

## ADOPTION OF CHILDREN.

### ADOPTION OF CHILDREN ORDINANCE 1938.

#### No. 2 of 1938.

#### An Ordinance Relating to the Adoption of Children.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1. This Ordinance may be cited as the *Adoption of Children Ordinance 1938.*<sup>(a)</sup> Short title.
2. In this Ordinance, unless the contrary intention appears— Definitions.
  - “adopter” means a person authorized under this Ordinance to adopt an infant;
  - “adopted child” means an infant authorized to be adopted under this Ordinance;
  - “infant” means a person under the age of twenty-one years;
  - “the Court” means the Court of Petty Sessions.
- 3.—(1.) Upon application by any person desirous of adopting an infant who has never been married, the Court may, subject to the provisions of this Ordinance, make an adoption order authorizing the applicant to adopt the infant. Power to make adoption order.  
(2.) Except in the case of an application for an adoption order by two spouses jointly, an adoption order authorizing more than one person to adopt an infant shall not be made.
- 4.—(1.) An adoption order shall not be made in any case where— Restrictions on making adoption orders.
  - (a) the applicant is under the age of twenty-five years; or
  - (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, or, being of the same sex, are of the same blood, the Court may, if it thinks fit, make the adoption order although the applicant is under the age of twenty-five years or is less than twenty-one years older than the infant.

  - (2.) An adoption order shall not, unless the Court is satisfied that exceptional circumstances justify the order, be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female.
  - (3.) An adoption order shall not be made except with the consent in writing of every person who—
    - (a) is a parent or guardian of the infant in respect of whom the application is made;

<sup>(a)</sup> Made on 9th February, 1938; published in *Gazette*, 10th February, 1938.

- (b) has the actual custody of the infant; or
- (c) is liable to contribute to the support of the infant:

Provided that the Court may dispense with any consent required under this sub-section in any case where the person whose consent is to be dispensed with—

- (a) has abandoned or deserted the infant;
- (b) cannot be found;
- (c) is incapable of giving consent;
- (d) being a person liable to contribute to the support of the infant has persistently neglected or refused so to do; or
- (e) is a person whose consent should, in the opinion of the Court and in all the circumstances of the case, be dispensed with.

(4.) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the Court may dispense with such consent—

- (a) where the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent; or
- (b) where the spouses have separated and are living apart and the separation is likely to be permanent.

Matters with respect to which the Court to be satisfied.

5. The Court, before making an adoption order, shall be satisfied—

- (a) that every person whose consent is necessary under this Ordinance and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application has been made, and in particular, in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) that the order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and
- (c) that the applicant has not received or agreed to receive, and that no other person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption of the infant, except such as the Court sanctions.

The Court may impose terms and conditions.

6. The Court in an adoption order may impose such terms and conditions as it thinks fit, and may require the adopter by bond or otherwise to make for the adopted child such provision as it thinks expedient and just.

7. A copy of every adoption order containing particulars as to the name in full of the infant, the place and date of its birth, the names of its natural parents and of the adopter or adopters shall be forwarded by the Clerk of the Court to the Registrar of Births, Deaths and Marriages, who shall record the particulars in the register of births.

Particulars to be forwarded to Registrar.

8.—(1.) The Court may, on application by the adopter or adopters, authorize the alteration of the surname of the adopted child to that of the adopter or adopters.

Alteration of name of adopted child.

(2.) The Registrar of Births, Deaths and Marriages shall amend the particulars in the register of births relating to any adopted child whose surname has been altered in pursuance of the last preceding sub-section.

9.—(1.) Upon the making of an adoption order all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child shall, in relation to the future custody, maintenance and education of such child, including the right to appoint a guardian or to consent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the child was born to the adopter in lawful wedlock.

Effect of adoption order.

(2.) Where an infant has been adopted by two spouses, the infant shall, in the event of any question arising between the spouses as to the custody, maintenance, education of, or access to, the infant, be deemed by the Court exercising jurisdiction in the matter, to have been born to the two spouses in lawful wedlock.

