



# Changes to the Adoption Act

## Frequently Asked Questions (FAQs)

In December 2016, the *Adoption (Review) Amendment Act 2016* was passed in the South Australian Parliament. This means that some significant changes have been made to adoption law in South Australia.

The Amendment Act came about following the recommendations of an independent review of the Adoption Act conducted during 2014-15.

The changes to be implemented by the Amendment Act will be commenced in two stages. The first stage was proclaimed on 17 February 2017 and involves the commencement of those sections of the Amendment Act necessary to remove discrimination against same-sex couples from the Adoption Act.

It is expected that proclamation of the remaining sections of the Amendment Act will occur in mid-2017 after new regulations have been drafted and also proclaimed.

Further information will be made available on this site as soon as the actual commencement date is known.

You can read the Act at the South Australian Legislation website<sup>1</sup>. You can read the Adoption Act Review report and its recommendations at the Department for Child Protection website<sup>2</sup>.

The following information may help in understanding how the intended changes to the Adoption Act may affect you.

## Veto

### 1. What will happen to the veto system currently in place?

- Vetoes prevent the release of identifying information about one party to the other parties to an adoption.
- Adoption information vetoes only apply to adoptions that were completed in South Australia before 17 August 1989.
- Adoption information vetoes will be removed 5 years after the date the relevant section of the Amendment Act commences (section 20). The relevant section is likely to commence in mid-2017.
- Vetoes that are currently in place will continue for 5 years from the commencement of the new law unless the person who has placed the veto revokes the veto earlier. A veto will not be able to be renewed at the end of the 5 year transition period.
- This means that after the 5 years, if a party to the adoption applies for the identifying information, then that information may be released to them.

<sup>1</sup>[https://www.legislation.sa.gov.au/LZ/V/A/2016/ADOPTION%20\(REVIEW\)%20AMENDMENT%20ACT%202016\\_64.aspx](https://www.legislation.sa.gov.au/LZ/V/A/2016/ADOPTION%20(REVIEW)%20AMENDMENT%20ACT%202016_64.aspx)

<sup>2</sup><https://www.childprotection.sa.gov.au/sites/g/files/net916/f/adoption-act-review-report.pdf>



- Information can be withheld if it is determined that its release would:
  - (a) be an unjustifiable intrusion on the privacy of the person to whom the information relates; or
  - (b) give rise to a serious risk to the life or safety of a person; or
  - (c) in the case of information relating to a person adopted before 17 August 1989—not be in the best interests of the adopted person, taking into account the rights and welfare of the adopted person and any other prescribed matter.
- During the 5 year transition period, the Department for Child Protection will provide services to support people whose vetoes are to expire and to people who are unable to obtain information for 5 years.
- Support services will also be provided by the Post Adoption Support Services of Relationships Australia SA. The Post Adoption Support Services can be contacted on (08) 8245 8100. There is no cost for these services.

## 2. Will my current veto immediately expire? If not, when will it expire?

- All vetoes in place at the commencement of the transition period will continue for 5 years unless revoked earlier by the person who placed the veto.

## 3. Will there be a contact veto system?

- No. There will be no adoption veto system of any kind in South Australia after the 5 year transition period ends.

## 4. What is a *Statement of Wishes*?

- A person whose veto is to expire after the 5 year transition period may make a *Statement of Wishes* about contact with the other party. This statement will be held into the future by the Department for Child Protection and by the Registrar of Births, Deaths and Marriages.
- If adoption information related to a *Statement of Wishes* is to be released any time into the future after the 5 year transition period, the Department for Child Protection and or the Registrar of Births, Deaths and Marriages must ensure that the *Statement of Wishes* accompanies the adoption information that is released.
- This ensures that the party receiving the information knows what the other party thinks about whether or not they want contact.

## 5. When will the changes to the adoption veto law take effect?

- The Amendment Act must be proclaimed to come into effect on a certain date. The 5 year transition period will start on the date when the relevant section of the Amendment Act (section 20) commences.
- It is expected that the proclamation of section 20 will occur in mid-2017.

## 6. I have a veto in place and I am concerned about someone getting identifying information about me from the adoption file.

- While your veto is in place your identifying information cannot be released.
- After the end of the 5 year transition period, if the other parties apply for it, identifying information about you that is currently held in the adoption file may be made available to them. Support is available to you from the Department for Child Protection and the Post Adoption Support Services to help you to prepare for this (Contact details below).



