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Dated 1 July 2025



TASMANIA

ADOPTION ACT 1988

No. 41 of 1988

CONTENTS

PART I – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
- 3A. Meaning of “convention country”
4. Approved counsellors
- [5. *Repealed*]
6. Requirements for making adoption orders
7. Rules of private international law not to apply
8. Welfare and interests of child to be paramount

PART II – ADOPTIONS UNDER THIS ACT

Division 1 – Arrangement of adoptions

9. Adoptions may be arranged by Secretary or by approved agency

10. Application for approval of adoption agency
11. Minister may grant or refuse to grant application
12. Principal officer of approved agency
13. Revocation or suspension of approval
14. Effect of cessation or suspension, &c., of approval
15. Expiration of suspension of approval or authority
16. Duty to keep records of adoptions
17. Duties of Secretary and principal officers

Division 2 – General

18. Adoption order to be made on application by Secretary or principal officer
19. Who may be adopted
20. Persons in whose favour adoption orders may be made
21. Orders in favour of relatives
22. Age of adoptive parents
23. Wishes of child
24. Court to be satisfied as to certain matters
25. Notice of application for adoption orders
26. Parties to proceedings for adoption order
27. Custody, &c., after refusal of application for adoption order
28. Discharge of adoption orders

Division 3 – Consents to adoptions

29. Consents required to adoption
30. Manner of giving consent
31. Requirements to be complied with
32. Consent by guardian under section 29 (6)
33. Consents to be construed as general consents
34. Consents given under law of another State or a Territory
35. Revocation of consents
36. Defective consents
37. Court may dispense with consents

- 38. Person who gives consent to be given notice of certain events
- 38A. Validation of consents

Division 4 – Care of child pending adoption

- 39. Care of child pending adoption
- 40. Guardianship of child awaiting adoption
- 41. Renunciation of guardianship for adoption of child in another State
- 42. Guardianship of non-citizen child
- 43. Miscellaneous provisions as to care, control, placement, &c., of child
- 44. Duty of principal officer to report to Secretary
- 45. Natural parent's right of access after consent

Division 5 – Adoption of non-citizen children

- 46. Orders for adoption of non-citizen children
- 47. Supervision of certain children adopted overseas
- 48. Supervision of certain non-citizen children

PART III – ADOPTION ORDERS

Division 1 – Certificates of adoption

- 49. Certificates of adoption

Division 2 – Effect of adoption orders

- 50. General effect of adoption orders
- 51. Effect of orders in relation to dispositions of property
- 52. Bequest by will to unascertained adopted person
- 53. Adoption order not to affect distribution of property by trustees or personal representatives unless notice given
- 54. Names of adopted person
- 55. Effect of adoption order on domicile

Division 3 – Interim orders

- 56. Making of interim orders
- 57. Duration of interim orders
- 58. Discharge of interim orders

PART IV – RECOGNITION OF ADOPTIONS

- 59. Recognition of Australian and certain foreign adoptions
- 60. Recognition of foreign adoptions
- 61. Declarations of validity of foreign adoptions

PART V – REGISTRATION OF ORDERS

- 62. Memorandum of adoption order, &c., to be sent to the Registrar
- 63. Record of adoptions and endorsements, &c., to be made in birth registers in relation to adopted person
- 64. Record of adoptions of persons born outside Australia
- 65. Discharge of adoption orders
- 66. Sending of memoranda of orders to other States, &c.
- 67. Entries in registers of births not to be disclosed
- 68. Former register of adoptions and memoranda of adoption orders not open for search
- 69. Copies of entries in the special record
- [70. *Repealed*]

PART VI – ACCESS TO INFORMATION

Division 1 – General

- 71. Restriction on access to records and reports
- 72. Duties of relevant authorities to provide information
- 73. Secretary may obtain information from the court
- 74. Counselling services
- 75. Protection of privacy
- 76. Disclosure of medical information

Division 2 – Persons entitled to birth certificates or information

- 77. Application of this Division where adopted person under guardianship
- 78. Provision of information by relevant authorities
- 79. Access to birth certificates of adopted persons born outside Tasmania
- 80. Grant of certificate as to counselling, &c.

- 81. Adopted person's right to information under age 18
- 82. Adopted person's right to information at age 18
- 83. Information about adopted person under age 18
- 84. Information about adult adopted person
- [85. *Repealed*]
- 86. Adoptive parent's right to information
- 86A. Decision of relevant authority
- 86B. Review of decision of relevant authority
- 86C. Review by Ombudsman
- 87. Power of judge to order release of information to adopted persons, natural parents, &c.
- 88. Power of judge to order release of information to other interested persons

Division 3 – Adoption Information Service

- 89. Adoption Information Service
- 90. Adoption Information Registers

PART VII – MISCELLANEOUS

Division 1 – Supplemental provisions

- 91. Delegation of powers of Secretary
- 92. Financial assistance
- 93. Hearings to be in camera
- 94. Secretary, principal officer, &c., may appear at hearings
- 95. Judicial notice of signatures, &c.
- 96. Certified copies, &c., of adoption order to be evidence
- 96A. Reviews of decisions
- 97. Fees for assessment of applicants for adoption of non-citizen child, &c.
- 98. Waiver of fees
- 99. Identities of certain persons not to be revealed
- 100. Contents of reports not to be disclosed
- 101. Restriction on inspection of records

Division 2 – Offences

- 102. Territorial application of Part
- 103. Destruction, removal, &c., of adoption records
- 104. Taking away, &c., adopted child by natural parent
- 105. Harboursing child taken from adoptive parents
- 106. Undue influence, &c.
- 107. Payments in consideration of adoptions, &c.
- 108. Restrictions on advertising
- 109. Restriction on publication of identity of parties
- 110. Unauthorized arrangements for adoption
- 111. Agency, &c., to comply with request for information
- 112. False statements
- 113. Personation
- 114. Presenting forged consent, &c.
- 115. Improperly witnessing consent to adoption
- 115A. Compliance with undertaking
- 116. Penalties
- 117. Prosecutions for offences against this Act

Division 3 – Regulations

- 118. Regulations

Division 4 – Savings and repeals

- 119. Savings and transitional provisions
- 120. Repeal of *Adoption of Children Act 1968*
- 121. Consequential amendments to *Registration of Births and Deaths Act 1895*

SCHEDULE 1 –



ADOPTION ACT 1988

No. 41 of 1988

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

[Royal Assent 10 November 1988]

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

PART I – PRELIMINARY

1. Short title

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

Adoption Act 1988
Act No. 41 of 1988

s. 2

Part I – Preliminary

2. Commencement

- (1) This section and sections 1 and 3 shall commence on the day on which this Act receives the Royal Assent.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be fixed by proclamation.

3. Interpretation

- (1) In this Act, unless the contrary intention appears –

adopted person means a person –

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

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

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

Adoption Act 1988
Act No. 41 of 1988

Part I – Preliminary

s. 3

agreement country means a prescribed overseas jurisdiction within the meaning of the *Family Law (Bilateral Agreements–Intercountry Adoption) Regulations 1998* of the Commonwealth, as amended from time to time;

approved agency means –

- (a) a welfare organization approved by the Minister as an adoption agency under Division 1 of Part II; or
- (b) a welfare organization that, immediately before the commencement of this section, was approved as a private adoption agency within the meaning of the repealed Act –

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

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

child means –

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

Adoption Act 1988
Act No. 41 of 1988

s. 3

Part I – Preliminary

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

contact veto means a contact veto referred to in section 90(3)(c);

convention country has the meaning given by section 3A;

country includes a territorial unit or other part of a country;

court means the Magistrates Court (Children's Division);

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

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

function includes duty;

guardian, in relation to a child, includes –

- (a) a person who under a law of the Commonwealth or a State or Territory, is, or is deemed to be, the guardian of the child, to the exclusion of, or in addition to, a parent or other guardian; and
- (b) in the case of a guardian of a non-citizen child under the

Adoption Act 1988
Act No. 41 of 1988

Part I – Preliminary

s. 3

Immigration (Guardianship of Children) Act 1946 of the Commonwealth, a person to whom the performance or exercise of any functions or powers as a guardian are delegated under that Act;

Hague convention means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption made at The Hague on 29 May 1993, as amended from time to time;

interim order means –

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

natural parent, in relation to an adopted person, means –

- (a) a person who is named in the entry relating to the adopted person in a register of births, whether in Tasmania or in a place outside Tasmania, as a parent of the adopted person;
- (b) a man who is declared to be the father of the adopted person

Adoption Act 1988
Act No. 41 of 1988

s. 3

Part I – Preliminary

under a declaration of paternity in force under section 10 of the *Status of Children Act 1974*, if a copy of the declaration is filed in the office of the Registrar under section 9 (3) of that Act;

(c)

(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 adopted person; or

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

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

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

non-convention or non-agreement country means a country other than –

Adoption Act 1988
Act No. 41 of 1988

Part I – Preliminary

s. 3

-
- (a) Australia; and
 - (b) New Zealand; and
 - (c) a convention country; and
 - (d) an agreement country;

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

property includes an interest in property;

register means the register maintained under Part 7 of the *Births, Deaths and Marriages Registration Act 1999*;

Registrar means the Registrar of Births, Deaths and Marriages;

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

relevant authority, in relation to an application under Part VI, means –

- (a) the Secretary; or

Adoption Act 1988
Act No. 41 of 1988

s. 3

Part I – Preliminary

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

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

Secretary means the Secretary of the Department;

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

spouse includes the other party to a significant relationship which is the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*;

Territory means a Territory of the Commonwealth.

- (2) The definitions of “natural parent” and “natural relative” in subsection (1) are not affected by the provisions of this Act relating to the effect of adoption orders.
- (3) Where –
 - (a) an adoption order has been made in favour of one person as mentioned in section 19, 20, or 21; or

Adoption Act 1988
Act No. 41 of 1988

Part I – Preliminary

s. 3A

- (b) an application under this Act for such an order has been made, or is proposed –

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

- (4) A reference in this Act to an article of the Hague convention is a reference to that convention as made on 29 May 1993.

3A. Meaning of “convention country”

- (1) A convention country is a country for which the Hague convention has entered into force under article 46 of the Hague convention, other than –
 - (a) Australia; and
 - (b) New Zealand; and
 - (c) a country to whose accession Australia has raised an objection under article 44 of the Hague convention.
- (2) Subsection (1) applies to a country subject to a declaration under article 45 of the Hague convention.

4. Approved counsellors

- (1) Subject to subsection (2), the Secretary may, by notice in writing, approve a person as a

Adoption Act 1988
Act No. 41 of 1988

s. 5

Part I – Preliminary

counsellor for the purposes of this Act and may, by notice in writing, revoke any such approval.

- (2) The Secretary shall not approve a person as a counsellor under subsection (1) unless the person is –
- (a) an officer of the Department or a person who is temporarily employed in that Department; or
 - (b) employed by an approved agency; or
 - (c) if he is not such an officer or so employed, a person who, in the opinion of the Secretary, has such qualifications and experience as are appropriate for a counsellor for the purposes of this Act.

5.

6. Requirements for making adoption orders

- (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) each of the prospective adoptive parents was resident or domiciled in Tasmania; and
 - (ii) the child was present in Tasmania; or

Adoption Act 1988
Act No. 41 of 1988

Part I – Preliminary

s. 7

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

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

- (a) the prospective adoptive parents were resident or domiciled in Tasmania; or
- (b) a child was present in Tasmania; or
- (c) a child was under the guardianship of the Secretary –

on a date within 21 days before the date on which an application was filed in the court, the court may, in the absence of evidence to the contrary, presume that –

- (d) the prospective adoptive parents were resident or domiciled in Tasmania; or
- (e) the child was present in Tasmania; or
- (f) the child was under the guardianship of the Secretary –

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

7. Rules of private international law not to apply

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

Adoption Act 1988
Act No. 41 of 1988

s. 8

Part I – Preliminary

8. Welfare and interests of child to be paramount

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

PART II – ADOPTIONS UNDER THIS ACT

Division 1 – Arrangement of adoptions

9. Adoptions may be arranged by Secretary or by approved agency

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

10. Application for approval of adoption agency

- (1) In this section,

welfare organization means an organization, whether corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent, philanthropic, or welfare purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members.

Adoption Act 1988
Act No. 41 of 1988

s. 11

Part II – Adoptions under this Act

- (2) A welfare organization desiring to carry on the activity of conducting negotiations, or making arrangements, with a view to the adoption of children may apply in writing to the Minister for approval as an adoption agency.
- (3) An application under this section –
 - (a) shall contain such information relating to the organization as is prescribed; and
 - (b) shall specify the address of the principal office in Tasmania of the organization; and
 - (c) shall nominate a person resident in Tasmania to be the principal officer of the organization; and
 - (d) may nominate a person resident in Tasmania to be the deputy principal officer of the organization for the purposes of this Act.
- (4) Where the Minister receives an application under this section, he shall publish notice of the application in the *Gazette*.

11. Minister may grant or refuse to grant application

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

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 12

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- (a) that the applicant is not a welfare organization within the meaning of that section; or
 - (b) that the applicant is not suited to making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character, and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the making of arrangements with a view to the adoption of children.
- (2) Where the Minister approves an adoption agency under this section, the approval –
- (a) shall be subject to such conditions and requirements as may be prescribed; and
 - (b) may be granted subject to such additional conditions and requirements as the Minister thinks fit and specifies by notice in writing given to the principal officer of that adoption agency.

