



Australian Capital Territory

Adoption of Children Act 1965

A1965-15

Republication No 1

Effective: 7 November 1991 – 31 July 1993

Republication date: 22 November 2007

Last amendment made by A1991-71
(republication for initial republication since self-government)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Adoption of Children Act 1965* effective from 7 November 1991 to 31 July 1993.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.



Australian Capital Territory

ADOPTION OF CHILDREN ACT 1965

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
4. Repeal
6. Interpretation

PART II—JURISDICTION

7. Jurisdiction of Supreme Court
8. Cases in which jurisdiction may be exercised
9. Rules of private international law not to apply

PART III—PRIVATE ADOPTION AGENCIES

10. Application for approval of adoption agency
11. Minister may grant or refuse application
12. Principal officer of private adoption agency
13. Revocation or suspension of approval
14. Regulations relating to private adoption agencies

PART IV—ADOPTIONS UNDER THIS ACT

Division 1—General

15. Welfare and interests of child to be paramount
16. Who may be adopted
17. Persons in whose favour adoption orders may be made
18. Age of adopters
19. Court to be satisfied as to certain matters
20. Notice of application for adoption orders

TABLE OF PROVISIONS—continued

Section

- 21. Parties
- 22. Care of child after refusal of an application
- 23. Discharge of adoption orders
- Division 2—Consents to Adoptions*
- 24. Consents of parents and guardians required to adoptions
- 25. Consents to be general, except where in favour of relative
- 26. Revocation of consents
- 27. Form of consents
- 28. Consents given under law of a State or another Territory
- 29. Defective consents
- 30. Court may dispense with consents
- 31. Consent of child
- 32. Guardianship of child awaiting adoption
- Division 3—Effect of Adoption Orders*
- 33. General effect of adoption orders
- 34. Effect of orders as regards dispositions of property etc.
- 35. Names of adopted child
- 36. Effect of order on domicile
- 37. Adoption order not to affect the distribution of property by trustees or personal representatives unless notice given
- Division 4—Interim Orders*
- 38. Making of interim orders
- 39. Duration of interim orders
- 40. Discharge of interim orders
- PART V—RECOGNITION OF ADOPTIONS**
- 41. Interpretation
- 42. Recognition of Australian adoptions
- 43. Recognition of foreign adoptions
- 44. Declarations of validity of foreign adoptions
- PART VI—OFFENCES**
- 45. Territorial application of Part
- 46. Taking away etc. of adopted child by natural parent
- 47. Payments in consideration of adoptions etc.
- 48. Unauthorised arrangements for adoption
- 49. Restriction on advertising etc.
- 50. Restriction on publication of identity of parties
- 51. False statement in application etc.
- 52. Personation of person whose consent to an adoption is required
- 53. Presenting forged consent

TABLE OF PROVISIONS—continued

Section	
54.	Improperly witnessing consent
	PART VII—MISCELLANEOUS
56.	Registration of orders under this Act
57.	Sending of memoranda of orders to States and other Territories
58.	Particulars of orders received from States or other Territories
59.	Hearings to be <i>in camera</i>
60.	Contents of reports not to be disclosed
61.	Restriction on inspection of records
62.	Director may appear at hearings
63.	Proof of adoptions
64.	Judicial notice of signatures
64A.	Power of Minister to determine fees
64B.	Fees payable
65.	Regulations



Australian Capital Territory

ADOPTION OF CHILDREN ACT 1965

An Act relating to the Adoption of Children

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Adoption of Children Act 1965*.¹

Commencement

2. This Act shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.¹

Repeal

4. The *Adoption of Children Ordinance 1938*, the *Adoption of Children Ordinance 1940* and the *Adoption of Children Ordinance 1949* are repealed.

Interpretation

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

“adoption order” means an order for the adoption of a child under this 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 to its members;

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

“Director” means the Director of Family Services;

“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;

“general consent” means a consent to the adoption of a child other than the consent referred to in subsection (2) of section 25 of this Act;

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

- (a) a person having the custody of the child under a court order; 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 IV;

“principal officer”, in relation to a private adoption agency, means the person specified as the principal officer in the application by virtue of which the private adoption agency was approved under this Act, or the person specified as the principal officer in the latest notice given to the Director by the private adoption agency under subsection (1) of section 12 of this Act;

“private adoption agency” means a charitable organization approved as a private adoption agency under Part III;

“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;

“the Court” means the Supreme Court;

“the repealed Ordinances” means all or any of the Ordinances repealed by section 4 of this Act.

