

THE ISLAND OF NAURU.

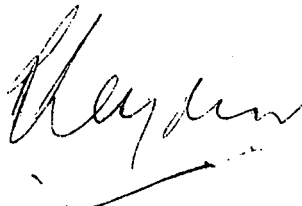
No. 2 of 1965.

A N O R D I N A N C E

Relating to the Adoption of Children.

I, the Administrator of the Island of Nauru, in pursuance of the powers conferred by Article 1 of the Agreement dated the second day of July, 1919, between the Government of the United Kingdom, the Government of the Commonwealth of Australia and the Government of the Dominion of New Zealand, hereby make the following Ordinance.

Dated this Eleventh day of March, 1965.



Administrator of the Island of Nauru.

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ADOPTION OF CHILDREN ORDINANCE 1965.

Short title.

1. This Ordinance may be cited as the Adoption of Children Ordinance 1965.<sup>⊗</sup>

Commencement.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

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⊗ Notified in the Nauru Government Gazette on  
15th March, 1965.

Definitions.

3. In this Ordinance, unless the contrary intention appears -

"adopted child" means a child adopted by virtue of an adoption order that has not been discharged under section nineteen of this Ordinance;

"adoptive parent", in relation to a child, means a person who, in pursuance of this Ordinance, is deemed to be the parent of the child, and, where a husband and his wife jointly are deemed to be the parents of the child, includes the husband and the wife;

"adoption order", in relation to an applicant and a child, means an order directing that the applicant shall be deemed to be the parent of the child and that the child shall be deemed to be the child of the applicant;

"applicant" means applicant for an adoption order;

"child" means a person who is under the age of twenty-one years and has never been married;

"Register of Births" means the Register of Births kept in pursuance of the Registration of Births, Deaths and Marriages Ordinance 1957;

"the Registrar" means the person for the time being performing the duties of Registrar under the Registration of Births, Deaths and Marriages Ordinance 1957;

"the Registrar of the Court" means the Registrar of the Central Court.

Power to make adoption orders.

4.--(1.) Subject to the provisions of this Ordinance, the Central Court, upon the application of a person to adopt a child, may make an order directing that the person shall be deemed to be the parent of the child and that the child shall be deemed to be the child of the person.

(2.) Subject to the provisions of this Ordinance, the Central Court, upon an application by a child or by a person acting on behalf of a child under section twenty-one of this Ordinance, may make an order directing that the child shall be deemed to be or deemed to have been the child of the persons referred to in the application and that those persons shall be deemed to be or deemed to have been the parents of the child.

Application by  
a sole applicant.

5.-(1.) Subject to the next succeeding sub-section, where a sole applicant applies to the Central Court for an adoption order, the Central Court shall not make the adoption order unless the applicant has attained the age of twenty-five years and is not less than twenty-one years older than the child in respect of whom the application is made.

(2.) The provisions of the last preceding sub-section do not prevent the Central Court making an adoption order where the Central Court is of opinion that, in the circumstances of the case, the interests of the child will best be promoted by making the adoption order.

Application by  
joint applicants.

6.-(1.) Subject to the next succeeding sub-section, where applicants apply jointly to the Central Court for an adoption order, the Central Court shall not make the adoption order unless -

- (a) the applicants are a man and his wife; and
- (b) each applicant has attained the age of twenty-five years and is not less than twenty-one years older than the child in respect of whom the application is made.

(2.) The provisions of paragraph (b) of the last preceding sub-section do not prevent the Central Court making an adoption order where the Central Court is

of opinion that, in the circumstances of the case, the interests of the child will best be promoted by making the adoption order.

Adoption of a child by a married person.

7.-(1.) Subject to the next succeeding sub-section, where an applicant is a married person, the Central Court shall not make an adoption order unless the consent of the spouse of the applicant is given to the adoption by the applicant of the child in respect of whom the application is made.

(2.) The Central Court may dispense with the consent referred to in the last preceding sub-section where -

(a) the person whose consent is required cannot be found or is incapable of giving his consent; or

(b) the Central Court is of opinion that, in the circumstances of the case, it is reasonable to dispense with the consent.

