

ADOPTION OF CHILDREN.

13° Elizabeth II., No. C.

No. 100 of 1964.

**AN ACT to amend the Adoption of Children Act,
1896-1962.**

[Assented to 23rd December, 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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Adoption of Children Act Amendment Act, 1964.*

Short title
and citation.

(2) In this Act the Adoption of Children Act, 1896-1962, is referred to as the principal Act.

Reprinted
approved
for reprint
10th June,
1963.

(3) The principal Act as amended by this Act may be cited as the Adoption of Children Act, 1896-1964.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

S. 2
repealed and
re-enacted.

3. Section two of the principal Act is repealed and re-enacted as follows—

Interpre-
tation.

2. In this Act, unless the contrary intention appears—

“adopted child” means a child in respect of whom an order of adoption has been made;

“adopting parent” in relation to an adopted child means any person who is authorised to adopt the child by virtue of an order of adoption; and where the order was made in favour of a husband and wife, includes the husband and wife;

“child” means a person who has not attained the age of twenty-one years;

“country” includes part of a country;

“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 deemed to be the guardian of a 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;

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

“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;

“the Director” means the Director of the Child Welfare Department appointed under section six of the Child Welfare Act, 1947, and includes the person for the time being duly acting in the office of the Director;

“Territory of the Commonwealth” includes any Territory that is under the trusteeship of the Commonwealth.

4. The principal Act is amended by adding after section four, the following section—

S. 4A
added.

4A. (1) Subject to this Act, a Judge shall not make an order of adoption unless consent (not being 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 Judge is satisfied that there is no such appropriate person.

Consent of
parents and
guardians
required to
adoptions.

(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 been previously adopted, the appropriate person is every person who is the mother or guardian of the child.

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

(5) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the order of adoption. .

S. 4B
added.

5. The principal Act is amended by adding a section as follows—

Consents to
be construed
as general
consents
except in
certain cases.

4B. (1) Subject to this section, for the purposes of this Act, a 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 any order of adoption may be made under this Act in respect of the child and is a valid consent notwithstanding that such 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.

(2) Where a consent is given 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, the consent shall be construed as a consent to the adoption of the child by that relative or those persons 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 order of adoption, but the application has been refused by a Judge, the consent remains in operation for the purposes of a further application for an order of adoption in respect of the child to whom the consent relates. .

S. 4C
added.

6. The principal Act is amended by adding a section as follows—

Consents
given under
law of
other State or
Territory.

4C. Where—

(a) a person whose consent to the adoption of a child is required by section four A 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, authorised the Director or other person to make arrangements for the adoption of the child in this State; 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,

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

7. The principal Act is amended by adding a section as follows—

S. 4D
added.

4D (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 the expiration of thirty days from the date on which the instrument of consent was signed and not otherwise.

Revocation
of consents.

(2) Service of a notice on the Director under subsection (1) of this section, shall be effected by delivering the notice to him personally, or by sending it to him by registered post in care of the Child Welfare Department, Perth in the State.

(3) Upon receiving the notice in writing of the revocation, the Director shall, as soon as practicable thereafter, send a copy of the notice to the Registrar of the Supreme Court. .

S. 4E
added.

8. The principal Act is amended by adding a section as follows—

Form of
consents.
Vide s. 25
Act No. 30
of 1918.

4E. (1) A consent for the purposes of the preceding provisions of this Act, 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 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 furnished to a Judge under paragraph (8b) of subsection (1) of section five of this Act in relation to a proposed adoption. .

S. 4F
added.

9. The principal Act is amended by adding a section as follows—

Defective
consents.

4F. (1) A Judge shall refuse to make an order of adoption in reliance on a consent given or purporting to have been given by a person, other than the child, to whom the application for the order relates, if it appears to the Judge 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 properly revoked;
- (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 Judge was signed before the birth of that child.

