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South Australia

Human Rights of Adult Adoptees in South Australia

A Review of the Provisions of the
Adoption Act 1988 (SA)





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1. Conceptual overview

This report critically examines the *Adoption Act 1988* (SA) using a human rights approach. It finds that state-ordered adoption, as it is currently framed and regulated under the *Adoption Act 1988* (SA), cannot fully uphold the human rights of adoptees. From the outset, the Act fundamentally alters a person's legal and familial identity, as reflected in section 9(1), which states that upon adoption, a child legally becomes the child of their adoptive parents, ceasing to be the child of their birth parents. This legal severance of familial ties with birth parents has profound, irreversible and lifelong implications for adoptees, often irreconcilable with human rights principles, even under modern open adoption frameworks. It is clear that proponents of the Act were motivated by genuinely held beliefs about the need to protect and promote the rights of vulnerable children. However, while the Act reflects attempts to align with principles outlined in the United Nations Convention on the Rights of the Child (UNCRC) (1989) and the Hague Convention (1993), it falls short of protecting the dignity, autonomy, and identity of adopted individuals. In addition, because the human rights implications of the *Adoption Act 1988* (SA) manifest in different ways throughout an adopted person's life, they can be hidden from public view or forgotten or ignored by key institutions and decision makers. This makes reviewing the *Adoption Act 1988* (SA) a particularly critical task, and one that demands sustained attention from researchers and policy makers.

As a social worker and child protection caseworker, I have witnessed the vulnerabilities of children, and the systemic challenges adoption seeks to address. However, my professional experience has also led me to question whether adoption truly prioritises the long-term well-being of adoptees. While foster and kinship care arrangements under the Chief Executive's guardianship are subject to ongoing oversight, adoption eliminates such safeguards. This prioritisation of the nuclear family model over adoptee safety and autonomy suggests an inherent disregard for the lifelong impact of adoption, especially for adult adoptees who often face unresolved trauma, identity struggles, and limited support mechanisms.

The historical context further amplifies these concerns. Past practices of forced adoption in Australia, in which social workers played a role (Community Affairs References Committee (CARD), 2012), were characterised by secrecy, coercion, and the erasure of identity. These practices prioritised the needs of adoptive families over the rights of birth parents and adoptees, creating a legacy of harm. Although modern adoption policies incorporate principles such as openness and the paramountcy of the child's best interests, these principles

are not fully realised. Adult adoptees remain conceptualised as vulnerable and treated as perpetual children, with limited recognition of their autonomy or capacity to navigate their own identity and relationships.

Reflecting on this legacy, I initially wondered if my conclusion-that adoption is fundamentally incompatible with human rights-was too radical. However, scholarly critiques, such as O'Halloran's *The Politics of Adoption* (2021), validate this perspective. O'Halloran describes adoption as "the most radical of all family law orders," given its irreversible transformation of legal and familial identity. Similarly, Hallahan (2016) critiques adoption for creating an irreparable fiction of origin, with lifelong consequences, aligning with the Australian Association of Social Workers' (AASW) position that other arrangements, such as 'Other Person Guardianship,' offer greater benefits and fewer harms for children and families.

While proponents such as Bartholet (2010) argue that adoption addresses global unparenthood and provides security and belonging for children, this perspective overlooks the ethical concerns and long-term harm caused by severing ties to one's birth identity and culture (Albert & Mulzer, 2022; Alves, 2023; Geller, 2025; Somerville, 2007). The risk of harm arising from state-ordered adoption increases in the absence of robust safeguards to ensure the rights of adopted people are upheld and protected before, during and after adoption orders are made. The absence of a structured follow-up system for adoptees after the finalisation of adoption orders highlights significant flaws in the current South Australian approach. Participants in a 2012 study reported experiencing abuse within their adoptive families, which went unnoticed due to the lack of systematic oversight. One respondent remarked, "With no follow-up on adoptions into my family, the abuse went undetected..." Another raised a critical question: "Where was the government's responsibility to ensure that the parents you were placed with were safe?"

Recognising that state-ordered adoption would be difficult to abolish immediately, this report proposes pragmatic amendments to the Adoption Act. These recommendations aim to address issues such as consent, the discharge of adoption orders, court procedures, and information-sharing mechanisms. Ultimately, this project advocates for a shift toward alternative child protection approaches that better align with human rights principles, such as enhanced foster or kinship care models. These alternatives preserve a child's identity, culture, and autonomy, aligning with the AASW's vision of family in the current era.

2. Historical context

The history of adoption in Australia is deeply intertwined with shifting societal attitudes and legislative priorities, each shaping how adoptees are perceived and treated. The earliest adoption laws, introduced in the early 20th century¹, sought to formalise informal caregiving arrangements and provide legal recognition for adoptive families (CARD, 2012). These laws were steeped in the stigmas of the time, particularly around single motherhood and illegitimacy, leading to secrecy and the permanent sealing of adoptees' original birth records (CARD, 2012)². Such practices prioritised the needs and rights of adoptive parents, granting them full legal recognition as parents while erasing the legal and often emotional ties of adoptees to their birth families (Kenny et al., 2012).

In the mid-20th century, adoption was considered to be a legitimate public policy solution for addressing the needs of children of single mothers, as societal pressures and limited support systems left unmarried women with few alternatives (CARD, 2012). During this period, state-ordered adoption practices had entrenched the conceptualisation of adoptees as vulnerable wards requiring protection, framing the severance of familial ties as necessary for their integration into a nuclear family model (*Adoption of Children Act 1925* (SA); Quartly et al., 2013). This approach ignored, silenced, or disregarded the long-term psychological impacts on adoptees and birth parents, who often experienced profound loss and trauma (Kenny et al., 2012).

Reforms from the 1980s onward, driven by feminist advocacy and adoptee-led movements, began to recognise the experiences of unmarried women, single mothers and birth mothers of adopted children, drawing public attention to the scope of harm and human rights abuses experienced under state ordered adoption practices (Quartly et al., 2013). South Australian legislative changes introduced mechanisms for adoptees to access identifying information about their birth parents and siblings, provided that the information disclosed could not allow them to be traced, and in the case of siblings, that they had attained 18 years and were themselves adopted (*Adoption Act 1988* (SA) which repealed the *Adoption of Children Act 1967* (SA)). Similarly, mechanisms were introduced which allowed birth parents access to the

¹ This is true for all Australian States and Territories except Western Australia, who enacted their Adoption of Children Act in 1896.

² For additional historical insight see Adams, 2002; Jacobs & Shahan, 2014; Swain & Howe, 1995.

names of the adoptee and their adopted parents, once the adoptee reached 18 years old.³ However, these reforms did not fully dismantle the paternalistic policy framework that conceptualised adoptees as perpetual children in need of protection, nor did they adequately address the unique challenges faced by adult adoptees.

The treatment of adoptees remains heavily influenced by these historical practices. Modern adoption laws continue to conceptualise adoptees, regardless of age, within a framework of vulnerability, limiting their autonomy and perpetuating paternalistic policies. This has compounded the harm caused by past adoption practices, such as the forced removals of children during the Stolen Generations (Swain, 2013; Turnbull et al., 2022). Although modern adoption legislation in Australia emphasises cultural competence and the preservation of Indigenous heritage for children (CARD, 2012), adult adoptees who were denied these protections continue to face systemic neglect, and ongoing, intergenerational human rights abrogation as a result of their irreversible legal status as adopted persons.

This enduring perception of adoptees as vulnerable is a direct result of legislative inertia and societal attitudes that have historically prioritised the rights and needs of adoptive families over the rights of adoptees (Tobin, 2023). Such practices have also entrenched certain ‘figures’ in the minds of the broader community when it comes to adoption, that work to silence or ignore the agency, autonomy and dignity of the adopted person as a human with rights (March, 2015). These figures include the altruistic, benevolent figure of the adoptive parents; the pitiful or transgressive figure of the birth mother; the absent figure of the birth father; and the vulnerable beneficiary infant figure of the ‘adopted child’ (Tucker, 2020). Addressing these enduring social perceptions of adoption and their legal manifestations requires not only legislative reform but also a paradigm shift in how adoption is conceptualised, moving towards approaches that uphold the autonomy, identity, and cultural rights of adoptees as fundamental human rights.