(3.) Except as hereinafter provided, on, from and after the making of the adoption order, the adopted child—

- (a) shall be entitled to succeed (whether under any intestacy or disposition) to the real and personal property of the adopter or adopters to the same extent as would have been the case if such child had in fact been a child born to the adopter or adopters in lawful wedlock:

Provided that an adopted child shall not have—

- (i) any right of succession to the real or personal property of a relative of the adopter or adopters who dies intestate; or
- (ii) any right to any real or personal property under any disposition made by a person or persons, other than the adopter or adopters, in favour of the issue, child or children of the adopter or adopters, unless it appears that it was the intention of

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the person or persons making the disposition to include adopted children as objects of such disposition;

- (b) shall not have any right of succession to any real or personal property of its natural parent or parents which, if the adoption order had not been made, might have been claimed (whether under any intestacy or disposition) by such child as a child born to its natural parent or parents in lawful wedlock, unless, in the case of a disposition, such child is expressly named therein:

Provided that the making of the adoption order shall not deprive the adopted child of—

- (i) any right of succession to the real or personal property of a relative of its natural parent or parents who dies intestate; or
- (ii) any right to any real or personal property under any disposition made by a person or persons, other than its natural parent or parents, in favour of the issue, child or children of its natural parent or parents, unless it appears that it was the intention of the person or persons making the disposition to exclude as objects of such disposition such of the children of the natural parent or parents as have been adopted by another person or other persons.

(4.) The making of an adoption order shall not affect any estate, right or interest in any real or personal property to which any person has become entitled, either mediately or immediately in possession, expectancy or contingency by virtue of any disposition made before the making of the adoption order, or by virtue of any devolution by law on the death of any person dying before the making of the adoption order.

(5.) The law for the time being in force in the Territory with respect to the marriage of persons within the degrees of consanguinity or affinity which may affect at law the validity of marriages in fact celebrated, and the provisions of sections seventy-three, seventy-four and seventy-five of the *Crimes Act*, 1900, of the State of New South Wales, in its application to the Territory, as amended by any law of the Territory for the time being in force, shall apply to any infant adopted in pursuance of this Ordinance, both as respects its relations by adoption and as respects its relations by blood.

10. An adopter shall not marry his or her adopted child, and any marriage contracted in contravention of this section shall be void. Marriage between adopter and adopted child prohibited.

11.—(1.) Upon the hearing of any application for an adoption order, the Court may— Interim order.

(a) postpone the hearing; and

(b) make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms and conditions as to the maintenance, education and supervision of the welfare of the infant as the Court thinks fit.

(2.) All such consents as are required to an adoption order shall be necessary to an interim order, but subject to a like power on the part of the Court to dispense with any such consent.

12. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Ordinance. Power to make subsequent order in respect of infant already subject to an order.

13. Where, at the date of the commencement of this Ordinance, any infant is in the custody of, and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any *de facto* adoption, the Court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorizing him or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that, in all the circumstances of the case, it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made. Provisions as to existing *de facto* adoptions.

14.—(1.) Upon application by a person authorized by the Minister, the Court may, in its discretion, vary or discharge an adoption order, subject to such terms and conditions as it thinks fit; but the adoption order shall not be varied or discharged unless the Court is satisfied that the variation or discharge of the order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant. Power to vary or discharge adoption order.

(2.) Where an adoption order is discharged then, subject to the conditions (if any) named in the discharging order, the infant and its natural parents and the adopter shall be deemed for all

purposes to be restored to the same position *inter se* as existed immediately before the adoption order was made:

Provided that such restoration shall not affect anything lawfully done or any right or interest which became vested in the infant while the adoption order was in force.

Applications  
may be heard  
in camera.

**15.—**(1.) Applications under this Ordinance may be heard by the Court in open court or in public or private chambers.

(2.) At the hearing of any application, the Court may order that any person, other than the parties thereto and the persons representing them upon the application, shall be excluded from the court room or other place of hearing.

(3.) Where the Court makes an order under the provisions of the last preceding sub-section, particulars of, or relating to, the application shall not be published, in any newspaper or otherwise, unless the Court directs that such particulars may be published.

(4.) Any person who publishes particulars of, or relating to, an application in contravention of the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for one month.

Rules and  
regulations.

**16.** The Attorney-General may make rules or regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Ordinance, and, in particular, prescribing matters providing for and in relation to the practice and procedure before Magistrates and in the Court in respect of proceedings of any kind under this Ordinance.

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