

REPUBLIC OF NAURU

GUARDIANSHIP OF CHILDREN ACT 1975

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REPUBLIC OF NAURU

(No. 6 of 1975)



AN ACT

To define and regulate the authority of parents as guardians of their children, their power to appoint guardians and the powers of the Courts in relation to the custody and guardianship of children.

(Certified: 12th September, 1975)

Enacted by the Parliament of Nauru as follows:-

PART 1 - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Guardianship of Children Act 1975 and shall come into force on a date to be notified by the Minister in the Gazette.

INTERPRETATION

2. In this Act, unless the context otherwise requires -  
"child" means a person under the age of eighteen years;  
"near relative" means a step-parent, grandparent, aunt, uncle, brother or sister; and includes a brother or sister of the half-blood as well as the full-blood;  
"Supreme Court" includes a judge thereof;  
"the Chairman" means the resident magistrate as Chairman of the Family Court;  
"the Family Court" means the Family Court established by the Family Court Act 1973;  
"upbringing" includes education and religion.

DEFINITION OF "CUSTODY" AND "GUARDIANSHIP"

3. For the purposes of this Act -  
"custody" means the right to possession and care of a child;  
"guardianship" means the custody of a child (except

in the case of a testamentary guardian and subject to any custody order made by the Court) and the right of control over the upbringing of a child, and includes all rights, powers and duties in respect of the person and upbringing of a child that were at the commencement of this Act vested by any written law or rule of law in the sole guardian of a child; and "guardian" has a corresponding meaning.

#### CONCURRENT JURISDICTION OF THE SUPREME COURT AND THE FAMILY COURT

4. (1) The Supreme Court and the Family Court shall each have jurisdiction in respect of proceedings under this Act:

Provided that the Family Court shall have no jurisdiction to entertain any application, other than an application for interim custody, in respect of a child -

- (a) where proceedings relating to or affecting the child are pending in the Supreme Court;
- (b) where an order of the Supreme Court relating to the custody or guardianship of, or access to, the child, other than an order under section 14 of this Act, is in force unless the order has been removed into the Family Court pursuant to section 27 of this Act; or
- (c) who has been placed under the guardianship of the Supreme Court.

(2) Notwithstanding anything in the preceding subsection, if the Family Court is of the opinion that any proceedings under this Act, or any question in any such proceedings, would be more appropriately or expeditiously dealt with in the Supreme Court, it may, upon application by any party to the proceedings or without any such application, in the prescribed manner refer the proceedings or the question to that Court.

(3) The Supreme Court, upon application by any party to proceedings pending under this Act in the Family Court, may, if it thinks fit, order that the proceedings be removed into the Supreme Court. Where the proceedings have been so removed they shall be continued in the Supreme Court as if they had been properly and duly commenced in that Court.

#### PERSONAL JURISDICTION

5. (1) The Supreme Court and the Family Court shall

have jurisdiction under this Act in any of the following cases -

- (a) where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction;
- (b) where the child who is the subject of the application or order is present in Nauru when the application is made;
- (c) where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in Nauru when the application is made.

(2) Notwithstanding the provisions of the preceding subsection, the Court may decline to make an order under this Act if neither the person against whom it is sought nor the child is resident in Nauru and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

## PART II - GUARDIANSHIP OF CHILDREN

### GUARDIANS

6. (1) Subject to the provisions of this Act, the father and the mother of a child shall each be a guardian of the child.

(2) Subject to the provisions of this Act, the mother of a child shall be the sole guardian of the child if she is not married to the father of the child, and either -

- (a) has never been married to the father; or
- (b) her marriage to the father of the child was dissolved before the child was conceived.

(3) Where the mother of a child is, or was at the time of her death, its sole guardian by virtue of the last preceding subsection, the father of the child may apply to the Supreme Court or the Family Court to be appointed as guardian of the child, either in addition to or instead of the mother or any guardian appointed by her, and the Court may in its discretion make such order on the application as it thinks proper.

(4) On the death of the father or the mother, the surviving parent, if he or she was then a guardian of the child, shall, subject to the provisions of this Act, be the sole guardian of the child.

#### DECLARATION OF GUARDIANSHIP

7. Any man who alleges that he is a guardian of a child by virtue of the provisions of section 6 of this Act, other than by virtue of an order under subsection (3) of that section, may apply to the Supreme Court or the Family Court for an order declaring that he is a guardian of the child and, if it is proved to the satisfaction of the Court that the allegation is true and that the man has not been deprived of his guardianship, the Court may make the order.