³ *The Adoption Act 1988* (SA) as assented to on 1 December 1988, to repeal the *Adoption of Children Act 1967* (SA)

3. Overview of the *Adoption Act 1988* (SA)

The *Adoption Act 1988* (SA) is the current legislation governing adoption within South Australia, outlining the processes, requirements and rights of those involved. The Act is organised into four main parts: Preliminary, adoption orders, open adoptions and miscellaneous. Together, these parts regulate the making and discharge of adoption orders, consent provisions and access to adoption information.

Part 1 of the Act establishes its objectives and guiding principles, emphasising that the child's best interests are paramount and that adoption should primarily be regarded as a service for the child (s. 3(1)(a-b)). This section also defines key terms such as child, Court and parties.

Notably, the Act designates the parties to an adoption as (1) the adopted person, (2) the adoptive parents, and (3) the birth parents, a conceptualisation that implies equal consideration of rights among the parties rather than recognising and prioritising the dignity and autonomy of the adopted person as the primary rights holder.

Adoption orders can be made by the Court under Part 2, Division 1, which specifies that an order may only be granted in relation to a child (including those aged 18 years or more) who is in the State and in favour of those residing in South Australia. For those under 18 years of age, an adoption order will not be made unless the Court is satisfied that it is in the best interest of the child and preferable to any alternative order (s. 10(1)). Additionally, the Court must consider a child's opinion in relation to the adoption if they are over the age of 5 years and deemed capable of expressing their views. This opinion is gained via an interview with the child, with the Court to determine the weight given to the child's opinion (s. 8A). The effect of an adoption order is that the adoptive parents assume full legal responsibility for the child, while the legal relationship with their birth parents is severed (s. 9). However, under Part 2, Division 1, the Court may also discharge an adoption order under limited circumstances, with an adoptee, birth parent, adoptive parent or the Chief Executive able to apply. Part 2, Division 1 of the Adoption Act also stipulates requirements for the adoption of those over the age of 18 and for Aboriginal or Torres Strait Islander children.

Consent provisions are outlined in Part 2, Division 2, requiring that adoption cannot proceed without the written consent of the child's birth parents or guardians (s. 15), except in cases where the court dispenses with their consent due to reasons such as abandonment, neglect, or incapacity (s. 18). Prior to providing their consent, parents must be counselled, and are able

to revoke their consent within given time frames. Children aged 12 and over must also provide written consent following counselling, unless they lack the capacity to do so.

Part 2A of the Adoption Act includes provisions for information access, broadly outlining the information that may be disclosed, by whom, and under what circumstances.

Part 3 addresses various legal and procedural matters relating to adoption. It includes provisions restricting the publication of identifying information about adoption proceedings (s. 31) and prohibiting certain advertisements related to adoption (s. 31). This Part also outlines the handling of offences and penalties, criminalising activities such as making false or misleading statements (s. 33) and presenting forged consent documents (s. 35).

4. Analysis

4.1. Adoptees human rights and section 27 of the Adoption Act 1988 (SA)

“I want the restoration of my human right to full disclosure regarding who I am and how I got here” (Kenny et al., 2012).

Section 27 of the *Adoption Act 1988 (SA)* (herein referred to as the ‘Adoption Act’), which governs information provision for adoptees, raises significant human rights concerns, particularly when examined in light of Articles 16 and 26 of the ICCPR.

Section 27 of the Adoption Act grants adoptees the right to access certain information related to their adoption only after they turn 18. This section allows adoptees access to details about their biological parents, siblings, and any other relevant information held by the Chief Executive. Despite this, the current framework often denies adoptees full autonomy in accessing information about their own lives. Although Section 27 seems to align with the principles of openness by providing adoptees access to information about their biological family, this right is conditional.

The Act’s provisions, notably Section 27(5), which empowers the Chief Executive to withhold information if its disclosure is considered an “unjustifiable intrusion on the privacy” of another individual, have a negative and deep impact on adoptees’ rights to access information about their origins.

4.2. Articles 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR)

Australia does not have a Bill of Rights contained in its constitution, and there is no legislative Charter of Human Rights or Human Rights Act at the stated level in South Australia. However, Australia has signed and ratified the *International Covenant on Civil and Political Rights* (ICCPR) which gives rise to obligations under international law to implement these rights domestically and to report periodically to the United Nations Human Rights Committee on its progress.⁴

⁴ See e.g. Ryazard W Piotrowicz and Stuart Kaye,(2000). *Human rights in international and Australian law*. (Butterworths Australia, 2000); See also Martin, n 3.

Under Article 16, “every person has the right to recognition as a person before the law,” while Article 26 states “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Under international law, Article 16 cannot be limited. Although Article 26 permits some limitations of this right, such restrictions must be necessary, pursue a legitimate aim, and be proportionate to that aim- a standard outlined in the United Nations Economic and Social Council’s Siracusa Principles (1984).

4.3. Section 27, the ICCPR and application of the Siracusa Principles’

a) Is the limitation necessary?

While protecting the privacy of biological and adoptive parents is a legitimate aim, the necessity of such a broad discretion under Section 27(5) is questionable. Access to information about one’s origins is a fundamental human right, as articulated in international human rights frameworks, including Article 8 of the United Nations Convention on the Rights of the Child (UNCRC). This right extends to adoptees, affirming their entitlement to knowledge about their biological, medical, and cultural heritage. For adoptees, access to this information is crucial for understanding their personal history, forming a coherent identity, and exercising self-determination. Yet, the Act imposes significant limitations.

For adoptees whose adoption occurred prior to 17 August 1989, additional challenges arise. During this period, adoption practices were often closed, emphasising confidentiality and anonymity for both biological and adoptive families (Quartly, 2013). This focus on privacy frequently conflicts with adoptees' rights to information about their origins. Decisions by the Chief Executive to deny access to records effectively infantilise adult adoptees, disregarding their autonomy and capacity for informed self-determination.

Given that non-adopted individuals benefit from strict processing times and clear

review pathways under the Freedom of Information (FOI) Act 1982⁵, the additional legal barrier imposed on adoptees appears excessive. If barriers exist to non-adopted individuals when it comes to accessing that information, they are likely to be social barriers, rather than legally enforced barriers (except perhaps in the case of people conceived via assisted reproductive technologies or via surrogacy (Plater et al., 2018)). For adopted persons, their fundamental right to be recognised as a person, and to have a legal identity as a person, is ‘balanced’ against the privacy rights of others using methods that do not appear to align with international human rights law approaches to intersectionality and proportionality. As a participant in a study by Kenny et al., (2012) expressed, “I feel that adopted children aren’t given the same rights as biological children, and this is unjust”. There is a strong argument that less restrictive alternatives such as mediated or redacted disclosures, could protect parental privacy without unduly infringing upon the adoptee’s right to identity.

b) Is the limitation effective at achieving its aim?

The intention behind Section 27(5) is to prevent what is deemed an “unjustifiable intrusion” on the privacy of others. In practice, while this measure may succeed in limiting the disclosure of sensitive information, its effectiveness is undermined by inconsistent application. The use of a generalised ordinary person standard (Department for Child Protection (DCP), 2022) often fails to take into account the unique circumstances and needs of individual adoptees. As a result, the discretionary power does little to reliably balance the competing interests, instead leading to delays, extended waiting times, and increased emotional and administrative burdens on adoptees.

c) Is the limitation proportionate in its impact on the right?

When considering proportionality, one of the key criteria outlined in the Siracusa Principles (1984), the impact of the limitation under Section 27 is starkly disproportionate. The Act’s framework, by effectively restricting access to vital information, deeply undermines an adoptee’s right to form a full legal and personal identity (Articles 16 and 26 of the ICCPR). The barriers imposed are not only legal

⁵ For processing times see Sections 15, 15AA, 15AB and 15AC. For clear review pathways see Parts 6, 7, 8, and 9.

but also practical, including the complexity of navigating systems that hold identifying data; extended waiting times; the high costs associated with obtaining information; and the inconsistent or unreliable information provided by departments or institutions (Kenny et al., 2012), which non-adopted individuals do not face.

