

and, where an order is so made, the spouse shall be deemed to be a parent of the child jointly with that parent or adoptive parent as if the spouse and that parent or adoptive parent had been married to each other at the time the child was born but notwithstanding anything in section 53—

- (a) the child is not to be treated in law as if the child were not the child of that parent or adoptive parent;
- (b) that parent or adoptive parent is not to be treated in law as if the parent or adoptive parent were not a parent of that child;
- (c) the relationship between the child and that parent or adoptive parent is not terminated;
- (d) if that parent or adoptive parent had been the guardian of the child, the order does not terminate the guardianship; and
- (e) if the child were the adopted child of that adoptive parent, the order does not terminate that adoption.

Orders in favour of relatives.

12. 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 two persons who are, or one of whom is, a relative of the child unless the Court is satisfied that, in the particular circumstances of the case, the welfare and interests of the child would be better served if an order were made for the adoption of the child than if an order were made under the *Children (Guardianship and Custody) Act 1984* in relation to the child.

Age of adoptive parents.

13. The Court shall not make an order for the adoption of a child in favour of a person who, or persons either of whom—

- (a) has not attained the age of eighteen years; or
- (b) is less than eighteen years older than the child or—
 - (i) in the case of a child who has not attained the age of ten years, more than 40 years; or
 - (ii) in the case of a child who has attained the age of ten years, more than 45 years—

older than the child—

unless the Court considers that there are circumstances relating to the needs of the child which make it desirable to make the adoption order.

Wishes of child.

14. 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

Cf. No. 7147
s. 11.

consideration given to them, having regard to the age and understanding of the child.

Court to be satisfied as to certain matters.

No. 7147. s. 12.

15. (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-General or the principal officer of an approved agency concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

- (a) the applicants satisfy the prescribed requirements relating to approval of applicants;
- (b) the Director-General or principal officer has given consideration to any wishes expressed by a parent of the child in relation to the religion, race or ethnic background of the proposed adoptive parent or adoptive parents of the child;
- (c) the Director-General or principal officer has given consideration to any wishes expressed by a parent of the child after consent was given or dispensed with about access to or information about the child and any arrangements agreed between the parent and the proposed 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) Sub-section (1) does not apply in relation to an order under section 10 for the adoption of a child who has attained the age of eighteen 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 make it desirable that the child should be adopted.

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

Notice of application for adoption orders.

No. 7147 s. 13.

16. (1) The Court shall not make an order for the adoption of a child unless the applicant or applicants for the adoption order has or have given notice of the application in accordance with the rules of the Court—

- (a) to any person whose consent to the adoption of the child is required under section 33 but whose consent has not been given and has not been dispensed with under section 43;
- (b) to any person who is not a parent of the child but is a guardian of the child; and

(c) to any person (not being a person whose consent is so required) with whom the child resides or who has the care or custody of the child.

(2) The Court may, upon application in writing, dispense with the giving of a notice under sub-section (1).

(3) 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.

Parties.

17. 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 for the purpose of opposing an application to dispense with the consent of a person.

No. 7147, s. 14.

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

18. Subject to any order that may be made under Part VII. of the *Marriage Act* 1958 or under the *Children (Guardianship and Custody) Act* 1984, where the Court refuses an application for an order for the adoption of a child, the Court may make such order for the care and control of the child or for the making of any further application under this Act as it thinks fit.

No. 7147 s. 15.

Discharge of adoption orders.

19. (1) An eligible person may apply to the Court for an order discharging an order for the adoption of a child made under this Act or any corresponding previous enactment on the grounds—

No. 7147, s. 16.

(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 why the adoption order should be discharged.

(2) In sub-section (1)—

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

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

(3) Where an application is made under sub-section (1), 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 sub-section (3) shall be made by the Director-General and, where the Court so directs, by a person nominated by the Secretary to the Law Department.

(5) The Court shall, after consideration of a report of an investigation carried out under sub-section (3), if it is satisfied that the adoption order should be discharged, make an order for the discharge of the adoption.

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

(7) Where the Court makes an order under this section, 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 child, including orders relating to—

- (a) the name of the child;
- (b) the ownership of property;
- (c) the custody or guardianship of the child; or
- (d) the domicile of the child.

(8) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under sub-section (7) and to section 53 (2), the rights, privileges, duties, liabilities and relationships of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

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

whilst the adoption order was in force.

Division 2—Arrangement of Adoptions

Adoptions may be arranged by Director-General or by approved agency.

No. 7147, s. 17.

