

Chapter 275.
Adoption of Children Act 1968.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 275.

Adoption of Children Act 1968.

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SCHEDULE 1

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Adoption of Children Act 1968,

Being an Act relating to the adoption of children.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

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

“**child**” means a person who has not attained the age of 21 years, or a person who has attained that age and in respect of whom an adoption order is sought or has been made;

“**the commencement date**” means 23 May 1969, being the date of commencement of the *Adoption of Children Act 1968*;

“**the Court**” means the National Court;

“**the Director**” means the Director of Child Welfare;

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

“**father**”, in relation to a child who is illegitimate, means the putative father;

“**the former provisions**” means the provisions of the *Child Welfare Act 1961* relating to the adoption of children that were in force immediately before the commencement date;

“**general consent**” means a consent to the adoption of a child other than the consent referred to in Section 16(2);

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

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

- (b) a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of Australia or of a State or Territory of Australia; and
- (c) a guardian by custom;

“interim order” means an interim order under Division III.5;

“the regulations” means any regulations made under this Act;

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

“this Act” includes the regulations.

PART II. – JURISDICTION.

2. JURISDICTION OF NATIONAL COURT.

Jurisdiction is conferred on the National Court in proceedings instituted in the Court in accordance with this Act, and in particular the Court may make an adoption order in accordance with this Act in respect of a child.

3. WHEN JURISDICTION MAY BE EXERCISED.

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

(a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the country; and

(b) the child was present in the country.

(2) For the purposes of Subsection (1), where the Court is satisfied–

(a) that an applicant was resident or domiciled in the country; or

(b) that the child was present in the country,

within 21 days before the date on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in the country, or that the child was present in the country, as the case may be, at the time of the filing in the Court of the application.

4. RULES OF PRIVATE INTERNATIONAL LAW, ETC., NOT TO APPLY.

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

PART III. – ADOPTIONS UNDER THIS ACT.

Division 1.

General.

5. WELFARE AND INTERESTS OF CHILD TO BE PARAMOUNT.

For all purposes of this Part, the welfare and interest of the child concerned shall be regarded as the paramount consideration.

6. WHO MAY BE ADOPTED.

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

- (a) had not attained the age of 21 years before the date on which the application was filed in the Court; or
- (b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or their child.

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

(3) An order may be made under this Act for the adoption of a child notwithstanding that the child has previously been adopted, whether before or after the commencement date, and whether in the country or elsewhere.

7. PERSONS IN WHOSE FAVOUR ADOPTION ORDERS MAY BE MADE.

(1) Except as provided by Subsection (2), an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

(2) Subject to Subsection (3), where the Court is satisfied that exceptional circumstances make it desirable to do so, the Court may make an adoption order in favour of one person.

(3) The Court shall not make an adoption order in favour of one person if that person is married and is not living separately and apart from his or her spouse.

(4) The Court may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child.

8. AGE OF ADOPTERS.

The Court shall not make an adoption order in respect of a child in favour of a person who or persons either of whom—

- (a) has not attained the age of 21 years; or
- (b) being a male person, is less than 18 years older than the child, or, being a female person, is less than 16 years older than the child,

unless the applicant, or at least one of the applicants, is a natural parent of the child or the Court considers that there are exceptional circumstances that justify making the adoption order.

9. COURT TO BE SATISFIED AS TO CERTAIN MATTERS.

(1) The Court shall not make an order for the adoption of a child unless the Director has made a written report to the Court concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child; and
- (b) the applicants are suitable persons to adopt the child, having regard to—
 - (i) all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicants; and
 - (ii) any wishes that have been expressed by a parent or guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child; and
- (c) the welfare and interests of the child will be promoted by the adoption.

(2) Subsection (1) does not apply in relation to an order in accordance with Section 6(1) for the adoption of a child who has attained the age of 21 years before the date of making of the order, but the Court shall not make an adoption order in such a case unless it is satisfied—

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

(3) Except in the case of a child to whom Subsection (4) relates, the Court shall not make an order for the adoption of a child unless the Court has received a report in the prescribed form as to the physical and mental condition of the child signed by a medical practitioner who examined the child not more than 30 days before the date on which the application for the order was filed in the Court.

(4) Subsection (3) does not apply in relation to the proposed adoption of a child—

- (a) who has attained the age of 21 years; or
- (b) by a person who is a relative of the child, or by two persons one of whom is a parent or relative of the child.

10. NOTICE OF APPLICATION FOR ADOPTION ORDERS.

(1) The Court shall not make an order for the adoption of a child unless the applicants for the adoption order have given not less than 14 days' notice of the application—

- (a) to any person whose consent to the adoption of the child is required under Section 15 but whose consent has not been given; and
- (b) to any person (not being a person whose consent is required under that section) with whom the child resides, or who has the care or custody of the child.

(2) A notice referred to in Subsection (1) shall not specify the name or names of the applicants or identify them.

(3) On written application, the Court may dispense with the giving of a notice under Subsection (1).