These challenges are compounded by emotional obstacles, an aspect that is explored in depth in a study by Kenny et al., (2012). This study found that adoptees universally expressed a desire to know their origins, with the absence of this information being a significant source of distress. These issues were not confined to those with negative adoption experiences but were reported by adoptees from diverse backgrounds, whether they had a perfect upbringing, a relatively normal experience, or had been subjected to abuse or neglect within their adoptive families. Some adoptees have described feeling powerless and adrift due to their inability to access their information, describing their experience as “cosmic loneliness” (DaBetta, 2022, p. 126).

This imbalance, as noted by Colin-Green (2017) and further supported by studies from Kenny et al. (2012) and DaBetta (2022), suggests that the negative impact on the adoptee’s autonomy and sense of self far outweighs the intended benefit of protecting parental privacy. As Colin-Green (2017) notes, this imbalance can lead to feelings of frustration, disempowerment, and, in some cases, a denial of personhood, as adoptees are excluded from vital information about their own histories that shape their identity and well-being.

In summary, the limitation imposed by Section 27, particularly Section 27(5), of the *Adoption Act 1988 (SA)* appears neither necessary, effective, nor proportionate when scrutinised under the Siracusa Principles and the human rights standards set by Articles 16 and 26 of the ICCPR. While the aim of protecting parental privacy is important, it should not come at the expense of an adoptee’s fundamental right to access essential information that underpins their identity and legal recognition (Chisholm, 2012). A more balanced approach, which considers less restrictive alternatives, is essential to ensure that the rights of adoptees are not unduly compromised.

5. Pathways for review of information access decisions made under the Adoption Act (s. 27)

The Adoption Act grants the Court, Chief Executive, or a designated senior officer within the DCP, significant powers in relation to adoption matters, including decisions on access to adoption records, publication of identifying information, and the discharge of adoptions. However, the pathways available for reviewing these decisions raise concerns about whether they adequately protect adoptees' rights. These include specific concerns that the review mechanisms may lack sufficient independence, potentially compromising procedural fairness.

The DCP's procedure, "Chief Executive's discretion under section 27(5) of the Adoption Act 1988 Procedure" (DCP, 2025, 4.6), establishes a multi-step review process for decisions that restrict or redact information.

Initially, a decision is made under section 27 regarding whether to provide or redact parts of a document. If a decision results in withholding or redaction, the applicant is notified in writing, which specifies that either the entire document is being withheld or that certain details have been removed. If an adoptee or other applicant is dissatisfied with this outcome, they can request a reconsideration by submitting a written appeal within 30 days. However, because the same authority that issued the original decision is responsible for reconsidering it, concerns arise about the independence and fairness of the process. If the reconsideration does not resolve the issue, further options are available, including lodging internal complaints or seeking recourse through external oversight bodies such as Ombudsman SA. While there is no statutory right of appeal against decisions of the Chief Executive under section 27, it may be possible to seek judicial review of the decision in the Supreme Court of South Australia (DCP, 2025, 4.6.3).

Despite these avenues, the review process faces significant challenges regarding procedural fairness, accessibility, and the interplay with other restrictions; for instance, even if an adoptee is granted permission under Section 31(2)(b) to publish identifying information, this does not override the restrictions on accessing new information imposed by Section 27.

The lack of an independent mechanism for reconsidering decisions on information access may hinder adoptees from effectively challenging decisions that impact their right to form a coherent personal identity and exercise self-determination. This situation calls into question whether the current review pathways provide an effective remedy, as mandated by

international human rights standards such as those outlined in the ICCPR and the UNCRC and suggests that reforms are needed to enhance procedural fairness and independence in the review process.

5.1. Adoptees' human rights and section 31 of the *Adoption Act 1988* (SA): A Siracusa Principles analysis

Section 31 of the *Adoption Act 1988* (SA) governs the publication of identifying information regarding individuals involved in adoption proceedings. It defines “publish” broadly covering dissemination via newspapers, radio, television, the internet, and similar means of public communication (s. 4) and imposes severe penalties (up to \$40,000 or four-years imprisonment) for breaches. Although the primary aim is to protect the privacy of vulnerable children and families by restricting public disclosure of sensitive information, significant human rights concerns arise when this limitation is assessed against Articles 16 and 17 of the ICCPR and Article 8 of the UNCRC.

5.2. Articles 16 and 17 of the ICCPR

As noted above, under Article 16 of the ICCPR, “every person has the right to recognition as a person before the law,” a right that cannot be limited under international law.

Article 17 provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 17 has what can be referred to as an implied limitation which results from the interpretation of the word ‘arbitrary’ (Attorney General’s Department, n.d.). The concept of ‘arbitrariness’ means more than something that is not authorised by law. It is closely linked to the ideas of proportionality and necessity, and the notions of fairness, justice and predictability.⁶ In other words, an action can be *lawful* but still *arbitrary* if it has a significant impact on a protected human right, and cannot be justified as necessary, effective

⁶ Çınar, Özgür H, ‘The Right to Privacy in International Human Rights Law’ [2019] *Journal of Information Systems & Operations Management* 33

and proportionate to achieving the objective of protecting interference with privacy, family or home.

5.3. Balancing privacy and autonomy: The limitations of section 31 in adoptee rights

While protecting privacy under Article 17 of the ICCPR is a legitimate aim, the broad application of these restrictions often extends beyond what is necessary. In practice, although Section 31(2)(b) permits adoptees to publish information about themselves without needing to seek the Court's permission, this provision does not extend to the publication of another person's name or any material that might identify an individual unless that person, if aged 18 or over, has provided written consent. Consequently, while adoptees are free to share their own experiences and personal narratives, such as on social media, they are prohibited from disclosing identifying information about others involved in their adoption proceedings without either that person's consent or explicit Court authorisation. This restriction raises significant questions about balancing an adoptee's right to speak openly about their adoption with the need to protect the privacy of others, as even casual online commentary could inadvertently reveal identifying details of individuals connected to the adoption, thereby exposing the publisher to criminal penalties. This chilling effect, reminiscent of sexual assault victim gag laws⁷ which although originally enacted to protect survivors from media exploitation have instead silenced individual voices, exacerbated trauma and limited survivor-led advocacy, serves to silence adoptees as well, effectively preventing them from sharing their personal histories. Given that adoptees have a fundamental right to establish and express their identity (as affirmed by Article 8 of the UNCRC and supported by Article 16 of the ICCPR), the expansive scope of Section 31 appears to be more restrictive than necessary. Moreover, it raises the question of whether less draconian measures could protect parental privacy without erasing the personal narratives and identity formation of adoptees.

Section 31 does offer some flexibility through its consent provisions. Specifically, Section 31(2)(a)(i) allows for the publication of identifying information with the written consent of individuals aged 18 or older, thereby acknowledging the autonomy of adult adoptees to control how their personal data is shared. However, this mechanism is effective only if adoptees have access to comprehensive adoption records and sufficient information about their origins. If these records are withheld or if access is otherwise restricted under provisions

⁷ See, for example, Funnell, n.d.

such as Section 27, the consent mechanism becomes largely symbolic as adoptees may lack the informed basis to make meaningful decisions about disclosure.

Furthermore, while Section 31(2)(b) provides for court-authorised disclosure, judicial discretion in this area often results in a blanket restriction rather than a nuanced, case-by-case approach. Such rigidity not only limits adoptees' freedom to discuss their own status but may also hinder the reporting of critical issues such as neglect or abuse. High-profile cases demonstrate how omitting an adoptee's status in public records can obscure vital information, reduce accountability, and impede research and justice (Inter Country Adoptee Voices, 2021). These factors underscore that, although the measure might achieve its narrow aim of protecting privacy, it does so at the cost of silencing adoptees and limiting their ability to reclaim their personal histories.