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

Jurisdiction of Supreme Court

7. Jurisdiction is conferred on the Supreme Court in proceedings instituted in the Court in accordance with this Act.

Cases in which jurisdiction may be exercised

8. (1) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order—

- (a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the Territory; and
- (b) the child was present in the Territory.

(2) For the purposes of the last preceding subsection, where the Court is satisfied that an applicant was resident or domiciled in the Territory, or that the child was present in the Territory, 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 Territory, or that the child was present in the Territory, 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

9. The jurisdiction of the Supreme Court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Act.

PART III—PRIVATE ADOPTION AGENCIES

Application for approval of adoption agency

10. A charitable organization carrying on, or desiring to carry on, the activity of conducting negotiations and making arrangements with a view to the adoption of children may apply in writing to the Minister for approval as a private adoption agency.

Minister may grant or refuse application

11. (1) The Minister may, in his discretion, grant or refuse an application under the last preceding section.

(2) Without limiting the generality of the last preceding subsection, the Minister shall refuse an application if it appears to him that the applicant is not a charitable organization or is not suited to carrying on the activity of conducting negotiations and 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 conducting of such negotiations or the making of such arrangements.

Principal officer of private adoption agency

12. (1) Before making an application under section ten of this Act, an organization shall appoint a person resident in the Territory to be its principal officer in the Territory for the purposes of this Act in the event of the granting of the application and, if the application is granted, the private adoption agency shall, within seven days after the occurrence of a vacancy in the office of principal officer, appoint a person resident in the Territory to fill the vacancy and give notice in writing to the Director of the appointment.

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

(3) Anything done by the principal officer of a private adoption agency 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 private adoption agency.

Revocation or suspension of approval

13. The Minister may, at any time, by notice in writing served personally or by registered post on the principal officer of a private adoption agency, revoke or suspend the approval of the private adoption agency under this Part—

- (a) at the request of the agency;
- (b) on the ground that the agency is no longer a suitable organization to carry on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the matters referred to in section 11 of this Act; or
- (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it.

Regulations relating to private adoption agencies

14. The regulations may prescribe requirements to be observed and facilities to be provided by private adoption agencies, including requirements with respect to the qualifications and experience of persons acting for or on behalf of private adoption agencies.

PART IV—ADOPTIONS UNDER THIS ACT

Division 1—General

Welfare and interests of child to be paramount

15. 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

16. (1) Subject to this Act, the Court may, on application, make an order for the adoption of a person who—

- (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 applicants, or by the applicant and a deceased spouse of the applicant, as his or their child under a *de facto* adoption.

(2) The Court shall not make an order for the adoption of a person who is, or has been, married.

(3) 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 the Territory or elsewhere, previously been adopted.

Persons in whose favour adoption orders may be made

17. (1) Except as provided by the next succeeding subsection, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to the next succeeding subsection, 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) 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) The Court may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child.

Age of adopters

18. The Court shall not make an order 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 the applicant, or at least one of the applicants, is a natural parent of the child or the Court considers that there are exceptional circumstances that justify making the adoption order.

Court to be satisfied as to certain matters

19. (1) The Court shall not make an order for the adoption of a child unless the Director, or the principal officer of a private adoption agency that has made the arrangements that have resulted in the application, has made a report in writing to the Court concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child;
- (b) the applicants are suitable persons to adopt that child, having regard to all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the 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) The last preceding subsection does not apply in relation to an order, in accordance with subsection (1) of section 16 of this Act, for the adoption of a child who has attained the age of eighteen years before the date of the making of the order, but the Court shall not make an adoption order in such a case unless it is satisfied—

- (a) that the applicants are of good repute; and
- (b) that exceptional circumstances make it desirable that the child should be adopted.

