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# Appendix A: Legislation

## A.1 Summary of legislation

### Commonwealth

Intercountry adoption in Australia at the Commonwealth level is governed by the following legislation:

- *Family Law Act 1975*
- Family Law (Hague Convention on Intercountry Adoption) Regulations 1998
- Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998.

The following legislation relating to immigration matters also governs aspects of intercountry adoption:

- *Immigration (Guardianship of Children) Act 1946*
- *Migration Act 1958*
- Migration Regulations 1994
- *Australian Citizenship Act 2007.*

### New South Wales

- *Adoption Act 2000*
- Adoption Regulation 2015

### Level of court

- Supreme Court of New South Wales

### Step-parent adoptions

Step-parents apply directly to the Supreme Court to adopt a stepchild in their care.

The child must be 5 years old and have resided with the step-parent for at least 2 years immediately before the application. The step-parent must provide a report with their application to the court to assist in its decision making. This report must be completed by an adoption assessor approved by the New South Wales Department of Family and Community Services.

### Relative adoptions

There is provision for adoptions by relatives. The child must have had an established relationship for at least 2 years with the applicant(s). These adoptions are made only in exceptional circumstances—that is, where a parental responsibility order or other order made through the Family Court would not adequately provide for the interests and welfare of the child.

### Authorised carer adoptions

Children who are unable to live with their parents or extended family are placed with authorised carers (foster carers) under an order of the Children's Court allocating parental responsibility to the Minister of the New South Wales Department of Family and Community

Services until they turn 18. An authorised carer, who is also an approved adoptive applicant, may adopt a child in their care, if this is assessed as being an appropriate permanency plan for the child. Adoption must be clearly preferable to any other order and in the best interests of the child.

The consent of both birth parents is sought. Where the child and carer(s) have established a stable relationship, and it is assessed that adoption will promote the child's welfare and is in their best interests, the Supreme Court may dispense with the consent of one or both birth parents. Where possible, a parent whose consent is dispensed with must be notified of the adoption application. The consent of any other person with any aspect of Parental Responsibility for the child is also required.

The sole consent of a child aged 12 or over must be given where the child has been assessed to have the capacity to understand the effects of giving consent, and has been cared for by the prospective adoptive parent(s) for at least 2 years. Where possible, the birth parents and any guardian must be notified of the adoption application. No other consent is required. Where a child aged 12 or over does not have the capacity to give consent, the requirement for their consent may be dispensed with by the Supreme Court. If the child's consent is dispensed with, the consent of the parents and any other person with any aspect of Parental Responsibility for the child is required.

All parties to an adoption are encouraged to participate in developing an adoption plan—a written plan that explains how the child will remain connected to their birth family and culture through their growing years. At least two parties to an adoption must agree to the adoption plan. A non-consenting birth parent who agrees to an adoption plan is to be treated as if they were a party to the adoption of the child.

If an adoption plan is registered in the Supreme Court, it becomes part of the adoption order, and becomes enforceable as an order of the Supreme Court.

### **Local and intercountry adoptions**

To apply for an adoption in New South Wales, applicant(s) must:

- live in New South Wales
- be aged over 21, and
- be either a single person or a couple who have been living together continuously for 2 years.

Gazetted selection criteria apply, and are available from the state's Department of Family and Community Services' website at <[www.community.nsw.gov.au/parents-carers-and-families/fostering-guardianship-and-adoption/adoption](http://www.community.nsw.gov.au/parents-carers-and-families/fostering-guardianship-and-adoption/adoption)>.

The main consideration for any adoption order being made is that it is in the best interests of the child, in both childhood and later life.

Arrangements must be made by the New South Wales Department of Family and Community Services (FACS), or accredited adoption service providers (Anglican Community Services, Barnardos Australia and CatholicCare Adoption Services). Intercountry adoption arrangements can currently only be made by FACS.

### **Official client**

An applicant becomes an official client of Adoption Services when a formal application has been lodged (after lodging an expression of interest and attending the relevant training seminar).

## **Adoption of Indigenous children**

Adoption is not customary in Aboriginal communities. Instead, alternative permanent care options are typically pursued for Aboriginal children entering out-of-home care.

There are provisions in the *NSW Adoption Act 2000* for the adoption of Aboriginal children for whom it is the best permanency option. Open adoption for Aboriginal children is not actively promoted by FACS, however, it is able to occur when it is clearly preferable above any other care arrangements.

Aboriginal and Torres Strait Islander children must be placed in accordance with the Aboriginal and Torres Strait Islander Placement Principles.

## **Adoption of adults**

A person aged 18 or over who was cared for by the prospective adoptive parent as their child before turning 18, and who is in a 'fit condition' to give consent, may give sole consent to their own adoption. The Supreme Court must not dispense with the consent of a person who is 18 or over.

An adoption application is generally lodged directly with the Supreme Court, with little or no involvement from Adoption Services other than providing a report to the Supreme Court at the court's request.

## **Victoria**

- *Adoption Act 1984*
- *Adoption Regulations 2008*
- *Adoption Amendment Act 2013*
- *Adoption Amendment Act 2015*

## **Level of court**

- Supreme Court of Victoria and County Court of Victoria

## **Step-parent and other relative adoptions**

In all cases when a child is placed with relatives, attempts are made for this to happen on an order made through the Family Court. An adoption order in favour of a relative or step-parent is made only if exceptional circumstances exist and if an order from the Family Court will not make adequate provision for the welfare and interests of the child.

A solicitor may prepare an application for formal adoption by a step-parent or other relative. The application must be made to the Victorian Department of Health and Human Services (DHHS Vic) or an approved non-government adoption agency for an assessment report on the prospective adoptive parent(s). The report is submitted with the application to the County Court or Supreme Court.

Adoptions are arranged by DHHS Vic or an approved non-government agency (listed in the section following).

