

WESTERN AUSTRALIA.

ADOPTION OF CHILDREN ACT 1896.

ARRANGEMENT

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ADOPTION OF CHILDREN.

No. 6 of 1896.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 35 of 1915, assented to 13 September 1915;
No. 5 of 1916, assented to 17 November 1916;
No. 9 of 1921, assented to 8 November 1921;
No. 57 of 1926, assented to 24 December 1926;
No. 31 of 1945, assented to 30 January 1946;
No. 22 of 1949, assented to 22 October 1949;
No. 53 of 1953, assented to 9 January 1954;
No. 57 of 1953, assented to 9 January 1954;
No. 51 of 1959, assented to 25 November 1959;
No. 84 of 1962, assented to 6 December 1962;
No. 100 of 1964,¹ assented to 23 December 1964;
No. 24 of 1971,² assented to 1 December 1971;
No. 49 of 1973,³ assented to 6 November 1973;
No. 106 of 1975,⁴ assented to 1 December 1975;
No. 112 of 1976,⁵ assented to 25 November 1976;
No. 52 of 1977,⁶ assented to 18 November 1977;
No. 67 of 1979,⁷ assented to 21 November 1979;
No. 85 of 1980,⁸ assented to 9 December 1980;
No. 92 of 1981,⁹ assented to 4 December 1981,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to make Provision for the Adoption of Children.

[Assented to 23 September 1896.]

BE it enacted—

1. The short title of this Act is the *Adoption of Children Act 1896-1981*. Short title.

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

² Proclaimed to come into operation on 1 July 1972. See *Gazette* 23/6/72, p. 2027.

³ Proclaimed to come into operation on 1 March 1974. See *Gazette* 22/2/74, p. 519.

⁴ Family Court Act 1975, the relevant provisions proclaimed to operate from 1 June, 1976. See *Gazette* 7/5/76, p. 1381.

⁵ Proclaimed to come into operation on 14 June 1977. See *Gazette* 10/6/77, p. 1741.

⁶ Section 3 operates from 1/1/78. See s. 2(2) and *Gazette* 23/12/77, p. 4671.

⁷ Proclaimed to come into operation on 11 February 1980. See *Gazette* 8/2/80, p. 383.

⁸ Proclaimed to come into operation on 1 July 1981. See *Gazette* 26/6/81, p. 2285.

⁹ Came into operation on the coming into operation of the Domicile Act 1981 i.e. 1 July 1982. See *Gazette* 25/6/82, p. 2114.

Interpretation.
Substituted by
No. 100 of
1964, s. 3.

Amended by
No. 24 of
1971, s. 3;
No. 106 of
1975, s. 5;
No. 112 of
1976, s. 3.

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

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

“adopting parent” in relation to an adopted child means any person who is authorized 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 eighteen years or a person who has attained that age and in respect of whom an order of adoption is sought or has been made;

“country” includes part of a country;

“Family Court” means the Family Court of Western Australia created by the Family Court Act 1975;

“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;

“Judge” means a Judge of the Family Court and includes an acting Judge of that Court, if any, who for the time being holds an appointment as such pursuant to section 11 of the Family Court Act 1975;

“memorandum”, in relation to an order of adoption, an order discharging an order of adoption, or an order consequential or ancillary to such a discharging order—

- (a) where the order is made under this Act, means memorandum in the prescribed form; and
- (b) where the order is made in any other State or Territory of the Commonwealth or in New Zealand, means memorandum made in accordance with the law in respect of adoption of children in that State or Territory or in New Zealand, as the case may be;

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

“Registrar General” means the person appointed Registrar General under the Registration Of Births, Deaths and Marriages Act 1961, and includes any person appointed to be Deputy Registrar General under that 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, a person whose parents were not married to each other at the time of his birth or subsequently, or depends upon the adoption of any person;

“the Department” means the Department for Community Welfare of the State;

“the Director” means the Director of the Department for Community Welfare appointed under section seven of the Community Welfare Act 1972, 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.

Welfare and
interest of child
to be
paramount.
Inserted by
No. 24 of
1971, s. 4.

2A. For all purposes of this Act, the welfare and interest of the child shall be regarded as the paramount consideration.

Jurisdiction.
Substituted by
No. 24 of
1971, s. 5.

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

Persons in
whose favour
adoption
orders may be
made.
Substituted by
No. 24 of
1971, s. 5.
Amended by
No. 112 of
1976, s. 4.

4. (1) Except as provided by this section, an order of adoption shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to subsection (3) of this section, where a Judge is satisfied that in the particular circumstances of the case it is desirable to do so, the Judge may make an order of adoption in favour of one person.

