

ADOPTION OF CHILDREN.

92.

MODEL BILL.

(Prepared as Commonwealth Bill for Australian Capital Territory
and Northern Territory.)

DRAFT.]

[CONFIDENTIAL.

1964.

LAST VERSION
ON
FILE

A BILL

FOR

AN ACT

Relating to the Adoption of Children in the Australian
Capital Territory and the Northern Territory of
Australia.

BE it enacted by the Queen's Most Excellent Majesty, the
Senate, and the House of Representatives of the
Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Adoption of Children Act* 1964. Short title.

2.—(1.) Subject to this section, this Act shall come into
operation on a date to be fixed by Proclamation. Commence-
ment.

(2.) Sections one, two, three and six, Division 2 of Part III.,
Part V., and section sixty, of this Act shall come into operation
on the date of publication in the *Gazette* of the Proclamation
for the purposes of the last preceding sub-section.

3. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1–6).

Part II.—Jurisdiction (Sections 7–9).

Part III.

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4. The Adoption of Children Ordinance 1938,
the Adoption of Children Ordinance 1940 and the
Adoption of Children Ordinance 1949 are repealed.

5.-(1.) Notwithstanding the repeal effected by
the last preceding section -

(a) an adoption order or interim order made under
the repealed Ordinances and in force at the
commencement of this Ordinance continues in
force; and

(b) an application to the Court of Petty Sessions
for an order under the repealed Ordinances
that was pending immediately before the commence-
ment of this Ordinance may be continued and
dealt with, and proceedings incidental to such
an application may be instituted, continued
and dealt with, under the provisions of the
repealed Ordinances as if this Ordinance had
not been made, but an adoption order made in
pursuance to this paragraph shall have effect
as if made by the Supreme Court under this
Ordinance.

(2.) A consent in writing to the adoption of a
child by a person or persons given by a person before
the commencement of this Ordinance in accordance with
the repealed Ordinances and duly attested and verified
shall, for the purposes of proceedings under this

transitional
provisions.

Ordinance for the adoption of the child by the person or persons specified in the sencent, be deemed to be a sufficient consent of the person giving the consent.

(3.) Subject to the next succeeding sub-section, the provisions of sections thirty and thirty-one (other than sub-section (4.) of this Ordinance apply in relation to an adoption order made under the repealed Ordinances as if this Ordinance had been in force when the order was made and the order had been made under this Ordinance.

(4.) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Ordinance, an adoption order referred to in the last preceding sub-section has the same effect as if the repealed Ordinances had continued in operation.

Note.

Under these provisions, theoretically, the Court of Petty Sessions could, on a pending application for an adoption order, make an interim order giving custody for two years, and could, at the end of the two years, proceed to ~~make~~ make an adoption order under the adjourned application.

Part III.—Adoptions under this Act.

Division 1.—General (Sections 10–18).

Division 2.—Adoption List (Sections 19–20).

Division 3.—Consents to Adoptions (Sections 21–29).

Division 4.—Effect of Adoption Orders (Sections 30–34).

Division 5.—Interim Orders (Sections 35–37).

Part IV.—Recognition of Adoptions (Sections 38–41).

Part V.—Offences (Sections 42–50).

Part VI.—Miscellaneous (Sections 51–60).

4. Upon the commencement of this Act but subject to this Act, the *Adoption of Children Ordinance* 1938–1949 of the Australian Capital Territory and the *Adoption of Children Ordinance* 1949–1950 of the Northern Territory of Australia cease to have effect.

Adoption Ordinances of the Australian Capital Territory and the Northern Territory to cease to have effect.

5.—(1.) Notwithstanding the last preceding section—

(a) an application to a court of a Territory to which this Act applies for an order for the adoption of a child, or for the variation or discharge of an order for the adoption of a child, made under the provisions of the Adoption Ordinance of that Territory and pending immediately before the commencement of this Act may be continued and dealt with, and proceedings incidental to an application so made may be instituted, continued and dealt with, under those provisions as if this Act had not been passed, but an order made in pursuance of this paragraph shall be taken to be made under this Act.

Transitional provisions.

(b) an interim order of a court of a Territory to which this Act applies made under the Adoption Ordinance of that Territory and in force immediately before the commencement of this Act has effect in that Territory as if made under this Act.

