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

(3) The Court may, upon application in writing, dispense with the giving of a notice under subsection one of this section.

(4) Where it appears to the Court to be necessary in the interests of justice so to do, the Court may direct that notice of an application for an adoption order be given to any person.

Parties.

23. The Court may permit such persons as the Court thinks fit to be joined as parties to the proceedings for an adoption order for the purpose of opposing the application for the order.

Care of child after refusal of an application.

24. Where the Court refuses an application for an order for the adoption of a child, the Court may make such order for the care and custody of the child as it thinks fit, including an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as amended by subsequent Acts, as a ward admitted to State control.

Discharge of adoption orders.

25. (1) The Director or the Attorney-General may apply to the Court for an order discharging an order for the adoption of a child made under this Act or under the former Acts and the Court may make such an order if it is satisfied that—

(a) the order for adoption was obtained by fraud, duress or other improper means;

(b) any consent relied upon for the making of the order for adoption was a consent referred to in paragraph (a), (b), (c) or (d) of subsection one of section thirty-one of this Act; or

(c)

- (c) there is some other exceptional reason why the **No. 23, 1965** adoption order should be discharged.

(2) The Court shall not make an order under this section if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where the Court makes an order discharging an adoption order that was made in reliance on a general consent, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of a further application for the adoption of the child.

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

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

(5) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under subsection four of this section and to subsection four of section thirty-five of this Act, the rights, privileges, duties, liabilities and relationships under the law of New South Wales of the child and of all other persons shall be the same as if the order for adoption had not been made, but without prejudice to—

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

whilst the order for adoption was in force.

DIVISION

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DIVISION 2.—Consents to Adoptions.

Consents of
parents and
guardians
required to
adoptions.

26. (1) Subject to this Division, the Court shall not make an order for the adoption of a child unless consent (not being a consent that has been revoked in accordance with this Act) to the adoption has been given by the appropriate person or persons ascertained in accordance with the provisions of subsection two, three or four of this section or the Court is satisfied that there is no such appropriate person.

(2) In the case of a legitimate child who has not previously been adopted, the appropriate persons are every person who is a parent or guardian of the child.

(3) In the case of an illegitimate child who has not previously been adopted, the appropriate persons are every person who is the mother or guardian of the child.

(4) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent or a guardian of the child.

(5) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the adoption order.

(6) This section does not apply in the case of a child who has attained the age of twenty-one years before the making of the adoption order.

Consents to
be general,
except
where in
favour of
a parent or
relative.

27. (1) For the purposes of section twenty-six of this Act but subject to subsection two of this section, every consent to the adoption of a child shall be a consent to the adoption of the child by any person or persons in accordance with the law of New South Wales, and shall have effect accordingly in relation to an application for adoption made by any person or persons in accordance with this Act.

(2) Subsection one of this section does not apply in relation to a consent expressed to be a consent to the adoption of a child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

28.

28. (1) A consent to the adoption of a child given for the purposes of this Act by a person other than the child may be revoked by notice in writing delivered to the Master in Equity before—

- (a) the day on which an order for the adoption of the child is made; or
- (b) the expiration of thirty days from the date on which the instrument of consent was signed,

whichever is the earlier, but may not otherwise be revoked.

(2) Upon receipt of a notice under this section, the Master in Equity shall forthwith give notice to the Director of the receipt of the notice of revocation and, if it appears to the Master in Equity that the consent was given to the principal officer of a private adoption agency, to that principal officer.

29. A consent for the purposes of section twenty-six of this Act shall be evidenced by an instrument of consent in or to the effect of the prescribed form signed by the person giving the consent and attested as prescribed.

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

31. (1) The Court may refuse to make an adoption order in reliance on a consent given or purporting to have been given by a person (other than the child) if it appears to the Court that—

- (a) the consent was not given in accordance with this Act;
- (b)

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- (b) the consent was obtained by fraud, duress or other improper means;
- (c) the instrument of consent has been altered in a material particular without authority; or
- (d) the person giving or purporting to give the consent was not, on 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 adoption order in reliance on an instrument of consent signed by the mother of the child before the birth of the child.

