

ADOPTION OF CHILDREN (AMENDMENT) BILL

*Schedule of the Amendments referred to in Legislative Council's Message
of 27 March, 1980*

No. 1.—Page 2, clause 2, line 7. *Omit “and (4)”, insert “, (4) and (5)”.*

No. 2.—Page 2, clause 2, line 13. *Omit “and (11)”, insert “, (11) and (18) (c)”.*

No. 3.—Page 2, clause 2. *After line 21, insert—*

**(5) Schedule 3 (18) (c) shall commence on such day as may be appointed
by the Governor in respect thereof and as may be notified by proclamation
published in the Gazette.**

ADOPTION OF CHILDREN (AMENDMENT) BILL, 1980

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The principal objects of this Bill are to amend the Adoption of Children Act, 1965 ("the Principal Act"), to constitute the Adoption Tribunal ("the Tribunal"), to vest in the Tribunal the jurisdiction presently vested under the Principal Act in the Supreme Court and to otherwise specify the powers, authorities, duties and functions of the Tribunal and to make a number of miscellaneous amendments to the Principal Act.

In relation to the Tribunal, the Bill in Schedule 1 (3) and (6)—

- (a) constitutes the Tribunal (proposed section 6B);
- (b) provides for the appointment and qualification of members of the Tribunal (proposed section 6C);
- (c) specifies the jurisdiction of the Tribunal (proposed section 6D);
- (d) provides for the composition of the Tribunal for the purpose of hearing proceedings before it (proposed section 6E);
- (e) specifies various matters relating to meetings of the Tribunal (proposed sections 6F–6I);
- (f) confers powers on the Tribunal with respect to the production of evidence before it (proposed section 6J);
- (g) provides for the recording of proceedings before and of decisions of the Tribunal (proposed sections 6K and 6L);
- (h) enables the Tribunal to make orders as to costs (proposed section 6M);
- (i) enables the Tribunal to make rules (proposed sections 6N–6P);
- (j) specifies the manner in which appeals may be made from decisions of the Tribunal (proposed sections 6Q–6S);
- (k) provides for the appointment of the Registrar and other officers of the Tribunal (proposed section 6T);
- (l) specifies the means by which documents of the Tribunal may be authenticated (proposed section 6U);
- (m) requires judicial notice to be taken of the signatures of certain members and officers of the Tribunal (proposed section 6V);

- (n) provides immunity for the Tribunal and its members and officers from certain proceedings (proposed section 6w);
- (o) provides a defence of absolute privilege in respect of proceedings for defamation for publications made in the course of proceedings before the Tribunal (proposed section 6x); and
- (p) requires the President of the Tribunal to make a biennial report to the Minister with respect to the administration of the Principal Act and the Minister to lay the report before each House of Parliament (proposed section 6y).

In relation to the miscellaneous amendments, the Bill—

- (a) extends the period in respect of which a presumption of domicile or residence can be made for the purposes of the Principal Act from 30 days to 60 days (Schedule 3 (2));
- (b) removes the requirements that where an applicant or either of the applicants for the adoption of a child is the mother or father of the child, the consent of the applicant or applicants be first given (Schedule 3 (3));
- (c) enables the Tribunal, in certain circumstances, to dispense with the report of the Director concerning a proposed adoption (Schedule 3 (4) (a) and (b));
- (d) enables a principal officer of a private adoption agency, in addition to the Director, to approve of persons as fit and proper persons to adopt children (Schedule 3 (4) (c));
- (e) provides that the Tribunal shall not refuse to make an adoption order in favour of the foster parent of a child who applies to adopt the child on the ground that the name of the foster parent is not included in the register of persons approved as fit and proper persons to adopt children (Schedule 3 (4) (d));
- (f) specifies the circumstances in which—
 - (i) it is not relevant that the applicant, or each of the applicants, to adopt a child does not have a religious conviction or affiliation; and
 - (ii) it is not appropriate for the Tribunal to require the applicant, or each of the applicants, to give any undertaking with respect to the religious upbringing of the child (Schedule 3 (5)—proposed section 21A);
- (g) provides that the Tribunal—
 - (i) is not required to give notice of an application for an adoption order to a person whose consent to the adoption has been dispensed with by order of the Tribunal (Schedule 3 (6) (a)); and
 - (ii) may dispense with the necessity to give notice of such an application to a person with whom the child resides or who has the care or custody of the child (Schedule 3 (6) (b));

- (h) requires the Tribunal, on application by a putative father who satisfies certain requirements, to join the putative father as a party to proceedings for an adoption order in respect of his child for the purpose of opposing the application for the order (Schedule 3 (7));
- (i) provides, in relation to the granting of consents to adoptions, that the putative father of an exnuptial child is not, by virtue of the fact that he is the putative father, a guardian of the child (Schedule 3 (8));
- (j) provides that a consent to an adoption which is given under and in accordance with the law of another State or Territory of the Commonwealth is an effective consent for all or any of the purposes of an application for an adoption order under the Principal Act (Schedule 3 (9));
- (k) requires notice of a consent to the adoption of an exnuptial child to be given to the putative father of the child in certain circumstances and enables the putative father to apply to the Tribunal for an order with respect to the care, custody and guardianship of the child (Schedule 3 (11)—proposed sections 31A–31E);
- (l) extends the circumstances in which the Tribunal may dispense with the consent of a person (other than the child) to the adoption of a child (Schedule 3 (12) (a) and (b));
- (m) enables an application for an order dispensing with the consent of a person to the adoption of a child to be made by the mother, father or relative of the child where the mother, father or relative is the applicant for the adoption order (Schedule 3 (12) (c));
- (n) provides that the Minister's guardianship of a child ceases on the making of an adoption order in respect of the child (Schedule 3 (13));
- (o) makes further provision with respect to the circumstances in which the forenames of an adopted child may be changed (Schedule 3 (14));
- (p) permits the Tribunal to make an interim order for the custody of a child otherwise than on an application for an order for the adoption of the child (Schedule 3 (15) (b));
- (q) grants to adoption orders made in New Zealand the same recognition as adoption orders made in another State or Territory of the Commonwealth (Schedule 3 (17), (18), (19), (27) and (31));
- (r) facilitates the recognition of foreign adoptions (Schedule 3 (18) (c));
- (s) extends the class of persons who may commit the offence of taking or attempting to take a child from his adoptive parents so as to include a former relative of the child (Schedule 3 (20));
- (t) makes it an offence for persons related to a child before the making of an adoption order to attempt to communicate, without the prior consent of the adoptive parents, with the child before the child attains the age of 18 years (Schedule 3 (21)—proposed section 49A);

- (u) extends the class of persons who may commit the offence of making unauthorised arrangements for an adoption so as to include, in addition to the person conducting the arrangements, the person with whom the arrangements are conducted and the person to whom a child is transferred by virtue of those arrangements (Schedule 3 (22));
- (v) makes it an offence to induce or attempt to induce the revocation of a consent to the adoption of a child (Schedule 3 (23) and (24));
- (w) provides for penalties under the Principal Act or the regulations to be recovered summarily before a court of petty sessions (Schedule 3 (25));
- (x) extends the restriction imposed on the inspection of records of proceedings under the Principal Act so as to include records under certain former Acts relating to the adoption of children (Schedule 3 (29));
- (y) enables the provision of financial assistance in respect of certain handicapped children (Schedule 3 (30)—proposed section 68A);
- (z) facilitates the administration of the estates of deceased persons where a beneficiary under the estate is an adopted child (Schedule 3 (30)—proposed section 68B);
- (aa) extends the power of the Governor to make regulations relating to fees (Schedule 3 (32) (a)–(d)); and
- (bb) enables the establishment and administration, pursuant to the regulations, of a register of persons who have been separated as a consequence of the making of an adoption order and who desire a reunion (Schedule 3 (32) (e)).

The Bill also makes amendments to the Principal Act by way of statute law revision, enacts certain savings, transitional and other provisions and makes other amendments to the Principal Act of a minor, consequential or ancillary nature.

**ADOPTION OF CHILDREN (AMENDMENT)
BILL, 1980**

No. , 1980.

A BILL FOR

An Act to amend the Adoption of Children Act, 1965, to constitute the Adoption Tribunal and to specify its functions; and for certain other purposes.

[MR JACKSON—27 February, 1980.]

Adoption of Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Adoption of Children Short
(Amendment) Act, 1980". title.

2. (1) Except as provided by subsections (2), (3) and (4), Commence-
this Act shall commence on the date of assent to this Act. ment.

 (2) Section 5 (1) shall, in its application to a provision of
10 Schedule 1, 3 or 4, commence on the day on which that provision
commences.

 (3) Sections 5 (2) and 6 (1), Schedules 1, 2 and 3
(Schedule 3 (7), (8) and (11) excepted) and Part 1 of Schedule 5
15 in respect thereof and as may be notified by proclamation published
in the Gazette.

 (4) Schedule 3 (7), (8) and (11) shall commence on
such day, being not earlier than the day appointed and notified
under subsection (3), as may be appointed by the Governor in
20 respect thereof and as may be notified by proclamation published
in the Gazette.

3. The Adoption of Children Act, 1965, is referred to in this Principal
Act as the Principal Act. Act.

4. This Act contains the following Schedules :— Schedules.

25 **SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT**
RELATING TO THE CONSTITUTION AND FUNCTIONS OF
THE ADOPTION TRIBUNAL.

Adoption of Children (Amendment).

SCHEDULE 2.—FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

5 SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 5.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

10 5. (1) The Principal Act is amended in the manner set forth in Schedules 1, 3 and 4. Amendment
of Act No.
23, 1965.

(2) The Principal Act is further amended—

15 (a) by omitting from a provision of the Principal Act specified in Column 1 of Schedule 2 the matter specified opposite the provision in the column headed "Matter to be omitted." in Column 2 of that Schedule, other than such matter, if any, as appears in brackets and is printed in italics; and

20 (b) by inserting instead the matter specified opposite the provision in the column headed "Matter to be inserted." in Column 2 of that Schedule.

6. (1) Part 1 of Schedule 5 has effect.

Savings,
transitional
and other
provisions.

(2) Part 2 of Schedule 5 has effect.

Adoption of Children (Amendment).

SCHEDULE 1.

Sec. 5 (1).

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

(1) (a) Section 3—

5 After the matter relating to Part I, insert :—

PART IA.—THE ADOPTION TRIBUNAL—ss. 6A–6Y.

DIVISION 1.—*Constitution and Jurisdiction*—ss.
6A–6E.

10 DIVISION 2.—*Conduct of Proceedings*—ss. 6F–
6P.

DIVISION 3.—*Appeals*—ss. 6Q–6S.

DIVISION 4.—*Miscellaneous*—ss. 6T–6Y.

(b) Section 3—

At the end of the section, insert :—

15 SCHEDULE 1.—PROVISIONS RELATING TO THE
MEMBERSHIP OF THE TRIBUNAL.

(2) (a) Section 6, definition of “Court”—

Omit the definition.

(b) Section 6, definition of “Deputy President”—

20 Before the definition of “Director”, insert :—

“Deputy President” means a person appointed, for
the time being, as a Deputy President of the
Tribunal.

(c) Section 6, definition of “President”—

25 Before the definition of “Principal officer”, insert :—

“President” means the person appointed, for the
time being, as the President of the Tribunal.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (d) Section 6, definition of “the nominated officer”—
Omit the definition.

(e) Section 6, definitions of “Registrar”, “Tribunal”—

At the end of section 6, insert :—

“Registrar” means the Registrar of the Tribunal.

10 “Tribunal” means the Adoption Tribunal consti-
tuted under this Act.

(3) Part IA—

After Part I, insert :—

PART IA.

15 THE ADOPTION TRIBUNAL.

DIVISION 1.—*Constitution and Jurisdiction.*

6A. In this Part, “member” means a person appointed, Interpret-
for the time being, as a member of the Tribunal. tation:
Pt. IA.

6B. (1) There shall be an Adoption Tribunal.

20 (2) The Tribunal shall have a seal of which judicial The
notice shall be taken. Tribunal.

6C. (1) Subject to this section, the members of the Members of
Tribunal shall be appointed by the Governor. the Tribunal.

(2) The members shall comprise—

25 (a) a qualified person appointed as President of the
Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (b) persons appointed from one or more of the
following classes of persons :—

(i) legally qualified medical practitioners;

(ii) persons having knowledge of and
experience in social work;

10 (iii) persons having, in the opinion of the
Governor, other suitable qualifications or
experience.

15 (3) The members may include one or more quali-
fied persons appointed as a Deputy President or Deputy
Presidents of the Tribunal.

(4) The Public Service Act, 1979, does not apply
to or in respect of the appointment of a member and a
member is not, in his capacity as a member, subject to
that Act while he holds office as a member.

20 (5) Schedule 1 has effect with respect to the mem-
bership of the Tribunal.

6D. The Tribunal shall have the jurisdiction vested in it
by or under this or any other Act.

Jurisdiction
of the
Tribunal.

25 6E. (1) Except as provided by subsections (5) and
(6), the Tribunal shall, for the purposes of hearing and
determining all proceedings before the Tribunal and all
business arising out of any such proceedings, be constituted
by not less than 3 and not more than 5 members nominated
by the President.

Composition
of the
Tribunal
for the
purposes
of hearing,
etc.,
proceedings.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (2) Of the members nominated by the President
for the purposes of subsection (1)—
- 10 (a) where the Tribunal is constituted by 3 or 4
members—one member, but not more than one
member, shall be the President or a Deputy
President; and
- (b) where the Tribunal is constituted by 5 members
—at least one member shall be the President or
a Deputy President, but not more than 2 mem-
bers shall be the President or Deputy Presidents.
- 15 (3) A nomination made for the purposes of sub-
section (1) may be made generally or in a particular case
or class of cases.
- 20 (4) The President shall notify a member nomin-
ated under subsection (1) (other than the President) of
his nomination as soon as practicable after the nomination
is made.
- 25 (5) In respect of an application for an adoption
order which is not opposed, the Tribunal shall, unless the
President otherwise determines or the Director, the prin-
cipal officer of a private adoption agency or an applicant
otherwise requests, be constituted by the President or a
Deputy President sitting alone.
- 30 (6) In respect of an application under section 47
(1), the Tribunal shall, unless the President otherwise
determines, be constituted by the President or a Deputy
President sitting alone.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (7) A determination of the President under sub-
section (5) or (6) may be made at any time prior to or
during the hearing of proceedings before the Tribunal.

10 (8) Where a determination of the President under
subsection (5) or (6) is made during the hearing of pro-
ceedings before the Tribunal, the proceedings shall be
heard de novo before the Tribunal constituted as referred
to in subsection (1).

DIVISION 2.—*Conduct of Proceedings.*

15 6F. Where one or more Deputy Presidents have been
appointed, more than one meeting of the Tribunal may be
held at the same time. Meetings
of the
Tribunal.

20 6G. The procedure for the calling of, and for conduct of
business at, any meeting of the Tribunal shall, subject to
this Part and any rules of the Tribunal made under section
6N, be as determined by the Tribunal. Procedure
at meetings
of the
Tribunal.

6H. Where, at a meeting of the Tribunal, the Tribunal
is constituted as referred to in section 6E (1)— Chairman
and votes of
members.

25 (a) the President or, in the absence of the President,
a Deputy President shall preside as chairman of
that meeting;

(b) except as provided by paragraph (c), questions
arising at that meeting shall be determined by a
majority of votes of the members present and
voting;

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (c) the decision of the chairman of that meeting
upon any question of law or procedure which
may arise at that meeting shall be the decision
of the Tribunal; and
- 10 (d) the chairman of that meeting shall have, in the
event of an equality of votes, in addition to a
deliberative vote, a second or casting vote.

6I. The Tribunal may from time to time adjourn its ^{Adjourn-}
proceedings to such times, dates and places and for such ^{ment.}
reasons as it thinks fit.

- 15 6J. (1) Subject to the rules of the Tribunal, the <sup>Powers, etc.,
of the
Tribunal as
to the
production
of evidence.</sup>
Tribunal shall have and may exercise and perform the
powers, authorities, duties and functions vested in the
Supreme Court in respect of the following matters :—
- 20 (a) compelling the attendance of witnesses and
their examination on oath, affirmation or
declaration;
- (b) compelling the production, discovery and inspec-
tion of books, records, documents and other
papers;
- 25 (c) compelling witnesses to answer questions which
the Tribunal considers to be relevant in any
proceedings before it;
- (d) apprehending, detaining and punishing persons
guilty of contempt, or of disobedience of any
30 order made by the Tribunal, or of any process
issuing out of the Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (e) directing witnesses to be prosecuted for perjury,
and the exercise or performance by the Tribunal of any
such power, authority, duty or function has the same effect
as it would have if exercised or performed by the Supreme
Court.

10 (2) All process issuing out of the Tribunal shall be
in or to the effect of the form prescribed by the rules of the
Tribunal and be signed by the President or a Deputy
President.

15 6K. (1) Proceedings before the Tribunal shall be recorded but any such record which is made by means of
shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the President directs that the
record be transcribed or the transcription of those records
is otherwise required by law, or on the application of a
20 party to the proceedings.

