

# Adoption of Children Act 1965 No 23

[1965-23]



New South Wales

## Status Information

### Currency of version

Repealed version for 18 December 2000 to 31 January 2003 (accessed 25 November 2024 at 20:38)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Children and Young Persons Legislation \(Repeal and Amendment\) Act 1998 No 158](#), Sch 2.2 [1] (not commenced)
- **Repeal**  
The Act was repealed by the [Adoption Act 2000 No 75](#), sec 209 (1) (a) with effect from 1.2.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Adoption of Children Act 1965 No 23



New South Wales

An Act to make provisions with respect to and consequential upon the adoption of children; to amend the *Registration of Births, Deaths and Marriages Act 1899* and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Adoption of Children Act 1965*.

### 2 Commencement

- (1) Subject to subsection (2), this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- (2) Subsection (6) of section 5 shall commence upon the day upon which the assent of Her Majesty to this Act is signified.

### 3, 4 (Repealed)

### 5 Savings

- (1) Notwithstanding the repeal of the former Acts:
  - (a) an order for adoption made under the former Acts and in force at the commencement of this Act continues in force,
  - (b) an application for an order for adoption under the former Acts that was pending immediately before the commencement of this Act may be continued and dealt with under the provisions of the former Acts as if this Act had not been passed, but an adoption order made in pursuance of this paragraph shall have effect 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 in accordance with the former Acts shall, for the purposes of proceedings under this Act for the adoption of the child, be deemed to be a sufficient consent of the person giving the consent.

(3) Where a consent referred to in subsection (2):

- (a) is not a consent to the adoption of the child by a specified person or by specified persons, the consent shall, for the purposes of this Act, be deemed to be a general consent,
- (b) is a consent to the adoption of the child by a specified person or by specified persons, that person or those persons shall, for the purposes of this Act, be deemed to be a relative, or relatives, as the case may be, of the child.

(4) Subject to subsection (5), the provisions of sections 35 and 36 (subsection (4) of section 36 excepted) apply, as from the commencement of this Act, in relation to an adoption order made under the former Acts as if this Act had been in force when the order was made and the order had been made under this Act upon its commencement.

(5) In relation to:

- (a) a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, or
- (b) a devolution of property upon the intestacy of any person who died before the commencement of this Act,

an adoption order referred to in subsection (4) has the same effect as if the former Acts had continued in operation.

(6) Notwithstanding any other provision of this Act, where:

- (a) a will made by any person before the commencement of this subsection conferred on any person a special power of appointment in respect of any property, the objects of that power being the issue, immediate or remote, or the children, of any specified person,
- (b) that special power of appointment was or is not exercised before the general power of appointment referred to in paragraphs (c) and (d) is exercised,
- (c) that will also conferred on any person a general power of appointment in respect of that property, and
- (d) that general power of appointment has been, before that commencement, or is, after that commencement, exercised exclusively in favour of any issue, immediate or remote (including any person or persons who was or were adopted by that specified person under the former Acts) or children (including any such adopted person or persons) of that specified person,

that general power shall, for all purposes, be deemed to be a special power in favour of the issue, immediate or remote, or the children, as the case may be, of that

specified person to the extent to which the disposition of that property had not, by virtue of that general power of appointment, taken effect in possession before that commencement.

## 6 Definitions

In this Act, unless inconsistent with the context or subject matter:

**Adoption order** means an order for the adoption of a child under this Act.

**Charitable organisation** means an organisation, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent or philanthropic purposes, but does not include an organisation formed or carried on for the purpose of trading or securing a pecuniary profit to its members or a statutory health corporation or affiliated health organisation within the meaning of the [Health Services Act 1997](#).

**Child** means a person who has not attained the age of 18 years, or a person who has attained that age and in respect of whom an adoption order is sought or has been made.

**Commonwealth** means the Commonwealth of Australia.

**Court** means the Supreme Court of New South Wales.

**Director-General** means the person for the time being holding office or acting as the Director-General of the Department of Youth and Community Services.

**Disposition of property** includes the grant or exercise of a power of appointment in respect of property.

**Father** includes a putative father.

**Foster parent** means any person:

- (a) who has the care of a child in accordance with a fostering authority held by the person under the [Children \(Care and Protection\) Act 1987](#),
- (b) who has the care of a child that has been placed in the care of the person by, or with the written approval of, the Minister administering the [Children \(Care and Protection\) Act 1987](#) or the Director-General, or
- (c) who has the care of a child that has been placed in the care of the person by an authorised private fostering agency within the meaning of the [Children \(Care and Protection\) Act 1987](#).

**General consent** means a consent to the adoption of a child other than the consent referred to in subsection (2) of section 27.

**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 a child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of another State or a Territory of the Commonwealth.

**Interim order** means an interim order under Division 4 of Part 4.

**Principal officer**, in relation to a private adoption agency, means the person specified as the principal officer in the application by virtue of which the private adoption agency was approved under this Act, or the person specified as the principal officer in the latest notice given to the Director-General by the private adoption agency under subsection (2) of section 12.

**Private adoption agency** means a charitable organisation for the time being approved as a private adoption agency under Part 3.

**Regulations** means regulations under this Act.

**Relative**, in relation to a child, means a grandparent, 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 depends upon the adoption of any person.

**Territory of the Commonwealth** includes a Territory under the trusteeship of the Commonwealth.

**the former Acts** means the [Child Welfare Act 1923](#) and the [Child Welfare Act 1939](#) or either of those Acts.

**the nominated officer** means the Registrar of the Family Law Division of the Court and includes any other officer of the Court specified by rules of Court as the nominated officer for the purposes of this Act.

## Part 2 Jurisdiction

### 7 (Repealed)

### 8 Cases in which jurisdiction may be exercised

- (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:
  - (a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in New South Wales, and
  - (b) the child was present in New South Wales.
- (2) For the purposes of subsection (1), where the Court is satisfied that an applicant was resident or domiciled in New South Wales, or that the child was present in New South

Wales, on a date within 60 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 New South Wales, or that the child was present in New South Wales, as the case may be, at the time of the filing in the Court of the application.

- (3) A reference in subsections (1) and (2) to an applicant being resident in New South Wales at a particular time or on a particular date includes a reference to an applicant who has had his or her usual place of abode in New South Wales for a period of at least three months immediately before that time or date.

## **9 Rules of private international law not to apply**

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

## **Part 3 Private adoption agencies**

### **10 Application for approval of adoption agency**

A charitable organisation carrying on, or desiring to carry on, the activity of conducting negotiations and making arrangements with a view to the adoption of children may apply in writing to the Director-General for approval as a private adoption agency.

### **11 Director-General may grant or refuse application**

- (1) The Director-General:
- (a) may grant or refuse an application under section 10, and
  - (b) shall give notice in writing served personally or by registered post of the Director-General's decision to the person specified in the application as the principal officer of the organisation.
- (2) Without limiting the generality of subsection (1), the Director-General shall refuse an application if it appears to the Director-General that the applicant is not a charitable organisation or is not suited to carrying on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character and number of the persons taking part, or proposing to take part, in the management or control of the organisation, or engaged or proposed to be engaged, on behalf of the organisation, in the conducting of such negotiations or the making of such arrangements.
- (3) Every approval of a private adoption agency shall be subject to such conditions and requirements as may be prescribed, and to such additional conditions and requirements as the Director-General, in any particular case, thinks fit and specifies in

the notice given to its principal officer under subsection (1).