5.4. Section 31- A one-size-fits-all approach

A proportionality analysis under the Siracusa Principles requires that any limitation on a human right must be no more extensive than necessary to achieve its legitimate aim. Section 31's punitive measures are uniformly applied, regardless of context or individual circumstances. This one-size-fits-all approach infantilises adult adoptees by centralising decision-making power in the Court, while failing to provide adequate safeguards against error or abuse. Consequently, the severe penalties for unauthorised publication impose a disproportionate burden on adoptees' rights to identity, access to information, and freedom of expression.

Moreover, the punitive regime under Section 31 is not similarly applied to non-adopted individuals, who benefit from clearly defined protections and transparent processes under freedom of information (FOI) laws. This inequitable treatment underscores an imbalance that not only stifles the adoptee's ability to share their story but also obstructs transparency and accountability in adoption matters. In effect, the broad restrictions of Section 31 risk destroying the very essence of the right to self-determination and public discourse by barring adoptees from discussing their lived experiences without fear of severe legal repercussions.

5.5. Conclusion

In summary, while Section 31 of the *Adoption Act 1988 (SA)* is founded on the legitimate objective of protecting the privacy of individuals involved in adoption proceedings, its

limitations on the publication of identifying information are neither necessary, sufficiently effective, nor proportionate when measured against the human rights of adoptees. The severe, blanket restrictions, with threats of significant fines and imprisonment, unduly restrict adoptees' rights under Articles 16 and 17 of the ICCPR and Article 8 of the UNCRC. Furthermore, the consent mechanism is undermined if adoptees lack access to their full adoption records, and the overall framework does not incorporate less restrictive alternatives that could balance privacy with the right to self-expression. Consequently, the current approach not only silences adoptees and curtails their ability to share their personal narratives but also limits transparency and accountability in adoption-related matters. A rebalancing of these provisions is essential to ensure that the rights of adoptees to identity, access to information, and freedom of expression are upheld.

6. The definition of child and the human rights implications

The Adoption Act primarily conceptualises adoptees as children, a framing evident in the definition of 'child' and its dominance as a key legal term in many of the provisions of the Act, and the other language used throughout the legislation. This conceptualisation has significant implications for the human rights of adoptees, some of which only manifest in adulthood.

The initial 1988 Act defined a child as a person under 18 years of age. At that time, adult adoptions were not permitted. However, the *Adoption (Review) Amendment Act 2016* expanded the definition to include "a person aged 18 years or more in respect of whom an order for adoption is sought or has been made." While this change facilitated adult adoptions under specific conditions, it inadvertently conflated adult adoptees with children, perpetuating a paternalistic framework that undermines the autonomy of adoptees and disregards their distinct rights and needs. In other words, although the 2016 amendments empowered the State of South Australia to issue adoption orders with respect to people who were over the age of 18, it continued to conceptualise of any one subject to an adoption order as a child or child-like. This is evident in both the continuation of the use of the word 'child' in key operative provisions of the Act (s. 8A; 10A; 16) and in the ways in which the legislation attempts to 'balance' the rights of other 'parties' (such as adoptive parents) with the rights of adopted persons.

The review of the Act by Hallahan (2016) did not propose this specific wording. Instead, her recommendation was to include a section titled "Who may be adopted." After reviewing the

Hansard records from the Act's second reading (South Australia, 2016), it remains unclear why such terminology was considered appropriate or necessary. However, it may have been adopted to align with the similar legislation in Victoria⁸ and New South Wales.⁹

Unfortunately, the lack of meaningful discussion regarding the expanded definition of child has had negative implications for adult adoptees. As Quartly (2013) aptly notes, "adoptees are indignant when they are referred to as children. They are mostly adults, well on in years, and determined to be in charge of their own lives".

This conflation has profound human rights implications. By framing *all* adoptees within the legislative language of childhood (regardless of their age), the Act contradicts international human rights principles, such as those in the Universal Declaration of Human Rights (UDHR) and the ICCPR, which emphasise individuals' rights to identity, autonomy, and self-determination.

6.1. Infantilisation and autonomy

This legal classification of adoptees as children in the Adoption Act reinforces assumptions of perpetual vulnerability and immaturity and legitimises the need for paternalistic forms of State protection. While these assumptions may have had some factual basis for some adopted persons who were subject to adoption orders very early in their lives, they diminish the agency, autonomy and human rights of adoptees, particularly once adoptees mature past infancy and reach adulthood. This framing overlooks the evolving identities and capacity of adoptees, creating systemic barriers to rights such as accessing information about the fact that they are an adopted person and/or their birth family origins, and navigating their adoption status independently. This is compounded by the fact that although an adoption order made under the Adoption Act can be 'discharged' it can never be fully reversed (either in law or in a socio-normative sense). This means that the person's legal and personal identity is forever changed by the adoption order, rendering their ability to access the legal rights non-adopted people take for granted forever dependent on state action, and in some cases, forever ignored or limited. This manifests in a number of legal settings, including inheritance law (where adopted persons may not be recognised as 'family' of birth parents, for example) and family law, as well as in a range of other areas including those directly impacting a person's physical

⁸ Adoption Act 1984 (Vic), s. 4(1)(b)

⁹ Adoption Act 2000 (NSW), p. 142

and mental health (Chamberlains Law Firm, 2020; South Australian Law Reform Institute, 2017; Victorian Law Reform Commission, 2017).

As a result, although the Adoption Act emphasises the “best interests, welfare, and rights” of adoptees throughout their lives (s. 3(1)(a)), this principle is narrowly interpreted and conceptualised as primarily applying to the rights of ‘the adopted child’ and focusing predominantly on childhood needs.

6.2. Ambiguity in terminology

Ambiguity in terminology used in the Adoption Act, coupled with the centrality of the legal term ‘child’, exacerbates the paternalistic assumptions that have defined and diluted the rights and status of adopted persons for many decades. While the term child is central to the Adoption Act, its application is inconsistent. In some sections, adopted person is used to encompass adoptees of all ages, yet these terms are not consistently applied throughout the legislation, leaving adoptees inadequately acknowledged as autonomous individuals. This inconsistency also creates confusion in the interpretation and application of the Adoption Act.

6.3. Practical implications in legislation

The Adoption Act's broad application of the term child directly affects adoptees' access to fundamental human rights. For instance, adoptees seeking to discharge adoption orders or access their original birth certificates face legislative barriers rooted in paternalistic assumptions about their perceived vulnerability, immaturity and need for State protection. These barriers are often constructed or supported by the ‘figures’ of adoption described above, regardless of the age, characteristics or attributes of the ‘parties’ involved. These restrictions conflict with human rights principles, including proportionality and evolving capacity, which requires State intervention to be balanced and justified in relation to individual autonomy (Breen et al., 2020; Cushman, 2012). This is particularly critical in the context of adoption orders, which as noted above, permanently alter a person’s legal and social identity, with lifelong impacts on their legal status, legal capacity and legal rights (in addition to other non-legal impacts, including impacts on physical and mental health).

7. Voluntary consent and protection of adoptees rights

The Adoption Act conceptualises consent as a formal, written acknowledgment provided by a parent, guardian, or child over the age of 12, agreeing to an adoption. Consent must be documented in writing, witnessed according to prescribed regulations, and endorsed by an

authorised officer who has provided the individual with appropriate counselling (s. 15-16). These safeguards are designed to underscore the significance of adoption decisions and to ensure that those making decisions, particularly individuals over the age of 12, understand the potential consequences of their choices. The aim is to protect the autonomy of individuals and reduce the risks of uninformed or coerced consent.

For children between the ages of 5 and 12, the Act stipulates that their opinions regarding adoption must be sought (s. 8A). However, the State retains discretionary power over the weight given to these opinions, meaning the child's views can be overridden. This approach reflects an inherent tension between protecting the child's best interests and respecting the child's autonomy.

Organisations such as Adoption Origins Victoria argue that the Act effectively ties adoptees to a contract they did not consent to. This is especially true if the adoption occurs when the child is unable to make such decisions, or if the court does not obtain the child's consent, or the child cannot voluntarily consent (Victorian Law Reform Commission, 2017). This situation leaves adoptees feeling disenfranchised from decisions that profoundly shape their identities.