Notice of application for adoption orders

20. (1) The Court shall not make an order for the adoption of a child unless the applicants for the adoption order have given not less than fourteen days' notice of the application—

- (a) to any person whose consent to the adoption of the child is required under section 24 of this Act but whose consent has not been given; and
- (b) to any 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 in writing, dispense with the giving of a notice under the last preceding subsection.

(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.

Parties

21. Where an application is made to the Court for an order for the adoption of a child, 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 or for the purpose of opposing an application to dispense with the consent of a person.

Care of child after refusal of an application

22. 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 control of the child as it thinks fit.

Discharge of adoption orders

23. (1) The Director or the Minister may apply to the Court for an order discharging an order for the adoption of a child made under this Act or under the repealed Ordinances, and the Court may make such an order if it is satisfied that—

- (a) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means; or
- (b) that there is some other exceptional reason why, subject to the welfare and interests of the child, the 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 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 the last preceding subsection and to subsection (2) of section 33 of this Act, the rights, privileges, duties, liabilities and relationships under the law of the Territory of the child and of all other persons shall be the same as if the adoption order 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 adoption order was in force.

Division 2—Consents to Adoptions

Consents of parents and guardians required to adoptions

24. (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 succeeding provisions 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 person is 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 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 eighteen years before the making of the adoption order.

Consents to be general, except where in favour of relative

25. (1) For the purposes of the last preceding section but subject to the next succeeding subsection, 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 the Territory, and shall have effect accordingly in relation to an application for adoption made by any person or persons in accordance with this Act.

(2) The last preceding subsection 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.

Revocation of consents

26. (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 served on the Registrar of the Supreme Court before—

- (a) the expiration of thirty days from the date on which the instrument of consent was signed; or
 - (b) the day on which an order for the adoption of the child is made,
- whichever is the earlier, but may not otherwise be revoked.

(2) Service of a notice on the Registrar of the Supreme Court under the last preceding subsection shall be effected by delivering it to him personally or by sending it to him by post at the address of the Registry of the Supreme Court.

(3) Upon receipt of a notice under this section, the Registrar of the Supreme Court shall forthwith notify the Director of the receipt of the notice.

Form of consents

27. A consent for the purposes of the preceding provisions of this Division shall be evidenced by an instrument of consent substantially in accordance with the prescribed form signed by the person giving the consent and attested as prescribed.

Consents given under law of a State or another Territory

28. 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 a State or of another 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.

Defective consents

29. (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) 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 seven days after, the day on which the child was born unless—

- (a) it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent; or
- (b) the consent—
 - (i) was given in accordance with the law of a State or another Territory; and
 - (ii) is, by virtue of section 28, an effective consent for the purposes of the application for the adoption order.

(4) For the purposes of the last preceding subsection, a certificate of a legally qualified medical practitioner or of a person registered as a nurse under the *Nurses Act 1988* certifying that, at the time when the instrument of consent was signed by the mother of a child, the mother was in a fit condition to give the consent is evidence of the matter so certified.

Court may dispense with consents

30. (1) The Court 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) that person has abandoned, deserted or persistently neglected or ill-treated the child;
- (d) that person has, for a period of not less than one year, failed, without reasonable cause, 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) In order to facilitate the making of arrangements with a view to the adoption of a child, the Court may, on the application of the Director or the principal officer of a private adoption agency, make an order under this section in relation to the child before an application for an adoption order has been made in respect of the child, and any such order under this section has effect for the purposes of any application for an adoption order that may subsequently be made in respect of the child.

(3) An order made by virtue of the last preceding subsection may, on the application of the Director or of the person whose consent was dispensed with, be revoked by the Court at any time before the making of an adoption order in respect of the child.

Consent of child

31. 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 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

32. (1) Subject to the next succeeding subsection, where, in the case of every person whose consent to the adoption of a child is required under section 24 of this Act—

- (a) the consent (being a general consent) of that person to the adoption of the child has been given; or
- (b) the consent of that person to the adoption of the child has been dispensed with by an order made by virtue of subsection (2) of section 30 of this Act,

the Director is the guardian of the child for all purposes (other than the purposes of section 24 of this Act) to the exclusion of all other persons until—

- (c) an adoption order is made in respect of the child;
- (d) in the case of any consent so given, the instrument of consent is lawfully revoked; or
- (e) the Court, by order, makes other provision for the guardianship of the child.