(4) Where it appears to the Court to be necessary in the interests of justice to do so, the Court may direct that notice of an application for an adoption order be given to any person.

11. PARTIES.

Where an application is made to the Court for an order for the adoption of a child, the Court may permit such persons as it thinks fit to be joined as parties to the proceedings for the purpose of—

- (a) opposing the application; or
- (b) opposing an application to dispense with the consent of a person.

12. CARE OF CHILD AFTER REFUSAL OF AN APPLICATION.

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

(2) Without limiting the generality of Subsection (1), an order made under that subsection may declare—

- (a) the child to be a ward within the meaning of the *Child Welfare Act 1961*; or
- (b) that the child shall remain under the guardianship of the Director for a further period of one year.

(3) When an order under Subsection (1) declares a child to be a ward, it has effect, for all purposes, as if it were an order under the *Child Welfare Act 1961* declaring the child to be a ward.

(4) The Director may, on such terms and conditions as he thinks proper, place a child of whom he is the guardian under Subsection (2) in the care of any suitable person who has agreed to have the child in his care.

(5) The fact that the Director is the guardian of a child under this section does not affect the liability of any other person to provide adequate means of support for the child.

13. DISCHARGE OF ADOPTION ORDERS.

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

- (a) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means; or
- (b) there is some other exceptional reason why, in view of the welfare and interests of the child, the adoption order should be discharged.

(2) The Court shall not make an order under this section if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

(3) Where the Court makes an order discharging an adoption order that was made in reliance on a general consent, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of any further application for the adoption of the child.

(4) Where the Court makes an order under this section, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the child, including orders relating to—

- (a) the name of the child; or
- (b) the ownership of property; or
- (c) the custody or guardianship of the child; or
- (d) the domicile (including the domicile of origin) of the child.

(5) On the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under Subsection (4) and to Section 28(2), the rights, privileges, duties, liabilities and relationships under the law of Papua New Guinea of the child and of all other persons are the same as if the adoption order had not been made, but without prejudice to—

- (a) anything lawfully done; or
- (b) the consequences of anything unlawfully done; or
- (c) any proprietary right or interest that became vested in any person,

while the adoption order was in force.

14. SUPPLEMENTAL PROCEDURE.

(1) On the completion of the hearing of an application for an adoption order, the Judge constituting the Court shall—

- (a) seal in an envelope all applications, reports and other documents that contain any information as to the identities of the child and of the parents and guardians of the child, and cause the envelope to be delivered to the Director; and
- (b) cause to be handed to the applicants an abridged copy of the order made as nearly as possible in the prescribed form.

(2) The Director has the custody of any envelope delivered to him in accordance with Subsection (1) and except by leave of a Judge no person may inspect any application, report or other document contained in it.

(3) Except by leave of a Judge no person may inspect a full copy of an adoption order.

Division 2.

Consents to Adoptions.

15. CONSENTS OF PARENTS AND GUARDIANS REQUIRED TO ADOPTIONS.

(1) Subject to this Division, the Court shall not make an order for the adoption of a child unless—

- (a) a consent (not being a consent that has been revoked in accordance with this Act) to the adoption has been given by the appropriate person ascertained in accordance with this section; or
- (b) the Court is satisfied that there is no such appropriate person.

(2) For the purposes of this section, the appropriate persons are—

- (a) in the case of a legitimate child who has not previously been adopted—persons who are parents and the guardians of the child; and
- (b) in the case of an illegitimate child who has not previously been adopted—the mother and the guardians of the child; and
- (c) in the case of a child who has previously been adopted—the adoptive parents and the guardians of the child.

(3) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the adoption order.

(4) This section does not apply in the case of a child who has attained the age of 21 years before the making of the adoption order.

16. CONSENTS TO BE GENERAL, EXCEPT WHERE IN FAVOUR OF RELATIVE.

(1) For the purposes of Section 15 but subject to Subsection (2), every consent to the adoption of a child—

- (a) shall be a consent to the adoption of the child by any person or persons in accordance with the law; and
- (b) has effect accordingly in relation to an application for adoption made by any person or persons in accordance with this Act.

(2) Subsection (1) does not apply in relation to a consent expressed to be a consent to the adoption of a child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

17. REVOCATION OF CONSENTS.

(1) A consent to the adoption of a child given for the purposes of this Act by a person other than the child may be revoked by written notice served on the Registrar of the Court before—

- (a) the expiration of 30 days from the date on which the instrument of consent was signed; or
- (b) the day on which an order for the adoption of the child is made,

whichever is the earlier, but may not otherwise be revoked.

(2) Service of a notice on the Registrar of the Court under Subsection (1) shall be effected—

- (a) by delivering it to him personally; or
- (b) by sending it to him by post at the address of the Registry of the Court.

(3) On receipt of a notice under this section, the Registrar of the Court shall immediately notify the Director of the receipt of the notice.