## **Local and intercountry adoptions**

To apply for an adoption in Victoria, the applicant(s) must be either:

- 2 persons who:
  - are married to each other
  - whose relationship is recognised as a traditional marriage by an Aboriginal community or an Aboriginal group to which they belong
  - are in a registered domestic relationship with each other,
  - are living in a domestic relationship and who have been so living for not less than 2 years before the date on which the order is made
- a single person, if the child faces special circumstances.

The *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015 (Vic)* came into effect on 1 September 2016. This Act means that lesbian, gay, bisexual, transgender and intersex (LGBTI) couples can now apply to adopt under the same circumstances as any other couple in Victoria.

Intercountry adoptions are arranged only via DHHS Vic. However, local adoptions may be arranged by DHHS Vic or approved non-government organisations (Anglicare Gippsland, Anglicare St Luke's, Anglicare Western, CatholicCare, Child and Family Services Ballarat, and Connections).

### **Official client**

An applicant becomes an official client for the purposes of intercountry adoption when they make an application.

### **Adoption of Indigenous children**

The Victorian Adoption Act recognises the principles of Indigenous self-management and self-determination, and that adoption is not available in Indigenous child care arrangements.

Restrictive eligibility criteria are in place for the selection of adoptive parents for Aboriginal and Torres Strait Islander children. The birth parent(s) of an Indigenous child can place the condition on adoption that the child go to an Indigenous adoptive parent(s), or that a right of access be granted to the birth parent(s), other relatives and members of the Indigenous community.

### **Adoption of adults**

Section 10 of the Victorian Adoption Act allows the court to grant an adoption order for the adoption of an adult who has been brought up, maintained and educated by the applicant(s) acting as the parent(s) of the person. The adoption proceeds without the involvement of DHHS Vic or approved adoption agency, and does not require the consent of the person's birth parents.

## **Queensland**

- *Adoption Act 2009*
- *Adoption Regulation 2009*

The Act and its regulations took effect on 1 February 2010.

## **Level of court**

- Childrens Court of Queensland

## **Step-parent adoptions**

Adoption by step-parents can be arranged only through the Queensland Department of Communities, Child Safety and Disability Services (DCCSDS).

## **Other relative adoptions**

If adoption by a relative is the best option for securing a child's long-term care, the DCCSDS can ask a relative to consider being assessed as a prospective adoptive parent for the child. However, the relative cannot initiate the process.

## **Local and intercountry adoptions**

A person is eligible to have the person's name entered or remain in the expression of interest register if:

- the person is an adult; and
- the person or the person's spouse is an Australian citizen; and
- the person is resident or domiciled in Queensland; and
- the person is not pregnant; and
- the person is not an intended parent under a surrogacy arrangement within the meaning of the Surrogacy Act 2010; and
- for a person who has been an intended parent for a surrogacy arrangement within the meaning of the Surrogacy Act 2010—the surrogacy arrangement ended at least 6 months earlier; and
- the person does not have custody of (does not include children of whom the person is an approved carer):
  - a child aged less than 1 year; or
  - a child who has been in the person's custody for less than 1 year; and
- for a person who has a spouse:
  - the person and the spouse made an expression of interest jointly under division 2; and
  - the spouse is also eligible under conditions above; and
  - the person and the spouse are living together.

A person who made an expression of interest jointly with the person's spouse is not eligible to have the person's name remain in the expression of interest register if the spouse stops being the person's spouse.

The DCCSDS is the only agency legally authorised to arrange adoptions in Queensland.

## **Official client**

Applicants become 'official clients' after they lodge an expression of interest to adopt a child with Adoption Services.

## **Adoption of Indigenous children**

The Queensland Adoption Act respects Indigenous custom by not promoting adoption as an appropriate option for the long-term care of an Indigenous child.

The Act includes safeguards to ensure, where parents and guardians of an Indigenous child do explore adoption for a child's care, that the child's culture is respected and the adoption proceeds only if there is no better option available for the child's long-term stable care.

The DCCSDS must provide counselling and information to all parents involved, and the option of receiving counselling and information about specific issues from an appropriate Indigenous person to the parents of the Indigenous child.

The Act includes the Aboriginal and Torres Strait Islander Child Placement Principle, which requires the DCCSDS to consider placing the child (in order of priority) with:

1. a member of the child's community or language group
2. another Indigenous person who is compatible with the child's community or language group
3. another Indigenous person.

The DCCSDS must consult an appropriate Indigenous person in selecting a couple to be considered as the child's prospective adoptive parents.

An adoption plan between the parties to the adoption is mandatory if an Indigenous child is to be adopted by a couple from outside his or her community. The plan must include agreement on how the child might be assisted to develop a cultural identity, including establishing links with cultural heritage and with members of his or her community or language group.

Before making any decisions about the adoption of an Indigenous child, the Childrens Court is required to consider the views of an appropriate Indigenous person about the child's interests, and any traditions or customs relating to the child.

## **Adoption of adults**

The Queensland Adoption Act does not make provision for an adult to be adopted. An adoption order can be made only for a child aged under 18.

## **Western Australia**

- *Adoption Act 1994*
- *Adoption Regulations 1995*
- *Family Law Act 1975*
- *Family Court Act 1997*

## **Level of court**

- Family Court of Western Australia

## **Local and intercountry adoptions**

All adoptions are arranged through the Department for Child Protection and Family Support. Applicants must meet specific eligibility criteria before being considered for assessment.

Local adoption includes relinquishment of infants and children, adult adoption and adoption by step parents, relatives and carers. For local adoptions, all known birth parents must give

consent to their child's adoption. Birth parents are involved in the selection process of prospective adoptive parents by selecting a family from non-identifying profiles.

An adoption plan (for local and known child adoptions; that is, carer, relative, step-parent) is required between birth parents and adopting parents, or an application to the Family Court of Western Australia is made to dispense with the adoption plan before the adoption order is granted by the Family Court.

In addition, the intercountry adoption process must meet principles and standards of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Western Australia is responsible for the management of individual adoptions under these agreements.