(2) Where—

- (a) a person or persons whose consent to the adoption of a child is required under section 24 of this Act has or have given that consent and a written authority to a private adoption agency to make arrangements with a view to the adoption of the child, and there is no other person whose consent to the adoption of the child is required and has not been dispensed with; and
- (b) the principal officer of the private adoption agency informs the Director that he is willing to assume the guardianship of the child,

the principal officer from time to time of the private adoption agency is the guardian of the child in lieu of the Director, but otherwise in accordance with the last preceding subsection.

(3) The preceding provisions of this section do not apply to a child who is a ward within the meaning of the law of the Territory relating to child welfare and for whose guardianship provision is made by that law.

Division 3—Effect of Adoption Orders

General effect of adoption orders

33. (1) For the purposes of the laws of the Territory, but subject to this Act and to the provisions of any law of the Territory 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 appointment of a person, by will or deed, as guardian of the adopted child ceases to have effect; and
- (e) any previous adoption of the child (whether effected under the law of the Territory or otherwise) ceases to have effect.

(2) Notwithstanding the last preceding subsection, for the purposes of any law of the Territory 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.

Effect of orders as regards dispositions of property etc.

34. (1) The provisions of subsection (1) of the last preceding section have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of this Act, except that—

- (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 (1) of the last preceding section 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) 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, an adoption order

made under this Act has the same effect as if the repealed Ordinances had continued in force and the adoption order had been made under those Ordinances.

(5) Nothing in the last preceding section 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.

Names of adopted child

35. (1) Subject to the next succeeding subsection, 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.

(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 the Territory.

Effect of order on domicile

36. (1) Subject to 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.

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

Adoption order not to affect the distribution of property by trustees or personal representatives unless notice given

37. (1) Notwithstanding any other provision of this Act, trustees or personal representatives may, subject to this section, convey, transfer or distribute property to or among the persons appearing to be entitled to the property without having ascertained whether or not an adoption has been effected by virtue of which a person is or is not entitled to an interest in the property.

(2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in the last preceding subsection shall not be liable to a person claiming directly or indirectly by virtue of an adoption unless the trustee or personal representative has notice of the claim before the time of the conveyance, transfer or distribution.

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

Division 4—Interim Orders

Making of interim orders

38. (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 may 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.

Duration of interim orders

39. (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.

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

Discharge of interim orders

40. (1) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under the repealed Ordinances, and may make such order for the care and custody of the child as it thinks fit.

(2) An interim order, whether under this Act or under the repealed Ordinances, ceases to have effect upon the making of an order for the adoption

of that child, whether made in the Territory or in a State or another Territory of the Commonwealth.

PART V—RECOGNITION OF ADOPTIONS

Interpretation

41. In this Part, “country” includes a part of a country.

Recognition of Australian adoptions

42. For the purposes of the laws of the Territory, the adoption of a person (whether before or after the commencement of this Act) in a State, or in another Territory of the Commonwealth, in accordance with the law of that State or other Territory has, so long as it has not been rescinded under the law in force in that State or other Territory, the same effect as an adoption order made in the Territory under this Act, and has no other effect.

Recognition of foreign adoptions

43. (1) For the purposes of the laws of the Territory, the adoption of a person (whether before or after the commencement of this Act) in a country outside the Commonwealth and the Territories of the Commonwealth, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order under this Act.

(2) This section applies to an adoption in a country if—

- (a) the adoption was effective according to the law of that country;
- (b) at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters, was resident or domiciled in that country;
- (c) in consequence of the adoption, the adopter or adopters had, or would (if the adopted person had been a young child) have had immediately following the adoption, according to the law of that country, a right superior to that of any natural parent of the adopted person in respect of the custody of the adopted person; and
- (d) under the law of that country the adopter or adopters were, by virtue of the adoption, placed generally in relation to the adopted person in the position of a parent or parents.

(3) Notwithstanding the foregoing provisions of this section, a court (including a court dealing with an application under the next succeeding

section) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the court that the procedure followed, or the law applied, in connexion with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.

(4) Where, in any proceedings before a court (including proceedings under the next succeeding section), the question arises whether an adoption is one to which this section applies, it shall be presumed, unless the contrary appears from the evidence, that the adoption complies with the requirements of subsection (2) of this section and has not been rescinded.

