

Authorised Version No. 071

Adoption Act 1984

No. 10150 of 1984

Authorised Version incorporating amendments as at
1 March 2019

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Adoption Act 1984

No. 10150 of 1984

Authorised Version incorporating amendments as at
1 March 2019

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

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

Part I—Preliminary

1 Short title

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

2 Commencement

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

3 Repeals, savings and transitional provisions

* * * * *

**S. 3(1)(2)
repealed by
No. 32/2000
s. 18.**

- (3) Except as in this Act expressly or by necessary implication provided—
- (a) all persons things and circumstances appointed or created by or under the **Adoption of Children Act 1964** or existing or continuing under that Act immediately before the commencement of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if that Act had not been repealed; and
 - (b) in particular and without affecting the generality of paragraph (a), such repeal shall not disturb the continuity of status, operation or effect of any rule, order, authority, application, decision, consent, bond, register, direction, liability or right made, affected, issued, granted, given, passed, accrued, incurred or acquired or existing or continuing by or under the **Adoption of Children Act 1964** before the commencement of this section.
- (4) Subject to this Act, sections 53 and 54 (other than subsection (4)) apply in relation to an adoption order made under, or continued in force by, any corresponding previous enactment as if this Act had been in force when the order was made and the order had been made under this Act.
- (5) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement of this section, an adoption order referred to in subsection (4) shall have the same effect as if this Act had not been passed.

S. 3(6)
repealed by
No. 32/2000
s. 18.

* * * * *

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

4 Definitions

No. 7147 s. 4.

- (1) In this Act, unless inconsistent with the context or subject-matter—

Aborigine means a person who—

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

accredited body means a body accredited under section 69O as an accredited body for the purposes of the Hague Convention;

S. 4(1) def. of *accredited body* inserted by No. 32/2000 s. 5(1).

adoption compliance certificate means a certificate issued in accordance with article 23 of the Hague Convention;

S. 4(1) def. of *adoption compliance certificate* inserted by No. 32/2000 s. 5(1).

S. 4(1) def. of
*approved
agency*
amended by
No. 46/1998
s. 7(Sch. 1).

adoption order means an order for the adoption of a child under this Act;

approved agency means a welfare organization approved by the Secretary under Division 2 of Part II;

approved counsellor means a person who is for the time being approved as a counsellor under section 5;

S. 4(1) def. of
*Central
Authority*
inserted by
No. 32/2000
s. 5(1).

Central Authority means a person or office designated for a Convention country under article 6 of the Hague Convention;

child means a person who has not attained the age of 18 years or a person who has attained that age in respect of whom an adoption order is sought or has been made;

S. 4(1) def. of
*Common-
wealth Central
Authority*
inserted by
No. 32/2000
s. 5(1).

Commonwealth Central Authority has the same meaning as in the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 of the Commonwealth¹;

S. 4(1) def. of
*contact
statement*
inserted by
No. 25/2013
s. 3,
repealed by
No. 32/2015
s. 4(1)(a).

* * * * *

S. 4(1) def. of
*Convention
country*
inserted by
No. 32/2000
s. 5(1),
amended by
No. 29/2011
s. 3(Sch. 1
item 3).

Convention country means, subject to article 45 of the Hague Convention—

- (a) a country specified in Schedule 2 to the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 of the Commonwealth²; and

-
- (b) any other country for which the Convention has entered into force³, other than—
- (i) Australia; and
 - (ii) a country against whose accession Australia has raised an objection under article 44 of the Convention;

*	*	*	*	*	S. 4(1) def. of <i>current contact statement</i> inserted by No. 25/2013 s. 3, repealed by No. 32/2015 s. 4(1)(b).
*	*	*	*	*	S. 4(1) def. of <i>de facto relationship</i> inserted by No. 72/1997 s. 3(1)(a), repealed by No. 68/2015 s. 4(2)(a).
*	*	*	*	*	S. 4(1) def. of <i>de facto spouse</i> inserted by No. 72/1997 s. 3(1)(a), repealed by No. 68/2015 s. 4(2)(b).

S. 4(1) def. of
*Director-
General*
amended by
Nos 16/1987
s. 12(Sch. 2
item 1(a)),
72/1997
s. 3(1)(b),
repealed by
No. 46/1998
s. 7(Sch. 1).

* * * *

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

S. 4(1) def. of
*domestic
partner*
inserted by
No. 68/2015
s. 4(1).

domestic partner of a person means—

- (a) a person who is in a registered domestic
relationship with the person; or
- (b) a person with whom the person is in a
domestic relationship;

S. 4(1) def. of
*domestic
relationship*
inserted by
No. 68/2015
s. 4(1).

domestic relationship means a relationship
between 2 persons who are living together
as a couple on a genuine domestic basis
(irrespective of sex or gender) and who are
neither married to each other nor in a
registered domestic relationship with each
other;

S. 4(1) def. of
*Government
Statist*
repealed by
No. 10244
s. 10.

* * * *

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

Hague Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 1;

S. 4(1) def. of *Hague Convention* inserted by No. 32/2000 s. 5(1).

interim order means an interim order under Division 4 of Part III;

legal practitioner means an Australian legal practitioner;

S. 4(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 3), amended by No. 17/2014 s. 160(Sch. 2 item 3).

non-citizen child has the same meaning as in the Immigration (Guardianship of Children) Act 1946 of the Commonwealth as amended and in force for the time being;

registered domestic relationship has the same meaning as in section 3 of the **Relationships Act 2008**;

S. 4(1) def. of *registered domestic relationship* inserted by No. 68/2015 s. 4(1).

Registrar means the Registrar of Births, Deaths and Marriages appointed under section 5 of the **Births, Deaths and Marriages Registration Act 1996**;

S. 4(1) def. of *Registrar* inserted by No. 10244 s. 10, amended by No. 43/1996 s. 65(Sch. item 1.1).

relative, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of the whole blood or half-blood or by affinity, and notwithstanding that the relationship depends upon the adoption of any person;

S. 4(1) def. of
Secretary
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 32/2015
s. 4(1)(c).

Secretary means the Secretary to the Department
of Health and Human Services;

S. 4(1) def. of
*State Central
Authority*
inserted by
No. 32/2000
s. 5(1).

State Central Authority has the meaning given in
section 69K;

Territory means Territory of the Commonwealth.

S. 4(1A)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 3).

- (1A) If under the **Public Administration Act 2004** the
name of the Department of Human Services is
changed, a reference in the definition of *Secretary*
in subsection (1) to that Department must, from
the date when the name is changed, be treated as a
reference to the Department by its new name.
- (2) For the purposes of this Act, where a period of
time is expressed to begin on, or to be reckoned
from, a particular day, that day shall not be
included in the period.
- (3) Where an office that is established by any Act is
referred to in this Act and the holder of that office
has power to assign or delegate to another person
all or any of his powers and functions under that
Act—
- (a) the powers and functions of the holder of
that office that may be so assigned or
delegated shall be deemed to include the
powers and functions of that office under this
Act, and any of those powers and functions
under this Act may be assigned or delegated
in the manner provided by that Act; and

- (b) in relation to a power or function so assigned or delegated a reference in this Act to the holder of that office shall be read as including a reference to the assignee or delegate, as the case may be.
- (4) In this Act, a reference to the principal officer of an approved agency includes a reference to the deputy principal officer (if any) or a person who is authorized in writing by the principal officer to exercise or perform the powers and functions of the principal officer under this Act.
- (5) If a person living in a domestic relationship is also in a registered domestic relationship, a reference in this Act (except in section 55) to a domestic partner of such a person does not include a reference to the person with whom the first-mentioned person is in the registered domestic relationship.
- (6) A reference in this Act to a spouse includes a reference to a person referred to in section 11(1)(a) or (b).
- (7) For the purposes of the definition of *domestic partner* in subsection (1), in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.
- (8) For the purposes of subsection (7), a person is not a domestic partner of another person only because they are co-tenants.
- S. 4(5)
inserted by
No. 72/1997
s. 3(2),
substituted by
No. 68/2015
s. 4(3).
- S. 4(6)
inserted by
No. 72/1997
s. 3(2),
amended by
No. 68/2015
s. 4(4).
- S. 4(7)
inserted by
No. 68/2015
s. 4(5).
- S. 4(8)
inserted by
No. 68/2015
s. 4(5).

5 Approved counsellors

S. 5(1)
amended by
No. 46/1998
s. 7(Sch. 1).

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

S. 5(2)
amended by
No. 46/1998
s. 7(Sch. 1).

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

S. 5(2)(a)
amended by
Nos 16/1987
s. 12(Sch. 2
item 1(b)),
46/1998
s. 7(Sch. 1),
32/2015
s. 4(2).

- (a) an officer or employee of the Department of Health and Human Services;

- (b) employed by an approved agency; or

S. 5(2)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

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

No. 7147 s. 5.

6 The Court

S. 6(1)
amended by
No. 3/1986
s. 4(a).

- (1) The Court having jurisdiction to make an adoption order or any other order under this Act shall be—

- (a) the Supreme Court; or

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

S. 6(1A)
inserted by
No. 3/1986
s. 4(b).

- (1A) If an application to make an adoption order or other order under this Act is made to the County Court and the County Court considers that, in all the circumstances of this case, the matter should be dealt with by the Supreme Court, the County Court may direct that the application be transferred to the Supreme Court.

- (2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the Court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect may in accordance with the provisions of sections 25 to 27 of the **Supreme Court Act 1958** be made by the Judges of the Supreme Court.

7 Jurisdiction

No. 7147 s. 6.

- (1) The Court shall not make an order for the adoption of a child unless—
- (a) at the time of the filing in the Court of the application for the order—
 - (i) the applicant or (in the case of joint applicants) each of the applicants, was resident or domiciled in Victoria; and
 - (ii) the child was present in Victoria; or
 - (b) the child was born in Victoria and at the time of the filing in the Court of the application for the order was under the guardianship of the Secretary or the principal officer of an approved agency.
- (2) For the purposes of subsection (1), where the Court is satisfied that an applicant was resident or domiciled in Victoria, that a child was present in Victoria or that a child was under the guardianship of the Secretary or a principal officer, on a date within 21 days before the date on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in Victoria, that the child was present in Victoria or that the child was under the guardianship of the Secretary or principal officer,

S. 7(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 7(2)
amended by
No. 46/1998
s. 7(Sch. 1).

as the case may be, at the time of the filing in the Court of the application.

S. 7(3)
inserted by
No. 32/2000
s. 5(2).

- (3) This section does not apply in respect of an order for the adoption of a child under Division 1 of Part IVA.

No. 7147 s. 7.

8 Rules of private international law not to apply

The jurisdiction of a Court to make an adoption order shall not be dependent on any fact or circumstances not expressly specified in this Act.

No. 7147 s. 8.

9 Welfare and interests of child to be paramount

In the administration of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Part II—Adoptions under this Act

Division 1—General

10 Who may be adopted

No. 7147 s. 9.

- (1) Subject to this Act, the Court may 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 either of the applicants, or by the applicant and a deceased spouse or domestic partner of the applicant, as the child of the applicant or of the applicant and deceased spouse or domestic partner as if the applicant were the parent of that child, or the applicant and deceased spouse or deceased domestic partner of the applicant were the parents of that child.
- (2) An order may be made under this Act for the adoption of a child notwithstanding that the child had, whether before or after the commencement of this Act, and whether in Victoria or elsewhere, previously been adopted.

S. 10(1)(b)
amended by
Nos 72/1997
s. 4(a)(b),
68/2015 s. 5.

10A Application for adoption order

S. 10A
inserted by
No. 72/1997
s. 5.

An application for an adoption order under sections 11 and 12 may be made—

- (a) in the case of 2 persons who are married or living in a relationship referred to in section 11(1), if the persons have been married to each other or living in that relationship with each other for not less than 2 years;

S. 10A(a)
amended by
No. 68/2015
s. 6(1).

S. 10A(b)
amended by
No. 68/2015
s. 6(2).

- (b) in the case of a person who is married or living in a relationship referred to in section 11(1) and who proposes adopting a child of the person's spouse or domestic partner, or a child who is related to the person's spouse or domestic partner, if that person and the person's spouse or domestic partner (as the case requires) have been married to each other or living in that relationship with each other for not less than 2 years.

Cf. No. 7147
s. 10.

11 Persons in whose favour adoption orders may be made

S. 11(1)
amended by
No. 68/2015
s. 7(1).

- (1) An adoption order may be made in favour of 2 persons—

S. 11(1)(b)
amended by
No. 72/1997
s. 6(1).

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

S. 11(1)(ba)
inserted by
No. 68/2015
s. 7(2).

- (ba) who are in a registered domestic relationship with each other and have been so for not less than 2 years; or

S. 11(1)(c)
inserted by
No. 72/1997
s. 6(1),
amended by
No. 68/2015
s. 7(3).

- (c) who are living in a domestic relationship and have been so living for not less than 2 years;
or

S. 11(1)(d)
inserted by
No. 72/1997
s. 6(1).

- (d) who have been living with each other in any combination of the relationships referred to in paragraphs (a) to (c) and have been so living for not less than 2 years—

before the date on which the order is made.

(1A) The Court must not make an adoption order under subsection (1) in relation to 2 persons in a domestic relationship unless the Court is satisfied that, at the time that the order is made, neither person—

S. 11(1A)
inserted by
No. 72/1997
s. 6(2),
substituted by
No. 68/2015
s. 7(4).

(a) is married to another person; or

(b) is in a registered domestic relationship with another person.

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

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

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

S. 11(4)
amended by
Nos 67/1987
s. 4(1)(a),
72/1997
s. 6(3)(a),
substituted by
No. 68/2015
s. 7(5).

(a) is married or is in a registered domestic relationship unless that person is living separately and apart from that person's spouse or domestic partner (as the case may be); or

(b) is married or is in a registered domestic relationship, and is living with that person's spouse or domestic partner (as the case may be), except with the consent of that person's spouse or domestic partner; or

(c) is living in a domestic relationship and has been so living for not less than 2 years, except with the consent of that person's domestic partner.

Adoption Act 1984
No. 10150 of 1984
Part II—Adoptions under this Act

S. 11(5)
amended by
Nos 72/1997
s. 6(3)(b)(i)(ii),
68/2015
s. 7(6).

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

S. 11(6)
substituted by
No. 67/1987
s. 4(1)(b),
amended by
Nos 72/1997
s. 6(3)(c)(i)(ii),
68/2015
s. 7(7).

- (6) Where an application is made under subsection (5) by the spouse or domestic partner of a parent or of an adoptive parent of a child, the Court must not make an order for the adoption of the child solely by that spouse or domestic partner unless it is satisfied that—

S. 11(6)(a)
amended by
No. 72/1997
s. 13(a).

- (a) the making of an order in relation to the guardianship or custody of the child under the Family Law Act 1975 of the Commonwealth as amended and in force for the time being in relation to the child would not make adequate provision for the welfare and interests of the child; and

- (b) exceptional circumstances exist which warrant the making of an adoption order; and

S. 11(6)(c)
amended by
No. 72/1997
s. 6(3)(d).

- (c) an order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a); and

S. 11(6)(d)
inserted by
No. 72/1997
s. 6(3)(d),
substituted by
No. 68/2015
s. 7(8).

- (d) in the case of an order in favour of the domestic partner of a parent or adoptive parent, at the time that the order is made the domestic partner is neither married to, nor in a registered domestic relationship with, a person who is not the parent or adoptive parent of the child.

(7) If an order for the adoption of a child is made under subsection (6), the spouse or domestic partner shall be deemed to be a parent of the child jointly with that parent or adoptive parent as if the spouse or domestic partner and that parent or adoptive parent had been married to each other at the time the child was born but notwithstanding anything in section 53—

S. 11(7)
inserted by
No. 67/1987
s. 4(1)(b),
amended by
Nos 72/1997
s. 6(3)(e),
68/2015
s. 7(9).

- (a) the child is not to be treated in law as if the child were not the child of that parent or adoptive parent; and
- (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; and
- (c) the relationship between the child and that parent or adoptive parent is not terminated; and
- (d) if that parent or adoptive parent had been the guardian of the child, the order does not terminate the guardianship; and
- (e) if the child were the adopted child of that adoptive parent, the order does not terminate that adoption.

12 Orders in favour of relatives

The Court shall not make an order for the adoption of a child in favour of a person who, or whose spouse or domestic partner, is a relative of the child or in favour of two persons who are, or one of whom is, a relative of the child unless the Court is satisfied that—

S. 12
amended by
Nos 67/1987
s. 4(2),
72/1997
s. 7(1),
68/2015
s. 8(1).

- (a) the making of an order in relation to the guardianship or custody of the child under the Family Law Act 1975 of the Commonwealth as amended and in force for the time being in relation to the child would

S. 12(a)
inserted by
No. 67/1987
s. 4(2),
amended by
No. 72/1997
s. 13(b).

not make adequate provision for the welfare and interests of the child; and

S. 12(b)
inserted by
No. 67/1987
s. 4(2).

- (b) exceptional circumstances exist which warrant the making of an adoption order; and

S. 12(c)
inserted by
No. 67/1987
s. 4(2),
amended by
No. 72/1997
s. 7(2).

- (c) the order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a); and

S. 12(d)
inserted by
No. 72/1997
s. 7(2),
substituted by
No. 68/2015
s. 8(2).

- (d) in the case of an order in favour of 2 persons who are in a domestic relationship with each other, neither of those persons, at the time that the order is made—

- (i) is married to another person; or
- (ii) is in a registered domestic relationship with another person; and

S. 12(e)
inserted by
No. 72/1997
s. 7(2),
substituted by
No. 68/2015
s. 8(2).

- (e) in the case of an order in favour of a person who is in a domestic relationship and whose domestic partner is a relative of the child, neither that person nor that person's domestic partner, at the time that the order is made—

- (i) is married to another person; or
- (ii) is in a registered domestic relationship with another person.

S. 13
substituted by
No. 67/1987
s. 5,
repealed by
No. 72/1997
s. 8, new s. 13
inserted by
No. 32/2000
s. 11.

13 Approval of persons to adopt children

- (1) Persons capable of making an application under section 10A(a) for an adoption order under section 11 may apply to the Secretary or the principal officer of an approved agency for approval as fit and proper persons to adopt a child.
- (2) An application is to be made in accordance with the regulations.

- (3) The Secretary or the principal officer of an approved agency may approve applicants under subsection (1) as fit and proper persons to adopt a child if the applicants satisfy the prescribed requirements relating to approval of applicants.
- (4) Subject to subsection (5), the Secretary or the principal officer of an approved agency may revoke an approval given by the Secretary or principal officer (as the case requires) under subsection (3).
- (5) The Secretary or the principal officer of an approved agency must not refuse, or defer the making of a decision on, an application for approval or revoke an approval, unless the Secretary or principal officer has—
 - (a) notified the applicant or approved person (as the case requires) in writing of the reasons for the refusal, deferment or revocation; and
 - (b) given the applicant or approved person a reasonable opportunity to make a written or oral submission to the Secretary or principal officer.

13A Register of approved persons

- (1) The Secretary must—
 - (a) keep a register of persons who have been approved by the Secretary under section 13 as fit and proper persons to adopt a child; and
 - (b) keep a record of persons—
 - (i) whose application for approval has been refused by the Secretary; or
 - (ii) whose application for approval has been deferred by the Secretary; or

S. 13A
inserted by
No. 32/2000
s. 11.

- (iii) whose approval has been revoked by the Secretary.
- (2) The principal officer of an approved agency must—
 - (a) keep a register of persons who have been approved by the principal officer under section 13 as fit and proper persons to adopt a child; and
 - (b) keep a record of persons—
 - (i) whose application for approval has been refused by the principal officer; or
 - (ii) whose application for approval has been deferred by the principal officer; or
 - (iii) whose approval has been revoked by the principal officer.

Penalty: 5 penalty units.

S. 14
substituted by
No. 32/2000
s. 12.

14 Wishes of child

- (1) Subject to this Division, an order for the adoption of a child shall not be made unless the Court is satisfied that—
 - (a) at least 28 days before the day on which the adoption order is to be made the child received counselling from an approved counsellor as to the effects of the adoption; and
 - (b) as far as practicable, the wishes of the child have been ascertained and due consideration is given to them, having regard to the age and understanding of the child.
- (2) Subsection (1)(a) does not apply if the Court is satisfied that counselling is inappropriate having regard to the age and understanding of the child.

- (3) A person who has given counselling to a child under subsection (1)(a) must provide a written report to the Court.

15 Court to be satisfied as to certain matters

No. 7147 s. 12.

- (1) The Court shall not make an order for the adoption of a child unless the Court has received a report in writing on behalf of the Secretary or the principal officer of an approved agency concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

S. 15(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) the applicants satisfy the prescribed requirements relating to approval of applicants and, except in the case of an order referred to in section 12, the applicants have been approved under section 13;

S. 15(1)(a)
amended by
No. 32/2000
s. 13.

- (b) the Secretary or principal officer has given consideration to any wishes expressed by a parent of the child in relation to the religion, race or ethnic background of the proposed adoptive parent or adoptive parents of the child;

S. 15(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

- (c) the Secretary or principal officer has given consideration to any wishes expressed by a parent of the child after consent was given or dispensed with about access to or information about the child and any arrangements agreed between the parent and the proposed adoptive parents of the child for access to the child or for the giving of information about the child; and

S. 15(1)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

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

S. 15(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Subsection (1) does not apply in relation to an order under section 10 for the adoption of a child who has attained the age of eighteen years before the making of the order but the Court shall not make an adoption order in such a case unless it is satisfied that special circumstances make it desirable that the child should be adopted.
- (3) A report on behalf of the Secretary or the principal officer of an approved agency may be made by the Secretary or principal officer or by a person authorized by the Secretary or principal officer in writing either generally or in any particular case.

