopted child may be identified (not being information that consists of the address of a place of residence);

“information” means identifying information or non-identifying information (not being personal, sexual or medical information of a prescribed kind);

“register of births” means the Register of Births kept pursuant to section 8 of the *Registration of Births, Deaths and Marriages Act 1963*;

“Registrar of Births, Deaths and Marriages” means the Registrar of Births, Deaths and Marriages appointed under subsection 6 (1) of the *Births, Deaths and Marriages Act 1963* and includes a person appointed under subsection 6 (3) of that Act to act in that office;

“relevant authority”, in relation to information, means—

- (a) the Director;
- (b) if the information is contained in records in the possession or under the control of a private adoption agency—that agency; or
- (c) if the Director has declared in writing that a private adoption agency is for the time being the relevant authority for the purposes of this Part in relation to that kind of information—that agency.

Application of Part

59. The provisions of this Part apply in relation to an adoption—

- (a) whether the order for the adoption was made before or after the commencement of this Act; and
- (b) if the child is domiciled or resident in the Territory—whether that order was made in the Territory or elsewhere.

Confidentiality of records

60. (1) Except as provided in this Part—

- (a) records in the possession or under the control of the Director or a private adoption agency relating to an adoption;
- (b) the records of the Court (other than an order or decision of the Court) relating to proceedings on an application for an adoption order; or
- (c) an entry in the register of births relating to the birth of an adopted child, or a copy of, or extract from, such an entry;

shall not be made available to, or be open to inspection by, any person.

(2) Subsection (1) does not operate to prevent a person whose duties require him or her to do so from obtaining access to information where it is necessary to do so for the administration of this Act.

Records of adoptions

61. (1) The Director shall maintain records—