## **12 Principal officer of private adoption agency**

- (1) Before making an application under section 10, a charitable organisation shall appoint a person resident in New South Wales to be its principal officer in New South Wales for the purposes of this Act in the event of the granting of the application.
- (2) If the application is granted, the private adoption agency shall, within seven days after the occurrence of a vacancy in the office of principal officer, appoint a person resident in New South Wales to fill the vacancy and give notice in writing to the Director-General of the appointment.
- (3) An application under section 10 shall specify the name of the principal officer, and the address of the principal office in New South Wales, of the charitable organisation making the application.
- (4) For the purposes of subsection (2), the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in New South Wales.
- (5) Anything done by the principal officer of a private adoption agency, or with his or her approval, shall, for the purposes of this Part and any regulations relating to private adoption agencies but without prejudice to any personal liability of the principal officer, be deemed to be done by the private adoption agency.

## **13 Revocation or suspension of approval**

- (1) The Director-General may, at any time, revoke or suspend the approval of a private adoption agency under this Part:
  - (a) at the request of the agency,
  - (b) on the ground that the agency is no longer suited to carrying on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the matters referred to in section 11, or
  - (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it or any additional condition or requirement referred to in subsection (3) of section 11.
- (2) Where the Director-General has revoked or suspended the approval of a private adoption agency under the provisions of subsection (1), the Director-General shall give notice in writing served personally or by registered post on the principal officer of the private adoption agency of such revocation or suspension.

#### **14 Review by Administrative Decisions Tribunal of refusal, revocation or suspension**

An organisation may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General:

- (a) a decision to refuse an application of the organisation under section 10, or
- (b) a decision to approve of such an application subject to additional conditions or requirements referred to in section 11 (3), or
- (c) a decision to revoke or suspend the approval of the organisation as a private adoption agency in accordance with the provisions of section 13.

#### **15 Notice of approval to be published in Gazette**

- (1) The Director-General shall cause to be published in the Gazette notice of the approval of any charitable organisation as a private adoption agency under this Part and of the revocation or suspension of any such approval.
- (2) Every such notice shall specify the address of the principal office of the agency concerned and the full name of the principal officer of the agency.

#### **16 Regulations relating to private adoption agencies**

The regulations may prescribe conditions and requirements to be observed, and facilities to be provided, by private adoption agencies, including conditions and requirements with respect to the qualifications and experience of persons acting for or on behalf of private adoption agencies.

### **Part 4 Adoptions under this Act**

#### **Division 1 General**

#### **17 Welfare and interests of child to be paramount**

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

#### **18 Who may be adopted**

- (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 eighteen years before the date on which the application was filed in the Court, or
  - (b) had attained that age before that date and:
    - (i) had 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 her, or

their, child, or

- (ii) had, as a ward within the meaning of the *Child Welfare Act 1939* or the *Children (Care and Protection) Act 1987*, or as a person under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, been in the care or custody of the applicant or applicants or of the applicant and a deceased spouse of the applicant.

(2) Except where:

- (a) the applicant is a person, or the applicants are persons, in whose favour a consent referred to in subsection (2) of section 27 has been given,
  - (a1) the applicant, or either of the applicants, is the mother or father of the child, or
  - (b) the applicant, or either of the applicants, is a relative of the child, and the appropriate person, or every appropriate person, as the case may be, whose consent to the adoption would, but for the fact that the person is deceased, be required under section 26, has died without giving the person's consent referred to in that section,

the Court shall not make an adoption order unless the application is made by the applicant or applicants with the consent of the Director-General or on behalf of the applicant or applicants by the Director-General or by the principal officer of a private adoption agency.

- (3) An application for an adoption order by an applicant, or by applicants, referred to in subsection (2), may be made on behalf of the applicant, or applicants, by the Director-General.
- (4) The Court shall not make an order for the adoption of a person who is, or has been, married.
- (5) Subject to this Act, 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 New South Wales or elsewhere, previously been adopted.

## **19 Persons in whose favour adoption orders may be made**

- (1) Except as provided by subsections (1A) and (2), an adoption order shall not be made otherwise than in favour of a husband and wife jointly.
  - (1A) The Court may make an adoption order in favour of a man and a woman who are living together as husband and wife on a bona fide domestic basis although not married to each other if, without derogating from the other provisions of this Part, the Court is satisfied:
    - (a) that:

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made,
- (ii) except as provided by subsection (1B), the child in respect of whom the application for the adoption order is made has been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years before the date of the application, and
- (iii) the welfare and interests of the child will be better served by the making of an adoption order than by the making of any other order relating to the guardianship or custody of the child,

(b) that:

- (i) except as provided by subsection (1B), the man and woman have so lived together for a period of not less than 3 years before the date on which the application for the adoption order is made,
- (ii) the child in respect of whom the application for the adoption order is made is a child of a class or description prescribed for the purposes of section 68A (1), and
- (iii) having regard to the disability or special needs of the child, it is not likely that the welfare and interests of the child will be better served by any other placement of the child, or

(c) that:

- (i) the man and woman are Aborigines (within the meaning of the [Aboriginal Land Rights Act 1983](#)) and are recognised as being married according to the traditions of an Aboriginal community or Aboriginal group to which they belong, and
- (ii) the child in respect of whom the application for the adoption order is made is an Aboriginal (within the meaning of that Act).

(1B) Where the Court is of the opinion that, having regard to the circumstances of the case, the welfare and interests of the child will be better served by doing so, the Court may make an adoption order referred to in subsection (1A) even though:

- (a) the man and woman who are living together on a bona fide domestic basis although not married to each other have so lived together for a period of less than 3 years, or
- (b) the child in respect of whom the application for the adoption order is made has not been brought up, maintained and educated by the applicants as their child for a period of not less than 2 years,

before the date of the application, or where the circumstances described in paragraphs (a) and (b) both apply.

- (2) Subject to subsection (3), where the Court is satisfied that in the particular circumstances of the case it is 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 unless that person's spouse consents in writing to the application for the adoption order.
- (4) The Court may make an adoption order in favour of a husband and wife jointly or a man and a woman referred to in subsection (1A) jointly notwithstanding that one of them is a natural parent, or that they are the natural parents, of the child.

## **20 Age of adopters**

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

- (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 applicant, or at least one of the applicants, is a natural parent or relative of the child or the Court considers that in the particular circumstances of the case it is desirable to make the adoption order.

