

- (c) the relationship between the child and that parent or adoptive parent is not terminated;
- (d) if that parent or adoptive parent is the guardian of the child, the order does not terminate the guardianship; and
- (e) if, immediately before the adoption order is made, the child was the adopted child of that adoptive parent, the order does not terminate that adoption.

Orders in favour
of relatives.

21—The court shall not make an order for the adoption of a child in favour of a person who, or whose spouse, is a relative of the child or in favour of 2 persons who are relatives, or one of whom is a relative, of the child unless the court is satisfied that—

- (a) the making of an order by a court of competent jurisdiction for the custody or guardianship of the child would not make adequate provision for the welfare and interests of the child;
- (b) an order for the adoption of the child would better serve the welfare and interests of the child; and
- (c) special circumstances exist which warrant the making of the adoption order.

Age of adoptive
parents.

22—(1) The court shall not make an order for the adoption of a child in favour of a person who, or 2 persons either of whom, is less than 18 years older than the child unless the court, on the recommendation of the Director or the principal officer of an approved agency, considers that there are circumstances relating to the needs of the child which make it desirable to make the adoption order.

(2) Subsection (1) does not apply in relation to the proposed adoption of a child—

- (a) who has attained the age of 18 years; or
- (b) by a spouse of a natural parent of the child, by a person who is, or whose spouse is, a relative of the child, or by 2 persons who are relatives of the child.

Wishes of child.

23—Subject to this Division, an order for the adoption of a child shall not be made unless the court is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.

24—(1) The court shall not make an order for the adoption of a child unless the court has received a report in writing on behalf of the Director or the principal officer of an approved agency concerning the proposed adoption and, after considering the report and any other evidence before it, the court is satisfied that—

Court to be satisfied as to certain matters.

- (a)* the prospective adoptive parents satisfy the prescribed requirements relating to approval of adoptive parents;
- (b)* the Director or principal officer has given consideration so far as practicable to any wishes expressed by a parent of the child, particularly in relation to the religion, race, or ethnic background of the prospective adoptive parents of the child;
- (c)* the Director or principal officer has given consideration to—
 - (i)* any wishes expressed by a parent of the child at the time when consent to the adoption was given or dispensed with about access to, or information about, the child, including notification in the event of the death of the child; and
 - (ii)* any arrangements agreed between a parent of the child and the prospective adoptive parents of the child for access to the child or for the giving of information about the child; and
- (d)* the welfare and interests of the child will be promoted by the adoption.

(2) Subsection (1) does not apply in relation to an order under section 19 for the adoption of a child who has attained the age of 18 years before the making of the order but the court shall not make an adoption order in such a case unless it is satisfied that special circumstances exist in relation to the welfare and interests of the child which make it desirable that the child should be adopted.

(3) The report on behalf of the Director or the principal officer of an approved agency may be made by the Director or the principal officer of the agency or by a person authorized by the Director or principal officer in writing, either generally or in any particular case.

(4) Except in the case of an adoption referred to in subsection (5), the court shall not make an order for the adoption of a child unless the court has received a report in the prescribed form as to the physical and mental condition of the child, signed by a legally-qualified medical practitioner who examined the child not more than 60 days before the date on which the application for the order was filed in the court.

(5) Subsection (4) does not apply in relation to the proposed adoption of a child—

(a) who has attained the age of 18 years; or

(b) by a spouse of a natural parent of the child, by a person who is, or whose spouse is, a relative of the child, or by 2 persons who are relatives of the child.

Notice of
application for
adoption orders.

25—(1) The court shall not make an order for the adoption of a child unless not less than 28 days' notice of the application has been given by the Director or the principal officer of an approved agency—

(a) to any person whose consent to the adoption of the child is required under section 29 but whose consent has not been given, whether or not that consent has been dispensed with under section 37;

(b) to any person who is not a parent of a child but is a guardian of the child; or

(c) to any person, other than one of the prospective adoptive parents, with whom the child resides or who has the care, custody, or control of the child unless the consent of that person to the adoption of the child is required under section 29.

(2) A notice referred to in subsection (1) shall not specify the names of the prospective adoptive parents or otherwise identify them.

(3) The court may, on application in writing, by the Director or the principal officer of an approved agency, dispense with the giving of a notice under subsection (1).

(4) Where it appears to the court to be necessary in the interests of justice so to do, the court may direct that notice of an application for an adoption order be given to any person.

