

No. 3605.

An Act to make provision for the
Adoption of Infants.

[27th December, 1928.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Adoption of Children Act 1928.* Short title.

(2) This Act shall come into operation on a day to be fixed by the Governor in Council by proclamation published in the *Government Gazette.* Commencement.

2. In this Act, unless inconsistent with the context or subject-matter— Interpretation.

“Prescribed” means prescribed by rules of court made pursuant to this Act. “Prescribed.”

3. (1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married, the court may, subject to the provisions of this Act, make an order (in this Act referred to as “an adoption order”) authorizing the applicant to adopt that infant. Power to make adoption orders. Comp. 16 & 17 Geo. V. c. 29 s. 1.

(2) A person so authorized to adopt the infant and an infant authorized 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 for an adoption order is made by two spouses jointly, the court may make the order authorizing the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant.

4. (1) An adoption order shall not be made in any case where— Restrictions on making adoption orders. Id. s. 2.

(a) the applicant is under the age of twenty-five years;
or

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(b) the

- (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 court, if it 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 shall not 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 court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent in writing of every person or body who or which—

- (a) is a parent or guardian of the infant in respect of whom the application is made; or
- (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 by this sub-section if satisfied that the person whose consent is to be dispensed with—

- (i) has abandoned or deserted the infant; or
- (ii) cannot be found; or
- (iii) is incapable of giving such consent; or
- (iv) is a person (not being a parent of the infant) with whom the infant, being a ward of the Department within the meaning of section three of the *Children's Welfare Act* 1915, is boarded out placed or apprenticed pursuant to the said Act or division two of Part II. of the *Crimes Act* 1915, or is a person with whom pursuant to the *Infant Life Protection Act* 1915 the infant (not being the child of such person) is boarded out; or

- (v) 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 court and in all circumstances of the case, to be dispensed with.

(4) An

See No. 2708
ss. 3, 30;
No. 2637 ss. 321,
347;
No. 2670 s. 15.

(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 any consent required by this sub-section if satisfied—

- (i) that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent; or
- (ii) that the spouses have separated and are living apart and that the separation is likely to be permanent.

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 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;
- (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 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 court sanctions.

Matters with respect to which court to be satisfied.

Comp. 16 & 17 Geo. V. c. 29 s. 3.

6 The court in an adoption order may impose such terms and conditions as the court thinks fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient.

Terms and conditions of order.

Ib. s. 4.

7. (1) Upon an adoption order being made, 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

Effect of adoption order.
Ib. s. 5.

to

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 adopted child was a child born to the adopter 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 exclusively in the position of a child born to the adopter 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 purpose 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 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
&c. 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 order had not been made, might

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.

(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.

Comp. No. 2720 s. 29.

(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 of adopter and adopted child.

(5) The law 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 and the provisions of sections forty-eight and forty-nine of the *Crimes Act* 1915 as amended by any Act for the time being in force shall apply to an adopted child both as respects its relations by adoption and as respects its relations by blood ; and sections sixty-four and sixty-five of the *Imperial Acts Application Act* 1922 and the said sections forty-eight and forty-nine

As to prohibited degrees of relationship and as to incest &c.

See No. 3270 ss. 64, 65.

No. 2637 ss. 45, 49.

forty-nine as so amended shall with such alterations modifications and substitutions as are necessary be read and construed and have effect accordingly.

(6) 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
- (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—

Nos. 2611 &c. any duty under the Administration and Probate Acts, 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.

(7) 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.

Power to make interim orders.
Comp. 16 & 17
Geo. V. c. 29
s. 6.

8. (1) Upon any application for an adoption order the court—

- (a) may postpone the determination of the application; and
- (b) 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 more than two years 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 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.
Ib. s. 7.

9. 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

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.

10. (1) The court having jurisdiction to make adoption orders under this Act shall be—

Jurisdiction and procedure.
Comp. 16 & 17
Geo. V. c. 29
s. 8.

- (a) the Supreme Court; or
- (b) at the option of the applicant—any county court; or
- (c) in any case where the consents required by sub-section (3) and sub-section (4) of section four of this Act have been given—any court of petty sessions within the jurisdiction of which either the applicant or the infant resides at the date of the application for the adoption order and which consists—

- (i) in any district prescribed by the Governor in Council—of a police magistrate and two justices, one of whom shall be a woman and the other of whom shall be a man;

- (ii) in any district not so prescribed—of a police magistrate only.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect may in accordance with the provisions of sections twenty-five to twenty-seven of the *Supreme Court Act 1915* be made by the judges of the Supreme Court.

