

ADOPTION OF CHILDREN ACT, 1896-1964.

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Approved for Reprint, 27th April, 1970.

WESTERN AUSTRALIA.

ADOPTION OF CHILDREN.

No. 6 of 1896.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 35 of 1915, assented to 13th September, 1915;
No. 5 of 1916, assented to 17th November, 1916;
No. 9 of 1921, assented to 8th November, 1921;
No. 57 of 1926, assented to 24th December, 1926;
No. 31 of 1945, assented to 30th January, 1946;
No. 22 of 1949, assented to 22nd October, 1949;
No. 53 of 1953, assented to 9th January, 1954;
No. 57 of 1953, assented to 9th January, 1954;
No. 51 of 1959, assented to 25th November, 1959;
No. 84 of 1962, assented to 6th December, 1962;
No. 100 of 1964,¹ assented to 23rd December, 1964;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to make provision for the Adoption of Children.

[Assented to 23rd September, 1896.]

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. The short title of this Act is the *Adoption of Children Act, 1896-1964*.

Short title.
Amended by
No. 100 of
1964, s. 1.

¹ Proclaimed to come into operation on 1st May, 1970. See *Gazette* 20/3/70, page 844.

Interpreta-
tion.
Repealed
and
re-enacted
by No. 100
of 1964, s. 3.

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.

3. Upon the application in writing, in the prescribed form, to a Judge by—

By whom female child may be adopted. Amended by No. 5 of 1916, s. 2.

- (1) husband and wife jointly, or by
- (2) a married woman alone, but with the written consent of her husband, or by
- (3) any unmarried woman or a widow who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) any unmarried man or a widower who is, in the opinion of the Judge, at least thirty years older than the child,

an order of adoption of a female may be made by the Judge in favour of the applicant, in the prescribed form, and subject to the provisions of this Act.

4. Upon the application in writing, in the prescribed form, to a Judge by—

By whom male child may be adopted. Amended by No. 5 of 1916, s. 3.

- (1) husband and wife jointly, or by
- (2) a married man alone, but with the written consent of his wife, or by
- (3) any unmarried man or a widower who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) any unmarried woman or a widow who is, in the opinion of the judge, at least thirty years older than the child,

an order of adoption of a male child may be made by the Judge in favour of the applicant, in the prescribed form and subject to the provisions of this Act.

Consent of
parents and
guardians
required to
adoptions.
Added by
No. 100 of
1964, s. 4.

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.

(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.

Consents to
be construed
as general
consents
except in
certain
cases.
Added by
No. 100 of
1964, s. 5.

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.

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,

Consents given under law of other State or Territory. Added by No. 100 of 1964, s. 6.

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.

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. Added by No. 100 of 1964, s. 7.

(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.

Adoption of Children.

(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.

Form of
consents.
Vide s. 25
Act No. 30
of 1918.
Added by
No. 100 of
1964, s. 8.

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.

Defective
consents.
Added by
No. 100 of
1964, s. 9.

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.

Adoption of Children.

(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 Act, 1968, 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.

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.
Added by
No. 100 of
1964, s. 10.

- (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.

Guardianship
of child
awaiting
adoption.
Added by
No. 100 of
1964, s. 11.

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.

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.
Added by
No. 100 of
1964, s. 12.

5. (1) Before making such order of adoption, the Judge—

Consents required previous to adoption of child.

(1) may compel the attendance before him of any witness; and, for that purpose, may direct the issue and service upon the witness of a summons in the prescribed form;

Amended by
No. 9 of
1921, s. 2;
No. 22 of
1949, s. 4;
No. 57 of
1953, s. 2;
No. 51 of
1958, s. 2;
No. 100 of
1964, s. 13.