(5) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country outside the Commonwealth and the Territories of the Commonwealth does not have effect for the purposes of the laws of the Territory.

(6) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of this Act.

Declarations of validity of foreign adoptions

44. (1) A person specified in the next succeeding subsection may apply to the Court for an order declaring that an adoption of a person was effected (whether before or after the commencement of this Act) under the law of a country outside the Commonwealth and the Territories of the Commonwealth, and that the adoption is one to which the last preceding section applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The persons who make an application under the last preceding subsection in relation to an adoption are the adopted child, the adoptive parent or either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

(3) Where an application is made under this section, the Court may—

- (a) direct that notice of the application be given to such persons (who may include the Minister) as the Court thinks fit;
- (b) direct that a person be made a party to the application; or
- (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.

(4) Where the Court makes an order upon the application, it may include in the order such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the Court finds to be established.

(5) For the purposes of the laws of the Territory, an order under this section binds the Crown, whether or not notice was given to the Minister, but, except as provided in the next succeeding subsection, does not affect—

- (a) the rights of another person unless that person was—
 - (i) a party to the proceedings for the order or a person claiming through such a party; or
 - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or
- (b) an earlier judgment, order or decree of a court of competent jurisdiction.

(6) In proceedings in a court of the Territory, being proceedings relating to the rights of a person other than a person referred to in subparagraph (i) or (ii) of paragraph (a) of the last preceding subsection, the production of a copy of the order, certified by the Registrar of the Supreme Court to be a true copy, shall be evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is one to which the last preceding section applies.

PART VI—OFFENCES

Territorial application of Part

45. This Part does not apply in respect of acts occurring outside the Territory but, except to the extent to which the contrary intention appears, does apply in respect of acts done in the Territory in relation to the adoption of children in, or children adopted in, a State, another Territory of the Commonwealth, or a country outside the Commonwealth and the Territories of the Commonwealth.

Taking away etc. of adopted child by natural parent

46. (1) A person who was the father or mother or a guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a guardian of the child shall not take, lead, entice or decoy the child away, or detain the child, with intent to deprive the adopters of the child of possession of the child.

(2) A person shall not receive or harbour 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 the last preceding subsection.

Penalty: Four hundred dollars or imprisonment for six months.

Payments in consideration of adoptions etc.

47. (1) Subject to this section, a person shall not (whether before or after the birth of the child concerned) make, give or receive, or agree to make, give or receive, a payment or reward for or in consideration of—

- (a) the adoption or proposed adoption of a child;
- (b) the giving of consent, or the signing of an instrument of consent, to the adoption of a child;
- (c) the transfer of the possession or control of a child with a view to the adoption of the child; or
- (d) the conduct of negotiations or the making of arrangements with a view to the adoption of a child.

Penalty: Four hundred dollars or imprisonment for six months.

(2) The last preceding subsection does not apply to or in relation to any of the following payments or rewards in connexion with an adoption or proposed adoption under this Act:

- (a) a payment of legal expenses;
- (b) a payment made by the adopters, 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 connexion 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; and
- (c) any other payment or reward authorized by the Director or by the Court.

(3) Subsection (1) of this section does not apply to or in relation to a payment or reward in connexion with an adoption or proposed adoption under the law of a State or of another Territory of the Commonwealth if the making of the payment or the giving of the reward, or the agreeing to make the payment or give the reward, would have been lawful if it had taken place in that State or other Territory.

Unauthorised arrangements for adoption

48. (1) A person other than the Director, a private adoption agency or a person acting on behalf of the Director or a private adoption agency shall not—

- (a) conduct negotiations or make arrangements with another person with a view to the adoption of a child by that other person; or
- (b) except in accordance with arrangements made by or on behalf of the Director or a private adoption agency, transfer, or cause to be transferred, the possession or control of a child to another person with a view to the adoption of the child by that other person.

(2) The last preceding subsection does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child with a view to the adoption of the child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

Penalty: Two hundred dollars or imprisonment for three months.

Restriction on advertising etc.

49. (1) Subject to this section, a person shall not publish, or cause 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 willing to make arrangements with a view to the adoption of a child.

