



ANNO DECIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1967

No. 12 of 1967

An Act to Consolidate and Amend the law relating to the Adoption of Children and for purposes connected therewith; and to repeal the Adoption of Children Act, 1925-1965.

[Assented to 6th April, 1967.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Adoption of Children Act, 1966-1967", and shall come into operation on a day to be fixed by proclamation. Short title.

2. This Act is arranged as follows :—

Arrangement.

PART I.—PRELIMINARY, ss. 1-4.

PART II.—JURISDICTION, ss. 5-8.

PART III.—ADOPTIONS UNDER THIS ACT, ss. 9-37—

DIVISION 1.—GENERAL, ss. 9-20 :

DIVISION 2.—CONSENTS TO ADOPTIONS, ss. 21-29 :

DIVISION 3.—EFFECT OF ADOPTION ORDERS, ss. 30-34 :

DIVISION 4.—INTERIM ORDERS, ss. 35-37.

PART IV.—RECOGNITION OF ADOPTIONS, ss. 38-40.

PART V.—OFFENCES, ss. 41-54.

PART VI.—MISCELLANEOUS, ss. 55-72.

THE SCHEDULE.

Repeals,
savings and
transitional
provisions.

3. (1) The Acts set out in the first column of the Schedule to this Act are repealed to the extent indicated in the second column of that Schedule.

(2) Notwithstanding such repeal—

- (a) all regulations made under the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been made under this Act and to have effect as if the necessary powers to make them had been enacted by this Act and as if any reference therein to the Children's Welfare and Public Relief Board or to the chairman thereof were a reference to the Director ;
- (b) such regulations may be amended or revoked by regulations made under this Act ;
- (c) all books, registers and records kept and maintained under or for the purposes of the repealed Act shall, subject to such modifications as are necessary for the purpose, be continued, kept and maintained under or for the purposes of this Act, and all entries therein shall be deemed to have been made under this Act ;
- (d) all certificates and certified copies of and certified extracts from entries in any book, register or record kept and maintained under or for the purposes of the repealed Act and issued pursuant to the repealed Act shall be valid and effectual as if issued pursuant to this Act ;
- (e) an adoption order or any other order or direction made under the repealed Act and in force immediately before the commencement of this Act shall, subject to this Act, continue in force until it expires, is discharged or is otherwise determined according to law ;

and

- (f) an application for an order for the adoption of a child under the repealed Act that was pending immediately before the commencement of this Act may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with under the provisions of the repealed Act as if this Act had not come into operation, but an adoption order made in pursuance

of this paragraph shall have effect as if it were made under this Act.

(3) Subject to subsection (4) of this section, the provisions of sections 30 and 31 (excepting subsection (4) of section 31) of this Act apply in relation to an adoption order made under the repealed Act as if this Act had been in force when the order was made and the order had been made under this Act.

(4) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Act, an adoption order referred to in subsection (3) of this section has the same effect as if the repealed Act had continued in operation and this Act had not come into force.

(5) A consent in writing to the adoption of a child given by a person before the commencement of this Act in accordance with the repealed Act shall, subject to subsection (6) of this section, for the purposes of proceedings under this Act for the adoption of the child, be deemed to be a sufficient consent of the person who gave the consent.

(6) Where a consent referred to in subsection (5) of this section—

- (a) is not a consent to the adoption of the child by a person or by persons specified therein, the consent shall, for the purposes of this Act, be deemed to be a general consent ;
- (b) is a consent to the adoption of the child by a person or by persons specified therein, that person or those persons shall, for the purposes of this Act, be deemed to be a relative, or relatives, as the case may be, of the child.

4. (1) In this Act, unless the context otherwise requires— Interpretation.

“Adopted Children Register” means the Adopted Children Register established and maintained under the repealed Act and continued and kept for the purposes of this Act :

“adoption order” means an order for the adoption of a child under this Act and, where applicable, includes an order for the adoption of a child under the repealed Act :

“charitable organization” means an organization, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent or

philanthropic purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit or benefit to its members :

“child” means a person who has not attained the age of twenty-one years, or a person who has attained that age in respect of whom an adoption order is sought or has been made :

“country” includes part of a country :

“court”, in relation to the making of an adoption order or to proceedings relating to an application for an adoption order or in relation to proceedings incidental to such an application, means a court of a kind referred to in section 5 of this Act ; and, where applicable, includes a court or other authority of any other State or of a Territory of the Commonwealth which has jurisdiction to make an order for the adoption of a child in that State or Territory :

“disposition of property” includes the grant or exercise of a power of appointment in respect of property :

“father”, in relation to a child who is illegitimate, means the putative father of the child :

“general consent” means a consent of a kind referred to in subsection (1) of section 22 of this Act :

“guardian”, in relation to a child, includes—

(a) a person having the custody of the child pursuant to an order of a court of competent jurisdiction made under a law of the Commonwealth or of a State or Territory of the Commonwealth ;

and

(b) 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 of the Commonwealth :

