

Adoption of Children

- (b) the Minister, as guardian, is required to consent to the adoption of the child,

consent to the adoption may be expressed as a consent to the adoption of the child by a particular person or, where joint applicants, particular persons.

(3) Where a consent of the kind referred to in subsection (1) has been relied on in an application for an order for adoption, but the application has been refused by the Court, the consent remains in operation for the purposes of a further application for the adoption of the child unless the Court directs otherwise.

32. CONSENTS GIVEN UNDER LAW OF A STATE OR ANOTHER TERRITORY

Where -

- (a) a person whose consent to the adoption of a child is required by this Division has, in accordance with the law of a State or of another Territory of the Commonwealth, duly signed an instrument of consent for the adoption of a child by any person approved by or on behalf of the officer performing in that State or other Territory functions similar to those of the Minister;
- (b) that officer or a person acting on his or her behalf, has, by writing under his or her hand, authorised the Minister to make arrangements for the adoption of the child in the Territory; and
- (c) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that State or other Territory,

that instrument of consent is, for the purposes of this Act, to be deemed to be an instrument executed in accordance with this Division and evidencing a subsisting consent to the adoption of the child.

33. REVOCATION OF CONSENT

(1) A consent to the adoption of a child given for the purposes of this Act by a person other than the child may be revoked by notice in writing served on the Minister before the expiration of one month after the date on which the instrument of consent was signed but may not otherwise be revoked.

(2) Service of a notice of revocation on the Minister under subsection (1) shall be effected by delivering it personally, or by sending it by certified mail, to the appropriate office within the Department.

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34. DEFECTIVE CONSENTS

(1) The Court may refuse to make an adoption order where consent to the adoption was given, or is purported to have been given, by a person (not being the child) for the purposes of this Division 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 who gave or purportedly gave the consent was not, at the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent.

(2) The Court shall not make an order for the adoption of a child where the instrument of consent was signed by the birth mother of the child -

- (a) before the birth of the child; or
- (b) within one month after the birth of the child unless it is proved that, at the time the instrument was signed, the birth mother was in a fit condition to give the consent.

(3) For the purposes of subsection (2) (b) -

- (a) certificates from 2 medical practitioners each certifying that, at the time when the instrument of consent was signed by the birth mother of the child, the mother was in a fit condition to give the consent; and
- (b) a signed report from a person who is an approved person for the purposes of section 30 that the birth mother received counselling and the prescribed information pursuant to that section,

is evidence that that mother was in a fit condition to give the consent.

35. COURT MAY DISPENSE WITH CERTAIN CONSENTS

The Court may, by order, dispense with the consent of a person, other than the Minister or the child, to the adoption of a child where the Court is satisfied that -

- (a) after reasonable inquiry, the person cannot be found;

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- (b) the person is in such a physical or mental condition as not to be capable of properly considering the question whether he or she should give his or her consent;
- (c) the person has abandoned, deserted or persistently neglected or ill-treated the child;
- (d) the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (e) there are any other special circumstances by reason of which the consent may properly be dispensed with.

Division 5 - Guardianship of Child Awaiting Adoption

36. GUARDIANSHIP OF CITIZEN-CHILD AWAITING ADOPTION

(1) Subject to subsection (2), in the case of an adoption of a child who was born in a State or a Territory of the Commonwealth, other than an adoption by the spouse of a parent of the child, and -

- (a) the persons who are required to consent to the adoption under Division 4 have consented to the adoption of the child; or
- (b) the consent of such a person to the adoption of the child has been dispensed with by an order of the Court under section 35,

the child shall be placed in the guardianship of the Minister.

(2) Where the Minister is the guardian of a child who is about to leave or has left the Territory to reside in a State or another Territory of the Commonwealth, the Minister may transfer the guardianship of the child to a person, officer or authority performing functions similar to those of the Minister (in relation to the guardianship of a child under this Act) in accordance with the law of the State or other Territory.

(3) The Minister may, on the request in writing by or on behalf of a person, officer or authority referred to in subsection (2), place a child in respect of whom section 32 applies, and who is about to enter or has entered the Territory, in the guardianship of the Minister.