20. (1) For the purposes of this Act, arrangements or negotiations for or towards or with a view to the making of an adoption in favour of any person or persons may be made by or on behalf of the Director-General or by or on behalf of an approved agency.

(2) Arrangements or negotiations referred to in sub-section (1) may be made by any person authorized in writing for any specified purpose or purposes, either generally or in any particular case, by the Director-General or the principal officer of the approved agency.

(3) Except as otherwise provided in this Act, an order shall not be made for the adoption of a child unless arrangements or negotiations for or towards or with a view to the adoption of the child have been made by or on behalf of the Director-General or by or on behalf of an approved agency.

Application for approval of adoption agency.

21. (1) Any welfare organization carrying on, or desiring to carry on, the activity of conducting negotiations or making arrangements with a view to the adoption of children may apply in writing to the Director-General for approval as an approved agency.

No. 7147, s. 18.

(2) An application under this section shall contain such information relating to the organization as is prescribed and shall nominate a person to be the principal officer and may nominate a person to be the deputy principal officer of the organization for the purposes of this Act.

(3) Where the Director-General receives an application under this section, the Director-General shall publish notice of the application in the *Government Gazette*.

(4) For the purposes of this section "welfare organization" means an organization, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent, philanthropic or welfare purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members.

Director-General may grant or refuse application.

22. The Director-General may, as the Director-General thinks fit, grant or refuse an application under section 21 and in particular, without in any way limiting the generality of the foregoing, may refuse any application if it appears to the Director-General that the applicant is not a welfare organization within the meaning of section 21 or is not suited to carrying on the activity of making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the making of arrangements with a view to the adoption of children.

No. 7147, s. 19.

Authorized agencies—non-citizen children.

23. The Director-General may authorize an approved agency, whether at the time the Director-General grants or renews the application for approval under section 21 or 26 or at any other time, to make arrangements with prescribed persons or prescribed organizations

in places outside Australia for the adoption in Victoria of non-citizen children.

Revocation or suspension of approval.

No. 7147, s. 20.

24. (1) The Director-General may at any time by notice in writing served personally or by certified mail on the principal officer of an approved agency revoke or suspend for a specified period the approval of the agency under this Division or the authority of the agency under section 23—

- (a) at the request of the approved agency concerned;
- (b) in the case of a revocation or suspension of approval under section 22, on the ground that the approved agency is no longer a suitable organization to carry on the activity of conducting negotiations or making arrangements with a view to the adoption of children, having regard to all relevant considerations including the matters referred to in section 22;
- (c) in the case of revocation or suspension of authority under section 23, on the ground that the approved agency is no longer a suitable organization to make arrangements with prescribed persons or prescribed organizations in places outside Australia for the adoption in Victoria of non-citizen children; or
- (d) on the ground that the approved agency has contravened, or failed to comply with, a provision of this Act or the regulations that is applicable to it.

(2) Where the approval of a welfare organization as an approved agency is suspended, the organization shall not commence or continue arrangements or negotiations for an adoption under this Act.

Period of approval of agency.

25. The approval of a welfare organization as an approved agency under section 22 or renewal of such an approval under section 26 has effect for three years or, where a longer period is prescribed, that longer period, unless sooner revoked under this Part.

Renewal of approval.

26. (1) An approved agency may apply in writing to the Director-General for renewal of approval as an adoption agency.

(2) Where the Director-General receives an application under sub-section (1), the Director-General shall publish notice of the application in the *Government Gazette*.

(3) The Director-General may, as the Director-General thinks fit, grant or refuse an application under sub-section (1) as if it were an application under section 21.

Effect of cessation or suspension of approved agency.

27. Where a welfare organization ceases to be an approved agency or the approval of a welfare organization as an approved agency is suspended—

- (a) all records and other documents held by it or under its control relating to the arrangement or negotiation of adoptions shall become the property of the Director-General or, with the approval of the Director-General where the welfare organization has entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, of that approved agency;
- (b) where the principal officer of the first-mentioned approved agency was, immediately before the cessation or suspension, the guardian of a child under this Act, the Director-General or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be, becomes the guardian of that child upon the cessation or suspension; and
- (c) the arrangements or negotiations being undertaken by the first-mentioned approved agency immediately before the cessation or suspension shall be continued by the Director-General or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be.

Effect of revocation or suspension of authority under section 23.

