

INFANTS AMENDMENT BILL

EXPLANATORY NOTE

1. Section 27 of the Statutes Amendment Act, 1949, re-enacted section 21 of the Infants Act, 1908, in an amended form which made the status of an adopted child more like that of a natural child, and disposed of some difficulties of interpretation which had arisen out of the wording of the original section 21.

2. The new section came into force on 1st January, 1950, but doubts have since arisen as to whether it applies in the case of adoption orders made before that date.

3. By *clause 2* of the Bill the section is redrafted so as to provide—

- (a) By the new clause 21 (3), that the section shall apply, as from 1st January, 1950, to all orders of adoption whether made before or after that date, but not for the purposes of any deed or instrument (other than a will) made before that date, or of the will or intestacy of any testator or intestate who died before that date; and
- (b) By the new clause 21 (2) (d), that the safeguards as to existing documents and existing rights which applied to paragraph (a) and paragraph (b) of subsection (2) of the 1949 section shall apply generally in all cases where the documents or rights are in existence before the adoption order is made; and
- (c) That the proviso to paragraph (b) of subsection (2) (which continues the relationship between an adopted child and his existing parents for the purposes of forbidden marriages and incest) is to apply only where the existing parents are the natural parents; and
- (d) That an order of adoption shall not affect the nationality or citizenship of the adopted child.

4. *Clause 4* of the Bill redrafts section 22 (2) of the principal Act to bring its provisions into harmony with new wording of section 21; and to provide—

- (a) That where an order of adoption is discharged all relationships shall thereafter be determined as if the order of adoption had not been made; and
- (b) That, where the order is discharged after the commencement of the new subsection, vested or contingent rights acquired while the order is in force shall not be affected; and
- (c) That where a Magistrate discharges an adoption order he may fix the names by which the child is to be known thereafter; but, if he does not do so, the names of the child shall not be affected by the discharge of the order.

Hon Mr. Webb

INFANTS AMENDMENT

ANALYSIS

Title.	2. Legal status of adopted child.
1. Short Title.	3. Repeals.
	4. Discharge of adoption order.

A BILL INTITULED

AN ACT to Amend the Infants Act, 1908.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority
5 of the same, as follows:—

1. This Act may be cited as the Infants Amendment Act, 1950, and shall be read together with and deemed part of the Infants Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. III, p. 1069

10 2. The principal Act is hereby amended by repealing section twenty-one (as substituted by section twenty-seven of the Statutes Amendment Act, 1949), and substituting the following new section:—

Legal status of adopted child.
1949, No. 51

15 “21. (1) Every order of adoption shall confer the name of the adopting parent on the adopted child, with such proper or Christian name as the Judge, on the application of the adopting parent, may fix.

20 “(2) Upon an order of adoption being made the following paragraphs of this subsection shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely:—

- “(a) The adopted child shall be deemed to become the child of the adopting parent, and the adopting parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock: 5
- “(b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents: 10
- “ Provided that, where the existing parents are the natural parents, the provisions of this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest: 15
- “(c) The relationship to one another of all persons (whether the adopted child, the adopting parent, the existing parents, or any other persons) shall be determined in accordance with the foregoing provisions of this subsection so far as they are applicable: 20
- “(d) The foregoing provisions of this subsection shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the order of adoption is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the case may be, unless, in the case of a deed, instrument, or will, express provision is made to that effect: 25 30
- “(e) The order of adoption shall not affect the nationality or citizenship of the adopted child. 35
- “(3) This section shall be deemed to have come into force on the first day of January, nineteen hundred and fifty, and shall apply with respect to all orders of adoption, whether made before or after that date: 40
- “ Provided that, for the purposes of any deed or instrument (other than a will) made before that date, or of the will or intestacy of any testator or intestate who

died before that date, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, this section shall not apply and section twenty-seven of the Statutes Amendment Act, 1949, shall be deemed not to have been passed.”

3. (1) Section twenty-seven of the Statutes Amendment Act, 1949, is hereby consequentially repealed as from the commencement thereof. Repeals.

(2) Section twenty of the Death Duties Act, 1921, and subsection seven of section twenty-one of the Finance Act, 1947, are hereby repealed. See Reprint of Statutes, Vol. VII, p. 368 1947, No. 6

4. Section twenty-two of the principal Act is hereby amended by repealing subsection two, and substituting the following subsections:— Discharge of adoption order.

“(2) Where a Judge discharges any order of adoption as aforesaid he may confer on the person to whom the order related such name with such proper or Christian name as the Judge thinks fit; but, if he does not do so, the names of the child shall not be affected by the discharge of the order.

“(3) Where an order of adoption is discharged after the commencement of this subsection, the relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, or any other persons) shall be determined as if the order of adoption had not been made:

“ Provided that the discharge of the order shall not affect anything lawfully done or the consequences of anything unlawfully done while the order was in force:

“ Provided also that, for the purposes of any deed or instrument (other than a will) made while the order was in force, or of the will or intestacy of any testator or intestate who died while the order was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, the order shall be deemed to continue in force.

“(4) Where an order of adoption has been discharged before the commencement of this subsection, the effect of the discharge shall be determined by reference to the law existing on the date of the discharge.”