



NORTHERN TERRITORY OF AUSTRALIA

No. 17 of 1994

AN ACT

to provide for the adoption of children
and for related purposes

[Assented to 18 April 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Adoption of Children Act 1994*.

2. COMMENCEMENT

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"Aboriginal" means a person who is a member of the Aboriginal race of Australia;

"adoption list" means the record of names of couples kept and maintained under Division 2 of Part 3;

"adoptive parent", in relation to a child, means a person in whose favour an order for the adoption of a child has been made (whether before or after the commencement of this Act);

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"allocation", in respect of the adoption of a child, means the matching of a person or persons wishing to adopt a child and a child who is available for adoption (for the purposes of the adoption of the child) taking into account the interests and welfare of the child and the wishes of the parent or parents of the child and the person or persons wishing to adopt;

"approved person" means a person, or the holder from time to time of a particular designation or office, approved in writing by the Minister for a purpose under this Act;

"care and custody", in relation to a child, means the responsibility for the daily care and control of the child, including making decisions concerning the accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child;

"child" means a person who is or was available for adoption in respect of whom an order for adoption is yet to be made or has been made;

"citizen-child" means a child who was born and is domiciled in a State or Territory of the Commonwealth;

"Court" means the Local Court;

"Department" means the department responsible through the Minister for the administration of this Act;

"disposition of property" includes the grant or exercise of a power of appointment in respect of property;

"guardian", in relation to a child, means the person who has the responsibility for the care and custody and the long term welfare of the child (including decisions concerning education, religion, place of residence and the general health of the child) and who has the rights, powers and duties vested by law or custom in the guardian of the child;

"marriage" means a legal marriage and married has a corresponding meaning;

"non-citizen child" means a child who has not attained the age of 18 years, who has entered the Territory as a non-citizen for the purposes of being adopted by a permanent resident of Australia and who is intended to become a permanent resident of Australia;

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"overseas country" means a country that is outside the Commonwealth and the Territories of the Commonwealth and includes part of such a country;

"parent" means birth parent or adoptive parent;

"Registrar" means the Registrar within the meaning of the *Local Court Act*;

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of whole-blood or half-blood or by affinity, and notwithstanding that the relationship depends on the adoption of any person;

"relinquishing parent" means a parent who has relinquished a child (for the purposes of the adoption of the child) in respect of whom an order for adoption has been made;

"spouse" means a person who is married or who is living in a traditional Aboriginal marriage in relation to the man or woman to whom he or she is married or with whom he or she entered into the traditional Aboriginal marriage;

"traditional Aboriginal marriage" means a relationship between an Aboriginal man and woman that is recognised as a traditional marriage by the community or group to which either Aboriginal belongs.

(2) Where the holder of an office that is established by another Act is referred to in this Act and the holder of that office has power to delegate to another person or holder of an office or designation all or any of his or her powers and functions under that Act -

(a) the powers and functions that may be so delegated are deemed to include the powers and functions under this Act and the powers and functions under this Act may be delegated in the manner provided by that other Act; and

(b) in relation to a power or function so delegated, a reference in this Act to the holder of that office shall be read as including a reference to the delegate.

(3) For the purposes of this Act, "birth", in relation to a child or a parent, means as a result of a pregnancy caused -

(a) by sexual relations; or

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(b) by a fertilisation procedure within the meaning of Part IIIA of the *Status of Children Act*, parenthood being determined in accordance with that Part.

(4) For the purposes of this Act, a reference to 2 persons or a couple in relation to a joint adoption of a child under this Act is a reference to -

(a) a man and woman who are married; or

(b) an Aboriginal man and woman who are living together in a traditional Aboriginal marriage.

4. DELEGATION

(1) The Minister may, by instrument in writing, delegate to a person, or the holder from time to time of a particular designation or office, any of his or her powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, is deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

PART 2 - JURISDICTION

5. JURISDICTION OF LOCAL COURT

Subject to this Act, the Court has the jurisdiction to hear and determine all proceedings instituted under this Act.

6. CASES IN WHICH JURISDICTION TO BE EXERCISED

(1) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order -

(a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the Territory; and

(b) the child was present in the Territory.

(2) For the purposes of subsection (1), where the Court is satisfied that an applicant was resident or domiciled in the Territory, or that the child was present in the Territory, on a date within 21 days before the date

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on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in the Territory, or that the child was present in the Territory, as the case may be, at the time of the filing of the application in the Court.

7. RULES OF PRIVATE INTERNATIONAL LAW NOT TO APPLY

The jurisdiction of the Court to make an order for adoption is not dependent on any fact or circumstances not expressly specified in this Act.

