

REPUBLIC OF VANUATU

BILL FOR THE ADOPTION ACT NO. OF 2021

Explanatory Note

This Bill provides for the adoption of children in Vanuatu and for related purposes.

Since independence, Parliament has never enacted domestic legislation to provide for the process of adoption in Vanuatu. To date, the Supreme Court has relied on the UK Adoption Act of 1958 and the French Civil Code in making adoption orders.

This Bill set out the process and requirements for formal adoption in Vanuatu. The Bill regulates formal adoption and does not apply to custom adoption.

The Bill provides for the following matters:

- (a) that the Director-General of the Ministry of Justice and Community Services (“the DG”) is to provide adoption services, which includes making and facilitating the adoption arrangements of children in Vanuatu;
- (b) for the registration and regulation of adoption agencies and temporary carers to ensure that adoption services are provided to a high standard;
- (c) the process of adoption and the conditions for making of adoption orders, including conditions for making adoption orders without consent;
- (d) for adoption orders to be made in favour of a single person, married couples and unmarried persons;
- (e) for a more consistent approach to have access to information held by the Ministry, the Court and the Registrar of Civil Status;
- (f) for inter-country adoptions;
- (g) for the requirements for bringing a child into Vanuatu in connection with adoption. This is aimed at ensuring that Vanuatu residents and citizens follow the appropriate procedures when a child is brought into Vanuatu for the purposes of adoption;

- (h) for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) except through the DG or adoption agencies, and prohibits certain payments in connection with adoption;
- (i) to enable the DG to establish an Adopted Children's Register and to suggest matches between children waiting to be adopted and approved prospective adopters;
- (j) for the legal representation of children by lawyers in the State Law Office, Public Solicitor's Office and the Vanuatu Women's Centre;
- (k) to allow the birth parents to state their preferences for types of persons who can adopt their child, for example persons with a similar religious background, and provides for the making of an adoption plan prepared by the applicants as to their plan following adoption, for the child to learn and retain his or her Melanesian cultural roots.

Furthermore, the Bill provides for the following internationally recognised standards to be considered when decisions are made concerning the adoption of a child:

- (a) the "best interest of the child" must always be considered in the adoption process so as to reduce any risk of harm to the child; and
- (b) the child must be given a right to be heard where appropriate; and
- (c) cultural factors are important factors to consider in the adoption process.

This Bill is in line with and gives effect to the Convention on the rights of the Child that was ratified by Parliament in 1992.

Minister of Justice and Community Services



REPUBLIC OF VANUATU

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REPUBLIC OF VANUATU

BILL FOR THE ADOPTION ACT NO. OF 2021

An Act to provide for the adoption of children in Vanuatu and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the contrary intention appears:

adoption order means an order for the adoption of a child made under subsection 34(1);

applicant means the person or persons applying for the adoption of a child under this Act;

child means a person under the age of 18;

Director General means the Director General of the Ministry responsible for justice and community services;

guardian means:

- (a) a person appointed by the Supreme Court to be the guardian of a child; or
- (b) the Director General appointed as guardian of a child under subsection 10(1); or
- (c) a person who has the right of custody of the child under the rules of custom;

match means the process of identifying a suitable adoptive parent for a specific child;

Minister means the Minister responsible for justice and community services;

parent means the birth parent or adoptive parent of a child;

prospective adoptive parent means a person who intends to adopt a child that has been give for adoption under this Act;

Registrar General means the Registrar General of Civil Status under the Civil Status (Registration) Act [CAP 61];

relative means a grandparent, brother, sister, uncle or aunt, whether related:

- (a) biologically (either full blood or half blood) or ; or
- (b) through marriage; or
- (c) through kinship by adoption;

resident means a person who legally resides in Vanuatu for at least 12 months or more;

spouse means the legally recognised husband or wife of the applicant and includes the de-facto spouse of the applicant;

Supreme Court means the Supreme Court of the Republic of Vanuatu.

2 Principles of the Act

- (1) A person who performs any functions or exercises any powers under this Act must consider the following principals:
 - (a) the best interest of a child, both in childhood and later in life, must be given paramount consideration; and
 - (b) adoption is to be regarded as a service for the child concerned; and
 - (c) children, parents, and prospective adoptive parents must be provided with:
 - (i) an understanding of the lifelong implications of adoption; and
 - (ii) complete information to assist them in making informed decisions; and
 - (d) if the child is able to form his or her own views on a matter concerning his or her adoption:

- (i) he or she must be given an opportunity to express those views freely; and
- (ii) his or her views are to be given due weight depending on the child's age and developmental capacity; and
- (e) the child's family, members of the child's community and other persons significant to the child must, whenever possible, be consulted and involved in planning for the child; and
- (f) culture, custom, language and religion are the fundamental parts of life in Vanuatu, and priority must be given to placing the child with a family that has the same cultural origins as the child in order to facilitate an environment that will promote the child's cultural heritage, language and identity; and
- (g) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare and must be minimised.

3 Determining the best interest of a child

For the purpose of this Act, in determining the best interests of a child, a person must have regard to the following:

- (a) any wishes expressed by the child; and
- (b) the child's age, maturity, gender, background and family relationships; and
- (c) the importance of the child's development in having a positive relationship with a parent and a secure place to live in as a member of a family; and
- (d) the child's physical, emotional and educational needs; and
- (e) any disability that the child has; and
- (f) any wishes expressed by either or both of the parents of the child; and
- (g) the attitude of each applicant to the child and to the responsibilities of parenthood; and
- (h) the nature of the relationship of the child with each applicant; and
- (i) the suitability and capacity of each applicant to provide for the needs of the child, including any special needs in relation to disability; and

- (j) the need to preserve and promote the child's cultural, linguistic and religious heritage and identity, and the applicant's commitment to helping the child understand, develop and maintain his or her heritage and identity; and
- (k) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to violence or abuse.

