
ADOPTION OF CHILDREN.

No. 6 of 1896.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by the Acts No. 35 of 1915,* No. 5 of 1916,† No. 9 of 1921,‡ and No. 57 of 1926.§

AN ACT to make provision for the Adoption of Children.

[Assented to 23rd September, 1896.]

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

1. The short title of this Act is the *Adoption of Children Act*, 1896-1921.

Short title.
No. 6 of 1896,
s. 1.
No. 9 of 1921,
s. 6.

2. In this Act, and in all rules made thereunder, if not inconsistent with the context—

Interpre-
tation.
No. 6 of 1896,
s. 2.
No. 35 of
1915, s. 2.

“Child” means any boy or girl under the age of fifteen years;

“Deserted child” means any child who, in the opinion of the Judge dealing with such child under the provisions of the Act, is deserted and has ceased to be cared for and maintained by its parents, or by such one of them as is living, or by the guardian of such child, or by the mother of such child if the child is legitimate;

* Assented to 13th September, 1915. † Assented to 17th November, 1916.
‡ Assented to 8th November, 1921. § Assented to 24th December, 1926.

Amended by
No. 35 of
1915, s. 2.

“Adopted child” means any child concerning whom an order of adoption has been made as herein provided; and “adopting parent” means any person who is by any such order of adoption, as herein provided, authorised to adopt a child; and, in case of an order being made in favour of a husband and wife on their joint application, shall mean and include both husband and wife; “Judge” means a Judge of the Supreme Court; “Prescribed” means prescribed by rules to be made by the Governor under this Act.

By whom
female child
may be
adopted.
No. 6 of 1896,
s. 3.
No. 5 of 1916,
s. 2.

3. Upon the application in writing, in the prescribed form, to a Judge by—

- (1) husband and wife jointly, or by
- (2) a married woman alone, but with the written consent of her husband, or by
- (3) any unmarried woman or a widow who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) any unmarried man or a widower who is, in the opinion of the Judge, at least thirty years older than the child,

an order of adoption of a female may be made by the Judge in favour of the applicant, in the prescribed form, and subject to the provisions of this Act.

By whom
male child
may be
adopted.
No. 6 of 1896,
s. 4.
No. 5 of 1916,
s. 3.

4. Upon the application in writing, in the prescribed form, to a Judge by—

- (1) husband and wife jointly, or by
- (2) a married man alone, but with the written consent of his wife, or by
- (3) any unmarried man or a widower who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) any unmarried woman or a widow who is, in the opinion of the judge, at least thirty years older than the child,

an order of adoption of a male child may be made by the Judge in favour of the applicant, in the prescribed form and subject to the provisions of this Act.

5. Before making such order of adoption, the Judge—

- (1) may compel the attendance before him of any witness; and, for that purpose, may direct the issue and service upon the witness of a summons in the prescribed form;
- (2) shall take evidence *viva voce*, upon oath or by affidavit, in proof of or concerning any fact, matter, or thing required by this Act or by the Judge to be proved;
- (3) shall be satisfied that the child is under the age of fifteen years or if over that age has been under the care and custody of some person for a period of three years, during which time such a person has acted as an adopting parent or otherwise has acted in *loco parentis*; that the person proposing to adopt the child is of good repute and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child; that the welfare and interest of the child will be promoted by the adoption, and that the consents required by this Act have been duly signed and filed;
- (4) shall be satisfied that the child, if over the age of twelve years, consents to the adoption;
- (5) shall require the consent in writing of the parents, whether living within the colony or beyond the limits thereof, or such one of them as is living at the date of such application, or, if both the parents are dead, then of the legal guardian of the child, or if one of the parents has deserted the child, then the consent of the other parent;
- (6) shall not require any such consent in the case of a deserted child.

Consents required previous to adoption of child.
No. 6 of 1896, s. 5.
No. 9 of 1921, s. 2.

Amended by No. 9 of 1921, s. 2.

6. Except by husband and wife, as hereinbefore mentioned, no child shall be adopted by more than one person.

Child can be adopted by one person only.
No. 6 of 1896, s. 6.

7. When an order of adoption has been made, the adopted child shall, for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of the adopting parents.