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(4) The guardianship of the Minister referred to in subsection (1) shall continue to the exclusion of all other persons until -

- (a) an order for adoption is made in respect of the child;
- (b) where the appropriate consent to the adoption has been given, the lawful revocation of the instrument of consent;
- (c) the Court, by order, where it considers it necessary for the welfare and interests of the child (including where it considers that an order for adoption in respect of the child would not promote the welfare and interests of the child) transfers the guardianship of the child from the Minister to another person; or
- (d) where the child no longer resides in the Territory but in a State or other Territory of the Commonwealth, the Minister transfers the guardianship of the child to a person, officer or authority referred to in subsection (2).

37. GUARDIANSHIP OF NON-CITIZEN CHILD AWAITING ADOPTION

Where a non-citizen child enters or has entered the Territory from a State or another Territory of the Commonwealth or from an overseas country and the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth no longer applies in relation to the non-citizen child -

- (a) the guardianship of the child shall be placed with the Minister; and
- (b) section 36 shall, to the extent necessary, apply to that child as if he or she were born in a State or another Territory of the Commonwealth,

for so long as the Territory is the normal place of residence of the child.

Division 6 - Adoption Orders

38. APPLICATION FOR ADOPTION ORDER

Where the Minister is satisfied that a person or persons who wish to adopt a child are in fact suitable to adopt the child, the person or persons seeking the adoption may apply to the Court for an order for the adoption of the child.

39. NOTICE OF INTENTION TO APPLY

(1) Where a person or persons referred to in section 38 intend to apply for an order for the adoption of the child, the person or persons shall give to the Minister not less than 21 days notice in writing of his or her intention to make the application.

(2) On receipt of the notice referred to in subsection (1), the Minister shall, as soon as practicable but not later than 7 days after receipt of the notice, give notice in writing of the intention to make the application for the order for adoption to each person -

(a) whose consent to the adoption is required under Division 4 (whether or not he or she has given his or her consent), unless he or she has previously advised the Minister in writing that he or she does not wish to receive notice of the intention to make the application; and

(b) whose name and address is known or may reasonably be ascertained by the Minister,

and each person who receives notice from the Minister may, within 7 days of receipt of the notice, advise the Minister, together with his or her full name and an address for service, whether he or she wishes to be a party to the adoption proceedings.

(3) The Minister shall, as soon as practicable but not later than 7 days after receipt of the advice referred to in subsection (2), advise in writing the person or persons intending to apply for an order for adoption of the name and address for service of each person who wishes to be a party to the adoption proceedings.

(4) The Court may, upon application, dispense with the giving of a notice by the Minister under subsection (2) where it considers it reasonable to do so.

(5) Notwithstanding this section, where it appears to the Court to be necessary, the Court may direct that notice of an application for an adoption order be given to a person other than a person referred to in subsection (2).

40. PARTIES

(1) Where an application is made to the Court for an order for the adoption of a child, the following persons may attend and appear before the Court personally or by a legal representative as a party to the proceedings in respect of the application:

(a) an applicant;

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- (b) a person whose consent to the adoption is required under Division 4, except where his or her consent has been dispensed with under section 35;
- (c) the child;
- (d) the Minister.

(2) Notwithstanding subsection (1), where the Court considers it necessary, the Court may join any person it thinks fit as a party to the proceedings for the purpose of -

- (a) opposing the application for an order for the adoption; or
- (b) opposing an application to dispense with the consent of a person to the adoption under section 35.

41. COURT TO BE SATISFIED AS TO CERTAIN MATTERS

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

- (a) the welfare and interests of the child will be promoted by the adoption;
- (b) the applicant or applicants are suitable to adopt the child and satisfy the requirements of the Act; and
- (c) the Minister has ascertained and taken into account the wishes, if any, of a parent of the child, including wishes in respect of arrangements between the parent or parents and any prospective adoptive parent or adoptive parents in respect of access to the child by, or the giving and receiving of information about the child to, the first-mentioned parent or parents.

(2) Subsection (1) does not apply in relation to an order for the adoption of a child who has attained the age of 18 years before the making of the order, but the Court shall not make an order for the adoption of such a child unless it is satisfied -

- (a) that the applicant or applicants are suitable to adopt the child and satisfy the requirements of the Act; and
- (b) that exceptional circumstances make it desirable that the child should be adopted.