12. Principal officer of approved agency

- (1) Anything done by the principal officer of an approved agency, or with his approval, shall, for the purposes of this Act but without prejudice to

Adoption Act 1988
Act No. 41 of 1988

s. 13

Part II – Adoptions under this Act

any personal liability of the principal officer, be deemed to be done by the approved agency.

- (2) An approved agency shall, within 7 days after the occurrence of a vacancy in the office of its principal officer, appoint a person resident in Tasmania to fill the vacancy, either temporarily or permanently, and shall give notice in writing to the Secretary of the appointment.
- (3) For the purposes of subsection (2), the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in Tasmania.

13. Revocation or suspension of approval

- (1) The Minister may at any time, by notice in writing served personally or by certified mail on the principal officer of an approved agency, revoke or suspend for a specified period the approval of the agency under this Division –
 - (a) at the request of the approved agency concerned; or
 - (b) in the case of a revocation or suspension of approval under section 11, on the ground that the approved agency is no longer a suitable organization to conduct negotiations or make arrangements with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in that section; or

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 14

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- (c) on the ground that the approved agency has contravened, or failed to comply with, a provision of this Act that is applicable to it.
 - (2) Where the approval of a welfare organization as an approved agency is revoked or suspended under subsection (1), the organization shall not commence or continue arrangements or negotiations for the adoption of a child under this Act.

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

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

- (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, if the welfare organization has with his approval entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, the property of that approved agency; and
- (b) the arrangements or negotiations being undertaken by the first-mentioned approved agency immediately before the cessation, revocation, or suspension shall be continued by the Secretary or the principal officer of the approved agency

Adoption Act 1988
Act No. 41 of 1988

s. 15

Part II – Adoptions under this Act

that is the successor of the first-mentioned approved agency, as the case may be.

15. Expiration of suspension of approval or authority

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

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

16. Duty to keep records of adoptions

- (1) The Secretary shall keep records in respect of each adoption negotiated or arranged by him or on his behalf.
- (2) The principal officer of an approved agency shall keep records of each adoption negotiated or arranged by the approved agency or on its behalf.

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 17

17. Duties of Secretary and principal officers

In all matters relating to the exercise of their powers and the performance of their 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 concerned.

Division 2 – General

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

- (1) Subject to subsection (2), an application for an adoption order shall be made by the Secretary or the principal officer of an approved agency on behalf of the prospective adoptive parents.
- (2) Where –
 - (a) a prospective adoptive parent is a spouse of a natural parent or of an adoptive parent of the child proposed to be adopted; or
 - (b) a prospective adoptive parent is a person who is, or whose spouse is, a relative of the child proposed to be adopted –

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

Adoption Act 1988
Act No. 41 of 1988

s. 19

Part II – Adoptions under this Act

19. Who may be adopted

- (1) On application by the Secretary or the principal officer of an approved agency but subject to this Act, the court may make an order for the adoption of a child who –
 - (a) had not attained the age of 18 years before the date on which the application was filed in the court; or
 - (b) has been brought up, maintained, and educated by –
 - (i) the prospective adoptive parent or either of the prospective adoptive parents; or
 - (ii) the prospective adoptive parent and his or her deceased spouse –

as the child of that parent or, as the case may be, of that parent and his or her spouse –
- but the court shall not make an order for the adoption of a child who is, or has been, married.
- (2) An order may be made under this Act for the adoption of a child notwithstanding that the child had, whether before or after the commencement of this section, and whether in Tasmania or elsewhere, previously been adopted.
- (3) In this section,

spouse includes the person with whom a prospective adoptive parent had a

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 20

significant relationship which was the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*, which deed was revoked by the death of the person.

20. Persons in whose favour adoption orders may be made

- (1) An order for the adoption of a child may be made in favour of two persons who, for a period of not less than 3 years before the date on which the order is made, have been married to each other or have been the parties to a significant relationship which is the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*.
- (2) The period of 3 years referred to in subsection (1) may include a period during which the two persons resided together in a stable continuous relationship immediately before their marriage or the registration of the deed of relationship.
- (2A)
- (3) The court is not to make an adoption order in favour of a person who is, or persons either of whom is –
 - (a) the mother of the child; or
 - (b) a man who, under section 29(2) or (3), is an appropriate person to give consent to the adoption of the child; or

Adoption Act 1988
Act No. 41 of 1988

s. 20

Part II – Adoptions under this Act

- (c) a woman who, under section 29(4A), is an appropriate person to give consent to the adoption of the child.
- (4) Subject to this section, where the court is satisfied that exceptional circumstances exist in relation to the welfare and interests of the child which make it desirable to do so, the court may make an adoption order in favour of one person.
- (5) The court shall not make an adoption order in favour of one person –
 - (a) if that person is married or in a significant relationship referred to in subsection (1), unless that person is living separately and apart from his or her spouse; or
 - (b) if that person is married or in a significant relationship referred to in subsection (1) and is living with his or her spouse, except with the consent of that spouse.
- (6) Subject to subsection (7), an adoption order may be made in favour of the spouse of a natural parent, or of an adoptive parent, of the child concerned.
- (7) Where an application is made for an adoption order in favour of the spouse of a parent, or of an adoptive parent, of a child and there is an appropriate person within the meaning of section 29 to give consent to the adoption, the court shall not make an adoption order unless it is satisfied that –

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 20

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- (a) the making of an order by a court of competent jurisdiction for the custody or guardianship of the child would not make adequate provision to serve the welfare and interests of the child; and
 - (b) an order for the adoption of the child would better serve the welfare and interests of the child; and
 - (c) special circumstances exist which warrant the making of the adoption order.
- (8) On the making of an adoption order under subsection (7) relating to a child, the spouse shall be deemed to be a parent of the child jointly with that parent or adoptive parent as if the spouse and that parent or adoptive parent had been married to each other at the time the child was born but, notwithstanding section 50 –
- (a) the child is not to be treated in law as if the child were not the child of that parent or adoptive parent; 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 is the guardian of the child, the order does not terminate the guardianship; and

Adoption Act 1988
Act No. 41 of 1988

s. 21

Part II – Adoptions under this Act

- (e) if, immediately before the adoption order is made, the child was the adopted child of that adoptive parent, the order does not terminate that adoption.

21. 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, is a relative of the child or in favour of 2 persons who are relatives, or one of whom is a relative, of the child unless the court is satisfied that –

- (a) the making of an order under the *Children, Young Persons and Their Families Act 1997* for the custody or guardianship of the child would not make adequate provision for the welfare and interests of the child; and
- (b) an order for the adoption of the child would better serve the welfare and interests of the child; and
- (c) special circumstances exist which warrant the making of the adoption order.

22. Age of adoptive parents

- (1) The court shall not make an order for the adoption of a child in favour of a person who, or 2 persons either of whom, is less than 18 years older than the child unless the court, on the recommendation of the Secretary or the principal

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 23

officer of an approved agency, considers that there are circumstances relating to the needs of the child which make it desirable to make the adoption order.

- (2) Subsection (1) does not apply in relation to the proposed adoption of a child –
- (a) who has attained the age of 18 years; or
 - (b) by a spouse of a natural parent of the child, by a person who is, or whose spouse is, a relative of the child, or by 2 persons who are relatives of the child.

23. Wishes of child

Subject to this Division, an order for the adoption of a child shall not be made 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.

24. Court to be satisfied as to certain matters

- (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 it, the court is satisfied that –
- (a) the prospective adoptive parents –

Adoption Act 1988
Act No. 41 of 1988

s. 24

Part II – Adoptions under this Act

- (i) satisfy the prescribed requirements relating to approval of adoptive parents; or
 - (ii) satisfy those prescribed requirements as varied by the Secretary under subsection (6); and
- (b) the Secretary or principal officer has given consideration so far as practicable to any wishes expressed by a parent of the child, particularly in relation to the religion, marital status, sexual orientation, race, or ethnic background of the prospective adoptive parents of the child; and
- (c) the Secretary or principal officer has given consideration to –
 - (i) any wishes expressed by a parent of the child at the time when consent to the adoption was given or dispensed with about access to, or information about, the child, including notification in the event of the death of the child; and
 - (ii) any arrangements agreed between a parent of the child and the prospective adoptive parents of the child for access to the child or for the giving of information about the child; and

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 24

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- (d) the welfare and interests of the child will be promoted by the adoption.
- (2) Subsection (1) does not apply in relation to an order under section 19 for the adoption of a child who has attained the age of 18 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 exist in relation to the welfare and interests of the child which make it desirable that the child should be adopted.
- (3) The report on behalf of the Secretary or the principal officer of an approved agency may be made by the Secretary or the principal officer of an approved agency or by a person authorized by the Secretary or principal officer in writing, either generally or in any particular case.
- (4) Except in the case of an adoption referred to in subsection (5), the court shall not make an order for the adoption of a child unless the court has received a report in the prescribed form as to the physical and mental condition of the child, signed by a medical practitioner who examined the child not more than 60 days before the date on which the application for the order was filed in the court.
- (5) Subsection (4) does not apply in relation to the proposed adoption of a child –
- (a) who has attained the age of 18 years; or
 - (b) by a spouse of a natural parent of the child, by a person who is, or whose

Adoption Act 1988
Act No. 41 of 1988

s. 25

Part II – Adoptions under this Act

spouse is, a relative of the child, or by 2 persons who are relatives of the child.

- (6) At his or her own discretion or on written application by a principal officer, the Secretary in writing may vary the prescribed requirements relating to approval of particular prospective adoptive parents, by altering or omitting any one or more of those prescribed requirements, if the Secretary is satisfied that there are special circumstances relevant to the needs of a particular child.

25. Notice of application for adoption orders

- (1) The court shall not make an order for the adoption of a child unless not less than 28 days' notice of the application has been given by the Secretary or the principal officer of an approved agency –
- (a) to any person whose consent to the adoption of the child is required under section 29 but whose consent has not been given, whether or not that consent has been dispensed with under section 37; or
 - (b) to any person who is not a parent of a child but is a guardian of the child; or
 - (c) to any person, other than one of the prospective adoptive parents, with whom the child resides or who has the care, custody, or control of the child unless the

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 26

consent of that person to the adoption of the child is required under section 29.

- (2) A notice referred to in subsection (1) shall not specify the names of the prospective adoptive parents or otherwise identify them.
- (3) The court may, on application in writing, by the Secretary or the principal officer of an approved agency, dispense with the giving of a notice under subsection (1).
- (4) 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.

26. Parties to proceedings for adoption order

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 of opposing an application to dispense with the consent of a person.

27. Custody, &c., after refusal of application for adoption order

- (1) Where the court refuses an application for an order for the adoption of a child, the court may make such order for the care, custody, and control of the child as it thinks fit.

Adoption Act 1988
Act No. 41 of 1988

s. 28

Part II – Adoptions under this Act

- (2) Without limiting the order that a court may make under subsection (1), the court under that subsection may make an order placing the child under the guardianship of the Secretary for the period specified in the order.
- (3)

28. Discharge of adoption orders

- (1) In this section –

adoption order includes an adoption order made under the repealed Act or any corresponding previous enactment;

eligible person means the adopted person to whom an adoption order relates, a natural parent of the adopted person, an adoptive parent of the adopted person, the Secretary, or the principal officer of an approved agency by which the adoption was arranged –

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

- (2) An eligible person may apply to the court for an order discharging an adoption order on the grounds –
 - (a) that the adoption order or a consent for the purposes of the adoption order was

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 28

obtained by fraud, duress, or other improper means; or

- (b) that special circumstances exist in relation to the welfare and interests of the person why the adoption order should be discharged.
- (3) Where an application is made under subsection (2), 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.
- (4) An investigation under subsection (3) shall be made by the Secretary and, where the court so directs, by a person nominated by the Attorney-General.
- (5) If, after consideration of a report of an investigation carried out under subsection (3), the court is satisfied that the adoption order should be discharged, the court shall make an order for the discharge of the adoption but shall not make such an order if it appears to the court that it would be prejudicial to the welfare and interests of the adopted person to do so.
- (6) Where the court makes an order discharging an adoption order, any consent given under this Act for the purposes of the adoption of the person to whom the adoption order relates ceases to have effect unless the court otherwise orders.
- (7) Where the court makes an order under this section in respect of an adopted person, it may,

Adoption Act 1988
Act No. 41 of 1988

s. 28

Part II – Adoptions under this Act

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 person, including orders relating to –

- (a) the name of the person; and
 - (b) the ownership of property; and
 - (c) the care, control, custody, or guardianship of the person; and
 - (d) the domicile of the person.
- (8) On the making of an order under this section discharging an adoption order, but subject to an order made under subsection (7) and to section 50(2), the rights, privileges, duties, liabilities, and relationships of the person to whom the adoption order relates and of all other persons shall be the same as if that order had not been made, but without prejudice to –
- (a) anything lawfully done; or
 - (b) the consequences of anything unlawfully done; or
 - (c) a proprietary right or interest that became vested in a person –

while the adoption order was in force.

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 29

Division 3 – Consents to adoptions

29. Consents required to adoption

- (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 consent to the adoption has been given in accordance with this Division by the appropriate person or persons ascertained in accordance with this section, that the consent has not been revoked, and that the requirements of section 31 have been complied with; or
 - (b) that there is not an appropriate person within the meaning of this section to give consent to the adoption –

or unless the court dispenses with any such consent.

