

26 Geo. V.
No. 7.
THE
ADOPTION
OF CHILDREN
ACT OF 1935.

An Act to Make Provision for the Adoption of Infants, and for purposes incidental thereto or consequent thereon.

[ASSENTED TO 17TH OCTOBER, 1935.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

- Short title.** 1. This Act may be cited as "*The Adoption of Children Act of 1935.*"
- Commencement.** 2. This Act shall come into operation on a day to be fixed by the Governor in Council by Proclamation published in the *Gazette*.
- Interpretation.** 3. In this Act, unless the context otherwise indicates, the following terms have the meanings respectively set against them, that is to say:—
- Director.** "Director"—The Director, State Children Department, appointed under *"*The State Children Acts, 1911 to 1928*" ;
- District registrar.** "District registrar"—A district registrar within the meaning of †"*The Registration of Births Deaths and Marriages Act of 1855*" ;
- Minister.** "Minister" means the Home Secretary or other Minister of the Crown for the time being charged with the administration of this Act ;
- Prescribed.** "Prescribed"—Prescribed by this Act ;
- Registrar-General.** "Registrar-General" — The Registrar-General within the meaning of †"*The Registration of Births Deaths and Marriages Act of 1855*" : the term includes the Deputy Registrar-General within the meaning of ‡"*The Marriage Law Amendment Act of 1870*" ;
- Regulations.** "Regulations"—Regulations made under this Act ;
- This Act.** "This Act"—This Act and all Orders in Council and regulations made thereunder.

* 2 Geo. V. No. 11 and amending Acts, *supra*, pages 5076 *et seq.*

† 19 Geo. V. 34, *supra*, page 3268.

‡ 34 Vic. No. 8, *supra*, page 2047.

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4. (1.) Upon an application in the prescribed manner by any person desirous of being authorised to adopt an infant under the age of twenty-one years who has never been married, the Director may, subject to the provisions of this Act, make an order (in this Act referred to as "an adoption order") authorising the applicant to adopt that infant. Power to make adoptions.

(2.) A person so authorised to adopt the infant, and an infant authorised to be adopted are in this Act referred to as "an adopter" and "an adopted child," respectively, and "infant" means a person under the age of twenty-one years.

(3.) Where an application is made for an adoption order by two spouses jointly the Director may make the order authorising the two spouses jointly to adopt an infant, but, save as aforesaid, in no case shall he make an adoption order authorising more than one person to adopt an infant :

Provided that such application may be made by two spouses jointly notwithstanding that one of such spouses is the natural or adopted parent of the infant concerned.

5. (1.) No adoption shall be made in any case where— Restriction on making adoptions.

- (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, it shall be lawful for the Director if he thinks fit to make the order notwithstanding that 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 may, notwithstanding anything to the contrary contained in this section, be made in favour of two spouses jointly where one of such spouses is the natural or adopted parent of the infant in

respect of whom the application is made notwithstanding that either or both of such spouses is or are under the age of twenty-five years or less than twenty-one years older than such infant

(3.) No adoption shall 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 unless the Director is satisfied that there are special circumstances which justify, as an exceptional measure, the making of an adoption order.

(4.) Before an adoption order can be made the consent, in writing, shall be obtained of every person or body who or which is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant. In the case of an illegitimate child the consent of the mother (if living in the State) only will be required :

Provided that the Director may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent, or being a person liable to contribute to the support of the infant either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the Director and in all the circumstances of the case, to be dispensed with.

(5.) 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 Director may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(6.) No adoption order shall be made in favour of any applicant who is not resident and domiciled in the State of Queensland or who is not a British subject and so resident.

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6. The Director before making an adoption order shall be satisfied—

Matters with respect to which Director to 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 is 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 ; and
- (b) That the order if made will be for the promotion of the future welfare and interests 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 person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Director sanctions ;
- (d) That no adoption of a child over the age of twelve years is made without the child's consent.

7. When an adoption is made the Director may impose such terms and conditions as he may think fit, and in particular may require the adopter or adopters by bond or otherwise to make for the adopted child such provision (if any) as in his opinion is just and expedient.

Terms and conditions of adoption.

8. (1.) Upon an adoption order being made the child shall, unless the adopting order otherwise provides, assume the surname of the adopting parent or parents, and all rights, duties, obligations, and liabilities of the parent or parents, guardian or guardians of the adopted child in relation to the future custody, maintenance, and education of the adopted child, including all rights to appoint a guardian or to consent to or give notice of dissent 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 or adopters as though the adopted child was a

Effect of adoption.

child born to the adopter or adopters in lawful wedlock ; and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter or adopters exclusively in the position of a child born to the adopter or adopters in lawful wedlock :

Provided that in any case where two spouses are the adopters such spouses shall in respect of the matters aforesaid and for the purposes of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the said adopted child ; and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

As to
succession
to real and
personal
property.

(2.) 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 the 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 had not

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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 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.

(3.) 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.

Estate, right, or interest in certain property not affected.

(4.) It shall not be lawful for an adopter or either of two joint adopters to marry his or her adopted child, and any marriage between such persons shall be void.

