

Queensland



ANNO VICESIMO PRIMO

ELIZABETHAE SECUNDAE REGINAE

No. 17 of 1972

**An Act to Amend The Adoption of Children Acts 1964 to
1967 in certain particulars**

[ASSENTED TO 19TH DECEMBER, 1972]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Adoption of Children Act Amendment Act 1972*.

(2) *The Adoption of Children Act of 1964* as subsequently amended is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Adoption of Children Act 1964-1972*.

2. Commencement of Act. The provisions of this Act shall come into operation on a date to be appointed by Proclamation.

3. Repeal of and new s. 27. The Principal Act is amended by repealing section 27 and inserting in its stead the following section:—

“27. Guardianship of child awaiting adoption. (1) Upon the Director, himself or by his duly authorized officer, signifying that he accepts guardianship of a child in respect of whom the consents required by section 19 of this Act to its adoption have been given or dispensed with or upon the expiration of 30 days from the date the Director or, as the case may be, the duly authorized officer receives such consents or notification that such consents have been dispensed with, whichever event first occurs, the Director shall be the guardian of the child for all purposes, other than the purposes of section 19 of this Act, to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child;
- (b) where such consents are given, any such consent is lawfully revoked;
- (c) another person becomes guardian pursuant to section 27A of this Act; or
- (d) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child.

(2) The Director, himself or by his duly authorized officer, may in writing release to its natural parents or one of them a child awaiting adoption.

Upon a release to its natural parents or one of them of a child awaiting adoption all consents given by the natural parents to the adoption of the child shall be deemed to be thereby lawfully revoked and the guardianship of the child, if it theretofore was in the Director, shall thereby pass to the persons or person to whom the child is released.

(3) Subsection (1) of this section does not apply—

- (a) to a child for whose guardianship provision is made by the *Children's Services Act 1965-1971*;
- (b) to a child in respect of whom the Director has, within the period of 30 days referred to in that subsection, declined in writing to accept guardianship.”

4. New s. 27A. The Principal Act is amended by inserting after section 27 the following section:—

“27A. Renunciation of guardianship of child to be adopted in another State or Territory. (1) Where the Director, being guardian of a child pursuant to subsection (1) of section 27 of this Act, receives from an officer in another State or in a Territory of the Commonwealth whose powers, functions and duties correspond to those of the Director under this Act a notice that application has been or is to be made in that other State or Territory for the adoption of the child and a request that the Director

renounce his guardianship of the child, the Director may, if all consents to the adoption of the child obtained to comply with this Act have become irrevocable and if he thinks it to be in the best interests of the child so to do, by instrument in writing signed by him renounce his guardianship of the child.

(2) Forthwith after his signing an instrument of renunciation under subsection (1) of this section the Director shall send the instrument by registered post to such officer in the other State or Territory concerned together with all consents to the adoption of the child obtained to comply with this Act and held by him, and upon receipt thereof by such officer the Director shall cease to be guardian of the child.

(3) Where application is or is to be made for the adoption of a child of whom the guardian is an officer in another State or in a Territory of the Commonwealth pursuant to a law of that State or Territory that corresponds to section 27 of this Act, whose powers, functions and duties correspond to those of the Director under this Act, the Director may notify such officer thereof and request such officer in writing to renounce his guardianship of the child and to send to the Director for use in connexion with the application all consents to the adoption of the child obtained to comply with a law of that State or Territory that corresponds to this Act and held by such officer.

(4) Upon receiving from such officer an instrument of renunciation of guardianship of the child referred to in subsection (3) of this section together with all consents to the adoption of the child obtained to comply with a law of the State or Territory concerned that corresponds to this Act and held by such officer, the Director shall become and be the guardian of the child in all respects (other than as respects the date of commencement of the guardianship) as if such consents had been obtained to comply with this Act and had been duly executed in Queensland on the dates on which they respectively purport to have been signed and attested in that other State or Territory."

5. Amendment of s. 37. The Principal Act is amended by—

(a) in the note appearing in and at the commencement of section 37, inserting after the word "Australian" the words "and New Zealand";

(b) in section 37,

(i) inserting after the word "Commonwealth" the words "or in New Zealand";

(ii) inserting after the words "or Territory" where they twice occur the words "or country".

6. Amendment of s. 38. Section 38 of the Principal Act is amended by—

(a) in subsection (1), inserting after the words "a country" the brackets and words "(other than New Zealand)";

(b) omitting subsections (3), (4) and (5) and inserting in their stead the following subsections:—

"(3) The Governor in Council may by Order in Council declare that, in relation to all adoptions or to a particular adoption under the law of a country that is outside the Commonwealth

and the Territories of the Commonwealth and is specified in the Order in Council, it shall be conclusively presumed that the conditions referred to in paragraphs (c) and (d) of subsection (2) of this section are satisfied.

Whilst such an Order in Council subsists, effect shall be given to it according to its tenor.

(4) Where in any proceedings before a court (including proceedings under section 39 of this Act) the question arises whether an adoption is one to which this section applies, it shall be presumed, in the absence of proof to the contrary, that in relation to the adoption the conditions referred to in subsection (2) of this section are satisfied and that the adoption has not been rescinded.

(5) Notwithstanding the foregoing provisions of this section, a court (including a court dealing with an application under section 39 of this Act) 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.