(2.) A consent in writing to the adoption of a child given by a person before the commencement of this Act for the purposes of proceedings in a court of a Territory to which this Act applies in accordance with the Adoption Ordinance of that Territory and duly attested and verified shall, for the purposes of proceedings for an order for the adoption of that child under this Act instituted after that commencement, be deemed to have been duly given and attested under this Act.

(3.) Subject to the next succeeding sub-section, the provisions of sections thirty and thirty-one (other than sub-section (4.)) of this Act apply in relation to an adoption order made under, or

continued

continued in force by, the Adoption Ordinance of a Territory to which this Act applies as if this Act had been in force when the order was made and the order had been made under this Act.

(4.) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order referred to in the last preceding sub-section has the same effect as if the Adoption Ordinance under which it was made or continued in force had continued in operation.

6.—(1.) In this Act, unless the contrary intention appears— Interpretation.

“adoption list” means the list kept by the Director under sub-section (1.) of section nineteen of this Act;

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

“child” means a person who has not attained the age of twenty-one years, or a person who has attained that age in respect of whom an adoption order is sought or has been made;

“disposition of property” includes the grant or ^{exercise} interest of a power of appointment in respect of property;

“father”, in relation to a child who is illegitimate, means the putative father;

“general consent” means a consent referred to in ~~paragraph (b)~~ paragraph of sub-section (1.) of section twenty-two of this Act;

“guardian”, in relation to a child, includes—

(a) a person having the custody of the child under a court order; and

(b) a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory of the Commonwealth;

“interim order” means an interim order under Division 5 of Part III. of 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;

“Territory to which this Act applies” means the Australian Capital Territory or the Northern Territory of Australia;

“the Adoption Ordinance” means—

(a) in relation to the Australian Capital Territory—the *Adoption of Children Ordinance 1938-1949* of the Australian Capital Territory; and

(b) in

(b) in relation to the Northern Territory of Australia—the *Adoption of Children Ordinance 1949-1950* of the Northern Territory of Australia;

“the commencement of this Act” means the commencement of the provisions of this Act other than the provisions specified in sub-section (2.) of section two of this Act;

“the Director”, in relation to a Territory to which this Act applies, means the person for the time being holding, or performing the duties of, the office of Director of Child Welfare, or such other office as is prescribed, under the law of that Territory;

“the Registrar of Births, Deaths and Marriages”, in relation to a Territory to which this Act applies, means the person for the time being holding, or performing the duties of, the office of Registrar or Deputy Registrar of Births, Deaths and Marriages under the law of that Territory;

“the Registrar of the Supreme Court” means—

(a) in relation to the Supreme Court of the Australian Capital Territory—the person for the time being holding, or performing the duties of, the office of Registrar of that Court; and

(b) in relation to the Supreme Court of the Northern Territory of Australia—the person for the time being holding, or performing the duties of, the office of Master of that Court;

“the Supreme Court” or “the Court” means—

(a) in relation to adoption in the Australian Capital Territory—the Supreme Court of the Australian Capital Territory; and

(b) in relation to adoption in the Northern Territory of Australia—the Supreme Court of the Northern Territory of Australia;

“the Territory” means—

(a) in relation to adoption in the Australian Capital Territory—that Territory; and

(b) in relation to adoption in the Northern Territory of Australia—that Territory.

(2.) Where an office that is established by an Act or by an Ordinance of a Territory to which this Act applies is referred to in the last preceding sub-section and the holder of that office has power to delegate to another person all or any of his powers and functions under that Act or Ordinance—

(a) the powers and functions of that office that may be so delegated shall be deemed to include the powers and functions of that office under this Act, and any of those

the holder of

"The commencement of this Ordinance" means the commencement of the provisions of this Ordinance other than the provisions specified in sub-section (2.) of section two of this Ordinance;

"the Court" means the Supreme Court;

"the Director" means the Director of Child Welfare;

"the repealed Ordinances" means the Ordinances repealed by section four of this Ordinance.

(2.) Where the holder of an office that is established by another Ordinance is referred to in this Ordinance and the holder of that office has ~~the~~ power to delegate to another person ^{all} or any of his powers and functions ^{under} ~~of~~ that Ordinance -

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

Part II - Jurisdiction.

7. Jurisdiction of Supreme Court Jurisdiction § 15

1964.

in Proceedings

conferred on the Supreme Court to hear and determine ⁱⁿ ~~institution~~ ^{ed} in the Court in accordance with this Ordinance.

