



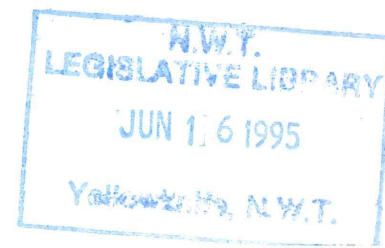
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PROPOSED
ADOPTION ACT

General description

This proposed *Adoption Act* is one of four proposed statutes that would reform family law legislation in the Northwest Territories. This statute would cover the adoption of children (but not aboriginal custom adoption).

IMPORTANT: This proposed *Adoption Act* is being released for information purposes only.



PROPOSED
ADOPTION ACT

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INTERPRETATION

Definitions

1. In this Act,

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"adopted person" means a person who was adopted under this Act;

"adoption", when used in reference to an adoption under this Act, means a step-parent adoption, a private adoption or a departmental adoption;

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"Adoption Register" means the Adoption Register referred to in paragraph 40(1)(a);

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"Adoption Registry" means the Adoption Registry established under subsection 40(1);

"Adoption Worker" means an Adoption Worker appointed under subsection 50(1);

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"applicant" means a person who applies to adopt a child through a departmental adoption;

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"application", except in section 14, means an application for a departmental adoption made under subsection 7(1);

"child" means a person who has not attained the age of majority;

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"cohabit" means to live together in a conjugal relationship, whether within or outside marriage;

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"departmental adoption" means an adoption under this Act of a child who has been committed to the permanent custody of the Director of Child and Family Services under the *Child and Family Services Act*;

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"Director" means the Director of Adoptions appointed under subsection 49(1);

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some permanence and are together
the parents of a child;

"step-parent adoption" means an adoption under this
Act by a spouse where the child is the child of his or
her spouse.

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Purposes of
Act

2. The purposes of this Act are

- (a) as a paramount objective, to promote
the best interests of a child being
adopted; and
- (b) to provide a means for establishing the
legal status of a child within a family.

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Best interests
of the child

3. Where there is a reference in this Act to the best
interests of a child, the following factors must be
taken into consideration in determining the best
interests of a child, with a recognition that differing
cultural values and practices must be respected in
making that determination:

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- (a) the child's physical, mental and
emotional needs, and the appropriate
care or treatment to meet those needs;
- (b) the importance for the child's
development of a positive relationship
with a parent and a secure place as a
member of a family;
- (c) the child's cultural, linguistic and
spiritual or religious ties or upbringing
and the importance of a family
environment that will respect the child's
cultural and linguistic heritage and
traditions and religious or spiritual
background;
- (d) all other relevant factors.

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PART I

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ADOPTION PROCEEDINGS

Pre-birth Information

Pre-birth
information

4. On the request of a parent who is expecting a
child, the Director, an Adoption Worker or a person
designated by the Director shall provide the parent
with information prepared by the Director on the
services available to the parent and to the child
where the child

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- (a) remains with the parent; or
- (b) is adopted under this Act.

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histories on the child's biological siblings were completed under subsection (2) and before the making of the adoption order, and the Adoption Worker shall complete a personal history on that child.

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Application for Departmental Adoption

Application for departmental adoption

7. (1) A person referred to in section 5 who wishes to adopt a child through a departmental adoption must make an application in accordance with this Act and the regulations and submit the application to the Director or an Adoption Worker.

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Review and pre-placement report

- (2) An Adoption Worker shall
- (a) review the application and, in accordance with the guidelines of the Minister, prepare a pre-placement report; and
 - (b) submit the application and pre-placement report to the Director.

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Adoption Registry

- (3) During the preparation of a pre-placement report, an Adoption Worker shall
- (a) explain to the applicant the purpose of the Adoption Registry;
 - (b) advise the applicant of the persons who will be named in the Adoption Register and that their personal histories will be deposited with the Adoption Registry;
 - (c) explain that the persons entitled under Part II to obtain identifying and non-identifying information may apply to obtain that information, and who those persons are;
 - (d) explain that an adopted person and a biological parent of an adopted person may participate in a reunion;
 - (e) encourage the applicant to keep his or her personal history and that of his or her children updated; and
 - (f) complete a personal history, in accordance with the regulations, on the applicant and his or her children.