18. FORM OF CONSENTS.

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

19. CONSENTS GIVEN UNDER LAW OF A STATE OR TERRITORY OF AUSTRALIA.

(1) For the purposes of an application by a person under this Act for an adoption order in respect of a child, a consent to the adoption of the child given by a person in accordance with the law of a State or Territory of Australia that would be an effective consent under that law if the application had been made in that State or Territory under that law is an effective consent.

(2) For the purposes of Subsection (1), a certificate by the prescribed authority of a State or Territory of Australia that a consent to the adoption of a child given in that State or Territory would be an effective consent under the law of the State or Territory is evidence of that fact.

20. DEFECTIVE CONSENTS.

(1) The Court may refuse to make an adoption order in reliance on a consent given or purporting to have been given by a person (other than the child) if it appears to the Court that—

- (a) the consent was not given in accordance with this Act; or
- (b) the consent was obtained by fraud, duress or other improper means; or
- (c) the instrument of consent has been altered in a material particular without authority; or
- (d) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent.

(2) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child before the birth of the child.

(3) Except where the consent to the adoption of the child has been given as provided by Section 19, the Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within seven days after, the day on which the child was born unless it is proved that, at the time when the instrument was signed, the mother was in a fit condition to give the consent.

(4) For the purposes of Subsection (3), a certificate that purports to be by a medical practitioner or nurse certifying that, at the time when the instrument of consent was signed by the mother of a child, the mother was in a fit condition to give the consent is evidence of the matter certified.

21. COURT MAY DISPENSE WITH CONSENTS.

(1) The Court may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied that—

- (a) after reasonable inquiry, the person cannot be found or identified; or
- (b) the person is in such a physical or mental condition as not to be capable of properly considering the question whether he should give his consent; or
- (c) the person has abandoned, deserted or persistently neglected or ill-treated the child; or
- (d) the person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or

- (e) there are any other special circumstances by reason of which the consent may properly be dispensed with.

(2) In order to facilitate the making of arrangements with a view to the adoption of a child, the Court may, on the application of the Director, make an order under this section in relation to the child before an application for an adoption order has been made in respect of the child, and any such order under this section has effect for the purposes of any application for an adoption order that may subsequently be made in respect of the child.

(3) On the application of the Director or of the person whose consent was dispensed with, an order made under Subsection (2) may be revoked by the Court at any time before the making of an adoption order in respect of the child.

22. CONSENT OF CHILD.

Subject to this Division, an order for the adoption of a child who has attained the age of 12 years shall not be made unless—

- (a) the child has consented to the adoption; or
- (b) the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has refused to consent to the adoption or his consent has not been sought.

23. GUARDIANSHIP OF CHILD AWAITING ADOPTION.

(1) Subject to Subsection (2), where the consent of every person whose consent to the adoption of a child is required under Section 15—

- (a) has been given and is a general consent; or
- (b) has been dispensed with by an order made under Section 21,

the Director is the guardian of the child for all purposes (other than the purposes of Section 15) to the exclusion of all other persons until—

- (c) an adoption order is made in respect of the child; or
- (d) in the case of a consent so given, the instrument of consent is lawfully revoked; or
- (e) the Director, by instrument under his hand, releases the child to its parents or one of its parents; or
- (f) the Director renounces guardianship of the child under Division 3; or
- (g) the child becomes a ward within the meaning of the *Child Welfare Act 1961*; or
- (h) the Court, by order, makes other provision for the guardianship of the child.

(2) A release under Subsection (1)(e) revokes any consent given by the parents or one of them to the adoption of the child.

(3) Subsection (1) does not apply to or in relation to a child—

(a) who is a ward within the meaning of the *Child Welfare Act 1961*; or

(b) until the Director has—

(i) received written notice that a general consent to the adoption of the child has been given; and

(ii) signified, in the prescribed manner, his acceptance of the guardianship of the child.

(4) Where the Director has become the guardian of a child under Subsection (1) or (5) and has not, within a period of one year, ceased to be the guardian of the child, he shall make a written report to the Court concerning the child, and the Court shall make such order for the care and control of the child as it thinks fit.

(5) Without limiting the generality of Subsection (4), an order under that subsection may declare—

(a) the child to be a ward within the meaning of the *Child Welfare Act 1961*;
or

(b) that the child shall remain under the guardianship of the Director for a further period of one year.

(6) Where an order under Subsection (5) declares a child to be a ward, it has effect, for all purposes, as if it were an order under the *Child Welfare Act 1961* declaring the child to be a ward.

(7) The Director may, on such terms and conditions as he thinks fit, place a child of whom he is the guardian under Subsection (1) in the care of any suitable person who has agreed to have the child in his care.

(8) The fact that the Director is the guardian of a child under this section does not affect the liability of any other person to provide adequate means of support for the child.

Division 3.

Adoptions in Reciprocating States.

24. INTERPRETATION OF DIVISION 3.

In this Division, “**reciprocating state**” means a State or Territory of Australia declared under Section 25 to be a reciprocating state for the purposes of this Division.

