

of the child, why the order should be made notwithstanding that the child has refused to consent to the adoption or his consent has not been sought.

Guardianship
of child
awaiting
adoption.

31. (1) Where every person whose consent to the adoption of a child is required under section twenty-three of this Act has consented to the adoption of the child or his consent has been dispensed with under this Act the Director-General shall be the guardian of the child for all purposes (other than the purposes of section twenty-three of this Act) to the exclusion of all other persons until—

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

Provided that where a private adoption agency is authorized in writing by every person whose consent is required as aforesaid, and has not been dispensed with, to make arrangements with a view to the adoption of a child and the principal officer of that agency agrees so to act, the said principal officer shall be the guardian of the child as in this sub-section provided.

(2) The last preceding sub-section does not apply to a child for whose guardianship provision is made by any Act or law relating to child welfare.

DIVISION 4.—EFFECT OF ADOPTION ORDERS.

General effect
of adoption
orders.

32. (1) Subject to this Act and to the provisions of any other Act 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 sub-section so far as they are relevant ;
- (d) any guardianship of the adopted child ceases to have effect ; and
- (e) any

- (e) any previous adoption of the child (whether effected under the law of Victoria or otherwise) ceases to have effect.

(2) Notwithstanding the last preceding sub-section, for the purposes of any law 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 sub-section in relation to that adoption order or by virtue of the discharge of that adoption order.

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

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

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

(3) Where—

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

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

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act an adoption order made under this Act shall have effect as if this Act had not been passed.

(5) Nothing

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

Names of adopted child.

34. (1) Upon the making of an adoption order, the adopted child shall have as his surname the surname of the adopters unless the Court otherwise orders and shall have as his forename or forenames such name or names as the Court, in the adoption order, approves on the application of the adopters.

(2) Nothing in this section prevents the changing of any name of an adopted child, after the making of the adoption order, in accordance with any other Act or law.

Effect of order on domicile.

35. (1) Subject to this section, upon the making of an adoption order, the adopted child acquires the domicile of the adoptive parent or parents at the date of the adoption order and the child's domicile thereafter shall be determined as if the child had been born in lawful wedlock to that parent or those parents.

(2) The domicile acquired, upon the making of the order, by the child under the last preceding sub-section shall be deemed to be also the child's domicile of origin.

Adoption order not to affect the distribution of property by trustees or personal representatives unless notice given.

36. (1) Notwithstanding any other provision of this Act, trustees or 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.

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

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

DIVISION 5.—INTERIM ORDERS.

Making of interim orders.

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

(2) An

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

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

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

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

Duration of interim orders.

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

39. (1) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under any corresponding previous enactment, and may make such order for the care and control of the child as it thinks fit.

Discharge of interim orders.

(2) An interim order shall cease to have effect upon the making of an order for the adoption of that child, whether made in Victoria or in another State or in a Territory of the Commonwealth.

PART III.—RECOGNITION OF ADOPTIONS.

40. In this Part, “country” includes a part of a country.

Definition.

41. For the purposes of the laws of Victoria, the adoption of a person (whether before or after the commencement of this Act) in another State, or in a Territory of the Commonwealth, in accordance with the law of that State or Territory has, so long as it has not been rescinded under the law in force in that State or Territory, the same effect as an adoption order made in Victoria, and has no other effect.

Recognition of Australian adoptions.

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

Recognition of foreign adoptions.

(2) This

- (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, was resident or 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 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 the next succeeding section) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the Court that the procedure followed, or the law applied, in connexion with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.

(4) Where, in any proceedings before a Court (including proceedings under the next succeeding section), the question arises whether an adoption is one to which this section applies, it shall be presumed, unless the contrary appears from the evidence, that the adoption complies with the requirements of sub-section (2) of this section and has not been rescinded.

(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 Victoria.

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

Declarations
of validity of
foreign
adoptions.