(3.) A person shall be deemed not to have consented to the adoption of a child unless the person -

(a) consents, in writing under his hand, to the adoption of the child; or

(b) appears before the Central Court and states, on oath, that he consents to the adoption of the child.

(4.) Where the Central Court makes an adoption order in respect of a child on the application of a married person whose spouse has consented to the adoption of the child, the spouse shall, for the purposes of this Ordinance, be deemed to be an adoptive parent and the child shall, for the purposes of this Ordinance, be deemed to have been adopted by the applicant and his spouse jointly.

Adoption of a female child by a male.

8. Where the sole applicant is a male and the child in respect of whom the application is made is a female, the adoption order shall not be made unless the Central Court is satisfied that exceptional circumstances justify the making of the order.

Adoptions by Nauruans, etc.

9.-(1.) Where the applicant is a Nauruan, an adoption order shall not be made unless the child in respect of whom the application is made is also a Nauruan.

(2.) Where the applicant is a married Nauruan, an adoption order shall not be made unless the child in respect of whom the application is made is a Nauruan and the spouse of the applicant is a Nauruan.

(3.) Where the applicant is not a Nauruan, an adoption order shall not be made unless the child in respect of whom the application is made is also not a Nauruan.

(4.) Where the applicant is a married person who is not a Nauruan, an adoption order shall not be made unless the child in respect of whom the application is made is not a Nauruan and the spouse of that applicant is also not a Nauruan.

Consent to adoption order.

10.-(1.) Subject to the next succeeding sub-section, an adoption order shall not be made in respect of a child unless the consent of each person -

- (a) who is a parent or guardian of the child;
- (b) who has the charge of, or control over the child; and
- (c) who is liable to contribute to the support of the child,

is given to the adoption of the child.

(2.) The Central Court may dispense with the consent of a person whose consent is required under the last preceding sub-section where the Central Court is

satisfied -

(a) that the person -

- (i) has abandoned or deserted the child;
- (ii) cannot be found;
- (iii) is incapable of giving his consent; or
- (iv) being liable to contribute to the support of the child, has persistently neglected or refused so to do; or

(b) that, in all the circumstances of the case, it is expedient to dispense with the consent of that person.

(3.) A person shall be deemed not to have consented to the adoption of a child unless the person -

(a) consents, in writing under his hand, to the adoption of the child; or

(b) appears before the Central Court and states, on oath, that he consents to the adoption of the child.

(4.) The withdrawal, without the leave of the Central Court, of a consent to the adoption of a child is void.

(5.) At the request of a person making application to adopt a child or of the Central Court -

(a) if the child is a Nauruan child - the Council; or

(b) if the child is not a Nauruan child - the

Registrar of the Court,

may make diligent enquiry with respect to any person who is, under this section, required to consent to the adoption of the child, unless his consent is dispensed with by the Central Court, and may certify, by writing under the hand of the Head Chief or of the Registrar of the Court, as the case may be, that such a diligent enquiry has been made and that the person specified in the certificate is the person whose consent to the

adoption of the child is, unless so dispensed with, required under this section.

(6.) Upon the hearing of an application to adopt a child -

(a) a certificate given under the last preceding sub-section of this section -

(i) is evidence of the facts stated in the certificate; and

(ii) shall, unless the contrary is proved, be deemed to have been signed by the person by whom it purports to be signed; and

(b) that person shall, unless the contrary is proved, be deemed to be a person authorized by this section to sign the certificate.

(7.) In this section, a reference to a person -

(a) who has the charge of, or control over a child; or

(b) who is liable to contribute to the support of a child,

shall be read, in the case of a Nauruan child, as including a reference to a person -

(c) who has the charge of, or control over the child; or

(d) who is liable to contribute to the support of the child,

as the case may be, in accordance with the customs and usages of Nauruans.

Matters with respect to which the Central Court is to be satisfied.

