

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

(4) Where a person referred to in paragraph (a) of sub-section (3) is satisfied that there are special circumstances why less than seven days notice should be given under paragraph (b) of that sub-section, that person shall approve a time less than seven days but not less than 24 hours as the period for the purposes of that paragraph.

(5) The Governor in Council may, by Order published in the *Government Gazette*, revoke or vary an Order made under sub-section (2).

**Requirements to be complied with.**

35. (1) The following requirements shall be complied with before a consent is given by a person (other than a person to whom section 33 (6) applies) for the purposes of this Division:

- (a) The person shall receive counselling from a person approved for the purpose by the Director-General or by the principal officer of an approved agency;
- (b) Not less than seven days or, where a shorter period is approved under sub-section (2), before the commencement of that shorter period, 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 names and addresses of organizations that provide family support services;
- (c) Notice in writing shall be given to the person that the person may, at any time before an adoption order is made, make application subject to and in accordance with the *Registration of Births Deaths and Marriages Act 1959* for a certified copy of, or extract from, the entry in the Register of Births relating to the child.

(2) Where a person referred to in section 34 (2) is satisfied that there are special circumstances why less than seven days notice should be given under paragraph (b) of sub-section (1), that person shall approve a time less than seven days but not less than 24 hours as the period for the purposes of that paragraph.

(3) A certificate signed by the Director-General or the principal officer of an approved agency shall be proof in the absence of evidence to the contrary that the requirements referred to in sub-section (1) have been complied with.

(4) Where a consent is given in a place outside Victoria, the requirements referred to in sub-section (1) do not apply.

**Consent by guardian under section 33 (6).**

36. A consent by a person who is a guardian, or the delegate of a guardian, of a non-citizen child to whom section 33 (6) applies 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—

- (a) each of the parents of the non-citizen child—
  - (i) has given consent, in accordance with the law of the place of residence of that parent or of the non-citizen child immediately before the non-citizen child began the journey to Australia, to the adoption of the non-citizen child and has not revoked that consent; or
  - (ii) is dead or cannot after reasonable inquiry be found; or
- (b) circumstances exist by reason of which the consent of a parent could be dispensed with if the consent of the parent were required under this Act.

**Consent subject to conditions.**

37. (1) A consent by a parent to the adoption of a child in which the wish is expressed under section 50 that the child be adopted within the Aboriginal community may be made subject to a condition that that parent, and such relatives of the child as are specified in the consent and members of the Aboriginal community to which the child belongs have a right of access in accordance with the prescribed terms to the child.

(2) Where the Director-General or the principal officer of an approved agency, as the case may be, is unable to find a person or persons suitable to adopt a child to whom a consent given subject to a condition under this section applies, the Director-General or principal officer shall, by notice in writing in the prescribed form, inform the parent by whom the consent was given of the inability and that the parent may, within 28 days after the notice is given, by notice in writing served on the Registrar of the County Court, vary the conditions or may revoke the consent.

(3) After the expiration of the period of 28 days after a notice is given under sub-section (2), the Director-General or the principal officer may, unless the condition has been varied or any consent given to the adoption of the child has been revoked, make application to the Court for the revocation or alteration of the conditions to which a consent is subject under this section.

(4) The Court may make such order as it thinks fit on an application under sub-section (3) where it is satisfied that the Director-General or the principal officer has taken such steps as are reasonable in the circumstances to satisfy the conditions to which the consent was subject and has received and considered a report from an Aboriginal agency within the meaning of section 50.

**Revocation of consent on notice of inability to place child.**

38. (1) Where a person has given consent for the purposes of this Division and the Director-General or principal officer is of the opinion that it is no longer possible to place the child with a proposed adoptive parent or proposed adoptive parents, the Director-General or principal officer shall give notice in writing to that effect to each person who has given such consent and shall, in the notice, inform the person of the right to revoke the consent within the period of 56 days after the giving of the notice.

