

PART VII

MISCELLANEOUS

Division 1—Supplemental provisions

91—(1) In this section, “power” includes authority.

Delegation of
powers of
Director.

(2) The Director may, by writing under his hand, delegate to—

(a) a specified officer of the Department for Community Welfare; or

(b) a person who is temporarily employed in that Department,

the performance of any of the functions or the exercise of any of the powers conferred or imposed on the Director by this Act, except this power of delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the resolution.

(4) No person is concerned to see or inquire whether any act, matter, or thing done or performed by a delegate of the Director under this section when purporting to act as such is, or is not, authorized by the delegation.

(5) Notwithstanding any delegation under this section, the Director may continue to perform or exercise all or any of the functions or powers delegated.

(6) Any act or thing done by, or to, a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by, or to, the Director and shall be deemed to have been done by, or to, the Director.

(7) Where the performance of a function or the exercise of a power by the Director is dependent on his opinion or belief, a delegate of the Director under this section may, in performing that function or exercising that power, act on his own opinion or belief.

92—The Director may, out of money appropriated by Parliament for that purpose, make grants or provide financial or other assistance on such terms and conditions as the Director determines to a person or persons with whom a child of a prescribed class has been placed for the purposes of adoption or to adoptive parents or prospective adoptive parents of a child of a prescribed class.

Financial
assistance.

Hearings to be
in camera.

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

(2) A 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 a person to leave the room or other such place during the examination of a witness.

Director,
principal officer,
&c., may appear
at hearings.

94—On the hearing of an application for an adoption order—

(a) where the application is made by the Director, the Director or a person appointed by him for the purpose; or

(b) where the application is made by the principal officer of an approved agency, the principal officer or a person appointed by him for the purpose,

may appear at the hearing, address the court, and call, examine, and cross-examine witnesses.

Judicial notice of
signatures.

95—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, or the corresponding office in another State or a Territory or of any delegate of any such person, appearing on a document and of the fact that, at the time the document was signed by the person, the person held, or was acting in, that office.

Certified copies,
&c., of adoption
order to be
evidence.

96—In any proceedings in a court—

(a) a certified copy of an order for the adoption of a child made by a court (whether in Tasmania or elsewhere) or a certificate or extract giving particulars of any such order and purporting to be signed by an officer of the court which made the order; or

- (b) a certified copy of an entry in a public official record of the adoption of children (whether kept in Tasmania 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 that record,

is evidence of the making of the order and of the facts stated in the order or the entry.

97—(1) Where an application is made by a person or persons to the Director for a report relating to the suitability of that person or those persons—

Fees for assessment of applicants for adoption of non-citizen child, &c.

- (a) to adopt a non-citizen child; or

- (b) to adopt a child in a place outside Australia,

(whether or not in either case the child is identified), the Director may make the report and require payment by the applicant or applicants of a fee not exceeding the amount prescribed for the purposes of this section in relation to applications of that class.

(2) Where a fee has been paid under subsection (1) and, before the report is made, notice in writing is given to the Director by the applicant or applicants that he or they are not proceeding with a proposal to adopt a non-citizen child or a child in a place outside Australia, the Director may refund the whole or a part of the fee to him or them.

98—The Director or the principal officer of an approved agency may waive or reduce, in a particular case or class of case, fees that would otherwise be payable pursuant to this Act to the Director or principal officer, as the case may be.

Waiver of fees.

99—(1) A person who—

- (a) conducts any arrangement for or relating to the adoption of a child in respect of whose adoption a general consent has been given;

- (b) signs, or files in a court, any document relating to the hearing of an application for an adoption order;
or

Identities of certain persons not to be revealed.

(c) appears before a court in connection with the hearing of such an application,

shall, so far as is practicable, take such steps as are necessary to ensure that the identities of the child and his natural parents are not revealed to the adoptive parents and that the identities of the adoptive parents are not revealed to the natural parents of the child.

(2) Subsection (1) does not prevent the disclosure of identities of persons referred to in that subsection in a case where that disclosure is authorized in writing by the adoptive parents or prospective adoptive parents, as the case may be, and each of the persons who has signed a consent to the adoption.

Contents of reports not to be disclosed.

100—A report to a court under section 24 (1) shall not, except as the court otherwise orders, be made available to any person, including a party to the proceedings for the purposes of which the report is made.

Restriction on inspection of records.

101—Except as provided by the regulations, the records of proceedings of a court under this Act are not open to inspection.

Division 2—Offences

Territorial application of Part.

102—This Part does not apply in respect of acts occurring outside Tasmania, but, unless otherwise expressly provided, does apply in respect of acts done in Tasmania—

(a) in relation to, or with a view to, the adoption of a child in another State, a Territory, or a country outside Australia; or

(b) in relation to arrangements with a view to the adoption in Tasmania of a child who is resident in a country outside Australia.