(3) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within three days after, the day on which the child was born unless it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

(4) For the purposes of subsection three of this section a certificate of a legally qualified medical practitioner certifying that, at the time when the instrument of consent was signed by the mother of the child, the mother was in a fit condition to give the consent is evidence of the matter so certified.

Court may dispense with consents.

32. (1) The Court, on the application of the Director or of the principal officer of a private adoption agency may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied that—

- (a) after reasonable inquiry, that person cannot be found or identified;
- (b) that person is in such a physical or mental condition as not to be capable of properly considering the question whether he should give his consent;

(c)

- (c) that person is, in the opinion of the Court, unfit to discharge the obligations of a parent or guardian by reason of his having abandoned, deserted, neglected or ill-treated the child; No. 23, 1965
- (d) that person has, for a period of not less than one year, failed, without reasonable cause, to discharge, or to make suitable arrangements to discharge, the obligations of a parent or guardian, as the case may be, of the child; or
- (e) there are any other special circumstances by reason of which the consent may properly be dispensed with.

(2) An order under this section may be made before an application for an adoption order has been made in respect of the child or in conjunction with an adoption order in respect of the child.

(3) Any order under this section made before an application for an adoption order has been made in respect of the child has effect for the purposes of any application for an adoption order that may subsequently be made in respect of the child.

(4) An order under this section referred to in subsection three of this section may, on the application of the Director or of the person whose consent was dispensed with or, where the order under this section was made on the application of the principal officer of a private adoption agency, on the application of that principal officer, be revoked by the Court at any time before the making of an adoption order in respect of the child.

(5) The Court shall not—

- (a) except in relation to a person referred to in paragraph (a) of subsection one of this section make an order under that subsection unless the Director or the principal officer of the private adoption agency applying for the order has given or sent by registered post to the person whose consent is sought to be dispensed with notice of the application for the order at least fourteen days before the application for the order is made to the Court; or
- (b)

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

Consent of child.

33. Subject to this Division, an order for the adoption of a child who has attained the age of twelve years shall not be made unless the child has consented to the adoption or, where the child has not attained the age of twenty-one years, the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has refused to consent to the adoption or his consent has not been sought.

Guardianship of child awaiting adoption.

34. (1) Subject to this section, where the consent of every person whose consent to the adoption of a child is required under section twenty-six of this Act, either—

- (a) has been given and is a general consent; or
- (b) has been dispensed with by an order made by virtue of subsection one of section thirty-two of this Act,

the Director is the guardian of the child (for purposes other than the purposes of section twenty-six of this Act) to the exclusion of all other persons.

(2) The provisions of subsection one of this section do not apply to a child—

- (a) who is a ward within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts; or
- (b) unless and until the Director has received notice in writing that a general consent to the adoption of the child has been given.

(3)

(3) Where the Director has become the guardian of a child under subsection one or four of this section and has not, within a period of one year thereafter, ceased to be the guardian of the child, he shall make a report in writing to the Court concerning the child and the Court shall make such order for the care and control of the child as it thinks fit. No. 23, 1965

(4) Without limiting the generality of subsection three of this section, an order under that subsection may direct that the child be placed in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as amended by subsequent Acts, as a ward admitted to State control or that the child remain under the guardianship of the Director for a further period of one year.

(5) Where the Director is the guardian of a child under subsection one or four of this section, he shall remain the guardian of the child until—

- (a) an adoption order is made in respect of the child;
- (b) in the case of any consent so given, the instrument of consent is lawfully revoked;
- (c) the Court, by order, makes other provision for the guardianship of the child either pursuant to section twenty-four of this Act or upon the application of the Director or otherwise; or
- (d) the child becomes a ward within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts.

(6) The Director may, upon such terms and conditions as he thinks fit, place any child of whom he is guardian under the provisions of subsection one of this section in the care of any suitable person who has agreed to have the child in his care.

(7) The fact that the Director is the guardian of a child under this section does not affect the liability of any person to provide adequate means of support for the child.

DIVISION

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DIVISION 3.—Effect of Adoption Orders.

General
effect of
adoption
orders.