## **21 Court to be satisfied as to certain matters**

- (1) The Court shall not make an order for the adoption of a child unless:
  - (a) except as provided by subsection (1A), the Director-General has made a report in writing to the Court concerning the proposed adoption,
  - (b) where the application for the order is made on behalf of the applicant or applicants by the principal officer of a private adoption agency, that principal officer has also made such a report, and
  - (c) the Court, after considering any such report and any other evidence before the Court, is satisfied that:
    - (i) in the case where the child had not attained the age of 18 years before the date on which the application for the order was filed in the Court:
      - (a) the applicant or each of the applicants is of good repute and is a fit and proper person to fulfil the responsibilities of a parent, and

- (b) the applicant or each of the applicants is a suitable person to adopt that child, having regard to all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicant or 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, or
  - (ii) in the case where the child had attained the age of 18 years before the date on which the application was filed in the Court:
    - (a) the applicant or each of the applicants is of good repute, and
    - (b) in the particular circumstances of the case it is desirable that the child should be adopted by the applicant or applicants,and in either case the welfare and interests of the child will be promoted by the adoption.
- (1A) The Court may dispense with the making of a report referred to in subsection (1) (a):
- (a) generally in respect of applications made on behalf of applicants by the principal officer of a private adoption agency where the Court is satisfied that the standard of applications made by that principal officer justifies such a dispensation,
  - (b) in respect of a particular application made on behalf of an applicant or applicants by the principal officer of a private adoption agency where the Court is satisfied that the particulars of that application and the report of that principal officer justify such a dispensation, or
  - (c) generally in respect of applications made by or on behalf of an applicant or applicants who is or are the natural parent or parents or relative or relatives of the child.
- (1B) The Director-General may make a report referred to in subsection (1) (a) to the Court notwithstanding that the Court has, under subsection (1A), dispensed with the making of the report.
- (1C) The Court may, in respect of an application made by a person other than the Director-General, require the Director-General to make a report referred to in subsection (1) (a) within a period of 6 months after the date of the making of the application or such other period as the Court may, having regard to the circumstances of the case, specify.
- (2) Where the regulations provide for the keeping by the Director-General of a register of persons approved by the Director-General or by the principal officer of a private adoption agency as fit and proper persons to adopt children, the Court may refuse to



make an adoption order in relation to a child referred to in subparagraph (i) of paragraph (c) of subsection (1):

- (a) if, in the case of a sole applicant, the applicant's name is not included in that register or, in the case of joint applicants, neither of their names is included in that register, or
  - (b) where the name of the applicant or of either applicant or the names of both of the applicants, as the case may be, is or are included in that register—if the Court is satisfied that some other person whose name is included in that register, is entitled under the regulations to be selected by the Director-General or by the principal officer of a private adoption agency, as the case may be, to be an applicant for an adoption order in priority to the applicant or applicants for the adoption order and that other person is suitable as an adoptive parent of that child.
- (3) Subsection (2) does not apply in any case where the applicant, or either of the applicants, for the adoption order is a parent or foster parent of the child or is a relative of the child in whose favour a consent referred to in subsection (2) of section 27 has been given or in any case where the applicant, or either of the applicants, is a relative of the child and the appropriate person, or every appropriate person, as the case may be, whose consent to the adoption would, but for the fact that the person is deceased, be required under section 26, has died without giving the person's consent referred to in that section.

#### **21A Religious upbringing of child**

- (1) Where the mother or father or a guardian of a child in respect of whom an application for an adoption order is made has not, in an instrument of consent to adoption of the child, expressed any wish with respect to the religious upbringing of the child:
- (a) it shall not be relevant, in the exercise or performance by the Court of its powers, authorities, duties and functions under section 21, that the applicant or each of the applicants does not have a religious conviction or affiliation, and
  - (b) section 17 does not operate so as to require, and the Court shall not, in making an order for the adoption of the child, require, the applicant or each of the applicants to give any undertaking with respect to the religious upbringing of the child.
- (2) Nothing in subsection (1) affects the consideration by the Court under section 21 (1) (c) (i) (b) of the religious upbringing or convictions (if any) of the child.

#### **22 Notice of application for adoption orders**

- (1) The Court shall not make an order for the adoption of a child unless at least fourteen days' notice of the application for the order has been given or sent by registered post:

- (a) to any person whose consent to the adoption of the child:
  - (i) is required under section 26,
  - (ii) has not been dispensed with by an order made by virtue of section 32 (1), and
  - (iii) 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.

(1A) Except as the Court may otherwise determine, nothing in subsection (1) requires a notice referred to in that subsection to be given or sent to:

- (a) a person referred to in subsection (1) (a) if that person is a person to whom section 32 (1) (h) applies, or
- (b) a person referred to in subsection (1) (b) if that person is:
  - (i) an applicant for the order for the adoption of the child, or
  - (ii) a person with whom the child resides only as a patient or inmate of a hospital of which that person is in charge or a person who has the care or custody of the child only as the person in charge of a hospital.

(2) A notice referred to in subsection (1) shall not specify the names of, or identify, the applicants.

(3) The Court may dispense with the giving of a notice under subsection (1).

(4) 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.

## **23 Parties**

(1) Except as provided by subsection (2), the Court may permit such persons as the Court thinks fit to be joined as parties to the proceedings for an adoption order for the purpose of opposing the application for the order.

(2) The Court shall, on application by a person:

- (a) who is the father of a child referred to in section 26 (3),
- (b) who is not given a notice referred to in section 31A (4), and
- (c) in respect of whom the Court has not, under section 31B, dispensed with the giving of a notice referred to in section 31A (4),

join the person as a party to the proceedings for an adoption order in respect of the

child for the purpose of opposing the application for the order.

#### **24 Care of child after refusal of an application**

Where the Court refuses an application for an order for the adoption of a child, the Court may make such order for the care and custody of the child as it thinks fit, including, where the child has not attained the age of 18 years, an order declaring the child to be under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

#### **25 Discharge of adoption orders**

- (1) The Director-General or the Attorney-General may apply to the Court for an order discharging an order for the adoption of a child made under this Act or under the former Acts and the Court may make such an order if it is satisfied that:
  - (a) the order for adoption was obtained by fraud, duress or other improper means,
  - (b) any consent relied upon for the making of the order for adoption was a consent referred to in paragraph (a), (b), (c) or (d) of subsection (1) of section 31, or
  - (c) there is some other exceptional reason why 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 on 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 to promote 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 of the child.
- (5) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under subsection (4) of this section and to subsection (4) of section 35, the rights, privileges, duties, liabilities and relationships under the law of New South Wales of the child and of all other persons shall be the

same as if the order for adoption had not been made, but without prejudice to:

- (a) anything lawfully done,
  - (b) the consequences of anything unlawfully done, or
  - (c) any proprietary right or interest that became vested in any person,
- whilst the order for adoption was in force.

## **Division 2 Consents to adoptions**

### **26 Consents of certain persons to adoptions required**

- (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 in accordance with this Act) to the adoption has been given by the appropriate person or persons ascertained in accordance with the provisions of subsection (2), (3), (4) or (4A) or (except in a case to which subsection (4A) applies) the Court is satisfied that there is no such appropriate person.
- (2) In the case of a child who has not previously been adopted and whose parents were married to each other at the time of the child's conception or, if they were not so married, have subsequently married each other, the appropriate persons are every person who is a parent or guardian of the child.
- (3) In the case of:
  - (a) a child (not being a child to whom paragraph (b) applies):
    - (i) who has not previously been adopted, and
    - (ii) whose parents were not married to each other at the time of the child's conception and have not subsequently married each other,the appropriate persons are every person who is the mother or guardian of the child, and
  - (b) a child:
    - (i) who has not previously been adopted,
    - (ii) whose parents were not married to each other at the time of the child's conception and have not subsequently married each other, and
    - (iii) whose parents lived together after the child's birth as husband and wife on a bona fide domestic basis in a household of which the child formed part,the appropriate persons are every person who is a parent or guardian of the child.

