



Government of South Australia

Department for Child Protection

Adult adoption



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Introduction

This brochure is about adoption of people over the age of 18 years and covers the circumstances in which an adult may be adopted, who may adopt an adult, and who must consent to the adoption.

The adoption law in South Australia says that the people who must consent to the adoption of an adult are:

- the person to be adopted, and
- their parents and or guardians.

The adoption law also says that those people who are considering consenting to the adoption must be given a copy of this brochure to explain:

- the implications and consequences of consenting to the adoption;
- the procedures and time limits related to giving consent or revoking (withdrawing) consent;
- counselling and other support services available;
- arrangements that may be made for the person as alternatives to adoption.

Adult adoption orders are made in the Youth Court of South Australia. If the Court makes an adoption order, this means that all the rights and responsibilities of the parents who gave birth to the adopted person are legally removed and transferred to the adoptive parents. The adopted person becomes the legal child of the adoptive parents and the law views the adopted person as if they were born into the adoptive family. The adopted person has the same legal rights as any biological child of the adoptive family. Adoption is a permanent legal arrangement.

The intending adoptive parents (prospective adoptive parents) will need to make an application for the adoption order by lodging it with the Youth Court.

The Department for Child Protection (DCP) must be involved in the counselling process and in the witnessing of consent. DCP may be required by the Court to provide a report to the Court about the prospective adoptive parents.

If you would like to talk with someone about adult adoption it is advisable to speak with a lawyer or the Youth Court Registry.

Information about the process of making an application is available on the adoptions page of the website of the Department for Child Protection.

Who can adopt an adult and in what circumstances?

The application to Court for an adoption order must be made by the prospective adoptive parents.

Adoption orders for a person over the age of 18 may be made if the Court is satisfied—

- (a) that a **significant parent to child relationship existed** between the prospective adoptive parent or parents and the person to be adopted before they turned 18; and
- (b) that the person to be adopted appears to understand the consequences of adoption in relation to their interests, rights and welfare.

The Court will make a determination about whether or not a significant parent to child relationship existed and may take into account:

- (a) whether the person to be adopted was cared for by the prospective adoptive parent or parents, or by the prospective adoptive parent and their deceased spouse or domestic partner, as their child prior to reaching the age of 18 years;
- (b) whether the person to be adopted was placed, through an order under South Australian child protection legislation, in the care of the prospective adoptive parent or parents, or the prospective adoptive parent and their deceased spouse or domestic partner, prior to reaching the age of 18 years.

Who must consent to the adoption?

The person to be adopted and their parents or guardian/s must consent to the adoption.

Consent can only be provided by these people after they have been counselled by a Social Worker in DCP Adoption Services.

The Youth Court will inform DCP when an application for an adoption order has been lodged. DCP will then make arrangements for counselling.

Once the counselling process has been completed and the parties have decided to go ahead, the person to be adopted and their parents or guardians must each provide their written consent, which must be witnessed by a Social Worker from DCP Adoption Services, or person formally appointed by DCP. The Social Workers must be satisfied that the consenting person understands the consequences of adoption and the process for revoking consent.

Counselling must have been completed at least 3 days before written consent is given to make sure there is plenty of time for the person to consider the process of adoption and the consequences of giving consent.

The person giving consent must also be given a copy of this booklet.

Birth parents

After signing the consent, there is a period of 25 days during which a birth parent or guardian can change their mind and revoke (withdraw) their consent. This 25 day period can be extended by another 14 days to give the person more time. When a birth parent consents, they will be given a form to enable them to request more time if needed.

Adult to be adopted

The person to be adopted can revoke their consent at any time up until the hearing of the adoption application. The Court cannot hear the application for the adoption unless 25 days have passed since the person to be adopted gave their written consent.

What about dispensation of consent?

The Youth Court may make an order dispensing with the consent of one or both birth parents, or of the adopted person.

Dispensation of consent means that the person's consent is not required due to certain circumstances: for example, if the person cannot be found or identified or they are not capable of properly considering the question of consent. There may be other circumstances that mean that the Court may dispense with their consent.

A separate application needs to be made to the Court for an order dispensing with consent.

Can other people have a say about the adoption application?

Any person who has a proper interest in an application to adopt an adult can make submissions to the Court about the application. This may include:

- the parents and or guardian of the person to be adopted
- the spouse of the person to be adopted
- children of the person to be adopted
- birth siblings of the person to be adopted
- prospective adoptive siblings of the person to be adopted

These people can make their submissions to the Court (either personally or through a representative).

Enquiries about this can be made by contacting the Youth Court Registry on 8204 0331 or email youthcourt@courts.sa.gov.au.

DCP report to court

The Court may request that DCP provides a report about the proposed adoption. A DCP Adoption Services Social Worker will then need to meet with the prospective adoptive parents, the person to be adopted, and others involved in the adoption application. The Social Worker will then prepare a report to the Court about the proposed adoption and the background to the application.

A copy of the report will be provided to the parties to the application.