PART 3 - ADOPTIONS UNDER THIS ACT

Division 1 - General

8. WELFARE AND INTERESTS OF CHILD TO BE PARAMOUNT

(1) For the purposes of the administration of this Act, adoption shall be regarded as a service for the child concerned, and the welfare and interests of the child shall be the paramount consideration.

(2) In determining the welfare and interests of a child referred to in subsection (1), regard shall be had, *inter alia*, to the ethnicity and religion of the birth parents of the child and, in so doing, the matters set out in Schedule 1 shall be taken into account.

9. RESPONSIBILITIES OF MINISTER

The Minister is, under and in accordance with this Act, responsible for -

- (a) the assessment of the suitability of a person or persons to adopt a child (including a non-citizen child);
- (b) the arrangements for and in relation to the allocation of a citizen-child to a person or persons wishing to adopt such a child;
- (c) the transfer of the care and custody of a child (including a non-citizen child) to the person or persons who will adopt him or her; and
- (d) the giving of his or her consent to the adoption of a child (including a non-citizen child) of whom he or she has guardianship.

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10. WISHES OF CHILD

(1) Subject to this Part, an order for the adoption of a child shall not be made unless the Court is satisfied that, as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them.

(2) Subject to this Part, an order for the adoption of a child who has attained the age of 12 years shall not be made unless -

- (a) the child has consented to the adoption; or
- (b) notwithstanding that the child has not consented to the adoption, the Court is satisfied that there are special reasons related to the welfare and interests of the child why the order should be made.

(3) Notwithstanding subsections (1) and (2)(b), an order for the adoption of a child who, on the date the order is made, has attained the age of 18 years shall not be made unless the child consents to the adoption.

11. ADOPTION OF ABORIGINAL CHILD

(1) Where an order for the adoption of an Aboriginal child is to be made, the Court shall satisfy itself that every effort has been made (including consultation with the child's parents, with other persons who have responsibility for the welfare of the child in accordance with Aboriginal customary law and with such Aboriginal welfare organisations as are appropriate in the case of the particular child) to arrange appropriate custody -

- (a) within the child's extended family; or
- (b) where that cannot be arranged, with Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law.

(2) In making an order for the adoption of an Aboriginal child, where, in the opinion of the Court, the custody referred to in subsection (1) is not possible or would not be consistent with the welfare and interests of the child, the Court shall ensure that a placement is made that is consistent with the best interests and welfare of the child and in so doing shall -

- (a) give preference to the adoption of the child by applicants one or both of whom are Aboriginal persons who are, in the opinion of the Minister, suitable to adopt the child;

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- (b) take into consideration the placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and a responsibility for, the welfare of the child; and
- (c) take into consideration undertakings, if any, by the persons who will have the care and custody of the child to encourage and facilitate the maintenance of contact between the child and its own kin and with its own culture.

12. WHO MAY BE ADOPTED

(1) Subject to this Act, the Court may, on application, make an order for the adoption of a child who -

- (a) had not attained the age of 18 years before the date on which the application was filed in the Court; or
- (b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased or estranged spouse of the applicant, as his, her or their child.

(2) The Court shall not make an order for the adoption of a child who is or has been married, is living or has lived in a de facto relationship within the meaning of the *De Facto Relationship Act* or has entered into a traditional Aboriginal marriage.

(3) An order may be made under this Act for the adoption of a child notwithstanding that the child has, whether before or after the commencement of this Act, and whether in the Territory or elsewhere, previously been adopted.

13. ADOPTION BY COUPLE

(1) Except as provided by this section, the Court shall only make an order for the adoption of a child in favour of a couple where the man and woman -

- (a) are married to each other and have been so married for not less than 2 years; or
- (b) have entered into a relationship that is recognised as a traditional Aboriginal marriage and has been so recognised for not less than 2 years,

on the date on which the order is made.

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(2) The Court shall not make an order for adoption in favour of a man and woman jointly under subsection (1) where one of them is a parent of the child.

14. ADOPTION BY ONE PERSON

(1) Subject to this section, the Court shall not make an order for the adoption of a child in favour of one person (not being a person to whom section 15 applies) unless -

- (a) the child is under the guardianship of the Minister; and
- (b) it is satisfied that, in the opinion of the Minister, exceptional circumstances exist that make it desirable to do so.

(2) A person referred to in subsection (1) does not include a person who is married or has entered into a traditional Aboriginal marriage and who is not living separately and apart from his or her spouse.