25. DECLARATION OF RECIPROCATING STATES.

Where the Head of State, acting on advice, is satisfied that there are, in the law of a State or Territory of Australia, provisions equivalent to Sections 26 and 27,

he may, by notice in the National Gazette, declare that State or Territory to be a reciprocating state for the purposes of this Division.

26. DIRECTOR MAY RENOUNCE GUARDIANSHIP WHERE CHILD TO BE ADOPTED IN A RECIPROCATING STATE.

(1) Where the Director receives, from an officer or authority of a reciprocating state whose powers, functions and duties are, in the opinion of the Director, equivalent to the powers, functions and duties of the Director under this Act, a notice that an application will be made in that reciprocating state for the adoption of a child of whom the Director is the guardian by virtue of Section 23(1), together with a request that the Director renounce his guardianship, the Director may, if the consent has become irrevocable under Section 17 or if consent has been dispensed with under Section 21, and if he thinks it in the best interests of the child to do so, by instrument renounce his guardianship of the child.

(2) Immediately after signing an instrument of revocation under Subsection (1), the Director shall send the instrument by registered post to the officer or authority of the reciprocating state together with the consent (if any) to adoption given in relation to the child under Section 15 or, if the consent has been dispensed with, a certified copy of the order under Section 21.

(3) An instrument renouncing guardianship of a child is effective as from the time when the officer or authority of the reciprocating state becomes the guardian of the child under the law of that state.

(4) Subject to Subsection (5), if within six months after the Director sends the instrument renouncing the guardianship of the child the child is not either—

- (a) adopted under the law of the reciprocating state; or
- (b) removed from the country,

the instrument ceases to have effect and the Director is again the guardian of the child in accordance with Section 23(1).

(5) If before the expiration of the period of six months referred to in Subsection (4)—

- (a) an application for the adoption of the child has been made under the law of the reciprocating state; or
- (b) the officer or authority of the reciprocating state certifies in writing to the Director that he continues to accept guardianship,

and the Director is satisfied that it is in the best interests of the child that that period be extended, the Director may by instrument extend that period by one period not exceeding six months, and that subsection applies accordingly.

27. DIRECTOR MAY ASSUME GUARDIANSHIP WHERE CHILD FROM A RECIPROCATING STATE TO BE ADOPTED IN THE COUNTRY.

(1) Where the Director is satisfied that an application will be made under this Act for the adoption of a child of whom an officer or authority of a reciprocating state is the guardian by virtue of a provision of the law of that state equivalent to Section 23(1) (other than Paragraphs (c), (d), (e), (f), (g) and (h)), he may forward to that officer or authority a notice in the prescribed form that an application will be so made, together with a request that that officer or authority renounce his guardianship and forward to the Director the consent (if any) to the adoption given in relation to the child under the law of that state or, if the consent has been dispensed with under that law, the order or other instrument dispensing with or evidencing the dispensation with that consent.

(2) On receipt by the Director of the instrument renouncing guardianship and the consent or the order or other instrument dispensing with or evidencing the dispensation with the consent, the Director is the guardian of the child as if Section 23(1)(a) or (b) applied.

(3) Where, by virtue of the operation of any provision of the law of the reciprocating state equivalent to Section 26(4), the instrument renouncing the guardianship of the child ceases to have effect and some officer or authority of that state becomes, under the law of that state, the guardian of the child, the Director ceases to be the guardian of the child.

Division 4.***Effect of Adoption Orders.*****28. GENERAL EFFECT OF ADOPTION ORDERS.**

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

- (a) the adopted child becomes a child of the adopters, and the adopters become the parents of the child, as if the child had been born to the adopters in lawful wedlock; and
- (b) the adopted child ceases to be a child of any person who was a parent (whether natural or adoptive) of the child before the making of the adoption order, and any such person ceases to be a parent of the child; and
- (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent of the adopted child) shall be determined on the basis of the preceding provisions of this subsection so far as they are relevant; and
- (d) any existing appointment of a person, by will or deed, as guardian of the adopted child ceases to have effect; and

- (e) any previous adoption of the child (whether effected under the law of Papua New Guinea or otherwise) ceases to have effect,

for the purpose of all laws.

(2) Notwithstanding Subsection (1), for the purposes of any law relating to a sexual offence (being a law for the purposes of which the relationship between persons is relevant)–

- (a) an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order, as the case may be, had not been made; and
- (b) any such relationship shall be deemed to exist in addition to any relationship that exists by virtue of the application of that subsection in relation to that adoption order or by virtue of the discharge of that adoption order.

29. EFFECT OF ORDERS AS REGARDS DISPOSITIONS OF PROPERTY, ETC.

(1) Section 28(1) has effect in relation to dispositions of property, whether by will or otherwise, and whenever made, except that it does not affect a disposition of property–

- (a) by a person who, or by persons any of whom, died before the commencement date; or
- (b) that has taken effect in possession before the commencement date.

(2) Section 28(1) does not apply in relation to an agreement or instrument (not being a disposition of property) made or executed before the commencement date.

