



Communities  
& Justice

# **MANDATORY WRITTEN INFORMATION ON INTRAFAMILY ADOPTION**

## **Information for Parents**

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## 1. Introduction

This document is called the ‘Mandatory Written Information on Intrafamily Adoption’ and is for parents who are considering adoption for their child.

Both parents of a child have the same rights in relation to planning for their child’s future. Adoption has consequences for all involved and it is important that you as a parent understand what adoption might mean for you and your child.

In NSW the *NSW Adoption Act 2000* requires that where a parent is considering consenting to the adoption of their child, you, as the child’s parent, must have the opportunity to read the information in the following pages and talk with an appropriately qualified person to ensure you fully understand what adoption in NSW means before you give consent.

Certain words are used in this booklet to explain the people involved in adoption arrangements:

- the child – is the person (of any age) who is going to be adopted
- parent(s) – are the parents who gave birth to the child
- birth family – any member of the child's original family
- relative – as defined in the legislation, means a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person, whether the relationship is of the whole blood or half blood or by marriage and whether or not the relationship depends upon the adoption of a person
- adoptive parent(s) – the person who becomes the parent of an adopted person by adoption
- adoptive family – any member of the child’s new family after adoption
- adopted person – is a person who has been adopted
- parties to the adoption – are the people involved in the adoption. In an intrafamily adoption this is:
  - the child who is being adopted
  - the parents who:
    - have given consent to the child’s adoption, or
    - have not given consent to the child’s adoption but have agreed to the Adoption Plan, therefore they will be treated as a party to the adoption for the purposes of the Adoption Plan
  - the adoptive parents
- DCJ – is the New South Wales (NSW) Department of Communities and Justice.

## 2. What is adoption?

The word adopt means ‘to choose and accept as one’s own’. Adoption is a legal process where the legal rights and responsibilities for a child are transferred from the child's parents to the adoptive parent(s).

In New South Wales, adoptions are made legally binding by the Supreme Court.

Intrafamily adoption is the term used to describe the adoption of a child by a step parent or relative. DCJ’s role in intrafamily adoption is limited to the provision of the ‘Intrafamily Adoption Information Package’ and to notifying a mother or father that their child has consented to their own adoption, where their child is aged 12 years or older but less than 18 years.

Following adoption, the child will become a legal member of the adoptive family and:

- will be issued with a new (amended) birth certificate
- have the same rights and responsibilities as any other child of the adoptive parent/s
- can take and legally use the adoptive parent’s/s’ last name if an order has been made regarding this
- will have an automatic right to inherit the property of the adoptive parent(s), just like any other children in the adoptive family
- their adoptive parent will be able to make all the parental decisions about the child’s upbringing.

An adoption order is permanent and lasts for all the child’s life.

## 3. What is ‘Open’ Adoption?

Adoption is now very different to the ‘closed’ adoptions that took place from the 1950s until the mid 1980s, where the parents and child had no contact or information about each other. The parents and adoptive parents did not get to know each other and there was a general atmosphere of secrecy. The child was often not told they were adopted or given information about their family.

Openness refers to the way the child is supported to remain connected to their family and cultural heritage. This occurs with an open attitude as well as actions and is an integral part of the current adoption legislation and practice in NSW.

Adoption recognises there is often benefit for children when both their families (birth and adoptive) remain in contact with each other after an adoption order has been made. An open attitude refers to the acceptance of the child having more than one set of parents and family, the willingness of birth and adoptive families to know about each other, exchange information and to build relationships through direct contact with each other, where possible. An open

attitude promoted by the adoptive parent(s) allows the child to feel comfortable to talk about their birth parents, other members in their birth family, their cultural heritage and their thoughts and feelings about being adopted, through their growing years.

## **4. The emotional and developmental effects of adoption**

### **For children**

Intrafamily adoption raises several issues that are familiar to children growing up in blended families. Children adopted by step parents or relatives in the past have talked about:

- feeling rejected by you
- a fear of losing you
- having divided loyalties between you and their adoptive parent(s)
- confusion about relationships because of the amended birth certificate
- anxiety about pleasing the custodial parent
- an inability to express their true feelings
- loss of contact with important extended family members, genealogical connections and knowledge of family history
- loss of inheritance
- regret about the amendments to their birth certificate and the loss of their legal ties to you.

Adopted children may also experience the lifelong effects of adoption. It is important for children to have information about your family background, culture, and medical history.

Children raised with openness, flexibility, understanding and an acceptance of their individuality will be less likely to struggle with feelings of grief, rejection, difference and "not belonging". Adoption arrangements that allow children to have some kind of contact with all family members, helps them to know who they are and why they were adopted.

### **For parents**

When you are thinking about the possibility of adoption for your child, you are likely to experience a range of feelings. Once you have made the decision for your child to be adopted you may have a sense of relief and feel that you have made the 'right choice' or you may continue to have feelings of uncertainty and regret.

