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Information for parents considering adoption of their child by their spouse or domestic partner



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# Introduction

If you are considering having your child adopted by your spouse or domestic partner, it is important that you understand all the choices for the care of your child, including adoption.

Adoption is permanent. It is important that you consider all options before making a decision.

This booklet is mainly about adoption, but it covers other arrangements for providing additional security to your child.

Your adoption counsellor will assist you to understand this booklet and give information to help you decide about your child’s future.

## History of Step Parent Adoption in Victoria

Before the current adoption legislation was introduced in 1984, adoption of children by their step parents and relatives was becoming more common. In the 1970s the numbers of step parent adoptions increased as divorce and remarriage became more common.

As a response to widespread community consultation across Australia at the time, changes in legislation were introduced which enshrined into law the preference for families to use other methods of legally recognising non-biological relationships in families, namely orders made through the *Family Law Act 1975*.

*The Family Law Act* itself was amended in 1975to state that when making orders in relation to a child, the Court’s paramount consideration is the best interests of the child. This resulted in a shift in focus from parental ‘rights’ to parental responsibility. The terms ‘custody’ and ‘access’ were changed to residence and contact to reflect this change. From this time, the rates of step parent and relative adoptions, which had already fallen dramatically, continued to fall even further.

Even with the changes to the *Family Law Act,* some families continued to seek adoption orders. In 1981 there were 1422 step parent or relative adoptions in Australia. With many step parent and relative adoptions continuing to occur, questions and concerns in the community arose about the appropriateness of step parent and relative adoptions as a means of establishing the legal status and family relationships of children. When the new Adoption Act was made, the circumstances under which a step parent or relative adoption could occur was limited.

### Requirements of the Adoption Act 1984

The Adoption Act still provides for the adoption of a child by a step parent or relative. However, in considering such an application, the court must be satisﬁed that three conditions are met. These are:

1. that an order of the Family Court would not make adequate provision for the welfare and interests of the child; and
2. exceptional circumstances exist which warrant the making of an adoption order; and
3. an adoption order would make better provision for the welfare and interests of the child.

These requirements reflect that parenting orders under the Family Law Act are considered the most appropriate way to provide legal recognition to care-giving arrangements within families.

## Stable and long-term care other than adoption

Many families have arrangements whereby the child is cared for and lives with people other than their natural parent. If they wish to formalise these arrangements with a legal order they may apply to the Family Court for a Parenting Order.

A Parenting Order has a number of components:

* residence: who the child will live with
* contact: who the child spends time and communicates with
* speciﬁc issues: any other matter relevant to the child’s care, such as schooling or medical treatment.

The Parenting Order can be designed to suit the individual circumstances of the parties. The court will consider what is in the child’s best interests.

Any person concerned with the care, welfare or development of the child may apply for a Parenting Order. The Family Court requires that when a person other than a parent makes an application, the parties must attend a conference with a family consultant, and the court considers a report by the consultant.

A Parenting Order does not affect the child’s birth certiﬁcate or inheritance rights, although the child’s name may be changed. Parenting Orders include obligations on the parties involved, and parties must comply with the terms of the order.

# Making an informed choice to consent to an adoption

## What is an adoption order

Adoption orders are usually granted in the County Court.

The granting of an adoption order means that the child’s adoptive parent becomes the legal parent.

The order will affect the child’s birth certificate and may affect the child’s name and inheritance rights. Please note - these can both be changed without an adoption order.

 The following terms are used to describe parents in this document:

**Natural parent** – refers to both biological parents of the child.

**Non-custodial parent** – refers to the parent who does not live with the child and who will lose their legal relationship with the child if they are adopted.

**Custodial parent** – the parent with whom the child lives with, and who will continue to be parent of the child being adopted.

The adoption order usually includes arrangements for contact between the child and the non-custodial parent and/ or other relatives, and/or exchange of information about the child.

Application may be made to the court to establish or vary conditions around ongoing contact or information exchange.

For step parent adoptions, the order can only be made if Adoption Services provides a report to the court, which will comment on the step parent’s fitness and propriety to adopt as well as the child’s views and understanding.

### Adult adoptions

Some families choose to apply for an adoption order after the child has turned 18. An adult adoption reflects that the person to be adopted has been brought up by someone who is not on their birth certificate. Adult adoptions are simpler than the adoption of children as families can apply directly to the court with no involvement of adoption services and no need for the consent of the natural parents. Another advantage of adult adoptions is that the person to be adopted has the opportunity to make the important decision about their identity for themselves, after considering the complexities of what adoption means for them as an adult.