26—Where an application is made to the court for an order for the adoption of a child, the court may permit such persons as the court thinks fit to be joined as parties to the proceedings for the purpose of opposing the application or of opposing an application to dispense with the consent of a person.

Parties to proceedings for adoption order.

27—(1) Where the court refuses an application for an order for the adoption of a child, the court may make such order for the care, custody, and control of the child as it thinks fit.

Custody, &c., after refusal of application for adoption order.

(2) Without limiting the generality of subsection (1), an order under that subsection may declare the child to be a ward of the State or that the child shall remain under the guardianship of the Director for a period of 12 months commencing on the date of the order.

(3) Where an order under subsection (1) declares a child to be a ward of the State, it has effect, for all purposes, as if it were an order made under the *Child Welfare Act 1960* declaring the child to be a ward of the State made by a children's court established under that Act.

28—(1) In this section—

Discharge of adoption orders.

“adoption order” includes an adoption order made under the repealed Act or any corresponding previous enactment;

“eligible person” means the adopted person to whom an adoption order relates, a natural parent of the adopted person, an adoptive parent of the adopted person, the Director, or the principal officer of an approved agency by which the adoption was arranged,

and a reference to special circumstances includes a reference to an irretrievable breakdown of the relationship between the adoptive parents and the adopted person.

(2) An eligible person may apply to the court for an order discharging an adoption order on the grounds—

(a) that the adoption order or a consent for the purposes of the adoption order was obtained by fraud, duress, or other improper means; or

(b) that special circumstances exist in relation to the welfare and interests of the person why the adoption order should be discharged.

(3) Where an application is made under subsection (2), the court shall, if satisfied that there may be grounds on which an order may be made, direct that an investigation be made into the circumstances under which the application is made.

(4) An investigation under subsection (3) shall be made by the Director and, where the court so directs, by a person nominated by the Attorney-General.

(5) If, after consideration of a report of an investigation carried out under subsection (3), the court is satisfied that the adoption order should be discharged, the court shall make an order for the discharge of the adoption but shall not make such an order if it appears to the court that it would be prejudicial to the welfare and interests of the adopted person to do so.

(6) Where the court makes an order discharging an adoption order, any consent given under this Act for the purposes of the adoption of the person to whom the adoption order relates ceases to have effect unless the court otherwise orders.

(7) Where the court makes an order under this section in respect of an adopted person, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the person, including orders relating to—

- (a) the name of the person;
- (b) the ownership of property;
- (c) the care, control, custody, or guardianship of the person; and
- (d) the domicile of the person.

(8) On the making of an order under this section discharging an adoption order, but subject to an order made under subsection (7) and to section 50 (2), the rights, privileges, duties, liabilities, and relationships of the person to whom the adoption order relates and of all other persons shall be the same as if that order had not been made, but without prejudice to—

- (a) anything lawfully done;
- (b) the consequences of anything unlawfully done; or
- (c) a proprietary right or interest that became vested in a person,

while the adoption order was in force.

Division 3—Consents to adoptions

29—(1) Subject to this Division, the court shall not make an order for the adoption of a child unless the court is satisfied—

Consents
required to
adoption.

(a) that consent to the adoption has been given in accordance with this Division by the appropriate person or persons ascertained in accordance with this section, that the consent has not been revoked, and that the requirements of section 31 have been complied with; or

(b) that there is not an appropriate person within the meaning of this section to give consent to the adoption,

or unless the court dispenses with any such consent.

(2) In the case of a child whose parents were married to each other at the time of its birth or at or after the time of its conception but before its birth and who has not previously been adopted, the appropriate persons are the mother and the father of the child.

(3) In the case of a child whose parents were not so married to each other and who has not previously been adopted, the appropriate persons are the mother of the child and a man—

(a) whose name is entered in the entry relating to the child in a register of births, whether in Tasmania or in a place outside Tasmania, as the father of the child, so long as that entry was made before the expiration of a period of 30 days commencing on the day when consent to the adoption was given in accordance with this Division by the mother of the child (the last day of which period is in this subsection referred to as “the relevant day”);

(b) who is declared to be the father of the child under a declaration of paternity in force under section 10 of the *Status of Children Act 1974*, if before the relevant day a copy of the declaration is filed in the office of the Registrar-General under section 9 (3) of that Act;

(c) against whom an order has been made under section 26 or 27 of the *Maintenance Act 1967* in respect of the child, if before the relevant day a copy of the order is filed in the office of the Registrar-General under section 9 (3) of the *Status of Children Act 1974*;