Adopted child to have legal status of legitimate child.
No. 6 of 1896, s. 7.

Exception.

Provided always, that such adopted child shall not by such adoption—

- (1) acquire any right, title, or interest whatsoever in any property which would devolve on any child of the adopting parent by virtue of any deed, will, or instrument whatsoever prior to the date of such order of adoption, unless it is expressly so stated in such deed, will or instrument; nor
- (2) be entitled to take property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation; nor
- (3) acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last mentioned child, or otherwise than directly through such adopting parent.

Adopting parent to have legal status of natural parent.
No. 6 of 1896, s. 8.

8. When an order of adoption has been made the adopting parent shall, for all purposes, civil, criminal, or otherwise howsoever, be deemed in law to be the parent of such adopted child, and be subject to all liabilities affecting such child as if such child had been born to such adopting parent in lawful wedlock; and such order of adoption shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his or her natural parents, except the right of the child to take property as heir or next of kin of his natural parents directly or by right of representation.

Order may be reversed or discharged.
No. 6 of 1896, s. 9.

9. It shall be lawful for any Judge of the Supreme Court, in his discretion, to vary, reverse, and discharge an order of adoption, whether made by himself or any other judge, subject to such terms and conditions as he thinks fit.

Name of adopted child.
No. 6 of 1896, s. 10.
No. 9 of 1921, s. 3.

*10. The order of adoption shall confer the surname of the adopting parent on the adopted child.

* In the Act No. 6 of 1896, section 10, read as follows:—

"10. The order of adoption shall confer the surname of the adopting parent on the adopted child *in addition to the proper name of the child.*"

The words in italics above were deleted from the said section 10 by section 3 of the Act No. 9 of 1921, which also provided that every order of adoption made under the Act No. 6 of 1896 before the commencement of the Act No. 9 of 1921 shall have effect as if the said words in italics above were omitted from the said section 10 as from the commencement of the Act No. 6 of 1896.

11. The record of any proceedings in the Supreme Court under the principal Act shall not be open to public inspection except for some reasonable and proper purpose and with the sanction in writing of the Master.

Inspection of records.
No. 9 of 1921, s. 4, now inserted in re-print as s. 11.

12. It shall be the duty of the Registrar of the Supreme Court to furnish to the Registrar General under the Registration of Births, Deaths, and Marriages Act, 1894, at intervals of not exceeding six months, a return in writing in the prescribed form of the orders of adoption made under this Act, and the Registrar General shall cause an entry of every such order to be made in the entry of the birth of the adopted child in the register of births.

Registration by Registrar General of Orders of Adoption.
No. 9 of 1921, s. 5, now inserted in re-print as s. 12.

13. (1) When an order of adoption has been made, before or after the commencement of the Adoption of Children Act Amendment Act, 1926, in respect of a child registered under Part IV. of the Registration of Births, Deaths, and Marriages Act, 1894, the district registrar having the custody of the register containing the entry of the birth of such child may, on an application being made to him in the prescribed form by the adopting parent, and on payment of the prescribed fee, make a fresh entry in the register in the prescribed form of the birth of the child, with particulars of the date and place of birth and the Christian name or names of the child, and the surname of the adopting parent conferred on the child, and the name and surname and residence of the adopting parent, and a reference to the order of adoption.

Registration of child in the name of adopting parent.
Inserted by No. 57 of 1926, as s. 10A, now renumbered s. 13.

The index of the register kept in the office of the district registrar, and the index of the register kept in the office of the Registrar General shall, in such case, be amended so as to refer to such fresh entry, and the original entry of the birth of the child and the duplicate thereof kept in the general registry, shall not be open to inspection except with the approval of the Registrar General.

(2) In this section "prescribed" means prescribed by regulations made under the Registration of Births, Deaths, and Marriages Act, 1894.

14. The Governor may from time to time make such rules as he thinks fit, prescribing the forms and mode of procedure to be used in exercising the jurisdiction hereby conferred upon any Judge, and prescribing the

Power to make rules.
No. 6 of 1896, s. 11.

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mode of registering and keeping a proper register of all orders made under this Act, and also prescribing the fees to be paid in respect of such procedure, registration, and otherwise, and generally giving full effect to the provisions of this Act.