(2) Any transcription so made shall, except as to
such part, if any, of the transcription as is specified by the
Tribunal, be supplied to the Director or any party to the
proceedings upon payment of the fee prescribed by the
25 rules of the Tribunal corresponding to the fee referred to
in section 73 (2) of the Justices Act, 1902, for copies of
depositions.

30 6L. Every decision of the Tribunal in respect of any
proceedings before the Tribunal shall be in the form of an
instrument in writing signed by—

(a) the President or Deputy President before whom
the proceedings were heard; or

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (b) where, in relation to a meeting of the Tribunal,
the Tribunal was constituted as referred to in
section 6E (1), the chairman of that meeting,

and shall include the reasons for the decision of each
member before whom the proceedings were heard.
- 10 6M. The Tribunal may make such order as to costs in **Costs.**
respect of any proceedings before the Tribunal as the
Tribunal thinks fit and such an order has the same effect
as if it had been made by the Supreme Court.
- 15 6N. (1) Five members nominated by the President, who **Rules.**
shall include the President or a Deputy President, or both,
may make rules of the Tribunal, not inconsistent with this
Act or the regulations, for or with respect to the calling of,
and conduct of business at, any meeting of the Tribunal
and generally to prescribe all matters that by this Act are
20 required or permitted to be prescribed by rules of the
Tribunal or are necessary or convenient to be prescribed
by rules of the Tribunal for carrying out or giving effect
to this Act.
- 25 (2) Without limiting the generality of subsection
(1), the Tribunal may, by its rules, fix, from time to time,
the costs, charges and fees to be paid in respect of pro-
ceedings before the Tribunal, including—
- (a) professional costs, charges and fees; and
- 30 (b) the maximum fee, determined having regard to
the actual cost incurred, which may be charged
by or on behalf of a private adoption agency in
respect of the making of an application for an
adoption order.

*Adoption of Children (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (3) Different rules of the Tribunal may be made to
apply in different circumstances.

- 10 6O. Subsections (I), (II) and (III) of section 41 of the
Interpretation Act, 1897, apply to and in respect of a rule
of the Tribunal made under this Act in the same way as
they apply to and in respect of a regulation referred to in
those subsections.

Gazettal,
etc., of
rules.

- 15 6P. (1) Judicial notice shall be taken of—
(a) a rule of the Tribunal made or purporting to
have been made under this Act and published in
the Gazette; and
(b) the date of its publication.

Judicial
notice, etc.,
of rules.

- 20 (2) It shall be presumed, in the absence of evidence
to the contrary, that all conditions and steps precedent to
the making of a rule of the Tribunal under this Act have
been complied with and performed.

DIVISION 3.—*Appeals.*

- 25 6Q. Except as provided by sections 6R and 6S, a decision
of the Tribunal with respect to any proceedings before it
shall be final and conclusive.

Nature of
decision
of the
Tribunal.

- 6R. (1) The Tribunal shall, if so required in writing
by the Director or a party to any proceedings before the
Tribunal, within the time and in the manner prescribed by
the rules of the Tribunal, or may of its own motion, state
a case for the decision of the Court of Appeal.

Appeals.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (2) The decision of the Court of Appeal on the hearing of a case stated under subsection (1) shall be binding upon the Tribunal and upon the Director and all the parties to the proceedings in respect of which the case was stated.

10 6s. Nothing in this Division derogates from or otherwise affects the jurisdiction of the Supreme Court under section 69 or 75 of the Supreme Court Act, 1970. Certain jurisdiction of Supreme Court not affected.

DIVISION 4.—*Miscellaneous.*

15 6t. (1) The registrar of a Division of the Supreme Court specified in section 38 (b) of the Supreme Court Act, 1970, being a Division nominated by the Minister, shall be the Registrar of the Tribunal. Registrar and other officers of the Tribunal.

20 (2) Except as provided by subsection (1), such officers and employees as may be necessary for the performance of the powers, authorities, duties and functions of the Tribunal may be appointed and employed under and subject to the Public Service Act, 1979.

25 6u. Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President or a Deputy President. Authentica-
tion of documents.

6v. Judicial notice shall be taken of the signature of the President, a Deputy President or the Registrar when appearing on a document issued by the Tribunal. Judicial notice of certain signatures.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 6w. No proceedings lie against the Tribunal, a member Certain
or an officer of the Tribunal for or on account of any act, proceedings
matter or thing done or ordered to be done or omitted or prohibited.
suffered to be done by the Tribunal, member or officer,
10 and purporting to be done, ordered, omitted or suffered
for the purposes of carrying out the provisions of this Act,
if the Tribunal, member or officer has acted in good faith
and with reasonable care. 01

15 6x. For the purposes of section 18 of the Defamation Application
Act, 1974, the proceedings of the Tribunal shall be deemed of the
to be an inquiry within the meaning of that section. Defamation
Act, 1974.

20 6y. (1) The President shall, as soon as practicable Biennial
after 1st March in each second year, prepare and forward report.
to the Minister a report on the administration of this Act
and the regulations for the two-yearly period ending on
that date. 21

(2) The Minister shall lay the report, or cause it
to be laid, before each House of Parliament as soon as
practicable after the receipt by him of the report. 22

(4) (a) Section 46 (3)—

25 After “the court”, insert “or the Tribunal”.

(b) Section 46 (4)—

After “court”, insert “or the Tribunal”. 23

(5) Section 72—

Omit the section.

Adoption of Children (Amendment).

SCHEDULE 1—continued.

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—continued.**

5 (6) Schedule 1—

At the end of the Act, insert :—

SCHEDULE 1.

Sec. 6c (5).

PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.

PART 1.

10

THE PRESIDENT AND DEPUTY PRESIDENTS.

1. A person is qualified to be appointed as the President or a Deputy President if he is the Chief Justice of the Supreme Court, the Chief Judge of a Division of that Court or a Judge of that Court. Qualifica-
tion.

15

2. The President or a Deputy President shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as the President or a Deputy President. Appoint-
ment.

20

3. (1) A Deputy President, while holding office as a Deputy President, shall, subject to the conditions of appointment specified in the instrument of his appointment and to any direction given to him by the President, have the powers, authorities, privileges and immunities and perform the duties of the President. Deputy
Presidents.

25

(2) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers, authorities or duties of the President and all acts or things done or omitted or suffered to be done by a Deputy President when exercising or performing those powers, authorities or duties shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by the President.

30

*Adoption of Children (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—*continued.*

- 5 4. (1) The appointment of the Chief Justice or a Judge of the Supreme Court as the President or a Deputy President shall not, nor shall his service as the President or a Deputy President, affect his tenure of the office of Chief Justice or Judge of the Supreme Court, as the case may be, or his rank, title, status, precedence, salary or other rights or privileges as a holder of that office.
- 10 (2) The Chief Justice or a Judge of the Supreme Court may, notwithstanding that he is the President or a Deputy President, exercise his powers as the Chief Justice or a Judge of the Supreme Court, as the case may be.
- 15 (3) The service, as the President or a Deputy President, of the Chief Justice or a Judge of the Supreme Court shall, for all purposes, be taken to be service as the Chief Justice or a Judge of the Supreme Court, as the case may be.
- 20 5. The Governor may remove the President or a Deputy President from office upon the address of both Houses of Parliament, but not otherwise.
- 25 6. Where a person who has been appointed, in accordance with this Act, as the President or a Deputy President ceases, in accordance with the law for the time being in force relating to the Chief Justice or Judges of the Supreme Court, to be the Chief Justice or a Judge of the Supreme Court, he shall thereupon cease to be the President or a Deputy President, as the case may be.

PART 2.

MEMBERS OTHER THAN THE PRESIDENT AND DEPUTY PRESIDENTS.

- 30 7. In this Part of this Schedule, "member" means a person appointed, for the time being, as a member of the Tribunal other than the President or a Deputy President.
8. A person who is of or above the age of 65 years shall not be appointed as a member.

Effect of
appointment
to the
Tribunal
of Judges
of the
Supreme
Court.

Removal
from
office.

Cessation
of office.

Interpreta-
tion: Sch. 1,
Pt. 2.

Age of
members.

Adoption of Children (Amendment).

SCHEDULE 1—continued.

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—continued.**

- | | | |
|----|--|---|
| 5 | 9. A member shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member. | Term of office of members. |
| 10 | 10. Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him. | Remuneration of and allowances for members. |
| | 11. The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. | Removal from office. |
| 15 | 12. A member shall be deemed to have vacated his office— | Vacation of office. |
| | (a) if he dies; | |
| | (b) if he resigns his office by writing under his hand addressed to the Governor; | |
| 20 | (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; | |
| 25 | (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; | |
| 30 | (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales, would be a felony or a misdemeanour so punishable; | |
| | (f) if he is removed from office by the Governor; or | |
| | (g) upon his attaining the age of 65 years. | |

Adoption of Children (Amendment).

SCHEDULE 2.

Sec. 5 (2).

FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

Column 1.		Column 2.	
5	Provision of the Principal Act.	Matter to be omitted.	Matter to be inserted.
10	Sections 8 (1), (2); 9; 14 (1), (3); 18 (1), (2), (4); 19 (2), (3), (4); 20; 21 (1), (2); 22 (1), (3), (4); 23; 24; 25 (1), (2), (3), (4); 26 (1), (7); 31 (1), (2), (3); 32 (1), (4), (5); 33; 34 (3), (5) (c); 38 (1), (2); 41 (1), (2), (3); 42 (1); 43 (1), (2); 47 (1), (3), (4); 50 (2) (b), (2) (c); 56; 62; 64; 66; 68; 73 (1) (e).	Court (<i>wherever occurring</i>)	Tribunal
15	Section 14 (2)	rules of Court	the rules of the Tribunal
20	Sections 28 (1), (2), (3); 47 (6); 61; 62; 63.	nominated officer (<i>wherever occurring</i>)	Registrar
	Section 46 (3)	a court (<i>where secondly occurring</i>)	the Tribunal
	Section 53 (2)	the Court	the Tribunal or a court
	Section 64	heard in open court	open to the public

SCHEDULE 3.

Sec. 5 (1).

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 6, definition of "Foster parent"—

After the definition of "Father", insert :—

"Foster parent" means any person who has the care and custody of a child, being a child—

(a) who—

(i) has been admitted to State control;
and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (ii) is a ward within the meaning of the
Child Welfare Act, 1939; or

(b) who—

(i) has been committed to the care of
the Minister to be dealt with as a
ward admitted to State control; and

10 (ii) has not been absolutely discharged
from the supervision and control of
the Minister under the Child
Welfare Act, 1939.

(2) Section 8 (2)—

15 Omit “thirty days”, insert instead “60 days”.

(3) (a) Section 18 (2) (a)—

Omit “or” where secondly occurring.

(b) Section 18 (2) (a1)—

After section 18 (2) (a), insert :—

20 (a1) the applicant, or either of the applicants, is
the mother or father of the child; or

(c) Section 18 (3)—

25 Omit “a person, or by persons, in whose favour a
consent referred to in subsection (2) of section 27
has been given”, insert instead “an applicant, or by
applicants, referred to in subsection (2),”.

Adoption of Children (Amendment).

SCHEDULE 3—continued.

**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.**

(4) (a) Section 21 (1) (a)—

- 5 Before “the Director”, insert “except as provided by
subsection (1A),”.

(b) Section 21 (1A)–(1C)—

After section 21 (1), insert :—

- 10 (1A) The Tribunal may dispense with the making
of a report referred to in subsection (1) (a)—

- 15 (a) generally in respect of applications made on
behalf of applicants by the principal officer
of a private adoption agency where the
Tribunal is satisfied that the standard of
applications made by that principal officer
justifies such a dispensation; or

- 20 (b) in respect of a particular application made
on behalf of an applicant or applicants by
the principal officer of a private adoption
agency where the Tribunal is satisfied that
the particulars of that application and the
report of that principal officer justify such
a dispensation.

- 25 (1B) The Director may make a report referred to
in subsection (1) (a) to the Tribunal notwithstanding
that the Tribunal has, under subsection (1A), dis-
pensed with the making of the report.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (1C) The Tribunal may, in respect of an
application made by a person other than the Director,
require the Director to make a report referred to in
subsection (1) (a) within a period of 6 months after
10 the date of the making of the application or such
other period as the Tribunal may, having regard to
the circumstances of the case, specify.

(c) Section 21 (2)—

After “him”, insert “or by the principal officer of a
private adoption agency”.

(d) Section 21 (3)—

15 After “parent”, insert “or foster parent”.

(5) Section 21A—

After section 21, insert :—

20 21A. (1) Where the mother or father or a guardian of
a child in respect of whom an application for an adoption
order is made has not, in an instrument of consent to
adoption of the child, expressed any wish with respect to
the religious upbringing of the child—

25 (a) it shall not be relevant, in the exercise or
performance by the Tribunal of its powers,
authorities, duties and functions under section
21, that the applicant or each of the applicants
does not have a religious conviction or
affiliation; and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (b) section 17 does not operate so as to require, and the Tribunal shall not, in making an order for the adoption of the child, require, the applicant or each of the applicants to give any undertaking with respect to the religious upbringing of the child.

10 (2) Nothing in subsection (1) affects the consideration by the Tribunal under section 21 (1) (c) (i) (b) of the religious upbringing or convictions (if any) of the child.

(6) (a) Section 22 (1) (a)—

Omit the paragraph, insert instead :—

15 (a) to any person whose consent to the adoption of the child—
(i) is required under section 26;
(ii) has not been dispensed with by an order made by virtue of section 32
20 (1); and
(iii) has not been given; and

(b) Section 22 (1A)—

Omit the subsection, insert instead :—

25 (1A) Except as the Tribunal may otherwise determine, nothing in subsection (1) requires a notice referred to in that subsection to be given or sent to—

30 (a) a person referred to in subsection (1) (a) if that person is a person to whom section 32 (1) (h) applies; or

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- 5 (b) a person referred to in subsection (1) (b)
if that person is—
- (i) an applicant for the order for the
adoption of the child; or
 - (ii) a person with whom the child
10 resides only as a patient or inmate
of a hospital of which that person is
in charge or a person who has the
care or custody of the child only as
the person in charge of a hospital.

- (7) (a) Section 23—
- 15 Omit “The”, insert instead “Except as provided by
subsection (2), the”.

(b) Section 23 (2)—

At the end of section 23, insert :—

- 20 (2) The Tribunal shall, on application by a
person—
- (a) who is the father of a child referred to in
section 26 (3);
 - (b) who is not given a notice referred to in
section 31A (4); and

Adoption of Children (Amendment).

SCHEDULE 3—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.**

5 (c) in respect of whom the Tribunal has
not, under section 31B, dispensed with the
giving of a notice referred to in section 31A
(4),

10 join the person as a party to the proceedings for an
adoption order in respect of the child for the purpose
of opposing the application for the order.

(8) Section 26 (3A)—

After section 26 (3), insert :—

(3A) A person who is the putative father of a child
referred to in subsection (3) and who—

15 (a) does not have the custody of the child under a
court order; or

20 (b) is not or is not deemed to be the guardian of
the child, to the exclusion of, or in addition to,
the mother or other guardian, under a law of the
Commonwealth or of another State or a Territory
of the Commonwealth,

is not a guardian of the child for the purposes of that
subsection.

(9) Section 30—

25 Omit “For”, insert instead “Notwithstanding any other
provision of this Act, for”.

(10) Section 31 (1) (d)—

Omit “on the date of the instrument of consent,” insert
instead “at the time the instrument of consent was signed.”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(11) Sections 31A–31E—

5 After section 31, insert :—

31A. (1) Where, under section 34 (1), the Director becomes the guardian of a child referred to in section 26 (3)—

Notice of
consents to
certain
putative
fathers.

10 (a) except as provided by paragraph (b)—the Director; or

(b) in any case where negotiations are being conducted or arrangements are being made by a private adoption agency with a view to the adoption of the child—the principal officer of the private adoption agency,

15 shall make all such inquiries as, in the opinion of the Director or the principal officer, as the case may be, having regard to all such information as may have been furnished to him by a person giving a consent to the adoption of the child or any other person, are reasonably necessary in order to ascertain whether any person, as at the date on which the Director so becomes the guardian of the child—

20 (c) is presumed, pursuant to section 11, 12 or 13 of the Children (Equality of Status) Act, 1976, to be the father of the child;

25 (d) is a party to proceedings as a consequence of which he may, pursuant to section 12 or 13 of the Children (Equality of Status) Act, 1976, be presumed to be the father of the child; or

30 (e) is otherwise registered as the father of the child under the Registration of Births, Deaths and Marriages Act, 1973.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (2) Where, in relation to a child referred to in
section 26 (3)—

(a) who—

(i) has been admitted to State control; and

(ii) is a ward within the meaning of the Child
Welfare Act, 1939; or

10 (b) who—

(i) has been committed to the care of the
Minister to be dealt with as a ward
admitted to State control; and

15 (ii) has not been absolutely discharged from
the supervision and control of the
Minister under the Child Welfare Act,
1939,

20 a consent to the adoption of the child is given by the
mother of the child, the Director shall make the inquiries
referred to in subsection (1) in order to ascertain whether
any person, as at the date on which the consent is given,
is, in relation to the child, a person to whom paragraph
(c), (d) or (e) of subsection (1) applies.