### **Step-parent adoptions**

Step-parents can apply to adopt a child under the *Adoptions Act 1994* if they have been married to, or in a de facto relationship with, a birth parent of the child for at least 3 years. The consent of the non-custodial birth parent, or an order from the Family Court of Western Australia to dispense with such consent is required. Before the adoption can be finalised, an adoption plan is negotiated between the non-custodial birth parent and the adoptive parent, or dispensed with by the court.

Step-parents wishing to adopt their stepchild are required to provide written notification to the Department for Child Protection and Family Support, at least 60 days before their application is filed, of their intention to apply for an adoption order.

After receiving notice of the step-parent's intention to adopt, the Department for Child Protection and Family Support's Chief Executive Officer will arrange for a report to outline whether the applicant satisfies the legislative requirements for an adoption order to be made.

### **Other relative adoptions**

Adoption by relatives is permitted under certain circumstances. The definition of 'relative' is limited to a person's grandparent, sibling, uncle or aunt. A relative adoption can only occur where the relative has had full-time care of the child for at least 2 consecutive years.

Approval of the child's placement with the prospective relative adoptive parents must be authorised by the Chief Executive Officer with a view to the child being adopted by the relative.

Prior to making an adoption order in favour of a relative the Court must be satisfied that there are good reasons to redefine the relationships within the child's family and that it would be preferable to a parenting order under the *Family Law Act 1974* (Cth) and the *Family Court Act 1997* (WA).

Where the child is in the care of the Chief Executive Officer under a protection order (time limited), or (until 18) made pursuant to the *Children and Community Services Act 2004*, relative adoption can occur if relatives meet the adoption criteria requirements, and the Chief Executive Officer is satisfied that the child's adoption is preferable to a protection order (special guardianship).

### **Carer adoptions**

Approval of the child's placement with the carer must be authorised by the Chief Executive Officer with a view to the child being adopted by the carer. Where the child is in the care of the Chief Executive Officer under a protection order (time limited), or (until 18) made pursuant to the *Children and Community Services Act 2004*, carer adoption can occur if

carers meet the adoption criteria requirements, and the Chief Executive Officer is satisfied that the child's adoption is preferable to a protection order (special guardianship).

Carers must have had full-time care of the child for at least 2 consecutive years before making an application to adopt the child. Birth parental consent is required for the child's adoption, or an order from the Family Court of Western Australia can be made to dispense consent. Unless dispensed with by the Family Court, an adoption plan must be initiated by parties to the adoption as it is a legal requirement.

### **Official client**

Applicants must meet specific eligibility criteria to be considered for adoptive parenthood. Applicants become 'official clients' after the Department for Child Protection and Family Support has considered their expression of interest application.

As part of the adoption process, applicants are required to attend the relevant education sessions before lodging their expression of interest. For the purpose of the adoption process, all applicants are advised to seek legal advice and representation.

### **Adoption of Indigenous children**

The Western Australian adoption legislation includes provisions for Aboriginal and Torres Strait Islander children, including:

- the placement for adoption principle
- promoting ongoing affiliation of the child's culture
- consulting relevant Indigenous staff and/or an Indigenous agency that has relevant knowledge of the child, and the child's family and community
- placing Indigenous children with Indigenous adoptive parents, where possible, unless the child's birth parents specifically request otherwise.

### **Adoption of adults**

An adult may be adopted by a person who was his or her carer or a step-parent immediately before he or she turns 18. Both the prospective adoptee and the prospective adoptive parent must consent to the adoption, and both birth parents of the prospective adoptee must be notified of the intention to apply for an adoption order. Parties who are required to sign consents must not do so unless the Department for Child Protection and Family Support's Chief Executive Officer has provided them with the information set out in Schedule 1 of the Western Australian Adoption Act.

The Chief Executive Officer is not required to provide a report to the Family Court of Western Australia about adult adoptions (unless requested by the court).

## **South Australia**

- *Adoption Act 1988*
- Adoption Regulations 2004

### **Level of court**

- Youth Court of South Australia

## **Adoption Act review**

In December 2016, the Adoption (Review) Amendment Act was passed in the South Australian Parliament. The Amendment Act put into place the recommendations of a 2015 review of the Adoption Act commissioned by the South Australian Government.

The Amendment Act provides for: the abolition of information vetoes and their phasing out over 5 years; adoption by same-sex couples; integrated birth certificates for adopted people; adult adoption; and discharge of adoption orders in special circumstances.

In February 2017, the same-sex provisions of the Amendment Act were brought into law. The remainder of the amendments will be brought into law in late 2017.

## **Step-parent adoptions**

In all cases, 'leave to proceed' granted in the Family Court is required before step-parents can apply to adopt a stepchild.

Adoption by step-parents is granted only when there is no other order that will adequately provide for the interests and welfare of the child. The South Australian Department for Child Protection is required to provide counselling for the relevant consents, as well as a report to the court.

## **Other relative adoptions**

Adoptions by relatives other than step-parents are granted only when there is no other order that will adequately provide for the interests and welfare of the child. The Department for Child Protection is required to provide counselling for the relevant consents, as well as a report to the court.

## **Local and intercountry adoptions**

To be eligible, the applicant(s) must be either:

- a couple in a qualifying relationship for a continuous period of at least 5 years at the time the adoption order is made, or 3 years for allocation or placement of the child, or
- a single person, in special circumstances.

## **Official client**

An applicant to be a registered prospective adoptive parent becomes an official client when they lodge an expression of interest to adopt a child with the Department for Child Protection.

Both members of a couple must attend an information session about adoption before lodging an expression of interest.

## **Adoption of Indigenous children**

Restrictive eligibility criteria apply for adoptive parents in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle.

## **Adoption of adults**

The *Adoption (Review) Amendment Act 2016* has provided for the adoption of adults in certain circumstances.