In cases where adoption is triggered by circumstances beyond the child's control, or when the child is deemed 'too young' to consent, the adoption process itself is often inherently coercive. Adopted children (who then become adolescents and adults) in these situations must align themselves (legally, socially and psychologically) with a family that may not be their own. Although their ability to understand or assert their autonomous legal or personal identity may change as they age, adopted persons invariably remain trapped in a state-ordered power dynamic where the rights of other 'parties' must be 'balanced' against their own. Once a person is subject to an adoption order, they can never fully remove the legal or psycho-socio impact of the order on their lives.

While this experience may not *always* manifest in ongoing trauma or harm, it often has serious negative intergenerational impacts on adopted persons and their families, which are frequently attributed to the forced nature of historical adoptions (Legal and Social Issues Committee, 2021; Standing Committee on Environment and Public Affairs, 2024). However, it could be argued that trauma may also arise in non-forced adoptions due to a combination of factors, including the absence of voluntary consent, the legal redefinition of identity, the

overarching aim to create a nuclear family structure, and the broader negative human rights implications of adoption legislation.

In this context, the interplay between state discretion and coercion raises concerns about whether voluntary consent, as required by human rights standards, is genuinely achieved (Breen et al., 2020). As explored further below, this tension has lasting implications for adoptees, particularly in how their autonomy and rights are recognised throughout their lifetime.

7.1. Implications for adoptees

The absence of a requirement for children under 12 to provide consent to their adoption can contribute to an ongoing tension between the adoptee's human rights and the broader principles of autonomy and self-determination. The issue intersects with the process of discharging adoption orders given that one of the grounds for application is that consent may have been obtained through fraud, duress, or improper means (s. 14(1)(a)). The inclusion of this language reveals an acknowledgement by lawmakers that there may be circumstances in which a court has made an adoption order under the Act, *without consent* of either the child or the birth parent, or in circumstances where consent has been procured or coerced. In other words, it reveals a genuine risk of institutional failure of a most egregious kind (the non-consensual removal of child from their birth parent by the state), and seeks to placate that risk with a legislative safeguard that can only be accessed in prescribed circumstances, even for the adopted person who is experiencing the egregious rights abrogation.

This, coupled with the absence of requirement for consent for children under 12 underscores a significant gap in the current legislative framework, one that diminishes the ability of adoptees to fully exercise their autonomy throughout their lives.

8. The case for adoptees' right to sever legal ties

Under the Adoption Act the discharge of an adoption order can be sought by the adopted person, adoptive parents, or birth parents. The grounds for such an application are outlined in two key provisions:

- S. 14(1)(a): Allows for the discharge of an adoption order if it was obtained through fraud, duress, or improper means.

- S. 14(1)(b): Permits the discharge of the adoption order if it is determined to be in the best interests of the adopted person, considering their rights and welfare.

Once an application is filed, the Youth Court is responsible for determining whether these grounds are met, ultimately deciding what constitutes the best interests of the adopted person rather than deferring to the adoptee's own perspective. Although the introduction of Section 14(1)(b) following the 2016 review marked a progressive step, this provision only took effect in 2018, coinciding with the enactment of the South Australian Youth Court (Adoption) Rules 2018.

8.1. Barriers to autonomy, identity and self-determination

While the Adoption Act uses the term adopted person to acknowledge that adoptees may be adults, the terminology and the associated provisions reinforce the treatment of adoptees as dependent minors, undermining their autonomy and perpetuating outdated notions of adoptees as children in need of legal protection by vesting broad discretionary power in the court (s. 27(5)) to decide what is in an adoptee's best interests. This process treats adoptees as though they were children without capacity to understand or access their legal rights, thereby undermining their ability to independently express their interests and needs. By maintaining state control over an adoptee's legal status well into adulthood, the Adoption Act not only restricts their right to identity and self-determination but also fails to align with contemporary human rights principles.

The right to identity, self-determination, and knowledge of one's origins are fundamental human rights that underpin personal autonomy and well-being (United Nations, 1948). However, the Adoption Act imposes significant barriers on adoptees seeking to reclaim their original identity. By maintaining state control over an adoptee's legal status even into adulthood, the legislation diminishes the self-determination of adoptees and fails to align with contemporary human rights principles.

While adults typically have the capacity to make decisions about their own lives, this process positions adoptees as though they are akin to children or somehow less than fully autonomous humans, capable of expressing opinions about their own interests and needs. It renders adopted persons dependent on external, institutional authority for the making of significant

decisions (sometimes the most significant decisions) in their lives. This approach contrasts sharply with the autonomy afforded to other adults in both legal and social contexts.

Although some interpretations suggest that the discharge process is not particularly burdensome (Hallahan, 2016, p. 55), the reality is that Section 14(2) mandates a formal investigation whenever there is a potential ground for discharge. In practice, a social worker from the DCP must meet with the applicant as part of this investigation (DCP, n.d.). Adoptee Sharyn White (Barra, 2019) notes that for those under the age of 18, this may be a suitable measure. However, for adults seeking discharge, this requirement is intrusive, discriminatory and pathologising. It could also be said that the Court's interest in ensuring the discharge is in the best interests of the adoptees welfare is ironic, given that once adoption orders are approved, the Court does not reassess their welfare nor check in on them until adoptees seek a discharge (if at all). Moreover, adoptees are required to submit a sworn affidavit detailing the factual basis for their discharge request (Youth Court of South Australia, n.d.), effectively forcing them to justify in writing why a discharge would serve their best interests.

The provision allowing adoptive or birth parents to apply for the discharge of an adoption order further contradicts the principle of paramountcy intended to protect the best interests of the adoptee. Collectively, these barriers make the process of discharging an adoption order disproportionately difficult for adoptees who already feel disenfranchised by a legal framework that treats them as less than fully capable of determining their own identity. This situation underscores the urgent need for a more transparent, accessible, and supportive process that truly respects the autonomy and rights of adult adoptees.

8.2. Comparative legal perspectives

Other legal frameworks, both within South Australia and internationally, further highlight the disparities in the treatment of adult adoptees. For example, when children under the guardianship of the Chief Executive reach adulthood, they are relieved of their legal status as wards, allowing them to transition into adulthood unencumbered by their childhood legal designations (Children and Young People (Safety) Act, s. 53. (4)). In contrast, adoptees are not granted a similar opportunity to redefine their identity. Furthermore, the Births, Deaths and Marriages Registration Act 1996 (SA) (s. 29I- 29R) allows individuals, including those under the age of 18 years, to apply to change their gender identity or sex on their birth certificate, recognising their right to make legal decisions about their identity. This stands in

stark contrast to the restrictions placed on adult adoptees under the Adoption Act, highlighting the need for reform to better align adoption law with contemporary human rights standards.

8.3. The evolving reality of adoption

The question of whether adoptees should have the exclusive right to discharge their adoption orders reflects a tension between the intent of adoption legislation and the evolving realities of adoption. It could be argued that discharging adoption orders would conflict with the principle of adoption, which seeks to establish permanent family structures (Department for Education and Child Development, 2015, p. 24). As the Adoption Act 1994 Review Committee observed, “there should be no greater ability for adopted people to ‘divorce’ their adoptive parents than there is for children who lived with their birth parents to ‘divorce’ them” (Department for Education and Child Development, 2015, p. 23). However, this perspective neglects the evolving understanding of human rights and the complexities of modern adoption and again reveals an infantilising conception of adoptees as people with a diminished or diluted legal capacity and somehow lacking full agency to exercise their rights. It also emphasises the figures of adoptive parents as altruistic and benevolent, and therefore deserving of legal preference and protection in the adoption system.

The Act’s original intent to form families “like any other” is based on a concept of family that does not account for the current emphasis on openness in adoption and the importance of ensuring that adoption law assists children in knowing and accessing their birth families and cultural heritage. Therefore, the idea that adoption should sever all ties with an adoptee's birth family is increasingly seen as unrealistic and inconsistent with psychosocial evidence (Duemer et al., 2016; Geller, 2025).