(3) A Judge shall not make an order of adoption in favour of one person if that person is married and not living separately and apart from his or her spouse unless that person's spouse consents in writing to the application for the order of adoption.

(4) A judge may make an order of adoption in favour of a spouse of a person who is the natural parent of a child or who is the parent of a child by adoption or both the spouse and that person jointly.

(5) A Judge shall not make an order of adoption in favour of a person or persons either of whom—

(a) has not attained the age of eighteen 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 the applicant, or at least one of the applicants, is a natural parent or relative of the child or the Judge considers that in the particular circumstances of the case it is desirable to make the order of adoption.

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.

Inserted by No. 100 of 1964, s. 4.

Amended by No. 24 of 1971, s. 6; No. 49 of 1973, s. 3; No. 112 of 1976, s. 5.

(2) In the case of a child other than a child referred to in subsection (3) or subsection (4) of this section, the appropriate persons are every person who is a parent or guardian of the child.

(3) In the case of a child whose parents were not married to each other at the time of his birth or subsequently and 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 or if the child has attained the age of eighteen years.

(6) In respect of any application for an order of adoption made after the coming into operation of the Adoption of Children Act Amendment Act 1973, where all the consents given—

- (a) are, on the date they are given, the only consents necessary under this section; and
- (b) are not revoked under section four D of this Act,

the Judge may make the order of adoption without any further consent that has after that date become necessary under this section unless paragraph (c), (d) or (e) of subsection (1) or subsection (5) of section 4H of this Act has had effect in respect of the child the subject of that application.

Consents to be construed as general consents except in certain cases. Inserted by No. 100 of 1964, s. 5. Amended by No. 24 of 1971, s. 7; No. 112 of 1976, s. 6.

4B. (1) Subject to this section, for the purposes of this Act, a consent to the adoption of a child who has not attained the age of eighteen years 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.

(2a) Where a consent is given to the adoption of a child—

- (a) by a person who is the spouse of—
 - (i) a natural parent of the child; or
 - (ii) a parent of the child by adoption; or
- (b) by two persons one of whom is a natural parent of the child or a parent of the child by adoption,

the consent shall be contrued as a consent to the adoption of the child by that person 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, authorized the Director or other person to make arrangements for the adoption of the child in this State or the Director is, under subsection (13) of section four H of this Act, guardian 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,

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.

Consents given
under law of
other State or
Territory.
Inserted by
No. 100 of
1964, s. 6.
Amended by
No. 24 of
1971, s. 8.

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 but a general consent

Revocation of
consents.
Inserted by
No. 100 of
1964, s. 7.
Amended by
No. 24 of
1971, s. 9;
No. 106 of
1975, s. 5.

shall be deemed to be revoked if the Director, pursuant to subsection (5) of section four H of this Act, ceases to be the guardian of the child.

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

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

Form of
consents.
Vide s. 25 Act
No. 30 of
1918.
Inserted 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.
Inserted by
No. 100 of
1964, s. 9.
Amended by
No. 112 of
1976, s. 7.

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 or, if the instrument of consent is given pursuant to the law of another State or Territory of the Commonwealth and the law of that State or Territory prescribes another period then within that other period, 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.

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.
Inserted 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.
Inserted by
No. 100 of
1964, s. 11.
Amended by
No. 24 of
1971, s. 10;
No. 106 of
1975, s. 5;
No. 52 of
1977, s. 3.

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, subject to this section and to the Legal Representation of Infants Act 1977, 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 others 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;
- (e) the Judge, by order, makes other provision for the guardianship of the child; or
- (f) the Director, pursuant to subsection (15) of this section, executes an instrument in writing renouncing 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.

(3) Without limiting the powers conferred on the Director in respect of a child of whom he is guardian under this section, and without affecting the status of the child, the Director may extend to the child such benefits as he might have extended to him if the child were a ward within the meaning of the Child Welfare Act 1947.

(4) A person who, without the consent of the Director, removes out of the State a child of whom the Director is guardian under this section, or suffers the child to remove or be removed out of the State is guilty of an offence against this Act.

Penalty: Two hundred dollars.

(5) Where the Director is, under subsection (1) or subsection (11) of this section, the guardian of a child but the Director is of the opinion that it is not possible or desirable to place the child in the custody

of any person for the purposes of adoption or that the welfare and interest of the child would not be promoted by adoption, the Director shall serve notice to that effect on the Registrar of the Family Court and on every person known to the Director as a parent, or guardian immediately before the Director became guardian, of the child and thereupon the Director ceases for all purposes to be the guardian of the child and the person who was the guardian of the child immediately before the Director became guardian is again the guardian of the child.