10. The court may make an order for the adoption of a child under the provisions of this Act if the applicant for the order is a resident or domiciled in the Territory, and the child was present in the Territory.

11. The court may make an order for the adoption of a child under the provisions of this Act if the applicant for the order is a resident or domiciled in the Territory, and the child was present in the Territory, and the court is satisfied that the child was brought into the Territory for the purpose of being adopted.

12. The jurisdiction of the Supreme Court of a Territory in making this Act applies to an adoption order which is dependent on any other order or not expressly specified in this Act.

Part III. ADOPTIONS UNDER THIS ACT.
Division 1. - General.

13. For all purposes of this Part the welfare and interests of the child concerned shall be regarded as the paramount consideration.

14. (1) Subject to this Act, the Court may, on application, make an order for the adoption of a person who -

- (a) had not attained the age of twenty-one years before the date on which the application was filed in the Court, or
- (b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a de facto spouse of the applicant, as his or her child under a de facto adoption.

(2) The Court shall not make an order for the adoption of a person who is, or has been, married.

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- (b) a reference in that sub-section to the holder of that office shall be read as including a reference to a person to whom a power or function of that office under this Act has been so delegated.

PART II.—JURISDICTION.

7. Jurisdiction is conferred on the Supreme Court of the Australian Capital Territory and on the Supreme Court of the Northern Territory of Australia to hear and determine proceedings instituted in those Courts in accordance with this Act.

Jurisdiction of Supreme Courts.

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

Cases in which jurisdiction may be exercised.

- (a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the Territory; and
- (b) the child was present in the Territory.

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

as the case may be

as that the child was present in the Territory.

9. The jurisdiction of the Supreme Court of a Territory to which this Act applies to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

Rules of private international law not to apply.

PART III.—ADOPTIONS UNDER THIS ACT.

Division 1.—General.

10. For all purposes of this Part, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Welfare and interests of child to be paramount.

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

Who may be adopted.

- (a) had not attained the age of twenty-one years before the date on which the application was filed in the Court; or
- (b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or their child under a *de facto* adoption.

(2.) The Court shall not make an order for the adoption of a person who is, or has been, married.

(3.) An

(3.) An order may be made under this Act for the adoption of a child notwithstanding that the child has, whether before or after the commencement of this Act, and whether in the Territory or elsewhere, previously been adopted.

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

Persons in whose favour adoption orders may be made.

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

(3.) The Court shall not make an adoption order in favour of one person if that person is married and is not living separately and apart from his or her spouse.

(4.) The Court may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child.

13. The Court shall not make an order for the adoption of a child in favour of a person who or persons either of whom—

Age of adopters.

- (a) has not attained the age of twenty-one years; or
- (b) being a male person, is less than eighteen years older than the child, or, being a female person, is less than sixteen years older than the child,

unless the Court considers that there are exceptional circumstances that justify making the adoption order.

Court to be satisfied as to certain matters.

the applicant, or at least one of the applicants, is a natural parent of the child or

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

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child;
- (b) the applicants are suitable persons to adopt that child, having regard to all relevant matters, including the age, physical appearance, 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; and
- (c) the welfare and interests of the child will be promoted by the adoption.

(2.) The

(2.) The last preceding sub-section does not apply in relation to an order, in accordance with sub-section (1.) of section eleven of this Act, for the adoption of a child who has attained the age of twenty-one years before the date of the making of the order, but the Court shall not make an adoption order in such a case unless it is satisfied—

- (a) that the applicants are of good repute; and
- (b) that exceptional circumstances make it desirable that the child should be adopted.

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

Notice of application for adoption orders.

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

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

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

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

Parties.

17. Where the Court refuses an application (including an application under the Adoption Ordinance of the Territory and dealt with under this Act) for an order for the adoption of a child, the Court may make such order for the care and control of the child as it thinks fit.

Custody after refusal of an application for an adoption order.

18.—(1.) The Director may apply to the Court for an order discharging an order for the adoption of a child made under this Act or under any provisions or laws of a Territory to which this Act applies, and the Court may make such an order if it is satisfied that—

Discharge of adoption orders.

- (a) the child has not attained the age of twenty-one years; and
- (b) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means, or that there is some other exceptional

Previous

exceptional reason why, subject to the welfare and interests of the child, the adoption order should be discharged.

(2.) The Court shall not make an order under this section if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

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

(4.) Where the Court makes an order under this section, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the child, including orders relating to—

- (a) the name of the child;
- (b) the ownership of property;
- (c) the custody or guardianship of the child; or
- (d) the domicile (including the domicile of origin) of the child.

