

(4) Except in circumstances described in subsection (2) an adoption order shall not be made in favour of 1 person if that person is married and is not living separately and apart from his or her spouse.

(5) An adoption order shall not be made in favour of a relative of the child unless—

- (a) the instrument of consent discloses consent to adoption by that particular relative; and
- (b) the Court is of the opinion that—
  - (i) there are circumstances why the relationships within the family of the child should be redefined as such an order would do; and
  - (ii) it would not be preferable to make an order relating to guardianship or custody of the child.

#### **Criteria for Court's discretion**

**19. (1)** An adoption order shall not be made if the child has not attained the age of 18 years unless—

- (a) the Director, or the principal officer of a private adoption agency that made the arrangements that have resulted in the application, has made a report in writing to the Court concerning the circumstances of the child and the proposed adoption;
- (b) the period within which any consent required may be revoked has expired without that consent having been revoked; and
- (c) after considering the report and any other evidence, the Court is of the opinion that—
  - (i) the applicants are persons of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child (including protecting a child's physical and emotional well-being); and
  - (ii) the applicants are suitable persons to adopt the particular child having regard to their—
    - (A) ages, education and attitudes to adoption;
    - (B) physical, mental and emotional health, particularly in so far as it impacts on capacity to nurture the child; and
    - (C) any other relevant consideration; and
  - (iii) the welfare and interests of the child will be promoted by the making of the order.

(2) In deciding whether or not to make an adoption order, the Court shall have regard to—

- (a) where it is appropriate given the age and understanding of the child—the wishes of the child; and
- (b) any wishes expressed in an instrument of consent, including wishes as regards—
  - (i) the racial or ethnic background of the proposed adoptive parents;
  - (ii) the religious upbringing of the child after adoption; or
  - (iii) whether a single person might adopt the child.

(3) Where a child is under the guardianship of an authority in a State or another Territory having functions under the law of that State or Territory corresponding to those of the Director, the Court may consider a report from that authority concerning the circumstances of the child and the proposed adoption either in addition to or instead of a report referred to in paragraph (1) (a), and in such a case the reference to a report in paragraph (1) (c) shall be construed accordingly.

(4) For the purposes of ascertaining the wishes of the child under paragraph (2) (a), or any other relevant consideration in relation to the welfare and interests of the child, the Court may inform itself in such manner as it thinks fit.

### **Overseas child**

**20. (1)** The following provisions of this section are in addition to, and do not derogate from, the provisions of section 19.

(2) An adoption order shall not be made if the child was brought from a place outside Australia for the purpose of adoption in Australia unless the Court is satisfied that—

- (a) the laws of the child's country of origin relevant to his or her emigration or adoption have been complied with;
- (b) arrangements have been made between the Minister and the appropriate authority in the child's country of origin to facilitate the bringing of children from that country to the Territory for the purpose of adoption in the Territory; and
- (c) any agency in the child's country of origin which made arrangements with a view to the adoption is approved for the purpose by the appropriate authority in that country.

**Aboriginal child**

**21. (1)** The following provisions of this section are in addition to, and do not derogate from, section 19.

**(2)** An adoption order shall not be made in respect of an Aboriginal child unless the Court is satisfied that—

- (a) it is not practicable for the child to remain in the custody of the birth parents or of a responsible person; and
- (b) the choice of the adoptive parents has been made having regard to the desirability of the child—
  - (i) being in the custody of a person who is a member of an Aboriginal community; and
  - (ii) being able to establish and maintain contact with his or her birth parents, any responsible person and the Aboriginal community of which the child is or was a member.

**Notice of application for adoption order**

**22. (1)** An adoption order shall not be made unless the applicants have caused notice in writing of the application and of the date fixed for the hearing of the application to be served, not later than 28 days before the date so fixed, on—

- (a) any person whose consent to the adoption is required but whose consent has not been given; and
- (b) any person (not being a person whose consent is required) with whom the child resides or who has guardianship or custody of the child.

**(2)** On application, the Court may dispense with the requirement for giving notice in accordance with subsection (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, and of the date fixed for the hearing of the application, be given to any person.