(6) Where, pursuant to subsection (5) of this section, the Director ceases to be the guardian of the child—

- (a) the Director may place the child in the custody of any person who is a parent or guardian of the child; or
- (b) the Minister may commit the child to the care of the Department as though the child were one to whom section forty-seven B of the Child Welfare Act 1947 applies and that section shall thereupon apply to and in respect of that child.

(7) The fact that, under this section, the Director is the guardian of the child or that, under subsection (6) of this section, a child is committed to the care of the Department does not affect the liability of any person to provide adequate means of support for the child.

(8) Where the Director extends benefits—

- (a) under subsection (3) of this section, to a child of whom the Director is guardian under subsection (1) or subsection (11) of this section; or
- (b) to a child by reason of the child being committed, under subsection (6) of this section, to the care of the Department,

and the Director thereby incurs costs or expenses, the Director may, at any time in a court of competent jurisdiction, recover the whole or any part of the costs and expenses from any parent, guardian, or guardian immediately before the Director became guardian, of the child who is able to pay, or contribute to, them.

(9) 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 manner whatsoever brings to the notice of members of the public in this State, in relation to an action in a court by the Director, under subsection (8) of this section, the name of the child, or of the person against whom the action is brought, is guilty of an offence against this Act.

Penalty: Four hundred dollars or imprisonment for six months.

(10) Where, under this section, the Director becomes, or a Judge orders that the Director shall remain, the guardian of a child and the Director does not, within a period of one year thereafter, cease, under this Act, to be the guardian of the child, the Director may apply to a Judge for such order for the care and control of the child as the Judge thinks fit, and the Judge may make such an order.

(11) Under subsection (10) of this section but without limiting the generality thereof—

- (a) the Judge may order that the child be committed to the care of the Department as though the child were one to whom section forty-seven B of the Child Welfare Act 1947 applies and that section shall thereupon apply to and in respect of that child; or
- (b) the Judge may order that the Director shall remain the guardian of the child for a further period of one year unless within that period the Director ceases, under the other provisions of this Act, to be the guardian.

(12) The Director may, on such terms and conditions as he thinks fit, place a child of whom he is a guardian under this section in the care of any suitable person who has agreed to have the child in his care.

(13) Where—

- (a) an officer of another State or of a Territory of the Commonwealth whose functions correspond to those of the Director under this Act has become the guardian of a child under a law of that State or Territory corresponding to this section;
- (b) any general consent that has been given to the adoption of the child cannot be lawfully revoked by the person by whom it was given;
- (c) the Director is satisfied that the child is present in this State;
- (d) that officer has requested the Director to accept, and the Director has, by an instrument in writing forwarded to that officer, agreed to accept, guardianship of the child; and
- (e) under that law, that officer ceases, upon the execution by him of an instrument renouncing his guardianship of the child, to be the guardian of the child,

the Director is, upon the execution of that instrument, 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—

- (f) an adoption order is made in respect of the child;
- (g) a Judge, by order, makes other provision for the guardianship of the child; or
- (h) the Director pursuant to subsection (15) of this section, executes an instrument in writing renouncing guardianship of the child.

(14) Subsection (13) of this section does not apply to a child for whose guardianship provision is made by any Act or law relating to child welfare.

(15) Where—

- (a) the Director has become the guardian of a child under this section;
- (b) any general consent that has been given to the adoption of the child cannot be lawfully revoked by the person by whom it was given;
- (c) the Director is satisfied that the child is present in another State or in a Territory of the Commonwealth;
- (d) the Director has requested an officer of that State or Territory whose functions correspond to those of the Director under this Act to accept, and that officer has, by an instrument in writing forwarded to the Director, agreed to accept, guardianship of the child; and
- (e) under the law of that other State or Territory, that officer will, upon the execution by the Director of an instrument in writing renouncing the Director's guardianship of the child, become the guardian of the child,

the Director may execute an instrument in writing renouncing guardianship of the child and, where he does so, shall forthwith forward the instrument to that officer.

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

Consents
required"
previous to
adoption of
child.

Amended by
No. 9 of 1921,
s. 2; No. 22 of
1949, s. 4;
No. 57 of
1953, s. 2;
No. 51 of
1959, s. 2;
No. 100 of
1964, s. 13;
No. 24 of
1971, s. 11;
No. 49 of
1973, s. 4.