Rules of Court.

No. 2733 ss.
25-27.

Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(3) For the purpose of any application under this Act and subject to any rules under this section, the court shall appoint some person or body to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

Guardian
ad litem.

11. (1) It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the

Restriction on payments.
Comp. 16 & 17
Geo. V. c. 29
s. 9.

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.

Penalty.

(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.

Provisions as to existing *de facto* adoptions.

Comp. 16 & 17
Geo. V. c. 29
s. 10.

12. 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 authorizing 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.

Power to vary or discharge adoption order.

13. (1) Upon the application of a law officer who after inquiry is satisfied that owing to the exceptional circumstances of the case the application should be made the Supreme 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 said 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 conditions (if any) named in the discharging order, the child 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 child while the adoption order was in force:

Provided further that the said court may, if in all the circumstances of the case it thinks proper, direct that the child

child be committed to the care of the Children's Welfare Department, or, if the child was at the time of its adoption a ward of the Department within the meaning of the Children's Welfare Acts or was under the guardianship of any person or institution to whose care children may be committed pursuant to Part VIII. of the *Children's Welfare Act 1915* and is under the age of eighteen years, direct that the child be recommitted to the care of the Children's Welfare Department or to such other guardianship (as the case may be).

No. 2703
Part VIII.

14. In addition to the powers conferred on the Secretary of the Children's Welfare Department by section thirty of the *Children's Welfare Act 1915*, the Secretary of the Children's Welfare Department may, subject to the regulations in that behalf made under this Act, and if there is a suitable adopter, take the necessary steps in accordance with this Act for obtaining an adoption order or an interim order under this Act with respect to any ward of the Children's Welfare Department.

Power of
Secretary of
Children's
Welfare
Department to
take steps to
obtain adoption
orders in case
of wards of that
Department in
lieu of boarding
out &c.
No. 2703 s. 30.

15. The provisions of sections five to eighteen of the *Infant Life Protection Act 1915*—

Non-application
of No. 2670 ss.
5-18 to adopted
infants.

(a) shall not apply in the case of any infant within the meaning of that Act with respect to whom an adoption order under this Act has been made; but

(b) shall (unless pursuant to paragraph (c) of section nineteen of the first-mentioned Act the infant is exempted from the operation of the said sections) apply as if this Act had not passed in the case of any infant within the meaning of the first-mentioned Act with respect to whom an interim order under this Act has been made.

Application in
case of interim
orders, unless
exempted under
No. 2670 s. 19
(c).

16. Any reference in Part I. of the *Marriage Act 1915* or in the Third Schedule or Fourth Schedule to the said Act or in the Fourth Schedule to the *Registration of Births Deaths and Marriages Act 1915* to the parent or parents of any person shall, in any case where an adoption order has been made in respect of such person and such order has not been discharged, be read and construed as if it were a reference to the adopter or adopters of such person: Provided that when there is only one adopter there shall be inserted after his or her name in the Third Schedule and Fourth Schedules aforesaid the words "By adoption."

Parent in case
of adopted child
to mean adopter
for purposes of
No. 2661 Part I.
and No. 2720
Fourth
Schedule.

17. (1) The

Adopted
children
register.
Comp. 16 & 17
Geo. V. c. 29
s. 11.

17. (1) The Government Statist shall establish and maintain at his office in Melbourne a register to be called the "Adopted Children Register," in which shall be made such entries as are directed to be made therein by adoption orders, but no other entries.

(2) Every adoption order shall contain a direction to the Government Statist to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule to this Act.

Schedule.

(3) If upon any application for an adoption order there is proved to the satisfaction of the court—

- (a) the date of the birth of the infant; and
- (b) the identity of the infant with a child to which any entry or entries in any register book of births relates or relate—

the adoption order shall state the date of the adopted child's birth and shall contain a further direction to the Government Statist to cause such birth entry or entries in such register book to be marked with the word "Adopted," and to include in the entry in the Adopted Children Register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule hereto.

(4) The prescribed officer of the court shall cause every adoption order to be communicated in the prescribed manner to the Government Statist, and upon receipt of such communication the Government Statist shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in any register book of births with the word "Adopted," and in regard to making the appropriate entry in the Adopted Children Register.

(5) A certified copy of any entry in the Adopted Children Register if purporting to be signed by the Government Statist or the Assistant Government Statist shall, without any further or other proof of such entry and notwithstanding anything in the Registration of Births Deaths and Marriages Acts—

- (a) where the entry does not contain any record of the date of the birth of the adopted child—be received as evidence of the adoption to which the same relates; and

(b) where

No. 2720 &c.