- (2) In the case of a child whose mother was married to a man 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 the mother and 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 the mother of the child and a man –

Adoption Act 1988
Act No. 41 of 1988

s. 29

Part II – Adoptions under this Act

- (a) whose name is entered in the entry relating to the child in a register of births, whether in Tasmania or in a place outside Tasmania, as the father of the child, so long as that entry was made before the expiration of a period of 30 days commencing on the day when consent to the adoption was given in accordance with this Division by the mother of the child (the last day of which period is in this subsection referred to as “the relevant day”); or
- (b) who is declared to be the father of the child under a declaration of parentage in force under section 10 of the *Status of Children Act 1974*, if before the relevant day a copy of the declaration is filed in the office of the Registrar under section 9 (3) of that Act; or
- (c)
- (d) who is named in an instrument filed before the relevant day 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
- (da) with whom the mother was in a significant relationship, within the meaning of the *Relationships Act 2003*, at the time of its birth or at or after the time of its conception but before its birth; or

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 29

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- (e) who has before the relevant day lodged with the Secretary or with the approved agency by which the arrangements for the adoption are being made evidence that –
- (i) he is conclusively presumed to be a parent of the child under section 8B(1) of the *Status of Children Act 1974*; or
 - (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
 - (iia) he is, or has at any time been, liable for child support for the child under the *Child Support (Assessment) Act 1989* of the Commonwealth; 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 particular 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.
- (4A) In the case of a child whose mother was married to, or in a significant relationship, within the meaning of the *Relationships Act 2003*, with, a

Adoption Act 1988
Act No. 41 of 1988

s. 29

Part II – Adoptions under this Act

woman at the time of the child's birth or at or after the time of its conception but before its birth and the child has not previously been adopted, the appropriate persons are the parties to that marriage or relationship if –

- (a) the child was born as a result of a fertilization procedure to which the female partner in the marriage or significant relationship with the mother had given consent; or
 - (b) there is no man required to give consent under subsection (3).
- (5) In the case of a child who has previously been adopted, the appropriate persons are the adoptive parents of the child.
- (6) In the case of a child who is a non-citizen child, the appropriate person is –
 - (a) the person who, under the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, is the guardian of the child; or
 - (b) 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 relation to a person who has attained the age of 18 years before the making of the adoption order.

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 30

30. Manner of giving consent

- (1) Subject to this Division, a consent by a person, except a guardian as mentioned in section 29(6), is given in accordance with this Division where –
 - (a) the person has signed the prescribed form of consent in the presence of –
 - (i) a prescribed person; and
 - (ii) a person approved for the purpose by the Secretary or the principal officer of an approved agency; and
 - (b) the persons in whose presence the form of consent was signed have signed the prescribed statements.
- (2) If 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 2 persons each of whom is –
 - (i) an Australian Diplomatic Officer within the meaning of the *Consular Fees Act 1955* of the Commonwealth; or
 - (ii) a judge of a court in that country; or
 - (iii) a magistrate in that country; or

Adoption Act 1988
Act No. 41 of 1988

s. 31

Part II – Adoptions under this Act

- (iv) a notary public in that country;
and
- (b) the 2 persons in whose presence the form of consent was signed have signed the prescribed statements.

31. Requirements to be complied with

- (1) Before a consent is given for the purposes of this Division by a person who is not a guardian as mentioned in section 29(6) –
 - (a) the person shall receive counselling from a person approved for the purpose by the Secretary or the principal officer of an approved agency; and
 - (b) not less than 24 hours 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 provisions of this Act relating to revocation of consent; and
 - (c) notice in writing shall be given to the person that the person may, at any time before an adoption order is made, apply subject to, and in accordance with, the *Births, Deaths and Marriages Registration Act 1999* for a certified copy of, or extract from, an entry in the register relating to the child.

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 32

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- (2) The Secretary or the principal officer of an approved agency shall, as soon as practicable after receiving a consent given for the purposes of this Division, give a copy of that consent to the person who signed it.
 - (3) A certificate signed by the Secretary or the principal officer of an approved agency to the effect that the requirements referred to in subsection (1) have been complied with is evidence of that fact.
 - (4) Where a consent is given in a place outside Tasmania, the requirements referred to in subsections (1) and (2) do not apply.

32. Consent by guardian under section 29 (6)

A consent by a person who is a guardian, or the delegate of a guardian, of a non-citizen child as mentioned in section 29(6) 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 the child was given for adoption in accordance with the law of the country in which the child was residing at the time when it was placed in the care of the prospective adoptive parents.

33. Consents to be construed as general consents

- (1) Subject to subsection (2), a consent to the adoption of a child shall, for the purposes of this Act, be construed as a consent to the adoption of

Adoption Act 1988
Act No. 41 of 1988

s. 34

Part II – Adoptions under this Act

the child by persons in whose favour an adoption order may be made under this Act in respect of the child and is a valid consent notwithstanding that an application in respect of the child has not been made or contemplated or, if an application has been so made, that the person giving the consent does not know the identity of the prospective adoptive parents.

- (2) A consent to the adoption of a child by a relative of the child, or by a spouse of a parent of the child, shall be construed as a consent to the adoption of the child by that relative or spouse only.

34. Consents given under law of another State or a Territory

Where –

- (a) a person whose consent to the adoption of a child is required by section 29 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

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 35

evidencing a consent, in accordance with section 29(1), to the adoption of the child.

35. 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 Secretary before the expiration of 30 days after the date on which the instrument of consent was signed and not otherwise.
- (2) Service of a notice on the Secretary under subsection (1) shall be effected by delivering it personally or by sending it to him by certified mail.
- (3) On receiving notice in writing of the revocation of a consent to the adoption of a child, the Secretary shall, if it appears to him that the consent was given to the principal officer of an approved agency, forthwith deliver or send by post a copy of the notice to that officer.
- (4) Where the Secretary releases a child to the parents or to one of the parents of the child as mentioned in section 40(1)(c), any consent given to the adoption of that child, is, by force of this subsection, revoked.

36. Defective consents

- (1) The court shall not make an adoption order in reliance on a consent given or purporting to have

Adoption Act 1988
Act No. 41 of 1988

s. 36

Part II – Adoptions under this Act

been given by a person if it appears to the court that –

- (a) the consent was not given in accordance with this Act; or
 - (b) the consent was obtained by fraud, duress, or other improper means; or
 - (c) the consent was revoked at a time when it was lawful to do so; or
 - (d) the instrument of consent has been altered in a material particular without authority; or
 - (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 to whom it relates.
- (2) A court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child to whom it relates on, or within 7 days after, the day on which the child was born unless it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent.
- (3) For the purposes of subsection (2), a certificate of a medical practitioner stating that, at the time when an instrument of consent was signed by the

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 37

mother of the child to whom it relates, the mother was in a fit condition to give the consent is evidence of that fact.

37. Court may dispense with consents

- (1) Where, on application by the Secretary or the principal officer of an approved agency, the court is satisfied –
 - (a) that a person whose consent to the adoption of a child is required under this Division cannot, after reasonable inquiry, be found; or
 - (b) by a certificate signed by not less than 2 medical practitioners, that any such person is, and is unlikely to cease to be, incapable on psychiatric or other medical grounds of properly considering the question whether the person should give consent; or
 - (c) that any such person has abandoned, deserted, persistently neglected, or ill-treated the child; or
 - (d) that any such 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; or
 - (e) that any such person has, for a period of not less than one year, failed, without

Adoption Act 1988
Act No. 41 of 1988

s. 37

Part II – Adoptions under this Act

reasonable cause, to discharge the obligations of a parent of the child; or

- (f) that any such person has such a physical or mental disability or is otherwise so impaired that the person is unable to meet the needs of the child; or
- (g) that for any reason the child is unlikely to be accepted into, or to accept, a family relationship with any such person; or
- (h) that there are any other special circumstances by reason of which, in the interests of the welfare of the child, the consent of any such person may properly be dispensed with –

the court may dispense with the consent of that person to the adoption of the child unless that person is a guardian of the child as mentioned in section 29(6).

- (2) For the purposes of subsection (1)(a), 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 at his last known place of residence; and
 - (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 the principal officer of an approved agency believes

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 37

may know where the first-mentioned person may be found; and

- (c) the address of that person cannot be found on a roll of electors under the *Commonwealth Electoral Act 1918* of the Commonwealth; and
- (d) notice to that person that consent of that person is sought has been published in a newspaper circulating generally in the area where the last known place of residence of that person is situated; and
- (e) inquiries 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 –

and the court is also satisfied that the Secretary or principal officer has been unable to find that person and that such other inquiries 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.

- (3) The court shall not make an order under subsection (1) dispensing with the consent of a person to the adoption of a child unless the court has received and taken into consideration a report from the Secretary or the principal officer of an approved agency as to –

Adoption Act 1988
Act No. 41 of 1988

s. 38

Part II – Adoptions under this Act

- (a) the circumstances in which the application for dispensation is made and the grounds for the application; and
 - (b) whether the dispensation of consent and the proposed adoption would serve the welfare and interests of the child concerned.
- (4) An order under subsection (1) dispensing with consent 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 the adoption order concerned.

38. Person who gives consent to be given notice of certain events

- (1) Where a person, except a guardian as mentioned in section 29(6), has given consent for the purposes of this Division, the Secretary or the principal officer of an approved agency shall, as soon as practicable after the occurrence of any of the following events, give notice in writing to the person of that event:
- (a) the placement of the child to whom the consent relates with the prospective adoptive parents;
 - (b) the termination of such a placement;
 - (c) the renunciation by the Secretary of guardianship of the child;

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 38A

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- (d) the making of an adoption order relating to the child;
 - (e) where the child to whom the consent relates dies before an adoption order is made, the death of the child.
- (2) Where the Secretary or the principal officer of an approved agency is of opinion that placement of the child as mentioned in subsection (1)(a) is no longer possible, he shall, as soon as practicable, give notice in writing of his opinion to any person who has given consent for the purposes of this Division.
 - (3) Except in the case of renunciation of guardianship, the Secretary or principal officer is not required to give notice under subsection (1) or (2) to a person who has, in writing, whether in the instrument of consent or otherwise, expressed the wish not to be given notice of an event or opinion mentioned in either of those subsections.
 - (4) Where the Secretary or the principal officer of an approved agency is notified of the death of an adopted person, he shall take such steps as are reasonably practicable to transmit that notification to each parent of the person who gave consent to the adoption.

38A. Validation of consents

A consent to an adoption purported to have been given in accordance with section 30(1)(a) in the period from 15 May 1992 to 27 December 1995

Adoption Act 1988
Act No. 41 of 1988

s. 39

Part II – Adoptions under this Act

is not invalid by reason only of the fact that a person in whose presence the consent was given was not at the time approved by the Director under section 30(1)(a)(ii).

Division 4 – Care of child pending adoption

39. Care of child pending adoption

- (1) The Secretary or the principal officer of an approved agency may, in accordance with this section, exercise rights of custody in respect of a child who is proposed to be adopted.
- (2) Where –
 - (a) the consent of a person to the adoption of a child has been given but an adoption order in respect of that child can not be made unless the consent of another person is given or dispensed with under this Act; or
 - (b) it appears to the Secretary or the principal officer of an approved agency that a person whose consent is required under this Act to the adoption of a child proposes to give that consent –

a person who has the custody or guardianship of the child may, in writing, authorize the Secretary or principal officer to exercise any rights of custody in respect of the child.

- (3) An authority given under subsection (2) ceases –

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 39

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- (a) on the expiration of a period of 6 months after the authority is given or, if that period is extended for a further period of 6 months by an agreement in writing between the person who gave the authority and the Secretary or principal officer, on the expiration of that further period; or
 - (b) if a person who has given consent to the adoption revokes that consent; or
 - (c) when all consents required for the adoption have been given or dispensed with; or
 - (d) if the person who gave the authority revokes it; or
 - (e) if the person who gave the authority ceases to be entitled to custody or guardianship of the child –

whichever first occurs, and on the cessation of that authority pursuant to paragraph (a), (b), (d), or (e), the Secretary or principal officer shall –

- (f) deliver the child to a person who at that time is entitled to the custody or guardianship of the child; or
- (g) where such a person cannot after reasonable inquiry be found, apply under the *Children, Young Persons and Their Families Act 1997* for a care and protection order granting guardianship of the child to the Secretary.

Adoption Act 1988
Act No. 41 of 1988

s. 40

Part II – Adoptions under this Act

40. Guardianship of child awaiting adoption

- (1) Where each person whose consent to the adoption of a child is required under section 29 has consented to the adoption of the child or the consent has been dispensed with under this Act, the Secretary shall be the guardian of the child for all purposes other than the purposes of that section to the exclusion of all other persons until –
 - (a) an adoption order is made in respect of the child; or
 - (b) the Secretary renounces guardianship of the child under section 41; or
 - (c) the Secretary, by writing under his hand, releases the child to the parents or to one of the parents of the child; or
 - (d) in the case of any consent so given, the instrument of consent is lawfully revoked; or
 - (e) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child.
- (2) Subsection (1) does not apply to, or in relation to –
 - (a) a child the adoption of whom by a spouse of a parent of the child or by a relative, or by a relative and the spouse of the relative, of the child is being negotiated or arranged; or

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 41

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- (b) a child who is under the guardianship of the Secretary by reason of –
 - (i) a care and protection order made under the *Children, Young Persons and Their Families Act 1997*; or
 - (ii) the assumption of guardianship under section 76 of that Act; or
 - (c) a child unless and until –
 - (i) the Secretary has received notice in writing that a general consent to the adoption of the child has been given; and
 - (ii) the Secretary has signified his acceptance of the guardianship of the child.