- (3A) A person who is the putative father of a child referred to in subsection (3) and who:
- (a) does not have the custody of the child under a court order, or
  - (b) is not or is not deemed to be the guardian of the child, to the exclusion of, or in addition to, the mother or other guardian, under a law of the Commonwealth or of another State or a Territory of the Commonwealth,
- is not a guardian of the child for the purposes of that subsection.
- (4) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent or a guardian of the child.
- (4A) In the case of a child who, before the making of the adoption order:
- (a) has attained the age of 12 years but not the age of 18 years, and
  - (b) has been brought up, maintained and educated as the child of the applicant or applicants for the period of 5 years before the making of the application,
- the only appropriate person is 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 eighteen years before the making of the adoption order.
- (7) Where in relation to an application for an adoption order made after the commencement of the *Children (Equality of Status) Act 1976* all the consents given were, on the date or dates on which they were given, the only consents required under this section and those consents have not since been lawfully revoked, but since that date or, as the case may be, the date on which the last of those consents was given a further consent would, but for this subsection, be required to be given under this section, the Court shall not refuse to make the adoption order on the ground that that further consent has not been given.

## **27 Consents to be general except where in favour of a parent or relative**

- (1) For the purposes of section 26 but subject to subsection (2) of this section, every consent to the adoption of a child shall be a consent to the adoption of the child by any person or persons in accordance with the law of New South Wales, and shall have effect accordingly in relation to an application for adoption made by any person or persons in accordance with this Act.
- (2) Subsection (1) does not apply in relation to a consent expressed to be a consent to the adoption of a child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

## **28 Revocation of consents**

- (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 delivered to the nominated officer before:
  - (a) the day on which an order for the adoption of the child is made, or
  - (b) the expiration of thirty days from the date on which the instrument of consent was signed,whichever is the earlier, but may not, except as provided by subsection (3), otherwise be revoked.
- (2) Upon receipt of a notice under this section, the nominated officer shall forthwith give notice to the Director-General of the receipt of the notice of revocation and, if it appears to the nominated officer that the consent was given to the principal officer of a private adoption agency, to that principal officer.
- (3) Upon the Director-General's ceasing to be the guardian of a child by reason of paragraph (c1) of subsection (5) of section 34, any consent to the adoption of the child given for the purposes of this Act shall be deemed to be lawfully revoked and the Director-General shall forthwith give notice of the revocation to the nominated officer and, if the consent was given to the principal officer of a private adoption agency, to that principal officer.

## **29 Form of consents**

A consent for the purposes of section 26 shall be evidenced by an instrument of consent in or to the effect of the prescribed form signed by the person giving the consent and attested as prescribed.

## **30 Consents given under law of a State or Territory**

Notwithstanding any other provision of this Act, for the purposes of an application by a person under this Act for an adoption order in respect of a child, a consent to the adoption of the child given by a person in accordance with the law of another State or of a Territory of the Commonwealth that would be an effective consent under that law if the application had been made in that State or Territory under that law is an effective consent for the purposes of the application under this Act.

## **31 Defective consents**

- (1) The Court may refuse to 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:
  - (a) the consent was not given in accordance with this Act,

- (b) the consent was obtained by fraud, duress or other improper means,
  - (c) the instrument of consent has been altered in a material particular without authority, or
  - (d) the person giving or purporting to give the consent was not, at the time the instrument of consent was signed, in a fit condition to give the consent or did not understand the nature of the consent.
- (2) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child before the birth of the child.
- (3) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within three days after, the day on which the child was born unless it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent.
- (4) For the purposes of subsection (3) a certificate of a legally qualified medical practitioner certifying that, at the time when the instrument of consent was signed by the mother of the child, the mother was in a fit condition to give the consent is evidence of the matter so certified.

### **31A Notice of consents to certain putative fathers**

- (1) Where, under section 34 (1), the Director-General becomes the guardian of a child referred to in section 26 (3):
- (a) except as provided by paragraph (b)—the Director-General, or
  - (b) in any case where negotiations are being conducted or arrangements are being made by a private adoption agency with a view to the adoption of the child—the principal officer of the private adoption agency,
- shall make all such inquiries as, in the opinion of the Director-General or the principal officer, as the case may be, having regard to all such information as may have been furnished to him or her by a person giving a consent to the adoption of the child or any other person, are reasonably necessary in order to ascertain whether any person, as at the date on which the Director-General so becomes the guardian of the child:
- (c) is presumed to be the father of the child by the operation of Division 1 of Part 3 of the *Status of Children Act 1996*, or
  - (d) is a party to proceedings as a consequence of which the person may be presumed to be the father of the child by the operation of section 12 of the *Status of Children Act 1996*, or
  - (e) is otherwise registered as the father of the child under the *Births, Deaths and Marriages Registration Act 1995*.

- (2) Where, in relation to a child referred to in section 26 (3) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, a consent to the adoption of the child is given by the mother of the child, the Director-General shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.
- (3) Except as provided by subsection (1) or (2), the applicant or applicants for an adoption order in respect of a child referred to in section 26 (3) shall make such inquiries as, in the opinion of the Court, are reasonably necessary in order to ascertain whether any person, as at the date on which the application for the adoption order was made is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.
- (4) Where, as a consequence of making inquiries pursuant to subsection (1), (2) or (3), or otherwise, the Director-General, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order ascertains or ascertain that there is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies, the Director-General, that principal officer, the applicant or those applicants, as the case may be, shall:
  - (a) in circumstances to which subsection (1) or (2) applies—give the person notice of each consent given by an appropriate person referred to in section 26 (3) in relation to the child, or
  - (b) in circumstances to which subsection (3) applies—give the person notice that an application has been made for an adoption order in respect of the child.
- (5) Nothing in subsection (4) requires the giving of a notice of a consent referred to in that subsection to the person by whom the consent was given.

### **31B Dispensing with notice**

The Court, on application by the Director-General, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order in respect of a child, may, by order, dispense with the giving of a notice referred to in section 31A (4) to a person where it appears to the Court that:

- (a) the Director-General, the principal officer of the private adoption agency or the applicant or the applicants, as the case may require, is unable to locate the person,
- (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether the person should file a notice under section 31C (1), or
- (c) there are circumstances, other than those referred to in paragraphs (a) and (b), in



which, by dispensing with the giving of the notice, the interests and welfare of the child will be promoted.

**31C Application for custody etc by putative father**

- (1) A person to whom a notice referred to in section 31A (4) is given may, within a period of 14 days after the date of service of the notice, file, with the nominated officer, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given.
- (2) The Court may determine an application under subsection (1) in relation to a child at any time that is not later than the determination of any application for an order for the adoption of the child.
- (3) In determining an application under subsection (1), the Court may join any person it thinks fit as a party to the application.
- (4) The Court may determine an application under subsection (1) in relation to a child by making such order, or such interim order, with respect to the care, custody or guardianship of the child as it thinks fit.
- (5) Where the Court determines an application under subsection (1) by making an order with respect to the guardianship of a child, the guardianship of any person before the date on which the order takes effect shall, on that date, cease.

**31D Consequence of failure to make application for custody etc**

- (1) Where:
  - (a) a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A (1) applies:
    - (i) is given a notice referred to in section 31A (4), and
    - (ii) does not, within a period of 14 days after the date of service of the notice, file, with the nominated officer, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given, or
  - (b) the Court, under section 31B, dispenses with the giving of a notice referred to in section 31A (4) to a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A (1) applies,

the person may not, at any time before the making of an adoption order in respect of the child, do any thing, under this or any other law, that is inconsistent with the making of such an order.