(3) Where–

- (a) before the commencement date, a person made, by an instrument other than a will, a disposition of property; and
- (b) the disposition had not taken effect in possession before that date; and
- (c) it did not appear from the instrument that it was the intention of that person to include adopted children as objects of the disposition,

then, notwithstanding that the instrument could not, apart from this subsection, be revoked or varied, he may vary by a like instrument the first-mentioned instrument to exclude adopted children (whether adopted under this Act or otherwise) from participation in any right, benefit or privilege under the instrument.

(4) In relation to a disposition of property by a person who, or by persons any of whom, died before the commencement date, an adoption order made under this Act has the same effect as if the provisions in force immediately before that date had continued in force and the adoption order had been made under those provisions.

(5) Section 28 and this section do not affect the operation of any provision in a will or other instrument (whether made or coming into operation before or after the commencement date) distinguishing between adopted children and children other than adopted children.

30. NAMES OF ADOPTED CHILD.

(1) Subject to Subsection (2), on the making of an adoption order the adopted child has—

- (a) as his surname—the surname of the adoptive parent or parents; and
- (b) as his given name or names—such name or names as the Court, on the application of the adoptive parents, approves in the adoption order.

(2) Where, before the making of the adoption order, the adopted child has been generally known by a particular surname, the Court may, in the adoption order, order that the child have that name as his surname.

(3) This section does not prevent the changing of a name of an adopted child, after the making of the adoption order, in accordance with law.

31. EFFECT OF ORDER ON DOMICILE.

(1) Subject to this section, on the making of an adoption order—

- (a) the adopted child acquires the domicile of the adoptive parents at the date of the adoption order; and
- (b) the child's domicile afterwards shall be determined as if the child had been born in lawful wedlock to those parents.

(2) The domicile acquired by the child under Subsection (1) on the making of the order shall be deemed to be also the child's domicile of origin.

32. DISTRIBUTION OF PROPERTY BY TRUSTEES, ETC.

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

(2) A trustee or personal representative conveying, transferring or distributing property in the manner referred to in Subsection (1) is not liable to a person claiming directly or indirectly by virtue of an adoption unless the trustee or personal representative has notice of the claim before the time of the conveyance, transfer or distribution.

(3) This section does not prejudice the right of a person to follow property into the hands of a person, other than a purchaser for value, who has received it.

Division 5.
Interim Orders.

33. MAKING OF INTERIM ORDERS.

(1) On an application to the Court for an order for the adoption of a child, the Court may postpone the determination of the application and make an interim order for the custody of the child in favour of the applicants.

(2) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the Court thinks proper.

(3) The Court may not make an interim order in respect of a child in favour of any persons unless the Court could lawfully make an order for the adoption of that child by those persons.

(4) While an interim order remains in force in respect of a child, the persons in whose favour the order is made are entitled to the care and custody of the child.

34. DURATION OF INTERIM ORDERS.

(1) Subject to this Division, an interim order remains in force for such period, not exceeding one year, as the Court specifies in the order, and for such further periods (if any) as the Court from time to time orders.

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

35. DISCHARGE OF INTERIM ORDERS.

(1) The Court may, at any time, make an order discharging an interim order made under this Division or an interim order made under the provisions in force immediately before the commencement date, and may make such order for the care and custody of the child as it thinks proper.

(2) An interim order, whether under this Act or under the provisions in force immediately before the commencement date, ceases to have effect on the making of an order for the adoption of the child, whether made in the country or in Australia.

PART IV. – RECOGNITION OF ADOPTIONS.**36. INTERPRETATION OF PART IV.**

In this Part–

“**country**” includes part of a country;

“**foreign country**” does not include Australia or the Territories of Australia.

37. RECOGNITION OF AUSTRALIAN ADOPTIONS.

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

38. RECOGNITION OF FOREIGN ADOPTIONS.

(1) For the purposes of the laws of Papua New Guinea, the adoption of a person (whether before or after the commencement date) in a foreign country, being an adoption to which this section applies, has, so long as it has not been rescinded under the law of that country, the same effect as an adoption order under this Act.

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

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

(3) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by a court or judicial or public authority in a foreign country is, in the absence of proof to the contrary, sufficient evidence that the adoption was made in and is effective according to the law of that country.

(4) The Head of State, acting on advice, may, by notice in the National Gazette, declare that all or any adoptions under the law of a foreign country shall be conclusively presumed to comply with Subsection (2)(b), (c) and (d).

(5) Notwithstanding the preceding provisions of this section, a court (including the Court dealing with an application under Section 39) may refuse to recognize an adoption as being an adoption to which this section applies if it appears to the court that the procedure followed, or the law applied, in connection with the adoption involved a denial of natural justice or did not comply with the requirements of substantial justice.

(6) Where, in any proceedings before a court (including proceedings under Section 39), the question arises whether an adoption is one to which this section applies, it shall be presumed, unless the contrary appears from the evidence, that the adoption complies with the requirements of Subsection (2) and has not been rescinded.