- (d) who is named in an instrument filed before the relevant day in the office of the Registrar-General under section 9 (1) of the *Status of Children Act 1974* that acknowledges that he is the father of the child; or
- (e) who has before the relevant day lodged with the Director or with the approved agency by which the arrangements for the adoption are being made evidence that—
- (i) an order has been made outside Tasmania that, under section 8 (5) of the *Status of Children Act 1974*, is *prima facie* evidence that he is the father of the child;
 - (ii) he is, or has at any time been, liable, under an order of the Family Court of Australia for the maintenance of the child; or
 - (iii) he has at any time, under an order of the Family Court of Australia, been granted access to, or custody or guardianship of, the child.

(4) Where there is evidence that a particular man is not the father of a child, that man is not, by reason only of paragraph (e) of subsection (3), an appropriate person for the purposes of that subsection in the case of that child.

(5) In the case of a child who has previously been adopted, the appropriate persons are the adoptive parents of the child.

(6) In the case of a child who is a non-citizen child, the appropriate person is—

- (a) the person who, under the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth, is the guardian of the child; or
- (b) where that guardian has, under that Act, delegated his powers and functions as guardian to another person, that other person.

(7) This section does not apply in relation to a person who has attained the age of 18 years before the making of the adoption order.

30—(1) Subject to this Division, a consent by a person, Manner of giving consent. except a guardian as mentioned in section 29 (6), is given in accordance with this Division where—

(a) the person has signed the prescribed form of consent in the presence of—

(i) a prescribed person; and

(ii) a person approved for the purpose by the Director or the principal officer of an approved agency; and

(b) the persons in whose presence the form of consent was signed have signed the prescribed statements.

(2) If a consent by a person is given in a country outside Australia, the consent is given in accordance with this Division where—

(a) the person has signed the prescribed form of consent in the presence of 2 persons each of whom is—

(i) an Australian Diplomatic Officer within the meaning of the *Consular Fees Act 1955* of the Commonwealth;

(ii) a judge of a court in that country;

(iii) a magistrate in that country; or

(iv) a notary public in that country; and

(b) the 2 persons in whose presence the form of consent was signed have signed the prescribed statements.

31—(1) Before a consent is given for the purposes of this Division by a person who is not a guardian as mentioned in section 29 (6)— Requirements to be complied with.

(a) the person shall receive counselling from a person approved for the purpose by the Director or the principal officer of an approved agency;

(b) not less than 24 hours before the consent is given, the person by whom that counselling was given shall give the person information in writing in the prescribed form about the effect of an adoption order, the alternatives to adoption, and the provisions of this Act relating to revocation of consent; and

(c) notice in writing shall be given to the person that the person may, at any time before an adoption order is made, apply subject to, and in accordance with, the *Registration of Births and Deaths Act 1895* for a certified copy of, or extract from, an entry in a register of births relating to the child.

(2) The Director or the principal officer of an approved agency shall, as soon as practicable after receiving a consent given for the purposes of this Division, give a copy of that consent to the person who signed it.

(3) A certificate signed by the Director or the principal officer of an approved agency to the effect that the requirements referred to in subsection (1) have been complied with is evidence of that fact.

(4) Where a consent is given in a place outside Tasmania, the requirements referred to in subsections (1) and (2) do not apply.

Consent by guardian under section 29 (6).

32—A consent by a person who is a guardian, or the delegate of a guardian, of a non-citizen child as mentioned in section 29 (6) is given in accordance with this Division where the person has signed the prescribed form of consent and a declaration that the person believes on reasonable grounds that the child was given for adoption in accordance with the law of the country in which the child was residing at the time when it was placed in the care of the prospective adoptive parents.

Consents to be construed as general consents.

33—(1) Subject to subsection (2), a consent to the adoption of a child shall, for the purposes of this Act, be construed as a consent to the adoption of the child by persons in whose favour an adoption order may be made under this Act in respect of the child and is a valid consent notwithstanding that an application in respect of the child has not been made or contemplated or, if an application has been so made, that the person giving the consent does not know the identity of the prospective adoptive parents.

(2) A consent to the adoption of a child by a relative of the child, or by a spouse of a parent of the child, shall be construed as a consent to the adoption of the child by that relative or spouse only.