(2) Without prejudice to the application of subsection (1) of this section, in relation to the consent of the mother of the child, a Judge shall not make an order of adoption in reliance on an instrument of consent signed by the mother of the child within seven days after the birth of the child, unless the Judge is satisfied, on the certificate of a legally qualified medical practitioner or person registered as a midwifery nurse under the Nurses Registration Act, 1921 or by other evidence, that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

(3) Notwithstanding the foregoing provisions of this Act, any consent to the adoption of a child validly given before the coming into operation of the Adoption of Children Act Amendment Act, 1964, is valid and effectual for the purposes of this Act. .

Prior
consents
valid.

10. The principal Act is amended by adding a section as follows—

S. 4G
added.

4G. (1) Subject to paragraph (4) of subsection (1) of section five of this Act, a Judge may, by order, dispense with the consent of a person, other than the child in respect of whom an order of adoption is sought, to the adoption of a child, where the Judge is satisfied that—

Judge may
dispense with
consents.

- (a) after reasonable inquiry the person cannot be found;
- (b) that 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 person has abandoned, deserted or persistently neglected or ill-treated the child;
- (d) that 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) 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, a Judge may on the application by or on behalf of the Director, or the person or persons proposing to adopt the child, make an order under this section in relation to the child, dispensing with the consent of a person whose consent is required to the adoption of the child before an application for an order of adoption has been made in respect of the child, and any order made under this section has effect for the purposes of any order of adoption that may subsequently be made under this Act in respect of the child.

(3) An order under subsection (2) of this section may, on application by or on behalf of the Director, or of the person whose consent has been dispensed with, be revoked by a Judge at any time before the making of an order of adoption in respect of the child. .

S. 4H
added.

11. The principal Act is amended by adding a section as follows—

Guardianship
of child
awaiting
adoption.

4H. (1) Where, in the case of every person whose consent to the adoption of a child is required under section four A of this Act—

- (a) the consent, being a general consent, of that person to the adoption of the child has been given; or

- (b) the consent of that person to the adoption of the child has been dispensed with by an order made by virtue of subsection (2) of section four G of this Act,

the Director shall be the guardian of the child for all purposes, other than the purposes of section four A of this Act, to the exclusion of all other persons, until—

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

(2) Subsection (1) of this section does not apply to a child for whose guardianship provision is made by any Act or law relating to child welfare. .

12. The principal Act is amended by adding a section as follows— S. 4I
added.

4I. An application for an order of adoption that was pending immediately before the coming into operation of the Adoption of Children Act Amendment Act, 1964, may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with, under this Act, as if the provisions of the firstmentioned Act other than this section had not come into operation. . Transitional
provision.

13. Section five of the principal Act is amended— S. 5
amended.

- (a) by adding after the word, "adoption", being the last word in paragraph (4) of subsection (1), the passage, "unless the

Judge is satisfied that there are special reasons related to the welfare and interests of the child, why the order of adoption should be made notwithstanding that the child has not consented to the adoption, or his consent has not been sought”;

- (b) by repealing paragraphs (5), (6), (7), (8) and (9) of subsection (1); and
- (c) by adding after the word, “child”, in line nine of paragraph (8b), the following passage, “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 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”.

S. 5A
repealed and
re-enacted.

14. Section five A of the principal Act is repealed and re-enacted as follows—

Cases
in which
jurisdiction
may be
exercised.

5A. (1) An order of adoption shall not be made unless, at the time of the filing in the Supreme Court of the application for the order—

- (a) the applicant, or where there are joint applicants each of the applicants, was resident or domiciled in the State; and
- (b) the child in respect of whom the order is sought was present in the State.

(2) For the purposes of subsection (1) of this section, where the Judge hearing the application is satisfied that an applicant was resident or domiciled in the State, or that the child was present in the State, on a date within twenty-one days before the date on which an application was filed in the Supreme Court, the Judge may, in the absence of evidence to the

contrary, presume that the applicant was resident or domiciled in the State, or that the child was present in the State, as the case may be, at the time of the filing in the Supreme Court of the application.

