



**Tuvalu**

# **ADOPTION OF CHILDREN ACT**

**Revised Edition 1990**





Tuvalu

## ADOPTION OF CHILDREN ACT

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Tuvalu

## ADOPTION OF CHILDREN ACT

8 of 1985

**TO PROVIDE FOR THE LEGAL ADOPTION OF CHILDREN IN CIRCUMSTANCES WHEN CUSTOMARY PROCEDURES OF NATIVE ADOPTION ARE INAPPROPRIATE.**

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [1 January 1986]

### PART I - PRELIMINARY

#### 1 Citation and Commencement

This Act may be cited as the Adoption of Children Act 1985 and shall come into force at such date as the Minister may, by notice, appoint.

#### 2 Purpose of this Act

- (1) This Act provides for the Senior Magistrates Court to grant adoption orders in respect of children under the age of 12 years, by procedures which will be recognised by foreign courts.
- (2) The procedures supplement those in force for native adoptions without affecting rights set out in the Native Lands Act and enable adoption orders to be granted —
  - (a) in respect of children who may not be natives; and
  - (b) to adoptive parents who may not be natives.

### 3 Interpretation

In this Act unless the context otherwise requires —

“**consent**” means a consent to the adoption of a child in accordance with Division (2) of this Act;

“**guardian**” in relation to a child, includes —

- (a) a person having custody under a Court order;
- (b) a person who is or is deemed to be a guardian under any law of Tuvalu; and
- (c) a guardian by custom;

“**Lands Court**” means a court established under Part IV of the Native Lands Act (Cap. 22, 1982 Edn.);

“**native**” has the meaning given to it in the Interpretation and General Provisions Act, (Cap. 1A, 1990 Ed.), and

“**native adoption**” has the meaning given to it in the Native Land's Act (Cap. 22, 1982 Edn.).

## PART II - JURISDICTION

### 4 Jurisdiction

- (1) Jurisdiction in all proceedings under this Act shall be in the Senior Magistrates Court.
- (2) Nothing in this Act shall affect the jurisdiction of the Lands Court in native adoption proceedings or matters arising from such adoptions.
- (3) Notwithstanding subsection (2) an application may be made in the Senior Magistrates Court for an adoption order both by applicants who are natives, and in respect of a child who is a native, in accordance with this Act.

### 5 When may jurisdiction be exercised

The Court may make an adoption order if at the time of applying to the Court for the order,

- (a) the child, or
- (b) at least one of the applicants,

was resident or domiciled in Tuvalu.

**6 Rules of private international law etc. not to apply**

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

**PART III - ADOPTIONS UNDER THIS ACT****DIVISION 1 - GENERAL****7 Welfare and interests of child to be paramount**

In all proceedings under this Act the welfare and interests of the child shall be regarded as the paramount consideration.

**8 Who may be adopted**

- (1) Subject to this Act the Court may make an adoption order only where a child has not attained the age of 12 years before the date on which the application for adoption was filed in the Court.
- (2) An adoption order may be made notwithstanding any previous adoption of the child whether in Tuvalu or elsewhere.

**9 Persons in whose favour adoption orders may be made**

- (1) An adoption order shall be made only in favour of a husband and wife jointly unless the Court is satisfied that exceptional circumstances make it desirable to make the order in favour of one person.
- (2) The Court may make an adoption order in favour of a husband and wife jointly, notwithstanding that one of them is the natural parent of the child.

**10 Court to be satisfied as to certain matters**

No adoption order shall be made unless having made proper enquiries the Court is satisfied that;

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of the child to be adopted, and
- (b) the applicants are suitable persons to adopt the child having regard to —
  - (i) all relevant considerations, including age, state of health, education and religious upbringing of the child and of the applicants;

- (ii) any wishes that have been expressed by a parent or guardian of the child in an instrument of consent to the adoption with respect to the religious upbringing of the child; and
- (iii) the welfare and interests of the child.

## **11 Notice of Application for adoption**

- (1) The Court shall not make an adoption order unless the applicants have given not less than 14 days notice of the application:
  - (a) to any person whose consent to the adoption is necessary under section 14 but whose consent has not been given; and
  - (b) to any person with whom the child resides, or who has the care or custody of the child.
- (2) On written application the Court may dispense with the giving of notice under subsection (1).
- (3) Where it appears to the Court to be necessary in the interests of justice to do so, the Court may direct that notice of an application for an adoption order be given to any person.

