



ANNO DECIMO SEXTO

# GEORGII V REGIS.

A.D. 1925.

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## No. 1692.

An Act relating to the Adoption of Children.

[*Assented to, December 17th, 1925.*]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Adoption of Children Act, 1925." Short title.

2. In this Act, unless inconsistent with the context or some other meaning is clearly intended— Interpretation.

"Adopted child" means a child concerning whom an order of adoption has been made as herein provided :

"Adopting parent" means a person who is by any such order of adoption authorised to adopt a child ; and in the case of an order being made in favor of a husband and wife on their joint application, means both the husband and the wife :

"Child" means any boy or girl under the age of fifteen years :

"Court" or "the Court" means a Special Magistrate and two Justices, one of whom shall be a Woman Justice :

"Deserted child" means any child who, in the opinion of the Court dealing with such child under the provisions of this 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 illegitimate :

"Unmarried" means not having a wife or husband (as the case may be) living at the time.

3. Upon

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By whom female  
child may be  
adopted.

Cf. N.Z. Infants Act,  
86 of 1908, s. 16.

3. Upon the application in writing, in the prescribed form, to the Court by—

- (a) a husband and wife jointly, or
- (b) a married woman alone, but, if she is not legally separated from her husband, only with the written consent of her husband, or
- (c) any unmarried woman who is, in the opinion of the Court, at least eighteen years older than the child, or
- (d) any unmarried man who is, in the opinion of the Court, at least forty years older than the child,

an order of adoption of a female child may be made by the Court in favor of the applicant, in the prescribed form, and subject to the provisions of this Act.

By whom male  
child may be  
adopted.

Cf. *ibid.*, s. 17.

4. Upon the application in writing, in the prescribed form, to the Court by—

- (a) a husband and wife jointly, or
- (b) a married man alone, but, if he is not legally separated from his wife, only with the written consent of his wife, or
- (c) any unmarried man who is, in the opinion of the Court, at least eighteen years older than the child, or
- (d) any unmarried woman who is, in the opinion of the Court, at least forty years older than the child,

an order of adoption of a male child may be made by the Court, in favor of the applicant, in the prescribed form, and subject to the provisions of this Act.

Consents required  
previous to adoption  
of child.

Cf. *ibid.*, s. 18.

5. Before making such order of adoption, the Court—

- (a) may compel the attendance before it of any witness, and for that purpose may sign, issue, and cause to be served upon the witness a summons, in the prescribed form ;
- (b) shall take evidence, *viva voce* upon oath or affirmation, or by affidavit sworn before any Commissioner for taking affidavits in the Supreme Court, or by declaration made before any Justice, in proof of or concerning any fact, matter, or thing required by this Act or by the Court, to be proved ;
- (c) shall be satisfied that the child is under the age of fifteen years, 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 is in a position and intends to provide the child with suitable and proper maintenance and education, as though it were his own child, that the welfare and interests of the child will be promoted by the adoption, and that the consents required by this Act have been duly signed and filed ;

(d) shall

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(d) shall be satisfied that the child, if over the age of twelve years, consents to the adoption; and

(e) shall require the consent in writing of the parents of the child, subject however to the provisions of section 6.

6. The following provisions shall have effect with respect to the consent of parents:—

Consent of parents  
or guardians.

I. Where one of the parents is dead, or incapable of consenting, or cannot be found, or has been permanently deprived of the legal custody of the child, the consent of the other parent shall be sufficient; and

II. Where the child is not in the legal custody of either of its parents, the consent of the person, or society or body of persons, having the legal custody of the child shall, for the purposes of this section, be substituted for the consent of the parents; and

III. Where any person, or society or body of persons, has been lawfully appointed as guardian of the child in addition to or in lieu of either parent, that person, society, or body shall, for purposes of this section, be deemed to be a parent; and

IV. In the case of an illegitimate child the consent of the father shall not be necessary; and

V. Where no person, or society or body of persons, has the legal custody of the child, the consent of parents under this section shall be dispensed with; and

VI. Where, before the commencement of this Act, a child has for a period not less than one year been living under the care and custody of a person other than its parents, and that person applies for an order of adoption, the Court may, if it thinks fit, dispense with the consent of the parents.

7. (1) Notwithstanding anything in section 5 or section 6, if the Court making an order of adoption of any child is satisfied that any parent or person, or society or body of persons, having the legal custody of the child is for any reason unfit to have the custody or control of the child, and that notice of the application for the order of adoption has been given to such parent or person or society or body of persons, such Court may, if it thinks fit, in making the said order dispense with the consent of such parent or person or society or body of persons.

In certain cases of adoption consents of parents may be dispensed with.

Cf. *ibid.*, s. 23.

(2) Any parent or person or society or body of persons whose consent is thus dispensed with may, within one month after the making of the order of adoption, make application to any Judge of the

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the Supreme Court, on notice to the adopting parent or parents, to discharge such order, and the Judge may in his discretion discharge such order accordingly, on such terms as he thinks fit.

(3) Any such discharge shall have the same effect as a discharge made under section 14.