**Parties to proceedings**

**23.** The Court may permit such persons as the Court thinks fit to be joined as parties to proceedings on an application for an adoption order for the purpose of opposing the application or for the purpose of opposing an application to dispense with a requirement for a consent.

**Notification to Director of adoption order**

**24.** When an adoption order has been made, the Registrar of the Supreme Court shall notify the Director in writing accordingly.

**Alternative orders on refusal of adoption order**

**25. (1)** Where the Court refuses to make an adoption order, the Court may—

- (a) if of the opinion that the child's welfare and interests would be promoted by doing so—make an order relating to guardianship or custody of the child; and
- (b) make such other orders (if any) as it thinks fit.

**(2)** An order under paragraph (1) (a) may be made in favour of the Director or any other person.

**Discharge of adoption order**

**26. (1)** On application by a prescribed person, the Court may make an order (in this section referred to as a discharging order) discharging an adoption order if the Court is of the opinion that—

- (a) the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means; or
- (b) there are other circumstances that justify the discharging order.

**(2)** For the purpose of paragraph (1) (b), a breakdown in the relationship between the child and the adoptive parents shall not be taken to constitute a circumstance justifying a discharging order.

**(3)** A discharging order shall not be made if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

**(4)** On an application under subsection (1), the Court may require the Director to investigate the matter and to provide a report in writing to the Court.

**(5)** A discharging order shall not be made unless the applicant has caused notice in writing of the application and of the date fixed for the hearing of the application to be served, not later than 28 days before the date so fixed, on each person whose consent to the adoption was required.

**(6)** On application, the Court may dispense with the requirement for giving notice in accordance with subsection (5).

**(7)** Where the Court makes a discharging order, the Court may, at the same time or subsequently, make such consequential or ancillary orders as it thinks fit to promote the welfare and interests of the child, or otherwise in the interests of justice, including orders relating to—

- (a) the name of the child;
- (b) the ownership of property;

- (c) guardianship or custody of the child; or
- (d) the domicile of the child.

(8) Upon the making of a discharging order, then, but subject to any order made under subsection (7) and to subsection 43 (3), the rights, privileges, obligations, liabilities and relationships under the law of the Territory 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 right or interest that became vested in any person;

while the adoption order was in force.

(9) Where an adoption order that has been discharged was made pursuant to a general consent, then, unless the Court otherwise orders, that consent remains effective for the purpose of a further application for an adoption order in respect of the same child.

(10) In this section—

“prescribed person” means the Minister, the Director, the Community Advocate, the child, an adoptive parent or a person whose consent to the adoption was required.

### ***Division 2—Consents to adoptions***

#### **Consents of parents and guardians**

27. (1) Subject to this Division, an adoption order shall not be made in respect of a child who has not attained the age of 18 years unless consent to the adoption has been given by each person who is an appropriate person ascertained in accordance with subsection (2).

(2) For the purposes of subsection (1), a person is an appropriate person in relation to a proposed adoption of a child if the person is—

- (a) in the case of a child who has not previously been adopted—
  - (i) each parent of the child; or
  - (ii) the guardian of the child; and
- (b) in the case of a child who has previously been adopted—each adoptive parent or guardian of the child.

(3) A reference in subparagraph (2) (a) (i) to a parent of a child shall not be read as including a reference to the father unless he is presumed to be the father under the *Birth (Equality of Status) Act 1988*.

**Consent of applicant not required**

**28.** Where a person whose consent to an adoption would, but for this section, be required is an applicant for the adoption order, the consent of that person is not required.

**General or limited consents**

**29. (1)** For the purposes of this Act, consent to the adoption of a child may be general or limited.

**(2)** A general consent shall be a consent to the adoption of the child by any person or persons in accordance with the law of the Territory, and shall have effect accordingly.

**(3)** A limited consent shall be a consent to the adoption of the child—

- (a)** by a relative of the child;
- (b)** by a person who has been appointed as a guardian of the child by order of a court;
- (c)** by a person in whose custody the child has been placed by the Director in accordance with a law of the Territory; or
- (d)** by a person referred to in subsection 18 (2).

**Instrument of consent**

**30.** A consent to an adoption shall be by an instrument substantially in accordance with the prescribed form, signed by the person giving the consent and attested as prescribed.