25 (3) Except as provided by subsection (1) or (2),
the applicant or applicants for an adoption order in respect
of a child referred to in section 26 (3) shall make such
inquiries as, in the opinion of the Tribunal, are reasonably
necessary in order to ascertain whether any person, as at
the date on which the application for the adoption order
30 was made is, in relation to the child, a person to whom
paragraph (c), (d) or (e) of subsection (1) applies.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (4) Where, as a consequence of making inquiries pursuant to subsection (1), (2) or (3), or otherwise, the Director, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order ascertains or ascertain that there is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection
10 (1) applies, the Director, that principal officer, the applicant or those applicants, as the case may be, shall—

- 15 (a) in circumstances to which subsection (1) or (2) applies—give the person notice of each consent given by an appropriate person referred to in section 26 (3) in relation to the child; or
- (b) in circumstances to which subsection (3) applies—give the person notice that an application has been made for an adoption order in respect of the child.

20 (5) Nothing in subsection (4) requires the giving of a notice of a consent referred to in that subsection to the person by whom the consent was given.

25 **31B.** The Tribunal, on application by the Director, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order in respect of a child, may, by order, dispense with the giving of a notice referred to in section 31A (4) to a person where it appears to the Tribunal that—

- 30 (a) the Director, the principal officer of the private adoption agency or the applicant or the applicants, as the case may require, is unable to locate the person;

Dispensing
with
notice.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether he should file a notice under section 31c (1); or

10 (c) there are circumstances, other than those referred to in paragraphs (a) and (b), in which, by dispensing with the giving of the notice, the interests and welfare of the child will be promoted.

15 31c. (1) A person to whom a notice referred to in section 31A (4) is given may, within a period of 14 days after the date of service of the notice, file, with the Registrar, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given. Application for custody, etc., by putative father.

20 (2) The Tribunal may determine an application under subsection (1) in relation to a child at any time that is not later than the determination of any application for an order for the adoption of the child.

25 (3) In determining an application under subsection (1), the Tribunal may join any person it thinks fit as a party to the application.

(4) The Tribunal may determine an application under subsection (1) in relation to a child by making such order, or such interim order, with respect to the care, custody or guardianship of the child as it thinks fit.

30 (5) Where the Tribunal determines an application under subsection (1) by making an order with respect to the guardianship of a child, the guardianship of any person before the date on which the order takes effect shall, on that date, cease.

Adoption of Children (Amendment).

SCHEDULE 3—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.****31D. (1) Where—**

- 5 (a) a person to whom, in relation to a child, para-
graph (c), (d) or (e) of section 31A (1) applies—
- 10 (i) is given a notice referred to in section
31A (4); and
- 15 (ii) does not, within a period of 14 days after
the date of service of the notice, file, with
the Registrar, an application for an order
with respect to the care, custody and
guardianship of the child in relation to
whom the notice is given; or
- 20 (b) the Tribunal, under section 31B, dispenses with
the giving of a notice referred to in section
31A (4) to a person to whom, in relation to a
child, paragraph (c), (d) or (e) of section 31A
(1) applies,
- the person may not, at any time before the making of an
adoption order in respect of the child, do any thing, under
this or any other law, that is inconsistent with the making of
such an order.
- 25 (2) A person—
- (a) who is the father of a child referred to in section
26 (3);
- (b) who is not given a notice referred to in section
31A (4); and

Con-
sequence
of failure
to make
application
for custody,
etc.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (c) in respect of whom the Tribunal has not, under
section 31B, dispensed with the giving of a
notice referred to in section 31A (4),

may not, except in pursuance of section 23 (2), at any time
before the making of an adoption order in respect of the
child, do any thing, under this or any other law, that is
10 inconsistent with the making of such an order.

31E. Subject to this Division, the Tribunal shall not
make an order for the adoption of a child referred to in
section 26 (3) unless it is satisfied that any notice which
may be required to be given under section 31A has been
15 given or dispensed with by an order under section 31B.

(12) (a) Section 32 (1) (d)—

Omit “or” where thirdly occurring.

(b) Section 32 (1) (e)–(h)—

Omit section 32 (1) (e), insert instead :—

20 (e) the child is in the care of a foster parent or
foster parents, the child has established a
stable relationship with that person or those
persons and the interests and welfare of the
child will be promoted by the child’s remaining
25 in the care of that person or those persons;

(f) the child is in the care of a person or persons
other than a parent, relative or foster parent
and the interests and welfare of the child will
be promoted if negotiations can be conducted
and arrangements made with a view to the
30 adoption of the child;

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (g) there are circumstances, other than those referred to in paragraphs (a)–(f), in which, by dispensing with the consent, the interests and welfare of the child will be promoted; or

10 (h) a notice of intention to seek an order dispensing with the consent has been served personally on that person and that person has not, within 14 days after the date of service of the notice, filed, with the Registrar, a notice of intention to oppose the making of the order.

(c) Section 32 (1A) (c)—

15 Omit the paragraph, insert instead :—

(c) where an application has been made to the Tribunal for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person), the applicant or applicants.

(d) Section 32 (5) (a) (ii)—

Omit “or” where secondly occurring.

(e) Section 32 (5) (a) (iii), (iv)—

Omit section 32 (5) (a) (iii), insert instead :—

25 (iii) in relation to a person referred to in subsection (1) (h); or

30 (iv) where the Tribunal considers that in the particular circumstances of the case it is desirable to make an order under subsection (1) without a notice referred to in this paragraph having been given or sent as so referred to,

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(13) Section 35 (1) (d)—

5 Omit “not being”, insert instead “including”.

(14) (a) Section 38 (1)—

Omit “subsection (2)”, insert instead “subsections
(2) and (2A)”.

(b) Section 38 (2A)—

10 After section 38 (2), insert :—

(2A) An approval of a change in the forename or
forenames of a child who has attained the age of 12
years shall not be given by the Tribunal unless the
child has, in a consent given under section 33, con-
15 sented to the change or, where the child has not
attained the age of 18 years, the Tribunal is satisfied
that there are special reasons, related to the welfare
and interests of the child, why the change should be
made notwithstanding that the child has refused to
20 consent to the change or his consent has not been
sought.

(15) (a) Section 41 (1)—

Before “applicants”, insert “applicant or”.

(b) Section 41 (1A)—

25 After section 41 (1), insert :—

(1A) Upon an application to the Tribunal by the
Director or the principal officer of a private adoption
agency, the Tribunal may make an interim order for
the custody of a child in favour of the applicant.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(16) Section 43 (3)—

5 After "Commonwealth", insert "or in New Zealand".

(17) (a) Section 45—

After "Commonwealth", insert "or in New Zealand".

(b) Section 45—

10 After "Territory" where secondly and thirdly occurring, insert "or New Zealand".

(18) (a) Section 46 (1)—

After "Commonwealth" where secondly occurring, insert "(other than New Zealand)".

(b) Section 46 (2)—

15 After "country" where firstly occurring, insert "(other than New Zealand)".

(c) Section 46 (2) (b)—

Omit the paragraph.

(d) Section 46 (5)—

20 After "Commonwealth" where secondly occurring, insert "(other than New Zealand)".

(19) (a) Section 47 (1)—

After "Commonwealth" where secondly occurring, insert "(other than New Zealand)".

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 47 (5) (d)—

5 After “court”, insert “or other body”.

(20) Section 49 (1)—

Before “guardian” wherever occurring, insert “relative or”.

(21) Section 49A—

After section 49, insert :—

10 49A. A person who was the father or mother or a relative or guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a relative or guardian of the child, and who, without the prior consent of—

Attempts by certain persons to communicate with adopted child.

15 (a) except as provided by paragraph (b)—the adoptive parent or adoptive parents of the child; or

(b) where the adoptive parent or adoptive parents of the child is or are dead or cannot be found or there is, in the opinion of the Director, any other sufficient reason—the Director,

20 attempts to communicate with the child at any time before the child reaches the age of 18 years is guilty of an offence against this Act.

(22) Section 51 (1)—

25 Omit “is guilty”, insert instead “and each person with whom negotiations are conducted or arrangements are made as referred to in paragraph (a) or to whom the possession or control of a child is transferred in the circumstances to which paragraph (b) applies is guilty”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(23) Section 56—

- 5 After “consent” where firstly occurring, insert “, or revocation of consent,”.

(24) (a) Section 57 (a)—

Omit “or” where thirdly occurring.

(b) Section 57 (b)—

- 10 Omit “child,” insert instead “child; or”.

(c) Section 57 (c)—

After section 57 (b), insert :—

- 15 (c) to inducing the parent or guardian to revoke a consent to the adoption of the child given by that parent or guardian,

(25) (a) Section 60 (2)—

- 20 Omit “children’s court established under the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “court of petty sessions held before a stipendiary magistrate sitting alone”.

(b) Section 60 (5)–(8)—

After section 60 (4), insert :—

- 25 (5) At the hearing of any proceedings in respect of an offence against this Act or the regulations, any persons not directly interested in the proceedings shall be excluded from the court unless the court otherwise directs.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(6) A court may—

- 5 (a) direct a child to leave the court at any time
 during the hearing of any proceedings
 in respect of an offence against this Act or
 the regulations; or
- 10 (b) direct any person to leave the court during
 the examination of any witness in any such
 proceedings,

if the court is of the opinion that, in the interests of
a child, such a direction should be given.

- 15 (7) The powers of a court under subsection (6)
 may be exercised notwithstanding that the child or
 person directed to leave the court may be directly
 interested in the proceedings.

- 20 (8) Subsections (5)–(7) apply to and in respect
 of the hearing of any appeal against the decision of
 a court in the same way as they apply to and in
 respect of the hearing of proceedings before the court.

(26) (a) Section 62—

After “Commonwealth”, insert “or in New Zealand”.

(b) Section 62—

- 25 After “Territory” where secondly occurring, insert “or
 New Zealand”.

(27) (a) Section 63—

After “Commonwealth”, insert “or in New Zealand”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 63—

- 5 After “Territory” where secondly occurring, insert “or New Zealand”.

(28) Section 65—

Omit “The Court,”, insert instead “Except as otherwise provided by this Act or the regulations, the Tribunal,”.

10 (29) Section 67—

After “Act”, insert “or the former Acts”.

(30) Sections 68A, 68B—

After section 68, insert :—

- 15 68A. (1) The Director may, with respect to a child of a prescribed class or description, enter into an agreement with a person or persons with whom the child has been placed for the purposes of adoption, the applicant, or applicants, for an adoption order in respect of the child or the adoptive parent, or adoptive parents, of the child, for
20 the provision of such financial or other assistance, on such terms and conditions as may be agreed, in order to assist or promote the welfare and interests of the child.

Provision of financial and other assistance to certain children.

- 25 (2) Nothing in subsection (1) prevents the Director from entering into an agreement under that subsection in relation to a child so as to provide financial or other assistance both before and after an adoption order in respect of the child is made.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 68B. (1) In this section, a reference to the executor or administrator of the estate of a deceased person includes a reference to a person who is a trustee of the whole or any part of the property comprised in the estate. Adminis-
tration of
certain
estates.

(2) Where—

- 10 (a) an adopted person is a beneficiary under the estate of a deceased person ;
- (b) the executor or administrator of the estate does not know the name or whereabouts of the adopted person; and
- 15 (c) the Director certifies, in writing, to the executor or administrator that he knows the name and whereabouts of the adopted person and that the adopted person is alive,

 the executor or administrator may, with the approval of the Director, transfer to the Director, on behalf of the adopted person, any property to which the adopted person may be entitled under the estate or which may be otherwise applied for his benefit.

20

 (3) A transfer made under subsection (2) shall be valid against all persons and the executor or administrator shall be absolutely discharged from all liability in respect of a transfer so made by him.

25

 (4) The Director shall apply any property transferred to him under subsection (2) on behalf of the adopted person in respect of whom it was transferred in accordance with the trusts on which the property was held immediately before it was transferred as if he were the executor or administrator of the estate of the deceased person in respect of which the transfer was made.

30

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- 5 (5) Nothing in this section affects any right of a person to claim or recover any property transferred under subsection (2) from a person other than the executor or administrator who transferred the property.

(31) Section 71 (1)—

After “Commonwealth”, insert “or in New Zealand”.

10 (32) (a) Section 73 (1) (b)—

After “administrative”, insert “, legal”.

(b) Section 73 (1) (b)—

After “makes,”, insert “is requested to make or is involved in the preparation of,”.

15 (c) Section 73 (1) (b)—

After “Act”, insert “, the rules of the Tribunal or the regulations”.

(d) Section 73 (1) (d)—

20 After “him”, insert “or by the principal officer of a private adoption agency”.

(e) Section 73 (1) (f1)—

After section 73 (1) (f), insert :—

- 25 (f1) the establishment and administration of a register of persons who have been separated as a consequence of the making of an adoption order and who desire a reunion;

Adoption of Children (Amendment).

SCHEDULE 4.

Sec. 5 (1).

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

- (1) (a) Section 6, definition of "Charitable organisation"—
5 Omit " , as amended by subsequent Acts".
- (b) Section 6, definition of "Prescribed"—
Omit the definition.
- (2) Section 18 (1) (b) (ii)—
Omit "as amended by subsequent Acts,".
- 10 (3) Section 24—
Omit "as amended by subsequent Acts,".
- (4) (a) Section 34 (2) (a)—
Omit " , as amended by subsequent Acts".
- (b) Section 34 (2D)—
15 Omit " , as amended by subsequent Acts".
- (c) Section 34 (4)—
Omit "as amended by subsequent Acts,".
- (d) Section 34 (5) (d)—
Omit " , as amended by subsequent Acts".
- 20 (5) Section 35 (1) (d)—
Omit " , as amended by subsequent Acts".

Adoption of Children (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

(6) Section 37—

5 Omit “as amended by subsequent Acts,”.

(7) Section 40 (1)—

Omit “as amended by subsequent Acts,” wherever
occurring.

(8) Section 43 (2)—

10 Omit “as amended by subsequent Acts,”.

(9) Section 69—

Omit the section, insert instead :—

15 69. (1) The Director may, by instrument in writing, Delegation.
delegate to any officer of the Department of Youth and
Community Services specified in the instrument of delega-
tion the exercise or performance of such of the powers,
authorities, duties and functions (other than this power of
delegation) conferred or imposed on him by or under this
20 Act as may be so specified and may, by such an instrument,
revoke wholly or in part any such delegation.

25 (2) A power, authority, duty or function, the
exercise or performance of which has been delegated under
this section, may, while the delegation remains unrevoked,
be exercised or performed from time to time in accordance
with the terms of the delegation by the delegate to whom
the exercise or performance thereof has been delegated.

Adoption of Children (Amendment).

SCHEDULE 4—continued.

**AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—continued.**

5 (3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

10 (4) Notwithstanding any delegation made under this section, the Director may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

15 (5) Any act or thing done or omitted or suffered to be done by a delegate while acting in the exercise of a delegation under this section shall be deemed to have been done or omitted or suffered to be done by the Director.

20 (6) An instrument purporting to be signed by a delegate of the Director in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Director and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Director under this section.

SCHEDULE 5.

Sec. 6.

25 **SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.**

PART 1.

1. In this Part of this Schedule—

“appointed day” means the day appointed and notified under section 2 (3);

Interpre-
tation:
Sch. 5,
Pt. 1.

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

“Court” means the Supreme Court of New South Wales;

5 “Tribunal” has the meaning ascribed thereto in section 6 of the Principal Act, as amended by this Act.

2. Except as provided in this Schedule, nothing in this Schedule limits any saving in the Interpretation Act, 1897, not affected.

3. An amendment made by section 5 and Schedules 1 and 2 shall not revive anything not in force or existing immediately before the appointed day.

4. (1) Any proceeding pending, as at the appointed day, before the Court which, if commenced after the appointed day, could only have been commenced before the Tribunal, shall—

15 (a) if the hearing of the proceeding has commenced, continue to be heard and dealt with in all respects as if this Act had not been enacted; or

(b) if the hearing of the proceeding has not commenced, be deemed to be a proceeding before the Tribunal.

20 (2) For the purpose only of continuing to hear and deal with a proceeding as referred to in subclause (1) (a) of this clause, the provisions of the Principal Act and any instrument under the Principal Act, as in force immediately before the appointed day, relating to—

(a) the Court;

(b) the Judges of the Court;

25 (c) the officers of the Court;

(d) any such proceeding; and

(e) appeals from the decision of the Court in any such proceeding,

shall continue in force notwithstanding any other provision of this Act.

30 (3) A decision of the Court and anything done or omitted or suffered to be done by an officer of the Court in any proceeding referred to in subclause (1) (a) of this clause shall have the same force and effect as it would have had if this Act had not been enacted.

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) The nominated officer within the meaning ascribed thereto in section 6 of the Principal Act, as in force immediately before the appointed day, shall, as soon as practicable after the appointed day, forward to the Registrar of the Tribunal all documents held by him and relating to any proceeding referred to in subclause (1) (b) of this clause.