(5.) Upon the making in a Territory to which this Act applies of an order under this section discharging an order for the adoption of a child, but subject to any order made under the last preceding sub-section and to sub-section (2.) of section thirty of this Act, the rights, privileges, duties, liabilities and relationships under the law of that Territory of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

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

whilst the adoption order was in force.

Division 2.—Adoption List.

19.—(1.) The Director for a Territory to which this Act applies shall, in accordance with this section, keep a list of ^{Adoption list.} married couples resident or domiciled in the Territory who wish to adopt children and have applied to have their names included in the list, being persons whom he considers to be fit and proper persons to adopt children.

the names of

(2.) The Director shall—

- (a) keep the adoption list in a form that indicates the order in which the applications by virtue of which names were included in the list were received by him; and
- (b) keep

(b) keep, in connexion with the adoption list, such particulars as he thinks necessary of each married couple whose names are included in the list and of the description of child that they wish to adopt.

(3.) The Director shall, in such manner as he thinks appropriate, incorporate in the adoption list kept under this Division the list or record that was kept by him before the commencement of this Division of married couples wishing to adopt children and regarded by him as fit and proper persons to do so.

(4.) Where the Director for a Territory to which this Act applies is satisfied that any persons applying to have their names included in the adoption list kept by him are persons whose names are, or were within one month before the date of the application, included in a similar adoption list kept by an officer of a State or of another Territory of the Commonwealth (including the other Territory to which this Act applies), the Director may treat the application as having been received by him on the date certified in writing by that officer to be the date on which the application by virtue of which the names were included in the list kept by that officer was received, or was treated as having been received, by that officer.

20. In making arrangements with a view to the adoption of a child and, in particular, in determining the person or persons whose application for an adoption order he will approve in the case of a child in respect of whom a general consent has been given, the Director shall, without prejudice to his duty to consider all other relevant matters, have regard to the adoption list and to the order in which the persons whose names are on the adoption list made application for the inclusion of their names on that list.

Director to have regard to adoption list.

Division 3.—Consents to Adoptions.

21.—(1.) Subject to this Division, the Court shall not make an order for the adoption of a child unless consent (not being a consent that has been revoked) to the adoption has been given by the appropriate person or persons ascertained in accordance with the succeeding provisions of this section or the Court is satisfied that there is no such appropriate person.

Consents of parents and guardians required to adoptions.

(2.) In the case of a legitimate child who has not previously been adopted, the appropriate persons are every person who is a parent or guardian of the child.

(3.) In the case of an illegitimate child who has not previously been adopted, the appropriate person is every person who is the mother or guardian of the child.

(4.) In

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

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

(6.) This section does not apply in the case of a child who has attained the age of twenty-one years before the making of the adoption order.

22.—(1.) Subject to this section, a consent for the purposes of the last preceding section shall be a consent to the adoption of the child by any person or persons whose application for an adoption order in respect of the child is approved by or on behalf of the Director.

Giving of consents.

expressed as

(2.) Where the applicant or at least one of the applicants

Clause 22.

(3.) Where a consent of the kind referred to in sub-section (1.) of this section has been relied on in an application for an adoption order, ~~being an application approved by or on behalf of the Director,~~ but the application has been refused by the Court, the consent remains in operation for the purposes of a further ~~such~~ application for the adoption of the child.

of

*for
of
Director*

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

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

(6.) This section does not apply in the case of a child who has attained the age of twenty-one years before the making of the adoption order.

22.—(1.) Subject to this section, a consent for the purposes of the last preceding section shall be a consent to the adoption of the child by any person or persons whose application for an adoption order in respect of the child is approved by or on behalf of the Director.

Giving of consents.

expressed as

(2.) Where the applicant, or at least one of two joint applicants, is a relative of the child, a consent for the purposes of the last preceding section may be a consent to the adoption of the child by the applicant or applicants only.

(3.) Where a consent under section 22(1) has been relied on but refused, the consent remains in operation for the purposes of a further application for the adoption of the child by the Director.

23. Where—

Consents given under law of a State or other Territory.

