

ADOPTION OF CHILDREN (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 13, 1971.

An Act relating to residence qualifications of adopting parents and guardianship of children in respect of whom general consent to adoption has been given; for these and other purposes to amend the Adoption of Children Act, 1965; and for purposes connected therewith. [Assented to, 18th May, 1971.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales 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 (Amendment) Act, 1971".

2.

*Adoption of Children (Amendment).***2. The Adoption of Children Act, 1965, is amended—** **No. 13, 1971**Amendment
of Act No.
23, 1965.

- (a) (i) by omitting from subsection two of section eight the word "twenty-one" and by inserting in lieu thereof the word "thirty";
- (ii) by inserting at the end of the same section the following new subsection :—

Sec. 8.
(Cases in
which juris-
diction may
be exer-
cised.)

(3) A reference in subsections one and two of this section to an applicant being resident in New South Wales at a particular time or on a particular date includes a reference to an applicant who has had his usual place of abode in New South Wales for a period of at least three months immediately before that time or date.

- (b) by omitting subsection two of section eighteen and by inserting in lieu thereof the following subsection :—

Sec. 18.
(Who
may be
adopted.)

(2) Except where—

- (a) the applicant is a person, or the applicants are persons, in whose favour a consent referred to in subsection two of section twenty-seven of this Act has been given; or
- (b) the applicant, or either of the applicants, is a relative of the child, and the appropriate person, or every appropriate person, as the case may be, whose consent to the adoption would, but for the fact that he is deceased, be required under section twenty-six of this Act, has died without giving his consent referred to in that section,

the

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the Court shall not make an adoption order unless the application is made on behalf of the applicant or applicants by the Director or by the principal officer of a private adoption agency.

Sec. 19.
(Persons in whose favour adoption orders may be made.)

(c) by omitting from subsection two of section nineteen the words "exceptional circumstances make it" and by inserting in lieu thereof the words "in the particular circumstances of the case it is";

Sec. 20.
(Age of adopters.)

(d) by omitting from section twenty the words "there are exceptional circumstances that make it" and by inserting in lieu thereof the words "in the particular circumstances of the case it is";

Sec. 21.
(Court to be satisfied as to certain matters.)

(e) (i) by omitting from paragraph (b) of subparagraph (ii) of paragraph (c) of subsection one of section twenty-one the words "exceptional circumstances make it" and by inserting in lieu thereof the words "in the particular circumstances of the case it is";

(ii) by inserting in subsection three of the same section after the word "given" the words "or in any case where the applicant, or either of the applicants, is a relative of the child and the appropriate person, or every appropriate person, as the case may be, whose consent to the adoption would, but for the fact that he is deceased, be required under section twenty-six of this Act, has died without giving his consent referred to in that section";

Sec. 22.
(Notice of application for adoption orders.)

(f) by inserting next after subsection one of section twenty-two the following new subsection :—

(1A) Notwithstanding the provisions of subsection one of this section, the Court may make an order without a notice referred to in that subsection having been given or sent to a person with

whom

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whom the child resides or who has the care or custody of the child if the child resides with that person only as a patient or inmate of a hospital of which that person is in charge or that person has the care or custody of the child only as the person in charge of a hospital. **No. 13, 1971**

- (g) (i) by inserting in subsection one of section twenty-eight after the words "may not" the words ", except as provided by subsection three of this section,"; Sec. 28. (Revocation of consents.)

- (ii) by inserting next after subsection two of the same section the following new subsection :—

(3) Upon the Director's ceasing to be the guardian of a child by reason of paragraph (c1) of subsection five of section thirty-four of this Act, any consent to the adoption of the child given for the purposes of this Act shall be deemed to be lawfully revoked and the Director shall forthwith give notice of the revocation to the Master in Equity and, if the consent was given to the principal officer of a private adoption agency, to that principal officer.

- (h) (i) by omitting from subsection one of section thirty-two the words "the request of the Director or of the principal officer of a private adoption agency" and by inserting in lieu thereof the words "a request made in accordance with subsection (1A) of this section,"; Sec. 32. (Court may dispense with consents.)