Penalty: Four hundred dollars or imprisonment for six months.

(2) The last preceding subsection does not apply in relation to an advertisement, news item or other matter that has been approved by the Director.

Restriction on publication of identity of parties

50. (1) Subject to this section, a person shall not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, in relation to an application under this Act or under a law of a State or another Territory of the Commonwealth for the adoption of a child or the proceedings on such an application, the name of an applicant, the child, or the

father or mother or a guardian of the child, or any matter reasonably likely to enable any of those persons to be identified.

Penalty: Four hundred dollars or imprisonment for six months.

(2) This section does not apply in relation to the publication of any matter with the authority of the court to which the application was made.

False statement in application etc.

51. A person shall not, whether orally or in writing, wilfully make a false statement for the purposes of or in connexion with a proposed adoption or any other matter under this Act.

Penalty: Four hundred dollars or imprisonment for six months.

Personation of person whose consent to an adoption is required

52. A person shall not personate or falsely represent himself to be a person whose consent to the adoption of a child is required by this Act or by the law of a State or of another Territory of the Commonwealth.

Penalty: Four hundred dollars or imprisonment for six months.

Presenting forged consent

53. A person shall not present, or cause to be presented, to the Court in connexion 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 if the signature to the document is or was, to the knowledge of that first-mentioned person, forged or obtained by fraud or duress.

Penalty: Four hundred dollars or imprisonment for six months.

Improperly witnessing consent

54. A person shall not subscribe his name as a witness to the signature of a person to an instrument of consent to the adoption of a child unless—

- (a) he is satisfied that the person signing the instrument is a parent or guardian of the child;
- (b) he takes such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; and

- (c) the instrument bears the date on which it is signed by the person giving the consent.

Penalty: Four hundred dollars or imprisonment for six months.

PART VII—MISCELLANEOUS

Registration of orders under this Act

56. The Registrar of the Supreme Court shall cause a memorandum, in accordance with the prescribed form, of every adoption order made by the Court under this Act, and a copy of every order for the discharge of such an adoption order, to be sent to the Registrar of Births, Deaths and Marriages, who shall—

- (a) register it, as prescribed, in a Register of Adoptions to be kept by him; and
- (b) if it relates to a child whose birth is registered in the Register of Births kept by him, make such alterations to, or entries in, that register as are prescribed.

Sending of memoranda of orders to States and other Territories

57. Where the Court makes an order for the adoption of a child, or an order discharging such an order, and the Registrar of the Supreme Court has reason to believe that the birth of the child is registered in a State or in another Territory of the Commonwealth, the Registrar shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order, or a copy of the discharging order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to such officer of that State or other Territory having functions in relation to the registration of births as is prescribed.

Particulars of orders received from States or other Territories

58. Where the Registrar of Births, Deaths and Marriages receives, in relation to a child whose birth is registered in the Territory, a memorandum or copy of an adoption order made (whether by a court or not) under the law in force in a State or in another Territory of the Commonwealth, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorized so to certify under the law of that State or other Territory, he shall—

- (a) register it, as prescribed, in the Register of Adoptions kept by him; and

- (b) make such alterations to, or entries in, the Register of Births kept by him as are prescribed.

Hearings to be *in camera*

59. An application to the Court under this Act shall not be heard in open court and persons who are not parties to the proceedings or their counsel, solicitors or representatives shall, except as otherwise permitted by the Court, be excluded during the hearing of such an application.

Contents of reports not to be disclosed

60. Except as the Court otherwise orders, a report to the Court under section nineteen of this Act shall not be made available to any person, including a party to the proceedings.

Restriction on inspection of records

61. Except as provided by the regulations, the records of any proceedings under this Act shall not be open to inspection.

Director may appear at hearings

62. The Director, or a person appointed for the purpose by the Director, may appear at the hearing of the proceedings on an application for an adoption order, and may address the Court, and call, examine and cross-examine witnesses.

Proof of adoptions

63. In any proceedings in a court of the Territory, the court may receive as evidence of the matters stated in, or appearing from, the document, a document purporting to be either the original or a certified copy or certified extract of an order effecting an adoption (whether in Australia or elsewhere), or an official certificate, entry or record of an adoption (whether effected in Australia or elsewhere).