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Notification respecting children

(4) An applicant who has been approved under subsection 8(1) or (4) shall notify the Director in writing of any child born to or adopted by the applicant after the personal history on the applicant and his or her children was completed under subsection (3) and before the making of the adoption

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**Placement of Child - Private and Step-parent
Adoptions**

Notification of placement of child	10. (1) A person who places a child with another person for the purpose of adoption shall notify the Director, in accordance with the regulations, of the placement within 30 days after the placement.	5
Notification by recipient	(2) A person with whom a child has been placed for the purpose of adoption shall notify the Director, in accordance with the regulations, of the placement within 30 days after the placement.	10
Offence and punishment	(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000, to imprisonment for a term not exceeding two months or to both.	15 20
Post-placement report	11. (1) In the case of a private or step-parent adoption, on the request of a petitioner or a person who intends to petition, an Adoption Worker shall prepare a post-placement report, in accordance with the guidelines of the Minister, and shall provide the post-placement report to the Director for review.	25
Affidavit of Director	(2) On reviewing a post-placement report, the Director shall (a) prepare an affidavit in accordance with the regulations; and (b) provide the petitioner or person who intends to petition with the affidavit and a copy of the post-placement report.	30 35
Definition of "relevant persons"	(3) In subsection (4), "relevant persons" means (a) the parent of the child being adopted; and (b) the petitioner or the person who intends to petition.	40 45
Adoption Registry	(4) During the preparation of a post-placement report, an Adoption Worker shall (a) explain to the relevant persons the purpose of the Adoption Registry; (b) advise the relevant persons of the persons who will be named in the Adoption Register and that their personal histories will be deposited with the Adoption Registry; (c) explain to the relevant persons that the persons entitled under Part II to obtain identifying and non-identifying	50 55

Responsibilities of applicant or petitioner after placement	13. Where a child is placed with an applicant or a petitioner or a person who intends to petition, the applicant or petitioner or person who intends to petition has the responsibility for the care of the child but has no rights in respect of the child until the adoption order is made or a judge orders otherwise.	5
Removal of child from Territories	14. (1) No person shall, without the written authority of the Director, take, send or place, or attempt to take, send or place a child outside the Territories for the purpose of adoption.	10
Application for authority to remove	(2) On the application of a person who wishes to take, send or place a child outside the Territories for the purpose of adoption, the Director may give written authority to do so where	15
	(a) the child requires care or treatment in a medical or treatment facility outside the Territories and it is in the best interests of the child that the child be adopted by a person who lives where that treatment can be provided;	20
	(b) the person with whom the child is to be placed	
	(i) is a relative of the child, or	
	(ii) demonstrates to the satisfaction of the Director that he or she has had a positive, long-standing relationship with the child or the child's parent; or	25
	(c) in the opinion of the Director, an appropriate placement for the child is not available in the Territories.	30
Application	(3) An application under subsection (2)	
	(a) may be made before or after the birth of a child;	40
	(b) must be made 30 days before the day on which the person intends to take, send or place the child outside the Territories, unless the Director otherwise agrees;	40
	(c) must be in a form that complies with the regulations; and	
	(d) must be accompanied by a report respecting the person with whom the child is to be placed that complies with the regulations and is prepared by a person who, in the opinion of the Director, is qualified to prepare the report.	50
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	(i) remains with the parent, or (ii) is adopted under this Act;	
	(b) explain the effect of an adoption, and when a consent may be given or revoked; and	5
	(c) advise the parent to obtain independent legal advice before giving his or her consent.	
Parent under age of majority	(2) A parent who has not attained the age of majority may consent to the adoption of his or her child.	10
Revocation of consent	17. (1) A parent may revoke his or her consent before the expiration of 30 days after the day on which his or her consent was given and, without delay, shall provide	15
	(a) the revocation to the Director; or	20
	(b) a copy of the revocation to the person with whom the parent placed his or her child, in which case the parent shall, without delay, notify the Director of having revoked his or her consent and send the revocation to the Director.	25
Assistance of Adoption Worker	(2) On the request of a parent, an Adoption Worker shall assist the parent in preparing a revocation under subsection (1).	30
Receipt of revocation by Adoption Worker	(3) An Adoption Worker may receive a revocation under paragraph (1)(a) on behalf of the Director.	35
Return of child to parent	(4) Unless a judge orders otherwise, where a parent revokes his or her consent under subsection (1).	40
	(a) the Director shall, within 30 days after the revocation is provided to the Director, return the child to the parent, in the case of a departmental adoption;	45
	or	
	(b) the person with whom the child has been placed by the parent shall, within 30 days after the revocation is provided to the Director or the person, return the child to the parent, in the case of a private adoption.	50
When consent irrevocable	(5) Where a parent does not revoke his or her consent in accordance with subsection (1) and section 21, the consent becomes irrevocable at the expiration	55

shall be recorded.

Dispensing
with consent
of child

(4) The consent of a child referred to in subsection (1) is not required where, in the opinion of a judge, it is in the best interests of the child to dispense with the consent of the child.

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Revocation of
consent

20. (1) A child may revoke his or her consent at any time before an adoption order is made, and shall without delay provide the revocation to

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- (a) the Director; or
- (b) the person with whom he or she has been placed for adoption, in which case that person shall, without delay, notify the Director of having received the revocation and send the revocation to the Director.

