

NORFOLK



ISLAND

Adoption of Children Act 1932

No. 16 of 1932

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ADOPTION OF CHILDREN ACT 1932

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Adoption of Children Act 1932

An Act relating to the Adoption of Children.

Short title

1. This Act may be cited as the *Adoption of Children Act 1932*.

Definitions

2. In this Act, unless the contrary intention appears —
“adopter” means a person authorised under this Act to adopt an infant;
“adopted child” means an infant authorised to be adopted under this Act;
“infant” means a person under the age of 18 years;
“the Court” means the Court of Petty Sessions.

Power to make adoption order

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 Act, make an adoption order authorising the applicant to adopt the infant.

- (2) Except in the case of an application for an adoption order by two spouses jointly, an adoption order authorising more than one person to adopt an infant shall not be made.

Restrictions on making adoption orders

4. (1) An adoption order shall not be made in any case where —
 - (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;
- (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 subsection in any case where the person whose consent is to be dispensed with —

- (d) has abandoned or deserted the infant;
- (e) cannot be found;
- (f) is incapable of giving consent;
- (g) being a person liable to contribute to the support of the infant has persistently neglected or refused so to do; or
- (h) 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 Act 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.

Particulars to be forwarded to Registrar

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.

Alteration of name of adopted child

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

(2) The Registrar of Births, Deaths and Marriages shall amend the particulars in the Register of Births kept under the *Registration of Births, Deaths and Marriages Act 1963* relating to any adopted child whose surname has been altered by subsection 8(1).

Effect of adoption order

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.

(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 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 Norfolk Island 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 shall apply to any infant adopted in pursuance of this Act both as respects its relations by adoption and as respects its relations by blood.

Marriage between adopter and adopted child prohibited

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

Interim order

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

- (a) postpone the hearing; and
- (b) may 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.

Power to make subsequent order in respect of infant already subject to an order

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 Act.

Provisions as to existing de facto adoptions

13. Where at the date of the commencement of this Act 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 authorising 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.

Power to vary or discharge adoption order

14. (1) Upon application by a person authorised by the Commonwealth

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.

(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.

Rules of Court

15. (1) The Commonwealth Minister may make rules of court for regulating the practice and procedure in respect of proceedings of any kind under this Act.

(2) All rules of court made in pursuance of this section shall be published or notified in the *Gazette*.

NOTES

The *Adoption of Children Act 1932* as shown in this consolidation comprises Act No. 16 of 1932 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Adoption of Children Act 1932</i>	1, 1932	7.4.32	
<i>Administration Act 1936</i>	14, 1936	16.12.36	
<i>Adoption of Children Act 1963</i>	8, 1963	17.10.63	
<i>Ordinances Revision Act 1964</i>	6, 1964	30.6.64	
<i>Ordinances Revision (Age of Majority) Act 1980</i>	34, 1980	15.1.81	

[Previously consolidated as at 1 December 2003 - Re-issued 22 July 2009]

<i>Interpretation (Amendment) Act 2012</i>	14, 2012	28.12.12	
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[to substitute throughout —
Commonwealth Minister for
Minister; and to substitute
Minister for executive
member]

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345, 382–390)
as amended by			
Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018	28 Sept 2018 (F2018L01377)	Sch 5 (item 1): 29 Sept 2018 (s 2(1) item 1)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provision affected	How affected
1	am 2, 1963
2	am 14, 1936; 6, 1964; 34, 1980
3	am 14, 1936
7	am 14, 1936; 8, 1963; 6, 1964
8(2)	rs 8, 1963
9	am Ord No 2, 2015 (as am by F2018L01377)
15(1)	am 6, 1964
15(3)	rep 6, 1964