

WESTERN AUSTRALIA.

ADOPTION OF CHILDREN.

No. 6 of 1896.

[As amended by No. 35 of 1915, (a); No. 5 of 1916, (b); No. 9 of 1921, (c); No. 57 of 1926, (d); No. 31 of 1945, (e); No. 22 of 1949, (f); No. 53 of 1953, (g); and No. 57 of 1953, (h), and reprinted for the second time pursuant to the Amendments Incorporation Act, 1938.]

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 the 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, 1896-1953*.

Short title.
No. 6 of 1896,
s. 1; amended
by No. 57 of
1953, s. 1 (3).

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

Interpreta-
tion.
No. 6 of 1896,
s. 2; amended
by No. 35 of
1915, s. 2;
No. 22 of
1949, s. 3.

“Child” means any boy or girl under the age of twenty-one 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 ex-nuptial;

(a) Assented to 13th September, 1915.

(b) Assented to 17th November, 1916.

(c) Assented to 8th November, 1921.

(d) Assented to 24th December, 1926.

(e) Assented to 30th January, 1946.

(f) Assented to 22nd October, 1949.

(g) Assented to 9th January, 1951.

(h) Assented to 9th January, 1954.

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; amended
by 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; amended
by 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. (1) 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;

Consents
required
previous to
adoption of
child.
No. 6 of 1896,
s. 5; amended
by No. 9 of
1921, s. 2;
No. 22 of
1949, s. 4;
No. 57 of
1953, s. 2.

- (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 State 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,

Adoption of Children.

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;
- (7) may dispense with the consent of the putative father of an ex-nuptial child;
- (8) may, if of opinion that any parent or legal guardian is for any reason unfit to have the custody of the child; including badness of character, unsoundness of mind, or aversion or apathy towards the child, and that notice of the application for the order of adoption has been given to the parent or guardian, dispense with the consent of that parent or guardian;
- (9) may dispense with any consent referred to in paragraphs (4) or (5) of this section where in any special circumstances the judge deems it expedient to do so;

Cf. S.A.
Adoption of
Children Act,
1925-1943,
s. 7.

Cf. N.S.W.
Child
Welfare Act,
1923, s. 126,
proviso (1).

(11) [Inserted by No. 22 of 1949, s. 4 (d) and repealed by No. 57 of 1953, s. 2 (c).]

Domicile.
Added by
No. 58 of
1893, s. 2.

5A. An order of adoption shall not be made unless, at the date of the application, either the applicant or the child to whom the application refers is domiciled in the State.

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

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

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

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.

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

- (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.

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.

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

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 and any variation, reversal or discharge shall incorporate a direction as to the name by which the child concerned in

Order may be reversed or discharged. No. 6 of 1896, s. 9; amended by No. 22 of 1949, s. 5.

the order of adoption varied, reversed, or discharged, shall thereafter be known and a direction as to the names of the persons who shall thereafter be regarded as the parents of the child.

Added by
No. 57 of
1953, s. 3.

9A. Where an Order of Adoption is varied, reversed or discharged and the particulars of the terms and conditions of the variation, reversal or discharge are filed with the Registrar of the Supreme Court, he shall forthwith give to the Registrar General the particulars, whereupon the Registrar General shall endorse in accordance with the particulars given to him—

- (a) the registration of the birth of the child concerned made pursuant to Part IV of the Registration of Births, Deaths and Marriages Act, 1894-1948;
- (b) the re-registration of the birth made pursuant to sections twelve A or thirteen of this Act; or
- (c) the registration of the birth made pursuant to section thirteen B of this Act.

Name of adopted child.
No. 6 of 1896, s. 10; amended by No. 9 of 1921, s. 3; No. 22 of 1949, s. 6.
Cf. No. 4 of 1914, s. 3, now renumbered s. 31 App. 1934 Sess. Vol.

*10. The order of adoption shall confer the surname of the adopting parent on the adopted child and shall confer and set forth the name (commonly called the Christian name), by which the child is thereafter to be known.

Inspection of records.
No. 9 of 1921, s. 4, inserted in the 1943 Reprint† as s. 11.
Cf. No. 5 of 1916, s. 1.

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.

* 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 reads as follows:—

3. Section ten of the Adoption of Children Act, 1896, is hereby amended by omitting the words "in addition to the proper name of the child," and every order of adoption made under the principal Act before the commencement of this Act shall have effect as if those words were omitted as from the commencement of the principal Act.

† i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

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 information in respect of the terms and conditions of any variation, reversal or discharge of an order for adoption, and the Registrar General shall cause an entry of every such order and such information 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, inserted in the 1943 Reprint as s. 12; amended by No. 22 of 1949, s. 7.

12A. (1) Where, after the coming into operation of the Adoption of Children Act Amendment Act, 1949, an order of adoption is made under the provisions of this Act or filed under the provisions of section thirteen A of this Act in respect of a child whose birth is registered pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948, the Registrar of the Supreme Court shall forthwith give to the Registrar General a certified copy of the order of adoption, together with information in respect of the date and place of birth of the child and the name (commonly called the Christian name), by which the child shall be known after the adoption, the surname conferred on the child by adoption and the name and surname and residence of the adopting parent or parents.