(5) Where proceedings in respect of any act or thing done or omitted or suffered to be done before the appointed day had not been brought before that day but could, but for the enactment of this Act, have been brought, immediately before that day, before the Court, proceedings in respect of that act or thing may, if, had that act or thing occurred after that day, proceedings could have been brought before the Tribunal, be brought before the Tribunal under the Principal Act, as amended by this Act.

15

PART 2.

5. A delegation made by the Director under section 69 of the Principal Act, being a delegation which is in force immediately before the date of assent to this Act, shall be deemed to be a delegation made by the Director under section 69 of the Principal Act, as amended by this Act.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

Legislative Assembly Chamber,

Sydney, March, 1980.

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1980.

An Act to amend the Adoption of Children Act, 1965, to constitute the Adoption Tribunal and to specify its functions; and for certain other purposes.

Adoption of Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 1. This Act may be cited as the "Adoption of Children Short
(Amendment) Act, 1980". title.

2. (1) Except as provided by subsections (2), (3) and (4), Commence-
this Act shall commence on the date of assent to this Act. ment.

(2) Section 5 (1) shall, in its application to a provision of
10 Schedule 1, 3 or 4, commence on the day on which that provision
commences.

(3) Sections 5 (2) and 6 (1), Schedules 1, 2 and 3
(Schedule 3 (7), (8) and (11) excepted) and Part 1 of Schedule 5
shall commence on such day as may be appointed by the Governor
15 in respect thereof and as may be notified by proclamation published
in the Gazette.

(4) Schedule 3 (7), (8) and (11) shall commence on
such day, being not earlier than the day appointed and notified
under subsection (3), as may be appointed by the Governor in
20 respect thereof and as may be notified by proclamation published
in the Gazette.

3. The Adoption of Children Act, 1965, is referred to in this Principal
Act as the Principal Act. Act.

4. This Act contains the following Schedules :— Schedules.

25 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE CONSTITUTION AND FUNCTIONS OF
THE ADOPTION TRIBUNAL.

Adoption of Children (Amendment).

SCHEDULE 2.—FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

5 SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 5.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

10 5. (1) The Principal Act is amended in the manner set forth in Schedules 1, 3 and 4. Amendment
of Act No.
23, 1965.

(2) The Principal Act is further amended—

15 (a) by omitting from a provision of the Principal Act specified in Column 1 of Schedule 2 the matter specified opposite the provision in the column headed "Matter to be omitted." in Column 2 of that Schedule, other than such matter, if any, as appears in brackets and is printed in italics; and

20 (b) by inserting instead the matter specified opposite the provision in the column headed "Matter to be inserted." in Column 2 of that Schedule.

6. (1) Part 1 of Schedule 5 has effect.

Savings,
transitional
and other
provisions.

(2) Part 2 of Schedule 5 has effect.

Adoption of Children (Amendment).

SCHEDULE 1.

Sec. 5 (1).

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

(1) (a) Section 3—

5 After the matter relating to Part I, insert :—

PART IA.—THE ADOPTION TRIBUNAL—ss. 6A–6Y.

DIVISION 1.—*Constitution and Jurisdiction*—ss.
6A–6E.

10 DIVISION 2.—*Conduct of Proceedings*—ss. 6F–
6P.

DIVISION 3.—*Appeals*—ss. 6Q–6S.

DIVISION 4.—*Miscellaneous*—ss. 6T–6Y.

(b) Section 3—

At the end of the section, insert :—

15 SCHEDULE 1.—PROVISIONS RELATING TO THE
MEMBERSHIP OF THE TRIBUNAL.

(2) (a) Section 6, definition of “Court”—

Omit the definition.

(b) Section 6, definition of “Deputy President”—

20 Before the definition of “Director”, insert :—

“Deputy President” means a person appointed, for
the time being, as a Deputy President of the
Tribunal.

(c) Section 6, definition of “President”—

25 Before the definition of “Principal officer”, insert :—

“President” means the person appointed, for the
time being, as the President of the Tribunal.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (d) Section 6, definition of “the nominated officer”—
Omit the definition.

(e) Section 6, definitions of “Registrar”, “Tribunal”—

At the end of section 6, insert :—

“Registrar” means the Registrar of the Tribunal.

10 “Tribunal” means the Adoption Tribunal consti-
tuted under this Act.

(3) Part IA—

After Part I, insert :—

PART IA.

15 THE ADOPTION TRIBUNAL.

DIVISION 1.—*Constitution and Jurisdiction.*

6A. In this Part, “member” means a person appointed, Interpret-
for the time being, as a member of the Tribunal. Pt. IA.

6B. (1) There shall be an Adoption Tribunal.

20 (2) The Tribunal shall have a seal of which judicial
notice shall be taken. The
Tribunal.

6C. (1) Subject to this section, the members of the Members of
Tribunal shall be appointed by the Governor. the Tribunal.

(2) The members shall comprise—

25 (a) a qualified person appointed as President of the
Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (b) persons appointed from one or more of the
following classes of persons :—
- (i) legally qualified medical practitioners;
 - (ii) persons having knowledge of and
experience in social work;
 - 10 (iii) persons having, in the opinion of the
Governor, other suitable qualifications or
experience.
- (3) The members may include one or more quali-
fied persons appointed as a Deputy President or Deputy
15 Presidents of the Tribunal.
- (4) The Public Service Act, 1979, does not apply
to or in respect of the appointment of a member and a
member is not, in his capacity as a member, subject to
that Act while he holds office as a member.
- 20 (5) Schedule 1 has effect with respect to the mem-
bership of the Tribunal.

6D. The Tribunal shall have the jurisdiction vested in it
by or under this or any other Act.

Jurisdiction
of the
Tribunal.

25 6E. (1) Except as provided by subsections (5) and
(6), the Tribunal shall, for the purposes of hearing and
determining all proceedings before the Tribunal and all
business arising out of any such proceedings, be constituted
by not less than 3 and not more than 5 members nominated
by the President.

Composition
of the
Tribunal
for the
purposes
of hearing,
etc.,
proceedings.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (2) Of the members nominated by the President
for the purposes of subsection (1)—
- 10 (a) where the Tribunal is constituted by 3 or 4
members—one member, but not more than one
member, shall be the President or a Deputy
President; and
- 15 (b) where the Tribunal is constituted by 5 members
—at least one member shall be the President or
a Deputy President, but not more than 2 mem-
bers shall be the President or Deputy Presidents.
- 20 (3) A nomination made for the purposes of sub-
section (1) may be made generally or in a particular case
or class of cases.
- 25 (4) The President shall notify a member nomin-
ated under subsection (1) (other than the President) of
his nomination as soon as practicable after the nomination
is made.
- 30 (5) In respect of an application for an adoption
order which is not opposed, the Tribunal shall, unless the
President otherwise determines or the Director, the prin-
cipal officer of a private adoption agency or an applicant
otherwise requests, be constituted by the President or a
Deputy President sitting alone.
- (6) In respect of—
- (a) the exercise of jurisdiction pursuant to section
6J (1) (d); or
- (b) an application under section 47 (1),
the Tribunal shall, unless the President otherwise
determines, be constituted by the President or a Deputy
President sitting alone.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (7) A determination of the President under sub-
section (5) or (6) may be made at any time prior to or
during the hearing of proceedings before the Tribunal.

10 (8) Where a determination of the President under
subsection (5) or (6) is made during the hearing of pro-
ceedings before the Tribunal, the proceedings shall be
heard de novo before the Tribunal constituted as referred
to in subsection (1).

DIVISION 2.—*Conduct of Proceedings.*

15 6F. Where one or more Deputy Presidents have been
appointed, more than one meeting of the Tribunal may be
held at the same time. Meetings
of the
Tribunal.

20 6G. The procedure for the calling of, and for conduct of
business at, any meeting of the Tribunal shall, subject to
this Part and any rules of the Tribunal made under section
6N, be as determined by the Tribunal. Procedure
at meetings
of the
Tribunal.

6H. Where, at a meeting of the Tribunal, the Tribunal
is constituted as referred to in section 6E (1)— Chairman
and votes of
members.

25 (a) the President or, in the absence of the President,
a Deputy President shall preside as chairman of
that meeting;

(b) except as provided by paragraph (c), questions
arising at that meeting shall be determined by a
majority of votes of the members present and
voting;

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (c) the decision of the chairman of that meeting
upon any question of law or procedure which
may arise at that meeting shall be the decision
of the Tribunal; and
- 10 (d) the chairman of that meeting shall have, in the
event of an equality of votes, in addition to a
deliberative vote, a second or casting vote.

6I. The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit. Adjourn-
ment.

- 15 6J. (1) Subject to the rules of the Tribunal, the
Tribunal shall have and may exercise and perform the
powers, authorities, duties and functions vested in the
Supreme Court in respect of the following matters :— Powers, etc.,
of the
Tribunal as
to the
production
of evidence.
- 20 (a) compelling the attendance of witnesses and
their examination on oath, affirmation or
declaration;
- (b) compelling the production, discovery and inspec-
tion of books, records, documents and other
papers;
- 25 (c) compelling witnesses to answer questions which
the Tribunal considers to be relevant in any
proceedings before it;
- (d) apprehending, detaining and punishing persons
guilty of contempt, or of disobedience of any
30 order made by the Tribunal, or of any process
issuing out of the Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (e) directing witnesses to be prosecuted for perjury,
and the exercise or performance by the Tribunal of any
such power, authority, duty or function has the same effect
as it would have if exercised or performed by the Supreme
Court.

10 (2) All process issuing out of the Tribunal shall be
in or to the effect of the form prescribed by the rules of the
Tribunal and be signed by the President or a Deputy
President.

15 6K. (1) Proceedings before the Tribunal shall be
recorded but any such record which is made by means of
shorthand, stenotype or sound-recording apparatus shall
not be transcribed unless the President directs that the
record be transcribed or the transcription of those records
is otherwise required by law, or on the application of a
party to the proceedings.

Records of
proceedings
before the
Tribunal.

20 (2) Any transcription so made shall, except as to
such part, if any, of the transcription as is specified by the
Tribunal, be supplied to the Director or any party to the
proceedings upon payment of the fee prescribed by the
rules of the Tribunal corresponding to the fee referred to
25 in section 73 (2) of the Justices Act, 1902, for copies of
depositions.

30 6L. Every decision of the Tribunal in respect of any
proceedings before the Tribunal shall be in the form of an
instrument in writing signed by—

Record of
decision.

(a) the President or Deputy President before whom
the proceedings were heard; or

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- 5 (b) where, in relation to a meeting of the Tribunal,
the Tribunal was constituted as referred to in
section 6E (1), the chairman of that meeting,
and shall include the reasons for the decision of each
member before whom the proceedings were heard.
- 10 6M. The Tribunal may make such order as to costs in **Costs.**
respect of any proceedings before the Tribunal as the
Tribunal thinks fit and such an order has the same effect
as if it had been made by the Supreme Court.
- 15 6N. (1) Five members nominated by the President, who **Rules.**
shall include the President or a Deputy President, or both,
may make rules of the Tribunal, not inconsistent with this
Act or the regulations, for or with respect to the calling of,
and conduct of business at, any meeting of the Tribunal
20 and generally to prescribe all matters that by this Act are
required or permitted to be prescribed by rules of the
Tribunal or are necessary or convenient to be prescribed
by rules of the Tribunal for carrying out or giving effect
to this Act.
- 25 (2) Without limiting the generality of subsection
(1), the Tribunal may, by its rules, fix, from time to time,
the costs, charges and fees to be paid in respect of pro-
ceedings before the Tribunal, including—
- 30 (a) professional costs, charges and fees; and
(b) the maximum fee, determined having regard to
the actual cost incurred, which may be charged
by or on behalf of a private adoption agency in
respect of the making of an application for an
adoption order.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (3) Different rules of the Tribunal may be made to
apply in different circumstances.

10 6o. Subsections (I), (II) and (III) of section 41 of the
Interpretation Act, 1897, apply to and in respect of a rule
of the Tribunal made under this Act in the same way as
they apply to and in respect of a regulation referred to in
those subsections. Gazetted,
etc., of
rules.

6p. (1) Judicial notice shall be taken of—

15 (a) a rule of the Tribunal made or purporting to
have been made under this Act and published in
the Gazette; and Judicial
notice, etc.,
of rules.

(b) the date of its publication.

20 (2) It shall be presumed, in the absence of evidence
to the contrary, that all conditions and steps precedent to
the making of a rule of the Tribunal under this Act have
been complied with and performed.

DIVISION 3.—*Appeals.*

6q. Except as provided by sections 6R and 6s, a decision
of the Tribunal with respect to any proceedings before it
shall be final and conclusive. Nature of
decision
of the
Tribunal.

25 6R. (1) The Tribunal shall, if so required in writing
by the Director or a party to any proceedings before the
Tribunal, within the time and in the manner prescribed by
the rules of the Tribunal, or may of its own motion, state
a case for the decision of the Court of Appeal. Appeals.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (2) The decision of the Court of Appeal on the hearing of a case stated under subsection (1) shall be binding upon the Tribunal and upon the Director and all the parties to the proceedings in respect of which the case was stated.

10 6s. Nothing in this Division derogates from or otherwise affects the jurisdiction of the Supreme Court under section 69 or 75 of the Supreme Court Act, 1970. Certain jurisdiction of Supreme Court not affected.

DIVISION 4.—*Miscellaneous.*

15 6T. (1) The registrar of a Division of the Supreme Court specified in section 38 (b) of the Supreme Court Act, 1970, being a Division nominated by the Minister, shall be the Registrar of the Tribunal. Registrar and other officers of the Tribunal.

20 (2) Except as provided by subsection (1), such officers and employees as may be necessary for the performance of the powers, authorities, duties and functions of the Tribunal may be appointed and employed under and subject to the Public Service Act, 1979.

25 6U. Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President or a Deputy President. Authenticat-
tion of
documents.

6v. Judicial notice shall be taken of the signature of the President, a Deputy President or the Registrar when appearing on a document issued by the Tribunal. Judicial notice of certain signatures.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 6w. No proceedings lie against the Tribunal, a member
or an officer of the Tribunal for or on account of any act,
matter or thing done or ordered to be done or omitted or
suffered to be done by the Tribunal, member or officer,
10 and purporting to be done, ordered, omitted or suffered
for the purposes of carrying out the provisions of this Act,
if the Tribunal, member or officer has acted in good faith
and with reasonable care.

Certain
proceedings
prohibited.

15 6x. For the purposes of section 18 of the Defamation
Act, 1974, the proceedings of the Tribunal shall be deemed
to be an inquiry within the meaning of that section.

Application
of the
Defamation
Act, 1974.

20 6y. (1) The President shall, as soon as practicable
after 1st March in each second year, prepare and forward
to the Minister a report on the administration of this Act
and the regulations for the two-yearly period ending on
that date.

Biennial
report.

(2) The Minister shall lay the report, or cause it
to be laid, before each House of Parliament as soon as
practicable after the receipt by him of the report.

(4) (a) Section 46 (3)—

25 After “the court”, insert “or the Tribunal”.

(b) Section 46 (4)—

After “court”, insert “or the Tribunal”.

(5) Section 72—

Omit the section.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

5 (6) Schedule 1—

At the end of the Act, insert :—

SCHEDULE 1.

Sec. 6c (5).

PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.

PART 1.

10

THE PRESIDENT AND DEPUTY PRESIDENTS.

1. A person is qualified to be appointed as the President or a Qualifica-
Deputy President if he is the Chief Justice of the Supreme Court tion.
or a Judge of that Court.

15

2. The President or a Deputy President shall, subject to this Appoint-
Part of this Schedule, be appointed for such term, not exceeding 3 ment.
years, as is specified in the instrument of his appointment and shall,
if otherwise qualified, be eligible for reappointment as the President
or a Deputy President.

20

3. (1) A Deputy President, while holding office as a Deputy Deputy
President, shall, subject to the conditions of appointment specified Presidents.
in the instrument of his appointment and to any direction given
to him by the President, have the powers, authorities, privileges and
immunities and perform the duties of the President.

25

(2) No person shall be concerned to inquire whether or not
any occasion has arisen authorising a Deputy President to exercise
or perform the powers, authorities or duties of the President and all
acts or things done or omitted or suffered to be done by a Deputy
President when exercising or performing those powers, authorities
or duties shall be as valid and effectual and shall have the same
consequences as if they had been done or omitted or suffered to be
done by the President.