Destruction, removal, &c., of adoption records.

103—A person who destroys, removes, or conceals records referred to in section 71 is guilty of an offence.

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

104—A person who is the father, mother, or a guardian of a child but is not, by reason of an adoption of the child, to be treated in law as the father, mother, or guardian of the child who takes, leads, entices, or decoys the child away or detains the child, with intent to deprive an adoptive parent of the child, is guilty of an offence.

105—A 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 section 104, is guilty of an offence.

Harbouring child taken from adoptive parents.

106—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—

Undue influence, &c.

(a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act; or

(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,

is guilty of an offence.

107—(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, reward, or other inducement for or in consideration of—

Payments in consideration of adoptions, &c.

(a) the adoption or proposed adoption of the 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,

is guilty of an offence.

(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 or under the law of another country:—

(a) a payment of legal expenses;

(b) a payment of fees authorized under section 97 or under the regulations;

(c) a payment made by the adoptive parents, with the approval in writing of the Director 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;

(d) a payment by the Director made in accordance with section 92;

(e) any other payment or reward authorized by the Director 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 if the making of the payment or the giving of the reward or any agreement to do so would have been lawful if it had taken place in that State or Territory.

Restrictions on advertising.

108—(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 making, or is willing to make, arrangements with a view to the adoption of a child,

is guilty of an offence.

(2) Subsection (1) does not apply in relation to an advertisement or other matter that has been approved by the Director or by the principal officer of an approved agency.

Restriction on publication of identity of parties.

109—(1) Subject to this section, a person who at any time publishes, or causes to be published, in a newspaper or periodical, or by means of broadcasting, television, or public exhibition in relation to a consent given, or dispensed with, or an application made, under this Act or under a law of another State or a Territory for the adoption of a child or the proceedings on such an application—

(a) the name of a prospective adoptive parent;

(b) the name of the child;

(c) the name of the father, mother, or a guardian of the child; or

(d) any matter reasonably likely to enable any of those persons to be identified,

is guilty of an offence.

(2) This section does not apply to the publication of matter—

(a) with the authority of the court—

(i) to which an application for an adoption order was made; or

(ii) to which an application under subsection (3) is made;

(b) that consists of information that has been obtained under Part VI by the person publishing it; or

(c) that relates to the name of a parent, other than an adoptive parent, of the child where, in accordance with the adoption order, the name of that parent is shown on the birth certificate of the child issued after the order is made.

(3) A person may apply to the court for authority to publish matter to which subsection (1) applies where—

(a) the adopted person concerned has attained the age of 18 years; and

(b) the applicant is a relative of the adopted person.

110—(1) A person who, without being authorized in writing for the purpose by the Director or the principal officer of an approved agency—

Unauthorized arrangements for adoption.

(a) conducts negotiations or makes arrangements with another person with a view to the adoption of a child by that other person;

(b) 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 that person or those persons; or

(c) receives possession, custody, or control of a child with a view to adopting the child,

is guilty of an offence.

(2) Subsection (1) does not apply to, or in relation 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 spouse of a parent of the child or by a relative, or a relative and the spouse of the relative, of the child.

111—(1) Where the Director requests an agency or other body or a person to give information to the Director or to another person under Part VI, the agency, other body, or person shall comply with the request so far as it or the person is able to do so.

Agency, &c., to comply with request for information.

(2) Where any agency, other body, or person has information to which a request made to it or him under subsection (1) relates, the agency, body, or person, as the case may be, shall comply with the request within 21 days after it is made.

Penalty: Fine not exceeding 10 penalty units.

False statements. **112**—Any 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.

Personation. **113**—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 a Territory is guilty of an offence.

Presenting forged consent, &c. **114**—Any person who 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 to the adoption signed by a person whose consent to the adoption is required by this Act knowing—

(a) that the signature is, or was, forged or obtained by fraud, duress, or other improper means; or

(b) that the document has been altered after it has been signed, otherwise than by the person signing it,

is guilty of an offence.

Improperly witnessing consent to adoption. **115**—A person shall not subscribe a 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, except in accordance with Division 3 of Part II.

Penalties. **116**—Any person who is guilty of an offence against this Act for which no penalty is expressly provided is liable on summary conviction to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months.

Prosecutions for offences against this Act. **117**—(1) Proceedings for an offence against this Act shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(2) A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever last occurs.

(3) Proof of the time when the commission of any such offence came to the knowledge of the complainant lies on the complainant.