#### TESTAMENTARY GUARDIANS

8. (1) The father or the mother of a child, including an unborn child, may by deed or will appoint any person to be a guardian of the child after his or her death, and that person is in this Act referred to as a testamentary guardian.

(2) If the person appointing a guardian pursuant to the preceding subsection is himself a guardian of the child at his death, the testamentary guardian shall thereupon, if he is of full age and capacity, be either sole guardian or a guardian in addition to any other guardian, as the case may be.

(3) If the person appointing a guardian pursuant to subsection (1) of this section is not himself a guardian at his death, the testamentary guardian may apply to the Supreme Court or the Family Court, and the Court may if it thinks fit appoint him as a guardian accordingly.

(4) Notwithstanding any written law or rule of law, an infant may appoint a guardian by deed or will pursuant to subsection (1) of this section.

#### COURT-APPOINTED GUARDIANS

9. (1) Subject to the provisions of this section, the Supreme Court or the Family Court may at any time, on application made for the purpose or on the making of an order under section 11 of this Act, appoint a guardian of a child either as sole guardian or in addition to any other guardian, and either generally or for any particular purpose, and either until the child attains the age of eighteen years or sooner marries or for any shorter period.

(2) Subject to any power invested in any higher Court, the Supreme Court shall have exclusive jurisdiction

to appoint and remove a guardian ad litem in respect of any proceedings before it or any higher Court, and may appoint or remove a guardian ad litem in respect of any proceedings before any other Court.

#### WARDS OF COURT

10. (1) The Supreme Court may upon application order that any unmarried child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

(2) An application under the preceding subsection may be made -

(a) by a parent, guardian or near relative of the child;

(b) by the child, who may apply without guardian ad litem or next friend;

(c) with the leave of the Court, by any other person.

(3) Between the making of the application and its disposal, and thereafter if an order is made, the Court shall have the same rights and powers in respect of the person and property of the child as the Lord Chancellor of England possessed in England on the 31st day of January, 1968, in relation to wards of court:

Provided that the Court shall not direct any child of or over the age of sixteen years to live with any person unless the circumstances are exceptional.

(4) A child who has been placed under the guardianship of the Supreme Court shall cease to be under such guardianship when the Court so orders or when the child reaches the age of eighteen years or sooner marries, whichever first occurs.

#### REMOVAL OF A GUARDIAN

11. (1) The Supreme Court or the Family Court may at any time on application by the other parent or by a guardian or near relative or, with the leave of the Court, by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court.

(2) No parent shall be deprived of the guardianship of his child pursuant to subsection (1) of this section unless the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.

#### CUSTODY ORDERS

12. (1) Subject to section 23 of this Act and to subsection (4) of section 5 of the Maintenance Ordinance 1959-1967, the Supreme Court or the Family Court may from time to time, on application by the father, mother, step-parent or guardian of a child, or with the leave of the Court by any other person, make such order with respect to the custody of the child as it thinks fit.

(2) Any order made under the preceding subsection may be made subject to such conditions as the Court thinks fit.

#### ORDERS IN OTHER PROCEEDINGS

13. (1) Subject to section 23 of this Act, in any proceedings in the Family Court for divorce, judicial separation, annulment of a voidable marriage or declaration of nullity of marriage the Court may from time to time, before or by or after the principal decree or order, make such order, whether an interim order or a permanent order, as it thinks just with respect to the custody and upbringing of any child of the marriage.

(2) In any such case the Court may, if in all the circumstances it thinks it appropriate, make a guardianship order vesting the sole guardianship of the child in one of the parents, or make such other order with respect to the guardianship of the child as it thinks fit.

(3) An order may be made under subsection (1) or subsection (2) of this section, and any such order may be varied or discharged, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Unless the Court makes a guardianship order every person who was a guardian of the child shall continue to be a guardian of the child.

#### DISPUTES BETWEEN GUARDIANS

14. (1) Where more than one person is a guardian of a child and they are unable to agree on any matter concerning the exercise of their guardianship, any of them may apply to the Supreme Court or the Family Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(2) Where more than one person has custody of



a child and they are unable to agree on any matter affecting the welfare of the child, any of them may apply to the Supreme Court or the Family Court for its direction and the Court may make such order relating to the matter as it thinks proper.

