

1964

VICTORIA.



ANNO TERTIO DECIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 7147.

An Act relating to the Adoption of Children and for
Purposes connected therewith.

[5th May, 1964.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

Short title
and
commence-
ment.

1. This Act may be cited as the *Adoption of Children Act 1964* and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Division.

2. This Act is divided into Parts and Divisions as follows :—

Part I.—Jurisdiction, ss. 5–7.

Part II.—Adoptions under this Act, ss. 8–39.

Division 1.—General, ss. 8–16.

Division 2.—Arrangement of Adoptions, ss. 17–22.

Division 3.—Consents to Adoptions, ss. 23–31.

Division 4.—Effect of Adoption Orders, ss. 32–36.

Division 5.—Interim Orders, ss. 37–39.

Part III.—Recognition of Adoptions, ss. 40–43.

Part IV.—Offences, ss. 44–56.

Part V.—Miscellaneous, ss. 57–67.

3. (1) The

3. (1) The *Adoption of Children Act 1958* and the *Adoption of Children (Property) Act 1962* shall be repealed. Repeal.

(2) Except as in this Act expressly or by necessary implication provided— Savings.

(a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under those Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if those Acts had not been repealed ;

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any rule order authority application decision consent bond register direction liability or right made effected issued granted given passed accrued incurred or acquired or existing or continuing by or under those Acts before the commencement of this Act.

(3) Subject to the next succeeding sub-section, the provisions of section thirty-two and section thirty-three (other than sub-section (4)) of this Act apply in relation to an adoption order made under, or continued in force by, any corresponding previous enactment 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 a person who, or by persons any of whom, died before the commencement of this Act, an adoption order referred to in the last preceding sub-section shall have the same effect as if this Act had not been passed.

4. (1) In this Act, unless inconsistent with the context or subject-matter— Interpretation.

“Adoption order” means an order for the adoption of a child under this Act ; “Adoption order.”

“Agency” or “private adoption agency” means a private adoption agency approved by the Chief Secretary under Division 2 of Part II. of this Act ; “Agency.”

“Child” means 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 ; “Child.”

“Commonwealth” means the Commonwealth of Australia. “Commonwealth.”

“Director-General”

- “ Director-General.” “ Director-General ” means the Director-General of Social Welfare within the meaning of Part I. of the *Social Welfare Act 1960* ;
- “ Disposition of property.” “ Disposition of property ” includes the grant or exercise of a power of appointment in respect of property ;
- “ Father.” “ Father ”, in relation to a child who is illegitimate, means the putative father ;
- “ Guardian.” “ 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 ; and
- (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.” “ Interim order ” means an interim order under Division 5 of Part II. of this Act ;
- “ Relative.” “ Relative ”, in relation to a child, means 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 ;
- “ Territory of the Commonwealth.” “ Territory of the Commonwealth ” includes any Territory under the trusteeship of the Commonwealth.

(2) Where an office that is established by any Act is referred to in this Act and the holder of that office has power to assign or delegate to another person all or any of his powers and functions under that Act—

- (a) the powers and functions of the holder of that office that may be so assigned or delegated shall be deemed to include the powers and functions of that office under this Act, and any of those powers and functions under this Act may be assigned or delegated in the manner provided by that Act ; and
- (b) in relation to a power or function so assigned or delegated a reference in this Act to the holder of that office shall be read as including a reference to the assignee or delegate, as the case may be.

PART

PART I.—JURISDICTION.

5. (1) The Court having jurisdiction to make adoption orders under this Act shall be—

Jurisdiction and procedure.

(a) the Supreme Court ; or

(b) at the option of the applicant—the County Court.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the Court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect may in accordance with the provisions of sections twenty-five to twenty-seven of the *Supreme Court Act* 1958 be made by the judges of the Supreme Court.

Rules of court.

6. (1) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order—

Cases in which jurisdiction may be exercised.

(a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in Victoria ; and

(b) the child was present in Victoria.

(2) For the purposes of the last preceding sub-section, where the Court is satisfied that an applicant was resident or domiciled in Victoria, or that the child was present in Victoria, on a date within twenty-one days before the date on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in Victoria, or that the child was present in Victoria, as the case may be, at the time of the filing in the Court of the application.

7. The jurisdiction of a Court to make an adoption order shall not be dependent on any fact or circumstance not expressly specified in this Act.

Rules of private international law not to apply.

PART II.—ADOPTIONS UNDER THIS ACT.

DIVISION 1.—GENERAL.

8. In the administration of this Part the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Welfare and interests of child to be paramount.