(b) where the entry contains a record of the date of the birth of the adopted child—be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of an entry in a register book of births under the Registration of Births Deaths and Marriages Acts.

Nos. 2720 &c.

(6) The Government Statist shall cause an index of the Adopted Children Register to be made and kept in his office, and every person shall be entitled to have a search made in such index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Registration of Births Deaths and Marriages Acts, in respect of searches in other indexes kept in the office of the Government Statist, and in respect of the supply from such office of certified copies of entries in the Register of Births Deaths and Marriages.

ib.

(7) The Government Statist shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein as are necessary, to record and make traceable the connexion between any entry which has been marked "Adopted" pursuant to this Act in any register of births and any corresponding entry in the Adopted Children Register, but such other registers and books shall not be nor shall any index thereof be open to public inspection or search, nor, except under an order of a court of competent jurisdiction, shall the Government Statist furnish any person with any copy or extract from such other registers or books.

(8) Regulations made under the Registration of Births Deaths and Marriages Acts may make provision as to the duties to be performed by registrars of births and deaths in the execution of this Act.

See No. 2720 s. 41.

18. (1) When an adoption order has been made in respect of any child registered under the Registration of Births Deaths and Marriages Acts or under any corresponding previous enactment, the Government Statist shall direct the registrar of births and deaths having the custody of the register containing the entry of the birth of

Registration of child in the name of adopting parent.

Comp. (W.A.) 1925 No. 57 s. 2. Nos. 2720 &c.

of such child to make in the prescribed manner a fresh entry as hereinafter provided 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 adopter conferred on the child, and the sex of the child, and the name and surname address and occupation of the adopter or (if the case so requires) of each of the adopters, and the date of the adoption order, and a description of the court by which the same was made ; and any registrar so directed shall make such fresh entry accordingly :

Provided that where an adoption order is made authorizing two spouses jointly to adopt a child the adopters shall be designated father and mother respectively in such fresh entry :

Provided further that, notwithstanding anything in this section, if an application made in accordance with this Act by any person or persons desirous of being authorized to adopt a child contains a statement that such person or persons desires or desire a specified surname (being that by which the child has been generally known and not being the surname of the adopter) to be given to such child in the adoption order, and if an adoption order has been issued pursuant to such application, the surname of the child to be included in the particulars appearing in the fresh entry hereinbefore referred to in this section shall be such specified surname and not the surname of the adopter.

(2) Such fresh entry—

(a) when made by a registrar—

shall be made by him in duplicate in documents in the prescribed form supplied to him by the Government Statist and one of such documents shall be transmitted to the Government Statist immediately on the fresh entry being made therein and shall be kept in the office of the Government Statist as a record of the birth to which it relates; or

(b) when the Government Statist has the custody of the register containing the entry of the birth of such child—

shall be made by the Government Statist in one of the above-mentioned documents and such document shall be kept by him as a record of such birth.

(3) The

Entries how made.

(3) The index of the register kept in the office of the registrar of births and deaths, and the index of the register kept in the office of the Government Statist 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 office of the Government Statist shall not be open to public inspection or search, nor, except under an order of a court of competent jurisdiction, shall the Government Statist furnish any person with any copy of or extract from such original entry or duplicate; and, notwithstanding anything in the Friendly Societies Acts, no copy of any such original entry of the birth of the child shall be furnished by the registrar of births and deaths for the purposes of the said Acts.

Amendment of indexes of registers.

See No. 2656 s. 16 (IX).

(4) In this section "prescribed" means prescribed by regulations made under the Registration of Births Deaths and Marriages Acts.

Meaning of "prescribed." See No. 2720 s. 41.

SCHEDULE.

Section 17.

1. No. of Entry.	2. Date of Entry.	3. Name of Adopted Child. (Enter name as stated in Adoption Order.)	4. Sex of Adopted Child. (Enter Sex as stated in Adoption Order.)	5. Name and Surname, Address and Occupation of Adopter or Adopters. (Enter name and surname, address and occupation as stated in Adoption Order.)	6. Date of Birth of Child. (Enter date of Birth (if any) directed by the Adoption Order to be entered, but otherwise no entry.)	7. Date of Adoption Order and Description of Court by which made. (Entry to be made as appearing in the Adoption Order.)	8. Signature of Government Statist or Assistant Government Statist.

Acts of the Parliament (of Victoria) [electronic resource]

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