(2) shall take evidence *viva voce*, upon oath or by affidavit, in proof of or concerning any fact, matter, or thing required by this Act or by the Judge to be proved;

(3) shall be satisfied that the child is under the age of fifteen years or if over that age has been under the care and custody of some person for a period of three years, during which time such person has acted as an adopting parent or otherwise has acted in *loco parentis*; that the person proposing to adopt the child is of good repute and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child; that the welfare and interest of the child will be promoted by the adoption, and that the consents required by this Act have been duly signed and filed;

Adoption of Children.

- (4) shall be satisfied that the child, if over the age of twelve years, consents to the adoption 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;
- (5) [*Repealed by No. 100 of 1964, s. 13.*]
- (6) [*Repealed by No. 100 of 1964, s. 13.*]
- (7) [*Repealed by No. 100 of 1964, s. 13.*]
- (8) [*Repealed by No. 100 of 1964, s. 13.*]
- (8a) shall require the applicant for an order of adoption and the husband of an applicant where the application is made by a married woman alone, to produce to him a certificate,
- signed by a medical practitioner by whom he has been professionally attended or by a medical officer who is an approved medical officer within the meaning of section two hundred and ninety of the Health Act, 1911,
- certifying that the applicant or husband or both, as the case may be, has within a period of six months immediately preceding the date of the application, undergone an x-ray examination of his chest, and any other bacteriological examination that the medical practitioner deems advisable, and is not on the evidence available from the examination or examinations, suffering from any form of infectious tuberculosis;
- (8b) shall require a responsible officer of the Child Welfare Department of the State to make a written report to him as to

- (a) whether the applicant is of good repute and a fit and proper person to have the care and custody of the child and the ability of the applicant to bring up, maintain and educate the 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 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;
- (b) such other matters concerning the applicant or the child as the Judge determines;

(9) [*Repealed by No. 100 of 1964, s. 13.*]

(11)¹ [*Inserted by No. 22 of 1949, s. 4 (d) and repealed by No. 57 of 1953, s. 2 (c).*]

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.

Cases in which jurisdiction may be exercised.
Added by No. 53 of 1953, s. 2.
Repealed and re-enacted by No. 100 of 1964, s. 14.

(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

¹ Inserted by Act No. 22 of 1949 as subsection (11) and not as a paragraph to subsection (1).

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.

Rules of Private International law not to apply.

(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.

Applicant to give Director Child Welfare notice of intending application.
Added by No. 51 of 1959, s. 3.

5B. Where a person intends to make an application under the provisions of section three or four of this Act, he shall, at least thirty days before the application is filed in the Supreme Court, notify in writing the Director of the Child Welfare Department of his intention and shall give to the Director or other responsible officer of that Department such information as he may require for the purposes of making the report referred to in paragraph (8b) of subsection (1) of section five of this Act.

Child can be adopted by one person only.

6. Except by husband and wife, as hereinbefore mentioned, no child shall be adopted by more than one person.

Adopted child to have legal status of legitimate child.
Amended by No. 84 of 1962, s. 2.

7. When an order of adoption has been made, the adopted child shall, for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of the adopting parents.

Exception.

Provided always, that such adopted child or the issue of that child shall not by such adoption—

- (1) acquire any right, title, or interest whatsoever in any property which would devolve on any child or remoter issue of the adopting parent by virtue of any deed, will, or instrument whatsoever prior to the date

of such order of adoption, unless it is expressly so stated in such deed, will or instrument; nor

- (2) be entitled to take property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation; nor
- (3) acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last mentioned child, or otherwise than directly through such adopting parent.

8. When an order of adoption has been made the adopting parent shall, for all purposes, civil, criminal, or otherwise howsoever, be deemed in law to be the parent of such adopted child, and be subject to all liabilities affecting such child as if such child had been born to such adopting parent in lawful wedlock; and such order of adoption shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his or her natural parents, except the right of the child to take property as heir or next of kin of his natural parents directly or by right of representation.

Adopting parent to have legal status of natural parent.

Adoption of Children.