41. Renunciation of guardianship for adoption of child in another State

- (1) Where the Secretary receives from an officer in another State or a Territory whose powers, functions, and duties correspond with those of the Secretary under this Act –
 - (a) notice that an application will be made in that State or Territory under a law corresponding with this Act for the adoption of a child who is under the guardianship of the Secretary by virtue of section 40; and

Adoption Act 1988
Act No. 41 of 1988

s. 41

Part II – Adoptions under this Act

- (b) a request that the Secretary renounce guardianship of the child –

the Secretary may, if consent to the adoption has become irrevocable or has been dispensed with under section 37 and he is satisfied that it is in the best interests of the child to do so, by instrument in writing under his hand, renounce guardianship of the child.

- (2) On signing an instrument of renunciation under subsection (1), the Secretary shall send it by certified mail to the officer of the other State or Territory from whom the notice referred to in that subsection was received, together with the consent to adoption executed in Tasmania in respect of the child by virtue of which the Secretary is the guardian of the child unless that consent has been dispensed with by an order under section 37.
- (3) On the posting of an instrument of renunciation under subsection (2) together with the consent to adoption of the child (if any) affected by the renunciation, the Secretary ceases to be the guardian of that child for the purposes of this Act.
- (4) Where an 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 any law corresponding with this Act whose powers, functions, and duties correspond with those of the Secretary under this Act, the Secretary may notify that officer or person of the application

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 42

and request him to renounce in writing guardianship of the child and to forward to the Secretary for use in the proceedings on the application the consent executed in that State or Territory with respect to the child.

- (5) On receiving from any such officer or person an instrument in writing executed by him renouncing the guardianship of a child referred to in subsection (4), the Secretary shall become the guardian of the child in all respects as if the consent to adoption executed outside Tasmania and forwarded with the instrument of renunciation were a consent given in accordance with Division 3 in Tasmania on the day when the consent purports to have been signed and attested outside Tasmania.
- (6) Where an application is to be made under this Act for the adoption of a child who, pursuant to the law of another State or a Territory corresponding with this Division, is under the guardianship of an officer in that State or Territory whose powers, functions, and duties correspond with those of the Secretary under this Act, but the consent to adoption has been dispensed with under a law corresponding with section 37, the requirement of a consent to adoption under this Part is deemed to have been dispensed with under that section.

42. Guardianship of non-citizen child

- (1) Where –

Adoption Act 1988
Act No. 41 of 1988

s. 43

Part II – Adoptions under this Act

- (a) a non-citizen child is present in Tasmania;
- (b) the Secretary is authorized to make arrangements with a view to the adoption of the child; and
- (c) it appears to the Secretary that there is not a person in Australia who is a guardian of the child –

the Secretary may make application to the court for an order that the Secretary shall be the guardian of the child.

- (2) Where the court, on an application under subsection (1), makes an order that the Secretary shall be the guardian of a child, the Secretary shall be the guardian of the child for all purposes to the exclusion of all other persons as if the Secretary had become the guardian of the child by reason of the operation of section 40 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 or section 41.

43. Miscellaneous provisions as to care, control, placement, &c., of child

- (1) Where the Secretary has become and remains for a period of 12 months the guardian of a child under section 40 or 42 or the Secretary continues to be the guardian of a child as mentioned in subsection (2) –

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 44

-
- (a) the Secretary shall make a report in writing to the court concerning the welfare and interests of the child; and
 - (b) the court shall make such order for the care, control, and custody of the child as it thinks fit.
- (2) Without limiting the orders the court may make under subsection (1)(b), the court may make a care and protection order under the *Children, Young Persons and Their Families Act 1997*.
- (3 - 4)
- (5) The fact that the Secretary is the guardian of a child under this Division does not affect the liability of any other person to provide adequate means of support for the child.

44. Duty of principal officer to report to Secretary

Where –

- (a) an approved agency has made, or is making, arrangements or negotiations for, towards, or with a view to, the adoption of a child; and
- (b) a period of 9 months has elapsed since the Secretary has signified his acceptance of guardianship of the child –

the principal officer of that approved agency shall, within 14 days after the expiration of that period, furnish the Secretary with a report in

Adoption Act 1988
Act No. 41 of 1988

s. 45

Part II – Adoptions under this Act

writing concerning the welfare and interests of the child.

45. Natural parent's right of access after consent

- (1) A parent of the child who has given consent to the adoption of the child may, notwithstanding that the Secretary is the guardian of the child under this Division but subject to subsection (2), visit the child during the period during which the consent may be revoked.
- (2) The Secretary or the principal officer of an approved agency may, by notice in writing given to a parent who has given consent to the adoption of a child, restrict the occasions on which or times at which that parent may, under this section, visit the child.

Division 5 – Adoption of non-citizen children

46. Orders for adoption of non-citizen children

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 24 and is also satisfied –

- (a) that the persons in whose favour the order is made are persons both of whom were approved by the Secretary as persons suitable to adopt a non-citizen child before the child came into, or was placed in, the care of those persons and that the placement of the child with a

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 47

view to adoption by those persons has been approved by the Secretary; or

- (b) that the child has been in the care of the persons in whose favour the order is made for the preceding 12 months and that, during that period, the Secretary has supervised the welfare and interests of the child.

47. Supervision of certain children adopted overseas

- (1) Subject to subsection (2), where –

- (a) a child is adopted in a country, other than New Zealand, outside Australia, whether or not the adoption has, under this Act, the same effect as an adoption order under this Act; and
- (b) the adoption in relation to the child has been in force for a period not exceeding 12 months; and
- (c) either of the adoptive parents of the child had not been resident in the country in which the order was made for a continuous period of 12 months immediately before the making of that order; and
- (d) the child is present in Tasmania –

the Secretary may supervise the welfare and interests of the child –

Adoption Act 1988
Act No. 41 of 1988

s. 48

Part II – Adoptions under this Act

- (e) for a period not exceeding 12 months commencing on the date of the arrival of the child in Tasmania; and
 - (f) if, on the expiration of that period, the child remains subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, until an adoption order is made in respect of the child or the child otherwise ceases to be subject to that Act.
- (2) The Secretary may exempt a child to whom subsection (1) would otherwise apply from the application of that subsection.

48. Supervision of certain non-citizen children

- (1) Subject to subsection (2), where a non-citizen child is in the care of prospective adoptive parents with a view to adoption by them, the Secretary may supervise the welfare and interests of the child –
- (a) for a period not exceeding 12 months commencing on the date on which the Secretary is notified of the placement of the child in their care; and
 - (b) if, on the expiration of that period, the child remains subject to the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, until an adoption order is made in respect of the child or the child otherwise ceases to be subject to that Act.

Adoption Act 1988
Act No. 41 of 1988

Part II – Adoptions under this Act

s. 48

- (2) The Secretary may exempt a child to whom subsection (1) would otherwise apply from the application of that subsection.
- (3) A person authorized by the Secretary for the purpose has a right of access to a child referred to in section 47(1) or in subsection (1) of this section at all reasonable times during the period when the Secretary may supervise the welfare and interests of the child.

PART III – ADOPTION ORDERS

Division 1 – Certificates of adoption

49. Certificates of adoption

On making an adoption order, the court shall issue to the persons in whose favour the order is made a certificate stating the date on which the order was made, the name of the adoptive parents, the name that, under the order, is the name of the adopted person, the place and date of birth of that person and such other matters as the court determines.

Division 2 – Effect of adoption orders

50. General effect of adoption orders

- (1) Subject to this Act and to any other Act that expressly distinguishes in any way between adopted children and children other than adopted children, on the making of an adoption order –
 - (a) the adopted person shall be treated in law as a child of the adoptive parents and the adoptive parents shall be treated in law as the parents of the adopted person; and
 - (b) the adopted person shall be treated in law as if the adopted person were not a child of any person who was a parent (whether natural or adoptive) of the adopted person before the making of the adoption order, and any such person shall be

Adoption Act 1988
Act No. 41 of 1988

Part III – Adoption Orders

s. 50

treated in law as if the person were not a parent of the adopted person; and

- (c) the relationship to one another of all persons, including the adopted person and an adoptive parent or former parent of the adopted person, shall be determined in accordance with this section; and
 - (d) any guardianship of the adopted person ceases to have effect; and
 - (e) any previous adoption of the adopted person, whether effected under the law of Tasmania or otherwise, ceases to have effect.
- (2) Notwithstanding subsection (1), where the relationship between persons is relevant for the purposes of any law relating to a sexual offence –
- (a) an adoption order, or the discharge of an adoption order, does not cause the cessation of a relationship that would have existed if the adoption order, or the discharge of an adoption order, as the case may be, had not been made; and
 - (b) 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.

Adoption Act 1988
Act No. 41 of 1988

s. 51

Part III – Adoption Orders

51. Effect of orders in relation to dispositions of property

- (1) Subsection (1) of section 50 has effect in relation to dispositions of property, whether by will or otherwise, and whether made before or after the commencement of the repealed Act, except that that subsection does not affect –
 - (a) a disposition of property by a person who, or by persons any of whom, died before that commencement; or
 - (b) a disposition of property that took effect in possession before that commencement.
- (2) Section 50(1) does not apply to, or in relation to, an agreement or instrument made or executed before the commencement of the repealed Act, unless the agreement or instrument effects a disposition of property.
- (3) Where –
 - (a) before the commencement of the repealed Act, a person made a disposition of property by an instrument other than a will; and
 - (b) the disposition had not taken effect in possession before that commencement; and
 - (c) it did not appear from the instrument that it was the intention of that person to

Adoption Act 1988
Act No. 41 of 1988

Part III – Adoption Orders

s. 52

include adopted children as objects of the disposition –

that person may, notwithstanding that the instrument could not, but for this subsection or a corresponding previous enactment, be revoked or varied, by a similar 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 repealed Act, an adoption order made under that Act or this Act has effect as if the *Adoption of Children Act 1920* were still in force.
- (5) Nothing in section 50 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 the repealed Act, distinguishing between adopted children and children other than adopted children.

52. Bequest by will to unascertained adopted person

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

Adoption Act 1988
Act No. 41 of 1988

s. 52

Part III – Adoption Orders

parent, child, brother, or sister of the
testator; and

- (b) the person so described was adopted by
another person; and
- (c) the personal representative of the testator
is unable to ascertain the name and
address of the adopted person –

the personal representative shall give to The
Public Trustee a copy of the will and a statement
that he is unable to ascertain the name and
address of the adopted person.

- (2) Where The Public Trustee is given a copy of a
will under subsection (1), The Public Trustee
shall, by notice in writing given to the Secretary,
request the Secretary to make arrangements for
ascertaining, and giving to The Public Trustee,
the name and address of the adopted person.
- (3) Where the Secretary receives a request under
subsection (2), he shall cause such reasonable
inquiries to be made of records in his possession
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 inquiries of those records, seek to
obtain the information from inquiries of an
agency, other body, or person.
- (4) If the Secretary ascertains the name of the
adopted person, he shall take such steps as are
reasonably practicable to ascertain the address
or, if the adopted person has died, the date of

Adoption Act 1988
Act No. 41 of 1988

Part III – Adoption Orders

s. 52

death of the adopted person and shall inform The Public Trustee of that name and address or date.

- (5) If the Secretary is unable to ascertain the name of the adopted person, he shall so inform The Public Trustee.
- (6) After receiving information from the Secretary under this section, The Public Trustee shall give notice in writing to the personal representative 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.
- (7) Unless the adopted person predeceased the testator or, for any other reason known to the personal representative, is not entitled to an interest under the will, The Public Trustee shall be deemed to be a trustee for the adopted person on the trusts specified in, or arising under, the will and, if the personal representative transfers the property to The Public Trustee as trustee for the adopted person, the personal representative shall be deemed to have transferred the property to the adopted person.
- (8) Where The Public Trustee –
 - (a) is, under subsection (7), deemed to be a trustee for an adopted person who is a beneficiary under a will; and
 - (b) gives the personal representative of the testator under that will a statement in writing to the effect that the adopted person has disclaimed the property to

Adoption Act 1988
Act No. 41 of 1988

s. 53

Part III – Adoption Orders

which the adopted person was entitled under that will –

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

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

- (1) Notwithstanding any other provision 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) is not 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.

54. Names of adopted person

(1) On the making of an adoption order –

(a) the surname of the adopted person shall be –

(i) where there is one adoptive parent, the surname of the adoptive parent; or

(ii) where there are 2 adoptive parents who have the same surname, that surname; or

(iii) where there are 2 adoptive parents who have different surnames, one or both of those surnames –

where that surname or each of those surnames, as the case may be, was specified in the application for the adoption order as the proposed surname of the person 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 person shall be such name or names as the court, in the adoption order, approves on the application of the adoptive parents.

(2) Where, before the making of an adoption order, the adopted person has been generally known by a particular surname, the court may, in the

Adoption Act 1988
Act No. 41 of 1988

s. 55

Part III – Adoption Orders

adoption order, order that the person shall have that name as his surname.