9. (1) Subject to this Act, the Court may make an order for the adoption of a person who—

Who may be adopted.

(a) had not attained the age of twenty-one years before the date on which the application was filed in the Court ; or

(b) has

(b) has been brought up, maintained and educated by the applicant or either of the applicants, or by the applicant and a deceased spouse of the applicant, as his or their child under a *de facto* adoption.

(2) 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 Victoria or elsewhere, previously been adopted.

Persons in whose favour adoption orders may be made.

10. (1) Except as provided by the next succeeding sub-section, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to the next succeeding sub-section, where the Court is satisfied that exceptional circumstances make it desirable so to do, the Court may make an adoption order in favour of one person.

(3) The Court 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 Court 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.

Age of adopters.

11. The Court 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 such person or either of such persons is a natural parent of the child or the Court considers that there are exceptional circumstances that justify making the adoption order.

Court to be satisfied as to certain matters.

12. (1) The Court shall not make an order for the adoption of a child unless the Court has received a report in writing by or on behalf of the Director-General concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

(a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child ;

(b) the applicants are suitable persons to adopt that child, having regard to all relevant matters, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicants, and any wishes that have been

expressed

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 :

Provided that where the principal officer of a private adoption agency or some person appointed by the Court is the guardian of a child pursuant to the provisions of section thirty-one of this Act the report in writing referred to in this sub-section shall be furnished by the principal officer or on his behalf or by the person appointed by the Court to be the guardian of the child (as the case requires).

(2) The last preceding sub-section shall not apply in relation to an order, in accordance with sub-section (1) of section nine 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 Court shall not make an adoption order in such a case unless it is satisfied that exceptional circumstances make it desirable that the child should be adopted.

(3) A report on behalf of the Director-General or on behalf of the principal officer of an agency may be made by a person thereunto authorized in writing, either generally or in any particular case, by the Director-General or the principal officer of the agency (as the case requires).

13. (1) The Court shall not make an order for the adoption of a child unless the applicants for the adoption order have given notice of the application in accordance with the rules of the Court—

Notice of application for adoption orders.

- (a) to any person whose consent to the adoption of the child is required under section twenty-three of this Act but whose consent has not been given ; and
- (b) to any person (not being a person whose consent is so required) with whom the child resides or who has the care or custody of the child.

(2) The Court may, upon application in writing, dispense with the giving of a notice under the last preceding sub-section.

(3) Where it appears to the Court to be necessary in the interests of justice so to do, the Court may direct that notice of an application for an adoption order be given to any person.

14. Where an application is made to the Court for an order for the adoption of a child, the Court may permit such persons as the Court thinks fit to be joined as parties to the proceedings for the purpose of opposing the application or for the purpose of opposing an application to dispense with the consent of a person.

Parties.

15. Subject

Custody, &c.,
after refusal
of an
application
for an
adoption
order.

15. Subject to any order that may be made under Part VII. of the *Marriage Act* 1958 where the Court refuses an application for an order for the adoption of a child, the Court may make such order for the care and control of the child and for the making of any further application, as it thinks fit.

Discharge of
adoption orders

16. (1) A law officer may apply to the Supreme Court for an order discharging an order for the adoption of a child made under this Act or under any corresponding previous enactment, and the Court may make such an order if it is satisfied that 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, then, unless the Court otherwise orders, or the consent is limited to specified persons the 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 the last preceding sub-section and to sub-section (2) of section thirty-two 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 proprietary right or interest that became vested in any person—

whilst the adoption order was in force.

DIVISION

DIVISION 2.—ARRANGEMENT OF ADOPTIONS.

17. (1) For the purposes of this Act arrangements or negotiations for or towards or with a view to the adoption of a child by any person or persons may be made by or on behalf of the Director-General or by or on behalf of a private adoption agency approved for the time being under this Division by the Chief Secretary.

Adoptions may be arranged by Director-General or by private adoption agency.

(2) Arrangements or negotiations may be made as aforesaid by any person authorized in writing for any specified purpose or purposes either generally or in any particular case, by the Director-General or the principal officer of the agency concerned.

(3) The foregoing provisions of this section shall not be construed as preventing a relative of a child, or any person on behalf of a relative of a child, from making arrangements or negotiations for the adoption of the child by a relative of the child.

18. (1) Any charitable organization carrying on, or desiring to carry on, the activity of conducting negotiations or making arrangements with a view to the adoption of children may apply in writing to the Chief Secretary for approval as a private adoption agency.