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

- (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;
- (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*; subject to subsection (1a) of this section, that, in the opinion of the Director, the applicant is a proper person to be an adopting parent or that, notwithstanding the opinion of the Director to the contrary, the applicant is such a proper person; 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;
- (4) shall be satisfied that the child, if over the age of twelve years, consents to the adoption unless the child is under the age of eighteen years and 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;

[Paragraphs (5), (6), (7) and (8) repealed by No. 100 of 1964, s. 13.]

[Paragraph (8a) inserted by No. 51 of 1959, s. 2.
Repealed by No. 24 of 1971, s. 11.]

(8b) subject to subsection (1a) of this section, shall require a responsible officer of the Department to make a written report to him, and deliver a copy thereof to the Director, as to—

- (a) matters that are referred to in subsections (2) and (3) of this section;
- (b) such other matters concerning the applicant or the child as the Judge determines;

(8c) subject to subsection (1a) of this section, shall require the Director to furnish to him in writing the opinion of the Director, formed after considering the contents of the report referred to in paragraph (8b) of this subsection, as to whether or not the applicant is a proper person to be an adopting parent, including in the opinion, where the case requires, special reasons related to the welfare and interest of the child why the order of adoption should be made;

(8d) shall require the applicant, or his solicitor, to furnish to him any particulars known to the applicant, or his solicitor, relating to the assets, liabilities, and financial standing of any parent (whether natural or adoptive) of the child and any kindred of the parent.

[Paragraph (9) repealed by No. 100 of 1964, s. 13.]

(1a) Where the child the subject of an application for an order of adoption is a child of one of the applicants, the provisions of subsection (1) of this section in relation to the opinion of the Director and in relation to the written report of the responsible officer of the Department do not apply to or in relation to that application unless the Judge by order directs that he requires to be informed on all or any

of the matters referred to in those provisions in which case those provisions shall apply to the extent necessary to give effect to the order.

(1b) Notwithstanding subsection (1a) of this section, the Director may report any information to the Judge regarding an applicant as the Director thinks fit.

(2) Subject to subsection (1a) of this section, in forming an opinion or being satisfied that an applicant is a proper person to be an adopting parent, the Director or the Judge, as the case may be, shall consider—

- (a) the age of the applicant;
- (b) his state of health;
- (c) the results of any x-ray examinations of the applicant which the Director considers necessary or desirable;
- (d) his assets, liabilities, and financial standing;
- (e) his personal repute;
- (f) his place of residence and the accommodation he has available there;
- (g) his ability to have children;
- (h) the size of his family;
- (i) his family stability;
- (j) his personal maturity and ability to give love and care to a child;
- (k) any other matter relevant to the applicant being such a proper person on which the Director has information or the Judge has evidence, as the case may be; and
- (l) notwithstanding any other matter referred to in this subsection, any special reasons related to the welfare and interest of the child why the order of adoption should be made.

(3) Subject to subsection (1a) of this section, in being satisfied that the welfare and interest of a child will be promoted by an adoption the Judge shall consider—

- (a) any particulars known to a responsible officer of the Department or to the applicant or his solicitor relating to the assets, liabilities, and financial standing of any parent (whether natural or adoptive) of the child and any kindred of the parent;
- (b) any other matter relevant to the welfare and interest of the child on which the Judge has evidence; and
- (c) notwithstanding any other matter referred to in this subsection, any special reasons related to the welfare and interest of the child why the order of adoption should be made.

(4) Where the opinion of the Director, furnished to the Judge under this section, is to the effect that an applicant is a proper person to be an adopting parent, that opinion is, for the purposes of this Act, conclusive evidence to that effect.

(5) Where the opinion of the Director, furnished to the Judge under this section is to the effect that an applicant is not a proper person to be an adopting parent, that opinion is not, for any purpose, conclusive evidence to that effect.

5A. (1) An order of adoption shall not be made unless, at the time of the filing in the Family 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.
Inserted by
No. 53 of
1953, s. 2.
Substituted by
No. 100 of
1964, s. 14.
Amended by
No. 106 of
1975, s. 5.

(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 Family 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 Family 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.

Applicant to
give the
Director notice
of intending
application.
Inserted by
No. 51 of
1959, s. 3.
Amended by
No. 24 of
1971, s. 12;
No. 49 of
1973, s. 5;
No. 106 of
1975, s. 5.

5B. Where a person intends to make an application for an order of adoption, he shall, at least thirty days before the application is filed in the Family Court, notify in writing the Director of the Department for Community Welfare of his intention and subject to subsection (1a) of section 5 of this Act, 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 5 of this Act.

Notice to
deceased
parent's family.
Inserted by
No. 49 of
1973, s. 6.
Amended by
No. 106 of
1975, s. 5.