30

*Adoption of Children (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—*continued.*

- 5 4. (1) The appointment of the Chief Justice or a Judge of the Supreme Court as the President or a Deputy President shall not, nor shall his service as the President or a Deputy President, affect his tenure of the office of Chief Justice or Judge of the Supreme Court, as the case may be, or his rank, title, status, precedence, salary or other rights or privileges as a holder of that office. Effect of appointment to the Tribunal of Judges of the Supreme Court.
- 10 (2) The Chief Justice or a Judge of the Supreme Court may, notwithstanding that he is the President or a Deputy President, exercise his powers as the Chief Justice or a Judge of the Supreme Court, as the case may be.
- 15 (3) The service, as the President or a Deputy President, of the Chief Justice or a Judge of the Supreme Court shall, for all purposes, be taken to be service as the Chief Justice or a Judge of the Supreme Court, as the case may be.
- 20 5. The Governor may remove the President or a Deputy President from office upon the address of both Houses of Parliament, but not otherwise. Removal from office.
- 25 6. Where a person who has been appointed, in accordance with this Act, as the President or a Deputy President ceases, in accordance with the law for the time being in force relating to the Chief Justice or Judges of the Supreme Court, to be the Chief Justice or a Judge of the Supreme Court, he shall thereupon cease to be the President or a Deputy President, as the case may be. Cessation of office.

PART 2.

MEMBERS OTHER THAN THE PRESIDENT AND DEPUTY PRESIDENTS.

- 30 7. In this Part of this Schedule, "member" means a person appointed, for the time being, as a member of the Tribunal other than the President or a Deputy President. Interpretation: Sch. 1, Pt. 2.
8. A person who is of or above the age of 65 years shall not be appointed as a member. Age of members.

Adoption of Children (Amendment).

SCHEDULE 1—continued.

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—continued.**

- 5 9. A member shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member. Term of office of members.
- 10 10. Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him. Remuneration of and allowances for members.
11. The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. Removal from office.
- 15 12. A member shall be deemed to have vacated his office— Vacation of office.
- (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Governor;
- 20 (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 25 (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 30 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales, would be a felony or a misdemeanour so punishable;
- (f) if he is removed from office by the Governor; or
- (g) upon his attaining the age of 65 years.

Adoption of Children (Amendment).

SCHEDULE 2.

Sec. 5 (2).

FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

	Column 1.	Column 2.	
5	Provision of the Principal Act.	Matter to be omitted.	Matter to be inserted.
10	Sections 8 (1), (2); 9; 14 (1), (3); 18 (1), (2), (4); 19 (2), (3), (4); 20; 21 (1), (2); 22 (1), (3), (4); 23; 24; 25 (1), (2), (3), (4); 26 (1), (7); 31 (1), (2), (3); 32 (1), (4), (5); 33; 34 (3), (5) (c); 38 (1), (2); 41 (1), (2), (3); 42 (1); 43 (1), (2); 47 (1), (3), (4); 50 (2) (b), (2) (c); 56; 62; 64; 66; 68; 73 (1) (e).	Court (<i>wherever occurring</i>)	Tribunal
15	Section 14 (2)	rules of Court	the rules of the Tribunal
	Sections 28 (1), (2), (3); 47 (6); 61; 62; 63.	nominated officer (<i>wherever occurring</i>)	Registrar
20	Section 46 (3)	a court (<i>where secondly occurring</i>)	the Tribunal
	Section 53 (2)	the Court	the Tribunal or a court
	Section 64	heard in open court	open to the public

25

SCHEDULE 3.

Sec. 5 (1).

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 6, definition of "Foster parent"—

After the definition of "Father", insert :—

30

"Foster parent" means any person who has the care and
custody of a child, being a child—

(a) who—

(i) has been admitted to State control;
and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- 5 (ii) is a ward within the meaning of the
Child Welfare Act, 1939; or
- (b) who—
- (i) has been committed to the care of
the Minister to be dealt with as a
ward admitted to State control; and
- 10 (ii) has not been absolutely discharged
from the supervision and control of
the Minister under the Child
Welfare Act, 1939.
- (2) Section 8 (2)—
- 15 Omit “thirty days”, insert instead “60 days”.
- (3) (a) Section 18 (2) (a)—
- Omit “or” where secondly occurring.
- (b) Section 18 (2) (a1)—
- After section 18 (2) (a), insert :—
- 20 (a1) the applicant, or either of the applicants, is
the mother or father of the child; or
- (c) Section 18 (3)—
- Omit “a person, or by persons, in whose favour a
consent referred to in subsection (2) of section 27
has been given”, insert instead “an applicant, or by
25 applicants, referred to in subsection (2),”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(4) (a) Section 21 (1) (a)—

5 Before “the Director”, insert “except as provided by
subsection (1A),”.

(b) Section 21 (1A)–(1C)—

After section 21 (1), insert :—

10 (1A) The Tribunal may dispense with the making
of a report referred to in subsection (1) (a)—

15 (a) generally in respect of applications made on
behalf of applicants by the principal officer
of a private adoption agency where the
Tribunal is satisfied that the standard of
applications made by that principal officer
justifies such a dispensation; or

20 (b) in respect of a particular application made
on behalf of an applicant or applicants by
the principal officer of a private adoption
agency where the Tribunal is satisfied that
the particulars of that application and the
report of that principal officer justify such
a dispensation.

25 (1B) The Director may make a report referred to
in subsection (1) (a) to the Tribunal notwithstanding
that the Tribunal has, under subsection (1A), dis-
pensed with the making of the report.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (1c) The Tribunal may, in respect of an
application made by a person other than the Director,
require the Director to make a report referred to in
subsection (1) (a) within a period of 6 months after
the date of the making of the application or such
10 other period as the Tribunal may, having regard to
the circumstances of the case, specify.

(c) Section 21 (2)—

After “him”, insert “or by the principal officer of a
private adoption agency”.

(d) Section 21 (3)—

15 After “parent”, insert “or foster parent”.

(5) Section 21A—

After section 21, insert :—

20 21A. (1) Where the mother or father or a guardian of
a child in respect of whom an application for an adoption
order is made has not, in an instrument of consent to
adoption of the child, expressed any wish with respect to
the religious upbringing of the child—

25 (a) it shall not be relevant, in the exercise or
performance by the Tribunal of its powers,
authorities, duties and functions under section
21, that the applicant or each of the applicants
does not have a religious conviction or
affiliation; and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (b) section 17 does not operate so as to require, and the Tribunal shall not, in making an order for the adoption of the child, require, the applicant or each of the applicants to give any undertaking with respect to the religious upbringing of the child.

10 (2) Nothing in subsection (1) affects the consideration by the Tribunal under section 21 (1) (c) (i) (b) of the religious upbringing or convictions (if any) of the child.

(6) (a) Section 22 (1) (a)—

Omit the paragraph, insert instead :—

15 (a) to any person whose consent to the adoption of the child—

(i) is required under section 26;

(ii) has not been dispensed with by an order made by virtue of section 32 (1); and

20 (iii) has not been given; and

(b) Section 22 (1A)—

Omit the subsection, insert instead :—

25 (1A) Except as the Tribunal may otherwise determine, nothing in subsection (1) requires a notice referred to in that subsection to be given or sent to—

30 (a) a person referred to in subsection (1) (a) if that person is a person to whom section 32 (1) (h) applies; or

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (b) a person referred to in subsection (1) (b)
if that person is—

(i) an applicant for the order for the
adoption of the child; or

10 (ii) a person with whom the child
resides only as a patient or inmate
of a hospital of which that person is
in charge or a person who has the
care or custody of the child only as
the person in charge of a hospital.

(7) (a) Section 23—

15 Omit “The”, insert instead “Except as provided by
subsection (2), the”.

(b) Section 23 (2)—

At the end of section 23, insert :—

20 (2) The Tribunal shall, on application by a
person—

(a) who is the father of a child referred to in
section 26 (3);

(b) who is not given a notice referred to in
section 31A (4); and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(c) in respect of whom the Tribunal has
not, under section 31B, dispensed with the
giving of a notice referred to in section 31A
(4),

join the person as a party to the proceedings for an
adoption order in respect of the child for the purpose
of opposing the application for the order.

(8) Section 26 (3A)—

After section 26 (3), insert :—

(3A) A person who is the putative father of a child
referred to in subsection (3) and who—

(a) does not have the custody of the child under a
court order; or

(b) is not or is not deemed to be the guardian of
the child, to the exclusion of, or in addition to,
the mother or other guardian, under a law of the
Commonwealth or of another State or a Territory
of the Commonwealth,

is not a guardian of the child for the purposes of that
subsection.

(9) Section 30—

Omit "For", insert instead "Notwithstanding any other
provision of this Act, for".

(10) Section 31 (1) (d)—

Omit "on the date of the instrument of consent," insert
instead "at the time the instrument of consent was signed,".

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(11) Sections 31A–31E—

5 After section 31, insert :—

31A. (1) Where, under section 34 (1), the Director becomes the guardian of a child referred to in section 26 (3)—

Notice of
consents to
certain
putative
fathers.

10 (a) except as provided by paragraph (b)—the Director; or

15 (b) in any case where negotiations are being conducted or arrangements are being made by a private adoption agency with a view to the adoption of the child—the principal officer of the private adoption agency,

20 shall make all such inquiries as, in the opinion of the Director or the principal officer, as the case may be, having regard to all such information as may have been furnished to him by a person giving a consent to the adoption of the child or any other person, are reasonably necessary in order to ascertain whether any person, as at the date on which the Director so becomes the guardian of the child—

25 (c) is presumed, pursuant to section 11, 12 or 13 of the Children (Equality of Status) Act, 1976, to be the father of the child;

(d) is a party to proceedings as a consequence of which he may, pursuant to section 12 or 13 of the Children (Equality of Status) Act, 1976, be presumed to be the father of the child; or

30 (e) is otherwise registered as the father of the child under the Registration of Births, Deaths and Marriages Act, 1973.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (2) Where, in relation to a child referred to in
section 26 (3)—

(a) who—

- (i) has been admitted to State control; and
- (ii) is a ward within the meaning of the Child Welfare Act, 1939; or

10 (b) who—

- (i) has been committed to the care of the Minister to be dealt with as a ward admitted to State control; and
- (ii) has not been absolutely discharged from the supervision and control of the Minister under the Child Welfare Act, 1939,

15
20 a consent to the adoption of the child is given by the mother of the child, the Director shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

25 (3) Except as provided by subsection (1) or (2), the applicant or applicants for an adoption order in respect of a child referred to in section 26 (3) shall make such inquiries as, in the opinion of the Tribunal, are reasonably necessary in order to ascertain whether any person, as at the date on which the application for the adoption order was made is, in relation to the child, a person to whom
30 paragraph (c), (d) or (e) of subsection (1) applies.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (4) Where, as a consequence of making inquiries
pursuant to subsection (1), (2) or (3), or otherwise, the
Director, the principal officer of a private adoption agency
or an applicant or the applicants for an adoption order
ascertains or ascertain that there is, in relation to the child,
10 a person to whom paragraph (c), (d) or (e) of subsection
(1) applies, the Director, that principal officer, the
applicant or those applicants, as the case may be, shall—

15 (a) in circumstances to which subsection (1) or (2)
applies—give the person notice of each consent
given by an appropriate person referred to in
section 26 (3) in relation to the child; or

(b) in circumstances to which subsection (3) applies
—give the person notice that an application has
been made for an adoption order in respect of
the child.

20 (5) Nothing in subsection (4) requires the giving
of a notice of a consent referred to in that subsection to
the person by whom the consent was given.

25 **31B.** The Tribunal, on application by the Director, the
principal officer of a private adoption agency or an
applicant or the applicants for an adoption order in respect
of a child, may, by order, dispense with the giving of a
notice referred to in section 31A (4) to a person where it
appears to the Tribunal that—

30 (a) the Director, the principal officer of the private
adoption agency or the applicant or the
applicants, as the case may require, is unable to
locate the person;

Dispensing
with
notice.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether he should file a notice under section 31c (1); or

10 (c) there are circumstances, other than those referred to in paragraphs (a) and (b), in which, by dispensing with the giving of the notice, the interests and welfare of the child will be promoted.

15 31c. (1) A person to whom a notice referred to in section 31A (4) is given may, within a period of 14 days after the date of service of the notice, file, with the Registrar, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given. Application for custody, etc., by putative father.

20 (2) The Tribunal may determine an application under subsection (1) in relation to a child at any time that is not later than the determination of any application for an order for the adoption of the child.

25 (3) In determining an application under subsection (1), the Tribunal may join any person it thinks fit as a party to the application.

(4) The Tribunal may determine an application under subsection (1) in relation to a child by making such order, or such interim order, with respect to the care, custody or guardianship of the child as it thinks fit.

30 (5) Where the Tribunal determines an application under subsection (1) by making an order with respect to the guardianship of a child, the guardianship of any person before the date on which the order takes effect shall, on that date, cease.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

31D. (1) Where—

5 (a) a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A (1) applies—

Con-
sequence
of failure
to make
application
for custody,
etc.

(i) is given a notice referred to in section 31A (4); and

10 (ii) does not, within a period of 14 days after the date of service of the notice, file, with the Registrar, an application for an order with respect to the care, custody and guardianship of the child in relation to
15 whom the notice is given; or

(b) the Tribunal, under section 31B, dispenses with the giving of a notice referred to in section 31A (4) to a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A
20 (1) applies,

the person may not, at any time before the making of an adoption order in respect of the child, do any thing, under this or any other law, that is inconsistent with the making of such an order.

25 (2) A person—

(a) who is the father of a child referred to in section 26 (3);

(b) who is not given a notice referred to in section 31A (4); and

Adoption of Children (Amendment).

SCHEDULE 3—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.**

5 (c) in respect of whom the Tribunal has not, under
section 31B, dispensed with the giving of a
notice referred to in section 31A (4),

may not, except in pursuance of section 23 (2), at any time
before the making of an adoption order in respect of the
child, do any thing, under this or any other law, that is
10 inconsistent with the making of such an order.

31E. Subject to this Division, the Tribunal shall not
make an order for the adoption of a child referred to in
section 26 (3) unless it is satisfied that any notice which
may be required to be given under section 31A has been
15 given or dispensed with by an order under section 31B.

Making
of certain
adoption
orders.

(12) (a) Section 32 (1) (d)—

Omit “or” where thirdly occurring.

(b) Section 32 (1) (e)–(h)—

Omit section 32 (1) (e), insert instead :—

20 (e) the child is in the care of a foster parent or
foster parents, the child has established a
stable relationship with that person or those
persons and the interests and welfare of the
child will be promoted by the child’s remaining
25 in the care of that person or those persons;

(f) the child is in the care of a person or persons
other than a parent, relative or foster parent
and the interests and welfare of the child will
be promoted if negotiations can be conducted
30 and arrangements made with a view to the
adoption of the child;

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 (g) there are circumstances, other than those referred to in paragraphs (a)–(f), in which, by dispensing with the consent, the interests and welfare of the child will be promoted; or

10 (h) a notice of intention to seek an order dispensing with the consent has been served personally on that person and that person has not, within 14 days after the date of service of the notice, filed, with the Registrar, a notice of intention to oppose the making of the order.

(c) Section 32 (1A) (c)—

15 Omit the paragraph, insert instead :—

(c) where an application has been made to the Tribunal for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person), the applicant or applicants.

(d) Section 32 (5) (a) (ii)—

Omit “or” where secondly occurring.

(e) Section 32 (5) (a) (iii), (iv)—

Omit section 32 (5) (a) (iii), insert instead :—

25 (iii) in relation to a person referred to in subsection (1) (h); or

(iv) where the Tribunal considers that in the particular circumstances of the case it is desirable to make an order under subsection (1) without a notice referred to in this paragraph having been given or sent as so referred to,

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(13) Section 35 (1) (d)—

5 Omit “not being”, insert instead “including”.

(14) (a) Section 38 (1)—

Omit “subsection (2)”, insert instead “subsections (2) and (2A)”.

(b) Section 38 (2A)—

10 After section 38 (2), insert :—

(2A) An approval of a change in the forename or forenames of a child who has attained the age of 12 years shall not be given by the Tribunal unless the child has, in a consent given under section 33, consented to the change or, where the child has not attained the age of 18 years, the Tribunal is satisfied that there are special reasons, related to the welfare and interests of the child, why the change should be made notwithstanding that the child has refused to consent to the change or his consent has not been sought.

15

20

(15) (a) Section 41 (1)—

Before “applicants”, insert “applicant or”.

(b) Section 41 (1A)—

25 After section 41 (1), insert :—

(1A) Upon an application to the Tribunal by the Director or the principal officer of a private adoption agency, the Tribunal may make an interim order for the custody of a child in favour of the applicant.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(16) Section 43 (3)—

5 After “Commonwealth”, insert “or in New Zealand”.

(17) (a) Section 45—

After “Commonwealth”, insert “or in New Zealand”.

(b) Section 45—

10 After “Territory” where secondly and thirdly occurring, insert “or New Zealand”.

(18) (a) Section 46 (1)—

After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

(b) Section 46 (2)—

15 After “country” where firstly occurring, insert “(other than New Zealand)”.

(c) Section 46 (2) (b)—

Omit the paragraph.

(d) Section 46 (5)—

20 After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

(19) (a) Section 47 (1)—

After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 47 (5) (d)—

5 After “court”, insert “or other body”.

(20) Section 49 (1)—

Before “guardian” wherever occurring, insert “relative or”.

(21) Section 49A—

After section 49, insert :—

10 49A. A person who was the father or mother or a relative or guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a relative or guardian of the child, and who, without the prior consent of—

Attempts
by certain
persons to
com-
municate
with adopted
child.