## Considering adoption for a child

### Counselling

Under the Adoption Act 1984, both parents must receive counselling before consenting to the adoption of their child.

A counsellor from the adoption service will discuss with you all the possible options for caring for your child. Written information is given, in the form of this document as well as the ‘Notice to parent considering placing a child for adoption’. Referrals to other agencies or services may be arranged. You will be given all the time you need to consider your options.

The purpose of counselling is to assist you in making an informed decision about options for the care of your child by providing support and information, and by assisting in exploring relevant issues.

Adoption is complex, as it involves the complete severing of the legal relationship to one parent, and their extended family, as well as a change in identity for the child. Children who are adopted will gain a new birth certificate, with their new adoptive parent listed as their parent at the time of their birth. Their non-custodial natural parent will not be listed at all. Some adopted people experience this as a significant loss, and wish that their birth certificate more accurately reflected the true circumstances of their birth and heritage.

## The Importance of openness in adoption

It is considered to be in the best interests of children to know as much as possible about their parents, their extended family and heritage. It is normal and natural to be curious about one’s origins.

Research indicates the adopted children have the best outcomes when their parents

* openly communicate about adoption and share information about it sensitively
* pay attention to children's views about adoption
* readily acknowledge the differences in raising adopted children compared to non-adopted children
* support their children to explore the meaning of adoption.

(Brodzinsky, et al 2022)[[1]](#footnote-2)

Most children who are adopted, including by relatives and step parents grow up having always known they were adopted. This is considered best practice. Parents who wait for an ideal time to tell their child may find that this ideal time never arrives.

Research indicates the children have better outcomes if they are told about their adoption before the age of three. It can be harmful to find out about adoption later in life. Adopted people who find out this way often report a feeling of betrayal by their loved ones and can find it difficult to trust people in their lives. (Baden, 2019) [[2]](#footnote-3)

If your child no longer has contact with their natural parent it is important that it is communicated to them, throughout their childhood, that questions and conversations about the parent are welcome. Information about the parent should be shared with the child in an age-appropriate way, perhaps adding more detail as the child gets older.

It is important that parents do not wait for children to ask questions about their non-custodial parent and instead, bring them up from time to time.

Sometimes it can be difficult for parents to talk neutrally about a child’s parent, or share any positives about them with the child if they shared a painful history. If parents find this is the case, they may benefit from seeking additional counselling so that they may best assist the child with their identity formation. Children’s natural parents will always be an important part of themselves. Criticisms of a child’s parent can lead the child to feel shame in themselves.

The adoption counsellor will speak with your child about their understanding of adoption and their origins, as well as their wishes about the adoption. This will inform a report to the court.

## Security and belonging

People interested in step parent adoption often say that they want to increase the psychological sense of belonging and security for the child within the step family. There are no research findings that demonstrate an increase in children’s sense of belonging or security after they are adopted by step parents as compared to where there is a Family Court Order or no order at all. There is evidence that children’s sense of security can be increased by changes to the way a family relates to one another.

## Long term consequences

When you are thinking about adoption, your counsellor will also talk to you about the long-term consequences for both you and your child. It is very important to consider the child’s rights and interests as well as the interests and needs of the parent(s) when making decisions about adoption.

While you are unlikely to experience loss as you will remain caring for the child, the child is likely to be significantly impacted by their adoption.

Issues that may arise particularly for children who are adopted by their step parents may include:

* adoption permanently severs the legal relationship between the child and relatives who are, or could be, significant to the child
* adoption can be used to prevent contact with the child’s extended family of origin, who no longer have a legal relationship with the child
* children may feel that they have to choose between different adults who are all important to them. This is painful at the time and can lead to problems as they grow older
* children who have been adopted often feel a sense of loss because one of their parents ‘gave them up’ to someone else. They may feel a sense of being cut off from their past
* an adopted child may blame the parent or step parent as they sometimes idealise the ‘lost’ parent in their absence, remembering only the good things about the relationship. Alternatively, children may feel rejected and that it was their fault the other parent went away. Feelings like these have been shown to undermine self-confidence and hinder a child’s development.

## Child’s identity and feelings of loss

The child may also experience feelings of loss in relation to their other parent. Adopted people often report feeling issues with loss and grief, abandonment, rejection and a lack of clarity or confusion about their identity. This includes struggling with questions about who they are, where they came from, how they fit into the world and how to make meaning of this.