Registrar of Supreme Court to furnish certain particulars to Registrar General. Added by No. 22 of 1949, s. 8; amended by No. 57 of 1953, s. 4.

(2) On receipt of the certified copy and information referred to in the last preceding subsection, the Registrar General shall, in the prescribed form, re-register the birth of the child in accordance with the particulars disclosed.

(3) [Repealed by No. 57 of 1953, s. 4 (b).]

(4) The index of the register which is kept in the office of the district registrar and in the office of the Registrar General respectively, shall in each case be amended so as to refer to the re-registration.

† i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

(5) The original entry of the birth of the child, the duplicate of that original kept in the general registry shall not be open to inspection and a certified copy of the original entry of the birth of the child or the duplicate of that original which is kept in the general registry or the entry relating to the re-registration of the birth of the child shall not be issued, except with the approval of the Registrar General.

(6) In this section "prescribed" means prescribed by regulations made under the Registration of Births, Deaths and Marriages Act, 1894-1948.

Registration in the name of adopting parent.
 Inserted by No. 57 of 1926, as s. 10A, renumbered s. 13 in the 1943 Reprint.*
 Repealed and re-enacted by No. 22 of 1949, s. 9; amended by No. 57 of 1953, s. 5.

13. (1) (a) Where before the commencement of the Adoption of Children Act Amendment Act, 1949, an order of adoption has been made under the provisions of this Act or a certified copy of an Order of Adoption has been filed in the Supreme Court under the provisions of the next succeeding section in respect of a child whose birth is registered pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948, the Registrar General on application being made to him in the prescribed form and on production of a certified copy of the Order of Adoption and on payment of the prescribed fee by the adopting parent or a person having knowledge of the true facts of the case shall in the prescribed form re-register the birth of the child in accordance with the particulars disclosed in the Order of Adoption, and in the firstmentioned prescribed form.

(b) 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 each case, be amended so as to refer to the re-registration.

(c) The original entry of the birth of the child and the duplicate thereof kept in the general registry, shall not be open to inspection and no certified copy of the original entry of the birth of the child or the

* i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.

duplicate thereof, kept in the general registry or the entry relating to the re-registration of the birth of the child, shall be issued, 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, 1894-1948.

13A. (1) The Minister for Child Welfare may make arrangements with the Minister or other appropriate authority administering any law relating to the adoption of children in any other State or territory of the Commonwealth or in any part of Her Majesty's Dominions, for the transmission to or by him, as the case requires, of a certified copy of an order of adoption, whether the order is made before or after the coming into operation of the Adoption of Children Act Amendment Act (No. 2), 1953, concerning a child born in this State and adopted under the law of that other State, territory or Dominion or born in that other State, territory or Dominion and adopted under the provisions of this Act.

Repealed and
re-enacted by
No. 57 of
1953, s. 6.

(2) Where a certified copy of an order of adoption made in any other State or territory of the Commonwealth or a part of Her Majesty's Dominions, whether the order is made before or after the coming into operation of the Adoption of Children Act Amendment Act (No. 2), 1953, is received in pursuance of an arrangement made under the provisions of subsection (1) of this section, it shall be filed in the Supreme Court and thereupon shall be dealt with as if it were an order of adoption made under the provisions of this Act.

(3) In this section the expression, "Order of Adoption" includes an order varying, reversing, or discharging an Order of Adoption.

Added by
No. 57 of
1953, s. 7.

13B. (1) Where an order of adoption in respect of a child whose birth is not registered in this State pursuant to the provisions of Part IV. of the Registration of Births, Deaths and Marriages Act, 1894-1948, is—

- (a) made under the provisions of this Act; or
- (b) filed in the Supreme Court in pursuance of subsection (2) of section thirteen A of this Act,

the Registrar of the Supreme Court shall forthwith give to the Registrar General a certified copy of the Order of Adoption together with particulars in respect of the date and place of birth of the child and the name (commonly called the Christian name) by which the child shall be known after the adoption, the surname conferred on the child by adoption and the name and surname and place of residence of the adopting parent or parents.

(2) (a) On receipt of the certified copy and particulars referred to in the last preceding subsection the Registrar General shall in the prescribed form, register the birth of the child in accordance with the particulars disclosed.

(b) The registration of the birth of the child shall not be open to inspection and a certified copy of the registration of birth shall not be issued, except with the approval of the Registrar General.

(3) In this section "prescribed" means prescribed by regulation made under the Registration of Births, Deaths and Marriages Act, 1894-1948.

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 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.

Power to
make rules.
No. 6 of
1896, s. 11;
renumbered
s. 14 in the
1943 Reprint.*

* i.e., the reprint of the Adoption of Children Act, 1896-1921, contained in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943.