9. It shall be lawful for any Judge of the Supreme Court, in his discretion, to vary, reverse, and discharge an order of adoption, whether made by himself or any other Judge, subject to such terms and conditions as he thinks fit and any variation, reversal or discharge shall incorporate a direction as to the name by which the child concerned in the order of adoption varied, reversed, or discharged, shall thereafter be known and a direction as to the names of the persons who shall thereafter be regarded as the parents of the child.

Order may be reversed or discharged.
Amended by No. 22 of 1949, s. 5.

Registrar
General
to endorse.
Added by
No. 57 of
1953, s. 3.

9A. Where an Order of Adoption is varied, reversed or discharged and the particulars of the terms and conditions of the variation, reversal or discharge are filed with the Registrar of the Supreme Court, he shall forthwith give to the Registrar General the particulars, whereupon the Registrar General shall endorse in accordance with the particulars given to him—

- (a) the registration of the birth of the child concerned made pursuant to Part IV of the Registration of Births, Deaths and Marriages Act, 1894-1948;¹
- (b) the re-registration of the birth made pursuant to sections twelve A or thirteen of this Act; or
- (c) the registration of the birth made pursuant to section thirteen B of this Act.

Name of
adopted
child.
Amended by
No. 9 of
1921, s. 3;
No. 22 of
1949, s. 6.
Cf. No. 4 of
1914, s. 3,
now
renumbered
s. 31 App.
1934 Sess.
Vol.

*10. The order of adoption shall confer the surname of the adopting parent on the adopted child and shall confer and set forth the name (commonly called the Christian name), by which the child is thereafter to be known.

Inspection
of records.
Added by
No. 9 of
1921, s. 4,
renumbered
in the 1943
Reprint†
as s. 11.
Cf. No. 5 of
1916, s. 1.
Amended by
No. 100 of
1964, s. 15.

11. The record of any proceedings in the Supreme Court under this Act shall not be open to public inspection except for some reasonable and proper purpose and with the sanction in writing of the Master.

* In the Act No. 6 of 1896, section 10, read as follows:—

10. The order of adoption shall confer the surname of the adopting parent on the adopted child *in addition to the proper name of the child.*

The words in italics above were deleted from the said section 10 by section 3 of the Act No. 9 of 1921, which reads as follows:—

3. Section ten of the Adoption of Children Act, 1896, is hereby amended by omitting the words "in addition to the proper name of the child," and every order of adoption made under the principal Act before the commencement of this Act shall have effect as if those words were omitted as from the commencement of the principal Act.

† Now Registration of Births, Deaths, and Marriages Act, 1961. (Part VI)

12. It shall be the duty of the Registrar of the Supreme Court to furnish to the Registrar General under the Registration of Births, Deaths, and Marriages Act, 1894,[†] at intervals of not exceeding six months, a return in writing in the prescribed form containing information in respect of the terms and conditions of any variation, reversal or discharge of an order for adoption, and the Registrar General shall cause an entry of such information to be made in the entry of the birth of the adopted child in the register of births.

Registration by Registrar General of Orders of Adoption.
Added by No. 9 of 1921, s. 5, renumbered in the 1943 Reprint† as s. 12; amended by No. 22 of 1949, s. 7; No. 51 of 1959, s. 4.

12A. (1) Where, after the coming into operation of the Adoption of Children Act Amendment Act, 1949, an order of adoption is made under the provisions of this Act or filed under the provisions of section thirteen A of this Act in respect of a child whose birth is registered pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948,[†] the Registrar of the Supreme Court shall forthwith give to the Registrar General a certified copy of the order of adoption, together with information in respect of the date and place of birth of the child and the name (commonly called the Christian name), by which the child shall be known after the adoption, the surname conferred on the child by adoption and the name and surname and residence of the adopting parent or parents.

Registrar of Supreme Court to furnish certain particulars to Registrar General.
Added by No. 22 of 1949, s. 8; amended by No. 57 of 1953, s. 4.

(2) On receipt of the certified copy and information referred to in the last preceding subsection, the Registrar General shall, in the prescribed form, re-register the birth of the child in accordance with the particulars disclosed.