Children can experience feelings of loss about their relationship with their natural parent, and issues with their identity even when they have a good relationship with their adopting parent. Many adopted people have said that their loss feels more painful when it is not acknowledged by others, or they sense that their families don’t want to discuss it. It is important to acknowledge that children may have a range of emotions about the adoption and their heritage.

### Adoption of Aboriginal or Torres Strait Islander Children

It is important for Aboriginal and Torres Strait Islander children to maintain their Aboriginal identity. The Adoption Act recognises the principle of Aboriginal self-management and self-determination and that adoption is absent in customary Aboriginal child care arrangements. For these reasons, the Adoption Act contains special provisions relating to the Adoption of Aboriginal Children.

# Consent to adoption

Adoption in Victoria is Voluntary, and requires the consent of both parents, if they are known.

As the custodial parent, you will retain all your parenting rights for your child, and if the adoption is granted, you will have equal rights with your spouse or partner who adopts the child.

The non-custodial parent will lose all rights to the child and they will no longer be listed on the child’s birth certificate.

Written information must be given to both the custodial and non-custodial parent at least seven days before consent is signed. This is to make sure that everyone has enough time to think about all the information in this booklet and to consider the alternatives to adoption.

If you consent to the adoption of your child, it is important that you understand the effects of an adoption order, and that you make the decision without undue influence or pressure from any other person.

## Who needs to sign consent?

If you know who the other natural parent is, you both will need to sign consent to the adoption of your child. It will be important for the child to know that both natural parents had the opportunity to be involved in planning for their future.

In some cases, the court may dispense with the consent of a parent. The applicant to the adoption (the child’s step parent) must apply to the court for the parent’s consent to be dispensed with. The court will only make this order if certain conditions are met.

## How is consent given?

Consent is given in the presence of a court ofﬁcial and the counsellor from the adoption service. This takes place at an ofﬁce of the County Court or, in regional Victoria at the County and Magistrates Court. Your counsellor will explain the arrangements for giving consent and will be able to provide you with copies of the forms to be signed. The counsellor and the court ofﬁcial need to be certain that you understand the ways in which you and your child will be affected if you give consent to adoption.

## Wishes about the adoption

The child’s non-custodial parent will be given the opportunity to express their wishes and views about the child’s cultural and religious upbringing. After signing consent to adoption, the child’s non-custodial parent can also express wishes in writing about:

* whether they and/or their relative want contact with the child after adoption and, if so, how often
* whether they would like information about the child to be provided after the adoption and, if so, how often
* whether they would like the conditions for contact and information exchange included in the adoption order.

Parents’ wishes are carefully considered by the court when granting an adoption order and may become conditions on the adoption order.

Contact and information exchange are discussed in more detail later in this booklet.

## Notiﬁcation of certain events

After signing consent, both the child’s parents will be able to express wishes about whether they wish to be told of the following events:

* the end of the period of time by which they can revoke their consent
* the placement of their child with a proposed adoptive parent or parents
* the termination of their child’s placement with a proposed adoptive parent or adoptive parents
* their child dies before an adoption order is made
* the Court makes an adoption order in relation to their child
* the end of the period of time by which they can revoke their consent
* the Court makes an adoption order in relation to their child

As the child’s custodial parent, some of these events will not be relevant for you, but you will still be expected to complete a form indicating your wishes about notification of events.

## What forms will I receive after the consent is signed?

If you give consent to adoption you will be given:

* a completed copy of the consent forms
* a form for revoking consent
* a form for extending the time for revoking consent.

The forms include instructions for revoking consent or extending the time in which you can revoke consent. The adoption service will give any help you need to complete these forms.

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## Who is legally responsible for my child after I give consent to adoption?

You will continue to be legally responsible for your child. Unless orders to the contrary have been made in another court, the child’s non-custodial parent will continue to be legally responsible for the child until the adoption order is made by the Court.

## Revoking your consent or extending the period during which consent can be revoked

Having your child adopted is an important and life-long decision. All natural parents are given the opportunity to change their mind within a period of twenty-eight days after the day they gave consent to adoption.

If either natural parent revokes their consent, the child is no longer able to be adopted.

The normal time you have in which to revoke consent is twenty-eight days. You can add up to fourteen days to the twenty-eight-day period if you are uncertain about your decision. (For example, if you add ten days you will have thirty-eight days after the day you consent to adoption in which you can revoke your consent.)