- (2) A person:

- (a) who is the father of a child referred to in section 26 (3),
- (b) who is not given a notice referred to in section 31A (4), and
- (c) in respect of whom the Court has not, under section 31B, dispensed with the giving of a notice referred to in section 31A (4),

may not, except in pursuance of section 23 (2), at any time before the making of an adoption order in respect of the child, do any thing, under this or any other law, that is inconsistent with the making of such an order.

### **31E Making of certain adoption orders**

Subject to this Division, the Court shall not make an order for the adoption of a child referred to in section 26 (3) unless it is satisfied that any notice which may be required to be given under section 31A has been given or dispensed with by an order under section 31B.

### **32 Court may dispense with consents**

- (1) The Court, on application made in accordance with subsection (1A), may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where it appears to the Court that:
  - (a) after reasonable inquiry, that person cannot be found or identified,
  - (b) that person is in such a physical or mental condition as not to be capable of properly considering the question whether the person should give his or her consent,
  - (c) that person is, in the opinion of the Court, unfit to discharge the obligations of a parent or guardian by reason of the person's having abandoned, deserted, 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, or to make suitable arrangements to discharge, the obligations of a parent or guardian, as the case may be, of the child,
  - (e) the child is in the care of a foster parent or foster parents, the child has established a stable relationship with that person or those persons and the interests and welfare of the child will be promoted by the child's remaining in the care of that person or those persons,
  - (f) the child is in the care of a person or persons other than a parent, relative or foster parent and the interests and welfare of the child will be promoted if negotiations can be conducted and arrangements made with a view to the adoption of the child,

- (f1) the child is the subject of an adoption in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which section 46 would, but for the requirements specified in subsection (2) (b) of that section, apply,
  - (g) there are circumstances, other than those referred to in paragraphs (a)-(f1), in which, by dispensing with the consent, the interests and welfare of the child will be promoted, or
  - (h) a notice of intention to seek an order dispensing with the consent has been served personally on that person and that person has not, within 14 days after the date of service of the notice, filed, with the nominated officer, a notice of intention to oppose the making of the order.
- (1A) The persons who may make application for the purposes of subsection (1) are:
- (a) the Director-General,
  - (b) the principal officer of a private adoption agency,
  - (c) where an application has been made to the Court for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person), the applicant or applicants, or
  - (d) with the consent of the Director-General, the applicant or applicants for the adoption of the child.
- (2) An order under this section may be made before an application for an adoption order has been made in respect of the child or in conjunction with an adoption order in respect of the child but shall not be made on the application of a person referred to in paragraph (c) of subsection (1A) except in conjunction with an adoption order in favour of that person or of that person and another person.
- (3) Any order under this section made before an application for an adoption order has been made in respect of the child has effect for the purposes of any application for an adoption order that may subsequently be made in respect of the child.
- (4) An order under this section referred to in subsection (3) may, on the application of the Director-General or of the person whose consent was dispensed with or, where the order under this section was made on the application of the principal officer of a private adoption agency, on the application of that principal officer, be revoked by the Court at any time before the making of an adoption order in respect of the child.
- (5) The Court shall not:
- (a) except:
    - (i) in relation to a person referred to in paragraph (a) of subsection (1),

- (ii) in relation to a person referred to in paragraph (b) of that subsection whose physical or mental health would, in the opinion of the Court, be detrimentally affected if he or she were to receive a notice referred to in this paragraph,
- (iii) in relation to a person referred to in subsection (1) (h), or
- (iv) where the Court considers that in the particular circumstances of the case it is desirable to make an order under subsection (1) without a notice referred to in this paragraph having been given or sent as so referred to,

make such an order unless notice of the application for the order has been given or sent by post to the person whose consent is sought to be dispensed with at least fourteen days before the application for the order is made to the Court, or

- (b) revoke any such order unless not less than fourteen days' notice of the application has been given, where the Director-General is not applying for the revocation, to the Director-General and, where the order under this section was made on the application of the principal officer of a private adoption agency and he or she is not applying for the revocation, to that principal officer.

(6) (Repealed)

### **33 Consent of child**

- (1) 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, where the child has not attained the age of eighteen years, 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 refused to consent to the adoption or his or her consent has not been sought.
- (2) Section 26 does not prevent the Court from making an order under this section without the consent of the child.

### **34 Guardianship of child awaiting adoption**

- (1) Subject to this section, where the consent of every person whose consent to the adoption of a child is required under section 26, either:
  - (a) has been given and is a general consent, or
  - (b) has been dispensed with by an order made by virtue of subsection (1) of section 32,the Director-General is the guardian of the child (for purposes other than the purposes of section 26) to the exclusion of all other persons.
- (2) The provisions of subsection (1) do not apply to a child:

(a) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or

(b) unless and until the Director-General has received notice in writing that a general consent to the adoption of the child has been given.

(2A) Within twenty-one days after the receipt by the Director-General of a notice referred to in paragraph (b) of subsection (2), the Director-General may, by instrument in writing, decline to be the guardian of the child to whom that notice relates.

(2B) Where the Director-General executes an instrument referred to in subsection (2A), the Director-General shall forthwith cause a copy of the instrument to be given or sent by registered post to the person or each of the persons, as the case may be, by whom the consent to the adoption of the child was given.

(2C) Where:

(a) an officer of another State or of a Territory whose functions correspond to those of the Director-General under this Act has become the guardian of a child under a law of that State or Territory corresponding to this section,

(b) the consent to the adoption of the child held by that officer cannot be lawfully revoked by the person or persons by whom it was given,

(c) the Director-General is satisfied that the child is present in New South Wales,

(d) that officer has requested the Director-General to accept, and the Director-General 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 the officer of an instrument renouncing his or her guardianship of the child, to be the guardian of the child,

the Director-General is, upon the execution of that instrument, the guardian of the child (for purposes other than the purposes of section 26) to the exclusion of all other persons.

(2D) The provisions of subsection (2C) do not apply to a child who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

(3) Where the Director-General has become the guardian of a child under subsection (1), (2C) or (4) and has not, within a period of one year thereafter, ceased to be the guardian of the child, the Director-General shall make a report in writing to the Court concerning the child and the Court shall make such order for the care and control of the child as it thinks fit.

(4) Without limiting the generality of subsection (3), an order under that subsection may, where the child has not attained the age of 18 years, declare the child to be under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or order that the child remain under the guardianship of the Director-General for a further period of one year.