No. 7147 s. 13.

16 Notice of application for adoption orders

- (1) The Court shall not make an order for the adoption of a child unless the applicant or applicants for the adoption order has or have given notice of the application in accordance with the rules of the Court—
 - (a) to any person whose consent to the adoption of the child is required under section 33 but whose consent has not been given and has not been dispensed with under section 43;
 - (b) to any person who is not a parent of the child but is a guardian of the child; and
 - (c) 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 subsection (1).
- (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.

17 Parties

No. 7147 s. 14.

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.

18 Custody etc. after refusal of an application for an adoption order

S. 18
amended by
No. 59/1997
s. 6.

If 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 or for the making of any further application under this Act as it thinks fit.

19 Discharge of adoption orders

No. 7147 s. 16.

- (1) An eligible person may apply to the Court for an order discharging an order for the adoption of a child made under this Act or any corresponding previous enactment on the grounds—
 - (a) that the adoption order or a consent for the purposes of the adoption order was obtained by fraud, duress or other improper means; or
 - (b) that special circumstances exist why the adoption order should be discharged.
- (2) In subsection (1)—
 - (a) *eligible person* means the adopted child to whom the adoption order relates, a natural parent of the adopted child, an adoptive parent of the adopted child, the Secretary or the principal officer of the approved agency by which the adoption was arranged; and

S. 19(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) a reference to special circumstances includes a reference to an irretrievable breakdown of the relationship between the adoptive parents and the adopted person.

(3) Where an application is made under subsection (1), the Court shall, if satisfied that there may be grounds on which an order may be made, direct that an investigation be made into the circumstances under which the application is made.

S. 19(4)
amended by
Nos 69/1989
s. 11(1)(a),
46/1998
s. 7(Sch. 1),
32/2015 s. 5.

(4) An investigation under subsection (3) shall be made by the Secretary and, where the Court so directs, by a person nominated by the Secretary to the Department of Justice and Regulation.

S. 19(5)
amended by
No. 32/2000
s. 14(1).

(5) The Court shall, after consideration of a report of an investigation carried out under subsection (3), if it is satisfied that the adoption order should be discharged, make an order for the discharge of the adoption order.

S. 19(5A)
inserted by
No. 32/2000
s. 14(2).

(5A) The Court shall not make an order for the discharge of an adoption order unless the Court is satisfied that the welfare and interests of the child would be promoted by the discharge of the adoption order.

(6) Where the Court makes an order discharging an adoption order, then, unless the Court otherwise orders, any consent given under this Act for the purposes of the adoption of the child ceases to have effect.

(7) 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 of the child.
- (8) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under subsection (7) and to section 53(2), the rights, privileges, duties, liabilities and relationships 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.
- (9) The Court may allow any of the following persons to appear and to address the Court (either personally or by a legal practitioner) at the hearing of an application for the discharge of an order for the adoption of a child—
- (a) the child;
 - (b) a natural parent of the child;
 - (c) an adoptive parent of the child;
 - (d) the Secretary;
 - (e) if the adoption was arranged by an adoption agency, the principal officer of that agency;
 - (f) any other person whom the Court determines has a sufficient interest in the matter.

S. 19(9)
inserted by
No. 32/2000
s. 14(3).

Division 2—Arrangement of adoptions

No. 7147 s. 17.

20 Adoptions may be arranged by Secretary or by approved agency

S. 20(1)
amended by
No. 46/1998
s. 7(Sch. 1).

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

S. 20(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Arrangements or negotiations referred to in subsection (1) may be made by any person authorized in writing for any specified purpose or purposes, either generally or in any particular case, by the Secretary or the principal officer of the approved agency.

S. 20(3)
amended by
No. 46/1998
s. 7(Sch. 1).

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

S. 20(4)
inserted by
No. 32/2000
s. 5(3).

- (4) Nothing in subsection (3) prevents the doing of anything required or authorised to be done by the Hague Convention.

S. 20A
inserted by
No. 72/1997
s. 9.

20A Determinations by Secretary or approved agency

A person who may make arrangements or enter into negotiations under section 20 for or towards or with a view to making an adoption must not make an assessment of the suitability of a person to adopt a child—

S. 20A(a)
amended by
No. 68/2015
s. 9(1).

- (a) in the case of 2 persons who are married or living in a relationship referred to in section 11(1), unless the person who may make those arrangements or enter into those negotiations is satisfied that the persons

have been married to each other or living in that relationship with each other for not less than 2 years;

- (b) in the case of one person, if that person is married or living in a relationship referred to in section 11(1) and proposes adopting a child of that person's spouse or domestic partner, or a child who is related to that person's spouse or domestic partner, unless the person who may make those arrangements or enter into those negotiations is satisfied that the person seeking to adopt a child and the person's spouse or domestic partner (as the case requires) have been married to each other or living in that relationship with each other for not less than 2 years.

S. 20A(b)
amended by
No. 68/2015
s. 9(2).

21 Application for approval of adoption agency

No. 7147 s. 18.

- (1) Any welfare organization carrying on, or 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 Secretary for approval as an approved agency.
- (2) An application under this section shall contain such information relating to the organization as is prescribed and shall nominate a person to be the principal officer and may nominate a person to be the deputy principal officer of the organization for the purposes of this Act.
- (3) Where the Secretary receives an application under this section, the Secretary shall publish notice of the application in the Government Gazette.

S. 21(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 21(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) For the purposes of this section *welfare organization* means an organization, 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.

No. 7147 s. 19.
S. 22
amended by
No. 46/1998
s. 7(Sch. 1).

22 Secretary may grant or refuse application

The Secretary may, as the Secretary thinks fit, grant or refuse an application under section 21 and in particular, without in any way limiting the generality of the foregoing, may refuse any application if it appears to the Secretary that the applicant is not a welfare organization within the meaning of section 21 or is not suited to carrying on the activity of 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.

S. 23
amended by
Nos 3/1986
s. 4(c),
46/1998
s. 7(Sch. 1).

23 Authorized agencies—non-citizen children

The Secretary may authorize an approved agency, whether at the time the Secretary grants or renews the application for approval under section 21 or 26 or at any other time, to make arrangements with a prescribed person or prescribed organization or a person or organization included in a prescribed class of persons or organizations in places outside Australia for the adoption in Victoria of non-citizen children.

24 Revocation or suspension of approval

No. 7147 s. 20.

S. 24(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary 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 or the authority of the agency under section 23—
 - (a) at the request of the approved agency concerned;
 - (b) in the case of a revocation or suspension of approval under section 22, on the ground that the approved agency is no longer a suitable organization to carry on the activity of conducting negotiations or making arrangements with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in section 22;
 - (c) in the case of revocation or suspension of authority under section 23, on the ground that the approved agency is no longer a suitable organization to make arrangements with prescribed persons or prescribed organizations in places outside Australia for the adoption in Victoria of non-citizen children; or
 - (d) on the ground that the approved agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it.
- (2) Where the approval of a welfare organization as an approved agency is suspended, the organization shall not commence or continue arrangements or negotiations for an adoption under this Act.

S. 25
amended by
No. 32/2000
s. 15.

25 Period of approval of agency

The approval of a welfare organization as an approved agency under section 22 or renewal of such an approval under section 26 has effect for the period, not exceeding 3 years, determined by the Secretary, unless sooner revoked under this Part.

26 Renewal of approval

S. 26(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) An approved agency may apply in writing to the Secretary for renewal of approval as an adoption agency.

S. 26(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) Where the Secretary receives an application under subsection (1), the Secretary shall publish notice of the application in the Government Gazette.

S. 26(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) The Secretary may, as the Secretary thinks fit, grant or refuse an application under subsection (1) as if it were an application under section 21.

27 Effect of cessation or suspension of approved agency

Where a welfare organization ceases to be an approved agency or the approval of a welfare organization as an approved agency is suspended—

S. 27(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(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 Secretary or, with the approval of the Secretary where the welfare organization has entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, of that approved agency;

S. 27(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) where the principal officer of the first-mentioned approved agency was, immediately before the cessation or

suspension, the guardian of a child under this Act, the Secretary or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be, becomes the guardian of that child upon the cessation or suspension; and

- (c) the arrangements or negotiations being undertaken by the first-mentioned approved agency immediately before the cessation or suspension shall be continued by the Secretary or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be.

S. 27(c)
amended by
No. 46/1998
s. 7(Sch. 1).

28 Effect of revocation or suspension of authority under section 23

Where the authority of an approved agency under section 23 is revoked or suspended—

- (a) all records and other documents held by it or under its control relating to arrangements for the adoption of non-citizen children shall become the property of the Secretary or, with the approval of the Secretary where the welfare organization has entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, of that approved agency; and
- (b) any such arrangements being undertaken by the first-mentioned approved agency immediately before the revocation or suspension shall be continued by the Secretary or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be.

S. 28(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 28(b)
amended by
No. 46/1998
s. 7(Sch. 1).

29 Ending of suspension of approval or authority

Upon the expiration of the period of suspension of the approval of a welfare organization as an approved agency or of the authority under section 23 of an approved agency—

S. 29(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) the Secretary may, return to the approved agency such documents and records as, by reason of section 27(a), became the property of the Secretary upon the suspension; and

S. 29(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) the Secretary may, authorize the approved agency to continue such arrangements and negotiations being undertaken by the Secretary as the Secretary thinks fit, being arrangements or negotiations that, but for the suspension, would have been carried on by the approved agency.

No. 7147 s. 21.

30 Notice of approval to be published in Government Gazette

- (1) Notice of the approval or renewal of the approval of any welfare organization as an approved agency under this Division and of the revocation or suspension of any such approval shall be published in the Government Gazette.
- (2) Each such notice shall specify the address of the principal officer of the welfare organization concerned and the full name of the principal officer and deputy principal officer (if any) of the organization.

No. 7147 s. 22.

31 Acts of principal officer deemed acts of approved agency

Anything done by the principal officer or deputy principal officer of an approved agency or with his approval shall be deemed to be done by the approved agency.

32 Duties of Secretary and approved agencies

S. 32
amended by
No. 46/1998
s. 7(Sch. 1).

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

Division 3—Consents to adoptions

33 Consents required to adoptions

No. 7147 s. 23.

- (1) Subject to this Division, the Court shall not make an order for the adoption of a child unless the Court is satisfied—
 - (a) that—
 - (i) consent (not being a consent that has been revoked) to the adoption has been given in accordance with this Division by the appropriate person or persons ascertained in accordance with this section; and
 - (ii) the requirements of section 35 were complied with; or
 - (b) that there is not an appropriate person within the meaning of this section to give consent to the adoption.
- (2) In the case of a child whose parents were married to each other at the time of its birth or at or after the time of its conception but before its birth and who has not previously been adopted, the appropriate persons are every person who is the mother or the father of the child.
- (3) In the case of a child whose parents were not so married to each other and who has not previously been adopted, the appropriate persons are every person who is the mother of the child or a man—

S. 33(3)(b)
amended by
No. 10244
s. 10.

(a) whose name is entered in the entry relating to the child in a register of births (whether in Victoria or in a place outside Victoria) as the father of the child;

S. 33(3)(c)
amended by
No. 10244
s. 10.

(b) who is declared to be the father of the child under a declaration of paternity in force under section 10 of the **Status of Children Act 1974**, being a declaration a copy of which is filed under section 9(3) of that Act in the office of the Registrar;

S. 33(3)(d)
amended by
No. 10244
s. 10.

(c) against whom an order has been made under section 10 or 12 of the **Maintenance Act 1965** in respect of the child, being an order a copy of which is filed in the office of the Registrar under section 9(3) of the **Status of Children Act 1974**;

S. 33(3)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

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

(e) who has lodged with the Secretary or with the approved agency by which the arrangements for the adoption are being made evidence that—

(i) an order has been made outside Victoria that, under section 8(5) of the **Status of Children Act 1974** is prima facie evidence that he is the father of the child;

(ii) he is, or has at any time, been liable, under an order of the Family Court of Australia for the maintenance of the child; or

- (iii) he has at any time, under an order of the Family Court of Australia, been granted access to or custody or guardianship of the child.
- (4) Where there is evidence that a man is not the father of a child, that man is not, by reason only of paragraph (e) of subsection (3), an appropriate person for the purposes of that subsection in the case of that child.
- (5) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent of the child.
- (6) In the case of a child who is a non-citizen child, the appropriate person is the person who, under the Immigration (Guardianship of Children) Act 1946 of the Commonwealth as amended and in force for the time being, is the guardian of the child or, where that guardian has under that Act, delegated his powers and functions as guardian to another person, that other person.
- (7) 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.

34 Manner of giving consent

- (1) Subject to this Division, a consent by a person (other than a person to whom section 33(6) applies) is given in accordance with this Division where—
 - (a) the person has signed the prescribed form of consent in the presence of—
 - (i) a person referred to in subsection (2); and
 - (ii) a person approved for the purpose by the Secretary or the principal officer of an approved agency; and

**S. 34(1)(a)(ii)
amended by
No. 46/1998
s. 7(Sch. 1).**

- (b) the persons in whose presence the form of consent was signed have signed the prescribed statements.
- (2) For the purposes of paragraph (a) of subsection (1) and of section 35(2), each of the following is a person referred to in this subsection—
 - (a) a person who is a prescribed official of a court;
 - (b) a person declared by Order of the Governor in Council published in the Government Gazette to be an authorized person for the purposes of this section;
 - (c) in relation to a consent signed in another State or in a Territory—a person who is the principal administrative officer of a court in that State or Territory or a deputy of such an officer.
- (3) Where a consent by a person is given in a country outside Australia, the consent is given in accordance with this Division where—
 - (a) the person has signed the prescribed form of consent in the presence of two persons each of whom is—
 - (i) an Australian diplomatic officer within the meaning of the Consular Fees Act 1955 of the Commonwealth as amended and in force at the time being;
 - (ia) an employee of the Commonwealth referred to in section 3(c) of the Consular Fees Act 1955 of the Commonwealth;
 - (ib) an employee of the Australian Trade and Investment Commission referred to in section 3(d) of the Consular Fees Act 1955 of the Commonwealth;

S. 34(3)(a)(ia)
inserted by
No. 6/2018
s. 68(Sch. 2
item 2).

S. 34(3)(a)(ib)
inserted by
No. 6/2018
s. 68(Sch. 2
item 2).

- (ii) a judge of a court in that country; or
- (iii) a magistrate in that country;
- (b) not less than seven days or, where a shorter period is approved under subsection (4), before the commencement of that shorter period, before the consent is given, one of those persons gave the first-mentioned person information about the effect of an adoption order under this Act and about the alternatives to adoption available in Victoria; and
- (c) the two persons in whose presence the form of consent was signed have signed the prescribed statements.
- (4) Where a person referred to in paragraph (a) of subsection (3) is satisfied that there are special circumstances why less than seven days notice should be given under paragraph (b) of that subsection, that person shall approve a time less than seven days but not less than 24 hours as the period for the purposes of that paragraph.
- (5) The Governor in Council may, by Order published in the Government Gazette, revoke or vary an Order made under subsection (2).

35 Requirements to be complied with

- (1) The following requirements shall be complied with before a consent is given by a person (other than a person to whom section 33(6) applies) for the purposes of this Division—
 - (a) the person shall receive counselling from a person approved for the purpose by the Secretary or by the principal officer of an approved agency;

**S. 35(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).**

S. 35(1)(c)
amended by
Nos 67/1987
s. 7(1),
43/1996
s. 65(Sch.
item 1.2).

(b) not less than seven days or, where a shorter period is approved under subsection (2), before the commencement of that shorter period, before the consent is given, the person by whom that counselling was given shall give the person information in writing in the prescribed form about the effect of an adoption order, the alternatives to adoption and the names and addresses of organizations that provide family support services;

(c) notice in writing shall be given to the person that the person may, at any time make application subject to and in accordance with the **Births, Deaths and Marriages Registration Act 1996** for a certified copy of, or extract from, the entry in the Register of Births relating to the child.

(2) Where a person referred to in section 34(2) is satisfied that there are special circumstances why less than seven days notice should be given under paragraph (b) of subsection (1), that person shall approve a time less than seven days but not less than 24 hours as the period for the purposes of that paragraph.

S. 35(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) A certificate signed by the Secretary or the principal officer of an approved agency shall be proof in the absence of evidence to the contrary that the requirements referred to in subsection (1) have been complied with.

(4) Where a consent is given in a place outside Victoria, the requirements referred to in subsection (1) do not apply.

36 Consent by guardian under section 33(6)

A consent by a person who is a guardian, or the delegate of a guardian, of a non-citizen child to whom section 33(6) applies is given in accordance with this Division where the person has signed the prescribed form of consent and a declaration that the person believes on reasonable grounds that—

- (a) each of the parents of the non-citizen child—
 - (i) has given consent, in accordance with the law of the place of residence of that parent or of the non-citizen child immediately before the non-citizen child began the journey to Australia, to the adoption of the non-citizen child and has not revoked that consent; or
 - (ii) is dead or cannot after reasonable inquiry be found; or
- (b) circumstances exist by reason of which the consent of a parent could be dispensed with if the consent of the parent were required under this Act.

37 Consent subject to conditions

- (1) A consent by a parent to the adoption of a child in which the wish is expressed under section 50 that the child be adopted within the Aboriginal community may be made subject to a condition that that parent, and such relatives of the child as are specified in the consent and members of the Aboriginal community to which the child belongs have a right of access in accordance with the prescribed terms to the child.
- (2) Where the Secretary or the principal officer of an approved agency, as the case may be, is unable to find a person or persons suitable to adopt a child to whom a consent given subject to a condition under this section applies, the Secretary or

S. 37(2)
amended by
No. 46/1998
s. 7(Sch. 1).

principal officer shall, by notice in writing in the prescribed form, inform the parent by whom the consent was given of the inability and that the parent may, within 28 days after the notice is given, by notice in writing served on the Registrar of the County Court, vary the conditions or may revoke the consent.

S. 37(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) After the expiration of the period of 28 days after a notice is given under subsection (2), the Secretary or the principal officer may, unless the condition has been varied or any consent given to the adoption of the child has been revoked, make application to the Court for the revocation or alteration of the conditions to which a consent is subject under this section.

S. 37(4)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) The Court may make such order as it thinks fit on an application under subsection (3) where it is satisfied that the Secretary or the principal officer has taken such steps as are reasonable in the circumstances to satisfy the conditions to which the consent was subject and has received and considered a report from an Aboriginal agency within the meaning of section 50.

38 Revocation of consent on notice of inability to place child

S. 38(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) Where a person has given consent for the purposes of this Division and the Secretary or principal officer is of the opinion that it is no longer possible to place the child with a proposed adoptive parent or proposed adoptive parents, the Secretary or principal officer shall give notice in writing to that effect to each person who has given such consent and shall, in the notice, inform the person of the right to revoke the consent within the period of 56 days after the giving of the notice.

- (2) Where a person to whom a notice relating to a child is given under subsection (1) does not revoke the consent within the period referred to in that subsection, the consent is revoked upon the Secretary or principal officer ceasing to be the guardian of the child by reason of the operation of section 46(1)(e).

S. 38(2)
amended by
No. 46/1998
s. 7(Sch. 1).

39 Consents to be construed as general consents

No. 7147 s. 24.

- (1) Subject to subsection (2) and except as provided in section 37, a consent to the adoption of a child shall, for the purposes of this Act, be construed as a consent to the adoption of the child by any person or persons on whose application an adoption order may be made under this Act in respect of the child and shall be a valid consent notwithstanding that an application in respect of the child has not been made or contemplated or, if application has been so made, that the person giving the consent does not know the identity of the applicant or applicants.
- (2) A consent to the adoption of a child by a relative of the child, or by a spouse or domestic partner of a parent of the child, shall be construed as a consent to the adoption of the child by that relative or spouse or domestic partner only.

S. 39(2)
amended by
Nos 72/1997
s. 12(a),
68/2015 s. 10.

40 Consents given under law of another State or a Territory

No. 7147 s. 25.

Where—

- (a) a person whose consent to the adoption of a child is required by section 33 has, in accordance with the law of another State or of a Territory, duly signed an instrument of consent to the adoption of the child; and

- (b) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that other State or Territory—

that instrument of consent shall, for the purposes of this Act, be deemed to be an instrument executed in accordance with this Division evidencing a consent, in accordance with section 33(1), to the adoption of the child.

No. 7147 s. 26.

41 Revocation of consents

- (1) A consent to the adoption of a child given for the purposes of this Act by a person may be revoked by notice in writing served on the Registrar of the County Court before—
 - (a) the expiration of 28 days after the date on which the instrument of consent was signed or, where before the expiration of that period, the person has, by instrument in writing in the prescribed form and attested as prescribed, declared that the period be extended by not more than fourteen days, before the expiration of that extended period;
 - (b) where a notice has been given to that person under section 37(2), the expiration of 28 days after the giving of that notice; or
 - (c) where a notice has been given to that person under section 38, the expiration of 56 days after the giving of that notice—and not otherwise.
- (2) Service of a notice on the Registrar of the County Court under subsection (1) shall be effected by delivering it personally or by sending it to the Registrar by certified mail at such address as is prescribed.