34—Where—

- (a) a person whose consent to the adoption of a child is required by section 29 has, in accordance with the law of another State or of a Territory, duly signed an instrument of consent to the adoption of the child; and
- (b) the consent evidenced by the instrument of consent has not been revoked in accordance with the law of that other State or Territory,

Consents given under law of another State or a Territory.

that instrument of consent shall, for the purposes of this Act, be deemed to be an instrument executed in accordance with this Division evidencing a consent, in accordance with section 29 (1), to the adoption of the child.

35—(1) A consent to the adoption of a child given for the purposes of this Act by a person may be revoked by notice in writing served on the Director before the expiration of 30 days after the date on which the instrument of consent was signed and not otherwise.

Revocation of consents.

(2) Service of a notice on the Director under subsection (1) shall be effected by delivering it personally or by sending it to him by certified mail.

(3) On receiving notice in writing of the revocation of a consent to the adoption of a child, the Director shall, if it appears to him that the consent was given to the principal officer of an approved agency, forthwith deliver or send by post a copy of the notice to that officer.

(4) Where the Director releases a child to the parents or to one of the parents of the child as mentioned in section 40 (1) (c), any consent given to the adoption of that child, is, by force of this subsection, revoked.

36—(1) The court shall not make an adoption order in reliance on a consent given or purporting to have been given by a person if it appears to the court that—

Defective consents.

- (a) the consent was not given in accordance with this Act;
- (b) the consent was obtained by fraud, duress, or other improper means;
- (c) the consent was revoked at a time when it was lawful to do so;
- (d) the instrument of consent has been altered in a material particular without authority;

- (e) the person giving or purporting to give the consent was not, when the instrument of consent was signed, in a fit condition to give the consent or did not understand the nature of the consent; or
- (f) the instrument of consent was signed before the birth of the child to whom it relates.

(2) A court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child to whom it relates on, or within 7 days after, the day on which the child was born unless it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

(3) For the purposes of subsection (2), a certificate of a legally-qualified medical practitioner stating that, at the time when an instrument of consent was signed by the mother of the child to whom it relates, the mother was in a fit condition to give the consent is evidence of that fact.

Court may dispense with consents.

37—(1) Where, on application by the Director or the principal officer of an approved agency, the court is satisfied—

- (a) that a person whose consent to the adoption of a child is required under this Division cannot, after reasonable inquiry, be found;
- (b) by a certificate signed by not less than 2 legally-qualified medical practitioners, that any such person is, and is unlikely to cease to be, incapable on psychiatric or other medical grounds of properly considering the question whether the person should give consent;
- (c) that any such person has abandoned, deserted, persistently neglected, or ill-treated the child;
- (d) that any such person has seriously ill-treated the child to the extent that it is unlikely that the child would accept, or be accepted by the person within, the family of that person;
- (e) that any such person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent of the child;
- (f) that any such person has such a physical or mental disability or is otherwise so impaired that the person is unable to meet the needs of the child;
- (g) that for any reason the child is unlikely to be accepted into, or to accept, a family relationship with any such person; or

(h) that there are any other special circumstances by reason of which, in the interests of the welfare of the child, the consent of any such person may properly be dispensed with,

the court may dispense with the consent of that person to the adoption of the child unless that person is a guardian of the child as mentioned in section 29 (6).

(2) For the purposes of subsection (1) (a), where, for the purposes of obtaining the consent of a person to the adoption of a child, the court is satisfied that—

(a) a letter seeking that consent has been sent by certified mail addressed to that person at his last known place of residence;

(b) a letter seeking that consent has been sent by certified mail addressed to that person at the address of such other person (if any) as the Director or the principal officer of an approved agency believes may know where the first-mentioned person may be found;

(c) the address of that person cannot be found on a roll of electors under the *Commonwealth Electoral Act 1918* of the Commonwealth;

(d) notice to that person that consent of that person is sought has been published in a newspaper circulating generally in the area where the last known place of residence of that person is situated; and

(e) inquiries have been made of such persons, bodies, agencies, and government departments as might reasonably be expected to have known where that person may be found,

and the court is also satisfied that the Director or principal officer has been unable to find that person and that such other inquiries as the court may determine have been made, the court shall determine that reasonable inquiry has been made for that person and that the person cannot be found.

(3) The court shall not make an order under subsection (1) dispensing with the consent of a person to the adoption of a child unless the court has received and taken into consideration a report from the Director or the principal officer of an approved agency as to—

(a) the circumstances in which the application for dispensation is made and the grounds for the application; and

(b) whether the dispensation of consent and the proposed adoption would serve the welfare and interests of the child concerned.