28. Where the authority of an approved agency under section 23 is revoked or suspended—

- (a) all records and other documents held by it or under its control relating to arrangements for the adoption of non-citizen children shall become the property of the Director-General or, with the approval of the Director-General where the welfare organization has entered into an agreement with an approved agency that the approved agency be the successor of the welfare organization, of that approved agency; and
- (b) any such arrangements being undertaken by the first-mentioned approved agency immediately before the revocation or suspension shall be continued by the Director-General or principal officer of the approved agency that is the successor of the first-mentioned approved agency, as the case may be.

Ending of suspension of approval or authority.

29. Upon the expiration of the period of suspension of the approval of a welfare organization as an approved agency or of the authority under section 23 of an approved agency—

- (a) the Director-General may, return to the approved agency such documents and records as, by reason of section 27 (a), became the property of the Director-General upon the suspension; and
- (b) the Director-General may, authorize the approved agency to continue such arrangements and negotiations being undertaken by the Director-General as the Director-General thinks fit, being arrangements or negotiations that, but for the suspension, would have been carried on by the approved agency.

Notice of approval to be published in *Government Gazette*.

No. 7147, s. 21.

30. (1) Notice of the approval or renewal of the approval of any welfare organization as an approved agency under this Division and of the revocation or suspension of any such approval shall be published in the *Government Gazette*.

(2) Each such notice shall specify the address of the principal officer of the welfare organization concerned and the full name of the principal officer and deputy principal officer (if any) of the organization.

Acts of principal officer deemed acts of approved agency.

No. 7147, s. 22.

31. Anything done by the principal officer or deputy principal officer of an approved agency or with his approval shall be deemed to be done by the approved agency.

Duties of Director-General and approved agencies.

32. In all matters relating to the exercise of powers and the performance of duties under this Act, the Director-General and the principal officer of an approved agency shall have regard to adoption as a service for the child.

Division 3—Consents to Adoptions

Consents required to adoptions.

No. 7147, s. 23.

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

(a) that—

- (i) consent (not being a consent that has been revoked) to the adoption has been given in accordance with this Division by the appropriate person or persons ascertained in accordance with this section; and
- (ii) the requirements of section 35 were complied with; or

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

(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 every person who is the mother or 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 every person who is the mother of the child or a man—

- (a) whose name is entered in the entry relating to the child in a register of births (whether in Victoria or in a place outside Victoria) as the father of the child;
- (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*, being a declaration a copy of which is filed under section 9 (3) of that Act in the office of the Government Statist;
- (c) against whom an order has been made under section 10 or 12 of the *Maintenance Act 1965* in respect of the child, being an order a copy of which is filed in the office of the Government Statist under section 9 (3) of the *Status of Children Act 1974*;
- (d) who is named in an instrument filed in the office of the Government Statist 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 lodged with the Director-General or with the approved agency by which the arrangements for the adoption are being made evidence that—
 - (i) an order has been made outside Victoria 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 man is not the father of a child, that man is not, by reason only of paragraph (e) of sub-section (3), an appropriate person for the purposes of that sub-section in the case of that child.

(5) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent of the child.

(6) In the case of a child who is a non-citizen child, the appropriate person is the person who, under the *Immigration (Guardianship of Children) Act 1946* of the Commonwealth as amended and in force for

the time being, is the guardian of the child or, 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 the case of a child who has attained the age of eighteen years before the making of the adoption order.

Manner of giving consent.

34. (1) Subject to this Division, a consent by a person (other than a person to whom section 33 (6) applies) is given in accordance with this Division where—

- (a) the person has signed the prescribed form of consent in the presence of—
 - (i) a person referred to in sub-section (2); and
 - (ii) a person approved for the purpose by the Director-General 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) For the purposes of paragraph (a) of sub-section (1) and of section 35 (2), each of the following is a person referred to in this sub-section:

- (a) A person who is a prescribed official of a court;
- (b) A person declared by Order of the Governor in Council published in the *Government Gazette* to be an authorized person for the purposes of this section;
- (c) In relation to a consent signed in another State or in a Territory—a person who is the principal administrative officer of a court in that State or Territory or a deputy of such an officer.

(3) Where 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 two persons each of whom is—
 - (i) an Australian diplomatic officer within the meaning of the *Consular Fees Act 1955* of the Commonwealth as amended and in force at the time being;
 - (ii) a judge of a court in that country; or
 - (iii) a magistrate in that country;
- (b) not less than seven days or, where a shorter period is approved under sub-section (4), before the commencement of that shorter period, before the consent is given, one of those persons gave the first-mentioned person information about the effect of an adoption order under this Act and about the alternatives to adoption available in Victoria; and