- (3) Upon receiving notice in writing of the revocation of a consent to the adoption of a child, the Registrar of the County Court shall forthwith notify the Secretary or, where the principal officer of an approved agency is the guardian of the child under this Act, that principal officer of the receipt of the notice.

S. 41(3)
amended by
No. 46/1998
s. 7(Sch. 1).

42 Defective consents

No. 7147 s. 28.

- (1) The Court shall not make an adoption order in reliance on a consent given or purporting to have been given by a person 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 or duress;
 - (c) the consent was revoked at a time when it had not become irrevocable;
 - (d) the instrument of consent has been altered in a material particular without authority;
 - (e) the person giving or purporting to give the consent was not, when the instrument of consent was signed, in a fit condition to give the consent or did not understand the nature of the consent; or
 - (f) the instrument of consent was signed before the birth of the child.
- (2) The Court shall not make an adoption order in reliance on an instrument of consent signed by a parent of the child within the prescribed period after the birth of the child.
- (3) In subsection (2), *prescribed period* means fourteen days or, where the Court has ordered that it is in the best interests of the child that a shorter period be applied, that shorter period.

- (4) Notwithstanding subsections (1) and (2), any consent to the adoption of the child validly given before the commencement of this section pursuant to the **Adoption of Children Act 1964** shall be valid and effectual for the purposes of this Act.

No. 7147 s. 29.

43 Court may dispense with consents

- (1) The Court may dispense with the consent of a person (other than a guardian under section 33(6)) to the adoption of a child where the Court is satisfied—
- (a) that the person cannot, after reasonable inquiry, be found;
 - (b) on evidence given in accordance with subsection (3) that the person is, and is unlikely to cease to be, in such a physical or mental condition as not to be capable of properly considering the question whether the person should give consent;
 - (c) that the person has abandoned, deserted, persistently neglected or ill-treated the child;
 - (d) that the person has seriously ill-treated the child to the extent that it is unlikely that the child would accept, or be accepted by the person within, the family of that person;
 - (e) that the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent of the child;
 - (f) that the person has such a physical or mental disability or is otherwise so impaired that the person would be unable to meet the needs of the child;
 - (g) that for any reason the child is unlikely to be accepted into, or to accept, a family relationship with the person; or

S. 43(1)(e)
amended by
No. 72/1997
s. 13(c).

- (h) that there are any other special circumstances by reason of which, in the interests of the welfare of the child, the consent may properly be dispensed with.
- (2) For the purposes of paragraph (a) of subsection (1), where, for the purposes of obtaining the consent of a person to the adoption of a child, the Court is satisfied that—
- (a) a letter seeking that consent has been sent by certified mail addressed to that person;
- (b) a letter seeking that consent has been sent by certified mail addressed to that person at the address of such other person (if any) as the Secretary or principal officer of an approved agency believes may know where the first-mentioned person may be found;
- (c) the Secretary or principal officer of an approved agency is satisfied that the address of that person cannot be found on a roll of electors under the Commonwealth Electoral Act 1918 of the Commonwealth as amended and in force for the time being;
- (d) notice to the person that consent of the person is sought has been published in a newspaper circulating generally in the area where the last known place of residence of the person is situated; and
- (e) enquiries have been made of such persons, bodies, agencies and government departments as might reasonably be expected to have known where that person may be found—
- S. 43(2) amended by No. 46/1998 s. 7(Sch. 1).
- S. 43(2)(b) amended by No. 46/1998 s. 7(Sch. 1).
- S. 43(2)(c) amended by No. 46/1998 s. 7(Sch. 1).

and the Court is satisfied that the Secretary or principal officer has been unable to find that person and that such other enquiries as the Court may determine have been made, the Court shall

determine that reasonable inquiry has been made for that person and that the person cannot be found.

S. 43(3)
amended by
Nos 69/1989
s. 11(1)(b),
23/1994
s. 118(Sch. 1
item 2.1),
97/2005
s. 182(Sch. 4
item 2.1),
13/2010
s. 51(Sch.
item 3.1).

- (3) For the purposes of paragraph (b) of subsection (1), the evidence required is a certificate signed by not less than two medical practitioners registered under the Health Practitioner Regulation National Law certifying as to the matters referred to in that paragraph.

S. 43(4)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) In order to facilitate the making of arrangements with a view to the adoption of a child, the Court may, on application by or on behalf of the Secretary or the principal officer of an approved agency, make an order under this section dispensing with the consent of a person whose consent is required to the adoption of the child before an application for an adoption order has been made in respect of the child or before proposed adoptive parents have been selected for the child, and any order under this section may have effect for the purposes of any application for an adoption order that may subsequently be made by any person under this Act.

S. 43(5)
amended by
No. 46/1998
s. 7(Sch. 1).

- (5) An order under subsection (4) may, on application by or on behalf of the Secretary, the principal officer of an approved agency or 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.

44 Person who gives consent to be given notice of certain events

S. 44(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) Where a person (other than a person to whom section 33(6) applies) has given consent for the purposes of this Division, the Secretary or

principal officer shall within seven days after the occurrence of each of the following events, give notice in writing to the person of that event—

- (a) the expiration of the period under section 41(1)(a) during which consent may be revoked;
 - (b) the placement of the child to whom the consent relates with a proposed adoptive parent or adoptive parents;
 - (c) the termination of such a placement;
 - (d) the renunciation by the Secretary or principal officer of guardianship of the child; S. 44(1)(d)
amended by
No. 46/1998
s. 7(Sch. 1).
 - (e) where the child to whom the consent relates dies before an adoption order is made, the death of the child;
 - (f) the making of an order for the adoption of the child.
- (2) The Secretary or principal officer is not required to give notice under subsection (1) of an event (other than renunciation of guardianship) of which the person has, in writing, whether in the instrument of consent or otherwise, expressed the wish not to be given notice. S. 44(2)
amended by
No. 46/1998
s. 7(Sch. 1).

Division 4—Care of child

45 Care of child awaiting adoption

- (1) Where— S. 45(1)
amended by
No. 46/1998
s. 7(Sch. 1).
- (a) a person whose consent to the adoption of a child is required under this Act proposes to give that consent; or

- (b) a person has given consent to the adoption of a child but the consent of another person is required, or has to be dispensed with, before an adoption order can be made—

and a person having the custody or guardianship of the child has authorized the Secretary or the principal officer to exercise any rights of custody in respect of the child, that authority ceases—

- (c) subject to subsection (2), on the expiration of six months after the authority is given;
- (d) if the person withdraws consent to the adoption;
- (e) when all consents required for the adoption have been given or been dispensed with;
- (f) upon revocation of the authority by the person who gave it; or
- (g) upon the person who gave the authority ceasing to be entitled to custody or guardianship of the child—

whichever first occurs.

S. 45(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) The period of six months may from time to time be extended, by the agreement of the person who gave the authority and the Secretary or principal officer for further periods, not exceeding six months, but the total of the periods for which the authority is given or renewed shall not exceed eighteen months from the time when the first authority was given.

S. 45(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) Where an authority given under subsection (1) ceases, the Secretary or the principal officer shall—
 - (a) deliver the child to a person who at that time is entitled to the custody or guardianship of the child; or

- (b) where such a person cannot after reasonable enquiry be found, take such steps as are necessary to make a protection application in respect of the child under the **Children, Youth and Families Act 2005**.

S. 45(3)(b)
amended by
Nos 16/1987
ss 4(3)(Sch. 1
item 1(a)),
12(Sch. 2
item 1(c)),
69/1992 s. 34,
48/2006
s. 42(Sch.
item 1.1).

46 Guardianship of child awaiting adoption

No. 7147 s. 31.

- (1) Where each person whose consent to the adoption of a child is required under section 33 has consented to the adoption of the child or the consent has been dispensed with under this Act, the Secretary or, where an approved agency is authorized to make arrangements with a view to the adoption of the child, the principal officer of that agency, shall be the guardian of the child for all purposes (other than the purposes of section 33) to the exclusion of all other persons until—

S. 46(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) an adoption order is made in respect of the child;
- (b) the Secretary or principal officer renounces guardianship of the child under subsection (4);
- (c) the Secretary or principal officer by writing under the hand of the Secretary or principal officer releases the child to the parents or to one of the parents of the child;
- (d) in the case of any consent so given, the instrument of consent is lawfully revoked;
- (e) where the Secretary or principal officer has given notice under section 38 to each person who has given consent, at the expiration of 140 days after the Secretary or principal officer gave the notice or notices; or

S. 46(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 46(1)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 46(1)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

- (f) the Court, by order, makes other provision for the guardianship of the child.
- (2) Except where a child is on placement with a view to adoption, a release in writing of a child under subsection (1) to the parents or to one of the parents of the child revokes any consent given by the parents or either of them to the adoption of the child.
- (3) Subsection (1) does not apply to or in relation to—
- (a) a child the adoption of whom by a spouse or domestic partner of a parent of the child or by a relative, or by a relative and the spouse or domestic partner of the relative, of the child is being negotiated or arranged; or
- (b) a child who is the subject of a care by Secretary order or long-term care order within the meaning of the **Children, Youth and Families Act 2005** or who is under the guardianship of a person by reason of provisions of an Act of another State or of a Territory corresponding to the provisions of the **Children, Youth and Families Act 2005** by reason of which a child may be such a ward.
- (4) Where the Secretary or a principal officer of an approved agency receives from an officer in another State or a Territory whose powers, functions and duties correspond with those of the Secretary or principal officer under this Act—

S. 46(3)(a)
amended by
Nos 72/1997
s. 12(b),
68/2015 s. 11.

S. 46(3)(b)
amended by
Nos 16/1987
s. 4(3)(Sch. 1
item 1(b)),
69/1989
s. 11(2),
56/1989
s. 286(Sch. 2
item 1.2(a)(b))
(as amended
by No.
93/1990
s. 24(h)(i)(ii)),
46/1998
s. 7(Sch. 1),
substituted by
No. 48/2006
s. 42(Sch.
item 1.2),
amended by
No. 61/2014
s. 161.

S. 46(4)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) a notice that application will be made in that State or Territory under provisions corresponding with this Act for the adoption of a child who is under the guardianship of the Secretary or a principal officer by virtue of the provisions of subsection (1); and

S. 46(4)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) a request that the Secretary or principal officer renounce guardianship of the child—

S. 46(4)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

the Secretary or principal officer may, if the consent has become irrevocable and the Secretary or principal officer thinks it in the best interests of the child so to do, by instrument in writing signed by the Secretary or principal officer renounce guardianship of the child.

(5) Forthwith after signing an instrument of renunciation under subsection (4), the Secretary or principal officer shall send the instrument by certified mail to the officer in the other State or Territory together with the consent to adoption executed in Victoria with respect to the child by virtue of which the Secretary or principal officer is the guardian of the child and shall thereupon cease to be guardian of the child for the purposes of this Act.

S. 46(5)
amended by
No. 46/1998
s. 7(Sch. 1).

(6) Where application is to be made under this Act for the adoption of a child who is under the guardianship of some officer or person in another State or in a Territory pursuant to provisions corresponding with the provisions of this Division whose powers, functions and duties correspond with those of the Secretary under this Act or of the principal officer of an approved agency, the Secretary or principal officer may notify such officer or person of the application and request the officer or person in writing to renounce guardianship of the child and to forward to the

S. 46(6)
amended by
Nos 69/1989
s. 11(1)(c),
46/1998
s. 7(Sch. 1).

Secretary or principal officer for use in the proceedings on the application the consent executed in that State or Territory with respect to the child.

S. 46(7)
amended by
No. 46/1998
s. 7(Sch. 1).

- (7) Upon receiving from any such officer or person an instrument in writing executed by such officer or person renouncing the guardianship of a child referred to in subsection (6) the Secretary or principal officer shall become and be the guardian of the child in all respects as if the consent to adoption executed in that State or Territory and forwarded with the instrument of renunciation were a consent given in accordance with Division 3 in Victoria on the day the consent purports to have been signed and attested in that State or Territory.

47 Guardianship of non-citizen child

S. 47(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) Where—
(a) a non-citizen child is present in Victoria;

S. 47(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) the Secretary or an approved agency is authorized to make arrangements with a view to the adoption of the child; and

the Secretary or principal officer may make application to the Court for an order that the Secretary be the guardian of the child.

S. 47(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Where the Court, on an application under subsection (1), makes an order that the Secretary or principal officer be the guardian of a child, the Secretary or principal officer shall be the guardian of the child for all purposes to the exclusion of all other persons as if the Secretary or principal officer had become the guardian of the child by reason of the operation of section 46 and shall cease to be the guardian in the same manner as he

would cease to be a guardian of a child under that section.

48 Natural parent's right of access after consent

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|--|--|
| (1) Notwithstanding that, under section 46, the Secretary or the principal officer of an adoption agency is the guardian of a child, a person who is a parent of the child who has given consent to the adoption of the child may, subject to subsection (2), visit the child during the period during which the consent may be revoked. | S. 48(1)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (2) The Court, on the application of the Secretary or principal officer may, by order, restrict the occasions on which or times at which a parent may, under this section, visit a child. | S. 48(2)
amended by
No. 46/1998
s. 7(Sch. 1). |

Division 5—Court to be satisfied as to certain additional matters

49 Putative father

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|--|---|
| (1) Where, in relation to the adoption of a child, the mother of the child is the only appropriate person under section 33 to give consent to the adoption, the Court shall not make an order for the adoption of the child unless it is satisfied that— | |
| (a) the Secretary or principal officer of the approved agency making the arrangements for the adoption does not know the name or address of a man who may on reasonable grounds be the father of the child; or | S. 49(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (b) the Secretary or principal officer does know the name or address of such a man and— | S. 49(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (i) has complied with subsection (2); or | |

S. 49(1)(b)(ii)
amended by
No. 46/1998
s. 7(Sch. 1).

(ii) the Court, on the application of the Secretary or principal officer made within two business days after the mother gave consent, dispenses with the requirement to comply with subsection (2).

S. 49(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Where, under subsection (1), the Secretary or the principal officer of an approved agency is required to comply with this subsection because the Secretary or principal officer knows the name or address of a man whom the Secretary or principal officer believes on reasonable grounds may be the father of a child, the Secretary or principal officer shall, within the period of two business days after the mother of the child gave consent to the adoption of the child send to that man by certified mail notice to the effect that the Secretary or principal officer believes the man may be the father and that, unless the father commences proceedings to obtain a declaration of paternity before the end of the period during which the consent of the mother may be revoked, the consent of the father to the adoption of the child will not be required.
- (3) Where a man commences, before the end of the period during which the consent of the mother of the child may be revoked, proceedings to obtain a declaration of paternity of the child under section 10 of the **Status of Children Act 1974** any proceedings for the adoption of the child shall be stayed until the proceedings to obtain the declaration are determined or withdrawn and, where a declaration of paternity is made, that man is an appropriate person for the purpose of section 33(1) notwithstanding that consents have been given by all other appropriate persons and the period during which such consents might be revoked has expired.

50 Adoption of Aboriginal child

- (1) The provisions of this section are enacted in recognition of the principle of Aboriginal self-management and self-determination and that adoption is absent in customary Aboriginal child care arrangements.
- (2) Where—
- (a) consent is given to the adoption of a child by a parent—
 - (i) who is an Aborigine; or
 - (ii) who is not an Aborigine but, in the instrument of consent, states the belief that the other parent is an Aborigine—and who, in the instrument of consent, expresses the wish that the child be adopted within the Aboriginal community; or
 - (b) the Court has dispensed with the consent of the parents and the Secretary or principal officer of an approved agency believes on reasonable grounds that the child has been accepted by an Aboriginal community as an Aborigine and so informs the Court—

S. 50(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

the Court shall not make an order for the adoption of the child unless the Court is satisfied as to the matters referred to in section 15 and, where a parent has given consent, is satisfied that the parent has received, or has in writing expressed the wish not to receive, counselling from an Aboriginal agency and—

- (c) that the proposed adoptive parents are members, or at least one of the proposed adoptive parents is a member, of the Aboriginal community to which a parent who gave consent belongs;

S. 50(2)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

- (d) that a person of a class referred to in paragraph (c) is not reasonably available as an adoptive parent and that the proposed adoptive parents, or at least one of the proposed adoptive parents, is a member of an Aboriginal community; or
 - (e) that a person of a class referred to in paragraph (c) or (d) is not reasonably available as an adoptive parent and that the proposed adoptive parents are persons approved by or on behalf of the Secretary or the principal officer of an approved agency and by an Aboriginal agency as suitable persons to adopt an Aboriginal child.
- (3) In this section, **Aboriginal agency** means an organization declared by Order of the Governor in Council published in the Government Gazette to be an Aboriginal agency in accordance with subsection (4).
- (4) An organization shall not be declared under subsection (3) to be an Aboriginal agency unless the Secretary is satisfied that the organization is managed by Aborigines, that its activities are carried on for the benefit of Aborigines and that it has experience in child and family welfare matters and the declaration includes a statement to that effect.
- (5) The Governor in Council may, by Order published in the Government Gazette, revoke or vary an order made under subsection (3).

S. 50(4)
amended by
No. 46/1998
s. 7(Sch. 1).

51 Order for adoption of non-citizen child

- (1) The Court shall not make an order for the adoption of a non-citizen child unless the Court is satisfied as to the matters referred to in section 15 and is satisfied—

- (a) that the person, or persons, in whose favour the order is made is a person who was, or are persons both of whom were, approved by the Secretary or by an authorized agency as a person, or persons, suitable to adopt a non-citizen child before the child came into or was placed in the care of the person or persons; or
- (b) that—
- (i) the child has been in the care of the person, or persons, in whose favour the order is made for the preceding twelve months; and
- (ii) during that period, the Secretary or an authorized agency has supervised the welfare and interests of the child.
- (2) Where under this section the Secretary supervises the welfare and interests of a child in the care of a person or persons, the Secretary may require payment by that person or those persons of a fee not exceeding the amount prescribed for the purposes of this section.
- (3) In this section, **authorized agency** means an approved agency that is authorized by the Secretary under section 23 to make arrangements with prescribed persons or prescribed organizations in places outside Australia for the adoption in Victoria of non-citizen children.
- S. 51(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).
- S. 51(1)(b)(ii)
amended by
No. 46/1998
s. 7(Sch. 1).
- S. 51(2)
amended by
No. 46/1998
s. 7(Sch. 1).
- S. 51(3)
amended by
No. 46/1998
s. 7(Sch. 1).

Part III—Adoption orders under this Act

Division 1—General

52 Certificate of adoption

Where the Court makes an order for the adoption of a child, the Court shall issue to the person or persons in whose favour the order is made a certificate stating the date on which the order was made, the name of the adoptive parent or adoptive parents, the name that, under the order, is the name of the child, the place of birth of the child and such other matters as the Court determines.

Division 2—Effect of adoption orders

53 General effect of adoption orders

No. 7147 s. 32.

- (1) Subject to this Act and to the provisions of any other Act that expressly distinguishes in any way between adopted children and children other than adopted children, upon the making of an adoption order—

S. 53(1)(a)
substituted by
No. 72/1997
s. 12(c).

- (a) the adopted child shall be treated in law as a child of the adoptive parent or adoptive parents, and the adoptive parent or adoptive parents shall be treated in law as the parent or parents of the child, as if the child had been born—

(i) to the adoptive parent; or

(ii) to the adoptive parents;

S. 53(1)(a)(ii)
amended by
No. 68/2015
s. 12.

- (b) the adopted child shall be treated in law as if the adopted child were not 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 shall

- be treated in law as if the person were not 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 guardianship of the adopted child ceases to have effect; and
 - (e) any previous adoption of the child (whether effected under the law of Victoria or otherwise) ceases to have effect.
- (2) Notwithstanding subsection (1), for the purposes of any law 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.

54 Effect of orders as regards dispositions of property etc.

No. 7147 s. 33.

- (1) The provisions of section 53(1) have effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of the **Adoption of Children Act 1964**, 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 that Act; and
 - (b) those provisions do not affect a disposition of property that took effect in possession before the commencement of that Act.
- (2) The provisions of section 53(1) do not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement of the **Adoption of Children Act 1964**.
- (3) Where—
 - (a) before the commencement of the **Adoption of Children Act 1964**, 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 that 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 or a corresponding previous enactment, 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 the **Adoption of Children Act 1964** an adoption order made under that Act

or this Act shall have effect as if neither that Act nor this Act had been passed.

- (5) Nothing in section 53 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) that expressly distinguishes a beneficiary or class of beneficiaries from another beneficiary or class.

55 Bequest by will to unascertained adopted person

- (1) Where, under a will made after the commencement of this section—

S. 55(1)
amended by
No. 55/1987
s. 57(3)(Sch. 5
item 9).

- (a) a disposition of property, or of an interest in property, is expressed to be made by the testator to a person who is not named but who is described as a child of the testator or of a spouse, domestic partner, de facto spouse, parent, child, brother or sister of the testator, being a person who was adopted by another person; and

S. 55(1)(a)
amended by
Nos 72/1997
s. 12(d),
68/2015
s. 13(1).

- (b) the personal representatives of the testator are unable to ascertain the name and address of the adopted person—

the personal representatives shall give to the State Trust a copy of the will and a statement that they are unable to ascertain the name and address of the adopted person.