(2) Where a person to whom a notice relating to a child is given under sub-section (1) does not revoke the consent within the period referred to in that sub-section, the consent is revoked upon the Director-General or principal officer ceasing to be the guardian of the child by reason of the operation of section 46 (1) (e).

**Consents to be construed as general consents.**

39. (1) Subject to sub-section (2) and except as provided in section 37, 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 any person or persons on whose application an adoption order may be made under this Act in respect of the child and shall be a valid consent notwithstanding that an application in respect of the child has not been made or contemplated or, if application has been so made, that the person giving the consent does not know the identity of the applicant or applicants.

No. 7147 s. 24.

(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.

**Consents given under law of another State or a Territory.****40. Where—**

No. 7147, s. 25.

- (a) a person whose consent to the adoption of a child is required by section 33 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—

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 33 (1), to the adoption of the child.

**Revocation of consents.**

No. 7147, s. 26.

**41. (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 Registrar of the County Court before—

- (a) the expiration of 28 days after the date on which the instrument of consent was signed or, where before the expiration of that period, the person has, by instrument in writing in the prescribed form and attested as prescribed, declared that the period be extended by not more than fourteen days, before the expiration of that extended period;
- (b) where a notice has been given to that person under section 37 (2), the expiration of 28 days after the giving of that notice; or
- (c) where a notice has been given to that person under section 38, the expiration of 56 days after the giving of that notice—

and not otherwise.

(2) Service of a notice on the Registrar of the County Court under sub-section (1) shall be effected by delivering it personally or by sending it to the Registrar by certified mail at such address as is prescribed.

(3) Upon receiving notice in writing of the revocation of a consent to the adoption of a child, the Registrar of the County Court shall forthwith notify the Director-General or, where the principal officer of an approved agency is the guardian of the child under this Act, that principal officer of the receipt of the notice.

**Defective consents.**

No. 7147, s. 28.

**42. (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—

- (a) the consent was not given in accordance with this Act;
- (b) the consent was obtained by fraud or duress;
- (c) the consent was revoked at a time when it had not become irrevocable;
- (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.

(2) The Court shall not make an adoption order in reliance on an instrument of consent signed by a parent of the child within the prescribed period after the birth of the child.

(3) In sub-section (2), “prescribed period” means fourteen days or, where the Court has ordered that it is in the best interests of the child that a shorter period be applied, that shorter period.

(4) Notwithstanding sub-sections (1) and (2), any consent to the adoption of the child validly given before the commencement of this section pursuant to the *Adoption of Children Act 1964* shall be valid and effectual for the purposes of this Act.

**Court may dispense with consents.**

43. (1) The Court may dispense with the consent of a person (other than a guardian under section 33 (6)) to the adoption of a child where the Court is satisfied—

No. 7147, s. 29.

- (a) that the person cannot, after reasonable inquiry, be found;
- (b) on evidence given in accordance with sub-section (3) that the person is, and is unlikely to cease to be, in such a physical or mental condition as not to be capable of properly considering the question whether the person should give consent;
- (c) that the person has abandoned, deserted, persistently neglected or ill-treated the child;
- (d) that the 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 the 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 the person has such a physical or mental disability or is otherwise so impaired that the person would be 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 the 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 may properly be dispensed with.

(2) For the purposes of paragraph (a) of sub-section (1), 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;
- (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-General or principal officer of an approved agency believes may know where the first-mentioned person may be found;

- (c) the Director-General or principal officer of an approved agency is satisfied that the address of that person cannot be found on a roll of electors under the *Commonwealth Electoral Act 1918* of the Commonwealth as amended and in force for the time being;
- (d) notice to the person that consent of the person is sought has been published in a newspaper circulating generally in the area where the last known place of residence of the person is situated; and
- (e) enquiries 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 satisfied that the Director-General or principal officer has been unable to find that person and that such other enquiries 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) For the purposes of paragraph (b) of sub-section (1), the evidence required is a certificate signed by not less than two duly qualified medical practitioners certifying as to the matters referred to in that paragraph.