Prohibition of marriage.

(5.) Where—

- (a) An adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by or the intestacy of the adopter ; or

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- (b) An adopter takes any interest in real or personal property under a disposition by or the intestacy of an adopted child or the spouse or issue of an adopted child,

any duty under **"The Succession and Probate Duties Acts, 1892 to 1932,"* or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(6.) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will, including codicil.

Application
of laws as
to fatal
accidents,
&c.

9. For the purposes of the enactments relating to fatal accidents, to workers' compensation, to insurance, and to friendly societies the adopting parent or parents shall be deemed to be the parent or parents of the child; and where before the deed of adoption was executed any insurance has been effected by the natural parent of the child its rights under the policy shall, notwithstanding the deed of adoption, remain as though no such deed had been executed.

Legitimation
not to affect
adoption.

10. The adoption of an illegitimate child shall not in any way be affected by the intermarriage of its parents:

Provided that nothing in this Act contained shall prejudice or affect the right of any such child to be registered (and whether the parents of such child intermarry before or after the making of the adoption order) under †*"The Legitimation Act of 1899."*

Power to
make interim
adoption.

11. (1.) Upon any application for an adoption order the Director may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period of not exceeding six months by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Director may think fit.

* 56 Vic. No. 13 and amending Acts, *supra*, pages 8989 *et seq.*

† 63 Vic. No. 11, *supra*, page 2056.

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(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 Director to dispense with any such consent.

12. An order to adopt or an interim order to adopt 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. Authority to readopt.

13. The authority having jurisdiction to make adoption orders under this Act shall be the Director, State Children Department, Brisbane. Director to make adoption orders.

14. (1.) It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Director to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward. Restriction on payments.

(2.) Any person who acts in contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence and liable for every such offence to a penalty of not more than fifty pounds. Penalty.

15. 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 adoption order made under **"The Infant Life Protection Acts, 1905 to 1927,"* or any *de facto* adoption the Director 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, her, 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 adoptions.

* 5 Edw. VII. No. 19 and amending Acts, *supra*, pages 166 *et seq.*

Power to
cancel on
adoption or
readoption.

16. (1.) The Governor in Council may in his discretion by Order in Council cancel any adoption order or readoption order subject to such terms and conditions as he thinks fit, but the adoption order or readoption order shall not be cancelled unless he is satisfied that the cancellation 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 or readoption order is cancelled then, subject to conditions (if any) specified, the child and its natural parents and the adopter or readopter shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the original adoption order was made :

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

Power of
Director to
resume
control of
former State
child.

Provided further, that the Director may, if in all the circumstances of the case he thinks proper, resume control of the child if the child was at the time an adoption order was made a ward of the State Children Department within the meaning of **The State Children Acts, 1911 to 1928,*" and that the child at the time of cancellation of the adoption order or readoption order is under the age of eighteen years.

Every such order of cancellation shall be notified to the Registrar-General, who shall note the fact in his registers.

Application
in case of
interim
orders unless
exemption
made under
s. 5 (c) of
the Infant
Life
Protection
Acts.

17. The provisions of †*The Infant Life Protection Acts, 1905 to 1927*—

- (a) Shall not apply in the case of an infant within the meaning of such Acts with respect to whom an adoption order under this Act has been made ; but
- (b) Shall (unless an exemption order has been specially made by the Minister pursuant to paragraph (c) of section five of such Acts) apply as if this Act had not been passed in

* 2 Geo. V. No. 11 and amending Acts, *supra*, pages 5076 *et seq.*

† 5 Edw. VII. No. 19 and amending Acts, *supra*, pages 166 *et seq.*

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the case of any infant within the meaning of such Acts with respect to whom an interim order under this Act has been made.

18. The Director shall make every adoption order in triplicate and in the form prescribed.

The application for an adoption order shall include all such particulars as may be necessary in order to enable the Director to complete columns two to six, both inclusive, of the Schedule to this Act, which Schedule shall be included in and form part of every adoption order, and shall be the schedule to such adoption order hereinafter referred to in this Act :

Adoption order to be in prescribed form and to contain prescribed particulars Schedule.

Provided that where the Director is satisfied that any such particulars cannot be ascertained he may nevertheless make the adoption order, but shall indicate in the appropriate place in such schedule the fact that such particulars cannot be ascertained.

Forthwith on the making of an adoption order the Director shall deliver all three copies thereof to the Registrar-General.

19. The Registrar-General shall make and keep in the general registry a register to be called the "Adopted Children Register" and shall also make and keep therein an index thereto.

Adopted Children Register

The Adopted Children Register shall consist of one copy of every adoption order to be kept therein as hereinafter provided, and may consist of such number of bound volumes of such adoption orders as the Registrar-General thinks fit.

Forthwith on the receipt by him of an adoption order the Registrar-General shall register same by completing column eight of the schedule thereto under his seal and signature in the manner therein set out.

The Registrar-General shall number consecutively, beginning with the number one, all adoption orders registered by him and shall insert in column one of the schedule to each such order its proper number.