- (2) Where the State Trust is given a copy of a will under subsection (1), the State Trust shall, by notice in writing given to the Secretary, request the Secretary to make arrangements for ascertaining and giving to the State Trust the name and address of the adopted person.

S. 55(2)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 9),
46/1998
s. 7(Sch. 1).

Adoption Act 1984
No. 10150 of 1984
Part III—Adoption orders under this Act

S. 55(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) Where the Secretary receives a request under subsection (2), the Secretary shall cause such reasonable enquiries to be made of records in possession of the Secretary as will show the name and enable the address or, if the adopted person has died, the date of the death, of the adopted person to be ascertained or, if it appears that the information cannot be obtained from enquiries of those records, seek to obtain the information from enquiries of an approved agency or other body or person.

S. 55(4)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 9),
46/1998
s. 7(Sch. 1).

- (4) If the Secretary ascertains the name of the adopted person the Secretary shall take such steps as are necessary to ascertain the address or, if the adopted person has died, the date of death, of the adopted person and shall inform the State Trust of that name and address or date.

S. 55(5)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 9),
46/1998
s. 7(Sch. 1).

- (5) If the Secretary is unable to ascertain the name of the adopted person the Secretary shall so inform the State Trust.

- (6) Where the adopted person cannot be found, the property, or interest in property to which, under the will, the adopted person was entitled, belongs to the Crown as bona vacantia.

S. 55(7)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 9),
46/1998
s. 7(Sch. 1).

- (7) After receiving information from the Secretary, the State Trust shall give notice in writing to the personal representatives of the testator stating whether or not the name and address of the adopted person has been ascertained or, if the adopted person has died, the date of death of the adopted person.

(8) Where the State Trust—

- (a) is, by reason of subsection (9), to be deemed to be a trustee for an adopted person, who is a beneficiary under a will; and
- (b) gives to the personal representatives of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the property, or interest in property to which the adopted person was entitled under that will—

that statement is, for the purposes of the administration of the estate by the personal representatives, conclusive evidence that the adopted person has disclaimed the property or interest in the property.

- (9) Unless the adopted person predeceased the testator or, for any other reason known to the personal representatives, is not entitled to an interest under the will, the State Trust shall be deemed to be a trustee for the adopted person upon the trusts set out in or arising under the will and, if the personal representatives transfer the property or interest in the property to the State Trust as trustee for the adopted person, the personal representatives shall be deemed to have transferred the property or interest to the adopted person.

(10) In this section—

de facto relationship means the relationship of a man and a woman who are living together as husband and wife on a genuine domestic basis, although not married to each other;

S. 55(8)
amended by
No. 55/1987
s. 57(3)(Sch. 5
item 9).

S. 55(9)
amended by
No. 55/1987
s. 57(3)(Sch. 5
item 9).

S. 55(10)
inserted by
No. 68/2015
s. 13(2).

de facto spouse means—

- (a) in relation to a man who is living with a woman in a de facto relationship, the woman with whom he is living in that de facto relationship;
- (b) in relation to a woman who is living with a man in a de facto relationship, the man with whom she is living in that de facto relationship.

No. 7147 s. 34.

56 Names of adopted child

(1) Upon the making of an adoption order—

- (a) the surname of the adopted child shall be—
 - (i) where there is one adoptive parent, the surname of the adoptive parent;
 - (ii) where there are two adoptive parents who have the same surname, that surname; or
 - (iii) where there are two adoptive parents who have different surnames, one of those surnames—

where that surname was specified in the application for the adoption order as the proposed surname of the child and is approved by the Court or such other surname as the Court approves in the adoption order; and

- (b) the forename or forenames of the adopted child shall be such name or names as the Court, in the adoption order, approves on the application of the adoptive parent or adoptive parents.

- (2) The Court shall not approve a name as a surname or forename of a child unless the Court is satisfied that so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.
- (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 any other Act or law.

57 Effect of order on domicile

No. 7147 s. 35.

The domicile of an adopted child shall be determined in accordance with the **Domicile Act 1978**.

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

No. 7147 s. 36.

- (1) Notwithstanding any other provisions of this Act, trustees or personal representatives may, subject to this section, convey, transfer or distribute real or personal 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 real or personal property in the manner referred to in subsection (1) 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 3—Adoption orders subject to conditions

S. 59(1)
re-numbered
as s. 59 by
No. 3/1986
s. 4(d)(i).

59 Certain adoption orders subject to condition

Where the consent of a parent to the adoption of an Aboriginal child was given subject to a condition in accordance with section 37, the adoption order may, subject to and in accordance with consents given to the adoption, be made subject to a condition that a parent or the parents, relatives of the child and members of the Aboriginal community to which the child belongs have such right to have access to the child as is specified in the order.

S. 59(2)
re-numbered
as s. 59A by
No. 3/1986
s. 4(d)(ii).

59A Adoption order subject to certain conditions

Where the Court is satisfied—

- (a) that circumstances exist which make it desirable so to do, whether by reason of the age of the child or otherwise; and
- (b) that the parent or parents and the adoptive parent or adoptive parents have, after consent to the adoption was given, agreed that the adoption order should be made subject to certain conditions—

the adoption order may be made subject to either or both of the following conditions—

- (c) a condition that a parent or both parents or such other relatives of the child as are specified in the order or both the parent or parents and relatives so specified have such right to have access to the child as is specified in the order;

- (d) a condition that the adoptive parent or adoptive parents of the child provide information about the child to the Secretary or principal officer of an approved agency to be given to the parent or parents at such periods and in accordance with such terms as are specified in the order.

S. 59A(d)
amended by
No. 46/1998
s. 7(Sch. 1).

60 Variation of orders and conditions

S. 60
amended by
No. 3/1986
s. 4(e),
substituted by
No. 32/2000
s. 16.

- (1) Where the Court is satisfied that it is in the best interests of the welfare of an adopted child that the adoption order for the child should be varied so as to be subject to a condition referred to in section 59 or 59A, the Court shall, on application under this section, vary the adoption order so that it is subject to the condition.
- (2) Where the Court is satisfied that it is in the best interests of the welfare of an adopted child that a condition referred to in section 59 or 59A to which the adoption order is subject be varied or revoked, the Court shall, on application under this section, by order vary or revoke the condition.
- (3) An application under this section may be made—
 - (a) by an adoptive parent of the adopted child;
or
 - (b) by a parent who gave consent to the adoption of the child; or
 - (c) by or on behalf of the adopted child.
- (4) An application under this section must be accompanied by a report from an approved counsellor.
- (5) An order cannot be made under this section so as to grant a person a right of access, or greater rights of access, to an adopted child unless—

- (a) the adoptive parent or, where there are two adoptive parents, both adoptive parents agree; and
 - (b) the Court is satisfied that, as far as practicable, the wishes of the child have been ascertained and due consideration is given to them, having regard to the age and understanding of the child.
- (6) In addition to the requirements of this section, an order cannot be made under subsection (1) unless the requirements of section 59 or 59A (as the case requires) for the imposition of the relevant condition are satisfied.

S. 61
amended by
No. 3/1986
s. 4(f).

61 Cessation of condition

An adoption order ceases to be subject to a condition referred to in section 59 or 59A—

- (a) when the condition is revoked; or
- (b) when the adopted child attains the age of eighteen years—

whichever first occurs.

Division 4—Interim orders

No. 7147 s. 37.

62 Making of interim orders

- (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, and access to, 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 person unless the Court could lawfully make an order for the adoption of that child by that person.
- (4) While an interim order remains in force in respect of a child, the person in whose favour the order is made is entitled to the care and custody of the child.

63 Duration of interim orders

No. 7147 s. 38.

- (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.

64 Discharge of interim orders

No. 7147 s. 39.

- (1) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under any corresponding previous enactment, and may make such order for the care and control of the child as it thinks fit.
- (2) An interim order shall cease to have effect upon the making of an order for the adoption of the child, whether made in Victoria or in another State or in a Territory.

Part IV—Recognition of adoptions

65 Application of Part

No. 7147 s. 40.

S. 65
substituted by
No. 32/2000
s. 6.

S. 65(1)
amended by
No. 32/2000
s. 10(1).

- (1) In this Part, a reference to a country includes a reference to a part of a country but does not include a reference to a Convention country or a prescribed overseas jurisdiction within the meaning of Part IVB.
- (2) Despite subsection (1), sections 67, 68 and 69 continue to apply, in relation to a country that is a Convention country, in respect of adoptions in that country that took place before the commencement of section 6 of the **Adoption (Amendment) Act 2000**.
- (3) Despite subsection (1), sections 67, 68 and 69 continue to apply, in relation to a country that is a prescribed overseas jurisdiction within the meaning of Part IVB, in respect of adoptions in that country that took place before the commencement of section 10 of the **Adoption (Amendment) Act 2000**.

S. 65(3)
inserted by
No. 32/2000
s. 10(2).

66 Recognition of Australasian adoptions

No. 7147 s. 41.

S. 66
amended by
No. 32/2000
s. 7(1)(a)(b)
(ILA s. 39B(1)).

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

- (2) This section, as in force immediately before the commencement of section 7 of the **Adoption (Amendment) Act 2000**, continues to apply in respect of the adoption of a person in New Zealand before that commencement.

S. 66(2)
inserted by
No. 32/2000
s. 7(2).

67 Recognition of foreign adoptions

No. 7147 s. 42.

- (1) For the purposes of the laws of Victoria, the adoption of a person (whether before or after the commencement of this Act) in a country, other than New Zealand, outside the Commonwealth and the Territories, 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;
 - (aa) either—
 - (i) that country was the usual place of abode of the adoptive parent or parents for a continuous period of at least twelve months immediately before the commencement of the legal proceedings which resulted in the adoption; or
 - (ii) the Secretary or the principal officer of an approved agency has, before the adoption in that other country, agreed to the placement of that child with that proposed adoptive parent or those proposed adoptive parents and the child is placed in accordance with the conditions of approval of the proposed adoptive parent or parents;

S. 67(2)(aa)
inserted by
No. 67/1987
s. 6.

S. 67(2)(aa)(ii)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) in consequence of the adoption, the adoptive parent or adoptive parents 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
 - (c) under the law of that country the adoptive parent or adoptive parents were, by the adoption, placed generally in relation to the adopted person in the position of a parent or parents.
- (3) The Governor in Council may by proclamation published in the Government Gazette declare that all or any adoptions under the law of a particular country, other than New Zealand, outside the Commonwealth and the Territories shall be conclusively presumed to comply with the conditions specified in paragraphs (b) and (c) of subsection (2).
- (4) The Governor in Council may by the like proclamation revoke or vary any proclamation made under subsection (3).
- (5) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority in any country, other than New Zealand, outside the Commonwealth and the Territories shall, in the absence of proof to the contrary, be sufficient evidence—
 - (a) that the adoption was made in that country and is effective according to the law of that country; and
 - (b) that the adoption has not been rescinded.

- (6) Notwithstanding the foregoing provisions of this section, a Court (including a Court dealing with an application under section 69) 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.
- (7) Where, in any proceedings before a Court (including proceedings under section 69), 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) and has not been rescinded.
- (8) Except as provided in this section, the adoption of a person (whether before or after the commencement of this Act) in a country, other than New Zealand, outside the Commonwealth and the Territories does not have effect for the purposes of the laws of Victoria.
- (9) Nothing in this section affects any right that was acquired by, or became vested in, a person before the commencement of the **Adoption of Children Act 1964**.

68 Supervision of certain adopted children

- (1) Subject to this section, where—
 - (a) a child is adopted in a country, other than New Zealand, outside the Commonwealth and the Territories, whether or not the adoption is an adoption that has, under this Act, the same effect as an adoption order under this Act;

S. 68(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) the adoption in relation to the child has been in force for a period not exceeding twelve months;
- (c) neither of the adoptive parents of the child was or, where there is only one adoptive parent, that parent was not, at the time of the making of the order of adoption with respect to the child a national or citizen of the country in which the order was made; and
- (d) the child is present in Victoria—

the Secretary may supervise the welfare and interests of the child for a period not exceeding six months commencing on the date of the arrival of the child in Victoria and any person authorized in writing by the Secretary for that purpose has a right of access to the child at all reasonable times during that period.

S. 68(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) Where a child whose welfare and interests may be supervised by the Secretary under subsection (1) has, after being adopted but before arriving in Victoria, been resident in any other State or in a Territory or in New Zealand, the period during which the child is subject to the supervision of the Secretary is reduced proportionately to the period of such residence in that other State or Territory or in New Zealand.

S. 68(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) Notwithstanding subsection (1), the Secretary may, in the discretion of the Secretary, exempt any child to whom the provisions of that subsection would otherwise apply from the provisions of that subsection.

- (4) Where either or both of the adoptive parents of the child or, where there is only one adoptive parent, that parent, was not, before the child was adopted, approved by the Secretary or the principal officer of an approved agency as a person suitable to be an adoptive parent of a child under the law of a country, other than New Zealand, outside the Commonwealth and the Territories, the reference in subsection (1) to a period not exceeding six months shall be read as a reference to a period not exceeding twelve months. **S. 68(4) amended by No. 46/1998 s. 7(Sch. 1).**
- (5) Where the Secretary supervises the welfare and interests of a child under this section, the Secretary may require payment by the adoptive parents or adoptive parent of the child of a fee not exceeding the amount prescribed for the purposes of this section. **S. 68(5) amended by No. 46/1998 s. 7(Sch. 1).**

69 Declarations of validity of foreign adoptions

No. 7147 s. 43.

- (1) A person specified in subsection (2) 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, other than New Zealand, outside the Commonwealth and the Territories, and that the adoption is one to which section 67 applies, and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.
- (2) The persons who may make an application under subsection (1) in relation to an adoption are the adopted child, the adoptive parent or either or both the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

Adoption Act 1984
No. 10150 of 1984
Part IV—Recognition of adoptions

S. 69(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) Where an application is made to a Court under this section, the Court shall direct that notice of the application be given to the Secretary and may do any or all of the following—

S. 69(3)(a)
amended by
Nos 69/1989
s. 11(1)(d),
46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 1)),
32/2015 s. 6.

- (a) direct that notice of the application be given to such other persons (who may include the Secretary to the Department of Justice and Regulation) as the Court thinks fit;

- (b) direct that a person be made a party to the application; or

S. 69(3)(c)
amended by
No. 46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 1)).

- (c) permit the Secretary or any other 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—

- (a) 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; and
- (b) it shall issue to the adoptive parent or adoptive parents a certificate stating the date on which the order was made, the name of the adoptive parent or adoptive parents, the name of the child and such other matters as the Court determines.

- (5) For the purposes of the laws of Victoria, an order under this section binds the Crown in right of the State of Victoria, but, except as provided in subsection (6), 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 in which an order has been made under this section, being proceedings relating to the rights of a person other than a person referred to in subparagraph (i) or (ii) of paragraph (a) of subsection (5), the production of a copy of the order, certified by the Prothonotary or the Registrar of the 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 section 67 applies.

Pt 4A
(Heading and
ss 69A–69S)
inserted by
No. 32/2000
s. 4.

Part IVA—Adoptions under the Hague Convention

Division 1—Court orders and recognition of adoptions

S. 69A
inserted by
No. 32/2000
s. 4.

69A Adoption of child in Victoria who is to live in a Convention country

(1) A person who—

- (a) is habitually resident in a Convention country; and
- (b) wishes to adopt a child who is habitually resident in Victoria—

may apply to the Court for an order for the adoption of the child.

(2) The Court may make an order for the adoption of a child on an application under subsection (1) if the requirements of section 15 are satisfied and the Court is satisfied that—

- (a) the child is in Victoria; and
- (b) the child is not prevented from leaving Australia—
 - (i) under a law of the Commonwealth, a State or a Territory; or
 - (ii) because of an order of a court of the Commonwealth, a State or a Territory; and
- (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention; and

- (d) the Central Authority of the Convention country has agreed to the adoption of the child; and
 - (e) the State Central Authority has agreed to the adoption of the child.
- (3) For the purposes of a proposed adoption order under this section, a report under section 15 may be made only on behalf of the Secretary or the principal officer of an approved agency that is an accredited body.

69B Adoption in Victoria of a child from a Convention country

S. 69B
inserted by
No. 32/2000
s. 4.

- (1) A person who—
- (a) is habitually resident in Victoria; and
 - (b) wishes to adopt a child who is habitually resident in a Convention country—
- may apply to the Court for an order for the adoption of the child.
- (2) The Court may make an order for the adoption of a child on an application under subsection (1) if the requirements of sections 15 and 51 are satisfied and the Court is satisfied that—
- (a) the child is in Victoria; and
 - (b) the child is not prevented from residing permanently in Australia—
 - (i) under a law of the Commonwealth, a State or a Territory; or
 - (ii) because of an order of a court of the Commonwealth, a State or a Territory; and

- (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention; and
 - (d) the Central Authority of the Convention country has agreed to the adoption of the child; and
 - (e) the State Central Authority has agreed to the adoption of the child.
- (3) For the purposes of a proposed adoption order under this section—
- (a) a report under section 15 may be made only on behalf of the Secretary or the principal officer of an approved agency that is an accredited body;
 - (b) a reference in section 51 to an authorized agency is a reference to an accredited body.

S. 69C
inserted by
No. 32/2000
s. 4.

69C Issue of adoption compliance certificate

If the Court has made an order for the adoption of a child under section 69A or 69B, the State Central Authority may issue an adoption compliance certificate.

S. 69D
inserted by
No. 32/2000
s. 4.

69D Recognition of adoption of a child from a Convention country to Australia

- (1) Subject to this section, an adoption in a Convention country—
- (a) of a child who is habitually resident in a Convention country; and
 - (b) by a person who is habitually resident in Australia—

is recognised if an adoption compliance certificate issued in that country is in force for the adoption.

- (2) An adoption recognised under subsection (1) is effective on and from the day the adoption compliance certificate becomes effective.
- (3) Subsection (1) does not apply if—
 - (a) a declaration is made under section 69I(2)(a); or
 - (b) a declaration is made under a law of the Commonwealth or of another State or a Territory that corresponds to section 69I(2)(a).

69E Recognition of adoption of a child from a Convention country to another Convention country

S. 69E
inserted by
No. 32/2000
s. 4.

Subject to section 69I, if—

- (a) a child, who is habitually resident in a Convention country, is adopted by a person who is habitually resident in another Convention country; and
- (b) an adoption compliance certificate issued in the Convention country in which the adoption is granted is in force for the adoption—

the adoption is recognised with effect on and from the day the certificate becomes effective.

69F Effect of recognition of adoption under this Part

S. 69F
inserted by
No. 32/2000
s. 4.

- (1) Subject to this section, if the adoption of a child is recognised under section 69D or 69E, then, for the purposes of the laws of Victoria, the adoption has the same effect as an adoption order under this Act⁴.
- (2) If the laws of the Convention country where the adoption was granted do not provide that the adoption of the child terminates the legal relationship between the child and the individuals who were, immediately before the adoption, the

child's parents, section 53(1)(b) does not apply to the adoption unless—

- (a) an order is made under section 69H or under a law of the Commonwealth or of another State or a Territory that corresponds to section 69H; or
 - (b) a decision is made in a Convention country to convert the adoption in accordance with article 27 of the Convention.
- (3) Subsection (2)(b) does not apply if a declaration is made under section 69I(2)(b) or under a law of the Commonwealth or of another State or a Territory that corresponds to section 69I(2)(b).

S. 69G
inserted by
No. 32/2000
s. 4.

69G Evidential value of adoption compliance certificate

Subject to section 69I, an adoption compliance certificate is evidence, for the laws of Victoria, that the adoption to which the certificate relates—

- (a) was agreed to by the Central Authorities of the countries mentioned in the certificate; and
- (b) was carried out in accordance with the Hague Convention and the laws of the countries mentioned in the certificate.

S. 69H
inserted by
No. 32/2000
s. 4.

69H Order terminating legal relationship between child and parents

- (1) If—
- (a) a child who was or is habitually resident in a Convention country was adopted in a Convention country; and
 - (b) the adoption was by a person who is habitually resident in Victoria; and
 - (c) the laws of the Convention country do not provide that the adoption of the child terminates the legal relationship between the

child and the persons who were, immediately before the adoption, the child's parents—

any of the parties to the adoption may apply to the Court for an order that the adoption of the child terminates the legal relationship between the child and the persons who were, immediately before the adoption, the child's parents.

- (2) The Court may make an order on an application under subsection (1) if satisfied that—
- (a) an adoption compliance certificate issued in the Convention country is in force for the adoption; and
 - (b) the laws of the Convention country do not provide that the adoption of a child terminates the legal relationship between the child and the persons who were, immediately before the adoption, the child's parents; and
 - (c) the child is allowed—
 - (i) to enter Australia; and
 - (ii) to reside permanently in Australia.

69I Refusal to recognise an adoption or an article 27 decision

S. 69I
inserted by
No. 32/2000
s. 4.

- (1) If the State Central Authority considers that—
- (a) an adoption recognised under section 69D or 69E; or
 - (b) a decision made in accordance with article 27 of the Hague Convention—

is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates, the State Central Authority may apply to the Court for a declaration that the adoption or decision is not recognised.