8.4. Advocacy for reform

Advocates such as Adoption Origins Victoria propose a no-fault discharge provision that would allow adoptees over the age of 18 to apply for the discharge of their adoption orders with relative ease. For many adoptees, the relationship with their adoptive family is distinct from their inherent right to reclaim their birth identity—which includes access to their original birth certificate and ancestral heritage. Allowing the legal option to discharge an

adoption order would empower adoptees to assert their autonomy, aligning the legal framework with modern human rights and self-determination.

While adoption undeniably creates legal bonds, and can precipitate deep emotional bonds, it is equally important to recognise that adoptees should have the right to define their own identities. Allowing the legal option for adoptees to discharge their adoption orders does not undermine the purpose of adoption but acknowledges that no law can make an adoptive family equivalent to a birth family (Walter, n.d.). While discharging an adoption order is not a universal solution, re-writing section 14 could significantly improve the alignment of the Act with human rights principles, acknowledging the complexities of modern adoption while respecting the autonomy of adult adoptees.

9. Closed court procedures and transparency

In the context of the Adoption Act, the term Court refers to the Youth Court of South Australia, where all adoption related proceedings are heard (s. 4(1)). These hearings are closed to the public, with the exception of genuine representatives of the news media. The Youth Court Act 1993 restricts reporting on these proceedings to ensure that no information is published which could lead to the identification of the youth (Courts Administration Authority of South Australia, n.d.).

Section 24(2) of the Adoption Act mandates that except as authorised by the Court, the records of proceedings for an adoption order will not be open to inspection.

While these provisions have a legitimate aim to protect the privacy of those involved, they also reinforce the perception of adoptees as vulnerable children, curtail transparency in the adoption process and obstruct the identification of systemic issues. Moreover, the closed court procedures limit access to precedential decisions that could benefit other adoptees facing similar circumstances. Often, adoptees have little to no access to these records, or even awareness that such records exist, thereby depriving them of insight into the decisions and reasoning that have shaped their personal histories.

This closed court system stands in stark contrast to the principles of open justice and open adoption, which emphasise transparency and the right of adoptees to understand their origins (Victorian Law Reform Commission, 2017). The Victorian Law Reform Commission's review of the Adoption Act 1984 (Vic) recommended that, when appropriate, adoption

proceedings should be held in open court, anonymised judicial rulings should be published, and researchers should be granted access to court decisions. Adopting similar reforms in South Australia could enhance transparency in these proceedings, aligning with open justice principles and empowering adoptees by providing clear, accessible examples to support their claims.

10. The retention of inheritance rights

A key concern raised by the Australian Adoptee Rights Action Group within the Victorian Law Reform Commission's (VLRC) 2017 review of the *Adoption Act 1984 (Vic)*, is the disinheritance that often results from adoption, which they argue may constitute a violation of adoptees' human rights if consent is not obtained. This concern is underscored by the findings of the review which highlighted that adoption permanently disconnects a child from their biological family. It leads to the cancellation of the child's original birth certificate and the issuance of a new one, effectively creating a 'new identity' for the child (Adoptee Rights Australia, 2022; VLRC, 2017)¹⁰. While the issue of integrated birth certificates was not within the scope of this report, it is a critical area of research that should be given further attention.

Despite the recognition of adoption as a highly interventionist process (Hallahan, 2016, p. 12), the VLRC (2017) report emphasised that consent is the cornerstone of adoption, serving as a crucial element to ensure that the adoption is in the best interests of the child and protects the rights of the parents. This emphasis on the primacy of parental consent seems to permeate adoption legislation throughout Australia raising concerns about the prioritisation of rights and autonomy of adoptees.

There are a range of possible responses to this important issue, including legislative amendments to family inheritance laws or Succession Acts, or amendments to the consent provisions in the Adoption Act (discussed below). However, it should also be noted that given the deep psycho-social impacts of adoption on the personal identity of adopted persons, legislative amendment alone may not fully address the range of rights impacts that arise when an adopted parent or birth parent dies. As explored throughout this report, this makes it

¹⁰ Although the topic of integrated birth certificates was not addressed in this report, it is a critical area that requires additional research.

challenging to fully align state-ordered adoption (even in an amended form) with human rights principles.

11. Australian adoption legislation human rights analysis comparison

To explore how South Australia's legislative framework compares to other jurisdictions, a review of adoption legislation across Australia was conducted. By identifying shared challenges and highlighting opportunities for improvement, this comparative analysis provides a foundation for recommendations to enhance the human rights of adult adoptees.

Legislation	Definition of child	Human rights analysis
Adoption Act 1988 (SA)	s. 4(1) child includes— (a) a person who is less than 18 years of age; and (b) a person who is aged 18 years or more in respect of whom an order for adoption under this Act is sought or has been made	This definition allows adult adoptions but conflates adults adopted as children with newly adopted adults, undermining autonomy.
Adoption Act 1984 (Vic)	s. 4(1) child means— (a) a person who is less than 18 years of age, or (b) a person who is 18 or more years of age and in relation to whom an adoption is sought or has been made	The broad definition includes adults but fails to distinguish their unique rights and autonomy, framing all adoptees as children.
Adoption Act 2000 (NSW)	p. 142 child means— (a) a person who has not attained the age of 18 years, or (b) a person who has attained that age in respect of whom an adoption order is sought or has been made	Similar conflation of minors and adults under the term child, perpetuating a lack of clarity about adult adoptees' distinct needs
Adoption Act 1988 (Tas)	s. 3(1) child means— (a) a person who has not attained the age of 18 years; or (b) a person who has attained that age in respect of whom an adoption order is sought	Broadly inclusive of adults but conflates newly adopted adults with adoptees who were adopted as children. This framing undermines autonomy.

Legislation	Consent required	Human rights analysis
Adoption Act 1988 (SA)	s. 16 An adoption order will not be made in relation to a child over the age of 12 years unless the child has consented to their adoption. Requirements: <ul style="list-style-type: none"> 25 days have elapsed since the giving of consent 	Children's right to participate in decisions affecting their lives is fundamental yet overlooked in adoption processes, particularly for those under 12. Excluding children from decisions can have ongoing negative implications, even after adoptees transition into adulthood. This lack of involvement can have long-term psychological effects. Additionally, disinheritance

	<ul style="list-style-type: none"> • The Court is satisfied, after interviewing the child in private, that the child's consent is genuine, and the child does not wish to revoke it. • Consent must be in writing, witnessed in accordance with the regulations; and be endorsed by an officer authorised by the Chief Executive to make such an endorsement with a statement to the effect that the child has been counselled by that person. 	resulting from adoption without consent may infringe on their rights to property and family life.
Adoption Act 1984 (Vic)	<p>s. 14</p> <p>There is no explicit provision requiring the consent of the child being adopted, regardless of their age. However, the Act does state that an order for adoption shall not be made unless the Court is satisfied that:</p> <ul style="list-style-type: none"> • at least 28 days before the day on which the adoption order is to be made the child received counselling from an approved counsellor as to the effects of the adoption • As far as practicable, the wishes of the child have been ascertained and due consideration is given to them, having regard to the age and understanding of the child. 	This approach reflects a more paternalistic stance, with the Court determining the level of consideration given to the child's wishes. While this may offer protections in some cases, it could also undermine the autonomy of children, especially those older than 12, who may have sufficient capacity to provide meaningful consent. This lack of explicit consent may also exacerbate feelings of disempowerment in adult adoptees who feel excluded from critical decisions that shaped their lives.
Adoption Act 2000 (NSW)	<p>s. 55</p> <p>The Court must not make an adoption order in relation to a child who is 12 or more but less than 18 years of age and who is capable of giving consent unless:</p> <ul style="list-style-type: none"> • the child has been counselled • The counsellor has certified that the child understands the effect of signing the instrument of consent • The child consents to his or her adoption by the prospective adoptive parent or parents or the Court dispenses with the requirement for consent. 	This is similar to South Australia's consent requirements, but the provision for the Court to waive consent adds a layer of state intervention that may override the child's autonomy in exceptional cases. The requirement for counselling aims to ensure that children understand the implications of adoption, which supports the child's right to information. However, the potential for the Court to override consent could undermine the principle of voluntary participation, a core element of human rights.
Adoption Act 1988 (Tas)	<p>s. 23</p> <p>Subject to this Division, an order for the adoption of a child shall not be made unless:</p> <ul style="list-style-type: none"> • The court is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child. 	The lack of explicit consent for children under 12 could diminish the agency of children, aligning with concerns about paternalism and the assumption that children are incapable of meaningful participation in their adoption process. As seen in South Australia, this omission could have lasting implications for adult adoptees, particularly in terms of emotional well-being and a sense of agency

