

Adoption Act 1984

No. 10150

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SCHEDULE **Repeals and Amendments**



ANNO TRICESIMO TERTIO
ELIZABETHAE SECUNDAE REGINAE
VICTORIA

Adoption Act 1984

No. 10150

An Act to amend and re-enact the Law relating to Adoption, to repeal the *Adoption of Children Act 1964*, to make consequential amendments to certain Acts and for other purposes.

[Assented to 13 November 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I.—PRELIMINARY

Short title.

1. This Act may be cited as the *Adoption Act 1984*.

Commencement.

2. The several provisions of this Act shall come into operation on a day or days to be proclaimed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

Repeals, savings and transitional provisions.

3. (1) The Acts mentioned in the Schedule to the extent thereby expressed to be repealed or amended are hereby repealed or amended accordingly.

(2) Sections 61 and 62 of the *Adoption of Children Act 1964* shall be repealed.

(3) Except as in this Act expressly or by necessary implication provided—

(a) all persons things and circumstances appointed or created by or under the *Adoption of Children Act 1964* or existing or continuing under that Act immediately before the commencement of this Act 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continue to have the same status, operation and effect as they respectively would have had if that Act had not been repealed; and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), such repeal shall not disturb the continuity of status, operation or effect of any rule, order, authority, application, decision, consent, bond, register, direction, liability or right made, affected, issued, granted, given, passed, accrued, incurred or acquired or existing or continuing by or under the *Adoption of Children Act 1964* before the commencement of this section.

(4) Subject to this Act, sections 53 and 54 (other than sub-section (4)) apply in relation to an adoption order made under, or continued in force by, any 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.

(5) 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 sub-section (4) shall have the same effect as if this Act had not been passed.

(6) A welfare organization within the meaning of section 21 that, immediately before the commencement of this section, was a private adoption agency within the meaning of the *Adoption of Children Act 1964* shall be deemed to be an approved agency within the meaning of this Act until—

(a) the expiration of the period of one year after the commencement of this section;

(b) an application under section 21 for approval of the agency is granted or refused; or

(c) the approval of the agency is revoked under section 24—

whichever first occurs.

(7) Notwithstanding the repeal of the *Adoption of Children Act* 1964, that Act shall continue to apply to and in relation to arrangements and negotiations for the adoption of a child in respect of whom all consents necessary under that Act for the adoption have been obtained or have been dispensed with before the commencement of this section and to the making of orders for the adoption of any such child.

Interpretation.

4. (1) In this Act, unless inconsistent with the context or subject-matter— No. 7147 s. 4.

“**Aborigine**” means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander;
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community.

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

“**Approved agency**” means a welfare organization approved by the Director-General under Division 2 of Part II.

“**Approved counsellor**” means a person who is for the time being approved as a counsellor under section 5.

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

“**Director-General**” means the Director-General of Community Welfare Services.

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

“**Government Statist**” includes Assistant Government Statist.

“**Guardian**” in relation to a child, includes a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory.

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

“**Non-citizen child**” has the same meaning as in the *Immigration (Guardianship of Children) Act* 1946 of the Commonwealth as amended and in force for the time being.

“**Relative**”, in relation to a child, means a grandparent, brother, sister, 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**” means Territory of the Commonwealth.

(2) For the purposes of this Act, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period.

(3) Where an office that is established by any Act is referred to in this Act and the holder of that office has power to assign or delegate to another person all or any of his powers and functions under that Act—

(a) the powers and functions of the holder of that office that may be so assigned or delegated shall be deemed to include the powers and functions of that office under this Act, and any of those powers and functions under this Act may be assigned or delegated in the manner provided by that Act; and

(b) in relation to a power or function so assigned or delegated a reference in this Act to the holder of that office shall be read as including a reference to the assignee or delegate, as the case may be.

(4) In this Act, a reference to the principal officer of an approved agency includes a reference to the deputy principal officer (if any) or a person who is authorized in writing by the principal officer to exercise or perform the powers and functions of the principal officer under this Act.

Approved counsellors.