- (2) The Court may make a declaration on an application under subsection (1) if satisfied that—
 - (a) an adoption recognised under section 69D or 69E; or
 - (b) a decision made in accordance with article 27 of the Hague Convention—is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates.
- (3) If a court declares that an adoption or decision is not recognised, the adoption or decision has no effect in Victoria.
- (4) The State Central Authority must give the Commonwealth Central Authority written notice of each application under subsection (1) and the reasons for making it as soon as practicable after it is made.
- (5) The State Central Authority must give the Commonwealth Central Authority written notice of the Court's determination of each application under subsection (1).

S. 69J
inserted by
No. 32/2000
s. 4.

69J Report on person who wishes to adopt a child in a Convention country

- (1) If a person—
 - (a) wishes to adopt a child in a Convention country; and
 - (b) is on the register of approved persons kept under section 13A by the Secretary or the principal officer of an approved agency—the State Central Authority or an accredited body must prepare a report that complies with article 15 of the Hague Convention.

- (2) The State Central Authority must send each report prepared under subsection (1) to the Central Authority of the Convention country.

Division 2—State Central Authority

69K State Central Authority

S. 69K
inserted by
No. 32/2000
s. 4.

- (1) The Secretary is appointed to be the Central Authority for the State of Victoria for the purposes of article 6.2 of the Hague Convention.
- (2) The Secretary must advise the Commonwealth Central Authority that the Secretary is the State Central Authority and the address and functions of the State Central Authority.
- (3) As soon as practicable after a change to the address or functions of the State Central Authority, the Secretary must advise the Commonwealth Central Authority of the change.

69L Functions of State Central Authority

S. 69L
inserted by
No. 32/2000
s. 4.

- (1) Subject to subsection (2), the State Central Authority, in Victoria—
- (a) has all the duties of a Central Authority under the Hague Convention; and
- (b) may exercise all of the powers of a Central Authority under the Hague Convention.
- (2) The functions of the State Central Authority do not include any functions that are functions of the Commonwealth Central Authority under the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 of the Commonwealth.

S. 69M
inserted by
No. 32/2000
s. 4.

69M Delegation

The State Central Authority may, by instrument, delegate any power or function of the State Central Authority, other than this power of delegation, to any employee or class of employee in the Department of which the Secretary is department head.

Division 3—Accredited bodies

S. 69N
inserted by
No. 32/2000
s. 4.

69N Application for accreditation

- (1) An approved agency, or an organization that has applied for approval as an approved agency, may apply to the State Central Authority for accreditation as an accredited body for the purposes of the Hague Convention.
- (2) An application must—
 - (a) contain the prescribed information; and
 - (b) nominate a person to be the principal officer of the accredited body for the purposes of this Act.

S. 69O
inserted by
No. 32/2000
s. 4.

69O Accreditation

- (1) The State Central Authority may accredit a body on an application under section 69N if satisfied that—
 - (a) the body is an approved agency or will be granted approval as an approved agency; and
 - (b) the body complies with—
 - (i) the criteria specified in articles 10 and 11 of the Hague Convention; and
 - (ii) any other prescribed criteria.

- (2) Accreditation under this section is subject to the following conditions—
- (a) that the accredited body—
 - (i) submit to the supervision of the State Central Authority; and
 - (ii) allow the State Central Authority access, as required by the State Central Authority, to the records of the accredited body; and
 - (b) that the accredited body report to the State Central Authority at six-monthly intervals, as determined by the State Central Authority, on the performance of its functions as an accredited body; and
 - (c) that the accredited body and each of its staff members comply with the prescribed code of conduct; and
 - (d) any other conditions imposed on the accreditation by the State Central Authority.
- (3) An accredited body has—
- (a) the duties and powers specified in the Hague Convention for an accredited body that are imposed or conferred on it from time to time by the State Central Authority; and
 - (b) any other duties and powers imposed or conferred on it by this Act or the regulations.
- (4) An accreditation under this section has effect for the period, not exceeding 3 years, determined by the State Central Authority, unless sooner revoked under section 69P.

S. 69P
inserted by
No. 32/2000
s. 4.

69P Revocation or suspension of accreditation

- (1) The State Central Authority may suspend for a specified period or revoke the accreditation of an accredited body—
 - (a) at the request of the accredited body; or
 - (b) if the body's approval as an approved agency is suspended or revoked under section 24; or
 - (c) if the body breaches a condition of the accreditation; or
 - (d) if the body ceases to comply with any of the criteria referred to in section 69O(1)(b).
- (2) The State Central Authority suspends or revokes accreditation by giving written notice of the suspension or revocation to the principal officer of the accredited body.

S. 69Q
inserted by
No. 32/2000
s. 4.

69Q Effect of suspension or revocation of accreditation

- (1) If the accreditation of an accredited body is suspended or revoked—
 - (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 State Central Authority or, with the approval of the State Central Authority where the body has entered into an agreement with an accredited body that the accredited body be the successor of the body, of that accredited body;
 - (b) if the principal officer of the first-mentioned body was, immediately before the suspension or revocation, the guardian of a child under this Act, the State Central Authority or principal officer of the accredited body that is the successor of the first-mentioned body, as the case may be,

- becomes the guardian of that child upon the suspension or revocation;
- (c) the arrangements or negotiations being undertaken by the first-mentioned body immediately before the suspension or revocation shall be continued by the State Central Authority or principal officer of the accredited body that is the successor of the first-mentioned body, as the case may be.
- (2) On the expiration of a period of suspension of the accreditation of an accredited body—
- (a) the State Central Authority may return to the accredited body any documents and records that, under subsection (1)(a), became the property of the State Central Authority upon the suspension; and
 - (b) the State Central Authority may authorize the accredited body to continue such arrangements and negotiations being undertaken by the State Central Authority as the State Central Authority thinks fit, being arrangements or negotiations that, but for the suspension, would have been carried on by the accredited body.

69R Renewal of accreditation

- (1) An accredited body may apply for renewal of its accreditation.
- (2) The State Central Authority may renew the accreditation of a body on an application under subsection (1) as if it were an application under section 69N.

S. 69R
inserted by
No. 32/2000
s. 4.

S. 69S
inserted by
No. 32/2000
s. 4.

69S Gazettal and notification to Commonwealth of accreditation matters

- (1) The State Central Authority must publish notice in the Government Gazette of each of the following—
 - (a) an application under section 69N for accreditation;
 - (b) an accreditation under section 69O;
 - (c) an application under section 69R(1) for renewal of accreditation;
 - (d) a renewal of accreditation under section 69R(2);
 - (e) a suspension or revocation of accreditation under section 69P.
- (2) As soon as practicable after accrediting a body under section 69O or renewing the accreditation of a body under section 69R, the State Central Authority must give the Commonwealth Central Authority written notice of—
 - (a) the name, address, duties and powers of the accredited body; and
 - (b) the conditions of the accreditation or renewal.
- (3) As soon as practicable after a change to the name, address, duties or powers of an accredited body, the State Central Authority must give the Commonwealth Central Authority written notice of the change.
- (4) As soon as practicable after a change to the conditions of an accreditation, the State Central Authority must give the Commonwealth Central Authority written notice of the change.

- (5) As soon as practicable after the State Central Authority suspends or revokes the accreditation of a body under section 69P, the State Central Authority must give the Commonwealth Central Authority written notice of the suspension or revocation.

Pt 4B
(Heading and
ss 69T–69Y)
inserted by
No. 32/2000
s. 9.

Part IVB—Bilateral arrangements for intercountry adoptions

S. 69T
inserted by
No. 32/2000
s. 9.

69T Definitions

In this Part—

adoption authority means a person, body or office in a prescribed overseas jurisdiction responsible for approving the adoption of children;

adoption certificate, in relation to an adoption, means a document issued by an adoption authority in the prescribed overseas jurisdiction in which the child to whom the document relates was habitually resident before being adopted, stating that—

- (a) the adoption took place in accordance with the laws of that jurisdiction; and
- (b) the Secretary, or a person or a delegate of a person whose functions in another State or a Territory correspond with those of the Secretary under this Act, agreed that the adoption may proceed;

prescribed overseas jurisdiction means a country, or part of a country, prescribed as an overseas jurisdiction for the purposes of this Part.

S. 69U
inserted by
No. 32/2000
s. 9.

69U Recognition of an adoption in a prescribed overseas jurisdiction of a child from that jurisdiction

- (1) Subject to section 69W, an adoption in a prescribed overseas jurisdiction of a child who is habitually resident in that jurisdiction by a person who is habitually resident in Australia is recognised if—

- (a) the adoption is granted in accordance with the laws of that prescribed overseas jurisdiction; and
 - (b) an adoption certificate is in force in relation to the adoption.
- (2) An adoption that is recognised under subsection (1) is effective on and from the date that the adoption takes effect in the prescribed overseas jurisdiction.

69V Effect of recognition of adoption under this Part

Subject to section 69W, if the adoption of a child is recognised under section 69U, then, for the purposes of the laws of Victoria, the adoption has the same effect as an adoption order under this Act⁵.

S. 69V
inserted by
No. 32/2000
s. 9.

69W Refusal to recognise an adoption under this Part

- (1) If the Secretary considers that an adoption recognised under section 69U is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption relates, the Secretary may apply to the Court for a declaration that the adoption is not recognised.
- (2) The Court may make a declaration on an application under subsection (1) if satisfied that the adoption is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption relates.
- (3) If a court declares that an adoption is not recognised, the adoption has no effect in Victoria.

S. 69W
inserted by
No. 32/2000
s. 9.

69X Evidential value of adoption certificate

An adoption certificate is evidence, for the laws of Victoria, that the adoption to which the certificate relates was carried out in accordance with the laws of the prescribed overseas jurisdiction whose adoption authority issued the certificate.

S. 69X
inserted by
No. 32/2000
s. 9.

S. 69Y
inserted by
No. 32/2000
s. 9.

69Y Report on person who wishes to adopt a child in a prescribed overseas jurisdiction

If a person—

- (a) wishes to adopt a child in a prescribed overseas jurisdiction; and
- (b) is on the register of approved persons kept under section 13A by the Secretary or the principal officer of an approved agency—

the Secretary or principal officer may send an assessment report on the person to the adoption authority of the prescribed overseas jurisdiction.

Part V—Registration of orders

70 Registration of orders

- | | |
|--|--|
| (1) The prescribed officer of the Court shall cause a memorandum, in accordance with the prescribed form, of each adoption order to be sent to the Registrar who shall register the adoption— | No. 7147 s. 57.
S. 70(1)
amended by
No. 10244
s. 10. |
| (a) by endorsing on the memorandum, an official number and placing the memorandum in a Register of Adoptions kept by the Registrar; and | S. 70(1)(a)
amended by
No. 10244
s. 10. |
| (b) by making an entry in the Adopted Children Register kept by the Registrar of the prescribed particulars ascertained from the memorandum. | S. 70(1)(b)
amended by
No. 10244
s. 10. |
| (2) Where an order for the adoption of a child to whom section 50 applies is made, the prescribed officer of the Court shall cause to be sent to the Registrar a memorandum giving the name of the Aboriginal agency (if any) concerned in the arrangements for the adoption and stating that the provisions of section 114 apply. | S. 70(2)
amended by
No. 10244
s. 10. |
| (3) The prescribed officer of the Court shall cause a copy of each order for the discharge of an adoption order to be sent to the Registrar who shall, where the order is for the discharge of an adoption order that has been registered in the Register of Adoptions, register the order— | S. 70(3)
amended by
No. 10244
s. 10. |
| (a) by placing it with the adoption order to which it relates in the Register of Adoptions kept by the Registrar; and | S. 70(3)(a)
amended by
No. 10244
s. 10. |

S. 70(3)(b)
amended by
No. 10244
s. 10.

- (b) by making a notation of the discharge in the entry in the Adopted Children Register kept by the Registrar and, where the order relates to a person whose birth is registered in Victoria, in the entry in the Register of Births relating to the birth.

No. 7147 s. 58.

71 Sending of memoranda of orders to other States etc.

Where the Court makes an adoption order or an order for the discharge of an adoption order and the Prothonotary or the Registrar of the County Court (as the case requires) has reason to believe that the birth of the child to which the order relates is registered in another State or in a Territory or in any country proclaimed by the Governor in Council for the purposes of section 67(3), the Prothonotary or Registrar shall, as soon as practicable, cause a memorandum, in accordance with the prescribed form, of the adoption order or a copy of the order for the discharge of an adoption order, as the case may be, certified in writing by the Prothonotary or Registrar to be a true memorandum or copy, to be sent to such officer of that State, Territory or country having functions in relation to the registration of births as is prescribed.

No. 7147 s. 59.
S. 72
amended by
Nos 10244
s. 10, 32/2000
s. 7(3).

72 Registration of orders received from other States etc.

Where the Registrar receives, in relation to a person whose birth is registered in Victoria, a memorandum or copy of an order for the adoption of the person made (whether or not by a court) under the law in force in another State or in a Territory or made in a country outside the Commonwealth and the Territories and recognized under Part IV or Part IVA or of an order for the discharge of 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, Territory or country, the Registrar shall—

- (a) in the case of an order for adoption, register the adoption—
 - (i) by endorsing on the memorandum or copy an official number and placing the memorandum or copy in the Register of Adoptions kept by the Registrar; and S. 72(a)(i)
amended by
No. 10244
s. 10.
 - (ii) by making an entry in the Adopted Children Register kept by the Registrar of the prescribed particulars ascertained from the memorandum or copy; or S. 72(a)(ii)
amended by
No. 10244
s. 10.
- (b) in the case of an order for the discharge of an order for adoption that has been registered in the Register of Adoptions, register the order—
 - (i) by placing it with the order for adoption to which it relates in the Register of Adoptions kept by the Registrar; and S. 72(b)(i)
amended by
No. 10244
s. 10.
 - (ii) by making a notation of the discharge in the entry in the Adopted Children Register kept by the Registrar to which it relates and in the entry in the Register of Births relating to the birth of the person. S. 72(b)(ii)
amended by
No. 10244
s. 10.

73 Registration of certain foreign orders

Where the Registrar receives, in relation to a person whose birth is registered in Victoria, an order of the Court making a declaration under section 69 with respect to a foreign adoption and a memorandum or copy of the order or other instrument by which the adoption is effected, the Registrar shall register the adoption—

S. 73
amended by
No. 10244
s. 10.

S. 73(a)
amended by
No. 10244
s. 10.

- (a) by endorsing on the memorandum or copy an official number and placing the memorandum or copy in the Register of Adoptions kept by the Registrar; and

S. 73(b)
amended by
No. 10244
s. 10.

- (b) by making an entry in the Adopted Children Register kept by the Registrar of the prescribed particulars ascertained from the memorandum or copy.

S. 73A
inserted by
No. 25/2013
s. 4.

73A Registration of adoption of a child from a Convention country to Australia

- (1) If the adoption of a child is recognised under section 69D, subject to subsection (2), the State Central Authority must cause a memorandum, in accordance with the prescribed form, of the adoption and a copy of the adoption compliance certificate to be sent to the Registrar.
- (2) If the adoption recognised under section 69D became effective before the commencement of section 4 of the **Adoption Amendment Act 2013**, the State Central Authority is not required to cause the memorandum and copy of the adoption compliance certificate to be sent under subsection (1) unless requested in writing to do so by—
 - (a) the adoptive parent or adoptive parents of the child; or
 - (b) if the child has attained the age of 18 years, the child.
- (3) The Registrar must register the adoption by—
 - (a) endorsing on the memorandum the official number and placing the memorandum in a Register of Adoptions kept by the Registrar; and

- (b) making an entry in the Adopted Children Register kept by the Registrar of the prescribed particulars ascertained from the memorandum.

74 Certain entries to be marked "adopted"

- | | |
|---|--|
| (1) Upon registration under this Division of a memorandum or copy of an order for adoption relating to a person whose birth is registered in Victoria, the Registrar shall mark with the word "adopted" the entry in the Register of Births relating to the birth. | S. 74(1)
amended by
No. 10244
s. 10. |
| (2) Upon the registration under this Division of a memorandum or copy of an order for adoption relating to a person who has previously been adopted in Victoria, the Registrar shall mark with the word "adopted" the entry in the Adopted Children Register relating to that person. | S. 74(2)
amended by
No. 10244
s. 10. |
| (3) The Registrar shall not, except in accordance with this Act or an order of the Court, open for inspection, or issue an extract from, or copy of, an entry in the Register of Births or in the Adopted Children Register marked with the word "adopted". | S. 74(3)
amended by
No. 10244
s. 10. |
| (4) On application by a natural parent (within the meaning of section 82), the Registrar may issue to the natural parent an extract from, or copy of, an entry in the Register of Births relating to the child of that parent and which is marked with the word "adopted". | S. 74(4)
inserted by
No. 67/1987
s. 7(2). |

75 Index to be kept by Registrar

- | | |
|---|---|
| (1) The Registrar shall cause an index to be made to the Register of Adoptions and to the Adopted Children Register in such a manner as to make traceable the connexion between the relevant entries in the Adopted Children Register and the | S. 75(1)
amended by
No. 10244
s. 10. |
|---|---|

Register of Births relating to a person whose birth is registered in Victoria.

S. 75(2)
amended by
No. 10244
s. 10.

- (2) Except as otherwise provided in this Act, the Registrar shall not open for inspection or search the index referred to in subsection (1).

S. 75(3)
amended by
No. 10244
s. 10.

- (3) Nothing in subsection (2) prevents the Registrar inspecting or searching the index referred to in subsection (1).

76 Register of Adoptions not open for search

- (1) Except as provided in subsection (2), the Register of Adoptions shall not be open for inspection or search and a person shall not be furnished with an extract from, or copy of, a memorandum or order or copy of an order kept in that register.

S. 76(2)
amended by
Nos 69/1989
s. 11(1)(e),
43/1996
s. 65(Sch.
item 1.3),
46/1998
s. 7(Sch. 1).

- (2) Upon application by the Secretary, the Registrar shall issue, subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the **Births, Deaths and Marriages Registration Act 1996** in relation to the Register of Births, an extract from, or certified copy of, an entry in the Register of Adoptions relating to a person adopted under an adoption order made in Victoria.

S. 76(3)
amended by
No. 46/1998
s. 7(Sch. 1)

- (3) The Secretary shall not make an application under subsection (2) except in respect of an adopted person from whom or in respect of whom he has received an application for information under Part VI.

77 Index of births

S. 77(1)
amended by
No. 10244
s. 10.

- (1) The Registrar shall, without making a distinction between entries in the Register of Births and entries in the Adopted Children Register, make in the General Index of Births an entry of the necessary particulars of each entry made in the Adopted Children Register.

- (2) The index referred to in subsection (1) shall be open for search subject to the provisions of the **Births, Deaths and Marriages Registration Act 1996**.

S. 77(2)
amended by
No. 43/1996
s. 65(Sch.
item 1.4).

78 Application for information about birth of adopted person

S. 78
amended by
No. 10244
s. 10,
substituted by
No. 67/1987
s. 8.

- (1) If a person who is—
- (a) an adopted person; or
 - (b) an adoptive parent of an adopted person—
- makes application under the **Births, Deaths and Marriages Registration Act 1996** to the Registrar for an extract from or copy of an entry in the Register of Births relating to the birth of the adopted person, subsection (2) applies.
- (2) Unless subsection (3) or (4) applies, the Registrar must issue an extract or copy under the **Births, Deaths and Marriages Registration Act 1996** which, as far as is practicable, contains all of the items of information which are required to be included in an extract or copy issued to a person who is not an adopted person.
- (3) If the Registrar—
- (a) does not have available all the information referred to in subsection (2) which is required for the items; or
 - (b) considers that the information may be available only after a considerable delay—
- the Registrar must advise the applicant accordingly.

S. 78(1)
amended by
No. 43/1996
s. 65(Sch.
item 1.5(a)).

S. 78(2)
amended by
No. 43/1996
s. 65(Sch.
item 1.5(b)).

S. 78(4)(a)
amended by
No. 43/1996
s. 65(Sch.
item 1.5(c)).

S. 78(4)(b)
amended by
No. 43/1996
s. 65(Sch.
item 1.5(d)).

- (4) On being advised under subsection (3), the applicant may agree with the Registrar to the issue of either—
- (a) an extract or copy under the **Births, Deaths and Marriages Registration Act 1996**, which contains as much as possible of the information referred to in subsection (2); or
 - (b) a certificate under the **Births, Deaths and Marriages Registration Act 1996**.
- (5) If the Registrar and the applicant cannot reach agreement under subsection (4) and the applicant wishes to continue with the application, the Registrar must issue whichever of the documents referred to in subsection (4)(a) or (4)(b) the Registrar considers appropriate.
- (6) If within six months from the date of the application under subsection (1), the Registrar considers that it is possible for the Registrar to issue to the applicant—
- (a) an extract or copy under subsection (4)(a) or a certificate under subsection (4)(b), if such an extract, copy or certificate has not been previously issued to the applicant; or
 - (b) an extract or copy under subsection (4)(a) or a certificate under subsection (4)(b), if the extract, copy or certificate would contain more information than that previously issued to the applicant under subsection (4)(a) or (4)(b); or
 - (c) an extract or copy under subsection (2)—
- the Registrar must as soon as is practicable advise the applicant about which (if any) of the documents referred to in paragraph (a), (b) or (c) is then available for the applicant and if the

applicant requires, must issue the available document to the applicant (without any further fee being payable by the applicant).