- (3) The court shall not approve a name as a surname or forename of an adopted person unless the court is satisfied that, so far as practicable, the wishes and feelings of the person have been ascertained and due consideration given to them having regard to the age and understanding of the person.
- (4) Nothing in this section prevents the changing of a name of an adopted person, after the making of the adoption order, in accordance with any other Act or law.

55. Effect of adoption order on domicile

The domicile of an adopted child shall be determined in accordance with the *Domicile Act 1980*.

Division 3 – Interim orders

56. Making of interim orders

- (1) On 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 prospective adoptive parents.
- (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.

Adoption Act 1988
Act No. 41 of 1988

Part III – Adoption Orders

s. 57

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- (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, a person in whose favour the order is made is entitled to the care, control, and custody of the child.

57. Duration of interim orders

- (1) Subject to this Division, an interim order remains in force for such period, not exceeding 12 months, 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 2 years.

58. Discharge of interim orders

- (1) The court may, at any time, make an order discharging an interim order and may make such order as it thinks fit for the care, control, and custody of the child to whom the interim order relates.
- (2) An interim order ceases to have effect on the making of an order for the adoption of the child to whom it relates, whether made in Tasmania, in another State, or in a Territory.

Adoption Act 1988
Act No. 41 of 1988

s. 59

Part IV – Recognition of Adoptions

PART IV – RECOGNITION OF ADOPTIONS

59. Recognition of Australian and certain foreign adoptions

(1) In this section,

prescribed place means –

- (a) another State; and
- (b) a Territory; and
- (c) New Zealand; and
- (d) a convention country; and
- (e) an agreement country.

(2) The adoption of a person which occurred –

- (a) before or after the commencement of this section; and
- (b) in a place that was a prescribed place at the time of the adoption; and
- (c) in accordance with the law of that place at that time –

has, so long as the adoption has not been rescinded under the law in force in that place, the same effect as an adoption order made under this Act and has no other effect.

Adoption Act 1988
Act No. 41 of 1988

Part IV – Recognition of Adoptions

s. 60

60. Recognition of foreign adoptions

- (1) For the purposes of the law of Tasmania, the adoption of a person, whether before or after the commencement of this section, in a non-convention or non-agreement country that is 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 made under this Act.
- (2) This section applies to an adoption in a non-convention or non-agreement country if –
 - (a) the adoption was effective according to the law of that country; and
 - (b) that country was the usual place of residence of each of the adoptive parents at the time of the commencement of the legal proceedings that resulted in the adoption and for a continuous period of at least 12 months before that time; and
 - (c) in consequence of the adoption, the 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
 - (d) under the law of that country the adoptive parents were, by the adoption,

Adoption Act 1988
Act No. 41 of 1988

s. 60

Part IV – Recognition of Adoptions

placed generally in the position of
parents in relation to the adopted person.

- (3) 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 a non-convention or non-agreement country 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.
- (4) Notwithstanding this section, a court, including the Supreme Court hearing an application under section 61, 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 connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.
- (5) Where, in any proceedings before a court, including the Supreme Court hearing an application under section 61, 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.
- (6) Except as provided in this section, the adoption of a person, whether before or after the

Adoption Act 1988
Act No. 41 of 1988

Part IV – Recognition of Adoptions

s. 61

commencement of this section, in a non-convention or non-agreement country does not have effect for the purposes of the law of Tasmania.

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

61. Declarations of validity of foreign adoptions

- (1) In this section,

the Court means the Supreme Court.

- (2) A person specified in subsection (4) 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 section, under the law of a non-convention or non-agreement country and that the adoption is an adoption to which section 60 applies.
- (3) The Court may hear and determine an application under subsection (2) and, if it thinks fit, make an order accordingly.
- (4) The persons who may make an application under subsection (2) in relation to an adoption are the adopted person, either or both of the adoptive parents, or a person tracing a relationship, by virtue of the adoption, through or to the adopted person.
- (5) Where an application is made to the Court under this section, the Court shall direct that notice of

Adoption Act 1988
Act No. 41 of 1988

s. 61

Part IV – Recognition of Adoptions

the application be given to the Secretary and may –

- (a) direct that notice of the application be given to such other persons, who may include the Attorney-General, as the Court thinks fit; or
 - (b) direct that a person be made a party to the application; or
 - (c) permit the Secretary or any other person having an interest in the matter to intervene in, and become a party to, the proceedings.
- (6) Where the Court makes an order on an application under this section –
 - (a) it may include in the order such particulars in relation to the adoption, the adopted person, and the adoptive parents as the Court finds to be established; and
 - (b) it shall issue to the adoptive parents a certificate stating the date on which the order was made, the name of the adoptive parents, the name of the adopted person, and such other matters as the Court determines.
- (7) For the purposes of the law of Tasmania, an order under this section binds the Crown in right of Tasmania, but, except as provided in subsection (8), does not affect –

Adoption Act 1988
Act No. 41 of 1988

Part IV – Recognition of Adoptions

s. 61

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- (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.
- (8) In proceedings in any court relating to the rights of a person other than a person referred to in subsection (7)(a)(i) or (ii), the production of a copy of an order made under this section, certified by the Registrar of the Court to be a true copy, is evidence that an adoption was effected in accordance with the particulars contained in the order and that the adoption is an adoption to which section 60 applies.

PART V – REGISTRATION OF ORDERS

62. Memorandum of adoption order, &c., to be sent to the Registrar

As soon as is reasonably practicable after the making of an adoption order or of an order for the discharge of an adoption order, the court shall cause a memorandum of the order in accordance with the prescribed form to be sent to the Registrar.

63. Record of adoptions and endorsements, &c., to be made in birth registers in relation to adopted person

- (1) The special record formerly kept under section 22F of the *Registration of Births and Deaths Act 1895* shall, notwithstanding the amendments made by section 121, continue in force for the purposes of this Part and shall be kept by the Registrar.
- (2) Where the Registrar receives –
 - (a) a memorandum of an adoption order under section 62 in respect of a person whose birth is registered in Tasmania; or
 - (b) a memorandum under a law of another State or a Territory corresponding to section 66 relating to the making in that State or Territory of an order for the adoption of any such person –

Adoption Act 1988
Act No. 41 of 1988

Part V – Registration of Orders

s. 63

the Registrar shall re-register the birth in accordance with this section and the particulars specified in that memorandum.

(3) Where –

- (a) a person whose birth is registered in Tasmania has been adopted in a place outside Australia; and
- (b) the order for adoption is an order to which section 60 applies –

the Registrar shall –

- (c) on application by the adopted person or a person in favour of whom the order was made; and
- (d) on production of a document purporting to be the relevant adoption order or some other document relating to an adoption order in respect of that person made in a place outside Australia –

re-register the birth in accordance with this section and the particulars specified in that document.

(4) A re-registration of the birth of an adopted person for the purposes of this section shall be made –

- (a) by an entry in the prescribed form in the special record and by endorsing that entry with –
 - (i) a reference to this section; and

Adoption Act 1988
Act No. 41 of 1988

s. 63

Part V – Registration of Orders

- (ii) a reference in the prescribed form identifying the entry of birth of that person as shown in the register; and
 - (b) by endorsing the entry of the birth of the adopted person as shown in the register with –
 - (i) a reference to this section; and
 - (ii) a reference in the prescribed form identifying the entry made relating to that person in the special record; and
 - (c) if there is a previous entry relating to the adopted person in the special record or in the former register of adoptions, by endorsing it with a reference in the prescribed form to the entry of the birth of that person as re-registered under this section.
- (5) Where, before the commencement of the repealed Act, an order for the adoption of a person whose birth is registered in Tasmania was registered in the former register of adoptions, the Registrar may, on application by that person or an adoptive parent of that person, cause to be made, in relation to that person, in the special record and in the register the same entries and endorsements as would be required by this section if the order for the adoption of that person had been made under this Act.
- (6)

64. Record of adoptions of persons born outside Australia

- (1) The Registrar shall, on receipt of a memorandum under section 62 in relation to the making of an adoption order for the adoption of a person born in a place outside Australia, cause an entry in the prescribed form to be made in the special record.
- (2) Where, before the commencement of this section –
 - (a) an order for the adoption of a person born in a place outside Australia was made under the repealed Act; or
 - (b) an order for the adoption of a person born in any such place was registered in the former register of adoptions –

the Registrar may, on application by that person or an adoptive parent of that person, cause to be made in relation to that person the same entry in the special record as he would have made if the order for the adoption of that person had been made under this Act after the commencement of this section.

65. Discharge of adoption orders

- (1) On receipt of a memorandum under section 62 or a memorandum under a law of another State or a Territory corresponding to that section, in relation to the discharge of an order for the adoption of a person, the Registrar shall –

Adoption Act 1988
Act No. 41 of 1988

s. 66

Part V – Registration of Orders

- (a) cause the entry made in relation to that person in the special record to be cancelled; and
 - (b) cause the endorsement made pursuant to section 63(4)(b) on the entry of the birth of that person in the register to be cancelled.
 - (c)
- (2) On receipt of a memorandum under section 62 in relation to the discharge of an order for the adoption of a person who was born in a place other than Tasmania or another State or a Territory, the Registrar shall cause the entry made in relation to that person in the special record to be cancelled.

66. Sending of memoranda of orders to other States, &c.

- (1) Where –
- (a) an adoption order or an order for the discharge of an adoption order has been made under this Act; and
 - (b) the Registrar has reason to believe that the birth of the person to which the order relates is registered in another State or in a Territory –

the Registrar shall, as soon as practicable, cause a memorandum in accordance with the prescribed form of the adoption order or a copy

Adoption Act 1988
Act No. 41 of 1988

Part V – Registration of Orders

s. 67

of the order for the discharge of an adoption order, as the case may be, certified in writing by him to be a true memorandum or copy, to be sent to an officer of that State or Territory having functions in relation to the registration of births who is prescribed by the regulations.

(2) Where –

- (a) an adoption order or an order for the discharge of an adoption order has been made under this Act; and
- (b) the Registrar has reason to believe that the birth of the person adopted under the order is registered in a country other than Australia –

the Registrar shall, on application in writing by the persons in whose favour the order was made or of the person adopted under the order, 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 him to be a true memorandum or copy, to be sent to an officer in that country who is prescribed by the regulations.

67. Entries in registers of births not to be disclosed

(1)

(2) The Registrar shall not, except in accordance with this Act or an order of the Supreme Court, open for inspection, or issue an extract from, or

Adoption Act 1988
Act No. 41 of 1988

s. 67

Part V – Registration of Orders

copy of, an entry relating to an adopted person in the register.

- (3) The Registrar shall, on an application in writing by a natural parent of an adopted person, issue to the natural parent an extract from, or copy of, an entry in the register relating to the adopted person.
- (4) Where an order has been made for the adoption of a person whose birth has been registered in Tasmania, the adopted person may apply to the Registrar for the issue of an extract from, or a certified copy of, the entry in the register relating to the adopted person.
- (5) An application under subsection (4) by an adopted person may be made whether before or after he has attained the age of 18 years and whether the order for his adoption was made before or after the commencement of this section but, except in a case where the adoption order has been made after the commencement of this section in favour of –
 - (a) a spouse of a natural parent of the adopted person; or
 - (b) another person who, or whose spouse, is a relative of the adopted person, or 2 persons who are relatives of the adopted person –

the application shall be accompanied by a certificate given to the adopted person under section 80.

Adoption Act 1988
Act No. 41 of 1988

Part V – Registration of Orders

s. 68

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- (6) On an application made in accordance with this section, the Registrar shall issue in accordance with the application an extract from, or certified copy of, the entry in the register relating to the adopted person to whom the application relates.
 - (7) An extract from, or certified copy of, an entry in the register issued under subsection (6) is 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 1999*.
 - (8) Where, pursuant to this section, the Registrar issues an extract from, or certified copy of, an entry in the register to an adopted person, the extract or certified copy shall contain a statement specifying the surname taken by the adopted person on the making of the order for his adoption.

68. Former register of adoptions and memoranda of adoption orders not open for search

- (1) Except as provided in this section –
 - (a) the former register of adoptions and a memorandum of an adoption order under section 55 of the repealed Act or section 62 of this Act are not open for inspection or search; and
 - (b) a person shall not be furnished with an extract from, or certified copy of, an entry in that register or with a certified

Adoption Act 1988
Act No. 41 of 1988

s. 69

Part V – Registration of Orders

copy of any such memorandum of an adoption order.

- (2) On application by an adopted person, the Registrar shall issue, subject to subsection (3) and 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 1999* in relation to the register –
 - (a) an extract from, or certified copy of, an entry in the former register of adoptions relating to the adopted person; or
 - (b) a certified copy of a memorandum of an adoption order under section 55 of the repealed Act or section 62 of this Act relating to the adopted person.
- (3) An application by an adopted person under subsection (2) shall be accompanied by a certificate given to him under section 80.

69. Copies of entries in the special record

- (1) On application, 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 1999*, an extract from, or certified copy of, an entry in the special record.
- (2) In the case of an application under this Part by an adopted person particulars of whose adoption

Adoption Act 1988
Act No. 41 of 1988

Part V – Registration of Orders

s. 70

are entered in the former register of adoptions, the Registrar may re-register the birth of that person in the special record and exercise his powers under, and in accordance with, subsection (1).

- (3) An extract from, or a certified copy of an entry in, the special record shall not contain a reference to any matter referred to in section 63(4)(a).