(4) In order to facilitate the making of arrangements with a view to the adoption of a child, the Court may, on application by or on behalf of the Director-General or the principal officer of an approved agency, make an order under this section dispensing with the consent of a person whose consent is required to the adoption of the child before an application for an adoption order has been made in respect of the child or before proposed adoptive parents have been selected for the child, and any order under this section may have effect for the purposes of any application for an adoption order that may subsequently be made by any person under this Act.

(5) An order under sub-section (4) may, on application by or on behalf of the Director-General, 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 an adoption order in respect of the child.

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

44. (1) Where a person (other than a person to whom section 33 (6) applies) has given consent for the purposes of this Division, the Director-General or principal officer shall within seven days after the occurrence of each of the following events, give notice in writing to the person of that event:

- (a) The expiration of the period under section 41 (1) (a) during which consent may be revoked;

- (b) The placement of the child to whom the consent relates with a proposed adoptive parent or adoptive parents;
- (c) The termination of such a placement;
- (d) The renunciation by the Director-General or principal officer of guardianship of the child;
- (e) Where the child to whom the consent relates dies before an adoption order is made, the death of the child;
- (f) The making of an order for the adoption of the child.

(2) The Director-General or principal officer is not required to give notice under sub-section (1) of an event (other than renunciation of guardianship) of which the person has, in writing, whether in the instrument of consent or otherwise, expressed the wish not to be given notice.

#### Division 4—Care of Child

##### Care of child awaiting adoption.

45. (1) Where—

- (a) a person whose consent to the adoption of a child is required under this Act proposes to give that consent; or
- (b) a person has given consent to the adoption of a child but the consent of another person is required, or has to be dispensed with, before an adoption order can be made—

and a person having the custody or guardianship of the child has authorized the Director-General or the principal officer to exercise any rights of custody in respect of the child, that authority ceases—

- (c) subject to sub-section (2), on the expiration of six months after the authority is given;
- (d) if the person withdraws consent to the adoption;
- (e) when all consents required for the adoption have been given or been dispensed with;
- (f) upon revocation of the authority by the person who gave it; or
- (g) upon the person who gave the authority ceasing to be entitled to custody or guardianship of the child—

whichever first occurs.

(2) The period of six months may from time to time be extended, by the agreement of the person who gave the authority and the Director-General or principal officer for further periods, not exceeding six months, but the total of the periods for which the authority is given or renewed shall not exceed eighteen months from the time when the first authority was given.

(3) Where an authority given under sub-section (1) ceases, the Director-General or the principal officer shall—

- (a) deliver the child to a person who at that time is entitled to the custody or guardianship of the child; or
- (b) where such a person cannot after reasonable enquiry be found, take such steps as are necessary to admit the child to the care of the Department of Community Welfare Services under the *Community Welfare Services Act 1970*.

#### **Guardianship of child awaiting adoption.**

No. 7147, s. 31.

**46.** (1) Where each person whose consent to the adoption of a child is required under section 33 has consented to the adoption of the child or the consent has been dispensed with under this Act, the Director-General or, where an approved agency is authorized to make arrangements with a view to the adoption of the child, the principal officer of that agency, shall be the guardian of the child for all purposes (other than the purposes of section 33) to the exclusion of all other persons until—

- (a) an adoption order is made in respect of the child;
- (b) the Director-General or principal officer renounces guardianship of the child under sub-section (4);
- (c) the Director-General or principal officer by writing under the hand of the Director-General or principal officer 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;
- (e) where the Director-General or principal officer has given notice under section 38 to each person who has given consent, at the expiration of 140 days after the Director-General or principal officer gave the notice or notices; or
- (f) the Court, by order, makes other provision for the guardianship of the child.

(2) Except where a child is on placement with a view to adoption, a release in writing of a child under sub-section (1) to the parents or to one of the parents of the child revokes any consent given by the parents or either of them to the adoption of the child.