11. An adoption order in respect of a child shall not be made unless the Central Court is satisfied -

(a) that each person who is, under this Ordinance, required to consent to the adoption of the child (other than a person whose consent is dispensed with by the Central Court) -

- (i) has consented to the adoption of the child; and
- (ii) understood, at the time he so consented, the nature and effect of the adoption of the child;
- (b) that each parent of the child who consented to the adoption of the child understood, at the time he so consented, that the effect of the adoption order will be to deprive him permanently of his parental rights in respect of the child;
- (c) after giving such consideration to the wishes of the child as, having regard to the age and understanding of the child, the Central Court deems proper, that the welfare and interest of the child will be promoted by making the order; and
- (d) that the applicant has not received, or agreed to receive, a payment or reward (other than a payment or reward approved by the Central Court) as a consideration for adopting the child.

Notice to be given where child is Nauruan.

12.-(1.) Where application is made to adopt a Nauruan child, the applicant shall, not less than fourteen days before the date fixed for hearing the application, serve on the Council a copy of the application and a notice containing particulars of the date fixed for hearing the application.

(2.) Where the Council has, in pursuance of the last preceding sub-section, been served with a copy of an application to adopt a child and is of opinion that, in the interests of the child, the Council should appear on the hearing of the application, the Council may, at



any time before the hearing, file with the Registrar of the Court a notice of its intention to appear on the hearing of the application.

(3.) Upon filing a notice under the last preceding sub-section, the Council shall cause a copy of the notice to be served on the applicant.

(4.) Where the Council has caused a copy of a notice of intention to appear on the hearing of an application to adopt a child to be served on the applicant, the Council shall be deemed to be a guardian of the child for the purposes of the application and, in that capacity, shall be deemed to have been joined as a respondent to the application.

Application  
may be heard  
in private.

13.-(1.) An application to adopt a child may be heard by the Central Court in court or in chambers.

(2.) The Central Court may, if it thinks proper, hear an application, or take any evidence, in private and a person (other than the parties to the application and their representatives) who is not expressly authorized by the Central Court to be present shall not be present during the hearing of that application or the taking of that evidence.

(3.) A person shall not publish particulars of, or relating to, an application, or any evidence, that is heard or taken by the Central Court in private, unless the Central Court authorizes the publication of the particulars.

Penalty: Fifty pounds or imprisonment for three months.

Interim order.

14.-(1.) On the hearing of an application to adopt a child, the Central Court may -

(a) postpone the hearing of the application; and

(b) make an interim order giving custody of the

child to the applicant for the period specified

in the order (being a period not exceeding two years), by way of probationary period, upon such terms and conditions as to maintenance, education and supervision of the welfare of the child as the Central Court thinks fit and specifies in the order.

(2.) The provisions of section ten of this Ordinance apply to and in relation to the making of an interim order as if an interim order were an adoption order.

The Central Court may impose terms and conditions in an adoption order.

15. In an adoption order the Central Court may -
- (a) impose such terms and conditions as it thinks fit; and
  - (b) require the adoptive parent, whether by bond or otherwise, to make such provision for the adopted child as it thinks fit.

Name of adopted child.

16.-(1.) The Central Court shall, in an adoption order, specify the name by which the child in respect of whom the adoption order is made shall be entitled to be known.

(2.) Unless the Central Court otherwise orders, the name specified in pursuance of the last preceding sub-section shall include the surname of the adoptive parent of the child.

Effect of adoption order.

17.-(1.) Upon the making of an adoption order, the rights, duties, obligations and liabilities of the natural parent or the guardian of the adopted child in relation to the custody, maintenance and education of the child (including the right to appoint a guardian of, or to consent to the marriage of, the child) are extinguished, and every such right, duty, obligation and liability vests in, may be exercised by, and is enforceable against, the adoptive parent of the child as though the child was born to the adoptive parent in

lawful wedlock.

(2.) Where a child has, under this Ordinance, been adopted by a husband and wife jointly, the child shall, in the event of a question arising between the husband and wife as to the custody, maintenance or education of, or the right of access to, the child, be deemed by the court exercising jurisdiction in the matter to have been born to the husband and wife in lawful wedlock.

