



REPUBLIC OF NAURU

Adoption of Children Act 1965

As in force from 15 April 2011

This compilation comprises Ordinance No. 2 of 1965 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 17 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Adoption of Children Act 1965

An Ordinance relating to the adoption of children

1 Short title

This Act may be cited as the *Adoption of Children Act 1965*.

2 Commencement

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

3 Definitions

In this Act, 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 Act;

‘adoptive parent’, in relation to a child, means a person who, in pursuance of this Act, 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;

‘Clerk’ means Clerk of the Court;

‘Court’ means the Family Court;

'foreign jurisdiction' means a foreign country or a political subdivision of a foreign country;

'Register of Births' means the Register of Births kept under the *Births, Deaths and Marriages Act 1957*;

'the Registrar of the Court' means the Clerk.

4 Power to make adoption orders

- (1) Subject to the provisions of this Act, the 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 Act, the Court, upon an application by a child or by a person acting on behalf of a child under section twenty-one of this Act, 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.

5 Application by a sole applicant

- (1) Subject to the next succeeding subsection, where a sole applicant applies to the Court for an adoption order, the 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 subsection do not prevent the Court making an adoption order where the 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.

6 Application by joint applicants

- (1) Subject to subsection (2), if applicants apply jointly to the Court for an adoption order, the 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 subsection do not prevent the Court making an adoption order where the 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.

7 Adoption of a child by a married person

- (1) Subject to the next succeeding subsection, where an applicant is a married person, the 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 Court may dispense with the consent referred to in the last preceding subsection where:
 - (a) the person whose consent is required cannot be found or is incapable of giving his consent; or
 - (b) the 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 Court and states, on oath, that he consents to the adoption of the child.
- (4) Where the 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 Act, be deemed to be an adoptive parent and the child shall, for the purposes of this Act, be deemed to have been adopted by the applicant and his spouse jointly.

8 Adoption of a female child by a male

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 Court is satisfied that exceptional circumstances justify the making of the order.

9 Adoptions by Nauruans, etc.

- (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.

10 Consent to adoption order

- (1) Subject to subsection (2), 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 Court may dispense with the consent of a person whose consent is required under the last preceding subsection where the 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 Court and states, on oath, that he consents to the adoption of the child.
- (4) The withdrawal, without the leave of the 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 Court:
 - (a) if the child is a Nauruan child — the Cabinet; or
 - (b) if the child is not a Nauruan child — the Clerk,

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 Court, and may certify, by writing under the hand of the President or of the Clerk, 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 subsection 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.

11 Matters with respect to which the Court is to be satisfied

An adoption order in respect of a child shall not be made unless the Court is satisfied:

- (a) that each person who is, under this Act, required to consent to the adoption of the child (other than a person whose consent is dispensed with by the 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 Court deems proper, that the welfare and interest 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 Court) as a consideration for adopting the child.

12 Notice to be given where child is Nauruan

- (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 Cabinet a copy of the application and a notice containing particulars of date fixed for hearing the application.
- (2) Where the Cabinet has, in pursuance of the last preceding subsection, been served with a copy of an application to adopt a child and is of opinion that, in the interests of the child, the Cabinet should appear on the hearing of the application, the Cabinet may, at any time before the hearing, file with the Clerk a notice of its intention to appear on the hearing of the application.
- (3) Upon filing a notice under the last preceding subsection, the Cabinet shall cause a copy of the notice to be served on the applicant.
- (4) Where the Cabinet 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 Cabinet 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.

13 Application may be heard in private

- (1) An application to adopt a child may be heard by the Court in court or in chambers.
- (2) The 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 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 Court in private, unless the Court authorizes the publication of the particulars.

Penalty: One hundred dollars or imprisonment for three months.

14 Interim order

- (1) On the hearing of an application to adopt a child, the 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 Court thinks fit and specifies in the order.
- (2) The provisions of section ten of this Act apply to and in relation to the making of an interim order as if an interim order were an adoption order.

15 Court may impose terms and conditions in an adoption order

In an adoption order the 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.

16 Name of adopted child

- (1) The 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 Court otherwise orders, the name specified in pursuance of the last preceding subsection shall include the surname of the adoptive parent of the child.

17 Effect of adoption order

- (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 Act, 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 subsection, 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 subsection, 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 sections 222 and 223 of the *Criminal Code 1899*, apply to and in relation to a child adopted in pursuance of this Act, both with respect to the relatives by adoption of the child and with respect to the relatives by blood of the child.