Upon registration the Registrar-General shall place and keep in the Adopted Children Register one copy of the adoption order and shall forthwith deliver the

remaining copies to the Director, who shall keep one such copy and shall give the other to the adopter or adopters.

When
register of
births to
be noted.

20. In every case where the adoption order sufficiently identifies the infant in respect of whom it was made with an infant whose birth has been entered in a register of births, the Registrar-General shall make a marginal note to such entry and to any index thereto sufficient to indicate to him or to any authorised officer of his Department the fact that the child mentioned in such entry has been adopted, and shall also, where the birth of such infant has been entered in a register of births kept in a district registry, forthwith instruct the district registrar to make a similar marginal note to such entry and to any index to such register.

Where a marginal note as aforesaid has been made to an entry in any register of births or in any index relating to such entry, such entry or the index relating thereto shall not be open to public inspection or search nor, except upon the order of a court of competent jurisdiction, shall the Registrar-General or a district registrar furnish any person with a copy of or extract from any such entry.

Evidence
and search.

21. The Adopted Children Register and any adoption order duly registered therein shall be and be deemed to be respectively a book and document of such a public nature as to be admissible in evidence on its mere production from the proper custody, and the Registrar-General shall be the person having the proper custody thereof.

Every person shall, subject as is hereinafter provided, be entitled to have a search made in the index to the Adopted Children Register and to have a copy of or extract from the schedule to the relative adoption order signed and certified as a true copy or extract by the Registrar-General :

Provided that the Registrar-General shall not unless upon the order of a court of competent jurisdiction furnish any person with a copy of or extract from any part of an adoption order other than the schedule thereto :

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Provided further, that the provisions of section twenty of **The Registration of Births Deaths and Marriages Act of 1855*” relating to times of search and the payment of search fees shall, *mutatis mutandis*, apply and extend to every such search and/or copy and/or extract as aforesaid.

22. All penalties and fees imposed by or pursuant to this Act may be recovered in a summary way by complaint under †*The Justices Acts, 1886 to 1932.*” Recovery of penalties.

Any person offending against any provision of this Act shall where no specific penalty is imposed be liable to a penalty of not more than twenty pounds.

23. (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act, or that may be necessary or expedient to carry out the objects and purposes of such Act. Regulations.

Without limiting the generality of the foregoing provisions regulations may be made for all or any of the following purposes, that is to say:—

- (i.) All matters required or permitted by this Act to be prescribed.
- (ii.) The mode in which application for the making of an adoption order under this Act shall be made and effected.
- (iii.) The form of adoption order.
- (iv.) The fee to be paid upon application for an adoption order, provided that such fee shall not exceed one pound and one shilling.
- (v.) Generally for giving effect to all incidental matters arising out of the Act.
- (vi.) Generally to give effect to the objects and purposes of this Act.

(2.) The regulations may fix a penalty, not exceeding in any case twenty pounds, for any breach thereof.

(3.) Any such regulations may be made on the passing of this Act.

* 19 Vic. No. 34, *supra*, page 3268.

† 50 Vic. No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

Publication
of
regulations
in the
Gazette.

24. All regulations made or purporting to be made under this Act shall upon being published in the *Gazette* have the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

The publication in the *Gazette* of any such regulation shall be conclusive evidence of the matters contained therein, and of the power and authority to make such regulation, as the case may be.

All such regulations shall be laid before Parliament forthwith, if then sitting; and, if not then sitting, within fourteen days after the commencement of the next ensuing session.

To be laid
before
Parliament.

If the Legislative Assembly, within the next fourteen sitting days after any regulations have been so laid before such House, resolves that such regulations or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such regulations or to the making of any new regulations.

For the purpose of this section the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

The statutes of Queensland passed during the year... [electronic resource]

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SCHEDULE.

THE ADOPTED CHILDREN REGISTER.

RECORD OF CHILD ADOPTED IN QUEENSLAND UNDER "THE ADOPTION OF CHILDREN ACT OF 1935."

[Sections 18 and 19.]

No.	CHILD.			PARENTS BY ADOPTION.		Director, State Children Department.	Registrar- General.
	1. When born. 2. Where born.	1. Name. 2. Surname.	Sex.	FATHER.	MOTHER.		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	1. 2.	1. 2.		1. Name and Sur- name. 2. Rank or Profession 3. Age. 4. Birthplace.	1. Name and Maiden Surname. 2. Age. 3. Birthplace.	1. Signature. 2. Date. 3. Place.	1. Signature. 2. Date. 3. Where registered. 4. No. of original entry.
						I certify that this Adoption Order is to the best of my know- ledge and belief cor- rect for registration.	This Adoption Order is duly registered by me as by law required.
						1. 2. 3. Brisbane. 4.	1. 2. 3. Brisbane. 4.
				Address of Adopter or Adopters.			<div style="border: 1px solid black; border-radius: 50%; width: 60px; height: 60px; display: flex; align-items: center; justify-content: center; margin: 0 auto;"> <div style="text-align: center;"> <p>Seal</p> <p>Registrar- General.</p> </div> </div>

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