## **12 Parties**

Where an application is made for an adoption order, the Court may permit such persons as it thinks fit to be joined as parties to the proceedings for the purpose of;

- (a) opposing the application; or
- (b) opposing an application to dispense with the consent of a person.

## **13 Discharge of Adoption orders**

- (1) The Secretary for Health, Education and Community Affairs may apply to the Court for an order discharging an adoption order, and the court shall make such an order if it is satisfied,
  - (a) the adoption order, or any consent for the purposes of the adoption order was obtained by fraud, duress or other improper means; or
  - (b) there is some exceptional reason why, in view of the welfare and interests of the child, the adoption order should be discharged.
- (2) No order shall be-made under this section if the Court is satisfied that to do so would prejudice the welfare and interests of the child.
- (3) Where the Court makes an order under this section, it may, at the same time or subsequently, make such other orders as it thinks necessary in the

interests of justice or the welfare and interests of the child, including orders relating to,

- (a) the name of the child,
  - (b) the ownership of property, and
  - (c) the custody or guardianship of the child
- (4) On making an order under this section discharging an adoption order, the rights, privileges, duties, liabilities and relationships under the Laws of Tuvalu of the child and all other persons shall, subject to subsection 19(2), be the same as if the adoption order had not been made but without prejudice to,
- (a) anything lawfully done;
  - (b) the consequences of anything unlawfully done;
  - (c) any proprietary right or interest that became vested in any person while the adoption order was in force.

## DIVISION 2 - CONSENTS TO ADOPTION

### 14 Consents of Parents and guardians required

- (1) Subject to this Division the Court shall not make an adoption order unless;
  - (a) consent to the adoption by the applicants has been obtained from the appropriate person, ascertained in accordance with this section, not more than thirty days prior to the application being lodged with the Court; or
  - (b) the Court is satisfied that there is no such appropriate person.
- (2) For the purposes of this section, the appropriate persons are:
  - (a) in the case of a legitimate child who has not previously been adopted - persons who are parents and the guardians of the child;
  - (b) in the case of an illegitimate child who has not previously been adopted - the mother and guardians of the child; and
  - (c) in the case of a child who has previously been adopted - the adoptive parents and the guardians of the child.
- (3) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the adoption order.

### 15 Form of consents

A consent for the purposes of this Division shall be evidenced by an instrument of consent in the prescribed form signed by the person giving the consent and authenticated as prescribed.

## 16 Defective consents

- (1) The Court may refuse to make an adoption order in reliance on a consent, given or purported to have been given by a person (other than the child) if it appears to the Court that —
  - (a) the consent was not given in accordance with this Act; or
  - (b) the consent was obtained by fraud, duress or other improper means; or
  - (c) the instrument of consent has been altered in a material particular without authority; or
  - (d) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent.
- (2) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child before the birth of that child.
- (3) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child within ten days of the child's birth unless the Court is satisfied on medical evidence, that the mother was in a fit condition to give the consent.

## 17 Court may dispense with consent

The Court may, by order, dispense with the consent of a person (other than the child) to the adoption, where it is satisfied that —

- (a) after reasonable inquiry, the person cannot be found or identified; or
- (b) the person has, for a period of not less than one year, failed without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (c) there are special circumstances by reason of which the consent may be properly dispensed with.

## 18 Consent of child

Subject to this Division an order for the adoption of a child who has attained the age of 10 years shall not be made unless —

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

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## DIVISION 3 – EFFECT OF ADOPTION ORDERS

### 19 General effect of adoption orders

- (1) Subject to this Act, and to any law which expressly distinguishes in any way between adopted children and children other than adopted children, on making of an adoption order —
  - (a) the adopted child becomes a child of the adopters, and the adopters become the parents of the child, as if the child had been a lawful child of the adopters' marriage;
  - (b) the adopted child ceases to be a child of any person who was his parent (whether natural or adoptive) before the making of the adoption order, and any such person ceases to be a parent of the child;
  - (c) the relationship to one another of all persons (including the adopted child and an adoptive parent or former parent of the adopted child) shall be determined on the basis of this section so far as it is relevant; and
  - (d) any previous adoption of the child, (whether effected under the Laws of Tuvalu or elsewhere) ceases to have effect;for the purposes of all laws.
- (2) Notwithstanding subsection (1), for the purposes of any law relating to sexual offences, (where the relationship between persons is relevant), —
  - (a) an adoption order, or the discharge of an adoption order does not end any relationship that would have existed if the adoption order or the discharging order, as the case may be, had not been made; and
  - (b) any such relationship shall be deemed to exist in addition to any new relationship created by the adoption order or as a result of the discharge of that adoption order.