(4) An order under subsection (1) dispensing with consent may, on application by, or on behalf of, the Director, the principal officer of an approved agency, or the person whose consent was dispensed with, be revoked by the court at any time before the making of the adoption order concerned.

Person who gives consent to be given notice of certain events.

38—(1) Where a person, except a guardian as mentioned in section 29 (6), has given consent for the purposes of this Division, the Director or the principal officer of an approved agency shall, as soon as practicable after the occurrence of any of the following events, give notice in writing to the person of that event:—

- (a) the placement of the child to whom the consent relates with the prospective adoptive parents;
- (b) the termination of such a placement;
- (c) the renunciation by the Director of guardianship of the child;
- (d) the making of an adoption order relating to the child;
- (e) where the child to whom the consent relates dies before an adoption order is made, the death of the child.

(2) Where the Director or the principal officer of an approved agency is of opinion that placement of the child as mentioned in subsection (1) (a) is no longer possible, he shall, as soon as practicable, give notice in writing of his opinion to any person who has given consent for the purposes of this Division.

(3) Except in the case of renunciation of guardianship, the Director or principal officer is not required to give notice under subsection (1) or (2) to a person who has, in writing, whether in the instrument of consent or otherwise, expressed the wish not to be given notice of an event or opinion mentioned in either of those subsections.

(4) Where the Director or the principal officer of an approved agency is notified of the death of an adopted person, he shall take such steps as are reasonably practicable to transmit that notification to each parent of the person who gave consent to the adoption.

Division 4—Care of child pending adoption

39—(1) The Director or the principal officer of an approved agency may, in accordance with this section, exercise rights of custody in respect of a child who is proposed to be adopted. Care of child pending adoption

(2) Where—

(a) the consent of a person to the adoption of a child has been given but an adoption order in respect of that child can not be made unless the consent of another person is given or dispensed with under this Act; or

(b) it appears to the Director or the principal officer of an approved agency that a person whose consent is required under this Act to the adoption of a child proposes to give that consent,

a person who has the custody or guardianship of the child may, in writing, authorize the Director or principal officer to exercise any rights of custody in respect of the child.

(3) An authority given under subsection (2) ceases—

(a) on the expiration of a period of 6 months after the authority is given or, if that period is extended for a further period of 6 months by an agreement in writing between the person who gave the authority and the Director or principal officer, on the expiration of that further period;

(b) if a person who has given consent to the adoption revokes that consent;

(c) when all consents required for the adoption have been given or dispensed with;

(d) if the person who gave the authority revokes it; or

(e) if the person who gave the authority ceases to be entitled to custody or guardianship of the child,

whichever first occurs, and on the cessation of that authority pursuant to paragraph (a), (b), (d), or (e), the Director or principal officer shall—

(f) deliver the child to a person who at that time is entitled to the custody or guardianship of the child; or

(g) where such a person cannot after reasonable inquiry be found, take such steps as are necessary to admit the child to the care of the Director under the *Child Welfare Act 1960*.

Guardianship of
child awaiting
adoption.

40—(1) Where each person whose consent to the adoption of a child is required under section 29 has consented to the adoption of the child or the consent has been dispensed with under this Act, the Director shall be the guardian of the child for all purposes other than the purposes of that section to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child;
- (b) the Director renounces guardianship of the child under section 41;
- (c) the Director, by writing under his hand, releases the child to the parents or to one of the parents of the child;
- (d) in the case of any consent so given, the instrument of consent is lawfully revoked; or
- (e) a court of competent jurisdiction, by order, makes other provision for the guardianship of the child.

(2) Subsection (1) does not apply to, or in relation to—

- (a) a child the adoption of whom by a spouse of a parent of the child or by a relative, or by a relative and the spouse of the relative, of the child is being negotiated or arranged;
- (b) a child who is a ward of the State or who is subject to guardianship pursuant to the law of another State or a Territory corresponding to the provisions of the *Child Welfare Act 1960* by reason of which a child may be such a ward; or
- (c) a child unless and until—
 - (i) the Director has received notice in writing that a general consent to the adoption of the child has been given; and
 - (ii) the Director has signified his acceptance of the guardianship of the child.

Renunciation of
guardianship for
adoption of child
in another State.

41—(1) Where the Director receives from an officer in another State or a Territory whose powers, functions, and duties correspond with those of the Director under this Act—

- (a) notice that an application will be made in that State or Territory under a law corresponding with this Act for the adoption of a child who is under the guardianship of the Director by virtue of section 40; and