(3) The jurisdiction of a Judge to make an order of adoption is not dependent on any fact or circumstance not expressly specified in this Act. .

Rules of Private International law not to apply.

15. Section eleven of the principal Act is amended by substituting for the words, "the principal Act", in line two, the words, "this Act".

S. 11 amended.

16. The principal Act is amended by adding after section thirteen B a section as follows:—

S. 14 added.

14. For the purposes of the laws of this State, the adoption of a person, whether before or after the coming into operation of the Adoption of Children Act Amendment Act, 1964, in another State or in a Territory of the Commonwealth, in accordance with the law of that State or Territory has, so long as it has not been rescinded under the law in force in that State or Territory, the same effect as an order of adoption made in this State under this Act, and has no other effect. .

Recognition of Australian adoption.

17. The principal Act is amended by adding a section as follows—

S. 15 added.

15. (1) For the purposes of the laws of this State, the adoption of a person, whether before or after the coming into operation of the Adoption of Children Act Amendment Act, 1964, 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 an adoption order under this Act.

Recognition of foreign adoptions.

(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 the legal proceedings 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) Notwithstanding the foregoing provisions of this section, a court, including a court dealing with an application under section sixteen of this Act, 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 did not comply with the requirements of substantial justice.

(4) Where, in any proceedings before a court, including proceedings under section sixteen 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 requirements of subsection (2) of this section and has not been rescinded.

(5) Except as provided in this section, the adoption of a person, whether before or after the coming into operation of the Adoption of Children Act Amendment Act, 1964, 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.

(6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the coming into operation of the Adoption of Children Act Amendment Act, 1964. .

18. The principal Act is amended by adding a section as follows— S. 16
added.

16. (1) A person specified in subsection (2) of this section may apply to a Judge for an order declaring that an adoption of a person was effected, whether before or after the coming into operation of the Adoption of Children Act Amendment Act, 1964, under the law of a country outside the Commonwealth and the Territories of the Commonwealth, and that the adoption is one to which section fifteen of this Act applies, and the Judge may hear and determine the application and, if he thinks fit, make an order accordingly. Declarations
of validity
of foreign
adoptions.

(2) The persons who may make an application under subsection (1) of this section, in relation to an adoption, are the adopted person, 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 person.

(3) Where an application is made under this section, the Judge may—

(a) direct that notice of the application be given to such persons, who may include the Attorney-General, as the Judge 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 Judge makes an order upon the application, he may include in the order such particulars in relation to the adoption, the adopted person and the adoptive parent or parents as the Judge finds to be established.

(5) 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 a notice of the application for the order was given to the Attorney-General but, except as provided in subsection (6) of this section, 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 before a Judge in which an order has been made under this section, being proceedings relating to the rights of a person other than a person referred to in subparagraph (i) or (ii) of paragraph (a) of subsection (5) of this section, the production of a copy of the order, certified by the Registrar of the Supreme Court to be a true copy, is evidence that—

- (a) an adoption was effected in accordance with the particulars contained in the order; and

- (b) the adoption is one to which section fifteen of this Act applies. .

19. The principal Act is amended by adding a section as follows—

S. 17
added.

17. Sections eighteen, nineteen, twenty and twenty-one of this Act do not apply in respect of acts occurring outside this State but, unless otherwise expressly provided, do apply in respect of acts done in this State in relation to adoption of children in, or children adopted in, any other State or a Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth. .

Territorial
application.

20. The principal Act is amended by adding a section as follows—

S. 18
added.

18 (1) Subject to this section, a person who (whether before or after the birth of the child concerned) makes, gives or receives or agrees to make, give or receive, a payment or reward for or in consideration of—

Payments in
consideration
of adoptions.

- (a) the adoption or proposed adoption of a child;
- (b) the giving of consent, or the signing of an instrument of consent, to the adoption of a child;
- (c) the transfer of the possession or custody of a child with a view to the adoption of the child; or
- (d) the making of arrangements with a view to the adoption of a child,

is guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment for six months.