35. (1) For the purposes of the laws of New South Wales, but subject to this Act and to the provisions of any law of New South Wales that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order—

- (a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or parents of the child, as if the child had been born to the adopter or adopters in lawful wedlock;
- (b) the adopted child ceases to be a child of any person who was a parent (whether natural or adoptive) of the child before the making of the adoption order, and any such person ceases to be a parent of the child;
- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent of the adopted child) shall be determined on the basis of the foregoing provisions of this subsection so far as they are relevant;
- (d) any existing guardianship of the adopted child (not being the Minister's guardianship of the child under section nine of the Child Welfare Act, 1939, as amended by subsequent Acts) ceases to have effect; and
- (e) any previous adoption of the child (whether effected under the law of New South Wales or otherwise) ceases to have effect.

(2) The provisions of subsection one of this section do not have effect so as to deprive an adopted child of any vested or contingent proprietary right acquired by the child before the making of the adoption order.

(3) Where—

- (a) one of the natural parents of a legitimate child, or one of two adoptive parents of an adopted child, has died;

(b)

(b) the surviving parent remarries; and

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(c) the child is adopted by the surviving parent and that parent's spouse,

any property of any collateral or lineal next-of-kin of the deceased parent who dies intestate shall, notwithstanding subsection one of this section, devolve in all respects as if the child had not been so adopted.

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

36. (1) Subject to subsection two of section thirty-five of this Act, the provisions of subsection one of that section have effect in relation to a disposition of property, whether by will or otherwise, and whether made before or after the commencement of this Act, and to a devolution of property in respect of which a person dies intestate after the commencement of this Act, except that—

Effect of orders as regards dispositions of property, etc.

- (a) those provisions do not affect a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act; and
- (b) those provisions do not affect a disposition of property that has taken effect in possession before the commencement of this Act.

(2) The provisions of subsection one of section thirty-five of this Act 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)

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(3) Where—

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

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

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this Act, and in relation to a devolution of property in respect of which a person died intestate before that commencement, an adoption order made under this Act has the same effect as if the former Acts had continued in force and the adoption order had been made under those Acts.

(5) Nothing in section thirty-five of this Act 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.

Relationship
of adopted
child to
other chil-
dren of the
adopter.

37. For the purposes of the application of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, to the devolution of any property in respect of which a person dies intestate and for the purposes of the construction of any disposition of any property, an adopted

child

child shall be deemed to be related to any other person, No. 23, 1965 being the child or adopted child of his or her adoptive parent or parents—

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

38. (1) Subject to subsection two of this section, upon the making of an adoption order, the adopted child shall have as his surname the surname of the adoptive parent or parents 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 adoptive parent or parents. Names of adopted children.

(2) Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the Court may, in the adoption order, order that the child shall have that name as his surname.

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

39. (1) Subject to subsection two of 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. Effect of order on domicile.

(2) The domicile acquired, upon the making of the order, by the child under subsection one of this section shall be deemed to be also the child's domicile of origin.

40.

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Liability of trustees and personal representatives in respect of adopted persons.

40. (1) Where, before conveying, transferring or distributing any property among the persons appearing to be entitled thereto, a trustee or personal representative gives the notice referred to in section sixty of the Trustee Act, 1925, as amended by subsequent Acts, or section ninety-two of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, as the case may be, and the time fixed by the notice has expired, the trustee or personal representative shall not be liable to any person—

- (a) who claims directly or indirectly an interest in the property by virtue of an adoption; and
- (b) of whose claim he does not have notice at the time of the conveyance, transfer or distribution.

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

DIVISION 4.—Interim Orders.

Making of interim orders.

41. (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 interim order shall be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the Court thinks fit.

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

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

42.

42. (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. No. 23, 1965
Duration of interim orders.

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

43. (1) The Court may, at any time, make an order discharging an interim order made under this Division. Discharge of interim orders.

(2) Where the Court discharges an interim order under the provisions of subsection one of this section the Court may make such order for the care and custody of the child as it thinks fit, including an order placing the child in the care of the Minister to be dealt with under the provisions of the Child Welfare Act, 1939, as amended by subsequent Acts, as a ward admitted to State control.

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

PART V.

RECOGNITION OF ADOPTIONS.

44. In this Part, "country" includes a part of a country. Definition.

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

46.