70.

Adoption Act 1988
Act No. 41 of 1988

s. 71

Part VI – Access to Information

PART VI – ACCESS TO INFORMATION

Division 1 – General

71. Restriction on access to records and reports

(1) Except as provided in this Act and without derogating from the powers of the Ombudsman under the *Ombudsman Act 1978* –

- (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 a part of any such records; and
- (b) a report to a court under section 24(1) or a 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 a corresponding previous enactment –

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

(2) Subsection (1) has effect notwithstanding that a copy of a report referred to in that subsection or of a part of any such report may be contained in records from which information may be available under this Part.

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 72

72. Duties of relevant authorities to provide information

- (1) Where a relevant authority receives an application for information under this Part, the relevant authority shall, subject to and in accordance with this Part –
 - (a) so far 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 if the information is such as may be given to him under this Part; and
 - (b) where the relevant authority is the Secretary and the information to which the application relates is not contained in records in his possession or under his control, request any agency, body, or person from which or from whom the information may be available –
 - (i) to give the information to the Secretary; or
 - (ii) where the applicant agrees and the request so states, to give the information to the applicant, so far as the information may be given to him under this Part.
- (2) On receipt of information under subsection (1), the Secretary shall give the information to the applicant, so far as it may be given to him under this Part.

Adoption Act 1988
Act No. 41 of 1988

s. 72

Part VI – Access to Information

- (3) Where information sought under this Part is not contained in any records referred to in subsection (1), a relevant authority shall –
 - (a) make such reasonable inquiries as in all the circumstances of the case ought to be made for the purposes of obtaining the information; and
 - (b) on obtaining the information, give it to the applicant, so far as it may be given to him under this Part.
- (4) Where an application has been made under this Part to a relevant authority other than the Secretary for information that is not contained in records in the possession, or under the control, of that relevant authority –
 - (a) the relevant authority shall notify the Secretary of that fact; and
 - (b) on receipt of a notification under paragraph (a), the Secretary shall request any agency, body, or person from which or from whom the information may be available to give the information to the Secretary.
- (5) On receipt of information sought under subsection (4), the Secretary shall give the information to the relevant authority referred to in that subsection.
- (6) On receipt of information under subsection (5), a relevant authority shall give the information to

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 73

the applicant, so far as it may be given to him under this Part.

73. Secretary may obtain information from the court

- (1) For the purposes of this Part, the Secretary may apply to the 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 may 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.

74. Counselling services

- (1) A relevant authority shall not provide a document or information to an applicant under this Part unless the applicant has received counselling from 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.

Adoption Act 1988
Act No. 41 of 1988

s. 75

Part VI – Access to Information

- (3) This section does not apply if the relevant authority is satisfied that –
- (a) the adopted person and all other persons referred to in the original birth certificate relating to the adopted person have previously exchanged information which may identify a natural parent or natural relative of the adopted person; or
 - (b) the applicant under this part is not resident in Tasmania.

75. 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.

76. 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 natural relative or child of the 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

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 77

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 nominated by the applicant and approved by the relevant authority.

Division 2 – Persons entitled to birth certificates or information

77. Application of this Division where adopted person under guardianship

Where an adopted person is under the guardianship of a person who is not his adoptive parent, references in this Division to the agreement of an adoptive parent shall be read as references to the agreement of that guardian.

78. Provision of information by relevant authorities

On application in accordance with this Division, a relevant authority shall, subject to this Part, provide information about an adopted person or the natural parents or the natural relatives of the adopted person if the relevant authority is satisfied that the information –

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

Adoption Act 1988
Act No. 41 of 1988

s. 79

Part VI – Access to Information

79. Access to birth certificates of adopted persons born outside Tasmania

- (1) Where an order has been made for the adoption of a person whose birth was not registered in Tasmania, the adopted person may, whether before or after attaining the age of 18 years and whether the order was made before or after the commencement of this section, apply to a relevant authority for a copy of, or an extract from, or certified copy of, the birth certificate relating to himself contained in records relating to his adoption that are in the possession, or under the control, of the relevant authority, an agency, another body or person, or of the court.
- (2) Where an application is made under subsection (1) by an adopted person who has not attained the age of 18 years, the application shall be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent.
- (3) Subject to subsection (4), where a relevant authority receives an application under subsection (1), the relevant authority shall –
 - (a) where the copy to which the application relates is in his possession or under his control, give a copy to the applicant; or
 - (b) where the copy to which the application relates is in the possession, or under the control, of an agency, another body or person, or the court, request that agency, body, person, or court to give a copy to

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 80

the relevant authority or, where the request so states, to the applicant.

- (4) Where an application is made under subsection (1) by an adopted person who has not attained the age of 18 years, a relevant authority shall not –
- (a) give a copy of, or an extract from, or a certified copy of, a birth certificate to the applicant; or
 - (b) request an agency, another body or person, or the court to give a copy to the applicant –

unless the relevant authority has obtained the agreement in writing, or evidence of the death, of each natural parent of the adopted person who has given consent to the adoption.

80. Grant of certificate as to counselling, &c.

- (1) An adopted person whose birth is registered in Tasmania may, whether before or after attaining the age of 18 years, apply in the prescribed form to a relevant authority for a certificate in the prescribed form to the effect that the requirements of this section have been complied with.
- (2) Where an application is made under subsection (1) by an adopted person who has not attained the age of 18 years, the application shall be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent.

Adoption Act 1988
Act No. 41 of 1988

s. 81

Part VI – Access to Information

- (3) Where the relevant authority receives an application under subsection (1) and the applicant has received counselling from an approved counsellor, the relevant authority shall, subject to subsection (4), give to the applicant a certificate referred to in subsection (1).
- (4) An adopted person who has not attained the age of 18 years is not entitled to a certificate referred to in subsection (1) unless the relevant authority has obtained the agreement in writing, or evidence of the death, of each natural parent of the adopted person who has given consent to the adoption.

81. Adopted person's right to information under age 18

- (1) An adopted person who has not attained the age of 18 years may, subject to this section, apply to a relevant authority for information about himself.
- (2) An application for information referred to in subsection (1) shall be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent of the adopted person.
- (3) There shall not be given to an applicant under this section any information 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.

82. Adopted person's right to information at age 18

- (1) An adopted person who has attained the age of 18 years may apply to a relevant authority for information about himself and he may so apply whether or not one of his natural parents or natural relatives may be identified from that information.
- (2) Before an adopted person is given any information that identifies, or identifies the whereabouts of, one of his or her natural parents or natural relatives, he or she is to undertake not to contact that natural parent or natural relative if that natural parent or natural relative –
 - (a) has entered a contact veto in an Adoption Information Register in respect of the adopted person; and
 - (b) has not withdrawn the contact veto from the Register.
- (3) An undertaking is to be in writing in a form determined by the Secretary.

83. Information about adopted person under age 18

- (1) A natural parent or natural relative of an adopted person who has not attained the age of 18 years may, subject to this section, apply to a relevant authority for information about the adopted person.
- (2) A natural parent or natural relative is not entitled to information about the adopted person from

Adoption Act 1988
Act No. 41 of 1988

s. 83

Part VI – Access to Information

which his adoptive parents may be identified or his whereabouts ascertained unless the relevant authority –

- (a) has considered any wishes expressed by 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.
- (3) A natural parent or natural relative is not entitled to information about the adopted person if the relevant authority is of opinion that, in order to give effect to any wishes of the adopted person or conditions imposed by an adoptive parent under subsection (2), that information ought not to be disclosed.
- (4) If an adopted person dies before attaining the age of 18 years, a natural parent or natural relative of the adopted person, on application under subsection (1), is entitled to be given the following information:
 - (a) the identity of the adopted person;
 - (b) the date of death of the adopted person;
 - (c) the place of burial or other disposal of the body of the adopted person;
 - (d) the identity of the adoptive parents.

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 84

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- (5) Before a natural parent or natural relative of an adopted person referred to in subsection (4) is given any information under that subsection that identifies, or identifies the whereabouts of, an adoptive parent of the adopted person, the natural parent or natural relative is to undertake not to contact that adoptive parent if that adoptive parent –
- (a) has entered a contact veto in an Adoption Information Register in respect of the natural parent or natural relative; and
 - (b) has not withdrawn the contact veto from the Register.
- (6) An undertaking is to be in writing in a form determined by the Secretary.

84. Information about adult adopted person

- (1) A natural parent or natural relative of an adopted person who has attained the age of 18 years may, subject to this section, apply to a relevant authority for information about the adopted person.
- (2) Before a natural parent or natural relative of an adopted person is given any information that identifies, or identifies the whereabouts of, the adopted person or an adoptive parent of the adopted person, the natural parent or natural relative is to undertake not to contact the adopted person or adoptive parent if the adopted person or adoptive parent –

Adoption Act 1988
Act No. 41 of 1988

s. 85

Part VI – Access to Information

- (a) has entered a contact veto in an Adoption Information Register in respect of the natural parent or natural relative; and
 - (b) has not withdrawn the contact veto from the Register.
- (3) An undertaking is to be in writing in a form determined by the Secretary.

85.

86. Adoptive parent's right to information

- (1) An adoptive parent of an adopted person may, subject to this section, apply to a relevant authority for information about the adopted person.
- (2) An adoptive parent is not entitled to information about the adopted person from which a natural parent or natural relative of the adopted person may be identified unless –
 - (a) the relevant authority has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death, of that natural parent or natural relative; and
 - (b) if the adopted person has attained the age of 18 years, the relevant authority –
 - (i) has notified the adopted person in writing of his intention to give the information; or

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 86A

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- (ii) has evidence of the death of the adopted person.
 - (3) An adoptive parent is not entitled to information about the adopted person if the relevant authority is of opinion that, in order to give effect to conditions imposed under subsection (2)(a) by a natural parent or natural relative, that information ought not to be disclosed.

86A. Decision of relevant authority

- (1) A relevant authority, on receiving an application for information under this Division, may decide to –
 - (a) give all the information sought; or
 - (b) refuse to give any or all of that information.
- (2) Notice of a decision under subsection (1)(b) is to –
 - (a) be in writing; and
 - (b) specify the reasons for the decision.

86B. Review of decision of relevant authority

- (1) An applicant for information under this Division may apply for a review of a decision under section 86A(1)(b).
- (2) An application for a review of a decision is to be made to the Secretary or to the principal officer

Adoption Act 1988
Act No. 41 of 1988

s. 86C

Part VI – Access to Information

of an approved agency within 28 days after the applicant receives notice of the decision.

- (3) The Secretary or principal officer, as soon as practicable, is to –
 - (a) review the decision and make a fresh decision; or
 - (b) arrange for another person to review the decision and make a fresh decision.
- (4) A decision under subsection (3) may be to –
 - (a) give the information that the relevant authority refused to give; or
 - (b) refuse to give any or all of that information.
- (5) Notice of a decision under subsection (4)(b) is to –
 - (a) be in writing; and
 - (b) specify the reasons for the decision.

86C. Review by Ombudsman

- (1) A person may apply to the Ombudsman for a review of a decision under section 86A(1)(b) or section 86B(4)(b).
- (2) A person may apply to the Ombudsman under subsection (1) only if he or she has applied for a review under section 86B and –

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 87

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- (a) 14 days have elapsed since the application for a review was made; or
 - (b) the person has been informed of the result of the review.
- (3) The Ombudsman is to make a decision within 30 days after receiving the application.
 - (4) The Ombudsman is to inform the relevant authority of the decision.
 - (5) The relevant authority is to take any action necessary to implement the decision.

87. Power of judge to order release of information to adopted persons, natural parents, &c.

- (1) Where a person –
 - (a) is unable to obtain information about an adopted person because a person whose agreement in writing is required under this Division has failed to give that agreement or has not been found; or
 - (b) being entitled to apply under a preceding section of this Division, desires to obtain information which he is not entitled to obtain under any other provision of this Part –

the first-mentioned person may apply to a judge in chambers for an order permitting him to obtain that information.

Adoption Act 1988
Act No. 41 of 1988

s. 87

Part VI – Access to Information

- (2) An application under subsection (1) shall be accompanied by a report from an approved counsellor.
- (3) Where, on an application made under subsection (1), the judge is satisfied –
 - (a) where the application is made because a person has failed to agree in writing to the giving of the information or has not been found, that it is in the best interests of the applicant that the information be given; and
 - (b) 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
 - (c) after consideration of the report of an approved counsellor made under subsection (2), that special circumstances exist which make it desirable so to do –

the judge may, subject to subsection (4), make an order directing –

- (d) a relevant authority to give such information as is specified in the order to the applicant; or

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 88

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- (e) 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.
- (4) Where a person has failed to agree in writing to the giving of information as mentioned in this Part, the judge shall not make an order under subsection (3) relating to that information unless the judge has given that person, if he can be found, an opportunity to be heard in circumstances in which his identity is not disclosed to the applicant.