(3.) Subject to the next succeeding sub-section, on and after the making of an adoption order, the adopted child is entitled to succeed (whether upon an intestacy, under a disposition or in accordance with Nauruan custom) to the real and personal property of the adoptive parent to the same extent as if the child was born to the adoptive parent in lawful wedlock.

(4.) An adopted child does not have -

(a) a right of succession to the real or personal property of a relative of the half blood of his adoptive parent -

(i) upon the death of the relative, intestate;

or

(ii) in accordance with Nauruan custom, upon the death of the relative; or

(b) a right to any real or personal property under a disposition made by a person, other than the adoptive parent, in favour of the issue, child or children of the adoptive parent, unless it appears that the person making the disposition intended to include the adopted child as an object of the disposition.

(5.) Subject to the next succeeding sub-section, on and after the making of an adoption order, an adopted child does not have a right of succession to any real

or personal property of his natural parent or parents to which, if the adoption order had not been made, the child would have been entitled (whether upon an intestacy, under a disposition or according to Nauruan custom) as a child born to his natural parents in lawful wedlock, unless, in the case of a disposition, the child is expressly named in the disposition.

(6.) The making of an adoption order does not deprive an adopted child of -

(a) a right to succeed to any real or personal property of a relative of the half blood of a natural parent of the child -

(i) upon the death of the relative, intestate; or

(ii) in accordance with Nauruan custom, upon the death of the relative; or

(b) a right to any real or personal property under a disposition made by a person, other than the natural parent or parents of the child, in favour of the issue, child or children of the natural parent or parents of the child, unless it appears that the person making the disposition intended to exclude, as an object of the disposition, such child or children of the natural parent or parents as are adopted by a person other than the natural parent.

(7.) An adoption order does not affect any estate, right or interest in real or personal property to which a person has become entitled, whether 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 a devolution by law, or in accordance with Nauruan custom, on the death

of a person dying before the making of the adoption order.

(8.) The law and customs for the time being in force in the Island with respect to the marriage of persons within the prohibited degrees of consanguinity or affinity that affect, at law, the validity of marriages in fact celebrated, and the provisions of sections two hundred and twenty-two and two hundred and twenty-three of the First Schedule to The Criminal Code Act, 1899, of the State of Queensland, in its application to the Island, apply to and in relation to a child adopted in pursuance of this Ordinance, both with respect to the relatives by adoption of the child and with respect to the relatives by blood of the child.

Marriage celebrated between adoptive parent and adopted child.

18. A marriage celebrated between an adoptive parent and his adopted child shall be deemed to be void.

The Central Court may discharge or vary an adoption order.

19.-(1.) Where -

(a) application is made to the Central Court by -

(i) a person authorized by the Administrator; or

(ii) where the adoptive parent or the adopted child is a Nauruan, a person authorized by the Council,

to vary or discharge an adoption order; and

(b) the Central Court, after giving such consideration to the wishes of the child in respect of whom the adoption order was made as the Central Court thinks proper in the light of the age and understanding of the child, is satisfied that the welfare of the child will be promoted by varying or discharging the adoption order,

the Central Court may vary or discharge the adoption order on such terms and conditions as it thinks fit.

(2.) Subject to the next succeeding sub-section and to any conditions specified in the order discharging an adoption order, the firstmentioned order shall, for all purposes, be deemed to restore the child, the natural parents of the child and the adoptive parent of the child to the status and position, in relation to each other, that existed before the adoption order was made.

(3.) The discharge of an adoption order does not affect anything lawfully done, or any right or interest that became vested in the child, while the adoption order was in force.

An adopted child may again be adopted.

20.--(1.) An adoption order or an interim order may be made in respect of a child who is an adopted child by virtue of an adoption order that has not been discharged.

(2.) Where application is made to adopt a child who is an adopted child, the adoptive parent of the child at the time the application is made shall, for the purpose of section ten of this Ordinance, be deemed to be the parent of the child.

De facto adoptions.

21.--(1.) In this section, "child" means a person under or over the age of twenty-one years who, before the date of commencement of this Ordinance, was in the custody of another person, or of a husband and his wife jointly, and was being or had been brought up, and maintained by that other person, or the two spouses jointly, as his or their own child.