Parents, whose children have been adopted, describe the pain of losing their child as being life-long. The pain may be worse at some times than at others. Although you may find ways of living with it you will always feel the loss of your child to some degree. Some parents have said that their physical and emotional health was affected, and they needed to seek ongoing counselling and support.

Adoption legislation allows and encourages you to have family time with or receive regular news, of your child, directly from the adoptive parents. This family time may bring joy and reassurance or satisfaction, but it may also remind you that someone else has the day-to-day care of your child. Following family time visits with your child, you may experience again what you have lost and deeply regret what has happened. Spending time with your child may bring with it a mixture of happiness and sadness.

As your child grows older, his/her needs change and develop. Your relationship with your child may be easier at some times than at others, causing you, at different times, to wonder whether you can cope with ongoing contact.

If you and your child were separated for many years before adoption was arranged, your time spent with each other might be easier now that a clear plan has been made. You both might feel a sense of release and be more able to move on with your relationship.

Being a non-custodial parent is often difficult; there is a strong community expectation that parents will look after their children. Some non-custodial parents say they don't feel like a parent. Often their friends don't know how to acknowledge their role, and parents can feel hurt and disappointed by this. You must develop your own way of marking special times like your child's birthday and Mother's or Father's Day.

### **Support Groups**

Other parents who are grieving have found it helpful to have professional counselling or to talk to other parents in similar situations. It is important to remember that there are supports available to you along the way – post adoption counselling, support groups and contact with other parents who have been through what you are now facing. See Section 17 Contacts for details of support groups.

## **5. A Child's Identity needs**

When considering an adoption application, the Supreme Court must consider the child's identity needs, their views, age, maturity, gender, background, and family relationships. The court will consider how adoption might affect your child's physical, emotional, educational needs, sense of personal, family and cultural identity.

### **The child's relationships with their parents**

You don't stop being your child's parent just because there is a breakdown of your relationship with your child's other parent, and your child never stops being the child of both parents. Over time your child learns about both parents and the role each parent has in his/her life.

### **The child's wishes and consent**

If your child is under the age of 12, they will have the opportunity to express their views about being adopted in an age-appropriate manner. Your child may see a psychologist or have

discussions with an Independent Assessor. Your child's consent to adoption is not required but their views and needs must be given due consideration by the Court.

If your child is aged 12 years or more, is capable of giving consent and has lived with their prospective adoptive parent(s) for at least 2 years, the child's consent to adoption is the only consent needed. They must:

- meet with a Registered (adoption) Counsellor and discuss adoption, before they can give consent
- have their capacity to give consent evaluated by a Registered Counsellor. If your child is not capable of giving consent, the Supreme Court may decide to dispense with their consent.

Your child can withdraw (revoke) their consent at any time before the adoption order is made.

### **Identity - your child's name at birth**

An important part of your child's identity is their name. The name your child is registered with at birth is your child's full legal name until it is changed by a later re-registration or at the time of making an adoption order. If you want the adoptive parents to keep all or part of your child's name this will need to be part of the discussion you have with them prior to the adoption application being filed at the Supreme Court.

A child over one (1) year of age will keep their names unless the Court is satisfied that the name change is in the best interests of the child.

The Court will not change the name of your child if they are aged 12 years or more unless your child has consented to the change. Sometimes an older child may wish to continue using their original last name or have a hyphenated surname incorporating both their birth and adoptive parents' surname.

### **The child's birth registration**

The making of an adoption order not only transfers parental responsibility for your child to the adoptive parent(s), but it will also result in your child's original birth registration being changed, to reflect his/her new name if the child's name is changed and legal parent(s). This creates a new legal identity for your child.

Following adoption, a copy of your child's original birth certificate is kept by the NSW at the NSW Registry of Births, Deaths and Marriages (BDM), and can no longer be used as the child's official birth certificate.

The NSW Supreme Court instructs the NSW Registrar of BDM to issue a new birth certificate for the child. The new amended birth certificate shows the following information:

- If a custodial parent and his/her new spouse make a joint adoption application, both adoptive parents are recorded as the child's parents.

- If a custodial parent consents to their partner adopting the child as a sole applicant, the parent and their partner are recorded as the child's parents.
- If relatives adopt your child the birth certificate issued will show them as the parents of the child.

In all of the above examples your details do not appear on the new certificate.

An Integrated Birth Certificate (IBC) is a form of birth certificate that includes information about an adopted person's parents and siblings at birth, as well as their parents and siblings after adoption.

An adopted person in NSW will receive a post-adoptive birth certificate and an IBC, both are legally recognised and contain the same registration number.

## 6. Alternatives to Intrafamily adoption

### **Name change through the Registry of Births, Deaths and Marriages**

If both parents agree for your child to have the same surname as their step-parent or the relative caring for them, an application for "Change of Name for a Child" can be made through the NSW Registry of Births, Deaths and Marriages. The new certificate issued will record your child's new surname but does not remove the parent's names from your child's birth certificate.