PART 2 ADOPTION SERVICES

4 Functions of the Director General

- (1) In addition to other functions under this Act, the Director General has the following functions:
- (a) to assess the suitability of an applicant to adopt a child; and
 - (b) to maintain a Register of persons approved to be approved adoptive parents; and
 - (c) to prepare a home assessment for prospective adoptive parents; and
 - (d) to assess the eligibility of a child for adoption; and
 - (e) to counsel children and parents to ensure that all consents are informed and freely given; and
 - (f) to match children eligible for adoption with the most suitable approved adoptive parents; and
 - (g) to provide timely reports and advice to the Supreme Court in relation to adoption applications; and
 - (h) to be responsible for post-adoption services, including post-adoption counselling and monitoring adoption matching; and
 - (i) to cooperate with relevant adoption authorities in other countries in relation to inter-country adoption; and
 - (j) to maintain adoption records and facilitate access to adoption information in accordance with this Act; and
 - (k) to accredit and oversee adoption service providers.
- (2) The Minister may prescribe fees or charges for the service provided by the Director General under this Act.

5 Delegation

- (1) The Director General may, in writing, delegate any of his or her functions under this Act to:
- (a) any staff of the Department of Justice; or

- (b) an adoption service provider that has been accredited under section 6.
- (2) A delegation may be made generally or in respect of a particular matter or class of matters.
- (3) The Director General may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Director General from performing the function that he or she has delegated.

6 Accreditation of adoption service providers

- (1) An individual or non-profit organisation may apply, in the prescribed form, to the Director General for accreditation as an adoption service provider.
- (2) The Minister, on the advice of the Director General, must prescribe the standards for the following:
 - (a) accreditation of adoption service providers; and
 - (b) monitoring and oversight of accredited adoption service providers.

PART 3 GIVING A CHILD FOR ADOPTION

Division 1 Restrictions on giving a child for adoption

7 Age of adoption

A child must not be given for adoption unless that child is less than 18 years old.

8 Giving a child for adoption

If the parent or guardian of a child intends to give the child for adoption, the parent or guardian must:

- (a) notify the Director General of his or her intention to give the child for adoption; or
- (b) appoint the Director General as the guardian of the child under section 10; or
- (c) arrange for private matching under section 21, which is to be approved by the Director General.

Division 2 Notification of Director General for adoption

9 Notification of the Director General of adoption

If the Director General is notified of the intention of the birth parents or guardians of a child to give the child for adoption under paragraph 8(a), the Director General must:

- (a) arrange for the matching of the child under section 20; and
- (b) ensure that all consent required for adoption under Part 6 have been given after all parties concerned have received counselling under section 26.

Division 3 Director General as guardian of the child

10 Care and custody of a child pending adoption

- (1) A parent or guardian may, in writing, appoint the Director General as the guardian of the child until such time the child is legally adopted if the parent or guardian:
 - (a) has expressed an intention to give a child for adoption; and
 - (b) does not want to care for the child pending the adoption process.

- (2) If the Director General has guardianship of a child under subsection (1), he or she may:
- (a) arrange for the temporary care and custody of the child by a relative; or
 - (b) transfer care and custody of the child to an approved temporary carer.
- (3) After arranging for the custody of the child under subsection (2), the Director General must:
- (a) arrange for the matching of the child under section 20; and
 - (b) ensure that all consent required for adoption under Part 6 have been given after all parties concerned have received counselling under section 26.
- (4) The Director General's guardianship of a child under this section ends if:
- (a) a final adoption order for the child is made by the Supreme Court; or
 - (b) the parents' or guardian's consent to the adoption is lawfully revoked.

Division 4 Prospective adoptive parents custody restrictions

11 Custody of a child for adoption

- (1) A prospective adoptive parent must not take custody of a child for adoption under paragraph 8(a),(b) or (c) before the adoption process has been completed, unless authorised by an interim order from the Supreme Court.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT200,000 or to a term of imprisonment not exceeding 12 months, or both.

PART 4 APPLICATION AND REGISTER OF APPROVED ADOPTIVE PARENTS

12 Adoptive parent requirement

An adoption order must not be made for the adoption of a child unless the adoptive parents are approved by the Director General under this Part.

13 Application for adoptive parent

A person who intends to be approved as an adoptive parent must make an application, in the prescribed form, to the Director General.

14 Approval of Approved Adoptive Parents

- (1) The Director General may approve a person as an adoptive parent if he or she is satisfied that:
 - (a) the applicant has met the requirements set out in sections 15, 16 and 17, whichever is applicable; and
 - (b) each applicant is determined as a suitable adoptive parent under subsection (2).
- (2) In determining an applicant's suitability to adopt under paragraph (1)(b), the Director General must consider:
 - (a) the general principles under section 2; and
 - (b) the findings and recommendations of a home assessment; and
 - (c) the applicant's character, psychological capacity and other personal qualities; and
 - (d) the applicant's attitude to, and understanding of:
 - (i) children and their physical and emotional development; and
 - (ii) the responsibilities and duties of parenthood; and
 - (e) the applicant's capacity to provide for a child's emotional, physical, educational, recreational and social needs; and
 - (f) in the case where the applicants are married - the quality of their relationship, including the duration and stability of the relationship; and

- (g) the applicant's criminal record and any other history of family violence; and
 - (h) any other information relevant to the applicant's capacity to undertake full parental responsibility for a child.
- (3) If the Director General refuses to approve an application made under subsection (1), he or she must inform the applicant in writing with the reasons as to why the application is being refused.