(3) [*Repealed by No. 57 of 1953, s. 4 (b).*]

[†] i.e. the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

[†] Now Registration of Births, Deaths, and Marriages Act, 1961. (Part VI)

(4) The index of the register which is kept in the office of the district registrar and in the office of the Registrar General respectively, shall in each case be amended so as to refer to the re-registration.

(5) The original entry of the birth of the child, the duplicate of that original kept in the general registry shall not be open to inspection and a certified copy of the original entry of the birth of the child or the duplicate of that original which is kept in the general registry or the entry relating to the re-registration of the birth of the child shall not be issued, except with the approval of the Registrar General.

(6) In this section "prescribed" means prescribed by regulations made under the Registration of Births, Deaths and Marriages Act, 1894-1948.¹

Registration in the name of adopting parent.
Added by No. 57 of 1926, as s. 10A, renumbered s. 13 in the 1943 Reprint.*
Repealed and re-enacted by No. 22 of 1949, s. 9; amended by No. 57 of 1953, s. 5; No. 51 of 1959, s. 5.

13. (1) (a) Where before the commencement of the Adoption of Children Act Amendment Act, 1949, an order of adoption has been made under the provisions of this Act or a certified copy of an Order of Adoption has been filed in the Supreme Court under the provisions of the next succeeding section in respect of a child whose birth is registered pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948¹ or where prior to the commencement of the Adoption of Children Act Amendment Act (No. 2), 1953, an order of adoption has been made under the provisions of this Act in respect of a child whose birth is not so registered, the Registrar General on application being made to him in the prescribed form and on production of a certified copy of the Order of Adoption and on payment of the prescribed fee by the adopting parent or a person having knowledge of the true facts of the case shall in the prescribed form re-register or register, as the case

* i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

¹ Now Registration of Births, Deaths, and Marriages Act, 1961. (Part VI)

may be, the birth of the child in accordance with the particulars disclosed in the Order of Adoption, and in the firstmentioned prescribed form.

(b) The index of the register kept in the office of the district registrar and the index of the register kept in the office of the Registrar General, shall, in each case, be amended so as to refer to the re-registration or registration.

(c) The original entry of the birth of the child and the duplicate thereof kept in the general registry, shall not be open to inspection and no certified copy of the original entry of the birth of the child or the duplicate thereof, kept in the general registry or the entry relating to the re-registration of the birth of the child, shall be issued, except with the approval of the Registrar General.

(d) (i) In the case of a child born in another State or Territory of the Commonwealth or a part of Her Majesty's Dominions with which arrangements have been made under the provisions of section thirteen A of this Act, the Registrar General, on receipt of the application, the certified copy of the order of adoption and the fee referred to in paragraph (a) of this subsection, shall by written notice inform the Director of the Child Welfare Department of the receipt by him of the application.

(ii) On receipt of the notice, the Director shall send or cause to be sent a certified copy of the order of adoption with such additional information as is required by the relevant arrangement to be transmitted to the appropriate authority in that State, or Territory or part of Her Majesty's Dominion as the case may be, in the manner provided in the arrangement.

(2) In this section "prescribed" means prescribed by regulations made under the Registration of Births, Deaths and Marriages Act, 1894-1948.¹

¹ Now Registration of Births, Deaths, and Marriages Act, 1961.

Arrangements with other parts of Her Majesty's Dominions for transmission of Orders of Adoption.

Added by No. 31 of 1945, s. 2.

Repeated and re-enacted by No. 57 of 1953, s. 6.

13A. (1) The Minister for Child Welfare may make arrangements with the Minister or other appropriate authority administering any law relating to the adoption of children in any other State or territory of the Commonwealth or in any part of Her Majesty's Dominions, for the transmission to or by him, as the case requires, of a certified copy of an order of adoption, whether the order is made before or after the coming into operation of the Adoption of Children Act Amendment Act (No. 2), 1953, concerning a child born in this State and adopted under the law of that other State, territory or Dominion or born in that other State, territory or Dominion and adopted under the provisions of this Act.