(4A) Where:

- (a) the Director-General has become the guardian of a child under subsection (1), (2C) or (4),
- (b) the consent to the adoption of the child cannot be lawfully revoked by the person or persons by whom it was given,
- (c) the Director-General is satisfied that the child is present in another State or in a Territory of the Commonwealth,
- (d) the Director-General has requested an officer of that State or Territory whose functions correspond to those of the Director-General under this Act to accept, and that officer has, by an instrument in writing forwarded to the Director-General, 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-General of an instrument in writing renouncing the Director-General's guardianship of the child, become the guardian of the child,

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

(5) Where the Director-General is the guardian of a child under subsection (1), (2C) or (4), the Director-General shall remain the guardian of the child 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,
  - (c) the Court, by order, makes other provision for the guardianship of the child either pursuant to section 24 or upon the application of the Director-General or otherwise, or
- (c1) the Director-General, pursuant to subsection (6), places the child:
- (i) in the care of the parents, or one of the parents, of the child, or
  - (ii) in the care of a guardian of the child,
- (c2) the Director-General executes an instrument referred to in subsection (2A),

- (c3) the Director-General, pursuant to subsection (4A), executes an instrument in writing renouncing guardianship of the child,
  - (d) the child comes under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.
- (6) The Director-General may, upon such terms and conditions as the Director-General thinks fit, place any child of whom the Director-General is guardian under the provisions of subsection (1), (2C) or (4) in the care of any suitable person who has agreed to have the child in his or her care.
- (7) The fact that the Director-General is the guardian of a child under this section does not affect the liability of any person to provide adequate means of support for the child.

## **Division 3 Effect of adoption orders**

### **35 General effect of adoption orders**

- (1) For the purposes of the laws of New South Wales, but subject to this Act and to the provisions of any law of New South Wales that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order:
- (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 subsection so far as they are relevant,
  - (d) any existing guardianship of the adopted child (including the Minister's parental responsibility under the *Children and Young Persons (Care and Protection) Act 1998*) ceases to have effect, and
  - (e) any previous adoption of the child (whether effected under the law of New South Wales or otherwise) ceases to have effect.
- (2) The provisions of subsection (1) do not have effect so as to deprive an adopted child of any vested or contingent proprietary right acquired by the child before the making of the adoption order.
- (3) Where:

- (a) one of the natural parents of a child, or one of two adoptive parents of an adopted child, has died,
  - (b) the surviving parent remarries or, if not previously married, marries, and
  - (c) the child is adopted by the surviving parent and that parent's spouse,
- any property of any collateral or lineal next-of-kin of the deceased parent who dies intestate shall, notwithstanding subsection (1), devolve in all respects as if the child had not been so adopted.

- (4) Notwithstanding the provisions of subsection (1), for the purposes of any law of New South Wales 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 shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

### **36 Effect of orders as regards dispositions of property etc**

- (1) Subject to subsection (2) of section 35, the provisions of subsection (1) of that section have effect in relation to a disposition of property, whether by will or otherwise, and whether made before or after the commencement of this Act, and to a devolution of property in respect of which a person dies intestate 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.
- (2) The provisions of subsection (1) of section 35 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 subsection, 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, and in relation to a devolution of property in respect of which a person died intestate before that commencement, an adoption order made under this Act has the same effect as if the former Acts had continued in force and the adoption order had been made under those Acts.
- (5) Nothing in section 35 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 commencement of this Act) distinguishing between adopted children and children other than adopted children.

### **37 Relationship of adopted child to other children of the adopter**

For the purposes of the application of the *Wills, Probate and Administration Act 1898* to the devolution of any property in respect of which a person dies intestate and for the purposes of the construction of any disposition of any property, an adopted child shall be deemed to be related to any other person, being the child or adopted child of his or her adoptive parent or parents:

- (a) where he or she was adopted by two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood, and
- (b) in any other case, as brother or sister of the half blood.

### **38 Names of adopted children**

- (1) Subject to subsections (2) and (2A), upon the making of an adoption order, the adopted child shall have as his or her surname the surname of the adoptive parent or parents and shall have as his or her forename or forenames such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or parents.
- (2) Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the Court may, in the adoption order, order that the child shall have that name as his or her surname.
- (2A) An approval of a change in the forename or forenames of a child who has attained the age of 12 years shall not be given by the Court unless the child has, in a consent given under section 33, consented to the change or, where the child has not attained the age of 18 years, the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why the change should be made notwithstanding that the child has refused to consent to the change or his or her consent has not been

sought.

- (3) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with the law of New South Wales.

### **39 (Repealed)**

### **40 Liability of trustees and personal representatives in respect of adopted persons**

- (1) Where, before conveying, transferring or distributing any property among the persons appearing to be entitled thereto, a trustee or personal representative gives the notice referred to in section 60 of the *Trustee Act 1925* or section 92 of the *Wills, Probate and Administration Act 1898*, as the case may be, and the time fixed by the notice has expired, the trustee or personal representative shall not be liable to any person:
  - (a) who claims directly or indirectly an interest in the property by virtue of an adoption, and
  - (b) of whose claim the trustee or personal representative does not have notice at the time of the conveyance, transfer or distribution.
- (2) Nothing in this section prejudices the right of a person to follow property into the hands of a person, other than a bona fide purchaser for value, who has received it.

## **Division 4 Interim orders**

### **41 Making of interim orders**

- (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 applicant or applicants.
- (1A) Upon an application to the Court by the Director-General or the principal officer of a private adoption agency, the Court may make an interim order for the custody of a child in favour of the applicant.
- (2) An interim order shall 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.

### **42 Duration of interim orders**

- (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.

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

#### **43 Discharge of interim orders**

- (1) The Court may, at any time, make an order discharging an interim order made under this Division.
- (2) Where the Court discharges an interim order under the provisions of subsection (1) the Court may make such order for the care and custody of the child as it thinks fit, including, where the child has not attained the age of 18 years, an order declaring the child to be under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.
- (3) An interim order in respect of a child ceases to have effect upon the making of an order for the adoption of that child, whether made in New South Wales or in another State or Territory of the Commonwealth.

### **Part 5 Recognition of adoptions**

#### **44 Definition**

In this Part, **country** includes a part of a country.

#### **45 Recognition of Australian adoptions**

For the purposes of the laws of New South Wales, the adoption of a person (whether before or after the commencement of this Act) in another State or Territory of the Commonwealth, in accordance with the law of that other State or Territory has, so long as it has not been rescinded under the law in force in that other State or Territory, the same effect as if it were an order for adoption under this Act or the former Acts, as the case may be, made in New South Wales on the date on which it was effected and has no other effect.

#### **46 Recognition of foreign adoptions**

- (1) For the purposes of the laws of New South Wales, 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 if it were an order for adoption under this Act or the former Acts, as the case may be, made in New South Wales on the date on which it was effected and has no other effect.
- (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, the adopter, or each of the adopters:
    - (i) had been resident in that country for 12 months or more, or
    - (ii) was domiciled in that country,
  - (c) in consequence of the adoption, the adopter or adopters had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the adopted person, and
  - (d) under the law of that country the adopter or adopters were, by virtue of 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 47) 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 47), 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) and has not been rescinded.
- (5) 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 New South Wales.
- (6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.
- (7) This section, as in force immediately before its amendment by the *Adoption of Children (Amendment) Act 1987*, applies in relation to the adoption of a person in a country outside the Commonwealth and the Territories of the Commonwealth effected before that amendment.