15 (a) except as provided by paragraph (b)—the adoptive parent or adoptive parents of the child; or

(b) where the adoptive parent or adoptive parents of the child is or are dead or cannot be found or there is, in the opinion of the Director, any other sufficient reason—the Director,

20 attempts to communicate with the child at any time before the child reaches the age of 18 years is guilty of an offence against this Act.

(22) Section 51 (1)—

25 Omit “is guilty”, insert instead “and each person with whom negotiations are conducted or arrangements are made as referred to in paragraph (a) or to whom the possession or control of a child is transferred in the circumstances to which paragraph (b) applies is guilty”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(23) Section 56—

- 5 After “consent” where firstly occurring, insert “, or
revocation of consent,”.

(24) (a) Section 57 (a)—

Omit “or” where thirdly occurring.

(b) Section 57 (b)—

- 10 Omit “child,”, insert instead “child; or”.

(c) Section 57 (c)—

After section 57 (b), insert :—

- 15 (c) to inducing the parent or guardian to revoke a
consent to the adoption of the child given by
that parent or guardian,

(25) (a) Section 60 (2)—

- 20 Omit “children’s court established under the Child
Welfare Act, 1939, as amended by subsequent Acts”,
insert instead “court of petty sessions held before a
stipendiary magistrate sitting alone”.

(b) Section 60 (5)–(8)—

After section 60 (4), insert :—

- 25 (5) At the hearing of any proceedings in respect
of an offence against this Act or the regulations, any
persons not directly interested in the proceedings shall
be excluded from the court unless the court otherwise
directs.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(6) A court may—

5 (a) direct a child to leave the court at any time
 during the hearing of any proceedings
 in respect of an offence against this Act or
 the regulations; or

10 (b) direct any person to leave the court during
 the examination of any witness in any such
 proceedings,

if the court is of the opinion that, in the interests of
a child, such a direction should be given.

15 (7) The powers of a court under subsection (6)
 may be exercised notwithstanding that the child or
 person directed to leave the court may be directly
 interested in the proceedings.

20 (8) Subsections (5)–(7) apply to and in respect
 of the hearing of any appeal against the decision of
 a court in the same way as they apply to and in
 respect of the hearing of proceedings before the court.

(26) (a) Section 62—

After “Commonwealth”, insert “or in New Zealand”.

(b) Section 62—

25 After “Territory” where secondly occurring, insert “or
 New Zealand”.

(27) (a) Section 63—

After “Commonwealth”, insert “or in New Zealand”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 63—

- 5 After “Territory” where secondly occurring, insert “or
New Zealand”.

(28) Section 65—

Omit “The Court,”, insert instead “Except as otherwise
provided by this Act or the regulations, the Tribunal,”.

10 (29) Section 67—

After “Act”, insert “or the former Acts”.

(30) Sections 68A, 68B—

After section 68, insert :—

- 15 68A. (1) The Director may, with respect to a child of a
prescribed class or description, enter into an agreement with a person or persons with whom the child has been placed for the purposes of adoption, the applicant, or applicants, for an adoption order in respect of the child or the adoptive parent, or adoptive parents, of the child, for the provision of such financial or other assistance, on such terms and conditions as may be agreed, in order to assist or promote the welfare and interests of the child.
- 20

Provision of
financial
and other
assistance
to certain
children.

- 25 (2) Nothing in subsection (1) prevents the
Director from entering into an agreement under that sub-
section in relation to a child so as to provide financial or
other assistance both before and after an adoption order in
respect of the child is made.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

5 68B. (1) In this section, a reference to the executor or administrator of the estate of a deceased person includes a reference to a person who is a trustee of the whole or any part of the property comprised in the estate. Adminis-
tration of
certain
estates.

(2) Where—

- 10 (a) an adopted person is a beneficiary under the estate of a deceased person ;
- (b) the executor or administrator of the estate does not know the name or whereabouts of the adopted person; and
- 15 (c) the Director certifies, in writing, to the executor or administrator that he knows the name and whereabouts of the adopted person and that the adopted person is alive,

20 the executor or administrator may, with the approval of the Director, transfer to the Director, on behalf of the adopted person, any property to which the adopted person may be entitled under the estate or which may be otherwise applied for his benefit.

25 (3) A transfer made under subsection (2) shall be valid against all persons and the executor or administrator shall be absolutely discharged from all liability in respect of a transfer so made by him.

30 (4) The Director shall apply any property transferred to him under subsection (2) on behalf of the adopted person in respect of whom it was transferred in accordance with the trusts on which the property was held immediately before it was transferred as if he were the executor or administrator of the estate of the deceased person in respect of which the transfer was made.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- 5 (5) Nothing in this section affects any right of a person to claim or recover any property transferred under subsection (2) from a person other than the executor or administrator who transferred the property.
- (31) Section 71 (1)—
 After “Commonwealth”, insert “or in New Zealand”.
- 10 (32) (a) Section 73 (1) (b)—
 After “administrative”, insert “, legal”.
- (b) Section 73 (1) (b)—
 After “makes,”, insert “is requested to make or is involved in the preparation of,”.
- 15 (c) Section 73 (1) (b)—
 After “Act”, insert “, the rules of the Tribunal or the regulations”.
- (d) Section 73 (1) (d)—
 After “him”, insert “or by the principal officer of a private adoption agency”.
- 20 (e) Section 73 (1) (f1)—
 After section 73 (1) (f), insert :—
- 25 (f1) the establishment and administration of a register of persons who have been separated as a consequence of the making of an adoption order and who desire a reunion;
-

Adoption of Children (Amendment).

SCHEDULE 4.

Sec. 5 (1).

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

- (1) (a) Section 6, definition of "Charitable organisation"—
5 Omit "as amended by subsequent Acts".
- (b) Section 6, definition of "Prescribed"—
Omit the definition.
- (2) Section 18 (1) (b) (ii)—
Omit "as amended by subsequent Acts,".
- 10 (3) Section 24—
Omit "as amended by subsequent Acts,".
- (4) (a) Section 34 (2) (a)—
Omit "as amended by subsequent Acts".
- (b) Section 34 (2D)—
15 Omit "as amended by subsequent Acts".
- (c) Section 34 (4)—
Omit "as amended by subsequent Acts,".
- (d) Section 34 (5) (d)—
Omit "as amended by subsequent Acts".
- 20 (5) Section 35 (1) (d)—
Omit "as amended by subsequent Acts".

Adoption of Children (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

(6) Section 37—

5 Omit “as amended by subsequent Acts,”.

(7) Section 40 (1)—

Omit “as amended by subsequent Acts,” wherever
occurring.

(8) Section 43 (2)—

10 Omit “as amended by subsequent Acts,”.

(9) Section 69—

Omit the section, insert instead :—

15 69. (1) The Director may, by instrument in writing, **Delegation.**
delegate to any officer of the Department of Youth and
Community Services specified in the instrument of delega-
tion the exercise or performance of such of the powers,
authorities, duties and functions (other than this power of
delegation) conferred or imposed on him by or under this
Act as may be so specified and may, by such an instrument,
20 revoke wholly or in part any such delegation.

25 (2) A power, authority, duty or function, the
exercise or performance of which has been delegated under
this section, may, while the delegation remains unrevoked,
be exercised or performed from time to time in accordance
with the terms of the delegation by the delegate to whom
the exercise or performance thereof has been delegated.

Adoption of Children (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

5 (3) A delegation under this section may be made
subject to such conditions or such limitations as to the
exercise or performance of any of the powers, authorities,
duties or functions delegated, or as to time or circumstance,
as may be specified in the instrument of delegation.

10 (4) Notwithstanding any delegation made under
this section, the Director may continue to exercise or
perform all or any of the powers, authorities, duties or
functions delegated.

15 (5) Any act or thing done or omitted or suffered
to be done by a delegate while acting in the exercise of a
delegation under this section shall be deemed to have been
done or omitted or suffered to be done by the Director.

20 (6) An instrument purporting to be signed by a
delegate of the Director in his capacity as such a delegate
shall in all courts and before all persons acting judicially
be received in evidence as if it were an instrument executed
by the Director and, until the contrary is proved, shall be
deemed to be an instrument signed by a delegate of the
Director under this section.

SCHEDULE 5.

Sec. 6.

25 SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

PART 1.

1. In this Part of this Schedule—

“appointed day” means the day appointed and notified under section
2 (3);

Interpre-
tation:
Sch. 5,
Pt. 1.

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

“Court” means the Supreme Court of New South Wales;

5 “Tribunal” has the meaning ascribed thereto in section 6 of the Principal Act, as amended by this Act.

2. Except as provided in this Schedule, nothing in this Schedule limits any saving in the Interpretation Act, 1897. Interpretation Act, 1897, not affected.

3. An amendment made by section 5 and Schedules 1 and 2 shall not revive anything not in force or existing immediately before the appointed day. Effect of amendments.

4. (1) Any proceeding pending, as at the appointed day, before the Court which, if commenced after the appointed day, could only have been commenced before the Tribunal, shall— Proceedings before the Supreme Court as at the appointed day, etc.

15 (a) if the hearing of the proceeding has commenced, continue to be heard and dealt with in all respects as if this Act had not been enacted; or

(b) if the hearing of the proceeding has not commenced, be deemed to be a proceeding before the Tribunal.

20 (2) For the purpose only of continuing to hear and deal with a proceeding as referred to in subclause (1) (a) of this clause, the provisions of the Principal Act and any instrument under the Principal Act, as in force immediately before the appointed day, relating to—

(a) the Court;

(b) the Judges of the Court;

25 (c) the officers of the Court;

(d) any such proceeding; and

(e) appeals from the decision of the Court in any such proceeding, shall continue in force notwithstanding any other provision of this Act.

30 (3) A decision of the Court and anything done or omitted or suffered to be done by an officer of the Court in any proceeding referred to in subclause (1) (a) of this clause shall have the same force and effect as it would have had if this Act had not been enacted.

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) The nominated officer within the meaning ascribed thereto in section 6 of the Principal Act, as in force immediately before the appointed day, shall, as soon as practicable after the appointed day, forward to the Registrar of the Tribunal all documents held by him and relating to any proceeding referred to in subclause (1) (b) of this clause.

(5) Where proceedings in respect of any act or thing done or omitted or suffered to be done before the appointed day had not been brought before that day but could, but for the enactment of this Act, have been brought, immediately before that day, before the Court, proceedings in respect of that act or thing may, if, had that act or thing occurred after that day, proceedings could have been brought before the Tribunal, be brought before the Tribunal under the Principal Act, as amended by this Act.

15

PART 2.

5. A delegation made by the Director under section 69 of the Principal Act, being a delegation which is in force immediately before the date of assent to this Act, shall be deemed to be a delegation made by the Director under section 69 of the Principal Act, as amended by this Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980

**ADOPTION OF CHILDREN (AMENDMENT)
ACT, 1980, No. 78**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 78, 1980.

An Act to amend the Adoption of Children Act, 1965, to constitute the Adoption Tribunal and to specify its functions; and for certain other purposes. [Assented to, 29th April, 1980.]

Adoption of Children (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short
title.

1. This Act may be cited as the "Adoption of Children (Amendment) Act, 1980".

Commence-
ment.

2. (1) Except as provided by subsections (2), (3), (4) and (5), this Act shall commence on the date of assent to this Act.

(2) Section 5 (1) shall, in its application to a provision of Schedule 1, 3 or 4, commence on the day on which that provision commences.

(3) Sections 5 (2) and 6 (1), Schedules 1, 2 and 3 (Schedule 3 (7), (8), (11) and (18) (c) excepted) and Part 1 of Schedule 5 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Schedule 3 (7), (8) and (11) shall commence on such day, being not earlier than the day appointed and notified under subsection (3), as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(5) Schedule 3 (18) (c) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal
Act.

3. The Adoption of Children Act, 1965, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules :—

**SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE CONSTITUTION AND FUNCTIONS OF
THE ADOPTION TRIBUNAL.**

Adoption of Children (Amendment).

SCHEDULE 2.—FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 5.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

5. (1) The Principal Act is amended in the manner set forth in Schedules 1, 3 and 4. Amendment
of Act No.
23, 1965.

(2) The Principal Act is further amended—

(a) by omitting from a provision of the Principal Act specified in Column 1 of Schedule 2 the matter specified opposite the provision in the column headed “Matter to be omitted.” in Column 2 of that Schedule, other than such matter, if any, as appears in brackets and is printed in italics; and

(b) by inserting instead the matter specified opposite the provision in the column headed “Matter to be inserted.” in Column 2 of that Schedule.

6. (1) Part 1 of Schedule 5 has effect.

(2) Part 2 of Schedule 5 has effect.

Savings,
transitional
and other
provisions.

Adoption of Children (Amendment).

Sec. 5 (1).

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

(1) (a) Section 3—

After the matter relating to Part I, insert :—

PART IA.—THE ADOPTION TRIBUNAL—ss. 6A–6Y.

DIVISION 1.—*Constitution and Jurisdiction*—ss.
6A–6E.DIVISION 2.—*Conduct of Proceedings*—ss. 6F–
6P.DIVISION 3.—*Appeals*—ss. 6Q–6S.DIVISION 4.—*Miscellaneous*—ss. 6T–6Y.

(b) Section 3—

At the end of the section, insert :—

SCHEDULE 1.—PROVISIONS RELATING TO THE
MEMBERSHIP OF THE TRIBUNAL.

(2) (a) Section 6, definition of “Court”—

Omit the definition.

(b) Section 6, definition of “Deputy President”—

Before the definition of “Director”, insert :—

“Deputy President” means a person appointed, for
the time being, as a Deputy President of the
Tribunal.

(c) Section 6, definition of “President”—

Before the definition of “Principal officer”, insert :—

“President” means the person appointed, for the
time being, as the President of the Tribunal.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(d) Section 6, definition of “the nominated officer”—

Omit the definition.

(e) Section 6, definitions of “Registrar”, “Tribunal”—

At the end of section 6, insert :—

“Registrar” means the Registrar of the Tribunal.

“Tribunal” means the Adoption Tribunal constituted under this Act.

(3) Part IA—

After Part I, insert :—

PART IA.

THE ADOPTION TRIBUNAL.

DIVISION 1.—*Constitution and Jurisdiction.*

6A. In this Part, “member” means a person appointed, for the time being, as a member of the Tribunal.

Interpre-
tation:
Pt. IA.

6B. (1) There shall be an Adoption Tribunal.

The
Tribunal.

(2) The Tribunal shall have a seal of which judicial notice shall be taken.

6C. (1) Subject to this section, the members of the Tribunal shall be appointed by the Governor.

Members of
the Tribunal.

(2) The members shall comprise—

(a) a qualified person appointed as President of the Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(b) persons appointed from one or more of the following classes of persons :—

- (i) legally qualified medical practitioners;
- (ii) persons having knowledge of and experience in social work;
- (iii) persons having, in the opinion of the Governor, other suitable qualifications or experience.

(3) The members may include one or more qualified persons appointed as a Deputy President or Deputy Presidents of the Tribunal.

(4) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

(5) Schedule 1 has effect with respect to the membership of the Tribunal.

Jurisdiction
of the
Tribunal.

6D. The Tribunal shall have the jurisdiction vested in it by or under this or any other Act.

Composition
of the
Tribunal
for the
purposes
of hearing,
etc.,
proceedings.

6E. (1) Except as provided by subsections (5) and (6), the Tribunal shall, for the purposes of hearing and determining all proceedings before the Tribunal and all business arising out of any such proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(2) Of the members nominated by the President for the purposes of subsection (1)—

- (a) where the Tribunal is constituted by 3 or 4 members—one member, but not more than one member, shall be the President or a Deputy President; and
- (b) where the Tribunal is constituted by 5 members—at least one member shall be the President or a Deputy President, but not more than 2 members shall be the President or Deputy Presidents.

(3) A nomination made for the purposes of subsection (1) may be made generally or in a particular case or class of cases.

(4) The President shall notify a member nominated under subsection (1) (other than the President) of his nomination as soon as practicable after the nomination is made.

(5) In respect of an application for an adoption order which is not opposed, the Tribunal shall, unless the President otherwise determines or the Director, the principal officer of a private adoption agency or an applicant otherwise requests, be constituted by the President or a Deputy President sitting alone.

(6) In respect of—

- (a) the exercise of jurisdiction pursuant to section 6J (1) (d); or
 - (b) an application under section 47 (1),
- the Tribunal shall, unless the President otherwise determines, be constituted by the President or a Deputy President sitting alone.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(7) A determination of the President under subsection (5) or (6) may be made at any time prior to or during the hearing of proceedings before the Tribunal.

(8) Where a determination of the President under subsection (5) or (6) is made during the hearing of proceedings before the Tribunal, the proceedings shall be heard de novo before the Tribunal constituted as referred to in subsection (1).

DIVISION 2.—*Conduct of Proceedings.*

Meetings
of the
Tribunal.

6F. Where one or more Deputy Presidents have been appointed, more than one meeting of the Tribunal may be held at the same time.

Procedure
at meetings
of the
Tribunal.

6G. The procedure for the calling of, and for conduct of business at, any meeting of the Tribunal shall, subject to this Part and any rules of the Tribunal made under section 6N, be as determined by the Tribunal.