Judicial notice of signatures

64. (1) 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 Director, or the corresponding officer in a State or in another Territory of the Commonwealth, appearing on a document and of the fact that, at the time the document was signed by him, he held, or was acting in, that office.

(2) In proceedings under this Act, judicial notice shall be taken of the signature of a person to whom any of the powers or functions of the Director (whether under this Act or otherwise) have been delegated.

Power of Minister to determine fees

64A. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Fees payable

64B. A fee determined under section 64A is payable to the Territory in relation to the relevant matter specified in the notice referred to in that section, being a matter in respect of which the Executive may make regulations.

Regulations

65. (1) The Executive may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, making provision for or in relation to—

- (a) the forms to be used for the purposes of this Act;
- (b) the keeping of lists by the Director and by private adoption agencies of persons approved as fit and proper persons to adopt children;
- (c) the prohibition or regulation of access to the Register of Adoptions kept under this Act;
- (d) the furnishing of copies of, or extracts from, matters included in the Register of Adoptions kept under this Act;
- (e) the making, correction or cancellation of entries relating to adopted children in the Register of Births kept under the law of the Territory; and
- (f) penalties, not exceeding a fine of One hundred dollars, for offences against the regulations.

(2) The regulations may make provision for the making, correction or cancellation of entries in the Register of Births kept under the law of the Territory relating to children in respect of whom adoption orders were made under the repealed Ordinances.

NOTE

1. The *Adoption of Children Act 1965* as shown in this reprint comprises Act No. 15, 1965 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Adoption of Children Ordinance 1965</i>	15, 1965	30 Sept 1965	8 Oct 1966 (see <i>Gazette</i> 1966, p. 4519)	—
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Adoption of Children Ordinance 1974</i>	41, 1974	22 Oct 1974	22 Oct 1974	S. 3
<i>Ordinances Revision (Age of Majority) Ordinance 1974</i>	47, 1974	24 Oct 1974	1 Nov 1974	—
<i>Ordinances Revision Ordinance 1977</i>	65, 1977	22 Dec 1977	22 Dec 1977	—
<i>Adoption of Children (Amendment) Ordinance 1979</i>	5, 1979	21 Mar 1979	21 Mar 1979	—
<i>Adoption of Children (Amendment) Ordinance 1983</i>	42, 1983	29 Sept 1983	1 Oct 1983	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Adoption of Children (Amendment) Ordinance 1988</i>	4, 1988	9 Mar 1988	26 Apr 1988 (see <i>Gazette</i> 1988, No. GN13, p. 673)	—
<i>Nurses (Consequential Amendments) Ordinance 1988</i>	62, 1988	7 Sept 1988	5 Dec 1988 (see <i>Gazette</i> 1988, No. S369)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

Self-Government day 11 May 1989

Table 2

NOTE—continued**Table of Ordinances**—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
-----------	-----------------	--	----------------------	--

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Director of Public Prosecutions (Consequential Provisions) Act 1990</i>	23, 1990	25 June 1990	Ss. 1 and 2: 25 June 1990 Remainder: 1 July 1990 (see <i>Gazette</i> 1990, No. S44, p. 2)	S. 4
<i>Adoption of Children (Amendment) Act 1991</i>	71, 1991	7 Nov 1991	7 Nov 1991 (see s. 2)	—

NOTE—continued**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	rep. No. 65, 1977
S. 5	rep. No. 67, 1985
S. 6	am. No. 47, 1974; No. 4, 1988; Act No. 71, 1991
S. 16	am. No. 47, 1974
S. 19	am. No. 47, 1974
S. 23	am. No. 38, 1989
S. 24	am. No. 47, 1974
S. 29	am. No. 41, 1974; No. 62, 1988
S. 44	am. No. 38, 1989
Ss. 46-54	am. No. 19, 1966
S. 55	am. No. 38, 1989
	rep. Act No. 23, 1990
S. 64	am. No. 4, 1988
S. 64A	ad. No. 42, 1983
S. 64B	ad. No. 42, 1983
	am. No. 38, 1989
S. 65	am. No. 19, 1966; No. 5, 1979; No. 38, 1989