(2.) A person or a person and his spouse jointly may apply to the Central Court for an adoption order in respect of a child and the Central Court, if it is satisfied that in the circumstances of the case it is just and equitable and, in an appropriate case, it is for the welfare of the child so to do, may make an order directing that the

applicant or applicants shall be deemed to be or deemed to have been the parent or parents of the child and that the child shall be deemed to be or to have been the child of the applicant or applicants.

(3.) A child or a person acting on his behalf may apply to the Central Court for an order that the child shall be deemed to be or deemed to have been a child of a person or of a husband and his wife jointly if he had been brought up and maintained by that person, or those two spouses jointly as his or their own child and, in the case of the person, he is dead or unable to make an application under the last preceding sub-section, or, in the case of the husband and wife -

- (a) both are dead; or
- (b) both are or the survivor of them is unable to make an application under the last preceding sub-section.

(4.) The Central Court, if it is satisfied that it is just and equitable and, in an appropriate case, for the welfare of the child so to do, may make the order referred to in the last preceding sub-section, but the Central Court shall not make the order, if to do so would -

- (a) deprive a natural child or an adopted child of a person of a share or part of a share in the estate of the person who died before the date of the application; or
- (b) cause the administration of the estate of a person to be re-opened.

(5.) The Central Court may make an order referred to in this section -

- (a) notwithstanding that the parent is a male and the child is a female; and
- (b) if the Central Court considers that it is just and equitable and in an appropriate case,

for the welfare of the child so to do,  
without requiring the consent of any of  
the persons specified in section ten of  
this Ordinance.

Register of  
adopted  
children.

22.-(1.) The Registrar of the Court shall forward to the Registrar a copy of every adoption order, and of every order varying or discharging an adoption order, or required to be registered under this Ordinance.

(2.) The Registrar shall cause to be kept a register to be called the Register of Adopted Children and shall cause to be entered in that register such particulars of every order forwarded to him in pursuance of the last preceding sub-section as are prescribed.

(3.) Where the birth of a child, in respect of whom an adoption order is made, has been registered in the Register of Births, the Registrar shall cause the prescribed particulars of every order forwarded to him in pursuance of sub-section (1.) of this section to be entered in the margin of the entry of the birth of the child in the Register of Births.

Birth cert-  
ificates of  
adopted  
children.

23.-(1.) An entry in the Register of Births that contains in the margin particulars of an adoption order shall not, except in pursuance of an order made by a court, be made open to search or inspection.

(2.) Where a person requests the Registrar to furnish a copy of an entry in the Register of Births that contains in the margin particulars of an adoption order, the copy furnished shall, unless the Central Court otherwise orders, contain the particulars entered in the Register of Adopted Children relating to the person referred to in the entry in the Register of Births.

(3.) A copy furnished in pursuance of the last preceding sub-section shall, for all purposes, be deemed to be a copy of an entry in the Register of Births



certified in pursuance of the Registration of Births, Deaths and Marriages Ordinance 1957.

Sending of memoranda of orders to the States and Territories of the Commonwealth.

24. Where -

- (a) the Central Court makes an order for the adoption of a child or an order discharging or varying an adoption order; and
- (b) the Registrar of the Court has reason to believe that the birth of the child is registered in a State of, or a Territory administered by, the Commonwealth,

the Registrar of the Court shall cause a memorandum or copy of the adoption order, or an order discharging or varying an adoption order, certified in writing by him to be a true memorandum or copy, as the case requires, to be sent to the person keeping the register of births in the State or Territory.

Adoption orders made in the States or Territories of the Commonwealth.

25. Where the Registrar receives a certified copy or memorandum of an adoption order or an order varying or discharging an adoption order made by a court of a State of, or a Territory administered by, the Commonwealth in respect of a child whose birth is registered in the Register of Births of the Island, the Registrar shall amend the Register of Births as if the adoption order or the order varying or discharging an adoption order had been made in the Island.

Regulations.

26. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.