- (7) If, after six months from the date of the application under subsection (1), the Registrar considers that it is not possible at that time for the Registrar to issue to the applicant any of the documents referred to in subsection (6)(a), (b) or (c), the Registrar must, as soon as is practicable, advise the applicant accordingly.
- (8) The fee for an application under this section must not exceed the relevant fee prescribed under the **Births, Deaths and Marriages Registration Act 1996**.

S. 78(8)
amended by
No. 43/1996
s. 65(Sch.
item 1.5(e)).

79 Place of birth

- (1) If an adopted person or an adoptive parent of an adopted person applies to the Registrar to add the place of birth of the adopted person—
- (a) to the face of a certificate referred to in section 78(4)(b); or
- (b) to the face of a copy previously issued by the Registrar of an entry from the Adopted Children Register—

S. 79
amended by
No. 10244
s. 10,
substituted by
No. 67/1987
s. 8.

which relates to the birth of the adopted person and is in the applicant's possession, subsection (2) applies.

- (2) If the information about the place of birth of the adopted person is available to the satisfaction of the Registrar, the Registrar must (without charging any fee) add the place of birth of the adopted person to the face of the certificate or copy of the entry and must certify as to the accuracy of that information.

- (3) If an adopted person or an adoptive parent of an adopted person applies to the Registrar to add the place of birth of the adopted person to the face of an extract from the Adopted Children Register which relates to the birth of the adopted person and is in the applicant's possession and the information about the place of birth of the adopted person is available to the satisfaction of the Registrar, the Registrar must re-issue (without charging any fee) the extract in a form which includes the place of birth of the adopted person.

S. 79A
inserted by
No. 67/1987
s. 8.

79A Adoption records

- (1) The Registrar has the management and control of any records concerning adoptions which are in the possession of the County Court, Supreme Court and Magistrates' Courts at the date of coming into operation of section 8 of the **Adoption (Amendment) Act 1987**.
- (2) For the purposes of sections 78 and 79, the Registrar may request from the Prothonotary of the Supreme Court, Registrar of the County Court and principal registrar of the Magistrates' Court that all records of those Courts concerning adoptions are given to the Registrar and those persons must ensure that the following records are given to the Registrar—
- (a) in the case of any court file relating to any time before the date of coming into operation of section 3(1), the entire file;
 - (b) in the case of any court file relating to any time after that date, the memorandum of the adoption order which must be sent to the Registrar in accordance with section 70.

S. 79A(2)
amended by
No. 57/1989
s. 3(Sch.
item 6.1).

(3) Despite subsections (1) and (2), the Prothonotary of the Supreme Court, Registrar of the County Court and principal registrar of the Magistrates' Court may—

S. 79A(3)
amended by
No. 57/1989
s. 3(Sch.
item 6.2).

- (a) have access to or obtain possession of the records in the Registrar's custody; and
- (b) keep in their possession any records concerning adoptions for as long as they require them for the purposes of any matter before that Court.

(4) If the Registrar requires any information for the purposes of section 78 or 79 and the records containing the information are not in the Registrar's possession, the Registrar may request the Prothonotary of the Supreme Court, Registrar of the County Court or principal registrar of the Magistrates' Court to conduct a reasonable search to locate any records held by that Court which may contain that information.

S. 79A(4)
amended by
No. 57/1989
s. 3(Sch.
item 6.3).

(5) If the Registrar obtains under this section any records of the Supreme Court, County Court or Magistrates' Court or any other relevant information from any other source, the Registrar must ensure on an application under section 78 or 79 which is relevant to those records—

S. 79A(5)
amended by
No. 57/1989
s. 3(Sch.
item 6.4).

- (a) that the records are added to the Register of Adoptions together with any other relevant documents which contain information which the Registrar considers to be evidence; and
- (b) that the prescribed particulars obtained from those records or documents are entered in the Adopted Children Register in the prescribed form and the necessary entries are placed in the appropriate indexes.

S. 79B
inserted by
No. 67/1987
s. 8.

79B Secretary may obtain information from Registrar

S. 79B(1)
amended by
No. 57/1989
s. 3(Sch.
item 6.5).

- (1) For the purposes of an application under Part VI a relevant authority may apply to the Registrar for copies of or information contained in any records of the County Court, Supreme Court or Magistrates' Court which are in the custody of the Registrar.
- (2) The Registrar must give to the relevant authority information in the possession or under the control of the Registrar to which an application under subsection (1) relates.

80 Discharge of order

S. 80(1)
amended by
No. 10244
s. 10.

- (1) Where an order for adoption is discharged, being an order—
 - (a) relating to a person—
 - (i) whose birth is registered in Victoria; or
 - (ii) an entry relating to whose previous adoption is entered in the Adopted Children Register; and
 - (b) a memorandum or copy of which is registered under this Division—the Registrar shall—
 - (c) delete the word "adopted" in the entry relating to the birth in the Register of Births or in the Adopted Children Register, as the case may be; and
 - (d) where the order relates to the name of the person, mark the entry in the Register of Births or Adopted Children Register with particulars of the order.

- (2) Where an order for adoption is discharged, being an order a memorandum or copy of which is registered under this Division, the Registrar, notwithstanding the deletion of the word "adopted" from the entry in the Register of Births or the Adopted Children Register, shall not issue an extract from, or copy of, that entry if the order for the discharge provides to that effect.

S. 80(2)
amended by
No. 10244
s. 10.

81 Correction of errors

The provisions of section 43 of the **Births, Deaths and Marriages Registration Act 1996** apply with respect to the Adopted Children Register.

S. 81
amended by
Nos 10244
s. 10, 43/1996
s. 65(Sch.
item 1.6).

Part VI—Access to information

Division 1—General

82 Definitions

In this Part, 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 the State but whose birth was registered in Victoria;

agency means an approved agency or an organization approved as a private adoption agency under the **Adoption of Children Act 1964**;

natural parent in relation to an adopted person means—

- (a) a person whose name is entered in the entry relating to the child in a register of births (whether in Victoria or in a place outside Victoria) as a parent of the person;
- (b) a man who is declared to be the father of the person under a declaration of paternity in force under section 10 of the **Status of Children Act 1974**, being a declaration a copy of which is filed under section 9(3) of that Act in the office of the Registrar;

S. 82 def. of
natural parent
amended by
Nos 10244
s. 10, 46/1998
s. 7(Sch. 1).

- (c) a man against whom an order has been made under section 10 or 12 of the **Maintenance Act 1965** in respect of the child, being an order a copy of which is filed in the office of the Registrar 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 under section 9(1) of the **Status of Children Act 1974** that acknowledges that he is the father of the person; or
- (e) unless there is evidence that the man is not the father of the person—a man who has lodged with the Secretary evidence that—
 - (i) an order has been made outside Victoria that, under section 8(5) of the **Status of Children Act 1974** is prima facie evidence that he is the father of the person;
 - (ii) he was at any time, liable under an order of the Family Court of Australia for the maintenance of the person; or
 - (iii) he has at any time been granted under an order of the Family Court of Australia, access to or custody or guardianship of the person—

and, in relation to an application under section 95, 96 or 103, includes a man who satisfies the Secretary that there is prima facie evidence that the man is the father of the person;

S. 82 def. of
*relevant
authority*
amended by
No. 46/1998
s. 7(Sch. 1).

relevant authority in relation to an application for information means—

- (a) the Secretary;
- (b) where the application relates to information contained in records in the possession or under the control of an approved agency—that approved agency; or
- (c) where the Secretary declares in writing that an approved agency is a relevant authority for the purposes of this Part for the time being or in relation to particular applications for information—an approved agency to which the declaration relates.

83 Restriction on access to reports and records

S. 83(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1)

(1) Except as provided in this Act—

- (a) records of or in the possession or under the control of the Secretary or an agency relating to an adoption negotiated or arranged by the Secretary or an agency or any part of such records; and
- (b) a report to a Court under section 15 or any corresponding previous enactment and the records of a Court of or relating to proceedings (other than an order or decision of a Court) under this Act or any corresponding previous enactment—

shall not be made available to, or be open for inspection by, any person.

(2) Where, by reason of subsection (1), a report to a Court is not to be made available or open for inspection, a copy of the report or of any part of it shall not be made available or be open for inspection notwithstanding that such a copy or

part may be contained in records from which information may be available under this Part.

- (3) Nothing in this section prevents the Secretary or an approved agency making available to a person who has made application to adopt a child any information referred to in paragraph (a) or (b) of section 84(2) that relates to the application by that person.

S. 83(3)
amended by
No. 46/1998
s. 7(Sch. 1)

84 Access to certain documents under the Freedom of Information Act 1982

- (1) An approved agency that is supported directly or indirectly by government funds or other assistance or over which the State is in a position to exercise control shall be deemed to be a prescribed authority for the purposes of the application of the **Freedom of Information Act 1982** in accordance with this section.
- (2) Subject to this section and to the **Freedom of Information Act 1982**, a person who, whether before or after the commencement of this Act, has made application to adopt a child to the Secretary, to an approved agency or to a private adoption agency within the meaning of the **Adoption of Children Act 1964** that, under this Act, is an approved agency, has a legally enforceable right under the **Freedom of Information Act 1982** to obtain access in accordance with that Act to a document of the Department of Health and Human Services or of the approved agency that—
- (a) is the application made by that person to the Secretary, approved agency or private adoption agency; or
- (b) contains matter in the nature of a report, opinion, advice or recommendation prepared by the Secretary or the principal officer of the agency or a record of consultation or

S. 84(2)
amended by
Nos 16/1987
s. 12(Sch. 2
item 1(d)),
46/1998
s. 7(Sch. 1),
32/2015
s. 4(2).

S. 84(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 84(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

deliberation that has taken place between any such persons in the course of, or for the purposes of, assessing the application.

- (3) A document to which subsection (2) applies, is not, by reason only that it contains matter to which paragraph (b) of that subsection applies, an exempt document for the purposes of the **Freedom of Information Act 1982**.

85 Records of adoptions

S. 85(1)
amended by
No. 46/1998
s. 7(Sch. 1).

- (1) The Secretary shall maintain and preserve records in respect of each adoption negotiated or arranged by or on behalf of the Secretary.

- (2) An approved agency shall—

(a) maintain records of each adoption negotiated or arranged by it; and

S. 85(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) in respect of each adoption negotiated and arranged by it, give to the Secretary details as prescribed of the parties to the application for the adoption order after the adoption order is made.

S. 85(2A)
inserted by
No. 67/1987
s. 9.

- (2A) In subsection (2)(b), the parties to the application include the adopted person, the natural parents of that person, the adoptive parent or parents and the person who made the report referred to in section 15.

S. 85(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) An agency, being an organization approved as a private adoption agency under the **Adoption of Children Act 1964** or any organization, body or person that arranged adoptions under the **Adoption of Children Act 1958** or any corresponding previous enactment may give to the Secretary records held by it of any adoption negotiated or arranged by it and in respect of which an adoption order was made before the commencement of this section.

- (4) The Secretary shall preserve records given to the Secretary under subsection (2) or (3).

S. 85(4)
amended by
No. 46/1998
s. 7(Sch. 1).

- (5) The regulations may prescribe the manner in which records shall be preserved for the purposes of this section.
- (6) A person shall not destroy, remove or conceal records referred to in this section.

Penalty applying to this subsection: 20 penalty units.

86 Secretary may obtain information from a Court

- (1) For the purposes of this Part, the Secretary may apply to a Court for such information from its records relating to proceedings as a result of which an adoption order was made by that Court as will enable the Secretary to seek or obtain information that, under this Part, the Secretary is permitted to give to a person who makes an application under this Part.
- (2) The Court shall give to the Secretary information in its possession or under its control to which an application under subsection (1) applies.

S. 86(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 86(2)
amended by
No. 46/1998
s. 7(Sch. 1).

87 Counselling services

- (1) A relevant authority shall not supply a document or information to an applicant under this Part unless the applicant has attended an interview with an approved counsellor.
- (2) Where a relevant authority receives an application under this Part, the relevant authority shall inform the applicant in writing of the place or places at which counselling services are available and that information cannot be supplied under this Part unless the applicant has attended an interview with an approved counsellor.

S. 87(3)
inserted by
No. 67/1987
s. 10.

- (3) This section does not apply if the relevant authority is satisfied that the adopted person and another person referred to in the original birth certificate relating to the adopted person have already exchanged information which may identify that natural parent or a relative of the adopted person.

88 Protection of privacy

A person shall not, under this Part, give to an applicant under this Part, and an applicant under this Part is not entitled to obtain, information relating to the personal affairs of a person (whether living or dead) other than the applicant or from which another person may be identified, whether directly or indirectly, except subject to and in accordance with this Part.

S. 89
amended by
Nos 23/1994
s. 118(Sch. 1
item 2.2),
97/2005
s. 182(Sch. 4
item 2.2),
13/2010
s. 51(Sch.
item 3.2).

89 Disclosure of medical information

Where, under this Part, information of a medical or psychiatric nature concerning an applicant under this Part or a natural parent or a relative or child of an applicant may be disclosed, a relevant authority may, if the relevant authority considers that the disclosure of the information to the applicant might be prejudicial to the physical or mental health or well-being of the applicant, determine not to disclose the information to the applicant personally but may disclose the information (without identifying a person, other than the applicant, to whom it relates) to a medical practitioner registered under the Health Practitioner Regulation National Law nominated by the applicant and approved by the relevant authority.

90 Secretary to provide information

(1) Where a relevant authority receives an application for information under this Part—

S. 90
amended by
No. 67/1987
s. 11(a).

(a) the relevant authority shall, subject to and in accordance with this Part—

(i) insofar as the information to which the application relates is contained in records in the possession or under the control of the relevant authority—
give the information to the applicant so far as, under this Part, the information may be given to the applicant; and

(ii) where the relevant authority is the Secretary (or any other relevant authority, subject to subsection (2)) and the information to which the application relates is not contained in records in the possession or under the control of the relevant authority—
request an agency, other body or a person from which or from whom the information may be available—

S. 90(1)(a)(ii)
amended by
Nos 67/1987
s. 11(b),
46/1998
s. 7(Sch. 1).

(A) to give the information to the Secretary; or

S. 90(1)(a)
(ii)(A)
amended by
No. 46/1998
s. 7(Sch. 1).

(B) where the applicant agrees and the request so states, give the information to the applicant, so far as, under this Part, the information may be given to the applicant—

and, where the information is given to the Secretary, give the information to the applicant so far as, under this Part, the information may be given to the applicant; and

- (b) insofar as the information to which the application relates is not contained in any such records, the relevant authority shall—
- (i) make such reasonable enquiries as in all the circumstances of the case ought reasonably to be made for the purposes of obtaining the information; and
 - (ii) upon obtaining the information, give it to the applicant so far as, under this Part, the information may be given to the applicant.

S. 90(2)
inserted by
No. 67/1987
s. 11(c),
amended by
Nos 43/1996
s. 65(Sch.
item 1.7),
46/1998
s. 7(Sch. 1).

- (2) For the purposes of subsection (1)(a)(ii), if an application for information referred to in that provision is an application for information about an adopted person, a relevant authority other than the Secretary may make a request under that provision to the Registrar for any information which is contained in entries in the Register of Births, Register of Deaths or Register of Marriages in the Register maintained under Part 7 of the **Births, Deaths and Marriages Registration Act 1996** about the natural parents or natural relatives (within the meaning of section 97) of the adopted person.

S. 90(3)
inserted by
No. 67/1987
s. 11(c),
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) The power of a relevant authority to make a request under subsection (2) does not limit the power of the Secretary to make that same type of request under subsection (1)(a)(ii).

Pt 6 Div. 1A
(Heading and
ss 90A, 90B)
inserted by
No. 25/2013
s. 5,
repealed by
No. 32/2015
s. 7.

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S. 90A
inserted by
No. 25/2013
s. 5,
repealed by
No. 32/2015
s. 7.

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S. 90B
inserted by
No. 25/2013
s. 5,
repealed by
No. 32/2015
s. 7.

Division 2—Persons entitled to birth certificates or information

91 Interpretation

In this Division, a reference to information about an adopted person is a reference to information about the adopted person or the natural parents or the relatives of the adopted person which the relevant authority is satisfied—

S. 91
amended by
No. 69/1989
s. 4.

- (a) is reasonably likely to be true; and
- (b) does not unreasonably disclose information relating to the personal affairs of a natural parent, a relative or any other person.

92 Access to birth certificates of adopted persons

- (1) Where an order under this Act for the adoption of a child whose birth was registered in Victoria is made in favour of—

S. 92(1)
amended by
Nos 10244
s. 10, 72/1997
s. 12(e),
68/2015
s. 14(1).

- (a) a spouse or domestic partner of a natural parent of the child;

S. 92(1)(a)
amended by
Nos 72/1997
s. 12(e),
68/2015
s. 14(1).

S. 92(1)(b)
amended by
Nos 72/1997
s. 12(e),
68/2015
s. 14(1).

(b) a person who, or whose spouse or domestic partner, is a relative of the child; or

(c) two persons who are relatives, or one of whom is a relative, of the child—

a person in whose favour such an order is made, the adopted person (whether before or after attaining the age of 18 years) or, where the order is made in favour of the spouse or domestic partner of a natural parent, the natural parent, may make application to the Registrar for the issue of an extract from, or certified copy of, the entry in the Register of Births relating to the adopted person.

S. 92(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) An adopted person who has attained the age of eighteen years may make application in the prescribed form to the Secretary—

(a) where the birth of the adopted person was registered in Victoria—for an extract from, or certified copy of, the entry in the Register of Births relating to the adopted person; or

S. 92(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) where the birth of the adopted person was not registered in Victoria—for a copy of an extract from, or certified copy of, the original birth certificate relating to the adopted person contained in records relating to the adoption of the person that are in the possession or under the control of the Secretary, an agency, another body or person or of the Court.

- (3) Where an order under this Act for the adoption of a child whose birth was not registered in Victoria is made in favour of—
- S. 92(3)
amended by
Nos 72/1997
s. 12(f),
46/1998
s. 7(Sch. 1),
68/2015
s. 14(2).
- (a) a spouse or domestic partner of a natural parent of the child;
- S. 92(3)(a)
amended by
Nos 72/1997
s. 12(f),
68/2015
s. 14(2).
- (b) a person who, or whose spouse or domestic partner is a relative of the child; or
- S. 92(3)(b)
amended by
Nos 72/1997
s. 12(f),
68/2015
s. 14(2).
- (c) two persons who are relatives, or one of whom is a relative, of the child—
- a person in whose favour such an order is made, the adopted person (whether before or after attaining the age of 18 years) or, where the order is made in favour of the spouse or domestic partner of a natural parent, the natural parent may make application in the prescribed form to the Secretary for a copy of an extract from, or certified copy of, the birth certificate relating to the adopted person contained in records relating to the adoption of the person that are in the possession or under the control of the Secretary, an agency, another body or person or of the Court.
- (4) Where the Secretary receives an application under paragraph (a) of subsection (2) together with the prescribed fee, the Secretary shall make application to the Registrar for the issue, whether to the Secretary or to the applicant, of an extract from, or certified copy of, the entry in the Register of Births relating to the applicant.
- S. 92(4)
amended by
Nos 10244
s. 10, 46/1998
s. 7(Sch. 1).

S. 92(5)
amended by
Nos 10244
s. 10,
43/1996
s. 65(Sch.
item 1.8).

(5) Upon application under subsection (1) or (4), the Registrar shall, subject to the same terms, conditions and regulations as to payment of fees or otherwise as are applicable under the **Births, Deaths and Marriages Registration Act 1996**, issue, in accordance with the application, an extract from, or certified copy of, the entry in the Register of Births relating to the person named in the application.

S. 92(6)
amended by
No. 10244
s. 10.

(6) The Registrar shall not issue an extract from an entry in the Register of Births under subsection (5) unless the extract is marked with the word "adopted".

S. 92(7)
amended by
No. 46/1998
s. 7(Sch. 1).

(7) Where the Secretary receives an application under paragraph (b) of subsection (2) or under subsection (3), the Secretary shall—

S. 92(7)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) where the copy to which the application relates is in the possession or under the control of the Secretary, give a copy to the applicant; or

S. 92(7)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) where the copy to which the application relates is in the possession or under the control of an agency, other body or person or the Court, request that agency, body, person or Court to give a copy to the Secretary or, where the request so states, to the applicant.

S. 93
substituted by
Nos 67/1987
s. 12(a),
69/1989 s. 5.

93 Adopted person's right to information at age eighteen

(1) An adopted person who has attained the age of 18 years may apply to a relevant authority for information about the adopted person, whether or not a natural parent or a natural relative (within the meaning of section 97) of the adopted person may be identified from that information.

- (2) If the information to which the application relates—
- (a) is not contained in records that are in the possession or under the control of a relevant authority; and
 - (b) is information from which, whether directly or indirectly, the whereabouts of a natural parent or a natural relative (within the meaning of section 97) of the adopted person may be ascertained—
- the relevant authority must not give the information to the applicant unless—
- (c) the relevant authority has obtained the agreement in writing of the person whose whereabouts would be disclosed; and
 - (d) if the agreement was given subject to any condition, the relevant authority has complied with the condition.
- (3) The relevant authority is not required to obtain the agreement of the person whose whereabouts would be disclosed if satisfied that—
- (a) the person is dead; or
 - (b) the relevant authority has made all enquiries that in the circumstances of the case ought reasonably to be made and the person cannot be found.