15. ADOPTION BY SPOUSE OF PARENT, &c.

(1) Subject to this section, the Court may make an order for the adoption of a child in favour of -

- (a) the spouse of a parent of the child (whether a birth parent or an adoptive parent and whether alive or dead);
- (b) a relative of the child;
- (c) the spouse of a relative of the child; or
- (d) a relative of the child and his or her spouse jointly.

(2) A person referred to in subsection (1) (b) or (c) does not include a person who is married or has entered into a traditional Aboriginal marriage and who is not living separately and apart from his or her spouse.

(3) The Court shall not make an order for the adoption of a child in favour of a person or persons referred to in subsection (1) unless it is satisfied that -

- (a) the making of an order in relation to the guardianship or custody of the child under the *Family Law Act 1975* of the Commonwealth or the *Guardianship of Infants Act* would not make adequate provision for the welfare and interests of the child;

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- (b) in the opinion of the Minister, exceptional circumstances exist which make the making of an order for the adoption of the child desirable; and
- (c) an order for the adoption of the child would make better provision for the welfare and interests of the child than an order referred to in paragraph (a).

(4) Where the Court makes an order for the adoption of a child in favour of the spouse of a parent of the child, the person in whose favour the order is made is deemed to be a parent of the child jointly with the first-mentioned parent and notwithstanding anything to the contrary in this Act or any other law in force in the Territory -

- (a) the child is not to be treated in law as if the child were not the child of the first-mentioned parent;
- (b) the first-mentioned parent is not to be treated in law as if he or she is not a parent of the child;
- (c) the relationship between the child and the first-mentioned parent is not terminated;
- (d) where the first-mentioned parent had been the guardian of the child, the order does not terminate the guardianship; and
- (e) where the child was the adopted child of the first-mentioned parent, the order does not terminate the adoption,

and section 45 otherwise applies.

16. AGE OF ADOPTIVE PARENTS

(1) Subject to this section, the Court may only make an order for the adoption of a child where the person or persons in whose favour it is made -

- (a) has or have attained the age of 25 years; and
- (b) is or are not less than 25 years older than the child.

(2) Where it is the first child to be adopted by the person or persons in whose favour the order for adoption is to be made and that person or neither of those persons does or do not have the care and custody of a child (including an adopted child) the Court may make an order for the adoption of a child in favour of that person or those persons only if that person or the older of those persons is not more than 40 years older than the child.

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(3) Where the person or persons, or one of those persons, in whose favour the order for adoption is to be made, has or have the care and custody of a child (including an adopted child), the Court may make an order for the adoption of a child in favour of that person or those persons only if that person or the older of those persons is not more than 45 years older than the child.

(4) Notwithstanding this section, the Court may make an order for the adoption of a child in favour of a person who does not comply with this section where, in the opinion of the Minister, exceptional circumstances exist that make such an order desirable.

Division 2 - Application and Assessment

17. APPLICATION AND ASSESSMENT

- (1) A person alone or a couple who -
- (a) is resident or domiciled in the Territory; and
 - (b) wishes to adopt a child (including a non-citizen child),

may apply in the prescribed form to the Minister for the purpose of adopting a child.

(2) Where the Minister receives an application under subsection (1), the Minister shall assess or cause to be assessed by an approved person the suitability of the applicant or applicants for the purposes of the adoption of a child (including a non-citizen child).

18. LIST OF PERSONS WISHING TO ADOPT A CITIZEN-CHILD

(1) The Minister shall, in accordance with this section, establish and maintain a record in such form (including an electronic form) or combination of forms, as the Minister thinks fit, of the names of the couples who have made an application to him or her under section 17 in respect of a citizen-child and who are, in his or her opinion, suitable to adopt such a child, and that record shall be known as the adoption list.

- (2) The Minister shall -
- (a) keep the adoption list in a form that indicates the chronological order that applications under section 17 were received by him or her; and
 - (b) in relation to each couple whose names are included on the adoption list, record on the adoption list such particulars, as he or she thinks necessary to assist in the arranging of an adoption, in respect of the couple and the child they wish to adopt.

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(3) The names of couples shall not be included on, or continue to remain on, the adoption list unless the Minister, having received a report from an approved person in respect of the suitability to adopt of the couple, decides that the couple is suitable, or continues to be suitable to adopt the child.

(4) On making his or her decision as to the suitability of the couple to adopt, the Minister shall give written notice of the decision as soon as practicable to the couple and, where the Minister decides not to approve the inclusion of names of the couple on the list, he or she shall supply reasons for that decision.