43. (1) A person specified in the next succeeding sub-section may apply to the Supreme 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 the last preceding section applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The

(2) The persons who may make an application under the last preceding sub-section in relation to an adoption are the adopted child, the adoptive parent or either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

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

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

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

(5) For the purposes of the laws of Victoria, an order under this section binds the Crown in right of the State of Victoria, whether or not notice was given to the Attorney-General, but, except as provided in the next succeeding sub-section, does not affect—

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

(6) In proceedings in a court in which an order has been made under this section, being proceedings relating to the rights of a person other than a person referred to in sub-paragraph (i) or (ii) of paragraph (a) of the last preceding sub-section, the production of a copy of the order, certified by the Prothonotary to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which the last preceding section of this Act applies.

PART IV.—OFFENCES.

44. This Part does not apply in respect of acts occurring outside Victoria, but, unless otherwise expressly provided, does apply in respect of acts done in Victoria in relation to adoption of children in, or children adopted in any other State or a Territory of the Commonwealth or a country outside the Commonwealth and the Territories of the Commonwealth.

Territorial
application of
Part.

45. Any

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

45. Any person who was the father or mother or a guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a guardian of the child who takes, leads, entices, or decoys the child away or detains the child, with intent to deprive the adopters of the child shall be guilty of an offence against this Part.

Harbouring
child taken
from adopters.

46. Any person who receives or harbours a child on behalf of a person who, to his knowledge has taken, led, enticed, or decoyed the child away, or is detaining the child, in contravention of the last preceding section, shall be guilty of an offence against this Part.

Payments in
consideration
of adoptions,
&c.

47. (1) Subject to this section, any 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—

- (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 the child ;
- (c) the transfer of the possession or custody of a child with a view to the adoption of the child ; or
- (d) the making of arrangements with a view to the adoption of a child—

shall be guilty of an offence against this Part.

(2) The last preceding sub-section does not apply to or in relation to any of the following payments or rewards in connexion with an adoption or proposed adoption under this Act :—

- (a) a payment of legal expenses ;
- (b) a payment made by the adopters, with the approval in writing of the Director-General or with the approval of the Court, in respect of the hospital and medical expenses reasonably incurred in connexion with the birth of the child or the ante-natal or post-natal care and treatment of the mother of the child or of the child ;
- (c) any other payment or reward authorized by the Director-General or by the Court.

(3) Sub-section (1) of this section does not apply to or in relation to a payment or reward in connexion with an adoption or proposed adoption under the law of another State or of a Territory of the Commonwealth if the making of the payment or the giving of the reward or any agreement so to do would have been lawful if it had taken place in that State or that Territory.

48. (1) Subject

48. (1) Subject to this section, any 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—

Restrictions on advertising.

(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—

shall be guilty of an offence against this Part.

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

49. (1) Subject to this section, any 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 a State or 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 shall be guilty of an offence against this Part.

Restriction on publication of identity of parties.

(2) This section does not apply to the publication of any matter with the authority of the Court to which the application was made.

50. (1) Any person who, without being authorized in writing for the purpose by the Director-General or the principal officer of a private adoption agency (as the case requires), transfers or causes to be transferred the possession, custody or control of a child to some other person or persons with a view to the adoption of the child by such person or persons shall be liable to a penalty of not more than One hundred pounds or to imprisonment for a term of not more than three months.

Penalty for making unauthorized arrangements.

(2) The provisions of the last preceding sub-section shall not apply to any arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by a relative of the child.

51. Any person who, whether orally or in writing, wilfully makes a false statement for the purposes of or in connexion with a proposed adoption or any other matter under this Act shall be guilty of an offence against this Part.

False statements.

52. Any person who personates or falsely represents himself 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 of a Territory of the Commonwealth shall be guilty of an offence against this Part.

Personation.

53. Any

Presenting
forged consent
&c.

53. Any person who presents, or causes to be presented, to the Court in connexion with an application for an order for the adoption of a child under this Act a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required by this Act knowing that the signature is or was forged or obtained by fraud or duress shall be guilty of an offence against this Part.

Improperly
witnessing
consent to
adoption.