42. INTERIM ORDERS

(1) On an application to the Court for an order for the adoption of a child, the Court, having received the Minister's report referred to in section 41, 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 for the order for adoption who are thereby entitled to the care and custody of the child during the period the interim order remains in force.

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

(3) Subject to this section, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order and may be extended for such further periods, if any, as the Court from time to time orders, but shall not be continuously in force for periods the aggregate of which is more than 2 years.

(4) An interim order ceases to have effect upon the making of an order for the adoption of the child, whether made in the Territory or in a State or another Territory of the Commonwealth.

(5) Notwithstanding subsection (3), the Court may, at any time, make an order discharging an interim order and make such order, subject to terms and conditions, for the care and custody and guardianship of the child as it thinks fit.

43. CARE OF CHILD AFTER REFUSAL OF AN APPLICATION

Where the Court refuses an application for the order for the adoption of a child, it shall make such order, subject to terms and conditions, for the care and custody and guardianship of the child as it thinks fit.

44. DISCHARGE OF ADOPTION ORDERS

(1) Subject to subsection (2), the Minister may apply to the Court for an order discharging an order for the adoption of a child, and the Court may make such an order if it is satisfied that -

- (a) the adoption order was obtained by fraud, duress or other improper means; or
- (b) a person's consent to the adoption required under Division 4 was obtained by fraud, duress or other improper means.

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(2) The Court shall not make an order discharging an order for adoption under this section if it is satisfied that -

- (a) the child has attained the age of 18 years; or
- (b) the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where -

- (a) the Court makes an order discharging an order for adoption under this section; and
- (b) that order for adoption was not made in reliance upon the consent of a person or persons that was obtained by fraud, duress or other improper means,

then, unless the Court otherwise orders, the consent of that person remains, or those persons remain, in force for the purposes of a further application for the adoption of the child.

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

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

(5) On the making of an order discharging an order for the adoption of a child under this section, but subject to Division 7 and any order made under subsection (4), the rights, privileges, duties, liabilities and relationships under the law of the Territory of the child and of all other persons affected by the order for adoption of the child shall be the same as if the adoption order had not been made, but without prejudice to -

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

whilst the adoption order was in force.

Division 7 - Effect of Adoption Orders

45. GENERAL EFFECT OF ADOPTION ORDERS

(1) For the purposes of the laws of the Territory, but subject to this Act and to the provisions of any other law in force in the Territory that expressly distinguishes in any way between birth children and adopted children, on the making of an order for the adoption of a child -

- (a) the child becomes a child of the adoptive parent or adoptive parents, and the adoptive parent becomes, or adoptive parents become, the parent or parents of the child as if that parent or those parents were the birth parent or parents of that child;
- (b) the child ceases to be a child of any person who was a parent of the child before the making of the adoption order, and such person ceases to be a parent of the child;
- (c) the relationship to one another of all persons affected by the order for the adoption of the child (including the child and a former parent of the child) shall be determined on the basis of the provisions of paragraphs (a) and (b) so far as they are relevant;
- (d) an existing appointment of a person, by will or deed or otherwise in accordance with a law in force in the Territory, as guardian of the adopted child ceases to have effect; and
- (e) a previous adoption of the child (whether effected under a law in force in the Territory or otherwise) ceases to have effect.

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

46. EFFECT OF ORDERS AS REGARDS DISPOSITIONS OF PROPERTY, &c.

(1) Section 45(1) has effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, and to devolutions of property in respect of which a

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person dies intestate after the commencement of this Act, except that that subsection does not affect a disposition of property -

- (a) by a person who, or by persons any of whom, died; and
- (b) that has taken effect in possession,

before the commencement of this Act.

(2) Section 45(1) does 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 the person to include adopted children as objects of the disposition,

the 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) Nothing in section 45 or in this section affects the operation of a 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.

47. ADOPTION ORDER NOT TO AFFECT THE DISTRIBUTION OF PROPERTY BY TRUSTEES OR PERSONAL REPRESENTATIVES UNLESS NOTICE GIVEN

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

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

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

48. NAMES OF ADOPTED CHILD

(1) On the making of an order for the adoption of a child, the surname of the child shall be -

- (a) where there are 2 adoptive parents who have the same surname, that surname;
- (b) where there is one adoptive parent, the surname of that adoptive parent; or
- (c) where there are 2 adoptive parents who have different surnames, one of those surnames,

that surname having been specified in the application for the order for the adoption as the proposed surname of the child and approved by the Court, or such other surname as the Court approves in the adoption order.