Chairman
and votes of
members.

6H. Where, at a meeting of the Tribunal, the Tribunal is constituted as referred to in section 6E (1)—

- (a) the President or, in the absence of the President, a Deputy President shall preside as chairman of that meeting;
- (b) except as provided by paragraph (c), questions arising at that meeting shall be determined by a majority of votes of the members present and voting;

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- (c) the decision of the chairman of that meeting upon any question of law or procedure which may arise at that meeting shall be the decision of the Tribunal; and
- (d) the chairman of that meeting shall have, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

6I. The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit. Adjourn-
ment.

6J. (1) Subject to the rules of the Tribunal, the Tribunal shall have and may exercise and perform the powers, authorities, duties and functions vested in the Supreme Court in respect of the following matters :— Powers, etc.,
of the
Tribunal as
to the
production
of evidence.

- (a) compelling the attendance of witnesses and their examination on oath, affirmation or declaration;
- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
- (c) compelling witnesses to answer questions which the Tribunal considers to be relevant in any proceedings before it;
- (d) apprehending, detaining and punishing persons guilty of contempt, or of disobedience of any order made by the Tribunal, or of any process issuing out of the Tribunal; and

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(e) directing witnesses to be prosecuted for perjury, and the exercise or performance by the Tribunal of any such power, authority, duty or function has the same effect as it would have if exercised or performed by the Supreme Court.

(2) All process issuing out of the Tribunal shall be in or to the effect of the form prescribed by the rules of the Tribunal and be signed by the President or a Deputy President.

Records of
proceedings
before the
Tribunal.

6K. (1) Proceedings before the Tribunal shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the President directs that the record be transcribed or the transcription of those records is otherwise required by law, or on the application of a party to the proceedings.

(2) Any transcription so made shall, except as to such part, if any, of the transcription as is specified by the Tribunal, be supplied to the Director or any party to the proceedings upon payment of the fee prescribed by the rules of the Tribunal corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

Record of
decision.

6L. Every decision of the Tribunal in respect of any proceedings before the Tribunal shall be in the form of an instrument in writing signed by—

(a) the President or Deputy President before whom the proceedings were heard; or

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

- (b) where, in relation to a meeting of the Tribunal, the Tribunal was constituted as referred to in section 6E (1), the chairman of that meeting,

and shall include the reasons for the decision of each member before whom the proceedings were heard.

6M. The Tribunal may make such order as to costs in respect of any proceedings before the Tribunal as the Tribunal thinks fit and such an order has the same effect as if it had been made by the Supreme Court. **Costs.**

6N. (1) Five members nominated by the President, who shall include the President or a Deputy President, or both, may make rules of the Tribunal, not inconsistent with this Act or the regulations, for or with respect to the calling of, and conduct of business at, any meeting of the Tribunal and generally to prescribe all matters that by this Act are required or permitted to be prescribed by rules of the Tribunal or are necessary or convenient to be prescribed by rules of the Tribunal for carrying out or giving effect to this Act. **Rules.**

(2) Without limiting the generality of subsection (1), the Tribunal may, by its rules, fix, from time to time, the costs, charges and fees to be paid in respect of proceedings before the Tribunal, including—

- (a) professional costs, charges and fees; and
- (b) the maximum fee, determined having regard to the actual cost incurred, which may be charged by or on behalf of a private adoption agency in respect of the making of an application for an adoption order.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(3) Different rules of the Tribunal may be made to apply in different circumstances.

Gazetted,
etc., of
rules.

60. Subsections (I), (II) and (III) of section 41 of the Interpretation Act, 1897, apply to and in respect of a rule of the Tribunal made under this Act in the same way as they apply to and in respect of a regulation referred to in those subsections.

Judicial
notice, etc.,
of rules.

6P. (1) Judicial notice shall be taken of—

- (a) a rule of the Tribunal made or purporting to have been made under this Act and published in the Gazette; and
- (b) the date of its publication.

(2) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule of the Tribunal under this Act have been complied with and performed.

DIVISION 3.—*Appeals.*

Nature of
decision
of the
Tribunal.

6Q. Except as provided by sections 6R and 6S, a decision of the Tribunal with respect to any proceedings before it shall be final and conclusive.

Appeals.

6R. (1) The Tribunal shall, if so required in writing by the Director or a party to any proceedings before the Tribunal, within the time and in the manner prescribed by the rules of the Tribunal, or may of its own motion, state a case for the decision of the Court of Appeal.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

(2) The decision of the Court of Appeal on the hearing of a case stated under subsection (1) shall be binding upon the Tribunal and upon the Director and all the parties to the proceedings in respect of which the case was stated.

6s. Nothing in this Division derogates from or otherwise affects the jurisdiction of the Supreme Court under section 69 or 75 of the Supreme Court Act, 1970.

Certain jurisdiction of Supreme Court not affected.

DIVISION 4.—*Miscellaneous.*

6t. (1) The registrar of a Division of the Supreme Court specified in section 38 (b) of the Supreme Court Act, 1970, being a Division nominated by the Minister, shall be the Registrar of the Tribunal.

Registrar and other officers of the Tribunal.

(2) Except as provided by subsection (1), such officers and employees as may be necessary for the performance of the powers, authorities, duties and functions of the Tribunal may be appointed and employed under and subject to the Public Service Act, 1979.

6u. Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President or a Deputy President.

Authentication of documents.

6v. Judicial notice shall be taken of the signature of the President, a Deputy President or the Registrar when appearing on a document issued by the Tribunal.

Judicial notice of certain signatures.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL
—*continued.*

Certain
proceedings
prohibited.

6w. No proceedings lie against the Tribunal, a member or an officer of the Tribunal for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or officer, and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this Act, if the Tribunal, member or officer has acted in good faith and with reasonable care.

Application
of the
Defamation
Act, 1974.

6x. For the purposes of section 18 of the Defamation Act, 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Biennial
report.

6y. (1) The President shall, as soon as practicable after 1st March in each second year, prepare and forward to the Minister a report on the administration of this Act and the regulations for the two-yearly period ending on that date.

(2) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by him of the report.

(4) (a) Section 46 (3)—

After “the court”, insert “or the Tribunal”.

(b) Section 46 (4)—

After “court”, insert “or the Tribunal”.

(5) Section 72—

Omit the section.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.
—*continued.*

(6) Schedule 1—

At the end of the Act, insert :—

SCHEDULE 1.

Sec. 6c (5).

PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.

PART 1.

THE PRESIDENT AND DEPUTY PRESIDENTS.

1. A person is qualified to be appointed as the President or a Deputy President if he is the Chief Justice of the Supreme Court or a Judge of that Court. Qualifica-
tion.

2. The President or a Deputy President shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as the President or a Deputy President. Appoint-
ment.

3. (1) A Deputy President, while holding office as a Deputy President, shall, subject to the conditions of appointment specified in the instrument of his appointment and to any direction given to him by the President, have the powers, authorities, privileges and immunities and perform the duties of the President. Deputy
Presidents.

(2) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers, authorities or duties of the President and all acts or things done or omitted or suffered to be done by a Deputy President when exercising or performing those powers, authorities or duties shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by the President.

Adoption of Children (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—continued.**

Effect of
appointment
to the
Tribunal
of Judges
of the
Supreme
Court.

4. (1) The appointment of the Chief Justice or a Judge of the Supreme Court as the President or a Deputy President shall not, nor shall his service as the President or a Deputy President, affect his tenure of the office of Chief Justice or Judge of the Supreme Court, as the case may be, or his rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

(2) The Chief Justice or a Judge of the Supreme Court may, notwithstanding that he is the President or a Deputy President, exercise his powers as the Chief Justice or a Judge of the Supreme Court, as the case may be.

(3) The service, as the President or a Deputy President, of the Chief Justice or a Judge of the Supreme Court shall, for all purposes, be taken to be service as the Chief Justice or a Judge of the Supreme Court, as the case may be.

Removal
from
office.

5. The Governor may remove the President or a Deputy President from office upon the address of both Houses of Parliament, but not otherwise.

Cessation
of office.

6. Where a person who has been appointed, in accordance with this Act, as the President or a Deputy President ceases, in accordance with the law for the time being in force relating to the Chief Justice or Judges of the Supreme Court, to be the Chief Justice or a Judge of the Supreme Court, he shall thereupon cease to be the President or a Deputy President, as the case may be.

PART 2.**MEMBERS OTHER THAN THE PRESIDENT AND DEPUTY PRESIDENTS.**

Interpreta-
tion: Sch. 1,
Pt. 2.

7. In this Part of this Schedule, "member" means a person appointed, for the time being, as a member of the Tribunal other than the President or a Deputy President.

Age of
members.

8. A person who is of or above the age of 65 years shall not be appointed as a member.

Adoption of Children (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRI-
BUNAL—*continued.*

9. A member shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member. Term of office of members.

10. Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him. Remuneration of and allowances for members.

11. The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment. Removal from office.

12. A member shall be deemed to have vacated his office— Vacation of office.
- (a) if he dies;
 - (b) if he resigns his office by writing under his hand addressed to the Governor;
 - (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
 - (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales, would be a felony or a misdemeanour so punishable;
 - (f) if he is removed from office by the Governor; or
 - (g) upon his attaining the age of 65 years.

Adoption of Children (Amendment).

Sec. 5 (2).

SCHEDULE 2.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
THE CONSTITUTION AND FUNCTIONS OF THE ADOPTION TRIBUNAL.

Column 1.	Column 2.	
Provision of the Principal Act.	Matter to be omitted.	Matter to be inserted.
Sections 8 (1), (2); 9; 14 (1), (3); 18 (1), (2), (4); 19 (2), (3), (4); 20; 21 (1), (2); 22 (1), (3), (4); 23; 24; 25 (1), (2), (3), (4); 26 (1), (7); 31 (1), (2), (3); 32 (1), (4), (5); 33; 34 (3), (5) (c); 38 (1), (2); 41 (1), (2), (3); 42 (1); 43 (1), (2); 47 (1), (3), (4); 50 (2) (b), (2) (c); 56; 62; 64; 66; 68; 73 (1) (e).	Court (<i>wherever occurring</i>)	Tribunal
Section 14 (2)	rules of Court	the rules of the Tribunal
Sections 28 (1), (2), (3); 47 (6); 61; 62; 63.	nominated officer (<i>wherever occurring</i>)	Registrar
Section 46 (3)	a court (<i>where secondly occurring</i>)	the Tribunal
Section 53 (2)	the Court	the Tribunal or a court
Section 64	heard in open court	open to the public

SCHEDULE 3.

Sec. 5 (1).

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 6, definition of "Foster parent"—

After the definition of "Father", insert :—

"Foster parent" means any person who has the care and
custody of a child, being a child—

(a) who—

(i) has been admitted to State control;
and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(ii) is a ward within the meaning of the
Child Welfare Act, 1939; or

(b) who—

(i) has been committed to the care of
the Minister to be dealt with as a
ward admitted to State control; and

(ii) has not been absolutely discharged
from the supervision and control of
the Minister under the Child
Welfare Act, 1939.

(2) Section 8 (2)—

Omit “thirty days”, insert instead “60 days”.

(3) (a) Section 18 (2) (a)—

Omit “or” where secondly occurring.

(b) Section 18 (2) (a1)—

After section 18 (2) (a), insert :—

(a1) the applicant, or either of the applicants, is
the mother or father of the child; or

(c) Section 18 (3)—

Omit “a person, or by persons, in whose favour a
consent referred to in subsection (2) of section 27
has been given”, insert instead “an applicant, or by
applicants, referred to in subsection (2),”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(4) (a) Section 21 (1) (a)—

Before “the Director”, insert “except as provided by subsection (1A),”.

(b) Section 21 (1A)–(1C)—

After section 21 (1), insert :—

(1A) The Tribunal may dispense with the making of a report referred to in subsection (1) (a)—

- (a) generally in respect of applications made on behalf of applicants by the principal officer of a private adoption agency where the Tribunal is satisfied that the standard of applications made by that principal officer justifies such a dispensation; or
- (b) in respect of a particular application made on behalf of an applicant or applicants by the principal officer of a private adoption agency where the Tribunal is satisfied that the particulars of that application and the report of that principal officer justify such a dispensation.

(1B) The Director may make a report referred to in subsection (1) (a) to the Tribunal notwithstanding that the Tribunal has, under subsection (1A), dispensed with the making of the report.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(1c) The Tribunal may, in respect of an application made by a person other than the Director, require the Director to make a report referred to in subsection (1) (a) within a period of 6 months after the date of the making of the application or such other period as the Tribunal may, having regard to the circumstances of the case, specify.

(c) Section 21 (2)—

After “him”, insert “or by the principal officer of a private adoption agency”.

(d) Section 21 (3)—

After “parent”, insert “or foster parent”.

(5) Section 21A—

After section 21, insert :—

21A. (1) Where the mother or father or a guardian of a child in respect of whom an application for an adoption order is made has not, in an instrument of consent to adoption of the child, expressed any wish with respect to the religious upbringing of the child—

Religious
upbringing
of child.

- (a) it shall not be relevant, in the exercise or performance by the Tribunal of its powers, authorities, duties and functions under section 21, that the applicant or each of the applicants does not have a religious conviction or affiliation; and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (b) section 17 does not operate so as to require, and the Tribunal shall not, in making an order for the adoption of the child, require, the applicant or each of the applicants to give any undertaking with respect to the religious upbringing of the child.

(2) Nothing in subsection (1) affects the consideration by the Tribunal under section 21 (1) (c) (i) (b) of the religious upbringing or convictions (if any) of the child.

- (6) (a) Section 22 (1) (a)—

Omit the paragraph, insert instead :—

- (a) to any person whose consent to the adoption of the child—
- (i) is required under section 26;
 - (ii) has not been dispensed with by an order made by virtue of section 32 (1); and
 - (iii) has not been given; and

- (b) Section 22 (1A)—

Omit the subsection, insert instead :—

(1A) Except as the Tribunal may otherwise determine, nothing in subsection (1) requires a notice referred to in that subsection to be given or sent to—

- (a) a person referred to in subsection (1) (a) if that person is a person to whom section 32 (1) (h) applies; or

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (b) a person referred to in subsection (1) (b) if that person is—
 - (i) an applicant for the order for the adoption of the child; or
 - (ii) a person with whom the child resides only as a patient or inmate of a hospital of which that person is in charge or a person who has the care or custody of the child only as the person in charge of a hospital.

(7) (a) Section 23—

Omit “The”, insert instead “Except as provided by subsection (2), the”.

(b) Section 23 (2)—

At the end of section 23, insert :—

(2) The Tribunal shall, on application by a person—

- (a) who is the father of a child referred to in section 26 (3);
- (b) who is not given a notice referred to in section 31A (4); and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (c) in respect of whom the Tribunal has not, under section 31B, dispensed with the giving of a notice referred to in section 31A (4),

join the person as a party to the proceedings for an adoption order in respect of the child for the purpose of opposing the application for the order.

(8) Section 26 (3A)—

After section 26 (3), insert :—

(3A) A person who is the putative father of a child referred to in subsection (3) and who—

- (a) does not have the custody of the child under a court order; or
- (b) is not or is not deemed to be the guardian of the child, to the exclusion of, or in addition to, the mother or other guardian, under a law of the Commonwealth or of another State or a Territory of the Commonwealth,

is not a guardian of the child for the purposes of that subsection.

(9) Section 30—

Omit “For”, insert instead “Notwithstanding any other provision of this Act, for”.

(10) Section 31 (1) (d)—

Omit “on the date of the instrument of consent,”, insert instead “at the time the instrument of consent was signed,”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(11) Sections 31A–31E—

After section 31, insert :—

31A. (1) Where, under section 34 (1), the Director becomes the guardian of a child referred to in section 26 (3)—

Notice of
consents to
certain
putative
fathers.

- (a) except as provided by paragraph (b)—the Director; or
- (b) in any case where negotiations are being conducted or arrangements are being made by a private adoption agency with a view to the adoption of the child—the principal officer of the private adoption agency,

shall make all such inquiries as, in the opinion of the Director or the principal officer, as the case may be, having regard to all such information as may have been furnished to him by a person giving a consent to the adoption of the child or any other person, are reasonably necessary in order to ascertain whether any person, as at the date on which the Director so becomes the guardian of the child—

- (c) is presumed, pursuant to section 11, 12 or 13 of the Children (Equality of Status) Act, 1976, to be the father of the child;
- (d) is a party to proceedings as a consequence of which he may, pursuant to section 12 or 13 of the Children (Equality of Status) Act, 1976, be presumed to be the father of the child; or
- (e) is otherwise registered as the father of the child under the Registration of Births, Deaths and Marriages Act, 1973.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(2) Where, in relation to a child referred to in section 26 (3)—

(a) who—

- (i) has been admitted to State control; and
- (ii) is a ward within the meaning of the Child Welfare Act, 1939; or

(b) who—

- (i) has been committed to the care of the Minister to be dealt with as a ward admitted to State control; and
- (ii) has not been absolutely discharged from the supervision and control of the Minister under the Child Welfare Act, 1939,

a consent to the adoption of the child is given by the mother of the child, the Director shall make the inquiries referred to in subsection (1) in order to ascertain whether any person, as at the date on which the consent is given, is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

(3) Except as provided by subsection (1) or (2), the applicant or applicants for an adoption order in respect of a child referred to in section 26 (3) shall make such inquiries as, in the opinion of the Tribunal, are reasonably necessary in order to ascertain whether any person, as at the date on which the application for the adoption order was made is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(4) Where, as a consequence of making inquiries pursuant to subsection (1), (2) or (3), or otherwise, the Director, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order ascertains or ascertain that there is, in relation to the child, a person to whom paragraph (c), (d) or (e) of subsection (1) applies, the Director, that principal officer, the applicant or those applicants, as the case may be, shall—

- (a) in circumstances to which subsection (1) or (2) applies—give the person notice of each consent given by an appropriate person referred to in section 26 (3) in relation to the child; or
- (b) in circumstances to which subsection (3) applies—give the person notice that an application has been made for an adoption order in respect of the child.