(7) Except as provided in this section, the adoption of a person (whether before or after the commencement date) in a foreign country does not have effect for the purposes of the laws of Papua New Guinea.

(8) This section does not affect any right that was acquired by, or became vested in, a person before the commencement date.

39. DECLARATIONS OF VALIDITY OF FOREIGN ADOPTIONS.

(1) A person specified in Subsection (2) may apply to the Court for an order declaring that—

- (a) an adoption of a person was effected (whether before or after the commencement date) under the law of a foreign country; and
- (b) the adoption is one to which Section 38 applies,

and the Court may hear and determine the application and, if it thinks fit, make an order accordingly.

(2) The persons who may make an application under Subsection (1) in relation to an adoption are—

- (a) the adopted child; or
- (b) the adoptive parents or either of them; or
- (c) a person tracing a relationship, by virtue of the adoption, through or to the adopted child.

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

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

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

(5) For the purposes of the laws of Papua New Guinea, an order under this section binds the State, whether or not notice was given to the Attorney-General, but, except as provided in Subsection (6), does not affect—

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

(6) In any proceedings relating to the rights of a person other than a person specified in Subsection (5)(a)(i) or (ii), the production of a copy of the order, certified by the Registrar of the Court to be a true copy, is evidence that—

- (a) an adoption was effected in accordance with the particulars contained in the order; and
- (b) that the adoption is one to which Section 38 applies.

PART V. – OFFENCES.

40. APPLICATION OF PART V.

This Part does not apply in respect of acts occurring outside Papua New Guinea but, except to the extent to which the contrary intention appears, does apply in respect of acts done in Papua New Guinea in relation to the adoption of children in, or children adopted in, another country.

41. TAKING AWAY, ETC., OF ADOPTED CHILD BY NATURAL PARENT.

(1) A person who was the father or mother or a guardian of a child but has, by reason of an adoption of the child, ceased to be the father or mother or a guardian of the child, and who takes, leads, entices or decoys the child away, or detains the child, with intent to deprive the adopters of the child of possession of the child, is guilty of an offence.

(2) A person who receives or harbours a child on behalf of a person who, to his knowledge, has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

42. PAYMENTS IN CONSIDERATION OF ADOPTIONS.

(1) Subject to this section, a person who (whether before or after the birth of a child) makes, gives or receives, or agrees to make, give or receive, a payment or reward for or in consideration of–

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

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

(2) Subsection (1) does not apply to or in relation to any of the following payments or rewards in connection with an adoption or proposed adoption under this Act:–

- (a) a payment of legal expenses;
- (b) a payment made by the adopters, with the written approval of the Director or with the approval of the Court, in respect of the hospital and

medical expenses reasonably incurred in connection with the birth of the child or the ante-natal or post-natal care and treatment of the mother of the child or of the child;

- (c) any other payment or reward authorized by the Director or by the Court.

(3) Subsection (1) does not apply to or in relation to a payment or reward in connection with an adoption or proposed adoption under the law of a State or Territory of Australia where—

- (a) the making of the payment or the giving of the reward; or
 (b) the agreeing to make the payment or give the reward,

would have been lawful if it had taken place in that State or Territory.

43. UNAUTHORIZED ARRANGEMENTS FOR ADOPTION.

(1) A person other than the Director or a person acting on behalf of the Director who—

- (a) conducts negotiations or makes arrangements with another person with a view to the adoption of a child by that other person; or
 (b) except in accordance with arrangements made by or on behalf of the Director, transfers, or causes to be transferred, the possession or control of a child to another person with a view to the adoption of the child by that other person,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding three months.

(2) Subsection (1) does not apply in relation to anything done by or on behalf of a parent, guardian or relative of a child, or by persons one of whom is a parent or relative of the child, with a view to the adoption of the child by a relative of the child.

44. RESTRICTION ON ADVERTISING, ETC.

(1) Subject to this section, a person who publishes or causes to be published, in a newspaper or periodical, or by means of broadcasting, television or public exhibition, any advertisement, news item or other matter indicating (whether or not in relation to a particular child, born or unborn) that—

- (a) a parent or guardian of a child wishes to have the child adopted; or
 (b) a person wishes to adopt a child; or
 (c) a person is willing to make arrangements with a view to the adoption of a child,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

(2) Subsection (1) does not apply in relation to an advertisement, news item or other matter that has been approved by the Director.