5C. In respect of any application for an order of adoption made after the coming into operation of the Adoption of Children Act Amendment Act 1973, where one of the applicants was formerly a widow or widower and the child the subject of the application is the child of that applicant and a person who is deceased, the applicants shall, in addition to the notice given under section 5B of this Act and at least thirty days before the application is filed in the Family Court, give written notice of their intention so to do to the surviving father or mother of that deceased person or, if neither survives, to any surviving brother or sister of that deceased person.

5D. A Judge may, on application by the person intending to make an application for an order of adoption—

Reduction of period of notice and dispensing with notice.

Inserted by No. 85 of 1980, s. 3.

- (a) with respect to the period of notice required to be given pursuant to section 5B or section 5C of this Act, make an order on such terms as he thinks fit abridging the period of notice required to be given pursuant to that section;
- (b) with respect to the notice required to be given pursuant to section 5C, make an order dispensing with the requirement to give notice pursuant to that section subject to such conditions (if any) as he may specify in the order,

and where a Judge so orders the period of notice required to be given or the notice, as the case requires, is, subject to compliance with the terms or conditions specified in the order (if any), reduced or dispensed with according to the terms of the order.

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

Child can be adopted by one person only.

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

General effect of adoption orders.

Substituted by No. 24 of 1971, s. 13.

Amended by No. 112 of 1976, s. 8.

- (a) the adopted child becomes a child of the adopted parent or adopting parents, and the adopting parent or adopting parents become the parent or parents of the child, as if the child had been born to the adopting parent or adopting parents in lawful wedlock;
- (b) the adopted child ceases to be a child of any person who was a parent (whether natural or adoptive) of the child before the making of the order of adoption, and any such person ceases to be the parent of the child;

Adoption of Children.

- (c) the relationship to one another of all persons (including the adopted child and an adopting parent or former parent of the adopted child) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant;
- (d) any existing appointment of a person, by will or deed, as guardian of the adopted child ceases to have effect; and
- (e) any previous adoption of the child (whether effected under the law of the State or otherwise) ceases to have effect,

but where an order is made pursuant to subsection (4) of section four of this Act in favour only of a spouse of a person referred to in that subsection that spouse is a parent of the child jointly with that person as if the child had been born to them in lawful wedlock and notwithstanding anything in paragraphs (a) to (e) (both inclusive) of this subsection—

- (f) the child does not cease to be a child of that person and that person does not cease to be a parent of the child;
- (g) the relationship between the child and that person is not determined;
- (h) if the child were the adopted child of that person, the order does not have the effect of terminating the adoption.

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

8. (1) The provisions of subsection (1) of section seven of this Act have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the coming into operation of the Adoption of Children Act Amendment Act 1971, except that—

Effect of orders as regards dispositions of property, etc. Substituted by No. 24 of 1971, s. 14.

- (a) those provisions do not affect a disposition of property by a person who, or by persons any of whom, died before the coming into operation of that Act; and
- (b) those provisions do not affect a disposition of property that had taken effect in possession before the coming into operation of that Act.

(2) The provisions of subsection (1) of section seven of this Act do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the coming into operation of the Adoption of Children Act Amendment Act 1971.

(3) Where—

- (a) before the coming into operation of the Adoption of Children Act Amendment Act 1971, a person made, by an instrument other than a will, a disposition of property;
- (b) the disposition had not taken effect in possession before the coming into operation of the Adoption of Children Act Amendment Act 1971; and
- (c) it did not appear from the instrument that it was the intention of that person to include adopted children as objects of the disposition,

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

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the coming into operation of the Adoption of Children Act Amendment Act 1971, an order of adoption made under this Act has the same effect as if that Act had not come into operation.

(5) Nothing in section seven or this section of this Act affects the operation of any provision in a will or other instrument (whether made before or after the coming into operation of the Adoption of Children Act Amendment Act 1971) distinguishing between adopted children and other than adopted children.

(6) The provisions of sections seven and eight of this Act, other than subsection (4) of that section eight, apply in relation to an order of adoption made under this Act before the coming into operation of the Adoption of Children Act Amendment Act 1971, as if that Act had been in operation when the order was made and the order had been made under this Act as amended by that Act.

Order of
adoption not to
affect distri-
bution of
property by
trustees or
personal
represent-
atives unless
notice given.
Inserted by
No. 24 of
1971, s. 15.

8A. (1) Notwithstanding any other provision of this Act, trustees or personal representatives may, subject to this section, convey, transfer, or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption has been effected by virtue of which a person is not entitled to an interest in the property.