(3) Where pursuant to an order of the Supreme Court more than one person is a guardian or has custody of a child, the Supreme Court shall have exclusive jurisdiction to settle disputes unless the order has been removed into the Family Court pursuant to section 27 of this Act.

#### REVIEW OF GUARDIAN'S DECISION OR REFUSAL TO GIVE CONSENT

15. (1) A child of or over the age of sixteen years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may, unless the child is under the guardianship of the Supreme Court, apply to the Family Court which may, if it thinks it reasonable in all the circumstances to do so, review the decision or refusal and make such order in respect thereto as it thinks fit.

(2) Any consent given by the Family Court pursuant to this section shall have the same effect as if it had been given by the parent or guardian.

#### ACCESS RIGHTS

16. (1) On making any order with respect to the custody of a child a Court may make such order as it thinks fit with respect to access to the child by a parent who does not have custody of it under the order.

(2) A parent who does not have custody of his child may apply to the Court which made the order as to custody for an order granting him access to the child, and the Court may make such order with respect thereto as it thinks fit.

#### ACCESS OF OTHER RELATIVES ON DEATH OF PARENT

17. If a parent of a child has died, a Court may, if it thinks fit, order that the parents of the deceased parent, or either of them, or any brother or sister of the deceased parent, or any brother or sister of the child, shall have access to the child at such times and places as the Court thinks fit.

#### VARIATION OR DISCHARGE OF ORDERS

18. (1) A Court may from time to time vary or discharge any order made by it with respect to the custody or upbringing of a child or with respect to access to a child.

(2) A Court may from time to time vary or discharge any order made by it vesting the guardianship of a child in one parent or in any other person or persons. If any such guardianship order is discharged and no other guardianship order is made, guardianship shall vest in the person, if any, who would be the guardian if the order discharged had not been made.

(3) An application to vary or discharge any order to which this section applies may be made by any person affected by the order or by any person on behalf of the child who is the subject of the order.

(4) This section shall apply to every order of the kinds mentioned in subsections (1) and (2) of this section whether made before or after the commencement of this Act but shall not apply to any interim order or adoption order made under the Adoption of Children Ordinance 1965-1967.

#### EFFECT OF CUSTODY AGREEMENTS

19. An agreement between the father and mother of a child with respect to the custody or upbringing of or access to the child shall be valid, whether or not either of the parties is a minor, but shall not be enforced if the Court is of opinion that its enforcement would not be in the best interest or welfare of the child.

#### ENFORCEMENT OF CUSTODY AND ACCESS RIGHTS

20. (1) Where any person is entitled to the custody of a child, whether pursuant to this Act or to the order of a Court, the Chairman or a judge may at any time, on the application of the person so entitled to custody, issue a warrant authorising any police officer or any other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody: Provided that where more than one person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.

(2) The Chairman or a judge may at any time, on the application of the person entitled to access to a child pursuant to an order of any Court, issue a warrant authorising any police officer or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order.

(3) The powers conferred on the Chairman and judge by subsection (1) and subsection (2) of this section may, if the Court thinks fit, be exercised on the making of the order.

(4) For the purpose of executing any warrant issued under subsection (1) or subsection (2) of this section, any police officer, or any other person named in the warrant, may enter and search any building, aircraft, ship, vehicle, premises or place, with or without assistance and by force if necessary.

(5) The police officer or other person executing any such warrant shall have it with him and shall produce it if required to do so.

(6) Nothing in subsection (1) to subsection (3) inclusive of this section shall limit or affect any other power to enforce a right of custody or access exercisable by any Court at the commencement of this Act.

(7) Where a Court declines to enforce a right of custody or access, it may of its own motion vary or discharge any existing order of custody or access accordingly.

(8) Subject to the proviso to subsection (3) of section 10 of this Act, in considering an application under subsection (1) or subsection (2) of this section, or any other application to enforce a right of custody or access, the Court, Chairman or judge shall not grant the application contrary to the wishes of the child if the child is of or over the age of sixteen years unless the Court, Chairman or judge is satisfied that his moral welfare so requires.

#### PREVENTING REMOVAL OF CHILD FROM NAURU

21. (1) Any judge, magistrate or member of the Family Court who has reason to believe that any person is about to take a child out of Nauru with intent to defeat the claim of any person who has applied for, or is about to apply for, custody of or access to the child, or to prevent any order of any Court as to custody of or access to the

child from being complied with, may issue a warrant directing any police officer to take the child, using such reasonable force as may be necessary, and place it in the care of some suitable person pending the order or further order of the Court having jurisdiction in the case.