88. Power of judge to order release of information to other interested persons

- (1) A person who is not entitled to apply under a preceding section of this Division may apply to a judge in chambers for an order that information about an adopted person be given to the applicant.
- (2) An application under subsection (1) shall be accompanied by a report from the Secretary or an approved counsellor.
- (3) Where an application is made under subsection (1), the judge may, if he is satisfied after consideration of a report made under subsection (2) that the applicant has a proper interest in obtaining the information sought and that special circumstances exist which make it desirable so to do, make an order directing –

Adoption Act 1988
Act No. 41 of 1988

s. 89

Part VI – Access to Information

- (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

89. Adoption Information Service

There shall be an Adoption Information Service established within the Department and within each approved agency which shall –

- (a) advise persons with respect to the provisions of this Part; and
- (b) make arrangements for the provision of counselling in relation to applications under this Part; and
- (c) receive applications for information under this Part; and
- (d) subject to and in accordance with this Part, facilitate the provision of information to a person whose name is entered in an Adoption Information Register maintained under section 90.

90. Adoption Information Registers

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

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 90

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- (2) As soon as practicable after making an entry in an Adoption Information Register, the principal officer of an approved agency shall forward to the Secretary a copy of the particulars relating to each person in respect of whom the entry is made and the Secretary shall enter those particulars in the Adoption Information Register maintained by him.
- (3) There shall be entered in each Adoption Information Register –
- (a) the names and addresses of persons, including –
 - (i) adopted persons; and
 - (ii) natural relatives of adopted persons; and
 - (iii) natural parents of adopted persons; and
 - (iv) adoptive parents of adopted persons –who have, in writing, applied to the Secretary or the principal officer of the appropriate approved agency to enter their names and addresses in that Register; and
 - (b) in relation to each person so registered, the wishes of the person in relation to –

Adoption Act 1988
Act No. 41 of 1988

s. 90

Part VI – Access to Information

- (i) obtaining information about, or meeting or providing information to; and
 - (ii) whether or not to release the name and address of, or any information about, the person to; and
 - (iii) being contacted by –

another person whose name is, or may at any time be, entered in that Register; and
 - (c) on behalf of any person whose name is entered in the Register, a contact veto specifying any person or class of persons by whom the registered person does not wish to be contacted.
- (3A) Any wish not to be contacted or met by any person or class of persons made under subsection (3)(b), before or after the commencement of section 10 of the *Adoption Amendment Act 1998*, by a person whose name is entered in an Adoption Information Register is taken to be a contact veto.
- (4) The name and address of a person whose name is entered in an 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 his name and address.
- (5) The Secretary shall from time to time –

Adoption Act 1988
Act No. 41 of 1988

Part VI – Access to Information

s. 90

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- (a) give public notification of the establishment of each Adoption Information Register; and
 - (b) invite adopted persons, natural parents, natural relatives and adoptive parents to record their wishes in relation to obtaining information about, being contacted by or meeting or providing information to, another person whose name is, or may at any time be, entered in an Adoption Information Register.
- (6) A person who is required to maintain an Adoption Information Register under this section shall, on application by a person whose name is entered in that Register, amend or cancel the entry relating to that person.

PART VII – MISCELLANEOUS

Division 1 – Supplemental provisions

91. Delegation of powers of Secretary

- (1) In this section,

power includes authority.

- (2) The Secretary may, by writing under his hand, delegate to –

- (a) a specified officer of the Department; or
- (b) a person who is temporarily employed in that Department –

the performance of any of the functions or the exercise of any of the powers conferred or imposed on the Secretary by this Act, except this power of delegation.

- (3) A delegation under this section may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the resolution.
- (4) No person is concerned to see or inquire whether any act, matter, or thing done or performed by a delegate of the Secretary under this section when purporting to act as such is, or is not, authorized by the delegation.
- (5) Notwithstanding any delegation under this section, the Secretary may continue to perform

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 92

or exercise all or any of the functions or powers delegated.

- (6) Any act or thing done by, or to, a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done by, or to, the Secretary and shall be deemed to have been done by, or to, the Secretary.
- (7) Where the performance of a function or the exercise of a power by the Secretary is dependent on his opinion or belief, a delegate of the Secretary under this section may, in performing that function or exercising that power, act on his own opinion or belief.

92. Financial assistance

The Secretary may, out of money appropriated by Parliament for that purpose, make grants or provide 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 adoptive parents or prospective adoptive parents of a child of a prescribed class.

93. Hearings to be in camera

- (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 representatives shall, except as otherwise directed by the court,

Adoption Act 1988
Act No. 41 of 1988

s. 94

Part VII – Miscellaneous

be excluded during the hearing of such an application.

(2) A 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 a person to leave the room or other such place during the examination of a witness.

94. Secretary, principal officer, &c., may appear at hearings

On the hearing of an application for an adoption order –

- (a) where the application is made by the Secretary, the Secretary or a person appointed by him for the purpose; or
- (b) where the application is made by the principal officer of an approved agency, the principal officer or a person appointed by him for the purpose –

may appear at the hearing, address the court, and call, examine, and cross-examine witnesses.

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 95

95. Judicial notice of signatures, &c.

- (1) In proceedings under this Act, all courts and persons acting judicially must take judicial notice of the signature of a person who –
 - (a) holds or has held the office of Secretary; or
 - (b) is acting or has acted in the office of Secretary; or
 - (c) has held the office of Director for Community Welfare; or
 - (d) has acted in the office of Director for Community Welfare; or
 - (e) holds or has held an office in another State or a Territory that corresponds to the office of Secretary under this Act; or
 - (f) is acting or has acted in such a corresponding office in another State or a Territory; or
 - (g) is a delegate of a person referred to in paragraph (a), (b), (c), (d), (e) or (f).
- (2) In any proceedings under this Act, proof is not required of the appointment of a person to, or to act in, the office of Secretary, the office of Director for Community Welfare or an office in another State or a Territory corresponding to the office of Secretary under this Act unless evidence is given to the contrary.

Adoption Act 1988
Act No. 41 of 1988

s. 96

Part VII – Miscellaneous

96. Certified copies, &c., of adoption order to be evidence

In any proceedings in a court –

- (a) a certified copy of an order for the adoption of a child made by a court (whether in Tasmania or elsewhere) or a certificate or extract giving particulars of any such order and purporting to be signed by an officer of the court which made the order; or
- (b) a certified copy of an entry in a public official record of the adoption of children (whether kept in Tasmania 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 that record –

is evidence of the making of the order and of the facts stated in the order or the entry.

96A. Reviews of decisions

- (1) A person aggrieved by any of the following decisions made by the Secretary or a principal officer may apply to the Tasmanian Civil and Administrative Tribunal for a review of that decision:
 - (a) refusal to accept an application for assessment of the suitability of the person to adopt a child;

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 97

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- (b) refusal to approve the person as a prospective adoptive parent;
 - (c) refusal to extend the term of an approval of the person as a prospective adoptive parent;
 - (d) withdrawal of an approval of the person as a prospective adoptive parent.
- (2) In determining an application referred to in subsection (1), the Tasmanian Civil and Administrative Tribunal –
- (a) is to receive and hear evidence, both oral and documentary, in the absence of the public; and
 - (b) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any information or material that identifies or may lead to the identification of the applicant for review.
- (3) Unless the Tasmanian Civil and Administrative Tribunal otherwise orders, a record or document that relates to a review under this section must not be made available to, or be open to inspection by, any person.

97. Fees for assessment of applicants for adoption of non-citizen child, &c.

- (1) Where an application is made by a person or persons to the Secretary for a report relating to the suitability of that person or those persons –

Adoption Act 1988
Act No. 41 of 1988

s. 98

Part VII – Miscellaneous

- (a) to adopt a non-citizen child; or
- (b) to adopt a child in a place outside Australia –

(whether or not in either case the child is identified), the Secretary may 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, notice in writing is given to the Secretary by the applicant or applicants that he or they are not proceeding with a proposal to adopt a non-citizen child or a child in a place outside Australia, the Secretary may refund the whole or a part of the fee to him or them.

98. Waiver of fees

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

99. Identities of certain persons not to be revealed

- (1) A person who –
 - (a) conducts any arrangement for or relating to the adoption of a child in respect of

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 100

whose adoption a general consent has been given; or

- (b) signs, or files in a court, any document relating to the hearing of an application for an adoption order; or
- (c) appears before a court in connection with the hearing of such an application –

shall, so far as is practicable, take such steps as are necessary to ensure that the identities of the child and his natural parents are not revealed to the adoptive parents and that the identities of the adoptive parents are not revealed to the natural parents of the child.

- (2) Subsection (1) does not prevent the disclosure of identities of persons referred to in that subsection in a case where that disclosure is authorized in writing by the adoptive parents or prospective adoptive parents, as the case may be, and each of the persons who has signed a consent to the adoption.

100. Contents of reports not to be disclosed

A report to a court under section 24(1) shall not, except as the court otherwise orders, be made available to any person, including a party to the proceedings for the purposes of which the report is made.

101. Restriction on inspection of records

Except as provided by the regulations, the records of proceedings of a court under this Act are not open to inspection.

Division 2 – Offences

102. Territorial application of Part

This Part does not apply in respect of acts occurring outside Tasmania, but, unless otherwise expressly provided, does apply in respect of acts done in Tasmania –

- (a) in relation to, or with a view to, the adoption of a child in another State, a Territory, or a country outside Australia; or
- (b) in relation to arrangements with a view to the adoption in Tasmania of a child who is resident in a country outside Australia.

103. Destruction, removal, &c., of adoption records

A person who destroys, removes, or conceals records referred to in section 71 is guilty of an offence.

104. Taking away, &c., adopted child by natural parent

A person who is the father, the mother, a parent or a guardian of a child but is not, by reason of

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 105

an adoption of the child, to be treated in law as the father, mother or parent or guardian of the child who takes, leads, entices, or decoys the child away or detains the child, with intent to deprive an adoptive parent of the child, is guilty of an offence.

105. Harboursing child taken from adoptive parents

A 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 104, is guilty of an offence.

106. Undue influence, &c.

A person who uses or threatens to use any force or restraint, or does, or threatens to do, any injury, or causes, or threatens to cause, any detriment of any kind to a parent or guardian of a child with a view –

- (a) to inducing that parent or guardian to offer or refrain from offering the child for adoption under this Act; or
- (b) to influencing the parent or guardian in the expression of any wishes contained in an instrument of consent to the adoption of a child –

is guilty of an offence.

Adoption Act 1988
Act No. 41 of 1988

s. 107

Part VII – Miscellaneous

107. Payments in consideration of adoptions, &c.

(1) Subject to this section, a 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, reward, or other inducement for or in consideration of –

- (a) the adoption or proposed adoption of the child; or
- (b) the giving of consent, or the signing of an instrument of consent, to the adoption of the child; or
- (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 –

is guilty of an offence.

(2) Subsection (1) does not apply to or in relation to any of the following payments or rewards in connection 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 97 or under the regulations;
- (c) a payment made by the adoptive parents, with the approval in writing of the Secretary or with the approval of the

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 108

court, in respect of the hospital and medical expenses reasonably incurred in connection 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;

(d) a payment by the Secretary made in accordance with section 92;

(e) any other payment or reward authorized by the Secretary or by the court.

(3) Subsection (1) does not apply to or in relation to a payment or reward in connection with an adoption or proposed adoption under the law of another State or a Territory if the making of the payment or the giving of the reward or any agreement to do so would have been lawful if it had taken place in that State or Territory.

108. Restrictions on advertising

(1) Subject to this section, a 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; or

(b) a person wishes to adopt a child; or

Adoption Act 1988
Act No. 41 of 1988

s. 109

Part VII – Miscellaneous

- (c) a person is making, or is willing to make, arrangements with a view to the adoption of a child –

is guilty of an offence.

- (2) Subsection (1) does 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.

109. Restriction on publication of identity of parties

- (1) Subject to this section, a person who at any time publishes, or causes to be published, in a newspaper or periodical, or by means of broadcasting, television, or public exhibition in relation to a consent given, or dispensed with, or an application made, under this Act or under a law of another State or a Territory for the adoption of a child or the proceedings on such an application –

- (a) the name of a prospective adoptive parent; or
- (b) the name of the child; or
- (c) the name of the father, the mother, a parent or a guardian or a guardian of the child; or
- (d) any matter reasonably likely to enable any of those persons to be identified –

is guilty of an offence.

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 110

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- (2) This section does not apply to the publication of matter –
- (a) with the authority of the court –
 - (i) to which an application for an adoption order was made; or
 - (ii) to which an application under subsection (3) is made; or
 - (b) that consists of information that has been obtained under Part VI by the person publishing it; or
 - (c) that relates to the name of a parent, other than an adoptive parent, of the child where, in accordance with the adoption order, the name of that parent is shown on the birth certificate of the child issued after the order is made.
- (3) A person may apply to the court for authority to publish matter to which subsection (1) applies where –
- (a) the adopted person concerned has attained the age of 18 years; and
 - (b) the applicant is a relative of the adopted person.

110. Unauthorized arrangements for adoption

- (1) A person who, without being authorized in writing for the purpose by the Secretary or the principal officer of an approved agency –

Adoption Act 1988
Act No. 41 of 1988

s. 111

Part VII – Miscellaneous

- (a) conducts negotiations or makes arrangements with another person with a view to the adoption of a child by that other person; or
- (b) 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 that person or those persons; or
- (c) receives possession, custody, or control of a child with a view to adopting the child –

is guilty of an offence.

- (2) Subsection (1) does not apply to, or in relation 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 of a parent of the child or by a relative, or a relative and the spouse of the relative, of the child.