(2) On the making of an order for the adoption of a child the forename or forenames of the child shall be such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or parents.

(3) The Court shall not approve a name as a surname or forename of a child under this section unless it is satisfied that, as far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.

(4) Nothing in this section prevents the changing of any name of a child in accordance with a law in force in the Territory after the making of an order for the adoption of the child.

PART 4 - RECOGNITION OF ADOPTIONS

49. RECOGNITION OF AUSTRALIAN ADOPTIONS

For the purposes of the law in force in the Territory, the adoption of a child (whether before or after the commencement of this Act) in a State or another Territory of the Commonwealth in accordance with the law of that State or other Territory has, so long as it has

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not been rescinded under the law in force in that State or other Territory, the same effect as an order for adoption made under this Act, and has no other effect.

50. RECOGNITION OF FOREIGN ADOPTIONS

(1) Subject to this Part, where a child has been adopted (whether before or after the commencement of this Act) in an overseas country and -

- (a) the adoption remains effective according to the law of that country;
- (b) in consequence of the adoption, the adoptive parent or adoptive parents had, immediately following the adoption, a right superior to that of a birth parent of the child alone, or of the birth parents of the child jointly, in respect of the custody of the child;
- (c) under the law of that country the adoptive parent or adoptive parents of the child were, by the adoption, placed generally in the position of a birth parent or birth parents in relation to the child; and
- (d) either -
 - (i) the adoptive parent or adoptive parents had been continuously residing in that country for a period of not less than 12 months immediately before commencing proceedings for the adoption; or
 - (ii) the Minister had, before the completion of the adoption, decided that the adoptive parent or adoptive parents is or are suitable to adopt a non-citizen child,

then the adoption has, for the purposes of the law in force in the Territory, the same effect as an order for adoption made under this Act, and has no other effect.

(2) Notwithstanding subsection (1), a court of competent jurisdiction (including the Court dealing with proceedings under section 52) -

- (a) shall, where the question arises whether an adoption is one to which this section applies, presume that the adoption complies with the requirements of subsection (1) unless the contrary appears from the evidence before it; or
- (b) may refuse to recognise an adoption as being an adoption to which this section applies if it appears to the Court that the procedure followed, or the law applied, in connection with the adoption was not fair and just.

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

51. MINISTER MAY APPROVE COUNTRIES FOR ADOPTION PURPOSES

(1) Where the Minister is satisfied that proceedings for adoption in an overseas country are fair, the Minister may, by notice in the Gazette, determine that an adoption of a child in that country, in accordance with the law of that country, shall so long as it remains in force under that law, have the same effect (and no other effect) as an adoption made in a State or another Territory of the Commonwealth has under section 49, and such an adoption shall have that effect.

(2) The approval of the Minister referred to in subsection (1) may be subject to such terms and conditions as the Minister thinks fit.

(3) A decision of the Minister whether to approve an overseas country for the purposes of subsection (1) is not reviewable.

52. DECLARATIONS OF VALIDITY OF FOREIGN ADOPTIONS

(1) A person who is -

(a) an adopted child;

(b) an adoptive parent;

(c) a person tracing a relationship by virtue of an adoption through or to an adopted child,

may apply to the Court for an order declaring that an adoption of a child was effected (whether before or after the commencement of this Act) under the law of an overseas country and that the adoption is one to which section 50 applies.

(2) A person making an application under subsection (1) shall serve a copy of the application on the Minister.

(3) The Court may hear and determine an application made under subsection (1) and may, if it thinks fit -

(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.

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

(5) For the purposes of the laws in force in the Territory, an order under this section binds the Crown in right of the Territory, whether or not notice was given to the Attorney-General, but, subject to subsection (6), does not affect -

- (a) the rights of another person unless that person was -
 - (i) a party to the proceedings for the order or a person claiming through such a party; or
 - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or
- (b) an earlier judgment, order or decree of a court of competent jurisdiction.

(6) In proceedings in a court of competent jurisdiction of the Territory, being proceedings relating to the rights of a person other than a person referred to in subsection (5)(a), the production of a copy of an order made under this section, certified by the Registrar to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which section 50 applies.