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

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

9. (1) The Director or Attorney General may apply to a Judge for an order discharging an order of adoption, whether made by himself or any other Judge, and whether made before or after the coming into operation of the Adoption of Children Act Amendment Act 1971, and the Judge may make such an order if he is satisfied that—

Order may be varied, reversed, or discharged.
Substituted by No. 24 of 1971, s. 16.
Amended by No. 92 of 1981, s. 3.

- (a) the order of adoption, or any consent for the purposes of the order of adoption, was obtained by fraud, duress, or other improper means; or
- (b) there is some exceptional reason why, subject to the welfare and interest of the child, the adoption order should be discharged.

(2) A Judge shall not make an order under this section if it appears to him that the making of the order would be prejudicial to the welfare and interest of the child.

(3) Where a Judge makes an order discharging an order of adoption that was made in reliance on a general consent, the general consent remains in operation for the purposes of a further application for the adoption of the child unless the Judge otherwise orders.

(4) Where a Judge makes an order under this section he may at the same time, or he or any other Judge may subsequently, make such consequential or ancillary orders as he thinks necessary in the interests of justice or the welfare and interest 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 of the child.

(5) Upon the making of an order under this section discharging an order of adoption, but subject to any order made under subsection (4) of this section and

to subsection (2) of section seven of this Act, the rights, privileges, duties, liabilities, and relationships under the law of the State of the child and all other persons shall be the same as if the order of adoption had not been made, but without prejudice to—

- (a) anything lawfully done;
- (b) the consequences of anything lawfully done; or
- (c) any proprietary right or interest that became vested in any person,

while the order of adoption was in force.

Registrar
General to
endorse.
Inserted by
No. 57 of
1953, s. 3.
Amended by
No. 24 of
1971, s. 17;
No. 106 of
1975, s. 5.

9A. Where an order is made under section nine of this Act the Registrar of the Family Court shall forthwith give to the Registrar General a certified copy or a memorandum of the order, whereupon the Registrar General shall endorse in accordance with the particulars therein—

- (a) the registration of the birth of the child concerned made pursuant to Part IV of the Registration of Births, Deaths and Marriages Act 1894-1948¹;
- (b) the re-registration of the birth made pursuant to section 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;
No. 112 of
1976, s. 9;
No. 85 of
1980, s. 4.
Cf. Act No. 34
of 1961, s. 29.

*10. (1) Subject to subsection (1a) of this section, the surname to be conferred on the adopted child by an order of adoption shall be—

- (a) where the adoption is by two adopting parents, the surname of the adopting father;

¹ Now Registration of Births, Deaths and Marriages Act 1961.
* 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 Act No. 9 of 1921, which reads as follows:—

3. Section 10 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.

- (b) where the adoption is by one adopting parent and paragraph (c) of this subsection does not apply in relation to the adoption, the surname of the adopting parent;
- (c) where the adoption is made pursuant to subsection (4) of section 4 of this Act by one adopting parent who is the husband of the parent of the child, the surname of the husband of the parent of the child.

(1a) Where an application for an order of adoption—

- (a) is in respect of a child who has attained the age of twelve years; and
- (b) the application seeks to allow the child to continue to use the surname by which the child is known at the time of the making of the application for the order of adoption,

the Judge may order that the child be allowed to continue to use the surname by which the child is known at the time of the making of the application if it is established to the satisfaction of the Judge that—

- (c) the child consents to continue to be known by the surname by which he is known at the time of the making of the application for the order of adoption; and
- (d) in all the circumstances of the case in question to allow the child to continue to use the surname by which the child is known at the time of the making of the application is for the welfare and in the best interests of the child.

(2) Where—

- (a) a child the subject of an application for an order of adoption has attained the age of twelve years; and
- (b) the application seeks an order to confer on the child a name (commonly known as a Christian name) other than the name by which the child is known immediately before the making of the order,

the Judge shall not make an order conferring that other name on the child unless he is satisfied that the child agrees to be known by that other name.

Inspection of records.
Inserted by No. 9 of 1921, s. 4.
Renumbered in the 1943 Reprint as s. 11.
Amended by No. 100 of 1964, s. 15; No. 106 of 1975, s. 5; No. 67 of 1979, s. 23.
Cf. Act No. 5 of 1916, s. 1.

11. The record of any proceedings in the Supreme Court or the Family 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 a Registrar of the Supreme Court or the Registrar of the Family Court, as the case requires.

Registration by Registrar General of orders of adoption.
Inserted 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; No. 24 of 1971, s. 18; No. 106 of 1975, s. 5.

12. It shall be the duty of the Registrar of the Family Court to furnish to the Registrar General under the Registration of Births, Deaths, and Marriages Act 1894,¹ at intervals not exceeding six months, a return in writing in the prescribed form containing information in respect of the particulars of any orders made under section nine of this Act, 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.