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Assistance of
Adoption
Worker

(2) On the request of a child, an Adoption Worker shall assist the child in preparing a revocation under subsection (1).

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Receipt of
revocation by
Adoption
Worker

(3) An Adoption Worker may receive a revocation under paragraph (1)(a) on behalf of the Director.

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Consents - General

Form of
consent or
revocation

21. A consent and a revocation of a consent must be

- (a) in writing and in a form that complies with the regulations; and
- (b) accompanied by an affidavit of execution.

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Consent or
revocation for
adoption
outside
Territories

22. (1) A consent or a revocation of a consent of a person residing outside the Territories to the adoption of a child from outside the Territories is a valid consent or revocation in the Territories provided that the consent or revocation complies with the laws of the jurisdiction in which the person resides when the consent was given or the revocation was made, and is admissible in evidence as if it were a consent or revocation given or made under this Act.

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Affidavit of
execution

(2) Notwithstanding paragraph 21(b), an affidavit of execution is not required for a consent or a revocation of a consent referred to in subsection (1) if it is not required by the law of the jurisdiction referred to in subsection (1).

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Treating petition as custody or guardianship application 26. Where a judge is satisfied that a petition could more appropriately be dealt with by granting an order for custody or guardianship under the *Children's Law Act*, whether jointly with another person or otherwise, the judge may treat the petition as an application for custody or guardianship. 5

Adoption Order

Waiver of provisions of this Act 27. Where, in the opinion of a judge hearing a petition, it is in the best interests of the child who is the subject of the petition not to require compliance with a provision of this Act that is otherwise required before an adoption order may be made, other than the requirement for a pre-placement or post-placement report, the judge may waive the provision and make an adoption order. 10 15 20

Conditions for making departmental adoption order 28. (1) In the case of a departmental adoption, a judge shall not make an adoption order unless the Director certifies, by affidavit, that the petitioner is, in the opinion of the Director, a person who is suitable to be an adoptive parent and, subject to subsection (2), that 25

(a) the child has been in the care of the petitioner for at least six months; or 30

(b) the child has not been in the care of the petitioner for six months, but the Director recommends that the requirement for a six-month period of care be waived on the grounds that 35

(i) a period of care has been partially completed and the petitioner has decided to live or is now living outside the Territories, or 40

(ii) the petitioner does not live in the Territories and the Director has given written authority in respect of the child under paragraph 14(4)(a). 45

Exception (2) Where a petitioner is not a petitioner described in paragraph (1)(a) or (b), a judge may, where the judge considers that there are proper or sufficient reasons for so doing, make an adoption order notwithstanding the absence of an affidavit complying with either paragraph (1)(a) or (b). 50

Name of adopted child 31. (1) Where an adoption order is made, the given name and surname of the adopted child shall be the given name and surname provided in the petition. 5

Naming adoptive parents (2) Where the petitioner is a surviving spouse and before the death of the spouse of the petitioner, the child being adopted was in the care of the petitioner and the deceased spouse, a judge may, on the request of the petitioner, name both the petitioner and the deceased spouse as the adoptive parents of the child in the adoption order. 10

Order for Access After Adoption 15

Private and step-parent adoption 32. (1) In the case of a private adoption or a step-parent adoption, where in the opinion of a judge it is in the best interests of the child to do so, the judge may, at the time of making the adoption order, make a further order providing for access to the child after the adoption order is made by a person who was a parent of the child before the adoption order was made, on the terms and conditions that the judge considers appropriate. 20 25

Death of parents (2) In the case of an adoption due to the death of a child's parents, the judge may, at the time of making the adoption order, make a further order providing for access to the child after the adoption order is made by those persons who were members of the child's family and extended family before the adoption order was made, or any of them, on the terms and conditions that the judge considers appropriate. 30 35

Effect of Adoption 40

Status of adopted child 33. (1) For all purposes, as of the date of the making of an adoption order. 40
(a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and 45
(b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent. 50 5

Registrar General requires to enable him or her to carry out the requirements of the *Vital Statistics Act*.

Sealed packet	(2) After the certified copies of an adoption order are made, the Clerk of the Supreme Court shall put the petition, the material used in support of the petition, the record of proceedings and the adoption order in a sealed packet.	5
Access to records	(3) A sealed packet referred to in subsection (2) may be opened on the written request of the Director for the purpose of supplying further certified copies of the adoption order or providing any other information contained in the sealed packet to the Director, but otherwise the packet shall not be opened and any information contained in it shall not be made public or disclosed to any person except on the order of a judge.	10
Duties of Director respecting records	38. (1) When an adoption order is made, the Director shall deposit his or her records relating to the adopted person with the Adoption Registry.	15
Reproduction of records	(2) Before depositing his or her records with the Adoption Registry, the Director may have his or her records relating to the adopted person reproduced in any prescribed manner and may destroy all or part of the records reproduced.	20
Copy of adoption order	39. On the request of an adoptive parent or an adopted person, the Director shall provide a copy of the adoption order to the parent or person.	25
	Adoption Registry	
Adoption Registry	40. (1) The Minister shall establish an Adoption Registry for the purpose of	30
	(a) maintaining an Adoption Register containing the names of the persons listed under section 42;	35
	(b) storing and maintaining information respecting adoptions deposited with the Adoption Registry under this Act;	40
	(c) disclosing identifying and non-identifying information in accordance with this Act; and	45
	(d) facilitating a reunion between an adopted person and a biological parent of an adopted person.	50
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Non-identifying information