15 Adoption by two persons applying together

- (1) The Director General must not approve an application made under section 13 in favour of two persons unless the applicants:
- (a) are married to each other and have been so married for not less than 2 years; or
 - (b) have been living in the same household for 4 years.
- (2) In addition to subsection (1), the Supreme Court may only make an adoption order in favour of two persons if satisfied that both applicants:
- (a) are of good character; and
 - (b) are fit and proper persons to fulfil the responsibilities of parents.
- (3) To avoid doubt, the Supreme Court may make an adoption order in favour of a couple even if one or both of them is a parent or relative of the child.

16 Adoption by one person

- (1) The Director General must not approve an application made under section 13 in favour of one person unless that person:
- (a) is of good character; and
 - (b) is a fit and proper person to fulfil the responsibilities of a parent.
- (2) In addition to subsection (1), the Supreme Court must not make an adoption order in favour of the applicant if:
- (a) the applicant is living with a spouse, or another person over the age of 18; and

- (b) the spouse or the other person referred to under paragraph (a) has not given his or her consent in writing to the application for the adoption order.
- (3) To avoid doubt, the Supreme Court may make an adoption order in favour of a person even if that person is a birth parent or relative of the child.

17 Age and sex of applicant

- (1) The Director General must not approve an application made under section 13 unless he or she is satisfied that the applicant:
 - (a) has attained the age of 25 years; and
 - (b) is 18 or more years older than the child.
- (2) Despite subsection (1), the Supreme Court may make an adoption order in favour of an applicant who does not fulfil the age requirements if the Supreme Court considers that it is desirable to make an adoption order after considering the particular circumstance of that case.
- (3) An adoption order must not be made in respect of a child who is a female in favour of a sole applicant who is a male, unless the Supreme Court is satisfied that there are special circumstances which justify the adoption order to be granted.

18 Register of Approved Adoptive Parents

The Director is to keep an up to date register of all persons approved as adoptive parents under section 14.

PART 5 MATCHING OF A CHILD WITH A PROSPECTIVE ADOPTIVE PARENT

Division 1 Matching of a child

19 Persons permitted to match a child

The following persons may match a child with the prospective adoptive parents for adoption under this Act:

- (a) the Director General; or
- (b) a parent or guardian of the child, by private matching in accordance with section 21.

Division 2 Matching by the Director General

20 Matching by the Director General

- (1) The Director General may match a child for adoption with a person who has been listed on the Register of Approved Adoptive Parents.
- (2) In making a decision about matching a child with the most suitable person on the Register of Approved Adoptive Parents, the Director General must consider all of the following:
 - (a) the general principles under section 2; and
 - (b) any preferences of the child's parents or guardians including preferences about:
 - (i) the characteristics of the child's adoptive parents and adoptive family; and
 - (ii) the maintenance of the child's cultural, linguistic or religious heritage; and
 - (iii) the degree of openness of the adoption arrangement and contact and communication with the adopted person after the adoption order.

Division 3 Private matching

21 Private matching

- (1) A parent or guardian of the child may arrange a private matching of a child with a prospective adoptive parent.
- (2) Before a child is taken into a prospective adoptive parents care, the prospective adoptive parent must notify the Director General of their intention to receive a child in their home for adoption.
- (3) As soon as possible after being notified under subsection (2), the Director General must:
 - (a) arrange for the parents and the child to be counselled in accordance with section 26; and
 - (b) ensure that the consent required under this Act has been given; and
 - (c) prepare a home assessment of the prospective adoptive parents; and
 - (d) make a determination as to whether the prospective adoptive parents are suitable to adopt the child in accordance with the requirements of this Act; and
 - (e) ensure that the child, if sufficiently mature, has been counselled about the adoption.

22 Duration of match

The approval of a match by the Director General under section 21 remains in force for 6 month after it is granted.

PART 6 CONSENT TO ADOPTION

23 Consent to adoption

- (1) An adoption order must not be made in respect of the adoption of a child unless the Supreme Court is satisfied that the parent or guardian of a child has consented to the adoption.
- (2) A person who is a parent or guardian of a child must complete the prescribed consent form that must be in the applicant's preferred language.
- (3) A consent form under subsection (2) must be signed and witnessed by a Commissioner of Oaths.
- (4) A birth mother's consent to the adoption of her child is valid only if the child is at least 6 weeks old when the consent form under subsection (2) is signed.
- (5) In addition to subsection (4), any person who is a parent or guardian of the child must give oral evidence on oath in the Supreme Court that:
 - (a) he or she understands that the adoption under this Act involves a complete loss of parental rights and is different to adoption made under custom; and
 - (b) if an adoption order is made, he or she understands that he or she will have no right to contact, visit, or maintain any communication with the child; and
 - (c) his or her consent is not the result of pressure, force, threats, inducement or any financial arrangement.