Division 3—Regulations

118—(1) The Governor may make regulations for the ^{Regulations.} purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for, or with respect to, the following matters:—

- (a) the practice or procedure in or in connection with consents to be used for the purposes of this Act;
- (b) requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children;
- (c) 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 to the adoption of children;
- (d) notifying the Director of applications for adoption orders;
- (e) notifying a change in the address, management, or control of approved agencies and making returns in relation to the conduct of their business;
- (f) matters to be considered in the placement of children with a view to adoption under this Act;
- (g) the keeping of registers by the Director or the principal officer of an approved agency of persons approved by the Director or principal officer as fit and proper persons to adopt children;
- (h) fees to be paid to the Director or to the principal officer of an approved agency for any service provided under this Act with a view to, or in connection with, the adoption of a person;

- (i) the keeping of records for the purposes of section 16;
- (j) fees to be paid for an application under Part VI or for information given to an applicant under that Part;
- (k) exempting persons included in particular classes of persons from liability to pay all or any fees prescribed under paragraph (h) or (j);
- (l) penalties, not exceeding 20 penalty units, for offences against the regulations.

(3) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding 20 penalty units and, in the case of a continuing offence, a further penalty not exceeding one penalty unit for each day during which the offence continues.

Division 4—Savings and repeals

119—(1) Except as otherwise provided in this Act—

- (a) all persons, things, and circumstances appointed, or created by, or under, the repealed Act or existing or continuing under that Act immediately before the commencement of this section shall, under and subject to this Act, continue to have the same status, operation, and effect as they respectively would have had if that Act had not been repealed; and
- (b) in particular and without affecting the generality of paragraph (a), the repeal effected by section 120 does not disturb the continuity of status, operation, or effect of any order, authority, application, decision, consent, register, direction, liability, or right made, affected, issued, granted, given, passed, accrued, incurred, acquired, existing, or continuing by, or under, the repealed Act before the commencement of that section.

(2) Subject to this Act, sections 50 and 51, other than subsection (4), apply in relation to an adoption order made under, or continued in force by, a corresponding previous enactment as if this Act had been in force when the order was made and the order had been made under this Act.

(3) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this section, an adoption order referred to in subsection (2) shall have the same effect as if the Act under which it was made were still in operation.

(4) Notwithstanding the repeal effected by section 120, the repealed Act continues to apply to, and in relation to—

- (a) arrangements and negotiations for the adoption of a child in respect of whom all consents required under that Act for the adoption have been obtained or dispensed with before the commencement of this section; and
- (b) the making of orders for the adoption of any such child.

120—The *Adoption of Children Act 1968** is repealed.

Repeal of *Adoption of Children Act 1968*.

121—The *Registration of Births and Deaths Act 1895*† is amended in the manner specified in Schedule 1.

Consequential amendments to *Registration of Births and Deaths Act 1895*.

* No. 33 of 1968. Subsequently amended by No. 37 of 1980 and No. 69 of 1982.

† 59 Vict., No. 9. For this Act, as reprinted up to and including 31st December 1959, see the Reprint of Statutes (1826-1959), Vol. 5. p. 297. Subsequently amended by No. 16 of 1963, No. 55 of 1965, No. 46 of 1966, No. 58 of 1968, No. 10 of 1973, No. 36 of 1974, No. 29 of 1984, and No. 19 of 1985, and S.R. 1969, No. 214.

SCHEDULE 1 Section 121
 CONSEQUENTIAL AMENDMENTS TO REGISTRATION OF
 BIRTHS AND DEATHS ACT 1895

Provision of <i>Registration of Births and Deaths Act 1895</i> amended.	Amendment
Section 1A (1).....	Insert, after the definition of “perinatal death”, the following definition:— “the special record” means the special record formerly kept under this Act and continued in force under section 63 (1) of the <i>Adoption Act 1988</i> ;
Division III of Part II.....	Repeal the Division.
Section 36A (1) (a)	Omit “record referred to in subsections (1) (c) and (1B) of section twenty-two F” and substitute “special record”.
Section 37 (2) and (3)	Omit “record referred to in subsections (1) (c) and (1B) of section twenty-two F”, wherever occurring, and substitute “special record”.
Section 37 (2A).....	Omit “index, register, book, or record referred to in subsection (2),” and substitute “index or register book or in the special record,”.
Section 37 (2A).....	Omit “record referred to in subsections (1) (c) and (1B) of section 22F” and substitute “the special record”.
Section 37	Insert, after subsection (3), the following subsection:— (4) This section has effect subject to the <i>Adoption Act 1988</i> .
Section 41	Omit “section twenty-two E or section twenty-two H” and substitute “section 22E of this Act or section 70 of the <i>Adoption Act 1988</i> ”.

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