5. (1) Subject to sub-section (2), the Director-General may, by notice published in the *Government Gazette*, approve a person as a counsellor for the purposes of this Act and may by notice so published revoke any such approval.

(2) The Director-General shall not approve a person as a counsellor under sub-section (1) unless the person is—

(a) an officer or employee of the Department of Community Welfare Services;

(b) employed by an approved agency; or

(c) a person who is not such an officer or employee or so employed but is a person who in the opinion of the Director-General has such qualifications and experience as is appropriate for a counsellor for the purposes of this Act.

The Court.

No. 7147, s. 5.

6. (1) The Court having jurisdiction to make an adoption order under this Act or an order under section 69 shall be—

(a) the Supreme Court; or

(b) at the option of the applicant—the County Court.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the Court are to be

made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect may in accordance with the provisions of sections 25 to 27 of the *Supreme Court Act 1958* be made by the Judges of the Supreme Court.

Jurisdiction.

7. (1) The Court shall not make an order for the adoption of a child unless— No. 7147, s. 6.

- (a) at the time of the filing in the Court of the application for the order—
 - (i) the applicant or (in the case of joint applicants) each of the applicants, was resident or domiciled in Victoria; and
 - (ii) the child was present in Victoria; or
- (b) the child was born in Victoria and at the time of the filing in the Court of the application for the order was under the guardianship of the Director-General or the principal officer of an approved agency.

(2) For the purposes of sub-section (1), where the Court is satisfied that an applicant was resident or domiciled in Victoria, that a child was present in Victoria or that a child was under the guardianship of the Director-General or a principal officer, on a date within 21 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 Victoria, that the child was present in Victoria or that the child was under the guardianship of the Director-General or principal officer, as the case may be, at the time of the filing in the Court of the application.

Rules of private international law not to apply.

8. The jurisdiction of a Court to make an adoption order shall not be dependent on any fact or circumstances not expressly specified in this Act. No. 7147, s. 7.

Welfare and interests of child to be paramount.

9. In the administration of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration. No. 7147, s. 8.

PART II.—ADOPTIONS UNDER THIS ACT

Division 1—General

Who may be adopted.

10. (1) Subject to this Act, the Court may make an order for the adoption of a person who— No. 7147, s. 9.

- (a) had not attained the age of eighteen years before the date on which the application was filed in the Court; or

- (b) has been brought up, maintained and educated by the applicant or either of the applicants, or by the applicant and a deceased spouse of the applicant, as the child of the applicant or of the applicant and deceased spouse under a *de facto* adoption.

(2) An order may be made under this Act for the adoption of a child notwithstanding that the child had, whether before or after the commencement of this Act, and whether in Victoria or elsewhere, previously been adopted.

Persons in whose favour adoption orders may be made.

11. (1) An adoption order may be made in favour of a man and a woman—

- (a) who are married to each other and have been so married for not less than two years; or
- (b) whose relationship is recognized as a traditional marriage by an Aboriginal community or an Aboriginal group to which they belong and has been so recognized for not less than two years—

before the date on which the order is made.

(2) The Court shall not make an adoption order in favour of a person who is, or persons either of whom is, the mother of the child or a man who, under section 33 (3), is an appropriate person to give consent to the adoption of the child.

(3) Subject to this section, where the Court is satisfied that special circumstances exist in relation to the child which make it desirable so to do, the Court may make an adoption order in favour of one person.

(4) The Court shall not make an adoption order in favour of one person—

- (a) if that person is married and is not living separately and apart from his or her spouse; or
- (b) if that person is married and is living with his or her spouse, except with the consent of that spouse.

(5) The spouse of a parent or of an adoptive parent of a child may make an application to the Court under this Act for an order for the adoption of the child by that spouse.

(6) Where an application is made under sub-section (5) by the spouse of a parent or of an adoptive parent of a child, the Court, if it is satisfied that, in the particular circumstances of the case, the welfare and interests of the child would be better served if an order were made for the adoption of the child than if an order were made under the *Children (Guardianship and Custody) Act 1984* in relation to the child, may make an order for the adoption of the child solely by that spouse