#### **47 Declarations of validity of foreign adoptions**

- (1) A person specified in subsection (2) may apply to the Court 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 section 46 applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

- (2) The persons who may make an application under subsection (1) 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 under this section, the Court may:
  - (a) direct that notice of the application be given to such persons (including 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 New South Wales, an order under this section binds the Crown in right of New South Wales, whether or not notice was given to the Attorney-General, and any person who was:
  - (a) a party to the proceedings for the order or a person claiming through such a party, or
  - (b) a person to whom notice of the application for the order was given or a person claiming through such a person,but does not affect:
  - (c) the rights of any other person, or
  - (d) an earlier judgment, order or decree of a court or other body of competent jurisdiction.
- (6) In proceedings in a court of New South Wales, the production of a copy of an order under this section, certified by the nominated officer to be a true copy, shall:
  - (a) where the proceedings relate to a person referred to in paragraph (a) or (b) of subsection (5), be conclusive evidence, and
  - (b) where the proceedings relate to the rights of any other person, be evidence,

that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 46 applies.

## **Part 6 Offences**

### **48 Territorial application of Part**

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

### **49 Taking away etc of adopted child by natural parent**

- (1) A person who was the father or mother or a relative or guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a relative or guardian of the child, and who takes, leads, entices or decoys the child, or counsels, causes or attempts to cause the child to be withdrawn or to abscond or detains the child, with intent to deprive the adopters of the child of possession of the child is guilty of an offence against this Act.
- (2) A person who receives or harbours a child on behalf of a person who, to his or her knowledge, has taken, led, enticed or decoyed the child away, or has counselled, caused or attempted to cause the child to be withdrawn or to abscond, or is detaining the child in contravention of subsection (1) is guilty of an offence against this Act.

### **49A Attempts by certain persons to communicate with adopted child**

A person who was the father or mother or a relative or guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a relative or guardian of the child, and who, without the prior consent of:

- (a) except as provided by paragraph (b)—the adoptive parent or adoptive parents of the child, or
- (b) where the adoptive parent or adoptive parents of the child is or are dead or cannot be found or there is, in the opinion of the Director-General, any other sufficient reason—the Director-General,

attempts to communicate with the child at any time before the child reaches the age of 18 years is guilty of an offence against this Act.

### **50 Payments in consideration of adoptions etc**

- (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 or in relation to:

- (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 control of a child with a view to the adoption of the child, or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of a child,

is guilty of an offence against this Act.

- (2) Subsection (1) does not apply to or in relation to any of the following payments or rewards in connection with an adoption or proposed adoption under this Act:
  - (a) a payment of legal expenses or fees authorised by the regulations,
  - (b) a payment made by the adopters, with the approval in writing of the Director-General or with the approval of the Court, 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, and
  - (c) any other payment or reward authorised by the Director-General or by the Court.
- (3) Subsection (1) does not apply to or in relation to a payment or reward in connection with an adoption or proposed adoption under the law of another State or a Territory of the Commonwealth if the making of the payment or the giving of the reward, or the agreeing to make the payment or give the reward, would have been lawful if it had taken place in that other State or Territory.

## **51 Unauthorised arrangements for adoptions**

- (1) A person, other than the Director-General, a person acting on behalf of the Director-General, the principal officer of a private adoption agency, or a person authorised in writing by such a principal officer to act on his or her behalf, who:
  - (a) conducts negotiations or makes arrangements with another person with a view to the adoption of a child by that other person, or
  - (b) except in accordance with arrangements made by or on behalf of, or with the written permission of, the Director-General, transfers, or causes to be transferred, the possession or control of a child to another person with a view to the adoption of the child by that other person,

and each person with whom negotiations are conducted or arrangements are made as

referred to in paragraph (a) or to whom the possession or control of a child is transferred in the circumstances to which paragraph (b) applies is guilty of an offence against this Act.

- (2) Subsection (1) does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child with a view to the adoption of the child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

## **52 Restriction on advertising etc**

- (1) Subject to this section, a person who publishes, or causes 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:

- (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.

- (2) Subsection (1) does not apply in relation to an advertisement, news item or other matter that has been approved by the Director-General.

## **53 Restriction on publication of identity of parties**

- (1) Subject to this section, a person who publishes, or causes to be published, in a newspaper or periodical, or by means of broadcasting or television, in relation to an application under this Act or under a law of another State or a Territory of the Commonwealth 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, is guilty of an offence against this Act.

- (2) 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.

## **54 False statement in application etc**

A person who, whether orally or in writing, wilfully makes a false statement for the purposes of or in connection with a proposed adoption or any other matter under this Act, is guilty of an offence against this Act.

## **55 Personation of person whose consent to an adoption is required**

A person who personates or falsely represents himself or herself to be a person whose consent to the adoption of a child is required by this Act or by the law of another State or



a Territory of the Commonwealth is guilty of an offence against this Act.

#### **56 Presenting forged consent**

Where a person presents, or causes to be presented, to the Court in connection with an application for an order for the adoption of a child under this Act a document purporting to be an instrument of consent, or revocation 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, that first-mentioned person is guilty of an offence against this Act.

#### **57 Undue influence**

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 a parent or guardian of a child with a view:

- (a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act,
- (b) to influencing the parent or guardian in the expression of any wishes contained in an instrument of consent to the adoption of a child, or
- (c) to inducing the parent or guardian to revoke a consent to the adoption of the child given by that parent or guardian,

is guilty of an offence against this Act.

#### **58 Improper witnessing of consent**

A person who subscribes his or her name as a witness to the signature of a person to an instrument of consent to the adoption of a child:

- (a) without being satisfied that the person signing the instrument is a parent or guardian of the child,
- (b) without taking such steps as are prescribed to satisfy himself or herself that the person signing the instrument understands the effect of the consent, and
- (c) without being satisfied that the instrument bears the date on which it is signed by the person giving the consent,

is guilty of an offence against this Act.

#### **59 Authority to prosecute**

Proceedings for an offence against this Act or the regulations shall not be commenced except with the written consent of the Minister.

## **60 Penalties and proceedings for offences**

- (1) Any person guilty of an offence against this Act is liable to a penalty not exceeding 10 penalty units or to imprisonment for 12 months, or both.
- (2) Penalties imposed by this Act or by the regulations may be recovered in a summary manner before a Local Court constituted by a Magistrate sitting alone.
- (3) A prosecution for an offence against this Act or against the regulations may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later time.
- (4) Proof of the time when the commission of an offence came to the knowledge of the complainant shall lie upon the complainant.
- (5) At the hearing of any proceedings in respect of an offence against this Act or the regulations, any persons not directly interested in the proceedings shall be excluded from the court unless the court otherwise directs.
- (6) A court may:
  - (a) direct a child to leave the court at any time during the hearing of any proceedings in respect of an offence against this Act or the regulations, or
  - (b) direct any person to leave the court during the examination of any witness in any such proceedings,if the court is of the opinion that, in the interests of a child, such a direction should be given.
- (7) The powers of a court under subsection (6) may be exercised notwithstanding that the child or person directed to leave the court may be directly interested in the proceedings.
- (8) Subsections (5)–(7) apply to and in respect of the hearing of any appeal against the decision of a court in the same way as they apply to and in respect of the hearing of proceedings before the court.

## **Part 7 Miscellaneous**

### **61 Functions of nominated officer in relation to orders under this Act**

The nominated officer shall cause a memorandum, in accordance with the prescribed form, of every adoption order, of every order made under section 47, and of every order for the discharge of such an adoption order, to be sent to the Registrar of Births, Deaths and Marriages and shall cause a copy of the memorandum to be sent to the Director-General.