18 Marriage celebrated between adoptive parent and adopted child

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

19 The Court may discharge or vary an adoption order

- (1) Where:
- (a) application is made to the Court by:
 - (i) a person authorized by the Minister; 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 Court, after giving such consideration to the wishes of the child in respect of whom the adoption order was made as the 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 Court may vary or discharge the adoption order on such terms and conditions as it thinks fit.
- (2) Subject to the next succeeding subsection 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.

20 An adopted child may again be adopted

- (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 Act, be deemed to be the parent of the child.

21 De facto adoptions

- (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

Act, 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 Court for an adoption order in respect of a child and the 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 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 subsection, 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 subsection.
- (4) The 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 subsection, but the 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 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 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 Act.

22 Register of adopted children

- (1) The Clerk 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 Act.
- (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 subsection 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 subsection (1) of this section to be entered in the margin of the entry of the birth of the child in the Register of Births.

23 Birth certificates of adopted children

- (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 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 subsection shall, for all purposes, be deemed to be a copy of an entry in the Register of Births certified in pursuance of the *Births, Deaths and Marriages Act 1957*.

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

Where:

- (a) the Court makes an order for the adoption of a child or an order discharging or varying an adoption order; and
- (b) the Clerk has reason to believe that the birth of the child is registered in a foreign jurisdiction;

the Clerk 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 that foreign jurisdiction.

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

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 foreign jurisdiction in respect of a child whose birth is registered in the Register of Births of Nauru, 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 Nauru.

26 Regulations

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

Notes for Adoption of Children Act 1965

Tables of Constituent Legislation

Ordinances and Order

Citation	Number	Made	Gazettal	Commencement
<i>Adoption of Children Ordinance 1965</i>	1965/02	11.03.1965	15.03.1965	29.03.1965 (GN 52/1965)
<i>Executive Council Ordinance 1966</i>	1966/03	14.02.1966	17.02.1966	17.02.1966
<i>Ordinances Revision Ordinance 1967</i>	1967/25	29.12.1967	29.12.1967	29.12.1967 (GN 316/1967)
<i>Adaptation of Laws Order 1969</i>	GN 188/1969	09.10.1969	13.10.1969	31.01.1968

Acts

Short title	Number	Certification	Commencement
<i>Family Court Act 1973*</i>	1973/14	01.11.1973	03.10.1977 (GN No. 390/1977)
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
 om. = omitted os. = omitted and substituted

Provision affected	How affected
Section 1	Rs. by Act 2011/08
Section 2	Am. by Act 2011/08.
Section 3	Am. by GN 188/1969, Act 2011/08.
Section 4	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08.
Section 5	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08.
Section 6	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08.
Section 7	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08. Subs. (3) am. by GN 188/1969, Act 2011/08. Subs. (4) am. by GN 188/1969, Act 2011/08.

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Provision affected	How affected
Section 8	Am. by GN 188/1969, Act 2011/08.
Section 10	Subs. (1) am. by Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08. Subs. (3) am. by GN 188/1969, Act 2011/08. Subs. (4) am. by GN 188/1969, Act 2011/08. Subs. (5) am. by GN 188/1969, Act 2011/08. Subs. (7) am. by Act 2011/08.
Section 11	Am. by GN 188/1969, Act 2011/08.
Section 12	Subs. (1) am by Act 2011/08. Subs. (2) am. by Act 2011/08. Subs. (3) am by Act 2011/08. Subs. (4) am by Act 2011/08.
Section 13	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08. Subs. (3) am. by Ord. 1967/25, GN 188/1969, Act 2011/08.
Section 14	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by Act 2011/08.
Section 15	Am. by GN 188/1969, Act 2011/08.
Section 16	Subs. (1) am. by GN 188/1969, Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08.
Section 17	Subs. (2) am. by Act 2011/08. Subs. (8) am. by Act 2011/08.
Section 19	Subs. (1) am. by GN 188/1969, Act 2011/08.
Section 20	Subs. (2) am. by Act 2011/08.
Section 21	Subs. (1) am. by Act 2011/08. Subs. (2) am. by GN 188/1969, Act 2011/08. Subs. (3) am. by GN 188/1969, Act 2011/08. Subs. (4) am. by GN 188/1969, Act 2011/08. Subs. (5) am. by GN 188/1969, Act 2011/08.
Section 22	Subs. (1) am. by Act 2011/08.
Section 23	Subs. (2) am. by GN 188/1969, Act 2011/08. Subs. (3) am. by Act 2011/08.
Section 24	Am. by GN 188/1969, Act 2011/08.
Section 25	Am. by Act 2011/08.
Section 26	Am. by Ord. 1966/03, Act 2011/08.