“interim order” means an interim order under Division 4 of Part III of this Act :

“prescribed” means prescribed by this Act or by regulations that have been made under this Act or the repealed Act and are in force :

“principal officer”, in relation to a private adoption agency, means the person specified as the principal officer in the application for its approval as a private adoption agency or the person specified as its principal officer in the latest notice given to the Director by the agency :

“private adoption agency” means a charitable organization for the time being approved as a private adoption agency under Part VI of this Act :

“regulations” means regulations in force under this Act or the repealed Act :

“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 is traced through, or to, an illegitimate person or depends upon the adoption of any person :

“Territory of the Commonwealth” includes any Territory under the trusteeship of the Commonwealth :

“the Director” means the person for the time being holding or acting in the office of Director of Social Welfare under the Social Welfare Act, 1926-1965 :

“the repealed Act” means the Adoption of Children Act, 1925-1965.

(2) Where the holder of an office that is established by or under any other Act is referred to in this Act and the holder of that office has power (with or without the approval of some person) to delegate to another person all or any of his powers and functions under that Act—

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

and

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

PART II.

PART II.

JURISDICTION.

5. Subject to this Act, a court, constituted of a special magistrate and two justices, one of whom is a woman justice, shall have jurisdiction to hear and determine an application under this Act for an adoption order. Jurisdiction.

PART II.

Cases in which jurisdiction may be exercised.

6. (1) A court shall not make an order under this Act for the adoption of a child unless—

(a) at the time of the filing in the court of the application for the order the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the State ;

and

(b) the child was present in the court at such time or times during the hearing of the application as required by the court and is present in the State at the time when the adoption order is made.

(2) For the purposes of subsection (1) of this section, where the court is satisfied that an applicant was resident or domiciled in the State on a date within twenty-one 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 the State at the time of the filing of the application in the court.

Adoption order not to be made if previously refused except in exceptional circumstances.

7. A court shall not, unless it is satisfied that there are exceptional circumstances which warrant its doing so, make an order under this Act in favour of any person or persons for the adoption of a child if that court or any other court in the State or any court in any other State or in a Territory of the Commonwealth has previously refused to make an order for the adoption of that child by that person or those persons.

Rules of private international law not to apply.

8. The jurisdiction or power of a court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

PART III.PART III.ADOPTIONS UNDER THIS ACT.DIVISION I.DIVISION I—GENERAL.

Welfare and interests of child to be paramount.

9. For all purposes of this Part, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Who may be adopted.

10. (1) Subject to this Act, a court may make an order under this Act for the adoption of a person who—

(a) had not attained the age of twenty-one 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 by either or both of the applicants, or by the applicant and a deceased spouse of the applicant, as his or their child under a *de facto* adoption.

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

11. (1) Except as provided in this section, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

Persons in whose favour adoption orders may be made.

(2) Subject to subsections (3), (4) and (6) of this section, where the court is satisfied that exceptional circumstances make it desirable so to do, the court may make an adoption order in favour of one person.

(3) Except as provided in subsection (4) of this section, the court shall not make an adoption order in favour of one person if that person is married and is not living separately and apart from his or her spouse.

(4) Where a person is a natural parent of a child or a parent of a child by adoption, the spouse of such person may, solely or jointly with such person, make an application to a court under this Act for an order for the adoption of the child and an order may be made by the court for the adoption of the child by such spouse or jointly by such spouse and such person, as the case may be.

(5) When an order is made under subsection (4) of this section for the adoption of the child by the spouse or jointly by the spouse and such person, the spouse shall be deemed to be a parent of the child jointly with such person as if the child had been born to them in lawful wedlock, but notwithstanding anything contained in section 30 of this Act—

- (a) the child does not cease to be a child of the person referred to in subsection (4) of this section and such person does not cease to be a parent of the child ;
- (b) the relationship between the child and such person is not determined ;
- (c) if such person were the guardian of the child the order does not have the effect of terminating such guardianship ;

and

(d) if the child were the adopted child of such person, the order does not have the effect of terminating such adoption.

(6) The court shall not make an adoption order under this Act in favour of one person if that person is married except with the consent of his or her spouse.

(7) The consent of a spouse as required by subsection (6) of this section shall be given in evidence before the court and such evidence shall be given in private and the applicant shall not then be present.

Age of
adopters.

12. A court shall not make an order under this Act for the adoption of a child in favour of a person who or persons either of whom—

(a) has not attained the age of twenty-one years ;

or

(b) being a male person, is less than eighteen years older than the child, or, being a female person, is less than sixteen years older than the child,

unless such person or either of such persons is a natural parent of the child or the court considers that there are exceptional circumstances that justify the making of the adoption order.

Court to be
satisfied as
to certain
matters.