Aboriginal and Torres Strait Islander families

Due to previous government policies and the need to ensure that Aboriginal and Torres Strait Islander people remain connected to their culture, community and country, the Adoption Act 1988 contains special provisions which apply to an application to adopt an Aboriginal or Torres Strait Islander child.

DCP staff must consult with a recognised Aboriginal or Torres Strait Islander organisation about the adoption application, and DCP must provide a report to the Court about this consultation.

The Court must consider both the DCP report and any submissions made by a recognised Aboriginal or Torres Strait Islander organisation.

Aboriginal people believe that their links to their family and culture are important and these links should be preserved.

What happens after an adoption order is made in the court?

Effect of an Adoption Order

When the adoption order is made, all the rights and responsibilities of the parents who gave birth to the adopted person are legally removed and transferred to the adoptive parents, because the adopted person becomes the legal child of the adoptive parents. Any legal rights, such as inheritance rights that the child had from birth as a result of their connection with the birth parents, are removed.

The law regards the adopted person as if they were born into the adoptive family and so the adopted person has the same legal rights as any biological child of the adoptive family. In relation to the adoptive parents, the legal rights of the adopted person become the same as if they had been born to the adoptive parents.

Changes to registration of birth

Once an adoption order is made, a notice will be sent by the Court to the Registrar of Births, Deaths and Marriages informing them that the order has been made and advising the Registrar of the new legal parents of the adopted person. The Registrar will then add the name of the adoptive parents to the original birth entry for the adopted person.

Change of name of the adopted person

Depending upon individual circumstances, the adoption order may include a change of name for the adopted person so that the person can have the same family name as the adoptive parents. The adopted person may also have their other names changed at the time that the adoption order is made. The Court will not change the name of an adopted person unless the person consents to the change. The Registrar of Births, Deaths and Marriages will record any new names on the birth entry for the adopted person.

Birth certificates

The adopted person's birth certificate will record the names of their legal parents and the names of their birth parents. Depending on the adopted person's preference, the Registry of Births, Deaths and Marriages can issue an "integrated birth certificate" (a single page certificate with the names of both sets of parents) or two separate certificates: an integrated certificate and a certificate which only records the adoptive parents' details.

For more information about this, contact Births, Deaths and Marriages Registry, phone 131 882;

website: www.cbs.sa.gov.au/births-deaths-marriages

Application forms for an adoption order or consent dispensation order

Application forms are available from the website of the Youth Court of South Australia. Enquiries about obtaining application forms can be made by contacting the Youth Court Registry on (08) 8204 0331 or email youthcourt@courts.sa.gov.au.

The Court's website is:

www.courts.sa.gov.au/OurCourts/YouthCourt

The process for making an application is available on the adoptions page of DCP's website at:

<https://www.childprotection.sa.gov.au/adoption>

What happens to the information that is recorded by DCP about the adoption?

DCP Adoption Services will keep information about the adoption in a file. This will include copies of the consent forms and the report to Court.

This file is kept by DCP and cannot be destroyed. The parties to the adoption can seek access to the contents of the file by making an application under s 27 of the Adoption Act 1988. The application will be handled by the FOI Team at DCP. Information about how to apply for adoption information is available on the adoption pages of the DCP website at:

www.childprotection.sa.gov.au

What other arrangements are available besides an adoption order?

For a person who is now an adult, there are no other arrangements available that can make the person the legal child of other parents.

Other arrangements that may help to formally connect the person to the family that brought them up are:

- legal change of name – an application can be made to the Registrar of Births, Deaths and Marriages, phone 131 882; website: www.cbs.sa.gov.au/births-deaths-marriages
- inclusion in will – consult a legal practitioner or the Public Trustee, phone (08) 8226 9200; email: pt.enquiries@sa.gov.au; website: publictrustee.sa.gov.au

What counselling and support services are available?

The Post Adoption Support Services within Relationships Australia is available for adopted people, birth families and adoptive families. They provide support and counselling. Phone: (08) 8245 8100 or email: passinfo@rasa.org.au

Adoption Services within DCP is available to respond to queries about adult adoption.

Adoption Act provisions that provide for adult adoption

The South Australian *Adoption Act 1988* provides for the adoption of adults in certain circumstances.

Section 4(1) defines “child” in relation to adult adoption as a person who is aged 18 years or more in respect of whom an order for adoption under this Act is sought or has been made.

Section 4(1) defines “domestic partner” as being a person who is a domestic partner of another if they are in a qualifying relationship with each other.

Section 4(1) defines “qualifying relationship” to mean the relationship between 2 persons who are living together in a marriage or marriage-like relationship (irrespective of their sex or gender identity);

Section 10A provides for adult adoptions and details who can adopt an adult and in what circumstances.

Section 15 provides for the parents and guardians to consent to an adoption. Regulations 5 and 6 of the *Adoption (General) Regulations 2018*. contain requirements about counselling, and about witnessing consent.

Section 16 provides for the consent of a child. This is also regulated by regulations 5 and 6.

Section 18 provides for applications for dispensation of consent.

Section 22 requires DCP to provide a report to the Court about the prospective adoptive parents.

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This booklet is also available online.
Please visit www.childprotection.sa.gov.au/adoption



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