19. PERSONS WHOSE NAMES APPEAR ON ADOPTION LIST OF ANOTHER STATE

Where the Minister is satisfied that any persons applying to have their names included on the adoption list are persons whose names are, or were within one month before the date of the application, included in a similar list kept by a person, officer or authority in accordance with the law of a State or another Territory of the Commonwealth, the Minister may treat the application as having been received by him or her on the date on which the application by virtue of which the names were included in the list kept by that person, officer or authority was received, or was treated as having been received, by that person, officer or authority.

20. MINISTER TO HAVE REGARD TO ADOPTION LIST

In making arrangements for and in relation to the adoption of a child and in the allocation of the child to a couple, the Minister shall, without prejudice to his or her duty to consider all other relevant matters (including in particular the welfare and interests of the child and the wishes of the parent or parents of the child and the couple wishing to adopt), have regard to the adoption list and to the chronological order of the names of the persons included on the adoption list.

21. SUITABILITY TO ADOPT NON-CITIZEN CHILD

(1) Where the assessment of a person alone or a couple who has made an application under section 17 in respect of a non-citizen child has been carried out, the Minister shall, having received a report from an approved person in respect of the suitability to adopt of the person or the couple and decided whether in his or her opinion the person or the couple is suitable to adopt, give as soon as practicable written notice to the person or the couple of his or her decision that -

- (a) the person or the couple is suitable to adopt a non-citizen child; or

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- (b) the person or the couple is not suitable to adopt a non-citizen child and the reasons for that decision.

(2) The Minister shall cause records to be kept of an assessment of the person or the couple carried out under this section.

(3) On receipt of notice under subsection (1) (a) of the decision of the Minister that a person or a couple is suitable to adopt, the person or the couple may proceed to have arrangements made for the allocation of a non-citizen child to them for adoption under the law in force in the Territory.

*Division 3 - Review of Decision
not to Approve Persons*

22. PERSON AGGRIEVED MAY SEEK REVIEW

A person or couple who is aggrieved by a decision of the Minister under Division 2 as to his, her or their suitability to adopt may, not later than one month after the date of the written notice from the Minister of his or her decision, or such longer time as the Minister may allow, apply to the Minister for review of that decision on the ground that the assessment of him, her or them was incorrect.

23. APPOINTMENT OF PANEL

(1) On receipt of an application for review under section 22, the Minister shall constitute a panel which shall consist of -

- (a) a chairperson who shall be a person who is admitted to practise as a legal practitioner of the Supreme Court; and
- (b) 2 other persons (one of whom shall be a person who is an employee within the meaning of the *Public Sector Employment and Management Act* who is employed in the Department) who, in the opinion of the Minister, are qualified and have relevant experience in the field of social work, psychology or child welfare.

(2) A member of a panel shall be appointed by instrument in writing in accordance with subsection (1) in respect of a particular application for review and that appointment shall be automatically terminated on the completion of its inquiry in respect of that review.

24. ROLE OF PANEL

(1) The role of a panel appointed under section 23 is to conduct an inquiry for the purpose of re-assessing the suitability of a particular person or couple to adopt and, on completion of its inquiry, to make recommendations to the Minister as to whether or not the Minister's decision should be varied.

(2) Subject to this section, the procedure for the conduct of the inquiry by a panel shall be as determined by the panel in each case.

(3) In conducting an inquiry, a panel -

- (a) shall act without regard to technicalities and legal form;
- (b) is not bound by rules of evidence; and
- (c) may inform itself on any matter in such manner as it thinks fit, including the interviewing of a person who applied for the review.

25. MINISTER TO REVIEW DECISION

The Minister shall, as soon as practicable after receiving the recommendations of a panel in respect of an application for review -

- (a) review his or her decision, taking into account those recommendations; and
- (b) give written notice to the applicant or applicants of the outcome of the review.

Division 4 - Consents to Adoptions

26. NO ADOPTION WITHOUT CONSENT

Subject to this Act, the Court shall not make an order for the adoption of a child unless -

- (a) consent (not being consent that has been revoked) to the adoption is given by the appropriate person or persons ascertained in accordance with this Division; or
- (b) the Court has, by order under section 35, dispensed with the giving of a consent to the adoption by such a person.

27. CONSENTS OF PARENTS AND GUARDIANS REQUIRED

(1) Subject to section 28, in the case of a child who has not previously been adopted, consent to the adoption of the child by each person who is a birth parent or a guardian of the child is required, except that the

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consent of a birth parent of a child born outside the marriage or the traditional Aboriginal marriage of his or her birth parents is not required unless that birth parent's parenthood of the child is recognised under a law in force in the Territory before -

- (a) the expiration of one month after the day on which an instrument of consent to the adoption of the child was signed by the first-mentioned birth parent or a guardian; or
- (b) the day on which an order for the dispensation of the giving of a consent to the adoption of the child is made by the Court under section 35,

whichever is the earlier.