Legislation	The process of discharging adoption orders	Human rights analysis
Adoption Act 1988 (SA)	<p>s. 14 Applications can be made by the adopted person, birth parent, adoptive parent, or the Chief Executive of the DCP</p> <p>Grounds for discharge:</p> <ul style="list-style-type: none"> • Fraud, duress, or improper consent (Section 14(1)(a)). • Best interests of the adopted person 	<p>The Act places significant power in the hands of the court, which determines whether discharge is in the adoptee's best interests. This undermines adult adoptees' autonomy and right to self-determination. The legal process still treats adoptees as dependent, reinforcing outdated views of adoptees as perpetual minors. The inability of adult adoptees to independently discharge their adoption orders infringes on their right to identity and personal autonomy.</p>
Adoption Act 1984 (Vic)	<p>s. 19 Eligible applicants include the adopted person, natural parent, adoptive parent, the Secretary of the Department, or the principal officer of the approved agency involved in the adoption.</p> <p>Grounds for discharge:</p> <ul style="list-style-type: none"> • Fraud, duress, or improper consent. • Special circumstances, such as irretrievable breakdown of the adoptive relationship. 	<p>Similar to South Australia, adult adoptees must apply through the court. However, Victoria allows a broader range of circumstances under which a discharge may be sought. This still requires judicial discretion, limiting the autonomy of adoptees to independently reclaim their identity. The court's role in determining "best interests" continues to diminish the self-determination of adult adoptees.</p>
Adoption Act 2000 (NSW)	<p>s. 93 A "concerned person," defined as the Attorney General or any party to the adoption, may apply for a discharge order.</p> <p>Grounds for discharge:</p> <ul style="list-style-type: none"> • Fraud, duress, or improper consent. • Exceptional reasons for discharge. 	<p>Similar concerns as in South Australia and Victoria. While exceptional reasons may be considered, the process still requires court involvement, thereby restricting the autonomy of adult adoptees in reclaiming their identity. The state's role in facilitating adoption continues to prevent adoptees from independently altering their legal status.</p>
Adoption Act 1988 (Tas)	<p>s. 28 Eligible applicants include the adopted person, natural parent, adoptive parent, the Secretary, or the Principal Officer of an approved agency by which the adoption was arranged.</p> <p>Grounds for discharge:</p> <ul style="list-style-type: none"> • Fraud, duress, or improper consent. • Special circumstances related to the welfare and interests of the adopted person. 	<p>While there are provisions for discharge, the need for "special circumstances" and the court's role in determining whether discharge is in the best interests of the adoptee limits their autonomy. This framework continues to undermine the human rights of adult adoptees to make independent decisions about their identity.</p>

Legislation	Disclosure of information once adopted person turns 18	Human rights analysis
Adoption Act 1988 (SA)	<p>s. 27 Eligibility: Adopted individuals aged 18 or older, or their lineal descendants (with consent or if the adopted person is deceased or cannot be located), may apply for information about their adoption, including the adoption order, and identifying information about biological parents.</p> <p>Conditions: The Chief Executive has discretion to withhold information if it would constitute an unjustifiable intrusion on the privacy of another person, present a serious risk to life or safety, or, in the case of adoptions before 17 August 1989, not be in the best interests of the adopted person.</p>	The broad discretion given to the Chief Executive in withholding information creates inconsistency and undermines the autonomy of adoptees by making access contingent on subjective assessments of privacy and risk. The court's role in determining "best interests" continues to diminish the self-determination of adult adoptees.
Adoption Act 1984 (Vic)	<p>s. 93 Eligibility: An adopted person who is 18 or older may apply for information about themselves, including information that may disclose the identity of their biological parents or relatives.</p> <p>Conditions: The relevant authority must not release information if it could identify the whereabouts of a birth parent or relative unless the authority has obtained the written consent of that person, or if the consent was provided with conditions, those conditions must be met.</p>	The requirement for consent from birth parents or relatives before releasing identifying information restricts the adopted person's access to their origins, potentially violating their right to know their biological heritage. This provision places the autonomy of the birth family over the rights of the adopted individual to access information about their identity.
Adoption Act 2000 (NSW)	<p>s. 133C Eligibility: Adopted individuals aged 18 or older are entitled to their original birth certificates, birth records, and prescribed information such as details about birth parents and siblings.</p> <p>Conditions: The Secretary must assess risks to the safety, welfare, or well-being of any individual before authorising the release of information and may impose conditions on the access.</p>	While adopted individuals are entitled to their original records, the Secretary's role in assessing risks and imposing conditions on access introduces a subjective element, potentially delaying or restricting access to critical information. This conditional access diminishes the autonomy of adoptees in asserting their right to know their identity.

Adoption Act 1988 (Tas)	<p>s. 82</p> <p>Eligibility: Adopted individuals aged 18 or older may apply for information regarding their adoption, including identifying information about biological relatives.</p> <p>Conditions:</p> <p>Before receiving information that could identify or locate a biological parent or relative, the adopted person must agree in writing not to contact that person if the birth parent has entered a contact veto in the Adoption Information Register, unless the veto has been withdrawn.</p>	While adopted individuals are granted access to their adoption information, the requirement to agree not to contact biological relatives if a veto is in place restricts the adoptee's ability to exercise their right to self-determination and establish relationships with their biological family. This provision may limit the adoptee's ability to fully access their identity and connections.
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Legislation	Closed court procedures	Human rights analysis
Adoption Act 1988 (SA)	<p>s. 24</p> <ul style="list-style-type: none"> Adoption applications are not heard in open court. Court records related to adoption proceedings are closed to inspection unless authorised by the Court. Hearings take place in the Youth Court. 	While closed court procedures aim to protect the privacy of all involved, they limit transparency in the adoption process. This lack of openness prevents adoptees from accessing important court records and understanding the decisions and reasoning behind their adoption. The restricted access to court records undermines the adoptee's ability to fully comprehend their personal history and the legal processes that shaped their adoption, inhibiting their right to self-determination and transparency. The use of the Youth Court for hearings related to adult adoptees is also inappropriate and further infantilises adoptees while denying principles of open justice.
Adoption Act 1984 (Vic)	<p>s. 107</p> <ul style="list-style-type: none"> Adoption applications must be heard in camera (closed court). Persons who are not parties to the proceedings or their legal practitioners are excluded unless otherwise directed by the Court. 	The closed nature of adoption hearings further obscures the adoptee's understanding of the decisions made in their case. The lack of public access to proceedings and court records reduces transparency and can perpetuate a sense of powerlessness for adoptees seeking clarity about their adoption. The exclusion of non-parties, including adoptees who may wish to attend, limits their participation in their own story and undermines their autonomy in understanding their adoption process.
Adoption Act 2000 (NSW)	<p>s.22</p> <ul style="list-style-type: none"> Proceedings for the making of adoption orders and other orders under this Act are to be heard and determined by the Supreme Court. <p>s.119</p>	Although adoption proceedings are conducted in the Supreme Court, non-parties, including adoptees, can still be excluded from hearings, creating barriers to transparency and diminishing adoptee's rights to participate in and understand the legal process affecting their lives. This lack of openness raises concerns about the erosion of autonomy and the suppression

	<ul style="list-style-type: none"> • Proceedings under the Act must be heard in camera (closed court) • The Court may, if it considers it to be appropriate, permit persons who are not parties to the proceedings or their Australian legal practitioners or representatives to be present during the hearing of the proceedings. 	of adoptees' rights to self-determination. That being said, in stark contrast to other Australian states, some adoption cases heard in the NSW Supreme Court can be accessed online, increasing its adherence to open justice principles.
Adoption Act 1988 (Tas)	s. 93 <ul style="list-style-type: none"> • Adoption applications must be in camera (closed court). • Non-parties and their legal representatives are excluded unless otherwise directed by the Court. 	The closed court procedures in Tasmania mirror the practices in other states, restricting transparency in adoption proceedings. The exclusion of non-parties, including adoptees themselves, from hearings or access to records reduces the opportunity for adoptees to understand the rationale behind adoption decisions. This limited access to information about one's own adoption process impedes the right to transparency and can hinder adoptees' efforts to reclaim their identity and gain insight into the legal processes that shaped their lives.