(a) a person whose consent to the adoption of a child is required by section twenty-one of this Act has, in accordance with the law of a State, or of a Territory other than the Territory in which the proceedings are instituted, duly signed an instrument of consent to the adoption of the child by any person approved by or on behalf of the officer performing in that State or other Territory functions similar to those of the Director;

(b) that officer, or a person acting on his behalf, has, by writing under his hand, authorized the Director to make arrangements for the adoption of the child in the Territory in which the proceedings are instituted; and

(c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that State or other Territory,

that instrument of consent shall, for the purposes of this Act, be deemed to be an instrument executed in accordance with this Division evidencing a subsisting consent, in accordance with sub-section (1.) of the last preceding section, to the adoption of the child.

24.—(1.) A

SIR GARFIELD BARWICK: Can we do this?

purposes of this Act by a person other than the child may be
revoked by notice in writing served on the Director before—

(a) the expiration of thirty days from the date on which the
instrument of consent was signed; or

(b) the day on which an order for the adoption of the child
is made,

whichever is the earlier, but may not otherwise be revoked.

(2.) Service of a notice on the Director under the last preceding
sub-section shall be effected by delivering it to him personally
or by sending it to him by post at such address as is prescribed.

25. A consent for the purposes of the preceding provisions
of this division shall be evidenced by ~~production to the Court of~~
an instrument of consent substantially in accordance with the Form of
consents.

(2.) The Court shall not make an adoption order in
reliance on an instrument of consent signed by the mother
of the child ~~if the instrument of consent was signed~~
before the birth of the child. v. d. m.

(3.) The Court shall not make an adoption order in
reliance on an instrument of consent signed by the mother
of the child within ^{seven} 7 days after ^{day on which} the ~~birth of~~ the child ~~is made~~
unless it is proved ~~to the satisfaction of the Court that,~~
at the time the instrument was signed, ~~by~~ the mother was in
a fit condition to give the consent.

(4.) For the purposes of the last preceding sub-
section, a certificate of a legally qualified medical
practitioner or other prescribed person certifying that,
at the time when the instrument of consent was signed by the
mother of a child, the mother was in a fit condition to
give the consent as evidence of the matter so certified.

SIR GARFIELD BARWICK: Can we do this?

revoked by notice in writing served on the Director before—

- (a) the expiration of thirty days from the date on which the instrument of consent was signed; or
- (b) the day on which an order for the adoption of the child is made,

whichever is the earlier, but may not otherwise be revoked.

(2.) Service of a notice on the Director under the last preceding sub-section shall be effected by delivering it to him personally or by sending it to him by post at such address as is prescribed.

25. A consent for the purposes of the preceding provisions of this division shall be evidenced by ~~production to the Court~~ of an instrument of consent substantially in accordance with the prescribed form signed by the person giving the consent and attested as prescribed. Form of consents.

26.—(1.) The Court ^{may refuse to} ~~shall not~~ make an adoption order in reliance on a consent given or purporting to have been given by a person (other than the child) if it appears to the Court that— Defective consents.

- (a) the consent was not given in accordance with this Act;
- (b) the consent was obtained by fraud or duress, ~~or by a contravention of section forty-four of this Act;~~
- (c) ~~the consent was revoked at a time when it had not become irrevocable;~~

as to the improper means

(c) (d) the instrument of consent has been altered in a material particular without authority; ~~or~~

(d) (a) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent; ~~or~~

(f) in the case of the consent of a mother to the adoption of her child, the instrument of consent produced to the Court was signed before the birth of the child.

(2.) Without prejudice to the application of the last preceding sub-section in relation to the consent of the mother of the child, the Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child within seven days after the birth of the child unless the Court is satisfied, on the certificate of a legally qualified medical practitioner or other prescribed person or by other adequate evidence, that, at the time the instrument was signed, the mother was in a fit condition to give it.

27.—(1.) The

SIR GARFIELD BARWICK: Can we do this?

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

Court may dispense with consents.

- (a) after reasonable inquiry, that 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 justly be dispensed with.

properly

(2.) In order to facilitate the making of arrangements by the Director with a view to the adoption of a child, the Court may, on the application of the Director, make an order under this section in relation to the child before an application for an adoption order has been made in respect of the child, and any such order under this section may be expressed to have effect for the purposes of any adoption order that may be made in pursuance of an application made with the approval of the Director.

has

(3.) An order under the last preceding sub-section may, on the application of the Director or of the person whose consent was dispensed with, be revoked by the Court at any time before the making of an adoption order in respect of the child.