(2) Any person who without the leave of the Supreme Court or the Family Court takes or attempts to take any child out of Nauru knowing that proceedings are pending in that Court, or are about to be commenced under this Act, in respect of the child or that an order of that Court conferring custody of or access to the child on any other person is in force or with intent to prevent any order of that Court as to custody of or access to the child from being complied with is guilty of an offence and shall be liable to a fine not exceeding five hundred dollars and to imprisonment for three months.

(3) No proceedings for contempt of court shall be taken against any person in respect of any act to which this section applies.

#### TERMINATION OF GUARDIANSHIP

22. (1) Guardianship of a child shall terminate when the child attains the age of eighteen years or marries under that age.

(2) Nothing in the preceding subsection shall limit or affect the appointment of a guardian ad litem or the powers of any Court in respect of any such guardian.

#### CUSTODY OF CHILDREN OVER SIXTEEN

23. (1) An order with respect to the custody of a child of or over the age of sixteen years shall not be made unless there are special circumstances..

(2) An order in respect of a child under the age of sixteen years in so far as it relates to custody shall expire when the child attains that age unless the Court in special circumstances otherwise orders at the time of making the order or subsequently.

(3) Nothing in this section shall limit or affect the power of the Supreme Court or the Family Court to make orders in respect of the upbringing of a child or to appoint or remove guardians.

(4) Nothing in this section shall apply in respect of children who are under the guardianship of the Supreme Court.

PART III - MISCELLANEOUS PROVISIONS

DOMICILE OF MARRIED CHILD

24. The domicile of a minor who is or has been married shall be determined as if the minor were an adult.

WELFARE OF CHILD PARAMOUNT

25. (1) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration. The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child.

(2) In any such proceedings as are referred to in the preceding subsection the Court shall ascertain the wishes of the child, if the child is able to express them, and shall, subject to subsection (8) of section 20 of this Act, take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child.

CONSENTS TO OPERATIONS

26. (1) The consent of a child of or over the age of sixteen years to any donation of blood by him, or to any medical, surgical or dental procedure, including a blood transfusion, to be carried out on him for his benefit by a person professionally qualified to carry it out, shall have the same effect as if he were of full age.

(2) The consent of or refusal to consent by a child to any donation of blood or to any medical, surgical or dental procedure, including a blood transfusion, whether to be carried out on him or on any other person, shall if the child is or has been married have the same effect as if he were of full age.

(3) Where the consent of any other person to any medical, surgical or dental procedure, including a blood transfusion, to be carried out on a child is necessary or sufficient, consent may be given -

- (a) by a guardian of the child;
- (b) if there is no guardian in Nauru or no such guardian

can be found with reasonable diligence or is capable of giving consent, by a person in Nauru who has been acting in the place of a parent; or

(c) if there is no person in Nauru who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a magistrate or a member of the Family Court.

(4) Where a child has been lawfully placed for the purpose of adoption in the home of any person, that person shall be deemed to be a guardian of the child for the purposes of the last preceding subsection.

(5) Nothing in this section shall limit or affect any written law or rule of law whereby in any circumstances -

(a) no consent or no express consent is necessary;

(b) the consent of the child in addition to that of any other person is necessary; or

(c) subject to subsection (2) of this section the consent of any other person instead of the consent of the child is sufficient.

#### FILING OF SUPREME COURT ORDERS IN THE FAMILY COURT

27. (1) Any party to any proceedings in the Supreme Court in which an order for the guardianship or custody of a child has been made, whether that order was made before or after the commencement of this Act, may make application to the Registrar of the Supreme Court to have a copy of the order filed in the Family Court and shall forward with the application a copy of the order and of any order varying or otherwise affecting it and the fees prescribed for sealing copies of orders.

(2) The Registrar shall thereupon transmit to the Clerk of the Family Court a copy under the seal of the Supreme Court of the order and of every order varying or otherwise affecting it, and shall also note on the original order a memorial to the effect that the copy has been so transmitted.

(3) The Clerk of the Family Court shall file the copy of any order transmitted to him under the last preceding sub-section. Thereafter a copy under the seal of the Court of every order of the Supreme Court varying or otherwise affecting any such order shall be forwarded by the Registrar of that Court to the Clerk of the Family

Court. Every order of the Supreme Court so filed in the Family Court may be enforced by the Family Court as though it were an order of that Court.