Adding another fourteen days could be helpful in clarifying your thoughts or you may wish to revoke your consent while you think more about your decision.

Once the period for revoking consent has passed your consent is ﬁnal. An adoption order will not be made by the court until this occurs.

When you give consent, certain procedures are followed, as required by law. In the same way, there are certain steps you must follow if you want to extend the time in which you can revoke your consent or if you want to revoke your consent altogether.

## What are the steps for extending the time to revoke consent?

The steps for extending the time to revoke your consent are very formal. If you feel you may need more time to consider whether to consent to adoption, you should raise this with your counsellor, who will help you with the process.

You will need to:

* Decide how many days you want to add to the twenty-eight-day period. (Fourteen days is the most you can add).
* Fill in the form for extending the period for revoking consent (You must use this form. You can obtain one from the adoption service.)

Do not sign it yet, as you must sign it in the presence of a witness.

The form must be witnessed by a person over the age of 18 years, and you need to follow the instructions on the form. They must witness your signature.

Hand deliver or post the form by registered mail to:

The Registrar

County Court of Victoria

250 William Street

MELBOURNE 3000

The form must be received by the Registrar within seven days after the form is signed. You should contact the adoption service as soon as possible after you extend the time in which you can revoke consent.

## How do I revoke consent?

You can obtain a form for revoking consent from the adoption service. However, you do not have to use this form. If you do not have a copy of the form, write a letter giving your name, address and date of birth, and your child’s name, date and place of birth, the agency involved with the adoption and the date that consent was given. You should state that you are revoking your consent to the adoption of your child. Do not sign it yet, as you must sign it in the presence of a witness.

The form or letter must be witnessed by a person over the age of 18 years. They must witness your signature.

Hand deliver or post the form by registered mail to:

The Registrar

County Court of Victoria

250 William Street

MELBOURNE 3000

To be effective, the form must be received by the Registrar of the County Court before the end of the period for revoking consent. If you post it by registered mail, you need to allow three to four days for delivery. You may ask your counsellor to help you with the process.

## If the child is older

When adoption is arranged for an older child, the child must be counselled by an adoption worker regarding the effects of an adoption, and their wishes must be sought, and considered. A written report regarding this must be provided to the court. This applies to children of about primary school age and above.

# Once an adoption order is granted

The County Court makes decisions about adoption orders. The granting of an adoption order causes major legal changes affecting the child’s relationship with their non-custodial parent.

#### Transfer of rights

Once an adoption order is granted, the child is treated in law in every way as the child of the person who adopts the child. The non-custodial parent’s rights and responsibilities as a parent are given to the adoptive parent.

An adoption order is permanent.

#### Inheritance

After adoption, your child is entitled to inherit from their adoptive parent as if the child was born to them. Your child may only inherit from their non-custodial parent or their relatives if named in their will or the will of a relative.

If an adopted person has been included in the will of a natural parent or relative and their adopted name is not known, the State Trustee will make enquiries of relevant adoption agencies to ﬁnd out the name of the adopted person.

#### Names of the child

After adoption the child’s surname may change. When an adoption order is made, the court approves the names of the child speciﬁed in the adoption application.

If your child is an older child, the court will take their preference into account in approving the child’s name. These matters are discussed by the adoption service before the adoption application is taken to court.

#### New birth certiﬁcate

After adoption, your child receives a new birth certiﬁcate which names the adoptive parent as the child’s parent, along with you.

#### Rights of parents

The law allows the non-custodial parent to have some rights after an adoption order is made. It entitles them to information about your child after the order is made. The order may also make provision for them to have direct contact with the child. These arrangements are outlined in more detail in the next section.

## Right to the original birth certiﬁcate

At any time before or after an adoption order is made, a natural parent can apply to the Registrar of Births, Deaths and Marriages for a certiﬁed copy of your child’s original (pre-adoptive) birth certiﬁcate.

A certiﬁed copy of a birth certiﬁcate gives full details of the child’s birth. This includes the child’s name, date and place of birth, sex, full details of the natural parents and any of their other children, and details of the hospital.

To obtain a copy of or extract from your child’s original (pre-adoptive) birth certiﬁcate you can apply online at https://[www.bdm.vic.gov.au/births/adoptions](http://www.bdm.vic.gov.au/births/adoptions).

You will need to provide the following details: the child’s full name; date and place of birth; and the full names of both parents, including the maiden name of the mother if married.