- You may give notice to the Department for Child Protection if you believe release of your identifying information may give rise to a serious risk to your life or safety.
- If you are an adopted person who was adopted before 17 August 1989, and you believe that release of your identifying information is not in your best interests, you may give notice to the Department for Child Protection. (Contact details below).

### **7. What identifying information about me will the other parties be able to get?**

- The other parties will be able to get identifying information about you that was collected by the Department for Child Protection at the time of the adoption.
- They will also be able to get some marriage / change of name details from the Births, Deaths and Marriages Registry, which may allow them to do further searching through electoral rolls and other publicly available sources of information.
- If you and / or other family members are active in social media such as Facebook, you may wish to check that your privacy settings are set to where you feel comfortable about the information that is publicly available.

### **8. Do I have to have contact with the other party if I don't want to?**

- No. You will be under no obligation to have contact with anyone with whom you don't want to have contact.
- You will be able to lodge with the Department for Child Protection a statement of your wishes about contact with other parties to the adoption. This statement will be provided with any adoption information disclosed to the other party.
- You may wish to provide the Department for Child Protection or the Post Adoption Support Services with some family medical / history information that can be passed on to the other party should they want this kind of information.

### **9. How can I stop someone from contacting me?**

- If someone contacts you and you do not want this, you can make your wishes clear to them about that.
- If you feel you are being harassed, you have the right to report the harassment to the Police.

### **10. If identifying information about me is made available, will this enable someone to find out about wider family members? Other family members don't know about the adoption. What can I do?**

- Yes, the other party may be able to find out further information about other family members through various publicly available sources.
- The Post Adoption Support Services can assist you in working through how and when to talk to other family members about this.

### **11. My child doesn't know they were adopted so they don't have a veto. Is there anything I can do to stop their birth mother/ father making contact?**

- Identifying information about your child will be available to their birth parent/s if they apply for it. They can then search and make contact if they wish to.
- We recommend that you talk with the Post Adoption Support Services on (08) 8245 8100 to discuss ways of telling your child that they are adopted prior to any potential contact.



## 12. When will I be able to access information not currently available to me because of a veto?

- Identifying information about parties to an adoption where there has been a veto may be available after the end of the 5 year transition period. The 5 year period starts on the day the changes commence which is likely to be in mid-2017.
- A veto in place at the start of the 5 year transition period will continue for the full 5 years of the transition period unless it is revoked earlier by the person who placed it.
- Access to the information may be restricted if the Department for Child Protection determines that it should not be released in certain limited circumstances (see point 1. above).
- If an adopted person or birth parent dies while their veto is in place, the Department for Child Protection will notify the other party to the adoption about the deceased person's identity and their death. In the case of the death of an adopted person, this includes notifying the birth siblings of the adopted person.
- Processing applications for adoption information takes about 6-8 weeks once an application is received. This time depends on the number and complexity of files being processed.

## 13. Is there help for me to tell my family about these changes?

- The Post Adoption Support Services can support you in managing your responses to these changes and in preparing to talk about things with other family members or people important to you.
- The Post Adoption Support Services can be contacted on (08) 8245 8100. There is no cost for this service.

## Discharge of adoption orders

### 1. What does "discharge of an adoption order" mean?

- "Discharge of an adoption order" means the undoing or removing of the legal effect of an adoption order.
- If the Court grants a discharge, then the adoption ceases to exist and the person is no longer an adopted person or legally connected to the family that adopted them. They become legally reconnected to their birth family.

### 2. What are the circumstances that could lead to the discharge of an adoption order?

- Adoption orders may be discharged by the Court on the grounds that it is in the best interests of the adopted person, taking into account their rights and welfare.
- An adoption order may also be discharged where the order or consent to the adoption order was obtained by fraud, duress or other improper means.
- A discharge can be sought by parties to an adoption, particularly adopted people, who feel aggrieved by their adoption and who wish to have the adoption undone.
- There may be other circumstances that may lead to the Court discharging an adoption order.



### **3. Who can apply for the discharge of an adoption order?**

- An application for a discharge can be made by an “eligible person”.
- An “eligible person” is defined as:
  - (a) the adopted person to whom an adoption order relates;
  - (b) a birth parent of the adopted person;
  - (c) an adoptive parent of the adopted person;
  - (d) the Chief Executive (of the Department for Child Protection).

