
ADOPTION ACT 1988

No. 41 of 1988

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SCHEDULE 1

CONSEQUENTIAL AMENDMENTS TO
REGISTRATION OF BIRTHS AND DEATHS
ACT 1895



ADOPTION ACT 1988

No. 41 of 1988

AN ACT to amend and consolidate the law relating to adoption, to repeal the Adoption of Children Act 1968, and to make consequential amendments to the Registration of Births and Deaths Act 1895.

[Royal Assent 10 November 1988]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Adoption Act 1988*.

Short title.

2—(1) This section and sections 1 and 3 shall commence Commencement. on the day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be fixed by proclamation.

Interpretation.

3—(1) In this Act, unless the contrary intention appears—

“adopted person” means a person—

(a) an order for whose adoption was made under this Act or any corresponding previous enactment; or

(b) an order for whose adoption was made, whether before or after the commencement of this section, in a place outside Tasmania if the birth of that person has been registered in Tasmania;

“adoption order” means an order for the adoption of a person made under this Act;

“agency” means a welfare organization that is, or has been at any time, an approved agency;

“approved agency” means—

(a) a welfare organization approved by the Minister as an adoption agency under Division 1 of Part II; or

(b) a welfare organization that, immediately before the commencement of this section, was approved as a private adoption agency within the meaning of the repealed Act,

so long as that approval is not revoked or suspended under section 13;

“approved counsellor” means a person who is for the time being approved as a counsellor under section 4, and includes a person who is for the time being approved as a counsellor under a law of another State or a Territory corresponding to this Act;

“child” means—

(a) a person who has not attained the age of 18 years; or

(b) a person who has attained that age in respect of whom an adoption order is sought;

“country” includes a part of a country;

“court” means a magistrate having jurisdiction under this Act by virtue of section 5;

“the Director” means the Director for Community Welfare;

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

“the former register of adoptions” means the register of adoptions formerly kept by the Registrar-General for the purposes of the *Adoption of Children Act 1920*;

“function” includes duty;

“guardian” in relation to a child, includes—

- (a) a person who under a law of the Commonwealth or a State or Territory, is, or is deemed to be, the guardian of the child, to the exclusion of, or in addition to, a parent or other guardian; and
- (b) in the case of a guardian of a non-citizen child under the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, a person to whom the performance or exercise of any functions or powers as a guardian are delegated under that Act;

“interim order” means—

- (a) an interim order made and in force under Division 3 of Part III; or
- (b) an interim order made under the repealed Act and in force immediately before the commencement of section 120;

“natural parent”, in relation to an adopted person, means—

- (a) a person who is named in the entry relating to the adopted person in a register of births, whether in Tasmania or in a place outside Tasmania, as a parent of the adopted person;
- (b) a man who is declared to be the father of the adopted person under a declaration of paternity in force under section 10 of the *Status of Children Act 1974*, if a copy of the declaration is filed in the office of the Registrar-General under section 9 (3) of that Act;
- (c) a man against whom an order has been made under section 26 or 27 of the *Maintenance Act 1967* in respect of the adopted person, if a copy of the order is filed in the office of the Registrar-General under section 9 (3) of the *Status of Children Act 1974*;

(d) a man who is named in an instrument filed in the office of the Registrar-General under section 9 (1) of the *Status of Children Act 1974* that acknowledges that he is the father of the adopted person; or

(e) in relation to an application under section 83, 84, or 90, a man who satisfies a relevant authority that there is evidence that the man is the father of the adopted person;

“natural relative”, in relation to an adopted person, means a grandparent, brother, sister, uncle, or aunt of the adopted person, where the relationship is of the whole blood or half-blood;

“non-citizen child” has the same meaning as in the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth;

“principal officer”, in relation to an approved agency, means the person nominated in an application made by the agency under section 10 or under the repealed Act as its principal officer and includes the person, if any, nominated as the deputy principal officer of that agency in any such application;

“property” includes an interest in property;

“registrar” means a person appointed or holding office as a registrar of births and deaths under section 4 of the *Registration of Births and Deaths Act 1895*;

“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 on the adoption of a person;

“relevant authority”, in relation to an application under Part VI, means—

(a) the Director; or

(b) where the application relates to information contained in records, or a copy of a birth certificate, in the possession, or under the control, of an agency, that agency;

“the repealed Act” means the *Adoption of Children Act 1968*;

“the special record” means the special record formerly kept under section 22F of the *Registration of Births and Deaths Act 1895* and continued in force under section 63 (1) of this Act;

“Territory” means a Territory of the Commonwealth;
 “ward of the State” has the same meaning as in the
Child Welfare Act 1960.

(2) The definitions of “natural parent” and “natural relative” in subsection (1) are not affected by the provisions of this Act relating to the effect of adoption orders.