#### COSTS

28. In any proceedings under this Act the Court may make such order as to costs as it thinks fit.

#### EVIDENCE

29. In all proceedings under this Act, whether by way of hearing in the first instance or by way of appeal or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a Court or not.

#### THE COURT MAY CALL FOR A REPORT

30. (1) In any case where a Court thinks fit in respect of any application made to it for guardianship, custody or access it may direct that a report on the application be made to it by a welfare officer or any other public officer.

(2) The welfare officer or other public officer required to do so by a direction given under this section shall report on the application and may attend on the hearing of any application.

(3) A copy of the report shall be given by the Registrar, or Clerk, of the Court to the barrister and solicitor or pleader appearing for each party to the proceedings or, if any party is not represented by a barrister and solicitor or pleader, to that party:

Provided that the Court may, if it thinks fit, order that a report given to a barrister and solicitor or pleader be not given or shown to the person for whom he is acting.

(4) Any party to the proceedings may tender evidence on any matter referred to in any such report which is given or shown to him or to his barrister and solicitor or pleader. The Court may, if it thinks fit, on the request of any party call the person making the report as a witness.

#### BARRISTER AND SOLICITOR OR PLEADER MAY BE APPOINTED

31. The Court may appoint a barrister and solicitor or pleader to assist it or to represent any child who is the subject of, or who is otherwise a party to, proceedings under this Part of this Act and, where any barrister and

solicitor or pleader is so appointed, his fees and expenses shall be paid by such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be a charge upon the Treasury Fund.

#### APPEAL TO LIE TO THE SUPREME COURT FROM ORDERS OF THE FAMILY COURT

32. (1) An appeal shall lie to the Supreme Court from any order or decision of the Family Court in proceedings under this Act. It shall be by petition and shall lie as of right if the petition is lodged at the registry of the Supreme Court within fourteen days of the order being made or the decision given by the Family Court.

(2) Where a petition is not lodged within fourteen days of the order being made or the decision given, leave to appeal may be granted by a judge upon application by summons.

(3) Except as may be otherwise expressly provided by any written law, the provisions of section 18 of the Family Court Act 1973 shall apply mutatis mutandis to the hearing of appeals under this section.

(4) Subject to the last preceding subsection, the provisions of Part III of the Appeals Act 1972 relating to appeals from the District Court to the Supreme Court shall apply mutatis mutandis to appeals from the Family Court under this section.

#### PROVISIONS OF COMMON LAW AND EQUITY DISPLACED

33. (1) Except as otherwise expressly provided in this Act, the provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the guardianship and custody of children.

(2) Subject to section 10 of this Act, no person shall be appointed as or shall have any powers as guardian of the property of any child:

Provided that nothing in this Act shall limit or affect any power of the Supreme Court in relation to any property held upon trust or to the administration thereof.

(3) In matters not provided for by this Act, the Supreme Court shall have all such powers in respect of the persons of children as the Lord Chancellor of England had in England on the 31st day of January, 1968.

#### OTHER STATUTES NOT AFFECTED

34. Except as expressly provided in this Act, nothing



in this Act shall limit or affect the provisions of the Maintenance Ordinance 1959-1967 or of the Matrimonial Causes Act 1973.

#### REGULATIONS

35. (1) The Cabinet may make regulations for the better carrying into effect of the provisions, objects and intentions of this Act and for the due administration thereof.

(2) The Cabinet may make regulations providing for the enforcement in Nauru of orders with respect to the custody and upbringing of, and access to, children made in such other countries as may be prescribed, and relating to the enforcement in other countries of orders made in Nauru with respect to the custody and upbringing of, and access to, children.

#### APPLICATION OF THIS ACT

36. This Act shall apply to persons living at the date of the commencement of this Act and to persons born thereafter.

I HEREBY CERTIFY that the attached document is a fair print of an Act entitled Guardianship of Children Act, 1975 THAT has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.

*C. Simon*

A/Clerk of Parliament  
12th September, 1975

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENAS AROI, Speaker of Parliament, HEREBY CERTIFY that the Guardianship of Children Act, 1975 a copy of which is attached has been passed by Parliament.

*Kenas Aroi*  
Speaker

12th September, 1975