Registrar of Family Court to furnish certain particulars to Registrar General.
Inserted by No. 22 of 1949, s. 8.
Amended by No. 57 of 1953, s. 4; No. 24 of 1971, s. 19; No. 106 of 1975, s. 5.

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 1894-1948,¹ the Registrar of the Family Court shall forthwith give to the Registrar General a certified copy or a memorandum 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

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

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.

(2) On receipt of the certified copy or the memorandum 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.

[Subsection (3) repealed by No. 57 of 1953, s. 4 (b).]

(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

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 or a memorandum 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 1894-1948,¹ or where prior to the commencement of the Adoption of Children Act

Registration in the name of adopting parent.
Inserted by No. 57 of 1926, as s. 10A. Renumbered in the 1943 Reprint. as s. 13.
Substituted by No. 22 of 1949, s. 9.
Amended by No. 57 of 1953, s. 5; No. 51 of 1959, s. 5; No. 24 of 1971, s. 20.

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

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 or a memorandum 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 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, New Zealand, 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 or the memorandum 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 Department for Community Welfare 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 or a memorandum 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, New Zealand, 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

13A. (1) The Minister for Community 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, in New Zealand, or in any part of Her Majesty's Dominions, for the transmission to or by him, as the case requires, of a certified copy or a memorandum 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.

Arrangements with other parts of Her Majesty's Dominions for transmission of orders of adoption.
Inserted by No. 31 of 1945, s. 2.
Substituted by No. 57 of 1953, s. 6.
Amended by No. 24 of 1971, s. 21; No. 106 of 1975, s. 5.

(2) Where a certified copy or a memorandum of an order of adoption made in any other State or territory of the Commonwealth, New Zealand, 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 Family 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 term "order of adoption" includes an order discharging an order of adoption and an order that is consequential or ancillary to such a discharging order.

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

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

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

Amended by
No. 24 of
1971, s. 22;
No. 106 of
1975, s. 5.

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 Family Court in pursuance of subsection (2) of section thirteen A of this Act,

the Registrar of the Family Court shall forthwith give to the Registrar General a certified copy or a memorandum 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 or the memorandum 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

Recognition of
Australian and
New Zealand
adoptions.

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

Amended by
No. 24 of
1971, s. 23.

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 or in New Zealand, in accordance with the law of that State or Territory

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

or New Zealand has, so long as it has not been rescinded under the law in force in that State or Territory or New Zealand, the same effect as an order of adoption made in this State under this Act, and has no other effect.

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, other than New Zealand, 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, and has no other effect.

Recognition of foreign adoptions. Inserted by No. 100 of 1964, s. 17. Amended by No. 24 of 1971, s. 24; No. 52 of 1977, s. 4; No. 85 of 1980, s. 5.

(2) This section applies to an adoption in a country if—

(a) the adoption was effective according to the law of that country;

[Paragraph (b) deleted by No. 85 of 1980, s. 5.]

(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 recognize 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, other than New Zealand, 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.

Declarations of
validity of
foreign
adoptions.
Inserted by
No. 100 of
1964, s. 18.
Amended by
No. 24 of
1971, s. 25;
No. 106 of
1975, s. 5.

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, other than New Zealand, 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.

(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 Family Court to be a true copy, or of a memorandum of the order, 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.

Director to
have
supervision of
certain
adopted
children.
Inserted by
No. 85 of
1980, s. 6.

16A. (1) Subject to subsection (2) and subsection (3) of this section where—

- (a) a child is adopted in a country, other than New Zealand, outside the Commonwealth and the Territories of the Commonwealth, whether or not the adoption is an adoption that has, pursuant to this Act, the same effect as an adoption order under this Act;
- (b) the adoption in relation to the child has been in force for a period not exceeding twelve months;
- (c) every adoptive parent of the child was not at the time of the making of the order of adoption with respect to the child a national or a citizen of the country in which the order was made; and
- (d) the child is present in this State,

the Director may supervise the welfare and interests of the child for a period of twelve months commencing from the date of the arrival of the child in this State and any person authorized in writing by the Director for that purpose has a right of access to the child at all reasonable times during that period.

(2) Where a child whose welfare and interests may be supervised by the Director pursuant to subsection (1) of this section has, after being adopted but before the arrival of the child in this State, been resident in any other State or in a Territory of the Commonwealth or in New Zealand the period during which the child is subject to the supervision of the Director is reduced proportionately to the period of such residence in that other State or Territory or in New Zealand.