**Revocation of consent**

**31. (1)** A consent to the adoption of a child may be revoked by notice in writing served on the Registrar of the Supreme Court before the expiration of 30 days after the date on which the instrument of consent was signed or, if before the expiration of that period the person who gave the consent has served on the Registrar notice in writing that a further period of 14 days commencing on that expiration is required for the purpose of this section, at the expiration of that further period, but may not otherwise be revoked.

**(2)** Upon receiving a notice under subsection (1), the Registrar of the Supreme Court shall forthwith notify the Director in writing accordingly.

**(3)** When the period within which a consent may be revoked has expired, the Director shall notify the person who gave the consent in writing accordingly.

**Access during revocation period**

**32. (1)** A person whose consent to the adoption of a child is required is entitled to have access to the child before the expiration of the period during which that consent may be revoked unless the Director, by notice in writing served on that person, informs that person that access is denied.

**(2)** The Director shall not give a notice under subsection (1) unless satisfied that it is necessary for the purpose of protecting the welfare and interests of the child to do so.

**Consents under law of a State or another Territory**

**33.** A consent to the adoption of a child given by a person in accordance with the law of a State or another Territory that would be an effective consent under that law if the application had been an application for a corresponding order under that law is, if the consent of that person is required, an effective consent for the purposes of this Act.

**Defective consents**

**34. (1)** The Court may refuse to make an adoption order if it appears to the Court that—

- (a) any required consent was—
  - (i) not given in accordance with this Act; or
  - (ii) obtained by fraud, duress or other improper means;
- (b) an instrument of consent has been altered in a material particular without the authority of the person who gave the consent; or
- (c) when an instrument of consent was signed, the person who gave or purported to give the consent was not in a fit condition to give the consent or did not understand the nature of the consent.

**(2)** An adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the birth of the child.

**(3)** An adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the expiration of 7 days after the day on which the child was born unless—

- (a) the Court is of the opinion that there are circumstances that justify the instrument being treated as an effective consent; or
- (b) the consent—
  - (i) was given in accordance with a law of a State or another Territory; and
  - (ii) is, by virtue of section 33, an effective consent for the purposes of this Act.

**Dispensing with consent**

**35. (1)** On application, the Court may, by order, dispense with the requirement for consent of a person to the adoption of a child if the Court is satisfied that—

- (a) the person cannot, after reasonable inquiry, be identified or located;
- (b) the physical or mental condition of the person is such that he or she is not capable of considering properly the question whether consent should be given;
- (c) the person has abandoned or deserted, or has neglected or ill-treated, the child;
- (d) the person has, for a period of not less than 1 year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (e) there are any other circumstances that justify the requirement for the consent being dispensed with.

**(2)** On an application for an order under subsection (1), the Court may require the Director to investigate the matter and to provide a report in writing to the Court.

**(3)** In order to facilitate the making of arrangements with a view to the adoption of a child, on the application of the Director or the principal officer of a private adoption agency, the Court may make an order under subsection (1) before an application for an adoption order has been made, and the first-mentioned order has effect for the purpose of any subsequent application for an adoption order.

**(4)** On the application of the Director or of the person the requirement for whose consent was dispensed with, the Court may revoke an order made by virtue of subsection (3) at any time before making an adoption order.

**Guardianship pending adoption**

**36. (1)** Subject to subsection (2) and subsection 38 (4), where the consent of each person who is an appropriate person for the purposes of subsection 27 (1) has been given or the requirement for that consent has been dispensed with under subsection 35 (1), the Director is the guardian of the child (other than for the purpose of section 27) until—

- (a) an adoption order is made;
- (b) any consent given is revoked; or
- (c) the Court makes an order relating to the guardianship of the child.

**(2)** Where—



- (a) each person whose consent to the adoption is required has consented and has, in writing, authorised a private adoption agency to make arrangements with a view to the adoption; and
- (b) the principal officer of the private adoption agency informs the Director in writing that he or she is willing to assume the guardianship of the child;

the principal officer from time to time of the private adoption agency is the guardian of the child (other than for the purpose of section 27) until—

- (c) an adoption order is made;
- (d) any consent given is revoked; or
- (e) the Court makes an order relating to guardianship of the child.

(3) This section does not apply in relation to a child who is a ward within the meaning of the *Children's Services Act 1986*.