### 20 Effect of order on domicile

- (1) Subject to this section, on making an adoption order —
  - (a) the adopted child acquires the domicile of the adoptive parents at the date of the adoption order, and
  - (b) the child's domicile afterwards shall be determined as if the child had been a lawful child of the adoptive parents' marriage.
- (2) The domicile acquired by the child under subsection (1) on the making of the order, shall be deemed to be also the child's domicile of origin.

**21 Effect of Order on Native Lands Act**

- (1) Notwithstanding section 19, where an adoption order is made in respect of applicants either of whom is a native, the provisions of the Native Lands Act (Cap. 22, 1982 Edn.) shall apply to any conveyances of land which such an adoption may entail.
- (2) No order made under this Act shall be regarded as a native adoption except for the purposes of subsection (1).

**PART IV - OFFENCES****22 Taking away etc of adopted child by natural parent**

- (1) A person who was the parent or guardian of a child but has, by reason of an adoption of the child, ceased to be the parent or guardian, and who takes, leads, entices or decoys the child away, or detains the child with intent to deny the adopters of the child of possession of the child, is guilty of an offence.
- (2) A person who receives or harbours a child on behalf of a person who, to his knowledge, has contravened subsection (1), is guilty of an offence.

**23 False statement in application etc**

A person who orally or in writing wilfully makes a false statement for the purposes, of, or in connection with a proposed adoption, is guilty of an offence.

**24 Authority to prosecute**

Proceedings for an offence against this Act shall not be commenced except with the written consent of the Attorney-General.

**25 Penalties**

A person convicted of any offence under this Act is liable to imprisonment for 1 year, or to a fine of \$500, or to both.

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## PART V - MISCELLANEOUS

### 26 Particulars to be forwarded to Registrar General

- (1) The Clerk of the Court shall send a copy of every adoption order and of every order under section 13 to the Registrar General.
- (2) An adoption order shall, so far as is practical, contain, —
  - (a) particulars of the child's full name, any authorized alteration of names, sex, and date and place of birth,
  - (b) the names of natural parents; and
  - (c) the names, addresses and occupations of the adopting parents.
- (3) There shall be attached to the copy of the adoption order sent under subsection (1) a schedule in Form 1, containing as far as is practical the particulars set out in that form.

### 27 Sending information to other countries

Where the Court makes an adoption order or discharges an adoption order and the Registrar General has reason to believe that the birth of the child is registered in another country, the Registrar General shall send a certified copy of the schedule prepared under section 26 to the officer in that other country who has responsibility for the registration of births.

### 28 Matters admissible in evidence

The Court may, in any application for an adoption order or for the discharge of an adoption order, act on any statement, document, information, or matter which, in the opinion of the Court, may assist it to deal with the proceedings, whether or not the statement, document, information or matter would otherwise be admissible in evidence.

### 29 Regulations

The Minister may make regulations for giving effect to this Act and in particular, making provision for: —

- (a) the forms to be used for the purposes of this Act; and
- (b) notification of consent to the adoption of a child.

**SCHEDULE**

Section 26

**ADOPTION OF CHILDREN ACT 1985**

Adoption Order No..... Date Made .....

**Particulars of Adoption**

**Particulars of Child**

- 1. Name of Child Sex.....
- 2. Sex .....
- 3. Date of Birth .....
- 4. Place of Birth .....
- 5. Fathers name (in full).....
- 6. Mothers name (in full).....

**Particulars of Adopting Parents Father Mother**

- 7. Full names: .....
- 8. Age.....
- 9. Birth place.....
- 10. Occupation.....
- 11. Usual place of residence .....

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**