(3) Where—

- (a) an adoption order has been made in favour of one person as mentioned in section 19, 20, or 21; or
- (b) an application under this Act for such an order has been made, or is proposed,

references in this Act to adoptive parents or prospective adoptive parents shall be read as including references to an adoptive parent or prospective adoptive parent, as the case may require.

4—(1) Subject to subsection (2), the Director may, by notice in writing, approve a person as a counsellor for the purposes of this Act and may, by notice in writing, revoke any such approval. Approved counsellors.

(2) The Director shall not approve a person as a counsellor under subsection (1) unless the person is—

- (a) an officer of the Department for Community Welfare or a person who is temporarily employed in that Department;
- (b) employed by an approved agency; or
- (c) if he is not such an officer or so employed, a person who, in the opinion of the Director, has such qualifications and experience as are appropriate for a counsellor for the purposes of this Act.

5—Except where otherwise provided in this Act, the jurisdiction conferred on a court by this Act is exercisable by a magistrate sitting alone. Jurisdiction of magistrates.

6—(1) The court shall not make an order for the adoption of a child unless— Requirements for making adoption orders.

- (a) at the time of the filing in the court of the application for the order—
 - (i) each of the prospective adoptive parents was resident or domiciled in Tasmania; and
 - (ii) the child was present in Tasmania; or

(b) the child was born in Tasmania and at the time of the filing in the court of that application was under the guardianship of the Director.

(2) For the purposes of subsection (1), where the court is satisfied that—

(a) the prospective adoptive parents were resident or domiciled in Tasmania;

(b) a child was present in Tasmania; or

(c) a child was under the guardianship of the Director, 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—

(d) the prospective adoptive parents were resident or domiciled in Tasmania;

(e) the child was present in Tasmania; or

(f) the child was under the guardianship of the Director, as the case may be, at the time of the filing of the application in the court.

Rules of private international law not to apply.

7—The jurisdiction of the court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

Welfare and interests of child to be paramount.

8—In the administration of this Act, the welfare and interests of the child or adopted person concerned shall be regarded as the paramount consideration at all times.

PART II

ADOPTIONS UNDER THIS ACT

Division 1—Arrangement of adoptions

Adoptions may be arranged by Director or by approved agency.

9—(1) For the purposes of this Act, arrangements or negotiations for, towards, or with a view to the making of an adoption order in favour of any persons may be made by, or on behalf of, the Director or by, or on behalf of, an approved agency.

(2) Except as otherwise provided in this Act, an order shall not be made for the adoption of a child unless arrangements or negotiations for, towards, or with a view to, the adoption of the child have been made by, or on behalf of, the Director or by, or on behalf of, an approved agency.

10—(1) In this section, “welfare organization” means an organization, whether corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent, philanthropic, or welfare purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members. Application for approval of adoption agency.

(2) A welfare organization desiring to carry on, the activity of conducting negotiations, or making arrangements, with a view to the adoption of children may apply in writing to the Minister for approval as an adoption agency.

(3) An application under this section—

- (a) shall contain such information relating to the organization as is prescribed;
- (b) shall specify the address of the principal office in Tasmania of the organization;
- (c) shall nominate a person resident in Tasmania to be the principal officer of the organization; and
- (d) may nominate a person resident in Tasmania to be the deputy principal officer of the organization for the purposes of this Act.

(4) Where the Minister receives an application under this section, he shall publish notice of the application in the *Gazette*.

11—(1) The Minister may, as he thinks fit, grant or refuse to grant an application under section 10 and in particular, without limiting the generality of this section, may refuse to grant the application if it appears to him— Minister may grant or refuse to grant application.

- (a) that the applicant is not a welfare organization within the meaning of that section; or
- (b) that the applicant is not suited to making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character, and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the making of arrangements with a view to the adoption of children.

(2) Where the Minister approves an adoption agency under this section, the approval—

- (a) shall be subject to such conditions and requirements as may be prescribed; and
- (b) may be granted subject to such additional conditions and requirements as the Minister thinks fit and specifies by notice in writing given to the principal officer of that adoption agency.

Principal officer
of approved
agency.

12—(1) Anything done by the principal officer of an approved agency, or with his approval, shall, for the purposes of this Act but without prejudice to any personal liability of the principal officer, be deemed to be done by the approved agency.

(2) An approved agency shall, within 7 days after the occurrence of a vacancy in the office of its principal officer, appoint a person resident in Tasmania to fill the vacancy, either temporarily or permanently, and shall give notice in writing to the Director of the appointment.

(3) For the purposes of subsection (2), the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in Tasmania.

Revocation or
suspension of
approval.