13. (1) A court shall not make an order under this Act for the adoption of a child unless after considering such report (if any) concerning the proposed adoption as may, under subsection (2) of section 16 of this Act, be made to the court by the Director or some other officer of the Department of Social Welfare, and any other evidence before the court, the court is satisfied that—

(a) the applicant or (in the case of joint applicants) each of the applicants is of good repute and is a fit and proper person to have the care and custody of a child and to fulfil the responsibilities of a parent of a child ;

(b) the applicant or (in the case of joint applicants) each of the applicants is a suitable person to adopt that child, having regard to all relevant matters, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicant or applicants, and any wishes that have been expressed by a parent or

guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child ;

and

- (c) the welfare and interests of the child will be promoted by the adoption.

(2) Subsection (1) of this section shall not apply in relation to an order, under subsection (1) of section 10 of this Act, for the adoption of a child who has attained the age of twenty-one years before the date of the making of the order, but the court shall not make an adoption order in such a case unless, after considering such report (if any) concerning the proposed adoption as may, under subsection (2) of section 16 of this Act, be made to the court by the Director or some other officer of the Department of Social Welfare, and any other evidence before the court, the court is satisfied that the applicant (or each of the applicants) is of good repute and that exceptional circumstances make it desirable that the child should be adopted.

(3) A report on behalf of the Director may be made by a person thereunto authorized in writing either generally or in a particular case, by the Director.

14. (1) Subject to this Act, a court may make an adoption order under this Act upon application in writing in the appropriate form prescribed.

Procedure governing applications for adoption orders and matters incidental thereto.

(2) Before the court hears an application for an adoption order, the applicant or applicants shall file in the court a statement signed by the applicant or by each of the applicants, as the case may be, setting out such matters as are prescribed.

(3) Where any person or persons intends or intend to make an application for an order for the adoption of a child and that person desires or those persons desire that the application be dealt with in such a way that—

- (a) the identities of the child and of the parents and guardians of the child are not to be disclosed to the applicant or applicants ;
- (b) the identity or identities of the applicant or applicants is not or are not to be disclosed to any parent or guardian of the child ;

or

- (c) the identities of the child and of the parents or guardians of the child and of the applicant or applicants are not to be disclosed to one another,

PART III.
DIVISION I.

the application shall be made in such prescribed form and manner as are appropriate.

(4) Where an application for an adoption order is made pursuant to subsection (3) of this section—

(a) the court shall, on the completion of the hearing, seal in an envelope all papers used in connection with the application which contain any information as to the identities of the child and of the parents and guardians of the child and deliver the envelope to the Director who shall have the custody thereof and no person shall thereafter be permitted to inspect any of such papers except by leave of a Judge or the Master of the Supreme Court ;

(b) an abridged copy of the order made as nearly as practicable in the prescribed form shall be handed by the court to the applicant or applicants, and no person shall be entitled to have or inspect a full copy of such order except by leave of a Judge or the Master of the Supreme Court ;

and

(c) no entry shall be made in the Adopted Children Register giving information as to the identities of the former parents or guardians of the child.

Notice of
application
for adoption
order.

15. (1) A court shall not make an order under this Act for the adoption of a child unless the applicant or the applicants for the adoption order has or have given notice of the application in accordance with the regulations—

(a) to each person whose consent to the adoption of the child is required under section 21 of this Act but whose consent has not been given ;

and

(b) to each person (not being a person whose consent is so required) with whom the child resides or who has the care or custody of the child.

(2) The court may, upon application by or on behalf of the applicant or applicants, or by or on behalf of the Director, dispense with the giving of a notice under subsection (1) of this section.

(3) 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.

16. (1) The court to which an application is made under this Act by any person other than the Director shall cause notice of the application to be given to the Director at least three weeks before the hearing of the application.

Notice of application for adoption order to be given to Director.

(2) The Director or some other officer of the Department of Social Welfare authorized in that behalf in writing by the Director may, before the conclusion of the hearing of any application for an adoption order, make a report in writing to the court concerning the proposed adoption and may appear at the hearing of any application made to a court under this Act and any proceedings relating to the application and may tender evidence, and may call, examine and cross-examine witnesses and address the court before which the application is heard or the proceedings are held on the whole of the evidence.

17. Where an application is made to a court for an adoption order or for an order to dispense with the consent of any person, the court may permit such persons as the court thinks fit to be joined as parties to the proceedings for the purpose of opposing the application.

Parties.

18. Before making an adoption order under this Act, the court—

Powers of court.

- (a) may compel the attendance before it of any witness, and for that purpose may issue and cause to be served upon the witness a summons in the prescribed form ;
- (b) shall take evidence, *viva voce* upon oath or affirmation, or by affidavit sworn before any commissioner for taking affidavits in the Supreme Court, or by declaration made before any justice, in proof of or concerning any fact, matter, or thing required by this Act or by the court to be proved ;

and

- (c) may require to be produced to the court a certificate of a legally qualified medical practitioner as to the results of a general medical examination of the child sought to be adopted, the applicant or applicants for the adoption order, the spouse of the applicant, or any of them, if such certificate was made at any time within three months before the hearing of the application, or may require any such examination to be made and the certificate of the legally qualified medical practitioner by whom the examination is made to be produced to the court.

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