### **4. Can I apply for a discharge if my adoption order was made under the 1966 Adoption Act or an older Act?**

- Yes. This part of the law refers to any adoption order granted in South Australia under any Adoption Act that was law at the time.

### **5. Do I have to tell my adoptive parents that I want to discharge my adoption order, and do I need their consent?**

- No. You do not have to tell your adoptive parents and their consent to the discharge is not required.
- Your adoptive parents may be contacted to notify them about the application and they may be interviewed by the social worker who has to write a report for the Court about the application.

### **6. If my adoption is discharged, what happens with my birth certificate? Do I need get a new one and if so, who is then named as my parents?**

- Generally speaking, if the adoption order is discharged by the Court, then you will revert to your original birth certificate as your legal birth certificate. However, on making the discharge order the Court may make other orders in respect to your entry on the Register of Births and to your name.
- If your adoption order is discharged, this will mean that your original parents will become your legal parents, and your adoptive parents will cease to be your legal parents.
- You will need to get a new birth certificate, because your post adoption birth certificate will become invalid.

### **7. I am an intercountry adoptee. Can my adoption order be discharged? Will this affect my citizenship?**

- If you are an intercountry adoptee, you can apply for the discharge of your adoption order. There may be particular legal issues depending on what country you were adopted from.
- Anything that lawfully occurred as a result of your adoption, such as obtaining Australian citizenship, should not be affected by your adoption order being discharged.
- It is recommended that you seek independent legal advice about how discharging your adoption order may impact on your situation.



## 8. What is the process for applying for the discharge of an adoption order?

- A formal application needs to be made to the Court. This application can be made by the Department for Child Protection on behalf of the person wanting the discharge so that they do not have to appear in Court.
- As part of the discharge process, the Court will require the Department for Child Protection to investigate the circumstances of the adoption and prepare a report. The adopted person will need to meet with a social worker from the Department as part of the investigation. The investigation will be used to assist the Court to determine all the implications for the adopted person's welfare, interests and rights that might flow from the proposed discharge.
- The social worker may need to contact several people where appropriate and necessary to complete the report for the Court. This may include members of the adopted person's birth and adoptive families and other significant people in their lives.

## 9. Who can I talk to about the possible discharge of my adoption order?

- If you want to have your adoption order discharged you will need to talk with someone in adoption services in the Department for Child Protection. The social workers there are responsible for managing this process and can be contacted on (08) 8463 3666.
- You can also talk with someone at the Post Adoption Support Services on (08) 8245 8100.

## Same-sex adoption

### 1. I am in a same-sex relationship; can we apply to adopt a child?

- Yes. You and your partner are eligible to apply to adopt a child. Applications by same-sex couples will be treated the same as applications by different-sex couples.

### 2. Can we adopt a child relinquished in South Australia?

- Yes. Same-sex couples are eligible to apply to the Department for Child Protection to adopt a child born in South Australia who has been relinquished for adoption.

### 3. Can we adopt a child from another country?

- Each country has its own laws about who can adopt their children. As yet, only 1 country, South Africa, will accept overseas adoption applications from same sex couples.
- You are eligible to apply to the Department for Child Protection to adopt a child from South Africa.
- Not many adoptions occur between Australia and South Africa, with only a few Australian applications being considered each year by the South African adoption authority.

### 4. Can I adopt my partner's child?

- Yes. You can make an application to adopt your partner's child. Your application will be treated in the same way as applications by people in different-sex relationships.



## Single person adoption

### 1. I am a single person; can I apply to adopt a child?

- Single people can apply to adopt a child, but a child may only be placed with them in special circumstances.
- Not all overseas countries accept applications from single people for intercountry adoption.

## Adoption of adults

### 1. How can I apply to be adopted as an adult?

- Before the Court can make an order for an adult to be adopted, the Court must be satisfied that before they turned 18 years of age a significant parent to child relationship existed between the person to be adopted and the prospective adoptive parent or parents.
- The Court must also be satisfied that the person to be adopted understands the consequences of the adoption on their interests, rights and welfare.
- A formal application needs to be made to the Court by the people who intend to adopt you. This is accompanied by a report by a social worker from the adoption services of the Department for Child Protection.
- The social worker will need to interview everyone concerned and will need to arrange for you to be properly counselled before you can legally consent to your adoption.
- This process can be started by contacting adoption services of the Department for Child Protection on (08) 8463 3666.

