

AUSTRALIAN CAPITAL TERRITORY

ADOPTION OF CHILDREN ORDINANCE 1965

EXPLANATORY MEMORANDUM

No. 15 of 1965

The Standing Committee of Commonwealth and State Attorney-General directed that Commonwealth State Authorities should examine adoption legislation and, as a result, concluded during 1965 that uniformity in the legislation was both possible and desirable.

The Committee accepted that, whilst some variations in legislative provisions relating to social welfare would arise, it would be possible to achieve uniformity of purely legal provisions of the legislation. The existing legislation in the States and Territories of the Commonwealth was deficient in many important respects and the proposed legislation will provide a more comprehensive scheme of adoption and take proper account of the roles to be played by child welfare authorities and non-governmental voluntary organisations in ensuring adequate controls for the welfare of adopted children.

The model uniform legislation did not provide for voluntary social welfare organisations to arrange adoptions but provisions for the role to be played by such organisations have been included in the proposed Ordinance as it is considered that they are in a unique position by virtue of their close working contact with the community to play an important part. It is intended that such agencies will have functions similar to those to be performed by the Director of Child Welfare subject to adequate supervision by the Department of the Interior. In view of the inclusion of these provisions it has been necessary to empower the principal officer of a private agency to be the guardian of a child awaiting adoption in the same manner as the Director of Child Welfare will act under the Ordinance in a case not involving a private agency.

The Legislation will also provide that a Court will have a discretionary power to make available to interested parties to an adoption application a report or part thereof by the Director of Child Welfare concerning a proposed adoption. The inclusion of this power is based on the view that, although the paramount consideration in an adoption is the welfare of the child and accordingly welfare officers making enquiries about applicants should be able, therefore, to do so on the basis that information obtained will be confidential, it is considered that as such information would, in many instances, be based merely on opinions, it would be a denial of natural justice if an applicant were not given, in a proper case, an opportunity of refuting any imputations made against him or her.

Consequent upon the decision to license voluntary agencies the legislation will provide that it is an offence for a person to transfer the possession of a child to some

other person with a view to adoption of the child without the consent of the Director of Child Welfare or the principal officer of an approved private agency.

Main points of difference between the existing and the proposed legislation are:-

- (a) jurisdiction will be vested in the Supreme Court instead of the Court of Petty Sessions;
- (b) in general, only a husband and wife jointly may adopt a child and in special circumstances it will be possible for a Court to make an Order in favour of one person only;
- (c) in general, the age of adopters will be lowered from 25 to 21 years and a male must not be less than 18 years older than the child adopted (at present 21 years);
- (d) where a Court refuses an application for an adoption it will have power to make Orders relating to the care and control of the Child concerned;
- (e) in discharging an Order for adoption, a Court may, if it thinks fit, make further Orders relating to the name of the child, ownership of property, custody or guardianship of the child and its domicile;
- (f) an adoption list is to be maintained by the Director of Child Welfare;
- (g) the Director of Child Welfare will become the guardian of a child in the period between the date of consent to adoption and the date an adoption Order is made by a Court;
- (h) provision is made for reciprocity as between the States and Territories and for recognition of foreign adoption Orders whether made interstate or overseas;
- (i) there will be a more complete severance of the ties between an adopted child and its natural parents.

J. D. ANTHONY