(3) Sub-section (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; or
- (b) a child who is a ward of the Department of Community Welfare Services within the meaning of the *Community Welfare Services Act 1970* or who is under the guardianship of a person by reason of provisions of an Act of another State or of a Territory corresponding to the provisions of the *Community Welfare Services Act 1970* by reason of which a child may be such a ward.



(4) Where the Director-General or a principal officer of an approved agency receives from an officer in another State or a Territory whose powers, functions and duties correspond with those of the Director-General or principal officer under this Act—

(a) a notice that application will be made in that State or Territory under provisions corresponding with this Act for the adoption of a child who is under the guardianship of the Director-General or a principal officer by virtue of the provisions of sub-section (1); and

(b) a request that the Director-General or principal officer renounce guardianship of the child—

the Director-General or principal officer may, if the consent has become irrevocable and the Director-General or principal officer thinks it in the best interests of the child so to do, by instrument in writing signed by the Director-General or principal officer renounce guardianship of the child.

(5) Forthwith after signing an instrument of renunciation under sub-section (4), the Director-General or principal officer shall send the instrument by certified mail to the officer in the other State or Territory together with the consent to adoption executed in Victoria with respect to the child by virtue of which the Director-General or principal officer is the guardian of the child and shall thereupon cease to be guardian of the child for the purposes of this Act.

(6) Where application is to be made under this Act for the adoption of a child who is under the guardianship of some officer or person in another State or in a Territory pursuant to provisions corresponding with the provisions of this Division whose powers, functions and duties correspond with those of the Director-General under this Act or of the principal officer of an approved agency, the Director-General or principal officer may notify such officer or person of the application and request the officer or person in writing to renounce guardianship of the child and to forward to the Director-General or principal officer for use in the proceedings on the application the consent executed in that State or Territory with respect to the child.

(7) Upon receiving from any such officer or person an instrument in writing executed by such officer or person renouncing the guardianship of a child referred to in sub-section (6) the Director-General or principal officer shall become and be the guardian of the child in all respects as if the consent to adoption executed in that State or Territory and forwarded with the instrument of renunciation were a consent given in accordance with Division 3 in Victoria on the day the consent purports to have been signed and attested in that State or Territory.

**Guardianship of non-citizen child.**

47. (1) Where—

- (a) a non-citizen child is present in Victoria;
- (b) the Director-General or an approved agency is authorized to make arrangements with a view to the adoption of the child; and
- (c) it appears to the Director-General or to the principal officer of the approved agency that there is not a person in Australia who is a guardian of the child—

the Director-General or principal officer may make application to the Court for an order that the Director-General be the guardian of the child.

(2) Where the Court, on an application under sub-section (1), makes an order that the Director-General or principal officer be the guardian of a child, the Director-General or principal officer shall be the guardian of the child for all purposes to the exclusion of all other persons as if the Director-General or principal officer had become the guardian of the child by reason of the operation of section 46 and shall cease to be the guardian in the same manner as he would cease to be a guardian of a child under that section.

**Natural parent's right of access after consent.**

48. (1) Notwithstanding that, under section 46, the Director-General or the principal officer of an adoption agency is the guardian of a child, a person who is a parent of the child who has given consent to the adoption of the child may, subject to sub-section (2), visit the child during the period during which the consent may be revoked.

(2) The Court, on the application of the Director-General or principal officer may, by order, restrict the occasions on which or times at which a parent may, under this section, visit a child.

**Division 5—Court to be satisfied as to Certain Additional Matters****Putative father.**

49. (1) Where, in relation to the adoption of a child, the mother of the child is the only appropriate person under section 33 to give consent to the adoption, the Court shall not make an order for the adoption of the child unless it is satisfied that—

- (a) the Director-General or principal officer of the approved agency making the arrangements for the adoption does not know the name or address of a man who may on reasonable grounds be the father of the child; or
- (b) the Director-General or principal officer does know the name or address of such a man and—