44. The following persons are entitled to receive non-identifying information from the Registrar in accordance with the regulations:

- (a) an adopted person, when he or she attains the age of majority;
- (b) an adopted person who has not attained the age of majority, with the written consent of an adoptive parent;
- (c) an adoptive parent;
- (d) a biological parent or biological grandparent of an adopted person;
- (e) a biological sibling, when he or she attains the age of majority;
- (f) an adoptive sibling, when he or she attains the age of majority;
- (g) a person who has the written consent of
 - (i) an adopted person, if the adopted person is entitled to the information under paragraph (a) or (b), or
 - (ii) an adoptive parent;
- (h) any other person where, in the opinion of the Registrar, it is desirable that the person receive the non-identifying information.

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Counselling

45. The Director shall make counselling available to persons who receive

- (a) identifying information; or
- (b) non-identifying information, at their request.

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Adoptions under previous legislation

46. (1) Where an adoption was made under any legislation previously in force, the Registrar may disclose identifying and non-identifying information in accordance with the regulations

- (a) where the adopted person has attained the age of majority, to the adopted person or to a biological parent of the adopted person, with the consent of the other; and
- (b) where the adopted person has attained the age of 12 years but has not attained the age of majority, to the adopted person, a biological parent of the adopted person or an adoptive parent, with the consent of the others.

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Search by Registrar

(2) On receiving a request for the disclosure of information from an adopted person or a biological parent under subsection (1), the Registrar shall conduct a discrete and reasonable search for the

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PART III

GENERAL

Administration

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Director of Adoptions	49. (1) The Minister shall appoint a Director of Adoptions.	
Duties of Director	(2) The Director shall (a) ensure that the provisions of this Act and the regulations are carried out; and (b) prepare the information on services referred to in section 4 and paragraph 16(1)(a).	10 15
Powers of Director	(3) The Director may (a) in writing, authorize an Adoption Worker to assist the Director in the exercise or performance of any of or all the Director's powers and duties under this Act or the regulations; and (b) exercise or perform any power or duty conferred or imposed on an Adoption Worker under this Act or the regulations.	20 25
Adoption Workers	50. (1) The Director may appoint Adoption Workers for the Territories.	30
Powers and duties	(2) An Adoption Worker has the powers and duties conferred or imposed on an Adoption Worker by this Act and the regulations and shall assist the Director in the exercise or performance of any powers or duties of the Director that the Director has authorized under paragraph 49(3)(a).	35 40
Directions of Director	(3) An Adoption Worker is subject to the directions of the Director in the exercise of any power or in the performance of any duty of an Adoption Worker under this Act or the regulations.	45

Procedure

Hearings	51. All proceedings under this Act shall be heard by a judge in private and no persons shall be present at the hearing other than (a) the officers of the Supreme Court; (b) the parties and their counsel; and (c) any other person whom the judge in his or her discretion expressly permits.	50 55
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- through a departmental adoption, including terms and conditions of placement;
- (e) respecting an affidavit prepared under subsection 11(2)(a) or 23(2); 5
- (f) respecting the form of application referred to in subsection 14(2);
- (g) respecting the report referred to in paragraph 14(3)(d);
- (h) respecting the form of a consent and a revocation of a consent to an adoption; 10
- (i) respecting the form of an adoption order;
- (j) respecting the Adoption Registry;
- (k) respecting personal histories; 15
- (l) prescribing the manner of reproducing the records of the Director relating to an adopted person under subsection 38(2) and personal histories under subsection 41(3); 20
- (m) further defining "identifying information" and "non-identifying information";
- (n) respecting the procedure by which identifying and non-identifying information shall be disclosed to persons entitled to receive that information; 25
- (o) respecting additional duties of the Director;
- (p) respecting forms; 30
- (q) fixing, or respecting the manner of calculating, fees, costs, charges and expenses payable on proceedings under this Act not otherwise determined, and for dispensing with payment where a judge considers that action advisable; 35
- and
- (r) governing any other matter that, in the opinion of the Commissioner, is necessary for carrying out the purposes and provisions of this Act; 40

Commencement 45

Coming into force **56.** This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner. 50