24 Exception to the requirement of consent to an adoption

- (1) Despite section 23, the Supreme Court may make an adoption order without the consent of the parent, or guardian, or person with parental responsibility of a child if it is satisfied that that parent, or guardian, or person with parental responsibility:
 - (a) has abandoned, neglected or persistently mistreated the child; or
 - (b) cannot be found; or
 - (c) is incapable of giving his or her consent or is withholding his or her consent unreasonably; or

- (d) is certified to be insane by a qualified medical practitioner.
- (2) Before making an adoption order under subsection (1), the Supreme Court must take all reasonable steps to ensure that the parent:
 - (a) is aware of the application for adoption; and
 - (b) has an adequate opportunity to indicate whether or not he or she consents to the application.
- (3) The Supreme Court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the spouses have separated and are living apart and that the separation is likely to be permanent.
- (4) Upon application, the Supreme Court may dispense consent of a birth mother even before the child is 6 weeks old for just cause.

25 Consent of the Child

An adoption order must not be made for a child who has attained the age of 12 years unless:

- (a) the child has received counselling in accordance with section 26; and
- (b) the child has consented to the adoption and demonstrated that consent by giving oral evidence to the Supreme Court; and
- (c) in the case where the child has not consented to the adoption - the Supreme Court is satisfied that there are special reasons related to the welfare and best interest of the child to justify the order.

26 Counselling and informed Consent

- (1) The Director General must arrange for a person whose consent to an adoption is required under this Act to receive counselling prior to signing the instrument of consent.
- (2) The counselling must be carried out by a counsellor nominated by the Director General.
- (3) The counsellor must:
 - (a) accurately explain to the person, in a way that the counsellor thinks will be understood by the person:

- (i) the information required under subsection (4); and
 - (ii) the legal effect of signing the consent form and the procedure for revoking the consent; and
 - (b) counsel the person on the emotional effects of the adoption and alternatives to adoption.
- (4) The Director General must ensure that, before signing the consent form, the following information is fully explained to the parents or guardians:
- (a) options other than adoption for the child's long-term care; and
 - (b) the legal effect of adoption; and
 - (c) possible psychological effects of the adoption on the parent and the child; and
 - (d) how and when the parent's consent to the adoption may be revoked; and
 - (e) how the parent may give the Director General the parent's preferences relating to the child's adoption; and
 - (f) the adoption process under this Act, including:
 - (i) the consent required for an adoption; and
 - (ii) the process for assessing and selecting prospective adoptive parents; and
 - (iii) the Director General's functions relating to the child's adoption; and
 - (iv) the role of the Supreme Court with regard to adoption; and
 - (v) the rights and responsibilities of the parties to an adoption, including those relating to access to information about, and contact with, other parties to an adoption throughout the life of the adopted person.
- (5) Before the consent form is signed, the counsellor nominated in accordance with subsection (2), must sign a statement certifying that:

- (a) the person giving the consent has been counselled by the counsellor; and
- (b) the counsellor is of the opinion that the person understands the effect of signing the consent form.

27 Revocation of consent

- (1) A child or the parent of a child who has consented to his or her adoption may revoke his or her consent by notice at any time before the adoption order is made.
- (2) As soon as possible after receiving a written revocation under this section, the Director General must:
 - (a) give notice of the revocation to the prospective adoptive parents; and
 - (b) make reasonable efforts to give notice of the revocation to anyone else who consented to the adoption.
- (3) The child must be returned to his or her parent as soon as possible after the prospective adoptive parents are given notice of the revocation.
- (4) Despite subsection (1), the Supreme Court may continue to make an adoption order where consent has been revoked, if it is satisfied that it is in the best interest of the child to do so.

PART 7 ADOPTION OF A CHILD

Division 1 Application for adoption to the Supreme Court

28 Application and assessment

- (1) A person who intends to apply for an adoption order from the Supreme Court must:
- (a) make an application to the Supreme Court in the prescribed form; and
 - (b) pay the prescribed fees.
- (2) If an application is filed under subsection (1), the Supreme Court must assess the suitability of the applicant for the purposes of the adoption of a child.

29 Applicant to provide background information

- (1) A person who applies for an adoption order must include in his or her application:
- (a) a sworn statement about his or her background demonstrating that he or she is:
 - (i) a fit and proper person to fulfil the responsibilities of being a parent; and
 - (ii) able to provide a safe and stable family environment for the child; and
 - (b) a police clearance certificate or similar document from his or her country of citizenship and country where the applicant has lived for 12 months or more; and
 - (c) a medical report confirming his or her health condition; and
 - (d) an adoption plan stating how the applicant intends to maintain the cultural, linguistic and religious heritage of the child and if there is an intention to maintain contact with the birth parent, how this will be facilitated.
- (2) For the purpose of paragraph (1)(a), the applicant must provide information about the applicant's social and cultural background, religious

beliefs, domestic relationship, living arrangements, financial circumstances, employment and educational background.

- (3) Despite paragraph (1)(b), if an applicant has not resided in his or her country of citizenship for 10 years or more, he or she is not required to provide a police clearance certificate or similar document from that country.
- (4) A person who applies for an adoption order must also give oral evidence on oath in the Supreme Court as to his or her suitability of being a parent for the child.

Division 2 Requirements for adoption proceedings

30 Hearing to be in closed Court

- (1) Adoption proceedings must not be heard in an open Court.
- (2) A person who is not a party to the proceeding or not the counsel, solicitor or representative of a person who is a party to the proceedings, must not attend the hearing of the application.