(3) Notwithstanding subsection (1) of this section, the Director may at his discretion exempt any child to whom the provisions of that subsection would otherwise apply from the provisions of that subsection.

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.
Inserted by
No. 100 of
1964, s. 19.

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.
Inserted by
No. 100 of
1964, s. 20.
Amended by
No. 113 of
1965, s. 8;
No. 24 of
1971, s. 26.

- (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 authorized 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 or of New Zealand, 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 or New Zealand.

Restriction on
advertising.
Inserted 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 item 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.

20. (1) Subject to this section, a person—

- (a) who publishes, or causes to be published in a newspaper or other periodical publication, or by means of broadcasting or television; or
- (b) who by any means whatsoever brings to the notice of the public in this State,

anything that will identify or be likely to identify any person—

- (c) who is or proposes to be the subject of or a party to an application for an order of adoption;
- (d) who is the relative of a person who is the subject of or a party to an application for an order of adoption;
- (e) who has consented to the adoption of a child; or
- (f) who is or may be affected by an order of adoption,

under this Act, or under a law of another State of the Commonwealth or of New Zealand, is guilty of an offence against this Act.

Penalty: Four hundred dollars or imprisonment for twelve 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 another person, with a view to inducing that other person—

- (a) to offer or refrain from offering a child for adoption under this Act; or

Restriction on publication of identity of parties.

Inserted by No. 100 of 1964, s. 22.

Amended by No. 113 of 1965, s. 8; No. 24 of 1971, s. 27; No. 49 of 1973, s. 7.

Undue influence.

Inserted by No. 100 of 1964, s. 23.

Substituted by No. 112 of 1976, s. 10.

(b) to revoke an instrument of consent for the adoption of a child under this Act,
is guilty of an offence.

Penalty: Four hundred dollars or imprisonment for six months.

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

Inserted by No. 100 of 1964, s. 24.

Amended by No. 113 of 1965, s. 8; No. 24 of 1971, s. 28.

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, and has informed himself of the results of a serology test carried out in relation to 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 unauthorized arrangements.

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

Amended by No. 113 of 1965, s. 8; No. 112 of 1976, s. 11.

23. (1) A person who, without the written consent of the Director—

- (a) 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; or
- (b) receives the possession, custody or control of a child with a view to the adoption of the 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 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.

23A. Where a child is in this State and—

- (a) is, pursuant to section four H of this Act, under the guardianship of the Director; or
- (b) is the subject of an application for an order for adoption under this Act,

a person shall not—

- (c) take, send or remove the child from the State; or
- (d) cause, aid or abet the taking, sending or removal of the child from the State,

without the written consent of the Director.

Penalty: \$400.

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.

24A. (1) A person who occupies or has occupied the office of Minister, Director, or officer of the Department, or who otherwise carries out or has carried out any duty or function under this Act, is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred or which purports to be conferred, or the carrying out of any duty imposed or which purports to be imposed, by this Act.

(2) For the purposes of subsection (1) of this section, anything done or omitted to be done by a person therein mentioned, in good faith and for

Child not to be removed from State pending order of adoption.
Inserted by No. 85 of 1980, s. 7.

Authority to prosecute.
"This Act" includes regulations.
S. 4 Act No. 30 of 1913.
Inserted by No. 100 of 1964, s. 26.
Exemption from personal liability.
Inserted by No. 24 of 1971, s. 29.

reasonable or probable cause in promoting the welfare and interest of a child, is deemed to have been done pursuant to a duty imposed by this Act.

Assistance for
an order of
adoption.
Inserted by
No. 85 of
1980, s. 8.

24B. (1) The Director may provide services assisting persons who desire to obtain an adoption under this Act.

(2) The Minister may, by order published in the *Gazette*, determine the charges to be paid in relation to services provided by the Director under subsection (1) of this section.

(3) An order under subsection (2) of this section may be revoked or varied by the Minister by a subsequent order published in the *Gazette*.

(4) Subject to any direction given by the Minister either generally or in a particular case, the Director may waive the payment of any charge payable pursuant to an order made under this section.

Power to make
rules.
No. 6 of
1898, s. 11.
Renumbered
in the 1943
Reprint as
s. 14.
Renumbered
s. 25 by Act
No. 100 of
1964, s. 27.
Amended by
No. 24 of
1971, s. 30;
No. 106 of
1975, s. 5.

25. The Judges or a majority of them may from time to time make rules not inconsistent with the Family Court Act 1975 and regulations in force thereunder, 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 prescribing the forms and procedure to be used in carrying out any duty or function under this Act, and generally giving full effect to the provisions of this Act.