### **Guardianship pending adoption of overseas child**

37. (1) This section applies in relation to a child—

- (a) brought from a place outside Australia for the purpose of adoption in Australia; or
- (b) adopted outside Australia, being an adoption that is not—
  - (i) to have the same effect as an adoption under this Act pursuant to section 55; or
  - (ii) the subject of a declaration under section 57.

(2) While a child to whom this section applies is domiciled or resident in the Territory, the Director is the guardian of the child until—

- (a) the child attains the age of 18 years;
- (b) an adoption order is made;
- (c) the Court makes an order relating to guardianship of the child; or
- (d) the child leaves Australia with the intention of remaining outside Australia permanently.

### **Transfer of guardianship of child pending adoption**

38. (1) On receiving a request in writing by or on behalf of the authority in a State or another Territory having the guardianship of a child in respect of whom consents with a view to adoption in the Territory have been given or dispensed with, the Director may, in writing, declare that the child is under the guardianship of the Director while the child is domiciled or resident in the Territory.

(2) Where a declaration under subsection (1) has effect, then, while the child is domiciled or resident in the Territory, the Director is the guardian of the child until—

- (a) the child attains the age of 18 years;
- (b) an adoption order is made; or
- (c) the Court makes an order relating to the guardianship of the child.

(3) A declaration under subsection (1) ceases to have effect if the child ceases to be under the guardianship of the authority in the State or other Territory.

(4) Where, in the opinion of the Director, a law of a State or another Territory contains a provision corresponding to this section, the Director may request the authority having the guardianship of children pending adoption in that State or Territory to declare that, while a child of whom the Director is the guardian pursuant to this Act (being a child in respect of whom consents with a view to adoption in that State or Territory have been given or dispensed with) is domiciled or resident in that State or Territory, the child is under the guardianship of that authority.

(5) While a declaration made pursuant to a request under subsection (4) has effect, the functions and obligations of the Director as guardian of the child are suspended.

(6) Subsection (5) does not apply in relation to the exercise by the Director of a function in respect of a child pursuant to an arrangement made under subsection (7).

(7) The Director may, on behalf of the Territory, make financial or other arrangements with an authority referred to in subsection (1) or (4) in respect of a child while the child is under the guardianship of the Director or that authority, as the case requires.

(8) The Director may make arrangements for the return of a child who is under the guardianship of the Director pursuant to this section to his or her former custody.

### **Review of status of child released for adoption**

**39. (1)** Where—

- (a) all required consents to the adoption of a child have been given; and
- (b) the child has not been—
  - (i) placed for adoption within a year; or
  - (ii) adopted within a year after being placed for adoption;

the Director shall apply to the Court for an order under this section.

- (2) On an application under subsection (1), the Court may—
  - (a) review the status of the child; and
  - (b) make such orders in relation to guardianship or custody of the child, or such other orders to promote the welfare and interests of the child, as the Court thinks fit.

### ***Division 3—Conditional Orders***

#### **Adoption order subject to certain conditions**

**40.** Where the Court is of the opinion—

- (a) that circumstances exist that justify it doing so, whether by reason of the age of the child or otherwise; and
- (b) that the birth parents and the adoptive parents have, after the required consents were given, agreed that the adoption order should be subject to certain conditions;

the Court may make the adoption order subject to either or both of the following conditions:

- (c) a condition that such birth parents and such relatives of the child as are specified in the order have such right of access to the child as is specified in the order;
- (d) a condition that the adoptive parents of the child provide information about the child to the Director or principal officer of a private adoption agency to be given to the birth parents at such periods and in accordance with such terms as are specified in the order.

#### **Variation etc. of condition**

**41. (1)** Where the Court is of the opinion that the welfare and interests of an adopted child would be best served by a condition referred to in section 40 to which the adoption order is subject being varied or revoked, the Court shall, on application by an adoptive parent, a birth parent who consented to the adoption or by or on behalf of the adopted child, by order vary or revoke the condition.

**(2)** An application under subsection (1) shall be accompanied by a report from the Director.

**(3)** A variation of a condition shall not be made so as to grant to a person greater rights of access to an adopted child unless the adoptive parents agree and 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.