(2) Subsection (1) of this section does not apply to or in relation to any of the following payments in connection with an adoption or proposed adoption under this Act—

- (a) a payment of legal expenses;
- (b) a payment made by the adopters, with the approval in writing of the Director or with the approval of a Judge, in respect of the hospital and medical expenses reasonably incurred in connection with the birth of the child or the ante-natal or post-natal care and treatment of the mother of the child or of the child; or
- (c) any other payment authorised by a Judge or the Director.

(3) Subsection (1) of this section does not apply to, or in relation to, a payment in connection with an adoption or proposed adoption under the law of another State or of a Territory of the Commonwealth, if the making of the payment or any agreement to do so, would have been lawful if it had taken place in that State or that Territory.

S. 19
added.

21. The principal Act is amended by adding a section as follows—

Restriction
on
advertising.

19. (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or periodical publication, or by means of broadcasting, television or public exhibition, any advertisement, news items or other matter indicating, whether or not in relation to a particular child, born or unborn, that—

- (a) a parent or guardian of a child wishes to have the child adopted;
- (b) a person wishes to adopt a child; or

- (c) a person is willing to make arrangements with a view to the adoption of a child,

is guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment for six months.

(2) Subsection (1) of this section does not apply in relation to an advertisement or other matter, the publication of which has been approved by the Director. .

22. The principal Act is amended by adding a section as follows— S. 20 added.

20 (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or other periodical publication, or by means of broadcasting or television, or in any other manner whatsoever brings to the notice of members of the public in this State, in relation to an application under this Act or under a law of another State or Territory of the Commonwealth for the adoption of a child or the proceedings on such an application— Restriction on publication of identity of parties.

- (a) the name of an applicant, the child, or the father or mother or the guardian of the child; or
- (b) any matter reasonably likely to enable any of those persons to be identified,

is guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment for six months.

(2) This section does not apply in relation to an advertisement or other matter the publication of which has been approved by the Director. .

S. 21
added.

23. The principal Act is amended by adding a section as follows—

Undue
influence.

21. A person who uses or threatens to use any force or restraint, or does or threatens to do any injury, or causes or threatens to cause any detriment of any kind to the mother of a child, with a view to inducing the mother to offer or refrain from offering the child for adoption under this Act, is guilty of an offence against this Act.

Penalty: Two hundred pounds or imprisonment for six months. .

S. 22
added.

24. The principal Act is amended by adding a section as follows—

Certificate
as to health
of child
to be given
to Director.

22. A person shall not transfer the possession or custody of a child to another person with a view to the adoption of the child, unless prior thereto the firstmentioned person has given or caused to be given to the Director, a certificate signed by a legally qualified medical practitioner nominated by the Director, certifying that—

- (a) the medical practitioner has examined the child within a period of twenty-one days prior to the receipt by the Director of the certificate; and
- (b) the child is in good health and free from physical and mental defect or that the child is suffering from such complaint or physical or mental defect as is specified in the certificate.

Penalty: Fifty pounds. .

S. 23
added.

25. The principal Act is amended by adding a section as follows—

Offence
of making
unauthorised
arrange-
ments.

23. (1) A person who, without the written permission of the Director, transfers or causes to be transferred the possession, custody or

control of a child to some other person or persons with a view to the adoption of the child by that person or those persons is guilty of an offence against this Act.

Penalty: One hundred pounds.

(2) Subsection (1) of this section does not apply to a parent, guardian or relative of a child who transfers or causes to be transferred the possession, custody or control of the child to a relative of the child, with a view to the adoption of the child by a relative of the child. .

26. The principal Act is amended by adding a section as follows—

S. 24
added.

24. Proceedings for an offence against this Act shall not be commenced except by the Attorney-General or with the written consent of the Attorney-General. .

Authority to
prosecute.
"This Act"
includes
regulations.
S. 4 Act No.
30 of 1918.

27. Section fourteen of the principal Act is amended by substituting for the section number, "14", the section number, "25".

S. 14
amended.