### 2. If I am adopted by my foster parents, do my birth parents need to be notified?

- Your parents or guardian or any other person who has a proper interest in the application for your adoption, may make submissions to the Court (either personally or through a representative) as part of your adoption proceedings.
- In order for them to know about this, the adoption services social worker will ensure that they are notified.
- Your birth parents' consents are not required by the Court for you to be adopted as an adult.

### 3. Can I adopt a new immigrant who is being supported by my family?

- No. This new law provides for the adoption of an adult by someone who has cared for them as a child such as a step parent or a foster parent.

## Keeping a child's original first name

### 1. What is the new law about adopted children's names?

- The new law says that in all cases the Court, at the time of granting the adoption order, will not change the first name of the child unless—
  - (a) the first name is offensive or unsuitable; or
  - (b) another child of the adoptive parents has the same first name.
- If the Court does change the first name of a child, then this should be changed to be the child's middle or second name or a name that is significant to the child.



- This will not affect adoptions that occurred before the enactment of the new law.

## 2. What should I do if I want the Court to change my child's first name at the adoption hearing?

- Your social worker in the Department for Child Protection will discuss this with you before your application for the adoption order is made to the Court.
- If you believe that there are circumstances for your child that mean that their name should be changed, this will be in the report that the social worker prepares for the Court. The decision will be up to the Court.

## An adopted person's birth certificate

### 1. What is an integrated birth certificate?

- A valid (not cancelled) birth certificate with the names of the adopted person's birth parents and adoptive parents on it is known as an "integrated birth certificate". It also has on it the full name that the child was given by their birth parents or guardians, as well as the adoptive name of the child.
- Integrated birth certificates may be available to people who were adopted in South Australia if they were born in this State, interstate or overseas. Access to certificates will be subject to an access policy to be issued by the Registrar of Births, Deaths and Marriages.
- An adopted person may apply to the Registrar of Birth's Deaths and Marriages for an integrated birth certificate. In some cases, an adopted person may first need to seek information about their adoption from the Department for Child Protection prior to applying for their certificate.

### 2. Can an adopted person over the age of 18 years and a person adopted under previous South Australian adoption laws get an integrated birth certificate?

- The new law allows for people adopted under any South Australian Adoption Act to get an integrated birth certificate if they are over the age of 18 years. **There are two exceptions to this.**
  1. **The first exception** is if the birth parent has a veto in place. Once the veto runs out after the 5 year transition period, then an integrated birth certificate may be available.
  2. **The second exception** is if the Chief Executive is of the opinion that the release of the birth parent/s' names may give rise to serious risk to the life or safety of the birth parent/s.

### 3. Can adopted people under the age of 18 years (or their adoptive parents) get an integrated birth certificate?

- Yes. They can if the adoptive and birth parents have agreed at the time of the adoption (or later) that it is OK for an integrated birth certificate to be produced before the adopted person turns 18.
- If there is no agreement, then the child's post adoption birth certificate will only have on it the names of the adoptive parents.
- Any integrated birth certificate produced after an adoption will make it clear who are the legal parents of the child (the adoptive parents).



## More information

### 1. Who can I contact to get more information and support about these changes to the adoption law?

- To talk to someone about getting support for how these changes might affect you, you can contact:
  - The Post Adoption Support Services (non-government):
    - Email address: [passinfo@rasa.org.au](mailto:passinfo@rasa.org.au)
    - Phone: (08) 8245 8100.
  - The Department for Child Protection adoption services unit (government):
    - Email address: [adoptions@sa.gov.au](mailto:adoptions@sa.gov.au)
    - Phone: (08) 8463 3666.

### 2. Who can I talk to about the Adoption Act Review and the parliamentary processes?

- Policy staff are available to help you with your queries about the Bill and where the process is up to in the South Australian Parliament. The Office can be contacted by:
  - Email address: [DECDFamiliesAdoptionReview@sa.gov.au](mailto:DECDFamiliesAdoptionReview@sa.gov.au)
  - Phone number: (08) 8226 6840.