(6) 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 a country outside the Commonwealth and the Territories of the Commonwealth shall, upon its production, in the absence of proof to the contrary, be sufficient evidence—

- (a) that the adoption was made in and is effective according to the law of that country;
- (b) that the adoption has not been rescinded;
- (c) that in relation to the adoption the condition referred to in paragraph (b) of subsection (2) of this section is satisfied.”;

(c) renumbering subsection (6) as subsection (7) and in that subsection inserting after the word “country” the brackets and words “(other than New Zealand)”;

(d) renumbering subsection (7) as subsection (8).

7. Repeal of and new s. 41. The Principal Act is amended by repealing section 41 and inserting in its stead the following section:—

“41. Interference relating to adopted child by natural parent.

(1) A person who, by reason of the adoption of a child, has ceased to be and is not the parent or guardian of the child—

- (a) shall not take, lead, entice or decoy the child away, or detain the child, with intent to deprive the adopter or adopters of possession of the child;
- (b) shall not interfere in or influence the upbringing of the child, or the relationship of the child with its adopter or adopters;
- (c) save where the adopter or one of the adopters is a relative of the child, shall not communicate with the

child or with any other person who to his knowledge is the adopter or one of the adopters of the child unless with the approval of the Director first had and obtained.

Penalty: \$400 or imprisonment for six months.

(2) A person shall not attempt to contravene any provision of subsection (1).

Penalty: \$400 or imprisonment for six months.

(3) Where application is made to the Director for his approval of a communication by a person referred to in subsection (1) with a child or an adopter of a child he shall not so approve unless the adopter or, where there are two adopters, both of them consent to his so approving."

8. Amendment of s. 56. The Principal Act is amended by—

(a) omitting from the note appearing in and at the commencement of section 56 the words "States and to Territories of the Commonwealth" and inserting in their stead the word "places";

(b) in section 56,

(i) inserting after the word "Commonwealth" the words ", New Zealand, or in a country specified in a subsisting Order in Council made under subsection (3) of section 38 of this Act";

(ii) inserting after the words "or Territory" the words "or country".

9. Repeal of and new s. 57. The Principal Act is amended by repealing section 57 and inserting in its stead the following section:—

"57. Particulars of orders received from other States and countries. Where the Registrar-General receives, in relation to a child whose birth is registered in Queensland,—

(a) a memorandum or copy of an adoption order made under the law in force in another State or in a Territory of the Commonwealth, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorized so to certify under the law of that State or Territory; or

(b) an original or a copy of an order or record of adoption made in a country outside the Commonwealth and the Territories of the Commonwealth that has the same effect as an adoption order under this Act, or of a rescission of such an adoption, certified, in the case of a copy, in writing to be a true copy by a person having custody of the original thereof in that country,

he shall—

(i) register it, as prescribed, in the Adopted Children Register; and

(ii) make such alterations to, or entries in, the appropriate registers of births as are prescribed."

10. Repeal of and new s. 59. The Principal Act is amended by repealing section 59 and inserting in its stead the following section:—

"59. Secrecy provisions. (1) A person engaged in giving effect to this Act or employed in the Department of Children's Services shall preserve and aid in preserving secrecy with regard

to all matter that comes to his knowledge by reason of his being so engaged or employed, and shall not disclose such matter to any person save—

- (a) to the Court; or
- (b) for the purpose of giving effect to this Act.

(2) A person engaged in giving effect to this Act or employed in the Department of Children's Services shall not disclose to any person, save to the Court—

- (a) the name or address of a child awaiting adoption or of an adopted child or a name or address previously had by the child;
- (b) the name or address of the adopter or adopters of a child or the name or address of the natural parent or parents of a child awaiting adoption or of an adopted child;
- (c) any matter reasonably likely to enable a child awaiting adoption or an adopted child, or the adopter or adopters of a child, or the natural parent or parents of a child awaiting adoption or of an adopted child to be identified.

(3) A person shall not disclose to any person, save to the Court, information—

- (a) that concerns any matter under this Act; and
- (b) that to his knowledge is contained in the records of the Director, or that is given to him by a person engaged in giving effect to this Act or employed in the Department of Children's Services.

A court shall not convict a person of a contravention of this subsection if it is satisfied that the disclosure is a publication to which subsection (1) of section 45 of this Act is expressed by that section not to apply.

(4) Except as provided by the regulations, the records of the Director in relation to proceedings under this Act shall not be open to inspection.

(5) A person who contravenes any provision of this section commits an offence against this Act."

11. New s. 59A. The Principal Act is amended by inserting after section 59 the following section:—

"59A. Protection of persons in administering Act. A person engaged in giving effect to this Act who for that purpose inserts or publishes in or by way of the records of the Director, or makes or gives any allegation, comment, or opinion in respect of any matter that concerns the history or family background of any child or its parent, or of any person who has applied to have his name included in the adoption list or to adopt a child, or that concerns the welfare of any child shall not thereby incur any liability for injury to any person if he has therein acted in good faith and without malice and with reasonable care.

In any proceeding taken against any such person on account of such an insertion, publication, making or giving, the burden of proof that such person has acted otherwise than in good faith or with malice or without reasonable care shall be on the plaintiff."

12. Decimal currency amendments. The Principal Act is amended by omitting the words "Two hundred pounds" and the words "two hundred pounds" wherever either of those expressions occurs, and inserting in their stead in each case the expression "\$400".