Application for approval of adoption agency.

(2) An application under this section shall contain such information relating to the organization as is prescribed and shall nominate some person to be the principal officer of the agency for the purposes of this Act.

(3) For the purposes of this section "charitable organization" means an organization, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent, or philanthropic purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members.

19. The Chief Secretary may, as he thinks fit, grant or refuse any such application and in particular, without in any way limiting the generality of the foregoing, may refuse any application if it appears to him that the applicant is not a charitable organization within the meaning of the last preceding section or is not suited to carrying on the activity of making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the making of arrangements with a view to the adoption of children.

Minister may grant or refuse application.

20. The

Revocation or suspension of approval.

20. The Chief Secretary may at any time by notice in writing served personally or by registered post on the principal officer of a private adoption agency revoke or suspend any approval of the agency under this Division—

- (a) at the request of the agency concerned ;
- (b) on the ground that the agency is no longer a suitable organization to carry on the activity of conducting negotiations or making arrangements with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in the last preceding section ; or
- (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it.

Notice of approval to be published in *Government Gazette*.

21. (1) Notice of the approval of any charitable organization as a private adoption agency under this Division and of the revocation or suspension of any such approval shall be published in the *Government Gazette*.

(2) Every such notice shall specify the address of the principal office of the agency concerned and the full name of the principal officer of the agency.

Acts of principal officer deemed acts of agency.

22. Anything done by the principal officer of an agency or with his approval shall be deemed to be done by the agency.

DIVISION 3.—CONSENTS TO ADOPTIONS.

Consents of parents and guardians required to adoptions.

23. (1) Subject to this Division, the Court 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 Court 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

(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.

24. For the purposes of this Act every consent to the adoption of a child shall be construed as a consent to the adoption of the child by any person or persons on whose application an adoption order may be made under this Act in respect of the child and shall be a valid consent notwithstanding that an application in respect 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 :

Consents to be construed as general consents.

Provided that a consent to the adoption of a child by a relative of the child, or by two persons one of whom is a relative of the child, shall be construed as a consent to the adoption of the child by that relative or those persons only.

25. Where—

- (a) a person whose consent to the adoption of a child is required by section twenty-three 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 ;
- (b) that person has, by writing under his hand, authorized the Director-General or a private adoption agency to make arrangements for the adoption of the child ; and
- (c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that other State or Territory—

Consents given under law of other State or 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 sub-section (1) of section twenty-three of this Act, to the adoption of the child.

26. (1) A consent

Revocation of
consents.

26. (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 Registrar of the County Court before the expiration of thirty days from the date on which the instrument of consent was signed, and not otherwise.

(2) Service of a notice on the Registrar of the County Court under the last preceding sub-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.

(3) Upon receiving notice in writing of the revocation of a consent to the adoption of a child the Registrar of the County Court shall forthwith notify the Director-General or, where the principal officer of a private adoption agency is the guardian of the child under this Act, the said principal officer of the receipt of such notice.

Form of
consents.

27. (1) Subject to the next succeeding sub-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) The consent of the Director-General to the adoption of a child of whom he is the guardian under any Act or law relating to child welfare may be expressed in any report in writing furnished by him or on his behalf to the Court under section twelve of this Act in relation to a proposed adoption of the child.

Defective
consents.

28. (1) The 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) if it appears to the Court that—

- (a) the consent was not given in accordance with this Act ;
- (b) the consent was obtained by fraud or duress ;
- (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 produced to the Court was signed before the birth of the child.

(2) Without prejudice to the application of the last preceding sub-section in relation to the consent of the mother of the child, the Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child within

five

five days after the birth of the child unless the Court is satisfied on the certificate of a legally qualified medical practitioner or other prescribed person or by other adequate evidence, that, at the time the instrument was signed, the mother was in a fit condition to give it.

(3) Notwithstanding the foregoing provisions of this section any consent to the adoption of a child validly given before the commencement of this Act pursuant to the provisions of any corresponding previous enactment shall be valid and effectual for the purposes of this Act.

Consent given before the commencement of this Act.

29. (1) The Court may dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied—

Court may dispense with consents.

- (a) that the person cannot after reasonable inquiry, be found ;
- (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 any other special 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-General or the principal officer of a private adoption agency 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 order under this section may have effect for the purposes of any application for an adoption order that may subsequently be made under this Act.

(3) An order under the last preceding sub-section may, on application by or on behalf of the Director-General 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.

30. 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 or the Court is satisfied that there are special reasons, related to the welfare and interests

Consent of child.

of