(2) In the case of a child who has been previously adopted, the consent of every person who is an adoptive parent or a guardian of the child is required.

(3) Where a person whose consent is otherwise required under this section is the applicant or one of the applicants for an order for adoption, that person's consent to the adoption is not required.

(4) This section does not apply in the case of a child who has attained the age of 18 years before the order for adoption is made.

28. BIRTH PARENT TO BE GIVEN OPPORTUNITY TO CONSENT

(1) In the case of the adoption of a child who has not been adopted before and who was born outside the marriage or the traditional Aboriginal marriage of his or her birth parents and only one birth parent consents to the adoption of the child, where the Minister knows or, after making reasonable inquiry, ascertains the name and last-known address of a person who the Minister reasonably believes to be the other birth parent of the child, the Minister shall, by certified mail within 14 days after the first-mentioned birth parent gives his or her consent to the adoption, send to the other birth parent written advice of the first-mentioned birth parent's consent to the adoption of the child.

(2) A birth parent to whom the Minister sends written advice pursuant to subsection (1) may, within 7 days after receiving the advice, give notice to the Minister that he or she intends to take steps to establish his or her parenthood of the child in accordance with the *Status of Children Act*.

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(3) The birth parent referred to in subsection (2) shall, within one month after the giving of notice to the Minister under that subsection -

- (a) establish his or her parenthood of the child; or
- (b) commence proceedings to establish his or her parenthood of the child under the *Status of Children Act*,

as the case requires, and, if he or she does not do so, his or her consent to the adoption is not required.

(4) Where the birth parent referred to in subsection (2) establishes his or her parenthood of the child, his or her consent to the adoption of the child is required in accordance with this Division.

(5) On application by the Minister within 7 days after receiving the consent of the first-mentioned birth parent referred to in subsection (1), the Court may, where it is satisfied that sufficient grounds exist, order that the Minister is not required to comply with subsection (1) and accordingly the Minister shall not comply with that subsection.

29. CONSENT FOR ADOPTION OF NON-CITIZEN CHILD

(1) Where an application is made for the adoption of a non-citizen child -

- (a) this Division does not apply in relation to the giving of consent to the adoption of the non-citizen child by a parent or a guardian of the non-citizen child; and
- (b) the Court must satisfy itself that the Minister consents to the application for the adoption of the non-citizen child before making the order for the adoption.

(2) The Minister's consent referred to in subsection (1) shall be accompanied by a written declaration, signed by the Minister, that the Minister believes on reasonable grounds -

- (a) that each parent or guardian of the non-citizen child -
 - (i) has, before the child commenced the journey to Australia, given consent in accordance with the law of the place of residence of the parent or guardian of the child to the adoption of the child and has not revoked the consent; or

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(ii) is dead or cannot, after reasonable inquiry, be found; or

(b) that circumstances exist by reason of which the consent of a parent or guardian, if required under this Act, may be dispensed with.

30. PERSON CONSENTING TO RECEIVE COUNSELLING

(1) Subject to subsection (4), a person (other than the Minister) who is, under this Division, required to consent to an adoption of a child shall not consent to the adoption unless he or she has received counselling from an approved person.

(2) The person who gives the counselling referred to in subsection (1) shall, not later than 7 days before consent to an adoption is given, give to the person or persons who propose to consent to the adoption information in the prescribed form in respect of the effect of an order for adoption and the alternatives to adoption.

(3) The Minister may, for the purposes of a proceeding under this Act, certify that subsections (1) and (2) have been complied with and such certification by the Minister is prima facie evidence that subsections (1) and (2) have been complied with.

(4) This section does not apply to a person who proposes to give consent to an adoption and who will have been residing outside the Territory for a continuous period of 2 months at the time of giving the consent.

31. FORM OF CONSENT

(1) Subject to this section, a consent to an adoption shall be in the prescribed form and shall be -

(a) expressed as consent of the person giving consent to the adoption of the child by the person or persons who the Minister is satisfied is suitable to adopt the child;

(b) signed by the person giving the consent; and

(c) witnessed as prescribed.

(2) Notwithstanding subsection (1)(a), where -

(a) an applicant, whether or not one of joint applicants, for an order for the adoption of a child is a relative of the child, the spouse of a parent of the child or the spouse of a relative of the child; or