## **Tasmania**

- *Adoption Act 1988*
- Adoption Regulations 2016
- *Adoption Amendment Act 2007*

### **Level of court**

- Magistrate sitting alone

### **Step-parent adoptions**

Adoption by step-parents is possible in some circumstances. If the child's father has not legally established his paternity, an application may be considered by the Tasmanian Department of Health and Human Services (DHHS Tas). If the child's paternity has been legally established, adoption is possible only in special circumstances that justify adoption, and when other available orders will not provide adequately for the welfare and interest of the child.

All applications for an adoption order in favour of a step-parent adoption must be made through DHHS Tas.

### **Other relative adoptions**

The court's power to make an adoption order in favour of a relative is limited to special circumstances that justify adoption, and when other available orders will not provide adequately for the welfare and interests of the child.

All applications for an adoption order in favour of a relative must be made through DHHS Tas.

### **Carer adoptions**

Adoption may be considered for a child in out-of-home care where it is considered to be in the child's best interests. DHHS Tas has established a policy that provides advice and clarifies the requirements on adoption by foster carers.

All applications for an adoption order in favour of a foster carer adoption must be made through DHHS Tas.

### **Local and intercountry adoptions**

To be eligible, the applicant(s) must be either:

- a couple who are married or in a registered relationship and have lived together in a stable, continuous relationship for not less than 3 years, or
- a single person, in special circumstances that relate to the welfare and interests of the child.

Adoptions by non-relatives can be arranged by DHHS Tas or a non-government organisation approved by the Tasmanian Minister for Children.

### **Official client**

In Tasmania, an applicant becomes an official client for the purpose of intercountry adoption once their adoption application has been registered.

## **Adoption of Indigenous children**

Adoption of Indigenous children is not included in the legislation, although the birth parent(s) may express wishes about race of adoptive parent(s). The cultural differences of Indigenous Australians are recognised, and placement within the Indigenous community is preferred.

## **Adoption of adults**

The Tasmanian Adoption Act provides for adult adoptions when a person has been brought up, maintained and educated by the prospective adoptive parent, or either of the prospective adoptive parents, or the prospective adoptive parent and his or her deceased spouse.

The court cannot make an order for the adoption of a person who is, or has been, married. It must also be satisfied that there are special circumstances for the welfare and interests of the person that make it desirable for the person to be adopted.

## **Australian Capital Territory**

- *Adoption Act 1993*
- *Adoption Amendment Act 2009*

### **Level of court**

- Supreme Court of the Australian Capital Territory

### **Step-parent adoptions**

Adoption by step-parents can be arranged only through Child and Youth Protection Services.

### **Other relative adoptions**

Adoptions by relatives other than step-parents are only granted when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through Child and Youth Protection Services.

### **Local and intercountry adoptions**

To be eligible, the applicant(s) must be either:

- a married couple for more than 3 years, or
- a de facto couple for more than 3 years, or
- a single person in particular circumstances.

Adoptions by non-relatives must be arranged Child and Youth Protection Services.

### **Official client**

A person becomes an official client at the point in which the Assessment and Support Unit of Child and Youth Protection Services receives a completed application form.

## **Adoption of Indigenous children**

Restrictive eligibility criteria apply for adoptive parents in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle.

## **Adoption of adults**

Adult adoptions are legal under the Australian Capital Territory Adoption Act, where the person is resident in the Australian Capital Territory, and has been brought up, maintained and educated by the applicants under a de facto adoption.

## **Northern Territory**

- *Adoption of Children Act 1994*
- *Adoption of Children Amendment Act 2006*

The Northern Territory Adoption of Children Amendment Act, which came into effect on 3 July 2006, enables the issue of Australian birth certificates for overseas-born adopted children whenever the necessary birth information is provided by the country of origin. This applies irrespective of whether the adoption is finalised in the Local Court or as a foreign adoption order, automatically recognised under Australian law.

## **Level of court**

- Northern Territory Local Court

## **Step-parent adoptions**

Other arrangements are sought before an adoption order is considered.

## **Other relative adoptions**

Adoptions by relatives other than step-parents are granted only when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

## **Carer adoptions**

Carers may lodge an expression of interest to adopt the child they are caring for in special circumstances. Birth parental consent is required for the child's adoption, unless the Local Court has made an order dispensing with that consent.

## **Local and intercountry adoptions**

Eligibility requirements allow/require the applicant(s) to:

- be a married couple for 2 years or more
- be no more than 40 years older than the child, or 45 years older than the child if previous children are in the family
- have other requirements in regard to the age of adoptive parent(s) considered in exceptional circumstances
- be a single person in exceptional circumstances.

All adoptions must be arranged through Territory Families.

## **Official client**

An applicant becomes an official client when they lodge an adoption application.

## **Adoption of Indigenous children**

Adoptions of Indigenous children can occur only if alternative custody with the child's extended family cannot be arranged. If an order is made, it must comply with the Aboriginal and Torres Strait Islander Child Placement Principle.

## A.2 Provisions for ‘open’ adoptions

### New South Wales

New South Wales recognises that a variety of relationships might exist between a child’s adoptive and birth families, but strongly supports the child’s connections with their birth family and culture through openness in adoption attitudes, and actions between birth and adoptive families. An adoption plan, which might include the regular exchange of information and/or contact, is usually provided to the court at the time an adoption order is sought.

For local adoptions in New South Wales, birth parents participate in choosing the adoptive family for their child. The New South Wales Department of Family and Community Services or the agency that arranged the adoption might help mediate ongoing contact after the adoption order, if necessary.

### Victoria

The Victorian Adoption Act allows an adoption order to include conditions on information exchange and/or access between the parties. After signing the consent, birth parents are given the opportunity to express their wishes about contact and information exchange, which are considered when placement decisions are made.

The Victorian Adoption Act requires that birth parents’ wishes are taken into account in selection of an adoptive family. In practice, at the time of signing the consent, birth parents are asked whether they wish to be actively involved in selecting an adoptive family. They are encouraged to consider profile information on approved adoption applicants who have been assessed as suitable for the child, and to indicate the couple with whom they would prefer the child to be placed.