## Contact and information exchange

After placement, contact may occur between the child and their non-custodial parent (and anyone else named in wishes documents they sign). This can take the form of direct contact and/or information exchange. Both types of contact can be requested. Direct contact is usually a meeting of one to two hours in a neutral place, with the adoptive parents and the child. Information exchange is usually between the non-custodial parent, the custodial parent, the adoptive parent and the child and may include photographs, letters, school reports, etc.

Ongoing contact can have beneﬁts for both the child and parents. The purpose of ongoing contact is to assist the child’s identity development, and to reassure parent of the child’s development within the adoptive family.

### Expressing preferences about contact and information exchange

At the time the non-custodial parent express their wishes regarding frequency of contact and information exchange, they may also indicate whether they want these wishes included as conditions in the adoption order.

It is also possible to have a private arrangement between the natural parents and the adoptive parent regarding contact and information exchange. This means that the natural parents and the adoptive parent decide about the frequency of contact and information exchange, but that the agreement is not included in the adoption order.

### Conditions about contact and information exchange on the adoption order

The adoption order may include conditions around contact and information exchange. The judge decides whether to include conditions regarding contact and information exchange on the adoption order, and the amount of contact. The court will be guided by consideration of the best interests of the child, and that there is agreement between the parties. The order may contain conditions about contact, or information exchange, or both.

### If you later wish to vary the arrangement

Any arrangements (whether in the adoption order or not) may be varied if the natural parents and the adoptive parent agree following granting of an adoption order.

If contact and information exchange provisions are included in the adoption order the non-custodial parent, you, the adoptive parent, the child or a person acting for the child, may apply to the court at any time after the order is made to change or cancel these provisions.

If contact and information exchange provisions are not included in the adoption order the non-custodial parent, you, the adoptive parent, the child or a person acting for the child, may apply to the court at any time after the order is made to have conditions for contact or information exchange included in the order.

However, the court will only vary an adoption order if it is satisﬁed that any change is in the best interests of the child. The court cannot grant new or additional levels of contact unless the custodial parent and the adoptive parent agree, and the wishes of an older child have been considered. In addition, the court must be provided with a report from an approved counsellor, before altering the adoption order.

## Discharge of adoption order

Adoption is permanent. An application to discharge an Adoption Order can be made if special circumstances exist or if a natural parent’s consent was obtained by improper means.

Applications to discharge adoption orders are mainly made by adopted people when they are adults. It is important to consider the meaning that an adoption may have for the child once they become adults. Over the last 10 years approximately one third of all applications to discharge an adoption have been in relation to a step parent or relative adoption.

# Adoption information services

Adoption information services are provided to eligible applicants. These services provide information regarding past adoptions and may also assist eligible applicants to ﬁnd relatives from whom they have been separated by adoption.

A record of all applicants is kept on the Central Register. Adopted people, natural parents, adoptive parents, natural relatives and adult children of adopted persons may register their wishes regarding exchange of information or contact. They may also apply to receive information about the adoption.

Before information or documents are given to applicants, they will be offered counselling with an approved counsellor.

Adult adopted people receive a copy of the court records pertaining to their adoption (including a copy of their original birth certiﬁcate) and any records held by the agency who arranged the adoption.

Adopted people under the age of 18 years need each of their adoptive parents’ or guardian’s agreement in writing before obtaining any information. To obtain identifying information, they need the agreement of their natural parents as well.

Natural parents may obtain identifying information about the adult adopted person. If the adopted person is under eighteen years, the agreement of adoptive parents’ or guardian is required and views of the adopted child must be considered.

Adoptive parents may obtain information about the adopted person’s background, other than information from which a natural parent may be identified.

Relatives may initially only be given non-identifying information. Identifying information can be provided only with consent of the adult adopted person. If the adopted person is under eighteen years, the adoptive parents’ or guardian must agree and the adopted person’s wishes must be considered.

Adult children of adopted people have the same rights to information as adopted people. However, the adopted person must be informed of the enquiry or evidence of death of the adopted person provided

### Notes

 

1. David Brodzinsky, Megan Gunnar, and Jesus Palacios. (2022) Adoption and Trauma: Risks, recovery and the lived experience of adoption *Child Abuse and Neglect* Volume 130 pages 1-12 [↑](#footnote-ref-2)
2. Amanda Baden, et al (2019) Delaying Adoption Disclosure: A Survey of Late Discovery Adoptees, *Journal of Family Issues* Vol. 40(9)( 1154–1180.) [↑](#footnote-ref-3)