31 Counsel assisting the Supreme Court

- (1) The Supreme Court is to appoint counsels to act as a separate representative for the child unless there are special circumstances which justify counsel not being appointed.
- (2) The Supreme Court may request counsel from the State Law Office, Vanuatu's Women's Centre or the Public Solicitor's Office to act as a separate representative for the child.

Division 3 Interim order

32 Supreme Court to make interim orders

- (1) A person must not take custody of a child before the Supreme Court has issued an adoption order under this Act unless taking custody is done in accordance with this section.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 2 years, or to both.
- (3) On an application to the Supreme Court for an adoption order, the Supreme Court may:

- (a) postpone the determination of the application; and
 - (b) make an interim order for the custody of the child in favour of the applicant for the adoption order.
- (4) The applicant to which an interim order under paragraph (3)(b) relates, is responsible for the care and custody of the child during the period the interim order remains in force.
- (5) The Supreme Court must not make an interim order unless it is satisfied that the requirements set out under sections 28 and 29 have been met.
- (6) The Supreme Court may make an interim adoption order only if it is satisfied that the applicant, is a fit and proper person persons to:
- (a) fulfil the responsibilities of a parent; and
 - (b) provide a safe and stable family environment for the child.

33 Terms and conditions of an interim order

- (1) An interim order may be subject to such terms and conditions relating to the maintenance, education and welfare of the child as the Supreme Court thinks fit.
- (2) Subject to subsection (3), an interim order remains in force for such period, not less than 3 months and not exceeding 1 year, as the Supreme Court specifies in the order and may be extended for such further periods, if any, as the Supreme Court from time to time orders.
- (3) The Supreme Court must not make an interim order under this section which will remain in force continuously for periods for which the aggregate is more than 2 years.
- (4) Despite subsection (2), the Supreme Court may, at any time, make an order discharging an interim order and make such order, subject to terms and conditions as it may determine, for the care, custody and guardianship of the child.
- (5) An interim order ceases to have effect on the date of the determination of the application for the adoption order.

Division 4 Adoption orders

34 Power to make adoption order

- (1) The Supreme Court may make an adoption order authorising the applicant to adopt a child.
- (2) The Supreme Court must not make an adoption order authorising the applicant to adopt a child unless:
 - (a) it has requested and considered a report from the Director General and is satisfied that:
 - (i) the child has been give for adoption in accordance with Part 3; and
 - (ii) the applicant has been approved by the Director General as an approved adoptive parent in accordance with Part 4; and
 - (iii) the requirements of matching the child with that applicant set out under Part 5 have been complied with; and
 - (iv) the requirement of consent and counselling set out under Part 6 have been complied with; and
 - (b) the applicant has included in the application, the information and fees required under sections 28 and 29.
- (3) The Supreme Court must only make an adoption order if:
 - (a) the adoption order is in the best interest of the child; and
 - (b) the applicant has attempted to identify and preserve the child's given name or names, identity, language, cultural heritage and religious ties.
- (4) The Supreme Court must ensure that as far as practicable and having regard to the age and understanding of the child, the views and feelings of the child have been ascertained and due consideration has been given to them.
- (5) The Supreme Court must not make an adoption order unless, at the time of the filing in the Supreme Court of the application for the adoption order

- (a) in the case where the applicant is not a citizen of Vanuatu - the applicant has resided in Vanuatu for at least 12 months; and
- (b) in the case where the child is not a citizen – the child is present in Vanuatu.

35 Appeal against refusal to issue an adoption order

If the Supreme Court has refused to issue an adoption order in respect of any child, the person who applied for the order may, within 30 days after the date of the refusal, appeal to the Supreme Court of Appeal.

Division 5 Effect of adoption orders

36 General effect of adoption orders

- (1) The following are the general effects making an adoption order under this Act:
 - (a) the child becomes a child of the adoptive parent; and
 - (b) the adoptive parent becomes parent of the child as if that parent is the biological parent of that child; and
 - (c) the child ceases to be a child of the person who was a parent or guardian of the child before the adoption order was made; and
 - (d) an existing appointment of a person, by will or deed or otherwise in accordance with a law in force in Vanuatu, as guardian of the adopted child ceases to have effect; and
 - (e) a previous adoption of the child ceases to have effect.
- (2) Subsection (1) does not apply for the purposes of the laws relating to incest or other sexual offence (being a law for which the relationship between persons is relevant) and laws relating to the prohibited degrees of marriage.

37 Change of name

- (1) The applicant for an adoption order may request the Supreme Court to change the child's given names or family name.
- (2) The Supreme Court may change the child's given names or family name in the adoption order, but only:
 - (a) with the child's consent, if the child is 12 years of age or over; or

- (b) in any event, after any wishes expressed by the child, having regard to the child's age and level of maturity.

38 Revocation of Adoption

- (1) The Supreme Court may revoke an adoption order for serious reasons on request of the following persons:
 - (a) an adoptive parent; or
 - (b) the child; or
 - (c) the Director General represented by the Attorney General; or
 - (d) a birth parent, or
 - (e) a biological relative of the child including the following:
 - (i) a grandparent; or
 - (ii) a brother; or
 - (iii) a sister; or
 - (iv) an uncle or aunt; or
 - (v) a first cousin.
- (2) The Supreme Court must not revoke an adoption order on the request of an adoptive parent or parents unless the child is over the age of 15 years.
- (3) If a Supreme Court has revoked an adoption order, the Court may make such other orders necessary for the custody.