45. RESTRICTION ON PUBLICATION OF IDENTITY OF PARTIES.

(1) Subject to this section, a person who publishes or causes to be published—

- (a) in a newspaper or periodical; or
- (b) by means of broadcasting or television,

in relation to an application under this Act or under a law of a State or Territory of Australia for the adoption of a child or to the proceedings on such an application—

- (c) the name of—
 - (i) an applicant; or
 - (ii) the child; or
 - (iii) the father or mother or a guardian of the child; or
- (d) any matter reasonably likely to enable any of those persons to be identified,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

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

46. FALSE STATEMENT IN APPLICATION, ETC.

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

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

47. PERSONATION OF PERSON WHOSE CONSENT TO AN ADOPTION IS REQUIRED.

A person who personates or falsely represents himself to be a person whose consent to the adoption of a child is required by this Act or by the law of a State or Territory of Australia is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

48. PRESENTING FORGED CONSENT.

A person who presents, or causes to be presented, to the Court in connection with an application for an order for the adoption of a child under this Act a document purporting to be an instrument of consent to the adoption signed by a person whose consent to the adoption is required by this Act is guilty of an offence if the signature to the document was to the knowledge of that first-mentioned person forged or obtained by fraud or duress.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

49. UNDUE INFLUENCE.

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

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

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

50. IMPROPERLY WITNESSING CONSENT.

A person who subscribes his name as a witness to the signature of a person to an instrument of consent to the adoption of a child unless—

- (a) he is satisfied that the person signing the instrument is a parent or guardian of the child; and
- (b) he takes such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; and
- (c) the instrument bears the date on which it is signed by the person giving the consent,

is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

51. AUTHORITY TO PROSECUTE.

Proceedings for an offence against this Act shall not be commenced except by the Public Prosecutor or with the written consent of the Public Prosecutor.

PART VI. – ADOPTION, FOSTERAGE, ETC., OF CHILDREN BY CUSTOM.

52. SAVING OF *CUSTOMS RECOGNITION ACT 1963*.

Nothing in this Part derogates the provisions of the *Customs Recognition Act 1963*.

53. ADOPTIONS BY CUSTOM.

(1) Notwithstanding any other law but subject to this section, where a child is or has at any time been in the custody of and is being or has been brought up, maintained and educated by any person or by two spouses jointly as his, her or their own child under any adoption in accordance with custom, then for the purposes of any law the child shall be deemed to have been adopted by that person or by those spouses jointly, as the case may be.

(2) An adoption to which Subsection (1) applies takes effect in accordance with the custom that is applicable and is subject to any provisions of that custom as to limitations and conditions, including limitations and conditions as to the period of the adoption, rights of access and return and property rights or obligations.

54. CERTIFICATES AS TO ADOPTIONS.

(1) A Local Court may–

- (a) on application by a party (including a natural or adoptive parent and the adopted child) to an adoption to which Section 53(1) applies; and
- (b) on being satisfied that the adoption has been made or has terminated in accordance with custom, and as to any relevant limitations and conditions referred to in Section 53(2),

grant a certificate that the adoption has been so made or has so terminated, and as to the relevant limitations and conditions.

(2) Subject to Part VI. of the *Local Courts Act 1963*, a certificate under Subsection (1) is conclusive as to–

- (a) the adoption or termination of adoption; and
- (b) any relevant limitations and conditions referred to in Section 53(2).

55. VARIATION OF CERTIFICATE.

A Local Court may–

- (a) on application by a party (including a natural or adoptive parent and the adopted child) to an adoption to which Section 53(1) applies; and
- (b) on being satisfied that the circumstances of the adoption or the custom applicable to the adoption have or has changed,

vary the certificate granted under Section 54 in respect of the adoption.

56. FOSTERAGE AND GUARDIANSHIP.

Where the Local Court—

- (a) is not satisfied that a relationship of adoption; but
- (b) is satisfied that a relationship of fosterage or guardianship,

by custom exists or existed, it may so declare in a certificate under this Act, and the preceding provisions of this Part, with the necessary modifications, apply accordingly.

57. PROCEDURE.

A Local Court shall not grant or vary a certificate under this Part unless it is satisfied that all persons interested have had a reasonable opportunity of making any representations that they wish to make on the subject of the certificate.

58. APPEALS.

The grant or refusal of an application under this Part, and the terms of the grant of any such application, shall be deemed to be a decision of a Local Court for the purposes of Part VI of the *Local Courts Act* 1963.

PART VII. – MISCELLANEOUS.

59. PARTICULARS TO BE FORWARDED TO REGISTRAR GENERAL.

(1) The Registrar of the Court shall forward an office copy of every adoption order and of every order under Section 13, 33 or 35 to the Registrar General.

(2) An adoption order shall, so far as is practicable, contain—

(a) particulars of the names in full of the adopted child, any authorized alteration in its names, its sex and the date and place of its birth; and

(b) the names of its natural parents; and

(c) the names, addresses and occupations of the adopting parents.

(3) There shall be attached to an office copy of an adoption order or order under Section 33 forwarded under Subsection (1) a separate schedule in Form 1 of particulars of the adoption or interim adoption in relation to each child in respect of whom the order was made containing, so far as is practicable, the particulars set out in that form.

60. SENDING OF MEMORANDUM OF ORDERS TO OTHER COUNTRIES.

Where the Court makes an adoption order or an interim adoption order or an order discharging such an order, or makes an order under Section 39, and the Registrar General has reason to believe that the birth of the child is registered in a country other than Papua New Guinea, the Registrar General shall, as soon as is reasonably practicable, cause a memorandum in the prescribed form of the order, certified in writing by him to be a true memorandum or copy, to be sent to such officer of that other country having functions in relation to the registration of births as is prescribed.