After placement, there might be direct contact between the parties, or an exchange of information.

### Queensland

Under the Queensland Adoption Act, all parties to an adoption have access to non-identifying information. Where an adopted person is aged under 18, parties to an adoption can access identifying information only if both the adoptive and birth parents agree and provide consent. Where a child’s prospective adoptive parent(s) and birth parent(s) wish to have in-person contact after the adoption order is made, an adoption plan is compulsory, and must be in place before a final adoption order can be made. The DCCSDS must assist parties negotiate an adoption plan at the time a child’s adoption is arranged or after an adoption order has been made, if assistance is requested.

### Western Australia

Since the inception of Western Australia’s *Adoption Act 1994*, all adoptions in Western Australia are conducted in the spirit of openness and recognises the need for people affected by adoption to have access to information.

An adoption plan enables contact and exchange of information between parties to the adoption. Before placement of a child occurs, an adoption plan is negotiated between birth parents and prospective adoptive parents. Under certain circumstances, the adoption plan can be dispensed with by applying to the Family Court of Western Australia (Family Court).

Adoption plans can be modified by parties to adoption and be approved by the Family Court. Before parties can apply to the Family Court to modify the adoption plan, they are required to participate in a mediation process conducted by the Department for Child Protection and Family Support. The Chief Executive Officer is required to certify that mediation has been completed. Mediation is not required for parties to adoption plans for an adoption by a step-parent, relative or carer. These parties can apply directly to the Family Court to vary the adoption plan.

## **South Australia**

Under the South Australian Adoption Act, open arrangements are possible between parties to the adoption. This can involve access to information or contact between the parties. The arrangements are not legally binding, and are facilitated and mediated by the South Australian Department for Child Protection.

## **Tasmania**

Under the Tasmanian Adoption Act, open adoptions are possible between parties to the adoption. The adoption forms (Adoption Regulations 2006) allow parties to express wishes about ongoing contact and information exchange at the time of the adoption. These exchanges are generally facilitated by DHHS TAS. Arrangements for contact and information exchange are not legally binding.

## **Australian Capital Territory**

Legislation allows for conditional orders (that is, where contact frequency and other arrangements can be specified). Since the 1993 adoption legislation, all adoptions are considered open—that is, some form of contact or information exchange is encouraged. Conditional orders are now routinely recommended to the court.

## **Northern Territory**

Open adoptions have been available since the Northern Territory's *Adoption of Children Act 1994* was introduced. It is an option for relinquishing parents to request an open adoption, and an arrangement may be made with adoptive parents, although such an arrangement is not legally binding.

# **A.3 Access to information and veto systems**

## **New South Wales**

### **Access to information**

The *Adoption Act 2000* (NSW) makes different provisions for the release of information, depending on whether the adopted person is under or over 18, and whether an adoption order was made before or after 1 January 2010.

**For adoptions made after 1 January 2010**, adopted persons, adoptive parents, birth parents, and adopted and non-adopted siblings of an adopted person can gain identifying information about each other, and search for each other from the day the adoption order is made.

Where the adopted person is aged under 18, the adopted person requires the consent of their surviving adoptive parents or of the Secretary of the New South Wales Department of Family and Community Services to apply.

Birth parents and non-adopted siblings (where the adopted person is aged under 18) must first apply to the Secretary for an authority to obtain identifying information, and, before an authority can be released, an assessment must be made to determine whether the release of identifying information would pose any risk to the safety, welfare or wellbeing of the adopted person or adoptive parents.

Non-adopted siblings under the age of 18 require the consent of their parents or the Secretary to apply.

Where the adopted person is aged 18 or over, a supply authority, now called an Adoption Information Certificate, is not required; but if a non-adopted sibling is under 18, the sibling must have the consent of their parents or the Secretary. If consent is given by their parents or the Secretary, then an Adoption Information Certificate will be issued.

**For adoptions made before 1 January 2010**, birth parents, adoptive parents and adopted siblings can access identifying information once the adopted person turns 18. All parties must first apply to the Secretary for an Adoption Information Certificate. Before an Adoption Information Certificate is issued, a check is done to see whether the application is subject to an advance notice or contact veto.

While an adopted person is under 18, birth parents and adoptive parents can access non-identifying information. With the permission of the other parents (birth or adoptive parents), identifying information can also be provided.

For people without other entitlements under the Act to receive identifying information, the legislation enables the Secretary to make adoption information available where it would be reasonable to do so.

The Act enables anyone who had a close personal relationship with a deceased adopted person or deceased birth parent to apply to the Secretary for adoption information. This is referred to as inheriting rights.

### **Advance Notice Register**

Adult adopted persons, birth parents and adoptive parents who are parties to an adoption may lodge an Advance Notice Application. This enables them to be advised if another party to an adoption applies for identifying information. The release of their personal information is then delayed for up to 3 months to allow the registered person to prepare for its release—for example, a birth mother might need time to tell her current partner about the adoption.

### **Contact Veto Register**

Where an adoption order was made before 26 October 1990, birth parents and adult adopted persons are able to lodge a contact veto. A veto cannot be lodged for an adoption that occurred after that date. The veto only prevents contact. It does not prevent the release of identifying adoption information.

Once a veto is lodged, it becomes an offence for the person applying for the identifying information to try to make contact with the person who lodged the veto, or for them to have someone else try to make contact on their behalf. Information that is subject to a contact veto will only be released to an applicant if he/she gives a written legal undertaking to not use the information to seek contact.

## **Reunion and Information Register**

Parties to an adoption and other people may apply to register their name in the Reunion and Information Register. Their registration enables them to be matched with another person who has also registered for the same adoption.

Once matched, the parties may then choose to be put in contact with each other and be reunited. Registration on the Reunion and Information Register also enables the Adoption Information Unit and other adoption agencies to act on behalf of the registered person to locate a person from whom they have been separated as a consequence of adoption.