39 Effect of revocation order

- (1) The Supreme Court must state its reasons for revoking an adoption.
- (2) Revocation causes all the effects of adoption to cease for the future, except for the modification of first names

PART 8 INTER-COUNTRY ADOPTIONS

40 Restrictions on inter-country adoption

- (1) A child who is a citizen is not to be adopted by an applicant who is not a resident or not a citizen unless the provisions of this Part have been complied with.
- (2) A person must not take or send a child who is a citizen to any place outside Vanuatu with a view to adopt the child unless authorized by a Supreme Court order issued in accordance with this Part, .
- (3) Any person who takes or sends a child to any person for the purpose of adoption contrary to subsection (2) commits an offence punishable on conviction to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 5 years, or to both.

41 Application for Adoption of child from Vanuatu by a non-resident or a non-citizen

- (1) An applicant who is not a resident or not a citizen of Vanuatu and who intends to adopt a child who is a citizen must apply to the relevant adoption authority in the country in which the applicant normally resides.
- (2) If the adoption authority of the country concerned is satisfied as to the applicant's suitability to adopt, it must prepare a report on that person in accordance with the prescribed requirements and submit the report to the Director General.
- (3) If a child is available for adoption, and the Director General is satisfied that:
 - (a) there are no other suitable arrangements available in Vanuatu for the care, support and welfare of the child; and
 - (b) the adoption of the child outside of Vanuatu is in the best interest of the child,

the Director General may propose a match of the child with a suitable applicant under subsection (1) and transmit a report on the child to the adoption authority in the country concerned.

- (4) If the Director General and the adoption authority in the country concerned both agree to the adoption, the Director General is to:
 - (a) notify the applicant; and

- (b) refer the application for adoption together with all relevant information and the reports under subsections (2) and (3) to the Supreme Court.
- (5) On receiving notification by the Director General of a match of a child, the applicant must:
- (a) make an application to the Supreme Court in the prescribed form; and
 - (b) pay the prescribed fees.

42 Prohibition on contact with the parents of a child

- (1) Any decision about the matching of a child who is a citizen with an applicant who is not a resident or not a citizen must be made by the Director General, and a prospective adoptive parent, or any person acting on behalf of such person, must not:
- (a) contact or attempt to contact a parent of a child; or
 - (b) procure another person to contact or attempt to contact a parent, before the child has been matched to the adoptive parent by the Director General.
- (2) Subject to subsection (3), any person who contravenes subsection (1) commits an offence punishable on conviction to a fine not exceeding VT100,000 or to a term of imprisonment not exceeding 2 years, or to both.
- (3) Subsection (1) does not apply if:
- (a) the prospective adoptive parent is a relative of the child or will become an adoptive parent jointly with the child's parent; or
 - (b) the contact has been approved by the Director General.

43 Power to make inter-country adoption order

- (1) The Supreme Court may issue an adoption order for a child who is a citizen, in Vanuatu by an applicant who is not resident or not a citizen in Vanuatu if it is satisfied that, in addition to all the other requirements of this Act:
- (a) the Director General and the adoption authority in the country concerned have agreed to the adoption of the child; and

- (b) there are no other suitable arrangements available in Vanuatu for the care, support and welfare of the child; and
 - (c) the child is not prohibited from leaving Vanuatu under any law of Vanuatu or because of an order of the Supreme Court; and
 - (d) the child will be permitted to enter and reside permanently in the applicant's country of residence; and
 - (e) the adoption is in the best interests of the child.
- (2) If the Supreme Court makes an interim order in favour of applicants who are not residents or not citizens of Vanuatu, the Supreme Court may order, in addition to any terms and conditions under sections 32 and 33, that:
- (a) the applicants remain in Vanuatu for the period of the interim order; or
 - (b) the applicants may return to their usual country of residence for the period of the interim order.
- (3) The Supreme Court, may, as a condition of an adoption order, require the applicants to provide to the Director General, semi-annual post-adoption reports, prepared by the adoption authority in the country concerned for a period of up to 2 years.

44 Approval before a child is brought to Vanuatu for adoption

- (1) Before a child who is not a citizen is brought to Vanuatu for adoption, the applicant must obtain the approval of the Director General.
- (2) The Director General must not give his or her approval unless satisfied that the applicant meets the eligibility requirements of this Act.

45 Power of the Supreme Court to make an adoption order for a non-citizen child by citizen or person resident in Vanuatu

- (1) Subject to subsection (2), the Supreme Court may make an adoption order for a child who is not a citizen by an applicant who is citizen or a resident of Vanuatu.
- (2) The Supreme Court may make an adoption order under subsection (1), if it is satisfied that, in addition to all the other requirements of this Act:
 - (a) the Director General has granted approval in accordance with section 44; and

- (b) the relevant adoption authority of the child's country of citizenship has agreed to the adoption of the child; and
 - (c) the child is allowed to reside permanently in Vanuatu; and
 - (d) the adoption is in the best interest of the child;
- (3) The Supreme Court must not make an adoption order under this section if the child is not in Vanuatu.