28. Subject to this Division, an order for the adoption of a child who has attained the age of twelve years shall not be made unless the child has consented to the adoption or the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has not consented to the adoption.

Consent of child.

29.—(1.) Where, in the case of every person whose consent to the adoption of a child is required under section twenty-one of this Act—

Guardianship of child awaiting adoption.

- (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 expressed to have effect for the purposes of any adoption order that may be made in pursuance of an application made with the approval of the Director,

~~Sec (1) (2)~~

by an order made under the sub-section (2) of ~~that~~ section, 27

the Director shall be the guardian of the child for all purposes (other than the purposes of section twenty-one of this Act) to the exclusion of all other persons until—

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

(2.) The last preceding sub-section does not apply to a child who is a ward within the meaning of the law of a Territory to which this Act applies relating to child welfare and for whose guardianship provision is made by that law.

Division 4.—Effect of Adoption Orders.

30.—(1.) For the purposes of the laws of a Territory to which this Act applies, but subject to this Act and to the provisions of any Ordinance or other law of that Territory that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order in that Territory—

General effect
of adoption
orders.

- (a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or parents of the child, as if the child had been born to the adopter or adopters 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 adoption order, and any such person ceases to be a parent of the child;
- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent of the adopted child) shall be determined on the basis of the foregoing provisions of this sub-section 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 that Territory or otherwise) ceases to have effect.

(2.) Notwithstanding the last preceding sub-section, for the purposes of any law of the Territory relating to a sexual offence, being a law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order, as the case may be, had not been made, and any such relationship

relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that sub-section in relation to that adoption order or by virtue of the discharge of that adoption order.

31.—(1.) The provisions of sub-section (1.) of the last preceding section have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, except that—

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

Effect of orders as regards dispositions of property, &c.

(2.) The provisions of sub-section (1.) of the last preceding section do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of this Act.

(3.) Where—

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

that person may, notwithstanding that the instrument could not, apart from this sub-section, be revoked or varied, by a like instrument vary the first-mentioned 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 commencement of this Act, an adoption order made under this Act by the Supreme Court of a Territory to which this Act applies has the same effect as if the Adoption Ordinance of that Territory had continued in force and the adoption order had been made under that Ordinance.

(5.) Nothing in the last preceding section or in this section affects the operation of any provision in a will or other instrument (whether made or coming into operation before or after the

the

Division 5.—Interim Orders.

35.—(1.) Upon an application to the Court for an order for the adoption of a child, the Court may postpone the determination of the application and make an interim order for the custody of the child in favour of the applicants. Making of interim orders.

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

(3.) The Court shall not make an interim order in respect of a child in favour of any persons unless the Court could lawfully make an order for the adoption of that child by those persons.

(4.) While an interim order remains in force in respect of a child, the persons in whose favour the order is made are entitled to the care and custody of the child.

36.—(1.) Subject to this Division, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order and for such further periods, if any, as the Court may from time to time order. Duration of interim orders.

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

37.—(1.) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under the provisions of the Adoption Ordinance of the Territory, and may make such order for the care and control of the child as it thinks fit. Discharge of interim orders.

(2.) An interim order made in a Territory to which this Act applies, whether under this Act or under the Adoption Ordinance of that Territory, ceases to have effect upon the making of an order for the adoption of that child, whether made in that Territory or in a State or another Territory of the Commonwealth.

PART IV.—RECOGNITION OF ADOPTIONS.

38. In this Part, "country" includes a part of a country. Definition.

39. For the purposes of the laws of a Territory to which this Act applies, the adoption of a person (whether before or after the commencement of this Act) in a State, or in another Territory of the Commonwealth, in accordance with the law of that State or other Territory (including an adoption under this Act in the other Territory to which this Act applies) has, so long as it has not been rescinded under the law in force in that State or other Territory, the same effect as an adoption order made in that first-mentioned Territory under this Act, and has no other effect. Recognition of Australian adoptions.

40.—(1.) For

40

(3.) Notwithstanding the foregoing provisions of this section, a court (including a court dealing with an application under the next succeeding section) 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 connexion 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 the next succeeding section), the question arises whether an adoption is one to which in this section applies, it shall be presumed, unless the contrary appears from the evidence, that the adoption complies with the requirements of sub-section (2.) of this section and has not been rescinded. (7)

SIR GARFIELD BARWICK: Can we do this?
meeting but he wanted it to go back to the Child Welfare Ministers.