## **Victoria**

### **Access to information**

In Victoria, an adopted person aged 18 or over may apply for a copy of his or her original birth certificate and adoption records.

An adopted person aged under 18 requires the written agreement of his or her adoptive parent(s) before information can be given; the written consent of the birth parent(s) is also required before identifying information can be given.

From 1 July 2013, birth parents have a right to identifying information about an adopted child who is now an adult. Birth relatives may obtain non-identifying information from records about the adopted person. Identifying information can be given with the written consent of the adoptive parent(s) if the adopted person is under 18.

Adult children of adopted persons have the same rights to information as the adopted person, providing the adopted person is first informed in writing and has not objected to the release of their adoption information, or, where the adopted person is dead, a copy of the death certificate is provided.

Adoptive parents may apply for information about the birth family's background. The written permission of the birth parent is required before identifying information may be released. Where the adopted person is aged 18 or over, the adopted person must be notified in writing of the intention to release identifying information about the birth family.

### **Veto system**

In Victoria, an adoption information register system operates on which people can record their wishes in relation to giving or receiving information and making contact. An authorised agency can facilitate contact between parties to an adoption.

In 2013, the *Adoption Amendment Act 2013* (Vic) introduced a contact veto scheme whereby adult adopted persons may lodge a 'contact statement' specifying whether or how they wished to be contacted by their birth parent. 'Identifying information' vetoes do not exist in Victoria.

In 2015, the *Adoption Amendment Act 2015* (Vic) repealed the contact veto scheme. Contact statements that were lodged before the commencement of the *Adoption Amendment Act 2015*, on 26 August 2016, will continue in force until they expire (5 years from lodgement).

## Queensland

### Access to information

The *Adoption Act 2009* (Qld) makes different provisions for the release of information, depending on whether an adopted person is under or over the age of 18, and whether an adoption order was made before or after 1 June 1991.

Adopted persons and birth parents are entitled to receive identifying information once the adopted person has reached 18. Where the adopted child is aged under 18, identifying information can be provided if consent is provided by both the adoptive and birth parents.

In certain circumstances, eligible relatives of an adopted person or birth parent who signed an adoption consent can obtain identifying information. This includes siblings of the adopted person who were not adopted.

The adopted person and the birth parent(s) who signed the adoption consent can lodge a contact statement to express their wishes about how they would prefer to be contacted, or to express their wish not to be contacted. It is an offence for an adopted person or birth parent affected by an adoption order made before 1 June 1991 to contact another party who has requested no contact.

To support people accessing information and considering contact statements, the Queensland Government also funds Post Adoption Support Queensland to provide counselling and support to people affected by adoption. This service offers:

- telephone counselling and support
- face-to-face counselling
- support and information during the search process
- mediation and assistance for people wishing to make contact with relatives.

### Veto (contact statement) system

In Queensland, the enactment of the *Adoption Act* brought significant changes to vetoes. The repealed *Adoption of Children Act 1964* (Qld) provided for objections to contact—and objections to the disclosure of identifying information—to be lodged by adopted persons or by birth parents affected by an adoption order made before 1 June 1991.

As at 1 February 2010, all objections then in force under this repealed Act were reconstituted as a contact statement that specifically requested no contact (effectively, a contact veto).

A contact statement remains in place unless it is revoked by the person who lodged it, or the person dies. It is an offence for an adopted person or birth parent affected by an adoption order made before 1 June 1991 to contact another party who has requested no contact. If a request for no contact is in place, identifying information can be provided only if the person seeking information has signed an acknowledgment indicating that they are aware the contact statement requesting no contact is in place, and that it would be an offence to contact the other person.

The release of identifying information can be restricted only if the Childrens Court has made an order preventing it, where it is deemed the release would pose an unacceptable risk of harm.

## Western Australia

### Access to information

All parties to an adoption may apply for access to either identifying or non-identifying information. Under the *Adoption Act 1994*, all parties can apply for access to birth records and adoption court records (identifying information). Birth parents, adoptive parents and adopted persons may apply for access to information about the adoption from departmental records, at the discretionary authority of the Department for Child Protection and Family Support's Chief Executive Officer. The level of information depends on the information recorded at the time and whether the records still exist.

Birth siblings of adoptees have the right to access court records and birth registration information about their adoptee sibling, provided that the sibling and adoptee are both aged 18 or over.

### Veto system

In Western Australia, a 'message box system' allows anonymous contact between parties to an adoption. Amendments to the adoption legislation in 2003 prohibit placing any new information vetoes or contact vetoes on adoptions after 1 June 2003, and existing information vetoes ceased to be effective from 1 June 2005.

The adoption plan agreed to by parties to the adoption can, however, include provisions for no contact between parties.

## South Australia

### Access to information

In South Australia, adopted persons aged 18 or over can access information in their original birth certificate, as well as details about their birth parents (if known), such as name, date of birth, physical attributes and personal interests.

Adopted persons are also entitled to know the names of any biological siblings who were also adopted.

Information may be provided to an adopted person or a birth parent before the adopted person turns 18 years of age in certain circumstances.

Once the adopted person reaches the age of 18, the birth parents can access the adoptive name of their relinquished child and the name(s) of the adoptive parent(s). Adoptive parents, descendants of an adopted person, and some birth relatives of the adopted person can apply for certain information under some circumstances.

### Veto system

Both adopted persons and birth parents can veto the release of identifying information. A specific contact veto is not available. The veto provision is available only for adoptions that occurred before the *Adoption Act 1988* (SA) came into force (August 1989).

Adoptive parents, who adopted a child before 1989, may lodge a veto to restrict identifying information about themselves being released to the birth parents, with a provision that this does not prevent the adopted person and the birth parent from receiving information about each other. Certain information is also available to adoptive parents.

## Tasmania

### Access to information

In Tasmania, an adopted person aged 18 or over may apply for access to his or her pre-adoption birth record and information from the adoption record. An adopted person aged under 18 may apply for this information with the written consent of his or her adoptive parent(s).