Legislation	The publication of information	Human rights analysis
Adoption Act 1988 (SA)	s. 31 The publication or disclosure of identifying information, or material tending to identify, a child, their parent/guardian, or any party to adoption proceedings without proper consent or authorisation is an offence. Exceptions: Written consent from the individual (if 18+), their parent/guardian (if under 18), or the Chief Executive (if under guardianship) allows publication. Alternatively, the court can authorise publication.	The strict prohibition on publishing identifying information serves to protect privacy, but it may conflict with the rights of adult adoptees seeking to understand their identity and access information about their origins. Furthermore, the provision's broad scope, which includes not only explicitly identifying information but also "material tending to identify," significantly increases the risk of prosecution for adoptees, effectively silencing adoptees by criminalising the sharing of their lived experiences. These provisions also restrict adoptees' ability to trace their biological family or understand the circumstances of their adoption. While consent mechanisms are in place, they may be ineffective if adoptees do not have access to their adoption records or the information necessary to make informed decisions.
Adoption Act 1984 (Vic)	The publication of identifying information about any party to an adoption (child, biological parents, adoptive parents, or guardians) is restricted, particularly during the prohibited	While the provision protects privacy, it may hinder adult adoptees' right to identity by limiting access to identifying information. For adoptees seeking to reconnect with biological relatives or understand their heritage, these

	<p>period from the initiation of an application to the final court order (or when guardianship ceases).</p> <p>Exceptions: Publication is allowed if the identified party consents. For children aged 10–17, both the child and their parent/guardian must consent. In exceptional circumstances, the court may authorise publication.</p>	<p>restrictions present significant obstacles. The requirement for consent from both the child and their parent/guardian complicates matters for adoptees aged 10–17 and may prevent full access to their adoption records. Furthermore, court discretion in authorising publication creates inconsistencies in the protection of adoptees' right to identity, depending on judicial interpretation.</p>
Adoption Act 2000 (NSW)	<p>s. 180A Disclosure or publication of identifying information about an adopted person, birth parent, or adoptive parent is restricted without lawful authority.</p> <p>Exceptions: Identified persons may consent to publication. The court can also authorise publication during proceedings, provided that all affected parties (12+ years old) have consented. The court can dispense with consent in certain cases, such as when the person is deceased, untraceable, or for other valid reasons.</p>	<p>The restrictions on publishing identifying information limit adult adoptees' ability to reclaim their identity and access their personal history. While the provision allows for some flexibility, the requirement for court authorisation or consent from affected parties creates barriers to transparency. In cases where consent cannot be obtained (e.g., deceased or untraceable biological parents), adoptees may be left with limited access to their origins, further undermining their autonomy and right to identity. The court's discretion also creates uncertainties about whether adoptees' interests will be prioritised in cases of conflicting rights.</p>
Adoption Act 1988 (Tas)	<p>s. 109. The publication of identifying information about prospective adoptive parents, children, parents, or guardians involved in adoption proceedings is restricted. Exceptions: Publication is permitted if authorised by the court, if information is obtained under Part VI of the Act, or for a birth parent named on the post-adoption birth certificate. Relatives of adopted persons over 18 may apply to the court for permission to publish identifying information.</p>	<p>The restrictions on the publication of identifying information are intended to protect privacy but may create challenges for adult adoptees seeking to reconnect with their biological families or understand their adoption histories. While court authorisation provides a potential pathway for disclosure, the process is subject to judicial discretion, which may not always align with the adoptee's right to access information about their heritage. Additionally, the requirement for relatives of adopted persons to apply for permission to publish identifying information may restrict opportunities for adoptees to gain insights into their origins, depending on the availability and willingness of family members.</p>

12. Recommendations

- 1.** Consult with adoptees to ensure their lived experiences are heard and valued
- 2.** Increase public awareness and education about adoption and its effects
- 3.** Provide free access to ongoing, accessible and affordable comprehensive support services, as requested by adoptees (Kenny et al., 2012)
- 4.** Review and amend the definition of child in the interpretation provision
 - a)** Remove part (b) from the definition of child and create a separate definition for adopted person.
 - b)** Amend Section 10A, Adoption of a child who has turned 18, by replacing child with ‘adopted person’.
 - c)** Ensure consistency in the use of child and adopted person throughout the legislation
- 5.** Amend provisions relating to consent of the child to include an evolving capacity stipulation
- 6.** Adoptees should maintain retention of their inheritance rights unless they provide explicit consent for disposal
- 7.** Amend Section 14 to ensure adult adoptees have a straightforward, no-fault process to discharge their adoption orders. The amendment of other Acts may be required to avoid unintended consequences of this change
- 8.** Amend the Act to ensure that adult adoptees can access their adoption records and identifying information in a straight-forward manner, without unnecessary conditions or discretion.
- 9.** Consider reforms to allow for greater transparency and accountability in adoption proceedings i.e. publishing anonymised judicial rulings, adoptee access to relevant court records, holding hearings in open court where appropriate
- 10.** Provide greater access to identifying information for adoptees. This could include clearer and more consistent pathways for adoptees to obtain consent or court authorisation to publish identifying information, reducing the barriers to transparency. Adoptees’ rights to access information about their identity and heritage should be the paramount consideration
- 11.** Moratorium on adoptions

A moratorium on adoptions under the Act is recommended as a transitional measure while pursuing the broader goal of phasing out adoption entirely in favour of alternative family care models. Adoption as a legal construct inherently fails to uphold key human rights principles, including autonomy, identity, and consent. Even with significant legislative amendments, adoption's foundational framework continues to conceptualise adoptees as children, restrict their autonomy as adults, and impose legal ties without their consent. A moratorium would acknowledge these limitations and aims to prevent further harm while creating space to develop alternative systems of care that better align with contemporary human rights standards.

Adoption undermines adoptees' autonomy by binding them permanently to decisions made during childhood, without a genuine mechanism to reclaim their identities. While provisions exist for discharging adoptions, these processes remain burdensome and fail to address the structural inequities of the current system. Furthermore, adoption disrupts the identity rights of adoptees by altering birth certificates and severing legal ties to birth families, erasing fundamental aspects of personal and cultural heritage. The issue of consent is also deeply problematic. Adoptees often cannot provide informed consent at the time of adoption, and birth parents often make decisions under complex social and economic pressures, raising serious ethical concerns. Additionally, the current legislative framework inadequately addresses adoptees' rights to access information about their origins, leaving significant gaps in transparency and accountability.

A moratorium would halt adoptions to prevent further injustices and allow time to develop and implement alternative care systems that prioritise guardianship, kinship care, and long-term foster care. These models offer permanency for children while preserving connections to their birth families and cultural heritage, addressing many of the systemic issues adoption cannot resolve. During the moratorium, efforts could focus on reforming the current adoption laws to improve outcomes for those already affected, including more accessible processes for discharge, greater transparency in information sharing, and enhanced support for adoptees.

A moratorium would also provide a window to invest in preventative measures aimed at supporting vulnerable families and reducing the need for alternative care arrangements altogether. Ultimately, the goal is to transition away from adoption entirely, as its inherent conflicts with fundamental human rights cannot be fully resolved through reform. By enacting a moratorium, the state acknowledges these shortcomings and takes a critical step

toward building a more equitable child welfare system that prioritises autonomy, identity, and self-determination for all individuals.

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