## **62 Sending of memoranda of orders to other States and Territories**

Where the Court makes an order for the adoption of a child, or an order discharging such an order, and the nominated officer has reason to believe that the birth or previous adoption of the child is registered in another State or in a Territory of the Commonwealth, the nominated officer 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 the nominated officer to be a true memorandum or copy, to be sent to such officer of that other State or Territory having functions in relation to the registration of births as is prescribed.

## **63 Particulars of orders received from other States or Territories**

Where the nominated officer receives, in relation to a child whose birth or previous adoption is registered in New South Wales, a memorandum or copy of an adoption order made (whether by a court or not) under the law in force in another State or in a Territory of the Commonwealth, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorised so to certify under the law of that other State or Territory, the nominated officer shall cause a memorandum, in accordance with the prescribed form, of the memorandum or copy so received to be sent to the Registrar of Births, Deaths and Marriages.

## **64 Hearings to be in camera**

Any proceedings heard by the Court under this Act or the regulations 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 permitted by the Court, be excluded during the hearing of the proceedings.

## **65 Matters admissible in evidence**

Except as otherwise provided by this Act or the regulations, the Court, in the hearing of any proceedings or in determining any application or matter under this Act or the regulations, may act upon any statement, document, information, or matter that may in its opinion assist it to deal with the matter of the proceedings or before it for determination whether or not the statement, document, information or matter would be admissible in evidence.

## **65A Report for applicants where child overseas**

- (1) Where an application is made by a person or persons to the Director-General for a report relating to the suitability of the applicant or applicants for adopting a child from a place outside the Commonwealth and the Territories of the Commonwealth (whether or not the child is identified), the Director-General may:
  - (a) assess the applicant or applicants, and

(b) prepare the report.

(2) A report under this section may contain:

- (a) information about the applicant or applicants concerned which has been obtained from such persons as the Director-General considers appropriate,
- (b) an assessment by the Director-General of any such information, and
- (c) such other information as the Director-General considers appropriate.

#### **66 Contents of reports not to be disclosed**

Except as the Court otherwise orders, a report to the Court referred to in section 21 or 34 shall not be made available to any person, including a party to the proceedings.

#### **67 Restriction on inspection of records**

Except as provided by the regulations and the *Adoption Information Act 1990*, the records of any proceedings under this Act or the former Acts shall not be open to inspection by any person.

#### **67A Decisions that are reviewable by Administrative Decisions Tribunal**

For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the following decisions made by the Director-General under or for the purposes of this Act are reviewable by the Administrative Decisions Tribunal:

- (a) a decision to refuse approval of an adoption agency,
- (b) a decision to revoke or suspend the approval of an adoption agency,
- (c) a decision within a class of decisions prescribed by the regulations for the purposes of this section.

#### **68 Director-General may appear at hearings**

The Director-General may appear at the hearing of the proceedings on any application under this Act, and may address the Court, and call, examine and cross-examine witnesses.

#### **68A Provision of financial and other assistance to certain children**

- (1) The Director-General may, with respect to a child of a prescribed class or description, enter into an agreement with a person or persons with whom the child has been placed for the purposes of adoption, the applicant, or applicants, for an adoption order in respect of the child or the adoptive parent, or adoptive parents, of the child, for the provision of such financial or other assistance, on such terms and conditions as may be agreed, in order to assist or promote the welfare and interests of the child.

- (2) Nothing in subsection (1) prevents the Director-General from entering into an agreement under that subsection in relation to a child so as to provide financial or other assistance both before and after an adoption order in respect of the child is made.

#### **68B Administration of certain estates**

- (1) In this section, a reference to the executor or administrator of the estate of a deceased person includes a reference to a person who is a trustee of the whole or any part of the property comprised in the estate.
- (2) Where:
  - (a) an adopted person is a beneficiary under the estate of a deceased person,
  - (b) the executor or administrator of the estate does not know the name or whereabouts of the adopted person, and
  - (c) the Director-General certifies, in writing, to the executor or administrator that the Director-General knows the name and whereabouts of the adopted person and that the adopted person is alive,

the executor or administrator may, with the approval of the Director-General, transfer to the Director-General, on behalf of the adopted person, any property to which the adopted person may be entitled under the estate or which may be otherwise applied for the adopted person's benefit.

- (3) A transfer made under subsection (2) shall be valid against all persons and the executor or administrator shall be absolutely discharged from all liability in respect of a transfer so made by the executor or administrator.
- (4) The Director-General shall apply any property transferred to the Director-General under subsection (2) on behalf of the adopted person in respect of whom it was transferred in accordance with the trusts on which the property was held immediately before it was transferred as if the Director-General were the executor or administrator of the estate of the deceased person in respect of which the transfer was made.
- (5) Nothing in this section affects any right of a person to claim or recover any property transferred under subsection (2) from a person other than the executor or administrator who transferred the property.

#### **69 (Repealed)**

#### **70 Proof of adoptions**

In any proceedings in a court of New South Wales, the court may receive as evidence of the matters stated in, or appearing from, the document, a document purporting to be either the original or a certified copy or certified extract of an order effecting an adoption

(whether in Australia or elsewhere), or an official certificate, entry or record of an adoption (whether effected in Australia or elsewhere).

### **71 Judicial notice of signatures**

- (1) In proceedings under this Act, judicial notice shall be taken of the signature of a person who holds or has held, or is acting or has acted in, the office of Director-General, or the corresponding office in another State or in a Territory of the Commonwealth, appearing on a document and of the fact that, at the time the document was signed by the person, he or she held or was acting in, that office.
- (2) In proceedings under this Act, judicial notice shall be taken of the signature of a person to whom any of the powers or functions of the Director-General (whether under this Act or otherwise) have been delegated.

### **72 Rules of Court**

- (1) Rules of Court may be made under the [Supreme Court Act 1970](#) regulating practice and procedure in respect of proceedings under this Act.
- (2) Subsection (1) does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).

### **73 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to:
  - (a) the forms to be used for the purposes of this Act,
  - (b) the fixing, by or under the regulations, and payment of fees to cover administrative, legal and other expenses payable to the Director-General or to a private adoption agency in any case where the Director-General or the principal officer of a private adoption agency makes, is requested to make or is involved in the preparation of, on behalf of an applicant, any application under this Act, the rules of the Court or the regulations and the waiving of any such fees or other charges,
  - (c) the conduct of private adoption agencies,
  - (c1) the form and content of any assessment made for the purposes of this Act,
  - (d) the keeping of registers by the Director-General of persons approved by the Director-General or by the principal officer of a private adoption agency as fit and proper persons to adopt children and the order in which persons whose names are included in any such list may be selected to be applicants for adoption orders,
  - (e) the making of appeals to the Court against the exclusion of the name of any

person from any register referred to in paragraph (d) and the jurisdiction of the Court to hear and determine those appeals,

- (f) notifying the Director-General of the giving of a general consent to the adoption of a child,
  - (f1) (Repealed)
  - (f2) the fixing, by or under the regulations, and payment of fees:
    - (i) (Repealed)
    - (ii) for assessments made pursuant to this Act, or
    - (iii) for conducting searches or providing information, reports and other documents pursuant to this Act or the regulations,and the waiving of any such fees,
  - (g) imposing penalties, not exceeding 5 penalty units, for offences against the regulations, and
  - (h) prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2), (3) (Repealed)

## **Part 8**

### **74 (Repealed)**