Birth parents, birth relatives and lineal descendants of an adopted person may apply for non-identifying information at any time, or for identifying information when the adopted person is aged 18 or over.

Adoptive parents may apply for non-identifying information at any time, but may receive information that includes the name of a birth parent only with the written permission of the birth parent concerned.

All applicants who reside in Tasmania must attend an interview with an approved counsellor before receiving information.

### Veto system

The right to information is unqualified, but a contact veto may be registered. Any adopted person, birth parent, birth relative, lineal descendant of an adopted person or adoptive parent may register a contact veto. Where a veto has been registered, identifying information is released only after an undertaking not to attempt any form of contact has been signed. An attempt to make contact where a veto is in force is an offence. A contact veto may be lifted at any time by the person who lodged it.

Once the *Adoption (Review) Amendment Act 2016* comes into law, vetoes will no longer be available.

## Australian Capital Territory

### Access to information

Under the *Adoption Act 1993* (ACT), an adopted person aged 18 or over, birth parents, adoptive parents and birth relatives may apply for identifying information in relation to the adoption. Identifying information consists of a copy of, or extract from, an entry in a register of births relating to the adopted child, or information from which a birth parent, birth relative or adopted child may be identified (excluding the address of a place of residence).

Before the *Australian Capital Territory Adoption Act* came into force in 1993, no provision for adoption information existed. However, because the Act is retrospective, information is now available for adoptions that occurred under the old Act.

### Veto system

Under the Australian Capital Territory's Adoption Act, only contact vetoes may be registered. The veto has to refer to a specified person or a specified class of persons.

The Act provides for an unqualified right to information, but also gives the adopted person aged over 17 years 6 months, an adoptive parent, birth parent, adult birth relatives, adoptive relatives and adult children or other descendants of the adopted person the right to lodge a contact veto. On lodgement of such a veto, it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto.

Where information is requested and a contact veto is in force, no information is given unless the person requesting information has attended a counselling service, and has signed a declaration that he or she will not attempt contact in any form.

Under the *Adoption Amendment Act 2009* (ACT), vetoes can no longer be lodged in respect of adoption orders made after 22 April 2010. The Act also makes provision for greater accountability in obtaining consents to adoptions, augments the rights of the birth parents and promotes a more open system of adoption.

## **Northern Territory**

### **Access to information**

In the Northern Territory, legislation before the territory's *Adoption of Children Act 1994* did not allow the release of information to any parties to an adoption. The current Act supports a more open process, with identifying information being available unless a veto has been lodged. Indigenous agencies, such as Link-Up, may be authorised to counsel for the purpose of supplying identifying information.

### **Veto system**

A 3-year renewable veto may be lodged by the adopted person or birth parents for adoptions finalised before 1994. There is no veto provision for adoptions finalised under the current Act.

# Appendix B: Countries party to the Hague Convention

Listed below are the countries in which the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has entered into force—these countries are legally obliged to apply the Convention.

**Table B1: Countries party to the Hague Convention, 30 June 2017**

Country	Official name (if different)	Date the Convention entered into force	Associated territories to which the Convention applies	Relevant reservations, declarations, notifications or extensions
Albania	Republic of Albania	1 January 2001		
Andorra <sup>(a)</sup>	Principality of Andorra	1 May 1997		
Armenia <sup>(a)</sup>	Republic of Armenia	1 June 2007		
Australia	Commonwealth of Australia	1 December 1998		The Convention applies to all the territorial units of Australia.
Austria	Republic of Austria	1 September 1999		
Azerbaijan <sup>(a)</sup>	Republic of Azerbaijan	1 October 2004		
Belarus	Republic of Belarus	1 November 2003		
Belgium	Kingdom of Belgium	1 September 2005		
Belize <sup>(a)</sup>		1 April 2006		
Bolivia	Republic of Bolivia	1 July 2002		
Brazil	Federative Republic of Brazil	1 July 1999		
Bulgaria	Republic of Bulgaria	1 September 2002		
Burkina Faso		1 May 1996		
Burundi <sup>(a)</sup>	Republic of Burundi	1 February 1999		
Cambodia <sup>(a)</sup>	Kingdom of Cambodia	1 August 2007		
Canada		1 April 1997		The Convention applies to all 13 Canadian provinces and territories, but the date the Convention entered into force differs for each one: < <a href="http://www.hcch.net/index_en.php?act=conventions.childstatus&amp;cid=69&amp;mid=719">http://www.hcch.net/index_en.php?act=conventions.childstatus&amp;cid=69&amp;mid=719</a> >.
Cape Verde <sup>(a)</sup>	Republic of Cabo Verde	1 January 2010		
Chile	Republic of Chile	1 November 1999		

China	People's Republic of China	1 January 2006	• Hong Kong Special Administrative Region of the People's Republic of China.	The Convention applies to all municipalities, provinces, autonomous regions and the two special administrative regions of the PRC.
			• Macau Special Administrative Region of the People's Republic of China.	
Colombia	Republic of Colombia	1 November 1998		
Costa Rica	Republic of Costa Rica	1 February 1996		
Côte d'Ivoire <sup>(a)</sup>		1 October 2015		
Croatia <sup>(a)</sup>	Republic of Croatia	1 April 2014		
Cuba <sup>(a)</sup>	Republic of Cuba	1 June 2007		
Cyprus	Republic of Cyprus	1 June 1995		
Czech Republic		1 June 2000		
Denmark	Kingdom of Denmark	1 November 1997	Faroe Islands—entered into force 1 April 2007.	The Convention did not originally apply to Greenland. The Convention came into force in Greenland on 1 May 2010.
Dominican Republic <sup>(a)</sup>		1 March 2007		
Ecuador	Republic of Ecuador	1 January 1996		
El Salvador	Republic of El Salvador	1 March 1999		
Estonia <sup>(a)</sup>	Republic of Estonia	1 June 2002		
Finland	Republic of Finland	1 July 1997		
Fiji <sup>(a)</sup>	Republic of Fiji	1 August 2012		
France	French Republic	1 October 1998		The Convention does not apply to France's overseas territories.
Georgia <sup>(a)</sup>		1 August 1999		
Germany	Federal Republic of Germany	1 March 2002		
Ghana <sup>(a)</sup>	Republic of Ghana	1 January 2017		
Greece	Hellenic Republic	1 January 2010		
Guatemala <sup>(a)</sup>	Republic of Guatemala	1 March 2003		
Guinea <sup>(a)</sup>	Republic of Guinea	1 February 2004		
Haiti	Republic of Haiti	1 April 2014		
Hungary	Republic of Hungary	1 August 2005		
Iceland <sup>(a)</sup>	Republic of Iceland	1 May 2000		