(5) Nothing in subsection (4) requires the giving of a notice of a consent referred to in that subsection to the person by whom the consent was given.

31B. The Tribunal, on application by the Director, the principal officer of a private adoption agency or an applicant or the applicants for an adoption order in respect of a child, may, by order, dispense with the giving of a notice referred to in section 31A (4) to a person where it appears to the Tribunal that—

Dispensing
with
notice.

- (a) the Director, the principal officer of the private adoption agency or the applicant or the applicants, as the case may require, is unable to locate the person;

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (b) the person is in such a physical or mental condition as not to be capable of properly considering the question of whether he should file a notice under section 31C (1); or
- (c) there are circumstances, other than those referred to in paragraphs (a) and (b), in which, by dispensing with the giving of the notice, the interests and welfare of the child will be promoted.

Application
for custody,
etc., by
putative
father.

31C. (1) A person to whom a notice referred to in section 31A (4) is given may, within a period of 14 days after the date of service of the notice, file, with the Registrar, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given.

(2) The Tribunal may determine an application under subsection (1) in relation to a child at any time that is not later than the determination of any application for an order for the adoption of the child.

(3) In determining an application under subsection (1), the Tribunal may join any person it thinks fit as a party to the application.

(4) The Tribunal may determine an application under subsection (1) in relation to a child by making such order, or such interim order, with respect to the care, custody or guardianship of the child as it thinks fit.

(5) Where the Tribunal determines an application under subsection (1) by making an order with respect to the guardianship of a child, the guardianship of any person before the date on which the order takes effect shall, on that date, cease.

Adoption of Children (Amendment).

SCHEDULE 3—continued.

**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.**

31D. (1) Where—

- (a) a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A (1) applies—

Con-
sequence
of failure
to make
application
for custody,
etc.

- (i) is given a notice referred to in section 31A (4); and

- (ii) does not, within a period of 14 days after the date of service of the notice, file, with the Registrar, an application for an order with respect to the care, custody and guardianship of the child in relation to whom the notice is given; or

- (b) the Tribunal, under section 31B, dispenses with the giving of a notice referred to in section 31A (4) to a person to whom, in relation to a child, paragraph (c), (d) or (e) of section 31A (1) applies,

the person may not, at any time before the making of an adoption order in respect of the child, do any thing, under this or any other law, that is inconsistent with the making of such an order.

(2) A person—

- (a) who is the father of a child referred to in section 26 (3);

- (b) who is not given a notice referred to in section 31A (4); and

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (c) in respect of whom the Tribunal has not, under section 31B, dispensed with the giving of a notice referred to in section 31A (4),

may not, except in pursuance of section 23 (2), at any time before the making of an adoption order in respect of the child, do any thing, under this or any other law, that is inconsistent with the making of such an order.

Making
of certain
adoption
orders.

31E. Subject to this Division, the Tribunal shall not make an order for the adoption of a child referred to in section 26 (3) unless it is satisfied that any notice which may be required to be given under section 31A has been given or dispensed with by an order under section 31B.

- (12) (a) Section 32 (1) (d)—

Omit “or” where thirdly occurring.

- (b) Section 32 (1) (e)–(h)—

Omit section 32 (1) (e), insert instead :—

- (e) the child is in the care of a foster parent or foster parents, the child has established a stable relationship with that person or those persons and the interests and welfare of the child will be promoted by the child’s remaining in the care of that person or those persons;
- (f) the child is in the care of a person or persons other than a parent, relative or foster parent and the interests and welfare of the child will be promoted if negotiations can be conducted and arrangements made with a view to the adoption of the child;

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

- (g) there are circumstances, other than those referred to in paragraphs (a)–(f), in which, by dispensing with the consent, the interests and welfare of the child will be promoted; or
- (h) a notice of intention to seek an order dispensing with the consent has been served personally on that person and that person has not, within 14 days after the date of service of the notice, filed, with the Registrar, a notice of intention to oppose the making of the order.

(c) Section 32 (1A) (c)—

Omit the paragraph, insert instead :—

- (c) where an application has been made to the Tribunal for the adoption of the child by the mother, the father or a relative of the child (whether alone or jointly with another person), the applicant or applicants.

(d) Section 32 (5) (a) (ii)—

Omit “or” where secondly occurring.

(e) Section 32 (5) (a) (iii), (iv)—

Omit section 32 (5) (a) (iii), insert instead :—

- (iii) in relation to a person referred to in subsection (1) (h); or
- (iv) where the Tribunal considers that in the particular circumstances of the case it is desirable to make an order under subsection (1) without a notice referred to in this paragraph having been given or sent as so referred to,

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(13) Section 35 (1) (d)—

Omit “not being”, insert instead “including”.

(14) (a) Section 38 (1)—

Omit “subsection (2)”, insert instead “subsections (2) and (2A)”.

(b) Section 38 (2A)—

After section 38 (2), insert :—

(2A) An approval of a change in the forename or forenames of a child who has attained the age of 12 years shall not be given by the Tribunal unless the child has, in a consent given under section 33, consented to the change or, where the child has not attained the age of 18 years, the Tribunal is satisfied that there are special reasons, related to the welfare and interests of the child, why the change should be made notwithstanding that the child has refused to consent to the change or his consent has not been sought.

(15) (a) Section 41 (1)—

Before “applicants”, insert “applicant or”.

(b) Section 41 (1A)—

After section 41 (1), insert :—

(1A) Upon an application to the Tribunal by the Director or the principal officer of a private adoption agency, the Tribunal may make an interim order for the custody of a child in favour of the applicant.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(16) Section 43 (3)—

After “Commonwealth”, insert “or in New Zealand”.

(17) (a) Section 45—

After “Commonwealth”, insert “or in New Zealand”.

(b) Section 45—

After “Territory” where secondly and thirdly occurring, insert “or New Zealand”.

(18) (a) Section 46 (1)—

After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

(b) Section 46 (2)—

After “country” where firstly occurring, insert “(other than New Zealand)”.

(c) Section 46 (2) (b)—

Omit the paragraph.

(d) Section 46 (5)—

After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

(19) (a) Section 47 (1)—

After “Commonwealth” where secondly occurring, insert “(other than New Zealand)”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 47 (5) (d)—

After “court”, insert “or other body”.

(20) Section 49 (1)—

Before “guardian” wherever occurring, insert “relative or”.

(21) Section 49A—

After section 49, insert :—

Attempts
by certain
persons to
com-
municate
with adopted
child.

49A. A person who was the father or mother or a relative or guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a relative or guardian of the child, and who, without the prior consent of—

- (a) except as provided by paragraph (b)—the adoptive parent or adoptive parents of the child; or
- (b) where the adoptive parent or adoptive parents of the child is or are dead or cannot be found or there is, in the opinion of the Director, any other sufficient reason—the Director,

attempts to communicate with the child at any time before the child reaches the age of 18 years is guilty of an offence against this Act.

(22) Section 51 (1)—

Omit “is guilty”, insert instead “and each person with whom negotiations are conducted or arrangements are made as referred to in paragraph (a) or to whom the possession or control of a child is transferred in the circumstances to which paragraph (b) applies is guilty”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(23) Section 56—

After “consent” where firstly occurring, insert “, or revocation of consent,”.

(24) (a) Section 57 (a)—

Omit “or” where thirdly occurring.

(b) Section 57 (b)—

Omit “child,” insert instead “child; or”.

(c) Section 57 (c)—

After section 57 (b), insert :—

- (c) to inducing the parent or guardian to revoke a consent to the adoption of the child given by that parent or guardian,

(25) (a) Section 60 (2)—

Omit “children’s court established under the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “court of petty sessions held before a stipendiary magistrate sitting alone”.

(b) Section 60 (5)–(8)—

After section 60 (4), insert :—

(5) At the hearing of any proceedings in respect of an offence against this Act or the regulations, any persons not directly interested in the proceedings shall be excluded from the court unless the court otherwise directs.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(6) A court may—

- (a) direct a child to leave the court at any time during the hearing of any proceedings in respect of an offence against this Act or the regulations; or
- (b) direct any person to leave the court during the examination of any witness in any such proceedings,

if the court is of the opinion that, in the interests of a child, such a direction should be given.

(7) The powers of a court under subsection (6) may be exercised notwithstanding that the child or person directed to leave the court may be directly interested in the proceedings.

(8) Subsections (5)–(7) apply to and in respect of the hearing of any appeal against the decision of a court in the same way as they apply to and in respect of the hearing of proceedings before the court.

(26) (a) Section 62—

After “Commonwealth”, insert “or in New Zealand”.

(b) Section 62—

After “Territory” where secondly occurring, insert “or New Zealand”.

(27) (a) Section 63—

After “Commonwealth”, insert “or in New Zealand”.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(b) Section 63—

After “Territory” where secondly occurring, insert “or New Zealand”.

(28) Section 65—

Omit “The Court,”, insert instead “Except as otherwise provided by this Act or the regulations, the Tribunal,”.

(29) Section 67—

After “Act”, insert “or the former Acts”.

(30) Sections 68A, 68B—

After section 68, insert :—

68A. (1) The Director may, with respect to a child of a prescribed class or description, enter into an agreement with a person or persons with whom the child has been placed for the purposes of adoption, the applicant, or applicants, for an adoption order in respect of the child or the adoptive parent, or adoptive parents, of the child, for the provision of such financial or other assistance, on such terms and conditions as may be agreed, in order to assist or promote the welfare and interests of the child.

Provision of financial and other assistance to certain children.

(2) Nothing in subsection (1) prevents the Director from entering into an agreement under that subsection in relation to a child so as to provide financial or other assistance both before and after an adoption order in respect of the child is made.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

Adminis-
tration of
certain
estates.

68B. (1) In this section, a reference to the executor or administrator of the estate of a deceased person includes a reference to a person who is a trustee of the whole or any part of the property comprised in the estate.

(2) Where—

- (a) an adopted person is a beneficiary under the estate of a deceased person ;
- (b) the executor or administrator of the estate does not know the name or whereabouts of the adopted person; and
- (c) the Director certifies, in writing, to the executor or administrator that he knows the name and whereabouts of the adopted person and that the adopted person is alive,

the executor or administrator may, with the approval of the Director, transfer to the Director, on behalf of the adopted person, any property to which the adopted person may be entitled under the estate or which may be otherwise applied for his benefit.

(3) A transfer made under subsection (2) shall be valid against all persons and the executor or administrator shall be absolutely discharged from all liability in respect of a transfer so made by him.

(4) The Director shall apply any property transferred to him under subsection (2) on behalf of the adopted person in respect of whom it was transferred in accordance with the trusts on which the property was held immediately before it was transferred as if he were the executor or administrator of the estate of the deceased person in respect of which the transfer was made.

Adoption of Children (Amendment).

SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued.

(5) Nothing in this section affects any right of a person to claim or recover any property transferred under subsection (2) from a person other than the executor or administrator who transferred the property.

(31) Section 71 (1)—

After “Commonwealth”, insert “or in New Zealand”.

(32) (a) Section 73 (1) (b)—

After “administrative”, insert “, legal”.

(b) Section 73 (1) (b)—

After “makes,”, insert “is requested to make or is involved in the preparation of,”.

(c) Section 73 (1) (b)—

After “Act”, insert “, the rules of the Tribunal or the regulations”.

(d) Section 73 (1) (d)—

After “him”, insert “or by the principal officer of a private adoption agency”.

(e) Section 73 (1) (f1)—

After section 73 (1) (f), insert :—

(f1) the establishment and administration of a register of persons who have been separated as a consequence of the making of an adoption order and who desire a reunion;

Adoption of Children (Amendment).

Sec. 5 (1).

SCHEDULE 4.

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

- (1) (a) Section 6, definition of "Charitable organisation"—
Omit " , as amended by subsequent Acts".

(b) Section 6, definition of "Prescribed"—
Omit the definition.
- (2) Section 18 (1) (b) (ii)—
Omit "as amended by subsequent Acts,".
- (3) Section 24—
Omit "as amended by subsequent Acts,".
- (4) (a) Section 34 (2) (a)—
Omit " , as amended by subsequent Acts".

(b) Section 34 (2D)—
Omit " , as amended by subsequent Acts".

(c) Section 34 (4)—
Omit "as amended by subsequent Acts,".

(d) Section 34 (5) (d)—
Omit " , as amended by subsequent Acts".
- (5) Section 35 (1) (d)—
Omit " , as amended by subsequent Acts".

Adoption of Children (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

(6) Section 37—

Omit “as amended by subsequent Acts,”.

(7) Section 40 (1)—

Omit “as amended by subsequent Acts,” wherever occurring.

(8) Section 43 (2)—

Omit “as amended by subsequent Acts,”.

(9) Section 69—

Omit the section, insert instead :—

69. (1) The Director may, by instrument in writing, ^{Delegation.} delegate to any officer of the Department of Youth and Community Services specified in the instrument of delegation the exercise or performance of such of the powers, authorities, duties and functions (other than this power of delegation) conferred or imposed on him by or under this Act as may be so specified and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A power, authority, duty or function, the exercise or performance of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate to whom the exercise or performance thereof has been delegated.

Adoption of Children (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

(3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation made under this section, the Director may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(5) Any act or thing done or omitted or suffered to be done by a delegate while acting in the exercise of a delegation under this section shall be deemed to have been done or omitted or suffered to be done by the Director.

(6) An instrument purporting to be signed by a delegate of the Director in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Director and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Director under this section.

SCHEDULE 5.

Sec. 6.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

PART 1.

Interpre-
tation:
Sch. 5,
Pt. 1.

1. In this Part of this Schedule—

“appointed day” means the day appointed and notified under section 2 (3);

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

“Court” means the Supreme Court of New South Wales;

“Tribunal” has the meaning ascribed thereto in section 6 of the Principal Act, as amended by this Act.

2. Except as provided in this Schedule, nothing in this Schedule limits any saving in the Interpretation Act, 1897. Interpretation Act, 1897, not affected.

3. An amendment made by section 5 and Schedules 1 and 2 shall not revive anything not in force or existing immediately before the appointed day. Effect of amendments.

4. (1) Any proceeding pending, as at the appointed day, before the Court which, if commenced after the appointed day, could only have been commenced before the Tribunal, shall— Proceedings before the Supreme Court as at the appointed day, etc.

(a) if the hearing of the proceeding has commenced, continue to be heard and dealt with in all respects as if this Act had not been enacted; or

(b) if the hearing of the proceeding has not commenced, be deemed to be a proceeding before the Tribunal.

(2) For the purpose only of continuing to hear and deal with a proceeding as referred to in subclause (1) (a) of this clause, the provisions of the Principal Act and any instrument under the Principal Act, as in force immediately before the appointed day, relating to—

(a) the Court;

(b) the Judges of the Court;

(c) the officers of the Court;

(d) any such proceeding; and

(e) appeals from the decision of the Court in any such proceeding, shall continue in force notwithstanding any other provision of this Act.

(3) A decision of the Court and anything done or omitted or suffered to be done by an officer of the Court in any proceeding referred to in subclause (1) (a) of this clause shall have the same force and effect as it would have had if this Act had not been enacted.

Adoption of Children (Amendment).

SCHEDULE 5—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) The nominated officer within the meaning ascribed thereto in section 6 of the Principal Act, as in force immediately before the appointed day, shall, as soon as practicable after the appointed day, forward to the Registrar of the Tribunal all documents held by him and relating to any proceeding referred to in subclause (1) (b) of this clause.

(5) Where proceedings in respect of any act or thing done or omitted or suffered to be done before the appointed day had not been brought before that day but could, but for the enactment of this Act, have been brought, immediately before that day, before the Court, proceedings in respect of that act or thing may, if, had that act or thing occurred after that day, proceedings could have been brought before the Tribunal, be brought before the Tribunal under the Principal Act, as amended by this Act.

PART 2.

Delegations
by the
Director.

5. A delegation made by the Director under section 69 of the Principal Act, being a delegation which is in force immediately before the date of assent to this Act, shall be deemed to be a delegation made by the Director under section 69 of the Principal Act, as amended by this Act.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 29th April, 1980.*

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980