- (ii) by inserting next after the same subsection the following new subsection :—

(1A) The persons who may make a request for the purposes of subsection one of this section are—

(a) the Director :

(b)

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- (b) the principal officer of a private adoption agency; or
- (c) where an application has been made to the Court for the adoption of the child and—
 - (i) the child is a legitimate child; and
 - (ii) that application is made jointly by a husband and wife and one of them is a parent of the child,those applicants.
- (iii) by inserting at the end of subsection two of the same section the words “but shall not be made on the request of a person referred to in paragraph (c) of subsection (1A) of this section except in conjunction with an adoption order in favour of that person or of that person and another person”;
- (iv) by omitting paragraph (a) of subsection five of the same section and by inserting in lieu thereof the following paragraph :—
 - (a) except—
 - (i) in relation to a person referred to in paragraph (a) of subsection one of this section;
 - (ii) in relation to a person referred to in paragraph (b) of that subsection whose physical or mental health would, in the opinion of the Court, be detrimentally affected if he were to receive a notice referred to in this paragraph; or
 - (iii)

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(iii) where the Court considers that No. 13, 1971 in the particular circumstances of the case it is desirable to make an order under that subsection without a notice referred to in this paragraph having been given or sent as so referred to,

make such an order unless notice of the request for the order has been given or sent by post to the person whose consent is sought to be dispensed with at least fourteen days before the request for the order is made to the Court; or;

(i) (i) by inserting next after subsection two of section thirty-four the following new subsections :—

(2A) Within twenty-one days after the receipt by him of a notice referred to in paragraph (b) of subsection two of this section, the Director may, by instrument in writing, decline to be the guardian of the child to whom that notice relates.

(2B) Where the Director executes an instrument referred to in subsection (2A) of this section, he shall forthwith cause a copy of the instrument to be given or sent by registered post to the person or each of the persons, as the case may be, by whom the consent to the adoption of the child was given.

(2C) Where—

(a) an officer of another State or of a Territory whose functions correspond to those of the Director under this Act

has

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has become the guardian of a child under a law of that State or Territory corresponding to this section;

- (b) the consent to the adoption of the child held by that officer cannot be lawfully revoked by the person or persons by whom it was given;
- (c) the Director is satisfied that the child is present in New South Wales;
- (d) that officer has requested the Director to accept, and the Director has, by an instrument in writing forwarded to that officer, agreed to accept, guardianship of the child; and
- (e) under that law, that officer ceases, upon the execution by him of an instrument renouncing his guardianship of the child, to be the guardian of the child,

the Director is, upon the execution of that instrument, the guardian of the child (for purposes other than the purposes of section twenty-six of this Act) to the exclusion of all other persons.

(2D) The provisions of subsection (2C) of this section do not apply to a child who is a ward within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts.

- (ii) by inserting in subsection three of the same section after the word "one" where firstly occurring the symbols, figure and letter ". (2C)";

(iii)

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(iii) by inserting next after subsection four of the No. 13, 1971 same section the following new subsection :—

(4A) Where—

- (a) the Director has become the guardian of a child under subsection one, (2C) or four of this section;
- (b) the consent to the adoption of the child cannot be lawfully revoked by the person or persons by whom it was given;
- (c) the Director is satisfied that the child is present in another State or in a Territory of the Commonwealth;
- (d) the Director has requested an officer of that State or Territory whose functions correspond to those of the Director under this Act to accept, and that officer has, by an instrument in writing forwarded to the Director, agreed to accept, guardianship of the child; and
- (e) under the law of that other State or Territory, that officer will, upon the execution by the Director of an instrument in writing renouncing the Director's guardianship of the child, become the guardian of the child,

the Director may execute an instrument in writing renouncing guardianship of the child and, where he does so, shall forthwith forward the instrument to that officer.

(iv) by inserting in subsection five of the same section after the word "one" the symbols, figure and letter ", (2C)";

(v)

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- (v) by inserting next after paragraph (c) of the same subsection the following new paragraphs :—
- (c1) the Director, pursuant to subsection six of this section, places the child—
 - (i) where the child is a legitimate child, in the care of the parents of the child or, if one of those parents is deceased, in the care of the surviving parent of the child; or
 - (ii) where the child is an illegitimate child, in the care of the mother of the child;
 - (c2) the Director executes an instrument referred to in subsection (2A) of this section;
 - (c3) the Director, pursuant to subsection (4A) of this section, executes an instrument in writing renouncing guardianship of the child;
- (vi) by inserting in subsection six of the same section after the word “one” the symbols, figure, letter and words “, (2C) or four”.
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