40.—(1) For the purposes of the laws of a Territory to which this Act applies, the adoption of a person (whether before or after the commencement of this Act) in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order under this Act.

(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 at which the legal steps that resulted in the adoption were commenced—

(i) the adopter, or each of the adopters, was resident or domiciled in that country; and

(ii) ~~the adopted person was present 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.) The regulations may provide that all or any adoptions under the law of a particular country shall be conclusively presumed to comply with the requirements of paragraphs (c) and (d) of the last preceding sub-section.

5) (4.) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country outside the Commonwealth and the Territories of the Commonwealth does not have effect for the purposes of the laws of a Territory to which this Act applies.

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

41.—(1.) A person specified in the next succeeding sub-section may apply to the Supreme Court of a Territory to which this Act applies for an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of a country outside the Commonwealth and the Territories of the Commonwealth, and that the adoption is one to which the last preceding section applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2.) The

Recognition of foreign adoptions.

Take in new (3) & (4)

Declarations of validity of foreign adoptions.

(2.) The persons who may make an application under the last preceding sub-section in relation to an adoption are the adopted child, 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 child.

(3.) Where an application is made to a Court under this section, the Court may—

- (a) direct that notice of the application be given to such persons (who may include the Attorney-General) as the Court thinks fit;
- (b) direct that a person be made a party to the application;
- or
- (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

(4.) Where the Court makes an order upon the application, it may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the Court finds to be established.

(5.) For the purposes of the laws of the Territory in which the order is made, an order under this section binds the Crown in right of the Commonwealth, whether or not notice was given to the Attorney-General, but, except as provided in the next succeeding sub-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 in a court of the Territory 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 the last preceding sub-section, the production of a copy of the order, certified by the Registrar of the Supreme Court that made the order to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which the last preceding section of this Act applies.

Territorial
application
of Part.

42. This Part does not apply in respect of acts occurring outside the Territory but, except to the extent to which the contrary intention appears, does apply in respect of acts done in the Territory in relation to the adoption of children in, or children adopted in, a State, another Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth.

PART V.—OFFENCES.

42. This Part does not apply in respect of acts occurring outside the Territories to which this Act applies, but does apply in respect of acts done in one of those Territories in relation to adoption in the other of those Territories.

Territorial application of Part.

Redrafted

43.—(1.) A person who was the father, mother or guardian of a child but has, by reason of an adoption of the child (~~whether under this Act or otherwise~~), ceased to be the father, mother or guardian of the child shall not take, lead, entice or decoy the child away, or detain the child, with intent to deprive the adopters of the child of possession of the child.

Taking away, &c., of adopted child by natural parent.

(2.) A person shall not receive or harbour a child on behalf of a person who, to his knowledge, has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of the last preceding sub-section.

Penalty: Two hundred pounds or imprisonment for six months.

44.—(1.) Subject to this section, a person shall not (whether before or after the birth of the child concerned) make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of—

Payments in consideration of adoptions, &c.

- (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.

Penalty: Two hundred pounds or imprisonment for six months.

(2.) The references in the last preceding sub-section to the adoption or proposed adoption of a child shall be read as including references to the adoption or proposed adoption of a child under the law of any place (whether in or outside Australia).

(3.) ~~Sub-section (1.) of this section~~ ^{the last preceding} does not apply to or in relation to any of the following payments or rewards in connexion 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 the Court, in respect of the hospital and medical expenses reasonably

reasonably incurred in connexion 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;

(c) any other payment or reward authorized by the Director or by the Court.

(4.) Sub-section (1.) of this section does not apply to or in relation to a payment or reward in connexion with an adoption or proposed adoption under the law of a State or of a Territory of the Commonwealth other than a Territory of which this Act applies if the making of the payment or the giving of the reward would have been lawful if it had taken place in that State or that Territory.

as the offering to make the payment or give the reward,

45.—(1.) Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical, 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—

Restriction on advertising, &c.

- (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.

Penalty: Two hundred pounds or imprisonment for six months.

(2.) The last preceding sub-section does not apply in relation to an advertisement or other matter that has been approved by the Director.

46.—(1.) Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical or by means of radio broadcasting or television, in relation to an application under this Act for the adoption of a child or the proceedings on such an application, the name of an applicant, the child, or the father or mother or a guardian of the child, or any matter reasonably likely to enable any of those persons to be identified.