94 Adopted person's right to information under age eighteen

- (1) An adopted person who has not attained the age of eighteen years may make application to a relevant authority for—

S. 94(1)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) information about the adopted person (other than information from which the identity of either of the natural parents of the adopted person may be ascertained, whether directly or indirectly) from the records of the relevant authority, or, where the application is made to the Secretary, from the records of the Secretary, an agency, another body or a person; and

S. 94(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) subject to subsection (2), information from the records of the relevant authority, or, where the application is made to the Secretary, from the records of the Secretary, an agency, another body or a person, being information about the adopted person from which the identity of either of the natural parents of the adopted person may be ascertained.

S. 94(2)
amended by
No. 67/1987
s. 12(b).

- (2) An application for information referred to in paragraph (a) or (b) of subsection (1) shall be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent of the adopted person or the agreement in writing of the guardian of the adopted person (if the guardian is not an adoptive parent).
- (3) There shall not be given to an applicant under this section any information to which paragraph (b) of subsection (1) applies from which the identity of a natural parent of the applicant may be ascertained unless the relevant authority has obtained the agreement in writing, or evidence of the death of, that natural parent.

95 Natural parent's right to information about adopted person under age eighteen

- (1) A natural parent of an adopted person who has not attained the age of eighteen years may make application to a relevant authority for—

- (a) information about the adopted person (other than information from which whether directly or indirectly, the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained); or
 - (b) information about the adopted person from which the adoptive parents of the person may be identified or the whereabouts of the adopted person ascertained.
- (2) There shall not be given to an applicant under this section—
- (a) any information to which paragraph (b) of subsection (1) applies unless the relevant authority—
 - (i) has considered any wishes expressed by the adopted person; and
 - (ii) has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death of, each adoptive parent of the adopted person or of the guardian of the adopted person (if the guardian is not an adoptive parent of the adopted person); or
 - (b) any part of that information where the relevant authority determines that, in order to give effect to any wishes of the adopted person or conditions imposed by an adoptive parent, that part of the information ought not to be disclosed.

S. 95(2)(a)(ii)
amended by
No. 67/1987
s. 13(a).

96 Natural parent's right to information about adult adopted person

- (1) A natural parent of an adopted person who has attained the age of eighteen years may make application to a relevant authority for—

- (a) information about the adopted person (other than information from which whether directly or indirectly the adoptive parents of the person may be identified or the whereabouts of the adopted person ascertained); or
- (b) information about the adopted person from which the adoptive parents of the person may be identified or the whereabouts of the adopted person ascertained.

S. 96(2)
substituted by
No. 25/2013
s. 6,
repealed by
No. 32/2015
s. 8.

* * * * *

S. 96A
inserted by
No. 69/1989
s. 6.

96A Person's right to information about parent's adoption

- (1) In this section—

natural child in relation to an adopted person means a son or daughter of the adopted person where the relationship is of the whole blood;

natural relative has the same meaning as in section 97.

- (2) A person who—

- (a) has attained the age of 18 years; and
- (b) is the natural child of an adopted person—

may apply to a relevant authority for information about the adopted person, whether or not a natural parent or a natural relative of the adopted person may be identified from the information.

(3) If the information to which the application relates is information from which, whether directly or indirectly, the identity of a natural parent or natural relative of the adopted person may be ascertained, the relevant authority must notify the adopted person in writing that it intends to give that information to the applicant.

(4) If the information to which the application relates—

- (a) is not contained in records that are in the possession or under the control of a relevant authority; and
- (b) is information from which, whether directly or indirectly, the whereabouts of a natural parent or natural relative of the adopted person may be ascertained—

the relevant authority must not give the information to the applicant unless—

- (c) the relevant authority has obtained the agreement in writing of the person whose whereabouts would be disclosed; and
 - (d) if the agreement was given subject to any condition, the relevant authority has complied with the condition.
- (5) The relevant authority is not required to obtain the agreement of the person whose whereabouts would be disclosed if satisfied that—
- (a) the person is dead; or
 - (b) the relevant authority has made all enquiries that in the circumstances of the case ought reasonably to be made and the person cannot be found.

97 Natural relative's right to information

- (1) In this section, *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.
- (2) A natural relative of an adopted person may make application to a relevant authority for—
 - (a) information about the adopted person (other than information from which (whether directly or indirectly) the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained); or
 - (b) information about the adopted person from which the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained.
- (3) There shall not be given to an applicant under subsection (2)—
 - (a) any information to which paragraph (b) of that subsection applies unless the relevant authority—
 - (i) is satisfied that circumstances exist which make it desirable so to do;
 - (ii) where the adopted person has attained the age of eighteen years—has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death, of the adopted person; and
 - (iii) where the adopted person has not attained the age of eighteen years—
 - (A) has considered any wishes expressed by the adopted person, or where the adopted person has

S. 97(3)(a)(iii)
amended by
No. 67/1987
s. 13(b).

died, has obtained evidence of the death of the adopted person; and

(B) has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death of, each adoptive parent of the adopted person or of the guardian of the adopted person (if the guardian is not an adoptive parent of the adopted person); or

(b) any part of the information to which paragraph (b) of that subsection applies where the relevant authority determines that, in order to give effect to any wishes of the adopted person or conditions imposed by the adopted person or of an adoptive parent, that part of the information ought not to be disclosed.

98 Adoptive parent's right to information

- (1) An adoptive parent of an adopted person may make application to a relevant authority for—
 - (a) information about the adopted person (other than information from which a natural parent of the adopted person may be identified whether directly or indirectly); or
 - (b) information about the adopted person from which a natural parent of the adopted person may be identified.
- (2) There shall not be given to an applicant under subsection (1)—
 - (a) any information to which paragraph (b) of that subsection applies from which a natural parent may be identified unless the relevant authority has obtained the agreement in writing, which may be given subject to

S. 98(2)(aa)
inserted by
No. 67/1987
s. 14.

- conditions, or evidence of the death, of that natural parent; or
- (aa) if the adopted person has attained the age of 18 years, any information to which paragraph (b) of that subsection applies, unless the relevant authority—
- (i) has notified the adopted person in writing of the relevant authority's intention to give the information; or
 - (ii) has evidence of the death of the adopted person; or
- (b) any part of that information where the relevant authority determines that, in order to give effect to conditions imposed by a natural parent, that part of the information ought not to be disclosed.

99 Application to Court

S. 99(1)(a)
amended by
No. 25/2013
s. 7.

- (1) Where a person—
- (a) is unable to obtain information to which section 94(1)(b), 95(1)(b), 97(2)(b) or 98(1)(b) applies because a person whose agreement in writing is required refuses to agree in writing, has not agreed in writing or has not been found; or
 - (b) being a person entitled to make application under a preceding section of this Division desires to obtain information which the person is not entitled to obtain under any other provision of this Part—

the first-mentioned person may make application to the County Court for an order permitting the applicant to obtain that information.

- (2) An application under subsection (1) shall be accompanied by a report from an approved counsellor.

- (3) Where an application is made under subsection (1), the County Court, if it is satisfied—
- (a) where the application is made because a person has not agreed in writing, and has not refused to agree in writing, to the giving of the information—that the relevant authority has taken reasonable steps to obtain that agreement;
 - (b) where the application is made because a person has refused to agree in writing to the giving of the information—that it is in the best interests of the applicant that the information be given;
 - (c) where the application relates to information which the applicant is not entitled to obtain under any other provision of this Part—that it is in the best interests of the applicant that the information be given, notwithstanding that the information relates to the personal affairs of another person or that another person may be identified from the information; and
 - (d) after consideration of the report of the approved counsellor, that special circumstances exist which make it desirable so to do—

may make an order directing—

- (e) a relevant authority to give such information as is specified in the order to the applicant; or
- (f) a body or person to give such information as is specified in the order to the Secretary for transmission to the applicant or, where the order so states and the agency, body or person agrees, to the applicant.

**S. 99(3)(f)
amended by
No. 46/1998
s. 7(Sch. 1).**

- (4) The County Court shall not make an order under subsection (3) relating to information to the giving of which a person has not agreed in writing, or has refused to agree in writing, unless the County Court has given that person an opportunity to be heard in circumstances in which the identity of the person is not disclosed to the applicant.

100 Other person's right to information

- (1) A person who is not entitled to make application under a preceding provision of this Division may make application to the County Court for information about an adopted person.
- (2) An application under subsection (1) shall be accompanied by a report from the Secretary or from an approved counsellor.
- (3) Where an application is made under subsection (1) the County Court may, if it is satisfied that circumstances exist which make it desirable so to do, and after consideration of the report under subsection (2), make an order directing—

S. 100(2)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 100(3)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) the Secretary; or

(b) an agency, body or person—

to give such information as is specified in the order to the applicant.

Division 3—Adoption Information Service

101 Definition

In this Division *adopted person* includes a person who has been adopted, whether before or after the commencement of this section, in a place outside Victoria.

102 Adoption Information Service

There shall be an Adoption Information Service established within the Department of Health and Human Services and within each approved agency which shall—

S. 102
amended by
Nos 16/1987
s. 12(Sch. 2
item 1(e)),
46/1998
s. 7(Sch. 1),
32/2015
s. 4(2).

- (a) advise persons with respect to the provisions of this Part;
- (b) make arrangements for the provision of counselling in relation to applications under this Part;
- (c) receive applications for information under this Part;
- (d) subject to and in accordance with this Part, facilitate the provision of information to a person whose name is entered in the Adoption Information Register maintained under section 103; and
- (e) assist a person whose name is entered in that register to obtain information about an adopted person who has been adopted, whether before or after the commencement of this section, in a place outside Victoria and whose birth was not registered in Victoria, or about an adoptive parent or a natural parent of such an adopted person, being information of a kind that, if the adopted person had been adopted in Victoria, the person may have been able to obtain under Division 2.

S. 102(c)
amended by
No. 72/1997
s. 13(d).

103 Adoption Information Register

- (1) The Secretary and the principal officer of each approved agency shall establish and maintain an Adoption Information Register.

S. 103(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 103(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) An approved agency shall forward to the Secretary a copy of the particulars relating to each person in respect of whom an entry is made in the Adoption Information Register maintained by the agency and the Secretary shall enter those particulars in the Adoption Information Register maintained by the Secretary.

S. 103(3)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) There shall be entered in the Adoption Information Register—

(a) the names and addresses of persons, including—

(i) adopted persons;

(ii) relatives of adopted persons;

(ia) natural children of adopted persons;

S. 103(3)
(a)(ia)
inserted by
No. 69/1989
s. 8.

(iii) natural parents of adopted persons; and

(iv) adoptive parents of adopted persons—

who have in writing requested the Secretary or the principal officer of the approved agency so to enter their names and addresses; and

(b) in relation to each person so registered, the wishes of the person in relation to—

(i) obtaining information about, or meeting or providing information; and

(ii) whether or not to release the name, address or any information about the person—

to another person whose name is, or may in the future be, entered in the Adoption Information Register.

(4) The name and address of a person whose name is entered in the Adoption Information Register shall not be disclosed to any person (except in accordance with this Act) unless the person has given consent in writing to the disclosure of the name and address.

(5) The Secretary shall from time to time—

- (a) publicise the establishment of the Adoption Information Register; and
- (b) invite adopted persons and natural parents to record their wishes in relation to obtaining information about, or meeting or providing information to, another person whose name is, or may be entered in the Adoption Information Register.

S. 103(5)
amended by
No. 46/1998
s. 7(Sch. 1).

(6) The Secretary shall, upon the request of a person whose name is entered in the Adoption Information Register, amend or cancel the entry relating to that person.

S. 103(6)
amended by
No. 46/1998
s. 7(Sch. 1).

(7) The register maintained by the Secretary under section 66A of the **Adoption of Children Act 1964** shall be incorporated in and form part of the Adoption Information Register maintained under this section.

S. 103(7)
amended by
No. 46/1998
s. 7(Sch. 1).

104 Secretary to give assistance

The Secretary shall make such reasonable enquiries as in all the circumstances of the case ought reasonably to be made for the purpose of assisting a person who seeks the assistance of the Adoption Information Service under section 102(e).

S. 104
amended by
No. 46/1998
s. 7(Sch. 1).

Part VII—Miscellaneous

Division 1—General

S. 105
amended by
Nos 31/1994
s. 3(Sch. 1
item 1),
46/1998
s. 7(Sch. 1).

105 Financial assistance

The Secretary may, out of moneys available for that purpose, make grants or provide other financial or other assistance on such terms and conditions as the Secretary determines to a person or persons with whom a child of a prescribed class has been placed for the purposes of adoption or to an adoptive parent, or adoptive parents, of a child of a prescribed class.

106 Separate representation of child

- (1) Proceedings under this Act relating to an application for an order—
 - (a) for adoption of a child where that application is contested;
 - (b) dispensing with the consent of a person to the making of an order for adoption of a child; or
 - (c) discharging an order for adoption—shall not be instituted or continued unless the child is separately represented in the proceedings.
- (2) Where, in any other proceedings under this Act affecting a child, it appears to the Court that the child ought to be separately represented, the Court may, of its own motion or on the application of the child, the Secretary, the principal officer of an approved agency or of any other organization concerned with the welfare of children or of any other person, order that the child be separately represented and the Court may make such other orders as it thinks necessary for the purpose of securing that separate representation.

S. 106(2)
amended by
No. 46/1998
s. 7(Sch. 1).

107 Hearings to be in camera

No. 7147 s. 60.

- (1) An application under this Act shall not be heard in open court and persons who are not parties to the proceedings or their legal practitioners or representatives shall, except as otherwise directed by the Court, be excluded during the hearing of such an application.

S. 107(1)
amended by
No. 35/1996
s. 453(Sch. 1
item 4).

- (1A) Subsection (1) does not exclude a person referred to in section 19(9) or their legal practitioners or representatives from the hearing of an application for discharge of an adoption order.

S. 107(1A)
inserted by
No. 32/2000
s. 17.

- (2) The Court may, at the hearing of an application under this Act—

- (a) order a child to leave the room or other place in which the Court is hearing the application at any time during the hearing if it is of opinion that such a direction should be given in the interests of the child; and
- (b) order any person to leave the room or other place during the examination of a witness.

108 Secretary may appear at hearings

No. 7147 s. 63.

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

S. 108
amended by
No. 46/1998
s. 7(Sch. 1).

109 Costs

No. 7147 s. 64.

In proceedings under this Act, the Court shall not make orders as to costs or security for costs unless the Court is satisfied that special circumstances exist which make it desirable so to do.

No. 7147 s. 65.
S. 110
amended by
No. 46/1998
s. 7(Sch. 1).

110 Judicial notice of signatures

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 the Secretary, or the corresponding office in another State or in a Territory or of any delegate of such a person, appearing on a document and of the fact that at the time the document was signed by the person, the person held, or was acting in, that office.

No. 7147 s. 66.
S. 111
amended by
No. 57/1989
s. 3(Sch.
item 6.6).

111 Certified copies etc. of adoption orders to be evidence

In any proceedings in any Court—

- (a) a certified copy of an adoption order made by any Court (whether in Victoria or elsewhere) or a certified extract giving particulars of any such order and purporting to be signed by the proper officer of the Court which made the order; or
- (b) a certified copy of an entry in any public official record of the adoption of children (whether kept in Victoria or elsewhere) or a certificate or extract giving particulars of any such entry and purporting to be signed by the person having the custody of such record—

shall be prima facie evidence of the making of the order and of the facts stated therein.

112 Fees for assessment of applicants for adoption of child outside Australia

S. 112(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
32/2000
s. 7(4).

- (1) Where an application is made by a person or persons to the Secretary or the principal officer of an approved agency or accredited body for a report relating to the suitability of the applicant or applicants as a person or persons—
 - (a) to adopt a non-citizen child; or

(b) to adopt a child in a place outside Australia—

(whether or not the child is identified) the Secretary or principal officer may, in the discretion of the Secretary or principal officer, make the report and require payment by the applicant or applicants of a fee not exceeding the amount prescribed for the purposes of this section in relation to applications of that class.

- (2) Where a fee has been paid under subsection (1) and, before the report is made, the applicant or applicants give notice in writing to the Secretary or principal officer that the applicant or applicants is not, or are not, proceeding with a proposal to adopt a non-citizen child or a child in a place outside Australia, the Secretary or principal officer may, in the discretion of the Secretary or principal officer, refund the whole or a part of the fee to the applicant or applicants.

S. 112(2)
amended by
No. 46/1998
s. 7(Sch. 1).

113 Waiver of fees

The Secretary or the principal officer of an approved agency or accredited body may waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this Act to the Secretary or the principal officer, as the case may be.

S. 113
amended by
Nos 46/1998
s. 7(Sch. 1),
32/2000
s. 7(4).

114 Registrar to give notices concerning Aboriginal children

- (1) Where a memorandum was sent to the Registrar under section 70(2) in relation to the adoption of a child, the Registrar shall, on or within the period of 28 days after the adopted child attains the age of twelve years, give notice in writing—
- (a) to the Aboriginal agency (if any) named in the memorandum or, where it has ceased to exist, to such other agency (if any) as is

S. 114(1)
amended by
No. 10244
s. 10.

prescribed for the purposes of this section;
and

S. 114(1)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) to the Secretary—

stating that the adopted child has attained the age
of twelve years.

S. 114(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) Where the Secretary receives a notice under
subsection (1), the Secretary shall take reasonable
steps to ensure that notice is given—

(a) to the adopted child; and

(b) to the adoptive parents of the adopted child
or, where they cannot be found, to some
other person in whose care the child is for
the time being—

to the effect that the adopted child may be entitled
to certain rights and privileges that exist for the
benefit of the child.

115 Arrangements for adoption of children outside Australia

S. 115(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) Arrangements for or towards or with a view to the
adoption in a country outside Australia of a child
present in Victoria may be made by or on behalf
of the Secretary or by or on behalf of an approved
agency.

S. 115(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) The Secretary or an approved agency shall not
make arrangements under subsection (1) except
with a prescribed person or prescribed
organization or a person or organization included
in a prescribed class of persons or organizations,
being a person or organization resident in a
country outside Australia that makes arrangements
for the adoption of children.

(3) Where—

S. 115(3)
amended by
No. 46/1998
s. 7(Sch. 1).

(a) the Secretary or the principal officer of an approved agency is the guardian of a child in respect of whom arrangements are being made under this section; and

S. 115(3)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

(b) under those arrangements, another person will become the guardian of the child upon renunciation of guardianship by the Secretary or principal officer—

S. 115(3)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

the Secretary or principal officer may renounce guardianship of the child.

(4) Nothing in this section prevents the doing of anything required or authorised to be done by or under the Hague Convention.

S. 115(4)
inserted by
No. 32/2000
s. 7(5).

Division 2—Offences

116 Territorial application of Part

No. 7147 s. 44.

This Part does not apply in respect of acts occurring outside Victoria, but, unless otherwise expressly provided, does apply in respect of acts done in Victoria in relation to adoption of children in, or children adopted in, any other State or a Territory or a country outside the Commonwealth and the Territories.

117 Taking away etc. adopted child by natural parent

No. 7147 s. 45.

Any person who was the father or mother or a guardian of a child but is not, by reason of an adoption of the child, to be treated in law as the father or mother or a guardian of the child who takes, leads, entices, or decoys the child away or detains the child, with intent to deprive the adoptive parent or adoptive parents of the child shall be guilty of an offence and liable to a penalty

S. 117
amended by
No. 69/1989
s. 7(1).

of not more than 25 penalty units or to imprisonment for a term of not more than 6 months or both.

No. 7147 s. 46.
S. 118
amended by
No. 69/1989
s. 7(1).

118 Harboursing child taken from adoptive parents

Any person who receives or harbours 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 section 117, shall be guilty of an offence and liable to a penalty of not more than 25 penalty units or to imprisonment for a term of not more than 6 months or both.

No. 7147 s. 47.

119 Payments in consideration of adoptions etc.

S. 119(1)
amended by
No. 69/1989
s. 7(3).

- (1) Subject to this section, any person who (whether before or after the birth of the child concerned) makes, gives or receives, or agrees 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 the child;
- (c) the transfer of the possession or custody of a child with a view to the adoption of the child; or
- (d) the making of arrangements with a view to the adoption of a child—

shall be guilty of an offence and liable—

S. 119(1)(e)
inserted by
No. 69/1989
s. 7(3).

- (e) in the case of a body corporate, to a penalty of not more than 500 penalty units; or

S. 119(1)(f)
inserted by
No. 69/1989
s. 7(3).

- (f) in any other case, to a penalty of not more than 100 penalty units or to imprisonment for not more than 2 years or both.

(2) Subsection (1) 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 or under the law of another country—

(a) a payment of legal expenses;

(b) a payment of fees authorized under section 112 or under the regulations;

(c) a payment made by the adoptive parent or adoptive parents, with the approval in writing of the Secretary 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;

S. 119(2)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

(d) a payment by the Secretary made in accordance with section 105; or

S. 119(2)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

(e) any other payment or reward authorized by the Secretary or by the Court.

S. 119(2)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

(3) Subsection (1) does not apply to or in relation to a payment or reward in connexion with an adoption or proposed adoption under the law of another State or of a Territory if the making of the payment or the giving of the reward or any agreement so to do would have been lawful if it had taken place in that State or that Territory.

No. 7147 s. 48.