(2) Where a certified copy of an order of adoption made in any other State or territory of the Commonwealth or a part of Her Majesty's Dominions, whether the order is made before or after the coming into operation of the Adoption of Children Act Amendment Act (No. 2), 1953, is received in pursuance of an arrangement made under the provisions of subsection (1) of this section, it shall be filed in the Supreme Court and thereupon shall be dealt with as if it were an order of adoption made under the provisions of this Act.

(3) In this section the expression, "Order of Adoption" includes an order varying, reversing, or discharging an Order of Adoption.

Registrar General to register birth of children adopted in this State but born outside the State.

Added by No. 57 of 1953, s. 7.

13B. (1) Where an order of adoption in respect of a child whose birth is not registered in this State pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948,¹ is—

- (a) made under the provisions of this Act; or
- (b) filed in the Supreme Court in pursuance of subsection (2) of section thirteen A of this Act,

¹ Now Registration of Births, Deaths, and Marriages Act, 1961.

the Registrar of the Supreme Court shall forthwith give to the Registrar General a certified copy of the Order of Adoption together with particulars in respect of the date and place of birth of the child and the name (commonly called the Christian name) by which the child shall be known after the adoption, the surname conferred on the child by adoption and the name and surname and place of residence of the adopting parent or parents.

(2) (a) On receipt of the certified copy and particulars referred to in the last preceding subsection the Registrar General shall in the prescribed form, register the birth of the child in accordance with the particulars disclosed.

(b) The registration of the birth of the child shall not be open to inspection and a certified copy of the registration of birth shall not be issued, except with the approval of the Registrar General.

(3) In this section "prescribed" means prescribed by regulation made under the Registration of Births, Deaths and Marriages Act, 1894-1948.¹

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.
Added by No. 100 of 1964, s. 16.

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

Recognition of foreign adoptions.
Added by No. 100 of 1964, s. 17.

¹ Now Registration of Births, Deaths, and Marriages Act, 1961.

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.

(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.

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.
Added by
No. 100 of
1964, s. 18.

(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.

Territorial
application.
Added by
No. 100 of
1964, s. 19.

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.

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. Added by No. 100 of 1964, s. 20. Amended by No. 113 of 1965, s. 8.

- (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: Four hundred dollars 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.

Restriction
on
advertising.
Added by
No. 100 of
1964, s. 21.
Amended by
No. 113 of
1965, s. 8.

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: Four hundred dollars 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.

Restriction
on publica-
tion of
identity of
parties.
Added by
No. 100 of
1964, s. 22.
Amended by
No. 113 of
1965, s. 8.

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—

- (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: Four hundred dollars 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.

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.

Undue influence.
Added by No. 100 of 1964, s. 23.
Amended by No. 113 of 1965, s. 8.

Penalty: Four hundred dollars or imprisonment for six months.

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 first mentioned 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—

Certificate as to health of child to be given to Director.
Added by No. 100 of 1964, s. 24.
Amended by No. 113 of 1965, s. 8.

- (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: One hundred dollars.

Offence of making unauthorised arrangements.

Added by No. 100 of 1964, s. 25.

Amended by No. 113 of 1963, s. 8.

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: Two hundred dollars.

(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.

Authority to prosecute.

"This Act" includes regulations.

S. 4 Act No. 30 of 1918.

Added by No. 100 of 1964, s. 26.

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.

Power to make rules.

No. 6 of 1896, s. 11; renumbered s. 14 in the 1943 Reprint.*

Renumbered s. 25 by Act No. 100 of 1964, s. 27.

25. The Governor may from time to time make such rules as he thinks fit, prescribing the forms and mode of procedure to be used in exercising the jurisdiction hereby conferred upon any Judge, and prescribing the mode of registering and keeping a proper register of all orders made under this Act, and also prescribing the fees to be paid in respect of such procedure, registration, and otherwise, and generally giving full effect to the provisions of this Act.

* i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.