

ADOPTION OF CHILDREN ORDINANCE 1951.⁽¹⁾

No. 23 of 1951.

An Ordinance relating to the Adoption of Children.

BE it ordained by the Administrator of the Government of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1950*, as follows:—

- Short title. **1.** This Ordinance may be cited as the *Adoption of Children Ordinance 1951*.⁽¹⁾
- Commencement. **2.** This Ordinance shall come into operation on a date to be fixed by the Administrator by notice⁽¹⁾ in the *Gazette*.
- Repeal. **3.** The *Adoption of Children Ordinance 1936*⁽²⁾ of the Territory of New Guinea is repealed.
- Definitions. **4.** In this Ordinance, unless the contrary intention appears—
 “adopted child” means a child authorized to be adopted under this Ordinance;
 “adopting parent” means a person authorized under this Ordinance to adopt a child, and, where two spouses are jointly so authorized, includes both spouses;
 “child” means a person, other than a native, under the age of twenty-one years;
 “Registrar-General” means, in relation to the Territory of Papua, the Registrar-General appointed under the *Registration of Births, Deaths, and Marriages Ordinance, 1912-1937*⁽³⁾ of that Territory and, in relation to the Territory of New Guinea, the Registrar-General appointed under the *Registration of Births, Deaths, and Marriages Ordinance 1935-1950*⁽⁴⁾ of that Territory;
 “the Court” means the Supreme Court of the Territory.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Cwlth. Administrator in Council.	Date on which notified in <i>Cwlth. Gaz.</i>	Date on which took effect.
31.8.1951	6.9.1951	18.9.1951 (<i>Papua and N.G. Govt. Gaz.</i> of 18.9.1951)

(2) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. III., on pp. 3173-3178.

(3) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. IV., on pp. 3927-3941.

(4) The *Registration of Births, Deaths, and Marriages Ordinance 1935-1941* is printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. IV., on pp. 4323-4337; as to subsequent amendments see the Supplementary Table printed in Part C of Volume II.

5.—(1.) Upon application by a person desirous of adopting a child, the Court may, subject to the provisions of this Ordinance, make an adoption order authorizing the applicant to adopt the child. Power to make adoption order.

(2.) Except in the case of an application for an adoption order by two spouses jointly, the Court shall not make an adoption order authorizing more than one person to adopt a child.

(3.) An adoption order shall not be made in respect of a child who has at any time married.

6.—(1.) Subject to this section, an adoption order shall not be made in any case where the applicant is— Restrictions on making of adoption order.

- (a) under the age of twenty-five years; or
- (b) less than twenty-one years older than the child in respect of whom the application is made.

(2.) Where the applicant and the child 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 an adoption order although the applicant is under the age of twenty-five years or is less than twenty-one years older than the child.

(3.) Subject to section sixteen of this Ordinance, the Court shall not make an adoption order in any case where the sole applicant is a male and the child in respect of whom the application is made is a female, unless the Court is satisfied that exceptional circumstances justify the order.

(4.) 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 child in respect of whom the application is made;
- (b) has the actual custody of the child; or
- (c) is liable to contribute to the support of the child.

(5.) The Court may dispense with any consent required under the last preceding sub-section in any case where the person whose consent is to be dispensed with—

- (a) has abandoned or deserted the child;
- (b) cannot be found;
- (c) is incapable of giving his consent;
- (d) being a person liable to contribute to the support of the child, has persistently neglected or refused to do so; 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.

(6.) Except as provided in the next succeeding sub-section, an adoption order shall not be made upon the application of one of two spouses without the consent of the other of them.

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(7.) The Court may dispense with the consent referred to in the last preceding sub-section—

- (a) where the person whose consent is required 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 Court to be satisfied.

7. The Court, before making an adoption order in respect of a child, 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 a parent, understands that the effect of the adoption order will be permanently to deprive him of his parental rights in respect of the child;
- (b) that the order, if made, will be for the welfare of the child, due consideration being given to the wishes of the child, having regard to his age and understanding; 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 child, except such as the Court sanctions.

Power of Court to impose terms and conditions.

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

Particulars to be forwarded to Registrar-General.

9.—(1.) The Registrar of the Court shall forward a copy of every adoption order and of every order made under section seventeen of this Ordinance, to the Registrar-General.