India	Republic of India	1 October 2003		
Ireland	Republic of Ireland	1 November 2010		
Israel	State of Israel	1 June 1999		
Italy	Italian Republic	1 May 2000		
Kazakhstan <sup>(a)</sup>	Republic of Kazakhstan	1 November 2010		
Kenya <sup>(a)</sup>	Republic of Kenya	1 June 2007		
Kyrgyzstan <sup>(a)</sup>	The Kyrgyz Republic	1 November 2016		
Latvia	Republic of Latvia	1 December 2002		
Lesotho <sup>(a)</sup>	Kingdom of Lesotho	1 December 2012		
Liechtenstein <sup>(a)</sup>	Principality of Liechtenstein	1 May 2009		
Lithuania <sup>(a)</sup>	Republic of Lithuania	1 August 1998		
Luxembourg	Grand Duchy of Luxembourg	1 November 2002		
Macedonia <sup>(a)</sup>	the former Yugoslav Republic of Macedonia	1 April 2009		
Madagascar	Republic of Madagascar	1 September 2004		
Mali <sup>(a)</sup>	Republic of Mali	1 September 2006		
Malta <sup>(a)</sup>	Republic of Malta	1 February 2005		
Mauritius <sup>(a)</sup>	Republic of Mauritius	1 January 1999		
Mexico	United Mexican States	1 May 1995		
Moldova <sup>(a)</sup>	Republic of Moldova	1 August 1998		
Monaco <sup>(a)</sup>	Principality of Monaco	1 October 1999		
Mongolia <sup>(a)</sup>		1 August 2000		
Montenegro <sup>(a)</sup>		1 July 2012		
Namibia <sup>(a)</sup>		1 January 2016		
Netherlands	Kingdom of the Netherlands	1 October 1998		The Convention applies to the Kingdom in Europe (thus excluding Aruba and the Netherlands Antilles).
New Zealand <sup>(a)</sup>		1 January 1999		
Norway	Kingdom of Norway	1 January 1998		
Panama	Republic of Panama	1 January 2000		
Paraguay <sup>(a)</sup>	Republic of Paraguay	1 September 1998		
Peru	Republic of Peru	1 January 1996		

Philippines	Republic of the Philippines	1 November 1996		
Poland	Republic of Poland	1 October 1995		
Portugal	Portuguese Republic	1 July 2004		
Romania		1 May 1995		
Rwanda <sup>(a)</sup>	Republic of Rwanda	1 July 2012		
San Marino <sup>(a)</sup>	Republic of San Marino	1 February 2005		
Senegal <sup>(a)</sup>	Republic of Senegal	1 December 2011		
Serbia <sup>(a)</sup>	Republic of Serbia	1 April 2014		
Seychelles <sup>(a)</sup>	Republic of Seychelles	1 October 2008		
Slovakia	Slovak Republic	1 October 2001		
Slovenia	Republic of Slovenia	1 May 2002		
South Africa <sup>(a)</sup>	Republic of South Africa	1 December 2003		
Spain	Kingdom of Spain	1 November 1995		
Sri Lanka	Democratic Socialist Republic of Sri Lanka	1 May 1995		
Swaziland <sup>(a)</sup>	Kingdom of Swaziland	1 July 2013		
Sweden	Kingdom of Sweden	1 September 1997		
Switzerland	Swiss Confederation	1 January 2003		
Thailand	Kingdom of Thailand	1 August 2004		
Togo <sup>(a)</sup>	Togolese Republic	1 February 2010		
Turkey	Republic of Turkey	1 September 2004		
United Kingdom	United Kingdom of Great Britain and Northern Ireland	1 June 2003	• England	The Convention only applies to England, Wales, Scotland and Northern Ireland. An extension was later granted for the Isle of Man.
			• Northern Ireland	
			• Scotland	
			• Wales	
			• Isle of Man—entered into force 1 November 2003	
United States	United States of America	1 April 2008		
Uruguay	Oriental Republic of Uruguay	1 April 2004		
Venezuela	Bolivarian Republic of Venezuela	1 May 1997		

Vietnam	Socialist Republic of Vietnam	1 February 2012		
Zambia <sup>(a)</sup>		1 October 2015		
<b>Total countries 98</b>				

(a) These countries have acceded to the Convention.

*Notes*

1. A country is counted as a Hague country only if the applicant/s file was sent after the Convention entered into force in this country.
2. Countries that participated in the Seventeenth Session (a particular conference held by the Hague) are able to sign this Convention, with the option of also ratifying it. Alternatively, countries that did not participate in the Seventeenth Session are able to accede to this Convention. By signing the Hague Convention, a country expresses, in principle, its intention to become a party to the Convention. However, signature does not, in any way, oblige a country to take further action (towards ratification or not). A country is party to the Hague Convention if it has ratified or acceded to the Convention—this involves the legal obligation for the country to apply the Convention once it has entered into force.
3. Nepal, the Russian Federation and South Korea have signed, but are yet to ratify, the Convention.

*Source:* Hague Conference on Private International Law website <[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69)>.