111. Agency, &c., to comply with request for information

- (1) Where the Secretary requests an agency or other body or a person to give information to the Secretary or to another person under Part VI, the agency, other body, or person shall comply with the request so far as it or the person is able to do so.
- (2) Where any agency, other body, or person has information to which a request made to it or him

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 112

under subsection (1) relates, the agency, body, or person, as the case may be, shall comply with the request within 21 days after it is made.

Penalty: Fine not exceeding 10 penalty units.

112. False statements

Any person who, whether orally or in writing, willfully makes a false statement for the purposes of, or in connection with, a proposed adoption or any other matter under this Act is guilty of an offence.

113. 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 a Territory is guilty of an offence.

114. Presenting forged consent, &c.

Any person who presents, or causes to be presented, to the court in connection 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, forged or obtained by fraud, duress, or other improper means; or

Adoption Act 1988
Act No. 41 of 1988

s. 115

Part VII – Miscellaneous

- (b) that the document has been altered after it has been signed, otherwise than by the person signing it –

is guilty of an offence.

115. 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.

115A. Compliance with undertaking

An adopted person or an adoptive parent, natural parent or natural relative of an adopted person must not fail to comply with any undertaking not to contact any person.

Penalty: Fine not exceeding 25 penalty units.

116. Penalties

Any person who is guilty of an offence against this Act for which no penalty is expressly provided is liable on summary conviction to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months.

117. Prosecutions for offences against this Act

- (1) Proceedings for an offence against this Act shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.
- (2) A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever last occurs.
- (3) Proof of the time when the commission of any such offence came to the knowledge of the complainant lies on the complainant.

Division 3 – Regulations

118. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations for, or with respect to, the following matters:
 - (a) the practice or procedure in or in connection with consents to be used for the purposes of this Act;
 - (b) requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children;

Adoption Act 1988
Act No. 41 of 1988

s. 118

Part VII – Miscellaneous

- (c) 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 to the adoption of children;
- (d) notifying the Secretary of applications for adoption orders;
- (e) notifying a change in the address, management, or control of approved agencies and making returns in relation to the conduct of their business;
- (f) matters to be considered in the placement of children with a view to 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;
- (ga) the maintaining of the Adoption Information Registers for the purpose of section 90;
- (h) fees to be paid to the Secretary or to the principal officer of an approved agency for any service provided under this Act with a view to, or in connection with, the adoption of a person;

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 118

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- (i) the keeping of records for the purposes of section 16;
 - (j) fees to be paid for an application 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) or (j);
 - (l) penalties, not exceeding 20 penalty units, for offences against the regulations.
- (3) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene, or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding 20 penalty units and, in the case of a continuing offence, a further penalty not exceeding one penalty unit for each day during which the offence continues.
 - (4) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
 - (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

Division 4 – Savings and repeals

119. Savings and transitional provisions

- (1) Except as otherwise provided in this Act –
 - (a) all persons, things, and circumstances appointed, or created by, or under, the repealed Act or existing or continuing under that Act immediately before the commencement of this section 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), the repeal effected by section 120 does not disturb the continuity of status, operation, or effect of any order, authority, application, decision, consent, register, direction, liability, or right made, affected, issued, granted, given, passed, accrued, incurred, acquired, existing, or continuing by, or under, the repealed Act before the commencement of that section.
- (2) Subject to this Act, sections 50 and 51, other than subsection (4), apply in relation to an adoption order made under, or continued in force by, a 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.

Adoption Act 1988
Act No. 41 of 1988

Part VII – Miscellaneous

s. 120

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- (3) 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 (2) shall have the same effect as if the Act under which it was made were still in operation.
- (4) Notwithstanding the repeal effected by section 120, the repealed Act continues to apply to, and in relation to –
- (a) arrangements and negotiations for the adoption of a child in respect of whom all consents required under that Act for the adoption have been obtained or dispensed with before the commencement of this section; and
 - (b) the making of orders for the adoption of any such child.

120. Repeal of *Adoption of Children Act 1968*

The *Adoption of Children Act 1968* is repealed.

121. Consequential amendments to *Registration of Births and Deaths Act 1895*

The *Registration of Births and Deaths Act 1895* is amended in the manner specified in Schedule 1.

Adoption Act 1988
Act No. 41 of 1988

sch. 1

SCHEDULE 1

*The amendments effected by this Schedule have
been incorporated into the authorised version of
the Registration of Births and Deaths Act 1895.*

Adoption Act 1988
Act No. 41 of 1988

NOTES

The foregoing text of the *Adoption Act 1988* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2025 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Adoption Act 1988</i>	No. 41 of 1988	10.11.1988 (ss. 1, 2 and 3) 1.7.1989 (ss. 4, 8, Pts. V and VI, ss. 91 and 98, Divs. 2 and 3 of Pt. VII (except s. 115), s. 121 and Sched. 1 - see S.R. 1989, No. 96)
<i>Administrative Arrangements (Miscellaneous Amendments) Act 1990</i>	No. 5 of 1990	1.7.1990
<i>Adoption Act 1988</i>	No. 41 of 1988	15.5.1992 (rest of Act, see S.R. 1992, No. 47)
¹ <i>Adoption Amendment Act 1994</i>	No. 24 of 1994	10.5.1994
<i>Government Business Enterprises (Consequential Amendments) Act 1995</i>	No. 20 of 1995	1.7.1995
<i>Adoption Amendment Act 1998</i>	No. 47 of 1998	18.12.1998 (ss. 1, 2, 3, 10 and 12)
<i>Adoption (Validation of Consents) Amendment Act 1999</i>	No. 13 of 1999	30.4.1999
<i>Adoption Amendment (Hague Convention and Intercountry Adoption) Act 1999</i>	No. 14 of 1999	30.4.1999
<i>Adoption Amendment Act 1998</i>	No. 47 of 1998	18.6.1999 (remaining provisions)

Adoption Act 1988
Act No. 41 of 1988

Act	Number and year	Date of commencement
<i>Children, Young Persons and Their Families and Youth Justice (Consequential Repeals and Amendments) Act 1998</i>	No. 2 of 1998	1.7.2000
<i>Births, Deaths and Marriages Registration Act 1999</i>	No. 58 of 1999	1.11.2000
<i>Legislation Publication Act 1996</i>	No. 17 of 1996	23.1.2002
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Adoption Amendment Act 2007</i>	No. 47 of 2007	29.11.2007
<i>Relationships (Miscellaneous Amendments) Act 2009</i>	No. 73 of 2009	1.1.2010
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Adoption Amendment Act 2013</i>	No. 25 of 2013	18.7.2013
<i>Justice and Related Legislation (Marriage and Gender Amendments) Act 2019</i>	No. 7 of 2019	8.5.2019
<i>Tasmanian Civil and Administrative Tribunal (Additional Jurisdictions) Act 2025</i>	No. 7 of 2025	1.7.2025

¹Sections 4(2), 5(2) and 6-12 of the Adoption Amendment Act 1994 have not commenced

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 24 of 1994, s. 4, No. 17 of 1996, No. 2 of 1998, Sched. 2, No. 47 of 1998, s. 4, No. 14 of 1999, s. 4, No. 58 of 1999, Sched. 1, No. 9 of 2003, Sched. 1 and No. 45 of 2003, Sched. 1
Section 3A	Inserted by No. 14 of 1999, s. 5
Section 4	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 5	Repealed by No. 2 of 1998, Sched. 2
Section 6	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 9	Amended by No. 2 of 1998, Sched. 2
Section 10	Amended by No. 17 of 1996
Section 12	Amended by No. 2 of 1998, Sched. 2
Section 13	Amended by No. 17 of 1996
Section 14	Amended by No. 2 of 1998, Sched. 2
Section 15	Amended by No. 2 of 1998, Sched. 2
Section 16	Amended by No. 2 of 1998, Sched. 2
Section 17	Amended by No. 2 of 1998, Sched. 2

Adoption Act 1988
Act No. 41 of 1988

Provision affected	How affected
Section 18	Amended by No. 2 of 1998, Sched. 2
Section 19	Amended by No. 2 of 1998, Sched. 2 and No. 45 of 2003, Sched. 1
Section 20	Amended by No. 17 of 1996, No. 45 of 2003, Sched. 1, No. 25 of 2013, s. 4 and No. 7 of 2019, s. 4
Section 21	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 22	Amended by No. 2 of 1998, Sched. 2
Section 24	Amended by No. 17 of 1996, No. 2 of 1998, Sched. 2, No. 45 of 2003, Sched. 1, No. 47 of 2007, s. 4 and No. 3 of 2010, Sched. 1
Section 25	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 27	Amended by No. 2 of 1998, Sched. 2
Section 28	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 29	Amended by No. 24 of 1994, s. 5, No. 17 of 1996, No. 2 of 1998, Sched. 2, No. 58 of 1999, Sched. 2, No. 9 of 2003, Sched. 1, No. 45 of 2003, Sched. 1, No. 73 of 2009, Sched. 1 and No. 7 of 2019, s. 5
Section 30	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 31	Amended by No. 17 of 1996, No. 2 of 1998, Sched. 2 and No. 58 of 1999, Sched. 1
Section 35	Amended by No. 2 of 1998, Sched. 2
Section 36	Amended by No. 17 of 1996 and No. 3 of 2010, Sched. 1
Section 37	Amended by No. 17 of 1996, No. 2 of 1998, Sched. 2 and No. 3 of 2010, Sched. 1
Section 38	Amended by No. 2 of 1998, Sched. 2
Section 38A	Inserted by No. 13 of 1999, s. 4
Section 39	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 40	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 41	Amended by No. 2 of 1998, Sched. 2
Section 42	Amended by No. 2 of 1998, Sched. 2
Section 43	Amended by No. 2 of 1998, Sched. 2
Section 44	Amended by No. 2 of 1998, Sched. 2
Section 45	Amended by No. 2 of 1998, Sched. 2
Section 46	Amended by No. 2 of 1998, Sched. 2
Section 47	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 48	Amended by No. 2 of 1998, Sched. 2
Section 50	Amended by No. 17 of 1996
Section 51	Amended by No. 17 of 1996
Section 52	Amended by No. 20 of 1995, s. 5 and Sched. 3, No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 54	Amended by No. 17 of 1996
Section 59	Substituted by No. 14 of 1999, s. 6
Section 60	Amended by No. 17 of 1996 and No. 14 of 1999, s. 7
Section 61	Amended by No. 17 of 1996 and No. 14 of 1999, s. 8
Section 62	Amended by No. 2 of 1998, Sched. 2 and No. 58 of 1999, Sched. 2
Section 63	Amended by No. 17 of 1996 and No. 58 of 1999, Sched. 1
Section 64	Amended by No. 58 of 1999, Sched. 2

Adoption Act 1988
Act No. 41 of 1988

Provision affected	How affected
Section 65	Amended by No. 17 of 1996 and No. 58 of 1999, Sched. 2
Section 66	Amended by No. 58 of 1999, Sched. 2
Section 67	Amended by No. 58 of 1999, Sched. 1
Section 68	Amended by No. 58 of 1999, Sched. 1
Section 69	Amended by No. 58 of 1999, Sched. 2
Section 70	Repealed by No. 58 of 1999, Sched. 1
Section 71	Amended by No. 2 of 1998, Sched. 2
Section 72	Amended by No. 2 of 1998, Sched. 2
Section 73	Amended by No. 2 of 1998, Sched. 2
Section 76	Amended by No. 3 of 2010, Sched. 1
Section 82	Amended by No. 2 of 1998, Sched. 2 and No. 47 of 1998, s. 5
Section 83	Amended by No. 2 of 1998, Sched. 2 and No. 47 of 1998, s. 6
Section 84	Amended by No. 2 of 1998, Sched. 2 and No. 47 of 1998, s. 7
Section 85	Repealed by No. 47 of 1998, s. 8
Section 86A	Inserted by No. 47 of 1998, s. 9
Section 86B	Amended by No. 2 of 1998, Sched. 2 Inserted by No. 47 of 1998, s. 9
Section 86C	Inserted by No. 47 of 1998, s. 9
Section 87	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 88	Amended by No. 2 of 1998, Sched. 2
Section 89	Amended by No. 5 of 1990, s. 3 and Sched. 1 and No. 17 of 1996
Section 90	Amended by No. 17 of 1996, No. 2 of 1998, Sched. 2 and No. 47 of 1998, s. 10
Section 91	Amended by No. 5 of 1990, s. 3 and Sched. 1 and No. 2 of 1998, Sched. 2
Section 92	Amended by No. 2 of 1998, Sched. 2
Section 94	Amended by No. 2 of 1998, Sched. 2
Section 95	Substituted by No. 2 of 1998, Sched. 2
Section 96A	Inserted by No. 47 of 2007, s. 5 Amended by No. 7 of 2025, s. 7
Section 97	Amended by No. 2 of 1998, Sched. 2
Section 98	Amended by No. 2 of 1998, Sched. 2
Section 99	Amended by No. 17 of 1996
Section 104	Amended by No. 7 of 2019, s. 6
Section 107	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 108	Amended by No. 17 of 1996
Section 109	Amended by No. 17 of 1996 and No. 7 of 2019, s. 7
Section 110	Amended by No. 17 of 1996 and No. 2 of 1998, Sched. 2
Section 111	Amended by No. 2 of 1998, Sched. 2
Section 115A	Inserted by No. 47 of 1998, s. 11
Section 118	Amended by No. 2 of 1998, Sched. 2, No. 47 of 1998, s. 12 and No. 47 of 2007, s. 6