PART 9 REGISTER OF ADOPTION

46 Adopted Children Register

- (1) The Registrar General of Civil Status is to maintain a register, to be called the Adopted Children Register.
- (2) Every adoption order made by the Supreme Court must be forwarded to the Registrar General of Civil Status within 14 days of the date each order is made.
- (3) The Register General must record all adoption orders forwarded to him or her under subsection (2), in the Adopted Children Register.
- (4) The register must state the following details as shown in the adoption order:
 - (a) the date of the adoption; and
 - (b) details of the child including the place of birth, gender and full name of the child; and
 - (b) details of the adoptive parents including the place of birth, gender and full name of the adoptive parents.
- (5) The Registrar General must make such amendments to the Register of births under the Civil Status (Registration) Act [CAP 61] as are necessary to indicate that a child has been adopted under this Act.

47 Amendment of orders and rectification of registers

- (1) If an adoption order has been made, the Supreme Court may, on the application of the adopter or of the adopted person, amend the order by the correction of any errors in the particulars contained within such orders, and may:
 - (a) if satisfied on the application of the adopter or of the adopted person that within one year beginning with the date of the order:
 - (i) any new name has been given to the adopted person (whether in baptism or otherwise) or taken by him; and
 - (b) any such new name is given or taken either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register,

amend the order by substituting or adding that name in those particulars, as the case may require; or

- (b) if satisfied on the application of any person concerned that a direction made for the marking of an entry in the Adopted Children Register included in the order was wrongly included, revoke that direction.
- (2) If an adoption order is amended or a direction is revoked under subsection (1), the amendment must be communicated to the Registrar General who must as the case may require:
- (a) cause the entry in the Adopted Children Register to be amended accordingly; or
 - (b) cause the marking of the entry in the Adopted Children Register to be cancelled.
- (3) If an adoption order is quashed or an appeal against an adoption is allowed by the Supreme Court, the Supreme Court is to give directions to the Registrar General to cancel:
- (a) any entry in the Adopted Children Register; and
 - (b) any making of an entry in that register which was effected in pursuance of the order.
- (4) The Supreme Court may direct the Registrar to amend any errors in the Register.

48 Restriction on access to records

- (1) Except as provided by this Act or the regulations, the following records are not to be open to inspection by, or made available to, any person, including any party to proceedings before the Supreme Court under this Act:
- (a) records made in connection with the administration or execution of this Act or the former written laws; and
 - (b) any reports made under this Act; and
 - (c) records of any court proceedings under this Act or comparable provisions of former laws.

- (2) Despite subsection (1), the Supreme Court may order the disclosure of identifying information to a person if the disclosure is necessary for the safety, health or well-being of a child.

49 Disclosure to adopted person 18 years or over

- (1) An adopted person who is 18 years of age or over may apply to the Director General for a copy of the following:
- (a) the adopted person's original birth registration; and
 - (b) the adoption order; and
 - (c) any prescribed information relating to the adopted person held by the Director General.
- (2) The Director General must give the applicant a copy of the requested records unless a disclosure has been filed under section 51.

50 Disclosure to parent when adopted person is 18 years or over

- (1) If an adopted person is 18 years of age or over, a parent may apply to the Director General for a copy of one or more of the following:
- (a) the original birth registration with a notation of the adoption and any change of name consequent to the adoption;
 - (b) the adoption order; and
 - (c) any prescribed information relating to the adopted person held by the Director General.
- (2) The Director General must give the applicant a copy of the requested records unless disclosure is prohibited under section 51.

51 Disclosure

The following persons may apply to the Director General to file a written decision prohibiting the disclosure of a birth registration or other record under section 49 or 50:

- (a) an adopted person who is 18 years of age or over and was adopted under this Act; or
- (b) a parent of an adopted person referred to in paragraph (a).

PART 10 OFFENCES

52 Taking away of adopted child by parent or guardian

- (1) A person who was a parent, or a guardian, of a child but who has, by reason of an adoption of the child, ceased to be the parent or guardian of the child, must not take, lead, entice or decoy the child away, or detain the child, with the intent to deprive the adoptive parent or adoptive parents of the child or of the care and custody of the child.
- (2) A person must not receive or harbour a child on behalf of another person where he or she knows, or could with reasonable diligence ascertain, that the other person has taken, led, enticed or decoyed the child away, or is detaining the child, in contravention of subsection (1).
- (3) A person who contravenes subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 2 years, or to both.

53 Payments in consideration of adoptions

- (1) A person must not, whether before or after the birth of a child, make, give or receive or agree to make, give or receive, a payment for or in consideration of:
 - (a) the adoption or proposed adoption of the child; or
 - (b) the giving of consent, or the signing of a consent form, for the adoption of a child; or
 - (c) the transfer of the control or custody of a child with a view to adopting the child; or
 - (d) the making of arrangements with the view to adopting a child.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding VT1000,000 or to imprisonment for a term not exceeding 5 years, or to both.
- (3) Subsection (1), does not apply to reasonable payments in relation to any or all of the following:
 - (a) a payment for legal expenses;
 - (b) a payment made by the adoptive parent or adoptive parents, with the approval in writing of the Supreme 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; and

- (c) the payment of prescribed fees for adoption services under this Act; and
- (d) any other payment prescribed by the Minister or authorised by the Supreme Court.

54 Arrangement for the adoption of a child

(1) For the purpose of this Act, a person is deemed to have made arrangements for the adoption of a child or to take part in arrangements for the placing of a child in the care or custody of another person, if:

- (a) he or she enters into any agreement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, pursuant to an adoption order or otherwise; or
- (b) he or she enters into any agreement or arrangement for, or facilitates, the placing of the child in the care or possession of that other person; or
- (c) he or she initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement for the adoption of the child.

