

CHANGES TO THE ADOPTION ACT

Frequently Asked Questions (FAQs)

In September 2016, the South Australian Government introduced into Parliament the *Adoption (Review) Amendment Bill 2016*.

The Bill came about following the recommendations of an independent review of the Adoption Act conducted during 2014-15. Some significant changes will be made to adoption law in South Australia if the Bill is passed by Parliament.

At this stage, the Bill has not been passed and no laws have changed. The changes will only come about after both Houses of the South Australian Parliament have agreed on them and after the Governor of South Australia has proclaimed that the Bill is to become law on a specified date in the future.

For ease of explanation some parts of this FAQ describe the situation that would exist if the Bill is passed into law. .

You can read the Bill [here](#) at the South Australian Parliament website. You can read the Adoption Act Review report and its recommendations [here](#) at the Department for Education and Child Development website.

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

VETOES

1. What does the Bill say about changing the veto system currently in place?

- The Bill provides for adoption information vetoes to be removed 5 years after the date the Bill comes into law.
- 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.
- 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 can be released to them.
- During the 5 year transition period, the Department for Education and Child Development 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.

2. 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.

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

- All vetoes currently in place will expire at the end of the 5 year transition period.
- Vetoes that are due to expire before the end of the 5 year transition period will be extended until the end of that 5 year period unless they are revoked earlier by the person who has placed the veto.

4. What is a *Statement of Wishes*?

- A person whose veto expires 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 Families SA 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, Families SA 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 Bill has not yet been passed in the South Australian Parliament. If this law is passed, then the Governor will set a date for when the law comes into effect. The 5 year transition period will start on that date.
- Before the Bill becomes law, new Adoption Regulations need to be written and passed by the Parliament to enable the new laws to operate effectively.
- The Regulations will be passed by Parliament at some time after the Bill has passed.

6. I have a veto in place. How can I stop 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 can be made available to them.

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 Families SA 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 some 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 Families SA a statement of your wishes in respect to 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 Families SA or the Post Adoption Support Service 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 will be available after the end of the 5 year transition period. That period starts on the day the changes become law.
- A veto will continue for the 5 year transition period unless it is revoked earlier by the person who placed it.
- Processing applications for adoption information takes about 6-8 weeks once an application is received.

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?

- The Bill allows for adoption orders to 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.
- A discharge can be used 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 responsible for adoption).

- 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?**
- If the adoption order is discharged by the Court, then you will revert to your original birth certificate as your legal birth certificate.
 - This means 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 Families SA on behalf of the person wanting the discharge so that they do not have to appear in Court.
 - For the Court to consider the application, a report needs to be prepared by the adoption services unit of Families SA. This will involve interviews with a social worker who must investigate the circumstances of the application.
 - The social worker may need to interview several people to complete the report for the Court.
- 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 Families SA. 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. Once the part of the Bill that enables same-sex couples to apply to adopt becomes law, you and your partner can 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 will be able to apply to Families SA 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.
- Once the new law is in place you will be able to apply to Families SA 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 already apply to adopt a child. The rules in the *Adoption Regulations 2004* about single people only being placed with a child in special circumstances will be removed and single people will be treated similarly to couples who apply to adopt.
- Single people must have been single (without a domestic partner) for a prescribed period of 5 years if no other period is prescribed. An equivalent qualification period of 5 years applies to couples seeking to adopt.
- 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 a significant parent to child relationship existed between the prospective adoptive parent or parents and the person to be adopted before they turned 18 years of age.
- 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 Families SA.
- 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 Families SA 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).
- In order for them to know about this, the adoption services social worker will ensure that they are notified.
- Their consent is 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 is for people who have been brought up for most of their childhood by someone 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 Families SA 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 can be provided to people who were adopted in South Australia, if they were born in this State, interstate or overseas.

2. Can people over the age of 18 years and people 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.***
- **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 will be available.
- **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. This will depend on whether or not 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 after the child's adoption.
- 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 Families SA adoption services unit (government):
 - Email address: adoptions@sa.gov.au
 - Phone: (08) 8463 3666
 - The Post Adoption Support Services (non-government):
 - Email address: passinfo@rasa.org.au
 - Phone: (08) 8245 8100

2. Who can I talk to about the Adoption Act Review and the process of the Bill in Parliament?

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