61. PARTICULARS OF ORDERS RECEIVED FROM STATES OR TERRITORIES.

Where the Registrar General receives, in relation to a child whose birth is registered in Papua New Guinea, a memorandum or copy of an adoption order or an interim adoption order made (whether by a court or not) under the law in force in a State or Territory of Australia, or in a country the subject of a declaration under Section 38, or of an order discharging such an order, certified in writing to be a true memorandum or copy by a person authorized so to certify under the law of that State, Territory or country, he shall deal with it in accordance with the *Civil Registration Act 1963*.

62. HEARINGS TO BE *IN CAMERA*.

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

63. IDENTITIES OF CERTAIN PERSONS NOT TO BE REVEALED.

A person who—

- (a) conducts any arrangement for or relating to the adoption, whether in the country or elsewhere, of a child in respect of whose adoption a general consent has been given; or
- (b) signs, or files in a court, any document relating to the hearing, whether in the country or elsewhere, of an application for an adoption order; or
- (c) attests or authenticates a general consent to the adoption of a child, whether for use in the country or elsewhere; or
- (d) appears before the Court in connection with the hearing of such an application,

and fails to take, so far as is practicable, such steps as are necessary to ensure that the identities of the child and his parents are not revealed to the adopters and that the identities of the adopters are not revealed to the parents, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

64. CONTENTS OF REPORTS NOT TO BE DISCLOSED.

Except as the Court otherwise orders, a report to the Court under Section 9 shall not be made available to any person, including a party to the proceedings.

65. RESTRICTION ON INSPECTION OF RECORDS.

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

66. DIRECTOR MAY APPEAR AT HEARINGS.

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

67. DELEGATION.

The Director may, by writing under his hand, delegate to an officer all or any of his powers and functions under this Act (except this power of delegation).

68. MATTERS ADMISSIBLE IN EVIDENCE.

On the hearing by the Court of any proceedings on an application for an adoption order or the discharge of an adoption order, the Court may act on any statement, document, information or matter that, in the opinion of the Court, may assist it to deal with the matter of the proceedings, whether or not the statement, document, information or matter would otherwise be admissible in evidence.

69. PROOF OF ADOPTION.

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

70. JUDICIAL NOTICE OF SIGNATURES.

(1) In proceedings under this Act, judicial notice shall be taken of the signature of a person who holds or has held, or is acting or has acted in, the office of Director, or the corresponding officer in a State or Territory of Australia, appearing on a document and of the fact that, at the time when the document was signed by him, he held, or was acting in, that office.

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

71. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for or in relation to—

- (a) the forms to be used for the purposes of this Act; and
- (b) notification to the Director of the giving of a general consent to the adoption of a child; and
- (c) the signification by the Director of his acceptance, for the purposes of Section 23, of the guardianship of a child in respect of whose adoption a general consent has been given by the appropriate person or persons, ascertained as provided in Section 15; and
- (d) the making to the Director of applications by persons who desire to be approved as fit and proper persons to adopt children, and the investigation and determination by the Director of applications so made; and
- (e) the keeping of lists by the Director of persons approved as fit and proper persons to adopt children; and
- (f) the placing of children in the care and custody of persons by whom the children are proposed to be adopted; and
- (g) the form of, and the manner of execution and authentication of, instruments of consent to the adoption of children, and the duties of persons executing and witnessing such instruments; and

- (h) the duties and powers of the Director in respect of the wishes of persons by whom instruments of consent to the adoption of children are executed as to the religious upbringing or convictions of the children; and
- (i) applications for adoption orders being made or dealt with in such a way that—
 - (i) the identities of the children proposed to be adopted pursuant to those applications are not disclosed to the applicants for those orders; and
 - (ii) that the identities of the adopters are not disclosed to the parents or guardians of those children,
 - except where all parties to those applications otherwise agree; and
- (j) the form of a certificate under Part VI. including a list of matters as to which the Local Court must certify; and
- (k) penalties not exceeding fines of K100.00 for offences against the regulations.

SCHEDULE 1

PAPUA NEW GUINEA.**Adoption of Children Act 1968.****Form 1 – Particulars of adoption.**

Sec. 59.

Form 1.

Adoption Order No.: _____ Date made: _____

Item No.	<i>Particulars of Child.</i>
1.	Surname prior to adoption:
2.	Other names prior to adoption:
3.	Sex:
4.	Date of birth:
5.	Place of birth:
6.	Surname of natural father:
7.	Other names of natural father:
8.	Maiden surname of natural mother:
9.	Other names of natural mother:
<i>Particulars of Adopting Parents.</i>	
	Father: _____ Mother: _____
10.	Surname:
11.	Other names:
12.	Age:
13.	Birthplace:
14.	Occupation:
15.	Usual place of residence:
<i>Names Given in Adoption.</i>	
16.	Surname:
17.	Other names:

Office of Legislative Counsel, PNG