(2.) The Registrar-General shall keep a register, to be called the Adopted Children Register, in which shall be recorded particulars of adoption orders and of orders under section seventeen of this Ordinance.

(3.) Where the birth of a child, in respect of whom an adoption order or an order under section seventeen of this Ordinance is made, is registered in a Register of Births established under a law of the Territory relating to the registration of births, the Registrar-General shall cause to be made in that Register of Births a note of the adoption order or of the order under section seventeen of this Ordinance, as the case may be.

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10.—(1.) The Court may, on application by the adopting parent, authorize the alteration of the surname of the adopted child to that of the adopting parent. Alteration of name of adopted child.

(2.) Where—

- (a) the Court authorizes an alteration in the surname of an adopted child in pursuance of this section; and
- (b) the birth of the child is registered in a Register of Births established under a law of the Territory relating to the registration of births,

the Registrar-General shall cause the particulars appearing in that Register of Births to be amended accordingly.

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

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

(3.) Subject to section thirteen of this Ordinance, the law for the time being in force in the Territory or any part of 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, shall apply to a child adopted in pursuance of this Ordinance, both as respects his relations by adoption and his relations by blood.

12.—(1.) Subject to this section, on, from and after the making of an adoption order, the adopted child shall be entitled to succeed (whether under any intestacy or disposition) to the real and personal property of the adopting parent to the same extent as if the child had been born to the adopting parent in lawful wedlock. Proprietary rights of adopted child.

(2.) An adopted child shall not have—

- (a) any right of succession to the real or personal property of a relative of the adopting parent who dies intestate; or
- (b) any right to any real or personal property under any disposition made by a person, other than the adopting parent, in favour of the issue, child or children of the adopting parent, unless it appears that it was the intention of the person making the disposition to include adopted children as objects of that disposition.

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(3.) Subject to this section, on, from and after the making of an adoption order, the adopted child shall not have any right of succession to any real or personal property of his natural parent or parents which, if the adoption order had not been made, might have been claimed (whether under any intestacy or disposition) by the child as a child born to his natural parent or parents in lawful wedlock, except in the case of a disposition where the child is expressly named therein.

(4.) The making of an adoption order shall not deprive the adopted child of—

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

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

Marriage
between
adopting parent
and adopted
child
prohibited.

13.—(1.) An adopting parent shall not marry his adopted child.

(2.) A marriage contracted in contravention of this section shall be void.

Interim order.

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

- (a) postpone the hearing; and
- (b) make an interim order giving the custody of the child 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 child as the Court thinks fit.

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

15. An adoption order or an interim order may be made in respect of a child who has already been the subject of an adoption order, and upon an application for the further adoption order, the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the child for the purposes of this Ordinance.

Subsequent order in respect of child already subject to an order.

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

Provisions as to existing *de facto* adoptions.

17.—(1.) Upon the application of the Crown Law Officer of the Territory, the Court may, in its discretion, vary or discharge an adoption order subject to such terms and conditions as it thinks fit.

Power to vary or discharge adoption order.

(2.) An adoption order shall not be varied or discharged unless the Court is satisfied that the variation or discharge of the order would be for the welfare of the child, due consideration being given to the wishes of the child, having regard to the age and understanding of the child.

(3.) Where an adoption order is discharged, the child, the child's natural parents and the adopting parent shall, subject to the next succeeding sub-section and to the conditions (if any) specified in the discharging order, be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the adoption order was made.

(4.) The discharge of an adoption order shall not affect anything lawfully done or any right or interest which became vested in the child while the adoption order was in force.

18.—(1.) The Judges of the Supreme Court may make rules of court⁽⁵⁾ for regulating the practice and procedure of the Court in respect of proceedings under this Ordinance.

Rules of Court.

(2.) Rules of court made under this section shall be published in the *Gazette*.

(5) No rules of court have been made before 1.1.1952.

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(3.) Copies of rules of court made under this Ordinance shall, within twenty-one days after the date of publication thereof, be forwarded by the Chief Judge to the Minister through the Administrator.

(4.) The Minister may, by notification in the *Gazette*, disallow any rule of court made under this section, and thereupon the rule so disallowed shall cease to have effect.