54. Any person who subscribes his name as a witness to the signature of a person to an instrument of consent to the adoption of a child (whether under this Act or under the law of another State or of a Territory of the Commonwealth)—

(a) without being satisfied that the person signing the instrument is a parent or guardian of the child ; and

(b) without taking such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent—

shall be guilty of an offence against this Part.

Penalty.

55. Any person guilty of an offence against this Part for which no penalty is expressly provided shall be liable to a penalty of not more than Two hundred pounds or to imprisonment for a term of not more than six months.

Authority to
prosecute.

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

PART V.—MISCELLANEOUS.

Registration
of orders
under this
Act.

57. The prescribed officer of the Court shall cause a memorandum, in accordance with the prescribed form, of every adoption order made by the Court under this Act, and a copy of every order for the discharge of such an adoption order, to be sent to the Government Statist, who shall—

(a) register it, as prescribed, in a Register of Adoptions to be kept by him ; and

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

Sending of
memoranda
of orders to
States and
other
Territories.

58. Where the Court makes an order for the adoption of a child, or an order discharging such an order, and the Prothonotary or the Registrar of the County Court (as the case requires) has reason to believe that the birth of the child is registered in another

State

State or in a Territory of the Commonwealth he shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to such officer of that State or Territory having functions in relation to the registration of births as is prescribed.

59. Where the Government Statist receives, in relation to a child whose birth is registered in Victoria, 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 authorized so to certify under the law of that State or Territory, he shall—

Particulars
or orders
received from
other States.

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

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

Hearings to
be *in camera*.

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

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

61. Unless the Court otherwise orders a report to the Court under section twelve of this Act, or any part of such a report, shall not be made available to any person, including a party to the proceedings.

Contents of
reports not
to be disclosed.

62. Except as provided by the regulations, the records of any proceedings under this Act shall not be open to inspection.

Restriction on
inspection of
records.

63. The Director-General, or a person appointed for the purpose by the Director-General may appear at the hearing of the proceedings on any application for an adoption order, and may address the Court, and call, examine and cross-examine witnesses.

Director
may appear
at hearings.

64. In

Costs.

64. In proceedings under this Act, the Court may, subject to the regulations, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the Court thinks just.

Judicial notice
of signatures.

65. 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 the Director-General, or the corresponding office in another State or in a Territory of the Commonwealth or of any delegate of such a person, appearing on a document and of the fact that, at the time the document was signed by him, he held, or was acting in, that office.

Certified copies
&c. of adoption
orders to be
evidence.

66. In any proceedings in any Court or before a justice or justices—

- (a) a certified copy of an adoption order made by any Court (whether in Victoria or elsewhere) or a certified extract giving particulars of any such order and purporting to be signed by the proper officer of the Court which made the order ; or
- (b) a certified copy of an entry in any public official record of the adoption of children (whether kept in Victoria or elsewhere) or a certificate or extract giving particulars of any such entry and purporting to be signed by the person having the custody of such record—

shall be *prima facie* evidence of the making of the order and of the facts stated therein.

Regulations.

67. The Governor in Council may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, making provision for or in relation to—

- (a) matters of practice or procedure in or in connexion with consents to be used for the purposes of this Act ;
- (b) the forms to be used for the purposes of this Act ;
- (c) requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children ;
- (d) the qualifications and experience of persons engaged in making arrangements with a view to the adoption of children and standards and procedures to be observed in providing any service to the public in relation thereto ;

(e) notifying

- (e) notifying any change in the address or in the management or control of private adoption agencies and making returns in relation to the conduct of the business of private adoption agencies ;
 - (f) factors to be considered in the placement of children for the purposes of adoption under this Act and the keeping of lists of approved applicants ;
 - (g) the prohibition or regulation of access to a Register of Adoptions kept under this Act ;
 - (h) the furnishing of copies of, or extracts from, matters included in a Register of Adoptions kept under this Act ;
 - (i) the making, correction or cancellation of entries relating to adopted children in the Register of Births ; and
 - (j) penalties, not exceeding Fifty pounds, for offences against the regulations.
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