S. 120(1)
amended by
No. 69/1989
s. 7(6).

120 Restrictions on advertising

- (1) Subject to this section, any person who publishes, or causes 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—

shall be guilty of an offence and liable—

S. 120(1)(d)
inserted by
No. 69/1989
s. 7(6).

- (d) in the case of a body corporate, to a penalty of not more than 1000 penalty units; or

S. 120(1)(e)
inserted by
No. 69/1989
s. 7(6).

- (e) in any other case, to a penalty of not more than 100 penalty units or to imprisonment for not more than 2 years or both.

S. 120(2)
amended by
Nos 69/1989
s. 9, 46/1998
s. 7(Sch. 1).

- (2) Subsection (1) shall not apply in relation to an advertisement or other matter that has been approved by the Secretary or by the principal officer of an approved agency, whether or not any person referred to in subsection (1) may be identified.

S. 121
substituted by
No. 69/1989
s. 10.

121 Restriction on publication of identity of parties

- (1) In this section, *party to an adoption*, in relation to a consent to an adoption given or dispensed with or an application made under this Act or under a law of another State or of a Territory for the adoption of a child or for an order declaring the validity of a foreign adoption or in relation to a proposed adoption of a child, includes—

- (a) the child; and
 - (b) the natural parents of the child; and
 - (c) the applicants for the order or the adoptive parents; and
 - (d) the guardians of the child (except guardians appointed under this Act or any corresponding previous enactment or under an Act of another State or of a Territory corresponding to the provisions of this Act); and
 - (e) persons who have been approved by the Secretary or principal officer of an approved agency as fit and proper persons to adopt a child and with whom a child is or has at any time been placed with a view to adoption.
- (2) At any time other than the prohibited period, a person must not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, any matter that identifies a person as, or is reasonably likely to enable any person to be identified as, a party to an adoption unless the last-mentioned person has given consent to the publication.
- Penalty: in the case of a body corporate,
1000 penalty units;
in any other case, 100 penalty units or imprisonment for 2 years.
- (3) For the purposes of subsection (2), if the person is an adopted child who has attained the age of 10 years but is under the age of 18 years, consent to publication must be given by the child as well as by the child's parent or guardian on behalf of the child.

S. 121(1)(e)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) During the prohibited period, a person must not publish, or cause to be published, in a newspaper or periodical, or by means of broadcasting or television, any matter that identifies a person as, or is reasonably likely to enable any person to be identified as, a party to an adoption unless the last-mentioned person has given consent to the publication and the Court has given permission under subsection (6).

Penalty: in the case of a body corporate,
1000 penalty units;
in any other case, 100 penalty units or
imprisonment for 2 years.

- (5) In this section *prohibited period* in relation to the adoption or proposed adoption of a child means the period from—

(a) the earliest of the following—

- (i) the making of the application for the adoption;
- (ii) the making of an application for an order under section 43(4);
- (iii) the time when the Secretary or principal officer of an approved agency (as the case may be) becomes the guardian of the child under section 46 or 47; or

(b) in the case of an application for an order under section 69, the time when the application is made; or

(c) in the case of a child who is a non-citizen child, the time when the person who, under the Immigration (Guardianship of Children) Act 1946 of the Commonwealth as amended and in force for the time being becomes the guardian of the child—

S. 121(5)(a)(iii)
amended by
No. 46/1998
s. 7(Sch. 1).

until the final order of the Court on the application or, if an order is not made by the Court, guardianship ceases.

- (6) The Court may, in exceptional circumstances, by order permit the publication of the name of any party to the adoption.
- (7) This section does not apply to the publication by or on behalf of a person of information obtained by that person under Part VI.

122 Penalty for making unauthorized arrangements

No. 7147 s. 50.

- (1) Any person who, without being authorized in writing for the purpose by the Secretary or the principal officer of an approved agency—
 - (a) transfers or causes to be transferred the possession, custody or control of a child to some other person or persons with a view to the adoption of the child by such person or persons; or
 - (b) receives possession, custody or control of a child with a view to adopting the child—shall be guilty of an offence and liable—
 - (c) in the case of a body corporate, to a penalty of not more than 500 penalty units; or
 - (d) in any other case, to a penalty of not more than 100 penalty units or to imprisonment for not more than 2 years or both.
- (2) The provisions of subsection (1) do not apply to any arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by a spouse or domestic partner of a parent of the child or by a relative, or a relative and the spouse or domestic partner of the relative, of the child.

S. 122(1)
amended by
Nos 69/1989
s. 7(4),
46/1998
s. 7(Sch. 1).

S. 122(1)(c)
inserted by
No. 69/1989
s. 7(4).

S. 122(1)(d)
inserted by
No. 69/1989
s. 7(4).

S. 122(2)
amended by
Nos 72/1997
s. 12(g),
68/2015 s. 15.

123 Agency etc. to comply with request for information

S. 123(1)
amended by
Nos 3/1986
s. 4(g),
46/1998
s. 7(Sch. 1).

- (1) Where the Secretary requests an approved agency or other body or a person to give information to the Secretary or to another person under Part VI, the approved agency, other body or person shall comply with the request so far as it or the person is able to do so.
- (2) Where an approved agency, other body or person has information to which a request made to the agency, body or person under subsection (1) relates, the agency, body or person shall comply with the request within the prescribed period after the request is made.

Penalty: 10 penalty units.

No. 7147 s. 51.
S. 124
amended by
No. 69/1989
s. 7(1).

124 False statements

Any person who, whether orally or in writing, wilfully makes a false statement for the purposes of or in connexion with a proposed adoption or any other matter under this Act shall be guilty of an offence and liable to a penalty of not more than 25 penalty units or to imprisonment for a term of not more than 6 months or both.

No. 7147 s. 52.
S. 125
amended by
No. 69/1989
s. 7(1).

125 Personation

Any person who personates or falsely represents himself to be a person whose consent to the adoption of a child is required by this Act or by the law of another State or of a Territory shall be guilty of an offence and liable to a penalty of not more than 25 penalty units or to imprisonment for a term of not more than 6 months or both.

126 Presenting forged consent etc.

Any person who presents, or causes 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 knowing—

- (a) that the signature is or was obtained by fraud or duress; or
- (ab) that the document is false within the meaning of section 83A(6) of the **Crimes Act 1958**; or
- (b) that the instrument has been altered after it has been signed (otherwise than by the person signing it)—

shall be guilty of an offence and liable—

- (c) in the case of a body corporate, to a penalty of not more than 500 penalty units; or
- (d) in any other case, to a penalty of not more than 100 penalty units or to imprisonment for not more than 2 years or both.

No. 7147 s. 53.

S. 126
amended by
No. 69/1989
ss 7(4),
11(1)(f).

S. 126(a)
amended by
No. 69/1989
s. 7(5)(a).

S. 126(ab)
inserted by
No. 69/1989
s. 7(5)(b).

S. 126(c)
inserted by
No. 69/1989
s. 7(4).

S. 126(d)
inserted by
No. 69/1989
s. 7(4).

127 Improperly witnessing consent to adoption

A person shall not subscribe a name as a witness to the signature of a person to an instrument of consent to the adoption of a child (whether under this Act or under the law of another State or of a Territory) except in accordance with Division 3 of Part II.

Penalty: 25 penalty units or imprisonment for 6 months.

No. 7147 s. 54.

S. 127
amended by
No. 69/1989
s. 7(2).

S. 127A
inserted by
No. 25/2013
s. 8,
repealed by
No. 32/2015
s. 9.

* * * *

No. 7147 s. 55.

128 Penalty

Any person guilty of an offence against this Part for which no penalty is expressly provided shall be liable to a penalty of not more than 25 penalty units or to imprisonment for a term of not more than six months.

No. 7147 s. 56.

129 Authority to prosecute

Proceedings for an offence against this Act or against the regulations shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

Pt 7 Div. 2A
(Heading and
s. 129A)
inserted by
No. 10155
s. 80(1).

Division 2A—Application for review

S. 129A
inserted by
No. 10155
s. 80(1),
amended by
No. 72/1997
s. 10,
substituted by
No. 52/1998
s. 311(Sch. 1
item 3),
amended by
No. 46/1998
s. 7(Sch. 1).

129A Review by Victorian Civil and Administrative Tribunal

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a decision of—
 - (a) the Secretary or a principal officer of an approved agency—
 - (i) refusing to approve a person as a fit and proper person to adopt a child; or
 - (ii) deferring the making of a decision to refuse or approve a person as a fit and proper person to adopt a child; or

- (iii) revoking the approval of a person to adopt a child; or
 - (b) the Secretary—
 - (i) refusing to approve an organisation as an agency; or
 - (ii) revoking or suspending for a specified period the approval of an agency; orrefusing to renew an approval of an agency; or
 - (c) the State Central Authority—
 - (i) refusing to accredit a body as an accredited body; or
 - (ii) suspending or revoking the accreditation of an accredited body; or
 - (iii) refusing to renew the accreditation of an accredited body.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 129A(1)(b)
amended by
No. 32/2000
s. 7(6).

S. 129A(1)(c)
inserted by
No. 32/2000
s. 7(6).

Division 3—Regulations

No. 7147 s. 67.

130 Regulations

The Governor in Council may make regulations prescribing all matters which by this Act are authorized or required to be prescribed for the purposes of this Act and, in particular, making provision for or in relation to—

- (a) matters of practice or procedure in or in connexion with consents to be used for the purposes of this Act;
- (b) the forms to be used for the purposes of this Act;
- (c) requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children;
- (d) the qualifications and experience of persons engaged in making arrangements with a view to the adoption of children and standards and procedures to be observed in providing any service to the public in relation thereto;
- (e) notifying any change in the address or in the management or control of approved agencies and making returns in relation to the conduct of the business of approved agencies;
- (f) factors to be considered in the placement of children for the purposes of adoption under this Act;
- (g) the keeping of registers by the Secretary or the principal officer of an approved agency of persons approved by the Secretary or principal officer as fit and proper persons to adopt children;

S. 130(g)
amended by
No. 46/1998
s. 7(Sch. 1).

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|---|--|
| (h) fees to be paid to the Secretary or to the principal officer of an approved agency by persons who apply for the inclusion of their names on a list of persons seeking approval for inclusion of their names in a register kept under regulations made under paragraph (g); | S. 130(h)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (i) fees to be paid by an applicant or applicants for any application under this Act to the Secretary or to an approved agency to cover administrative and other expenses in any case where the Secretary or principal officer prepares documents or provides copies of documents relating to the application on behalf of the applicant or applicants; | S. 130(i)
amended by
No. 46/1998
s. 7(Sch. 1). |
| (j) fees to be paid for applications under Part VI or for information given to an applicant under that Part; | |
| (k) exempting persons included in particular classes of persons from liability to pay all or any fees prescribed under paragraph (h), (i) or (j); and | S. 130(k)
amended by
No. 10155
s. 80(2)(a). |
| (l) all matters that are necessary or convenient for giving effect to the Hague Convention, including— | S. 130(l)
repealed by
No. 10155
s. 80(2)(b),
new s. 130(l)
inserted by
No. 32/2000
s. 7(7). |
| (i) criteria for the accreditation of accredited bodies; | |
| (ii) a code of conduct for an accredited body and its staff members; | |
| * * * * * | S. 130(m)
repealed by
No. 10155
s. 80(2)(b). |
| (n) penalties, not exceeding 5 penalty units, for offences against the regulations. | |

Pt 7 Div. 4
(Heading and
s. 131)
inserted by
No. 72/1997
s. 11.

Division 4—Transitional provisions

S. 131
inserted by
No. 72/1997
s. 11.

131 Transitional for applications

Section 10A does not apply to a person or persons who have applied for an adoption order immediately before the commencement of section 5 of the **Disability Services and Other Acts (Amendment) Act 1997**.

S. 132
inserted by
No. 32/2015
s. 10.

132 Transitionals—Adoption Amendment Act 2015

(1) In this section—

commencement day means the day on which the **Adoption Amendment Act 2015** comes into operation;

contact statement has the same meaning as it had in section 4(1) as in force immediately before the commencement day;

relevant authority has the same meaning as in section 82.

- (2) On and after the commencement day, a contact statement that is in force immediately before that day, is taken to be in force for the period that it would have continued to be in force had section 90B(1) not been repealed.
- (3) A contact statement that is taken to be in force on and after the commencement day ceases to have effect if—
- (a) the adopted person who made the contact statement revokes that contact statement by notice in writing given to the Secretary; or
 - (b) the adopted person dies.

- (4) On and after the commencement day, a relevant authority must not give an applicant referred to in section 96(1) any information referred to in paragraph (b) of that subsection if the adopted person has specified the applicant in a contact statement that is in force, unless the relevant authority has disclosed the adopted person's wishes stated in the contact statement about contact with the applicant.
- (5) Proceedings for an offence against section 127A, which was repealed by the **Adoption Amendment Act 2015**, must not be commenced on or after the commencement day, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

133 Transitional—Adoption Amendment (Adoption by Same-Sex Couples) Act 2015

S. 133
inserted by
No. 68/2015
s. 16.

An application for an adoption order that is made before the day on which section 7 of the **Adoption Amendment (Adoption by Same-Sex Couples) Act 2015** commences but is not determined by the Court before that day is to be determined in accordance with this Act as in force immediately before that day.

Sch.
substituted as
Sch. 1 by
No. 32/2000
s. 8.

Schedule 1—Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Section 4(1)

THE STATES SIGNATORY TO THE PRESENT CONVENTION,

RECOGNIZING that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

RECALLING that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

RECOGNIZING that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

CONVINCED of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

DESIRING to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

HAVE AGREED upon the following provisions—

CHAPTER 1—SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- a to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 2

1. The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
2. The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c have not been given before the child attains the age of eighteen years.

**CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY
ADOPTIONS**

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- a have established that the child is adoptable;
- b have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

- d have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- a have determined that the prospective adoptive parents are eligible and suited to adopt;
- b have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

1. A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 7

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
2. They shall take directly all appropriate measures to—
 - a provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- a collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c promote the development of adoption counselling and post-adoption services in their States;
- d provide each other with general evaluation reports about experience with intercountry adoption;
- e reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 11

An accredited body shall—

- a pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

**CHAPTER IV—PROCEDURAL REQUIREMENTS IN
INTERCOUNTRY ADOPTION**

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
2. It shall transmit the report to the Central Authority of the State of origin.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 16

1. If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—
 - a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
 - c ensure that consents have been obtained in accordance with Article 4; and
 - d determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
2. It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- a the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c the Central Authorities of both States have agreed that the adoption may proceed; and
- d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 19

1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
3. If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1. Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
 - a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - c as a last resort, to arrange the return of the child, if his or her interests so require.
2. Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 22

1. The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
2. Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—
 - a meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
3. A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
4. Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
5. Notwithstanding any declaration made under paragraph 2, the reports provide for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.
2. Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Adoption Act 1984
No. 10150 of 1984
Schedule 1—Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

1. The recognition of an adoption includes recognition of—
 - a the legal parent-child relationship between the child and his or her adoptive parents;
 - b parental responsibility of the adoptive parents for the child;
 - c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

1. Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect—
 - a if the law of the receiving State so permits; and
 - b if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
2. Article 23 applies to the decision converting the adoption.

CHAPTER VI—GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

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Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- d any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1. The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

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2. Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII—FINAL CLAUSES

Article 43

1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
2. The instrument of accession shall be deposited with the depositary.
3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

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Article 45

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
2. Thereafter the Convention shall enter into force—
 - a for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

1. A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expirations of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

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- a the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b the accessions and objections raised to accessions referred to in Article 44;
- c the date on which the Convention enters into force in accordance with Article 46;
- d the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e the agreements referred to in Article 39;
- f the denunciations referred to in Article 47.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Adoption Act 1984** was assented to on 13 November 1984 and came into operation as follows:

Sections 1, 2, 3(2), 4, 5, 9, 82–93, 101–104, 130 on 15 April 1985: Government Gazette 27 March 1985 page 781; sections 68, 79, 94–100, 112, 113 on 18 December 1985: Government Gazette 18 December 1985 page 4641; rest of Act on 16 November 1987: Government Gazette 28 October 1987 page 2880.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Adoption Act 1984** by Acts and subordinate instruments.

Administrative Appeals Tribunal Act 1984, No. 10155/1984

Assent Date: 20.11.84
Commencement Date: S. 80 on 18.11.87: Government Gazette 18.11.87 p. 3138
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Registration of Births Deaths and Marriages (Amendment) Act 1985, No. 10244/1985

Assent Date: 10.5.85
Commencement Date: 31.10.86: Government Gazette 29.10.86 p. 4114
Current State: All of Act in operation

Adoption (Amendment) Act 1986, No. 3/1986

Assent Date: 25.3.86
Commencement Date: 16.11.87: Government Gazette 28.10.87 p. 2880
Current State: All of Act in operation

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: S. 4(3)(Sch. 1 item 1(a)(b)) on 22.2.89: Government Gazette 22.2.89 p. 386
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Adoption (Amendment) Act 1987, No. 67/1987

Assent Date: 24.11.87
Commencement Date: Ss 1–7, 9–13 on 22.12.87: Special Gazette (No. 59) 22.12.87 p. 1; s. 8 on 1.1.89: Government Gazette 21.12.88 p. 3798; s. 14 on 25.1.89: Government Gazette 25.1.89 p. 146
Current State: All of Act in operation

Children and Young Persons Act 1989, No. 56/1989 (as amended by No. 93/1990)

Assent Date: 14.6.89
Commencement Date: S. 286(Sch. 2 item 1.2) on 30.9.92: Government Gazette 26.8.92 p. 2470
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

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Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Adoption (Amendment) Act 1989, No. 69/1989

Assent Date: 28.11.89
Commencement Date: S. 11(2) on 15.3.89: s. 2(2); rest of Act on 6.12.89: Government Gazette 6.12.89 p. 3128
Current State: All of Act in operation

Children and Young Persons (Amendment) Act 1992, No. 69/1992

Assent Date: 24.11.92
Commencement Date: S. 34 on 29.1.93: Government Gazette 28.1.93 p. 174
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 item 1) on 7.7.94: Government Gazette 7.7.94 p. 1878
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 4) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Births, Deaths and Marriages Registration Act 1996, No. 43/1996

Assent Date: 26.11.96
Commencement Date: S. 65(Sch. item 1) on 2.10.97: Government Gazette 2.10.97 p. 2731
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Commonwealth Powers (Family Law-Children) (Amendment) Act 1997, No. 59/1997

Assent Date: 5.11.97
Commencement Date: S. 6 on 1.11.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

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Disability Services and Other Acts (Amendment) Act 1997, No. 72/1997

Assent Date: 25.11.97
Commencement Date: Pt 2 (ss 3–13) on 3.3.98: Government Gazette 26.2.98 p. 418
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998
(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 3) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Adoption (Amendment) Act 2000, No. 32/2000

Assent Date: 6.6.00
Commencement Date: Ss 4–18 on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 3) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 3) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 2) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

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Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 1) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 3) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 3) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Adoption Amendment Act 2013, No. 25/2013

Assent Date: 15.5.13
Commencement Date: 1.7.13: s. 2(2)
Current State: All of Act in operation

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 3) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, No. 61/2014

Assent Date: 9.9.14
Commencement Date: S. 161 on 1.3.16: s. 2(3)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Adoption Amendment Act 2015, No. 32/2015

Assent Date: 25.8.15
Commencement Date: Ss 4–10 on 26.8.15: s. 2
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

Adoption Amendment (Adoption by Same-Sex Couples) Act 2015, No. 68/2015

Assent Date: 15.12.15
Commencement Date: Ss 4–16 on 1.9.16: s. 2(2)
Current State: This information relates only to the provision/s amending the **Adoption Act 1984**

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Oaths and Affirmations Act 2018, No. 6/2018

<i>Assent Date:</i>	27.2.18
<i>Commencement Date:</i>	S. 68(Sch. 2 item 2) on 1.3.19: s. 2(2)
<i>Current State:</i>	This information relates only to the provision/s amending the Adoption Act 1984

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ S. 4(1) def. of **Commonwealth Central Authority**: Regulation 5 of the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 of the Commonwealth provides that the Secretary to the Commonwealth Attorney-General's Department is the Commonwealth Central Authority.

² S. 4(1) def. of **Convention country**: As at 12 August 2016, these countries are: Albania, Andorra, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Canada (in relation only to the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, Saskatchewan, the Yukon Territory, Northwest Territories, Nova Scotia, Nunavut and Ontario), Chile, China, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark (other than Faroe Islands and Greenland), Ecuador, El Salvador, Estonia, Finland, France (other than the overseas territories), Georgia, Germany, Guatemala, Guinea, Hungary, Iceland, India, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Moldova, Monaco, Mongolia, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the United Kingdom of Great Britain and Northern Ireland (extended to the territory of the Isle of Man), Uruguay and Venezuela.

³ S. 4(1) def. of **Convention country**: As at 12 August 2016, Convention countries within the meaning of paragraph (b) of the definition are Armenia, Belize, Cambodia, Cape Verde, Côte d'Ivoire, Croatia, Cuba, Dominican Republic, Fiji, Greece, Haiti, Ireland, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Liechtenstein, Madagascar, Mali, Montenegro, Namibia, Rwanda, Senegal, Serbia, Seychelles, Swaziland, the former Yugoslav Republic of Macedonia, Togo, Turkey, the United States of America, Viet Nam and Zambia.

⁴ S. 69F(1): Section 53 and subsequent sections provide for the effect of adoption orders.

⁵ S. 69V: See note 4.