Application may be adjourned to enable applicant and child to live together.

8. The Court may in any case adjourn the hearing of an application for an order of adoption for such period, not exceeding one year, and on such conditions, as it thinks fit, and may direct that during such adjournment the child shall live with and be in the legal custody of the applicant.

Child may be adopted only by one person. Ibid., s. 19.

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

Adopting parent not to receive premium. Ibid., s. 20.

10. It shall not be lawful for any person adopting a child under this Act to receive any premium or other consideration in respect of such adoption, except with the consent of the Court or a Judge of the Supreme Court.

Adopted child to have legal status of child of adopting parent.

Ibid., s. 21 (1).

11. 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 parent :

Provided always that such adopted child shall not by such adoption—

- I. acquire any right or title or any interest whatsoever in any property which would devolve on any child of the adopting parent by virtue of any deed, will, or instrument whatsoever executed or made prior to the date of such order of adoption, unless it is expressly so stated in such deed, will, or instrument ; nor
- II. 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
- III. 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.

Adopting parent to have legal status of natural parent.

Ibid., s. 21 (2).

12. 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

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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.

**13.** (1) An adopted child shall, unless the Court for any special reason otherwise orders, bear the name of the adopting parent, in addition to his own name.

Name of adopted child and registration of adoption.

(2) When an order of adoption has been made the Court shall communicate to the Registrar-General of Births and Deaths the fact that the child has been adopted, whereupon the said Registrar-General shall cause to be entered in the certificate of registration of the child's birth in the register of births kept pursuant to the Registration of Births and Deaths Act, 1874, the word "adopted," and shall issue to the Court a certificate showing the Christian name or names and the date and place of birth of the adopted child, which certificate shall be then endorsed by the Court with the full name of the adopting parent and the full name of the adopted child, and returned by him to the said Registrar-General, who shall deal with such certificate as though it were a certificate of birth forwarded to him under the said Act by a District Registrar, and the said Act shall apply to and in respect of such certificate as though it were the certificate of registration of the child's birth.

**14.** (1) It shall be lawful for any Court, or for any Judge of the Supreme Court, in his discretion, to vary or reverse and discharge the order of adoption of any child, subject to such (if any) terms and conditions as it thinks fit.

Orders may be reversed or discharged.

*Ibid.*, s. 22 (1).

(2) Where an order of adoption is discharged, then, subject to the conditions (if any) stated in the discharging order, the child and its natural parents shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the order of adoption was made: Provided that such restoration shall not affect anything lawfully done whilst the order of adoption was in force.

On discharge of order rights and responsibilities of natural parent revives.

*Ibid.*, s. 22 (2).

**15.** (1) Upon the application in writing of the manager for the time being of any benevolent or other institution, established in connection with any religious denomination, who is desirous of adopting any deserted child in connection with such institution, any Court on being satisfied—

Adoption in connection with benevolent or other institutions.

*Ibid.*, s. 24.

(a) that such child is deserted;

(b) that such child is of the same religious denomination as that of the institution whose manager makes the application, and

(c) that

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(c) that such institution is properly conducted, and is capable of properly bringing up such child,

may make an order authorising the manager for the time being of such institution to adopt such child in connection with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, real or personal, or otherwise howsoever, of such manager or institution.

Sections 9 to 12  
not to apply thereto.

(2) Sections 9 to 12 shall not apply to the case of any child adopted as provided by this section, except as to the determination of all rights of the child's natural parents, and as to the rights of the child to take property, as respectively stated in section 12: Provided always that such child shall be entitled to the support, maintenance, and advancement afforded by such institution, and all such other rights, benefits, privileges, and advantages appertaining thereto, all which it shall be the duty of the person or body for the time being managing or controlling the said institution to provide.

Marriage law not  
affected.  
Ibid., s. 26.

**16.** Nothing in this Act shall be construed as authorising any marriage that could not lawfully have been contracted if this Act had not been passed.

Rules of Court.

**17.** The power to make rules conferred by the Supreme Court Act, 1878, shall include power to make rules for regulating the exercise of the jurisdiction by this Act conferred on the Judges of the Supreme Court.

Regulations.  
Cf. *ibid.*, s. 25.

**18.** (1) The Governor may make such regulations, not inconsistent with this Act, as may be necessary or convenient for fully effecting the objects and provisions of this Act, including (but without limiting the operation of this section) regulations prescribing—

- i. The forms and mode of procedure to be used in exercising the jurisdiction hereby conferred upon the Court;
- ii. The mode of registering and keeping a proper register of all orders made under this Act; and
- iii. The fees to be paid in respect of such procedure and registration, and otherwise.

(2) The regulations made under this section shall make provision—

(a) that where application is made for the purpose by the applicant for an order of adoption, or on behalf of the child proposed to be adopted, the proceedings shall be held *in camera*; and

(b) for applications being made and dealt with, where so desired by all parties to the proceedings, in such a way that the identity of the child proposed to be adopted shall

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shall not be disclosed to the applicant for the order of adoption, and that the identity of the adopting parent shall not be disclosed to the parents or guardian of the child proposed to be adopted.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.