Restriction on publication of identity of parties.

as under a law of a State or Territory of the Commonwealth

Penalty: ~~Five hundred pounds~~ *£ 250 or 6 months*

(2.) The Court may, where it considers it necessary to do so in the interests of justice, authorize any publication referred to in the last preceding sub-section.

47. A person shall not, whether orally or in writing, wilfully make a false statement to the Director in connexion with a proposed adoption or any other matter under this Act.

False statement in application, &c.

Penalty:

This section does not apply in relation to the publication of any matter with the authority of the court to which the application was made.

meeting but he wanted it to go back to the Child Welfare Ministers.

SIR GARFIELD BARWICK: Can we do this?

Penalty: Two hundred pounds or imprisonment for six months.

48. A person shall not personate or falsely represent himself to be a person whose consent to the adoption of a child is required by this Act or by the law of a State or of a Territory of the Commonwealth.

Personation of person whose consent to an adoption is required.

Penalty: Two hundred pounds or imprisonment for six months.

49.—(1.) A person shall not present, or cause to be presented, to the Court in connexion with an application for an order for the adoption of a child under this Act a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required by this Act if the signature to the document is or was, to the knowledge of that first-mentioned person, forged or obtained by fraud or duress.

Presenting forged consent, &c.

(2.) A person shall not subscribe his name as a witness to the signature of a person to an instrument of consent to the adoption of a child ~~(whether under this Act or under the law of a State or of a Territory of the Commonwealth other than a Territory to which this Act applies)~~ unless—

- (a) he is satisfied as to the identity of the person signing the instrument;
- (b) he takes such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; ~~and~~
- * (c) ~~the instrument bears the date on which he subscribes his name as a witness.~~ (8 Feb.)

Penalty: Two hundred pounds or imprisonment for six months.

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

Authority to prosecute.

PART VI.—MISCELLANEOUS.

51. The Registrar of the Supreme Court of a Territory to which this Act applies shall cause a memorandum, in accordance with the prescribed form, of every adoption order made by the Court under this Act, and a copy of every order for the discharge of such an adoption order, to be sent to the Registrar of Births, Deaths and Marriages for that Territory, who shall—

Registration of orders under this Act.

- (a) register

Omitted by Vic (?)

meeting but he wanted to be...
SIR GARFIELD BARWICK: Can we do this?

- (a) register it, as prescribed, in a Register of Adoptions to be kept by him; and
- (b) if it relates to a child whose birth is registered in the Register of Births kept by him, make such alterations to, or entries in, that register as are prescribed.

52. Where the Supreme Court of a Territory to which this Act applies makes an order for the adoption of a child, or an order discharging such an order, and the Registrar of that Court has reason to believe that the birth of the child is registered in a State or in another Territory of the Commonwealth (including the other Territory to which this Act applies), the Registrar shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to such officer of that State or other Territory having functions in relation to the registration of births as it is prescribed.

Sending of memoranda of orders to States and other Territories.

53. Where the Registrar of Births, Deaths and Marriages for a Territory to which this Act applies receives, in relation to a child whose birth is registered in that Territory, a memorandum or copy of an adoption order made (whether by a Court or not) under the law in force in a State or in another Territory of the Commonwealth (including the other Territory to which this Act applies), or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorized so to certify under the law of that State or other Territory, he shall—

Particulars or orders received from other States.

- (a) register it, as prescribed, in the Register of Adoptions ~~Orders~~ kept by him; and
- (b) make such alterations to, or entries in, the Register of Births kept by him as are prescribed.

54. (1) An application under this Act before the Court shall not be heard in open court and persons who are not parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise directed by the Court, be excluded during the hearing of such an application.

Hearings to be in camera.

(2) ~~The Court may, at the hearing of an application under this Act—~~

- (a) order a child to leave the room or other place in which the Court is hearing the application at any time during the hearing if it is of opinion that such a direction should be given in the interests of the child; and

(b) order

Permitted

(Not necessary because they are excluded by (a)).

Adoption of Children.

No.

- (f) the prohibition or regulation of access to a Register of Adoptions kept under this Act;
- (g) the furnishing of copies of, or extracts from, matters included in a Register of Adoptions kept under this Act, ~~and the evidentiary effect of such copies or extracts;~~ *Ordinance*
- (h) the making, correction or cancellation of entries relating to adopted children in the Register of Births kept under the law of a Territory to which this Act applies; and
- (i) penalties, not exceeding Fifty pounds, for offences against the regulations.