53. SUPERVISION OF NON-CITIZEN CHILD WHETHER OR NOT ADOPTION RECOGNISED

- (1) Subject to this section, where -
 - (a) a non-citizen child has been adopted in accordance with the law of an overseas country, whether or not the adoption is an adoption which, under this Act, has the same effect (and no other effect) as an order for adoption under this Act;
 - (b) the adoption of the child has been in force for not more than 12 months;
 - (c) no adoptive parent, whether there is one or 2, was a national or citizen of that overseas country at the time the adoption was made; and

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(d) the child is present in the Territory,

the Minister may supervise the welfare and interests of the child for a period not exceeding 12 months commencing on the date of the arrival of the child in the Territory and an approved person has a right of access to the child at all reasonable times during that period.

(2) Where a child whose welfare and interests may be supervised under subsection (1) by the Minister has, after being adopted but before arriving in the Territory, been resident in a State or another Territory of the Commonwealth, the period during which the child is subject to the supervision of the Minister is reduced by that period of residence in the State or other Territory.

(3) The Minister may, in his or her discretion, exempt a child, to whom subsection (1) would otherwise apply, from the application of that subsection and accordingly that subsection shall not apply to or in relation to that child.

PART 5 - REGISTRATION OF ADOPTIONS, &c.

54. REGISTRATION OF ORDERS

(1) The Registrar shall, as soon as practicable after every order for adoption, or every order discharging an order for adoption, is made by the Court under this Act, cause a memorandum, in accordance with the prescribed form, of the order for adoption, or a copy of the order discharging an order for adoption, to be sent to the Registrar of Births, Deaths and Marriages, who shall -

- (a) register it, as prescribed, in a register kept by him or her and known as the Register of Adoptions; and
- (b) if it relates to a child whose birth is registered in the Register of Births kept by him or her, make such alterations to, or entries in, that register as are prescribed or, if not prescribed, as he or she thinks fit.

(2) Where, under a law at any time in force in the Territory before the commencement of this Act, an order for the adoption of a child was made by a court of competent jurisdiction and a record of that order is held in the Territory, the Registrar of Births, Deaths and Marriages may, in his or her discretion, require the person having the custody or control of the records of the court making the order to forward to him or her a copy of, or a memorandum relating to, the order and of any order for the discharge of the order.

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(3) Upon receipt of a document forwarded to him or her in pursuance of subsection (2), the Registrar of Births, Deaths and Marriages may, in his or her discretion -

- (a) register it, as he or she sees fit, in the Register of Adoptions; and
- (b) if it relates to a child whose birth is registered in a register kept by him or her, make such alterations to, or entry in, that register as are prescribed or, if not prescribed, as he or she thinks fit.

(4) For the purposes of this section, the Registrar of Births, Deaths and Marriages may make such enquiries as he or she thinks fit to satisfy himself or herself that an order for adoption was made or discharged.

(5) The person having in his or her custody or control the records relating to an adoption order shall comply with a requirement of the Registrar of Births, Deaths and Marriages made under subsection (2) and shall assist him or her in his or her reasonable enquiries made pursuant to subsection (4).

55. REGISTRATION OF OVERSEAS BIRTH AND ADOPTION ORDER

(1) Where an order is made pursuant to section 52, the Registrar shall cause a copy of the order to be forwarded to the Registrar of Births, Deaths and Marriages.

(2) Where an adoption of a child which took place in an overseas county is one that the Minister, by notice in the Gazette pursuant to section 51, determines is to have the same effect as if an adoption made in a State or another Territory of the Commonwealth -

- (a) the adoptive parent or parents in respect of the adoption may apply to the Minister for a prescribed certificate that the adoption is an adoption to which section 51 applies; and
- (b) the Minister shall, as soon as practicable after causing the certificate to be prepared, cause a copy of the certificate to be forwarded to the Registrar of Births, Deaths and Marriages.

(3) Upon receipt of a copy of the order forwarded in accordance with subsection (1) or of a copy of a certificate forwarded in accordance with subsection (2), the Registrar of Births, Deaths and Marriages shall -

- (a) register it, as he or she sees fit, in the Register of Adoptions kept by him or her; and