(2) A person who contravenes subsection (1), commits an offence punishable on conviction by a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 2 years, or to both.

55 Restriction on advertising

(1) A person must not (whether or not in relation to a particular child, born or unborn) publish or cause to publish in any form or by any means, an advertisement, news item or any other matter indicating:

- (a) a parent or guardian of a child who intends to have the child adopted; or
- (b) a person who intends to adopt a child; or
- (c) a person is willing to make arrangements with a view to adopting a child.

- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 2 years, or to both.
- (3) Subsection (1) does not apply to publication of any advertisement, public information or other matter approved by the Supreme Court or the Director General.

56 Restriction on publication of identity of parties

- (1) A person must not, in relation to the adoption of a child, publish or distribute, or cause to be published or distributed, by any means, the name, address or other matter reasonably likely to enable the identification of a person who intends to adopt a child, a child who is available for adoption or the parent or guardian of such a child.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 2 years, or to both.
- (3) This section does not apply if the Minister or the Supreme Court has approved the publication or distribution of information in relation to the adoption of a child.

57 Secrecy to be observed

- (1) Subject to this Act, a person must not, directly or indirectly, except in the performance or exercise of his or her functions or powers under this Act, make a record of, or disclose or communicate to any person, information in respect of the affairs or identity of another person (whether living or dead), acquired by him or her in the performance of his or her functions or in the exercise of his or her powers under this Act.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT100,000 or to imprisonment for a term not exceeding 2 years, or to both.
- (3) This section does not apply where a person:
 - (a) is required to produce a document that has come to his or her possession or under his or her control in the Supreme Court;
 - (b) is required to disclose or communicate a matter or thing that has come to his or her attention or is within his or her knowledge to the Supreme Court;

- (c) discloses information or records to a person to whom the information or records relate or to a person who is expressly or impliedly authorised to obtain such information or records by the person to whom the information relates; or
- (d) discloses information or records in connection with the administration of this Act or for such purposes or to such persons as the Minister directs.

58 Destruction of records

- (1) A person must not, except in the performance of his or her functions or in the exercise of his or her powers under this Act, conceal, destroy or remove a document that has come to his or her possession or under his or her control in the performance of his or her functions or exercise of his or her powers under this Act.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 2 years, or to both.

59 False statement

- (1) A person must not, whether orally or in writing, wilfully make a false statement in connection with a proposed adoption or any other matter under this Act.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT200,000 or to imprisonment for a term not exceeding 2 years, or to both.

60 Personation of person who must consent to adoption

- (1) A person must not personate or falsely represent himself or herself to be a person whose consent to the adoption of a child is required by this Act.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT200,000 or to imprisonment for a term not exceeding 2 years, or to both.

61 Witnessing of consent

- (1) A person must not subscribe his or her name as a witness to the signature of a person in a consent form to the adoption of a child unless:
 - (a) he or she is satisfied as to the identity of the person signing the consent; and

- (b) he or she takes such steps to satisfy himself that the person signing the consent form understands the effect of the consent; and
 - (c) the consent form bears the date on which he or she subscribed his or her name as a witness.
- (2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT200,000 or to imprisonment for a term not exceeding 2 years, or to both.

62 General offence

A person who fails to comply with any other provision of this Act, commits an offence punishable on conviction to a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 2 years, or to both.

PART 11 MISCELLANEOUS

63 Power to make Regulations

- (1) The Minister may, on the recommendation of the Director General, make Regulations, not inconsistent with this Act for the better carrying out of the provisions of this Act, and prescribe anything that may be prescribed under the provisions of this Act.
- (2) Without limiting the generality of subsection (1), Regulations made under this section may provide for all or any of the following:
 - (a) the forms to be used for the purposes of this Act;
 - (b) the manner and form for witnessing a consent for adoption;
 - (c) the making, correction or cancellation of entries in the Register of Adoptions;
 - (d) the furnishing of copies of, or extracts from, matters included in the Register of Adoptions,
 - (e) the assessment of the suitability of persons to be approved to adopt, and the matching of adoptive parents to a child;
 - (f) the form and content of the Register of Approved Adoptive Parents and carers;
 - (g) the accreditation of counsellors and other adoption service providers;
 - (h) fees and charges for adoption services under this Act;
 - (i) penalties for an offence against the Regulations.

64 Custom adoption

The provisions of this Act do not in any way affect any adoption made in accordance with any prevailing customs in Vanuatu prior to or after the commencement of this Act.

65 Pre-independence existing laws

The following laws cease to have effect in Vanuatu:

- (a) Adoption Act 1958 (UK); and

- (b) all Articles and Orders made under the French Civil Code relating to adoption; and
- (c) any other British and French laws relating to adoption applied before the commencement of this Act.

66 Transitional Provisions

- (1) An adoption order or interim order made under any of the laws set out under section 65 before the commencement of this Act continues in force under this Act as if the order was made under this Act.
- (2) A valid consent to the adoption of a child:
 - (a) given under any of the laws set out under section 65 before the commencement of this Act ; and
 - (b) that has not been revoked before the commencement of this Act,is taken to be a consent given in accordance with this Act.
- (3) If an application for an adoption order is made under any of the laws set out under section 65 before the commencement of this Act, the Supreme Court is to continue to deal with that application under that law.
- (4) To avoid doubt, this Act does not apply to an application under subsection (3).

67 Commencement

This Act commences on 1 July 2020.