13—(1) The Minister may at any time, by notice in writing served personally or by certified mail on the principal officer of an approved agency, revoke or suspend for a specified period the approval of the agency under this Division—

- (a) at the request of the approved agency concerned;
- (b) in the case of a revocation or suspension of approval under section 11, on the ground that the approved agency is no longer a suitable organization to conduct negotiations or make arrangements with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in that section; or
- (c) on the ground that the approved agency has contravened, or failed to comply with, a provision of this Act that is applicable to it.

(2) Where the approval of a welfare organization as an approved agency is revoked or suspended under subsection (1), the organization shall not commence or continue arrangements or negotiations for the adoption of a child under this Act.

14—Where a welfare organization ceases to be an approved agency or the approval of a welfare organization as an approved agency is revoked or suspended under section 13 (1)—

Effect of cessation or suspension, &c., of approval.

- (a) all records and other documents held by it or under its control relating to the arrangement or negotiation of adoptions shall become the property of the Director or, if the welfare organization has with his approval entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, the property of that approved agency; and
- (b) the arrangements or negotiations being undertaken by the first-mentioned approved agency immediately before the cessation, revocation, or suspension shall be continued by the Director or the principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be.

15—On the expiration of the period of suspension of the approval of a welfare organization as an approved agency—

Expiration of suspension of approval or authority.

- (a) the Director may return to the approved agency such documents and records as, by virtue of section 14 (a), become his property on the suspension; and
- (b) the Director may authorize the approved agency to continue such arrangements and negotiations being undertaken by him as he thinks fit, if the arrangements or negotiations are such as, but for the suspension, would have been carried on by the approved agency.

16—(1) The Director shall keep records in respect of each adoption negotiated or arranged by him or on his behalf.

Duty to keep records of adoptions.

(2) The principal officer of an approved agency shall keep records of each adoption negotiated or arranged by the approved agency or on its behalf.

17—In all matters relating to the exercise of their powers and the performance of their duties under this Act, the Director and the principal officer of an approved agency shall have regard to adoption as a service for the child concerned.

Duties of Director and principal officers.

Division 2—General

Adoption order to be made on application by Director or principal officer.

18—(1) Subject to subsection (2), an application for an adoption order shall be made by the Director or the principal officer of an approved agency on behalf of the prospective adoptive parents.

(2) Where—

(a) a prospective adoptive parent is a spouse of a natural parent or of an adoptive parent of the child proposed to be adopted; or

(b) a prospective adoptive parent is a person who is, or whose spouse is, a relative of the child proposed to be adopted,

only the Director is competent to make the application on behalf of the prospective adoptive parent.

Who may be adopted.

19—(1) On application by the Director or the principal officer of an approved agency but subject to this Act, the court may make an order for the adoption of a child who—

(a) had not attained the age of 18 years before the date on which the application was filed in the court; or

(b) has been brought up, maintained, and educated by—

(i) the prospective adoptive parent or either of the prospective adoptive parents; or

(ii) the prospective adoptive parent and his or her deceased spouse,

as the child of that parent or, as the case may be, of that parent and his or her spouse,

but the court shall not make an order for the adoption of a child who is, or has been, married.

(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 section, and whether in Tasmania or elsewhere, previously been adopted.

Persons in whose favour adoption orders may be made.

20—(1) An order for the adoption of a child may be made in favour of a man and a woman who are married to each other and have been so married for not less than 3 years before the date on which the order is made.

(2) The period of 3 years referred to in subsection (1) may include a period during which a man and a woman resided together in a stable continuous *de facto* relationship immediately before their marriage.

(3) 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 29 (3), is an appropriate person to give consent to the adoption of the child.

(4) Subject to this section, where the court is satisfied that exceptional circumstances exist in relation to the welfare and interests of the child which make it desirable to do so, the court may make an adoption order in favour of one person.

(5) The court shall not make an adoption order in favour of one person—

- (a) if that person is married unless that person is 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.

(6) Subject to subsection (7), an adoption order may be made in favour of the spouse of a natural parent, or of an adoptive parent, of the child concerned.

(7) Where an application is made for an adoption order in favour of the spouse of a parent, or of an adoptive parent, of a child and there is an appropriate person within the meaning of section 29 to give consent to the adoption, the court shall not make an adoption order unless it is satisfied that—

- (a) the making of an order by a court of competent jurisdiction for the custody or guardianship of the child would not make adequate provision to serve the welfare and interests of the child;
- (b) an order for the adoption of the child would better serve the welfare and interests of the child; and
- (c) special circumstances exist which warrant the making of the adoption order.

(8) On the making of an adoption order under subsection (7) relating to a child, the spouse shall be deemed to be a parent of the child jointly with that parent or adoptive parent as if the spouse and that parent or adoptive parent had been married to each other at the time the child was born but, notwithstanding section 50—

- (a) the child is not to be treated in law as if the child were not the child of that parent or adoptive parent;
- (b) that parent or adoptive parent is not to be treated in law as if the parent or adoptive parent were not a parent of that child;