For more information contact:

NSW Registry of Births, Deaths and Marriages:

Phone: 13 77 88

Website: <https://www.nsw.gov.au/departments-and-agencies/births-deaths-marriages>

### **Orders made under the Family Law Act 1975**

Each parent of a child has parental responsibility for that child. Parental responsibility refers to the ability to make decisions about the care of your child, including deciding where your child will live and with whom your child will have contact. Following separation or divorce many parents can make their own arrangements to share parental responsibility and sort out contact between your child, the non-custodial parent and other extended family members. This can be done without the need for orders made under the Family Law Act 1975. If agreement can be reached it is possible to formalise this and you should seek legal advice or go to the Family Court website for information about how to do this.

If parents are unable to agree on arrangements for their children they may apply to the Federal Circuit and Family Court of Australia for a court order that stipulates each parent's responsibility.



Orders made under the Family Law Act 1975 are called "parenting orders" and relate to:

- who your child lives with
- the time a child will spend with another person(s) (who, where and how often)
- the communication a child will have with another person(s)
- who has parental responsibility
- child maintenance (financial support)
- any aspect of the care, welfare or development of the child

As someone who is concerned with the care, welfare or development of the child parents, a step parent, grandparents or other relatives of a child may make an application for parenting orders. Please refer to the Federal Circuit and Family Court's website. See Section 17 of this booklet for contact details.

## **7. The legal effects of adoption**

When an adoption order is made the child becomes regarded in law as the child of the adoptive parents. In New South Wales, adoptions are made through the Supreme Court.

When the adoption application is made, the court looks carefully at:

- the best interests of the child, both in childhood and later life
- the wishes and feelings of the child
- the parents' views, whether they have given consent to their child's adoption, or evidence about why the parents' consent is not required, see section 8 for more information about requirements for consents to an adoption
- if Aboriginal and Torres Strait Islander placement principles have been properly applied, that the culture, any disability, language and religion of the child and, as far as possible, that the child's given names, identity, language and cultural and religious ties have been taken account in the making of the Adoption Plan the arrangements for the Adoption Plan (where one has been prepared)
- the alternatives to adoption, and whether adoption is clearly preferable to any other order that can be made.

If the Court is satisfied with the above, they may proceed to make an adoption order. Once an order has been made, the adoptive parents will, from that time on, be the child's legal parents.

## **Obtaining a copy of the adoption order**

The adoptive parents will receive the adoption order from the Supreme Court. Parents can apply to the NSW Supreme Court for a copy of the adoption order. For more detail, see <https://dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/children-and-families/adoption/adoption-act-adoptions-post-2010.docx>

## **Who can access your child's amended birth certificate?**

Once an adoption order is made, adoptive and birth parents can apply for your child's amended birth certificate and IBC which will provide identifying information about the adoptive family. While your child is under 18 years, a birth parent must first obtain an 'Adoption Information Certificate' from DCJ Post Adoption Information Unit. DCJ can only refuse supply of this information if it would pose a risk to the safety, welfare or well-being of your child or their adoptive parents.

Your child and their adoptive parents can obtain a copy of the child's amended birth certificate at any time after the adoption. Where your child is under 18 years BDM require the approval of the adoptive parents to provide their IBC to them.

## **Who can access your child's original birth certificate?**

You, your child and their adoptive parents can obtain a copy of your child's original birth certificate at any time after the adoption. Post adoption, it will be marked 'not for official purposes.' Where your child is under 18 years BDM require the approval of the adoptive parents to provide this to them.

## **Inheritance**

Following the making of an adoption order, your child has an automatic right to inherit from his/her adoptive parents (subject to any will). Your child loses the automatic right of inheritance from you and members of your family unless he or she is specifically named as a beneficiary of a will (made before or after the adoption order).

Once the adoption order has been made, unless your child is already specifically named in your and your family members will, the wills would need to be altered to ensure your child's entitlement to inherit.

## **Is adoption permanent?**

Yes. An adoption order is a final order and is very rarely able to be changed. For this reason, it is essential that if you are considering adoption for your child, you have had the opportunity of exploring the alternatives to adoption.

## **Discharge (cancelling) of adoption orders**

The only grounds for a formal application to the Supreme Court for discharge of an adoption order are:

- if there is evidence the adoption order or the consent was obtained by fraud, duress or improper means
- if there are exceptional reasons why the order should be discharged.

## 8 Giving consent to adoption

### Who must agree to adoption?

Depending on how old your child is, there are different people who must agree to the adoption. Formally agreeing to adoption is called giving consent.

- If your child is under 12 years, the parent(s) and anyone who has parental responsibility for your child (through a Court order) is required to give consent to adoption. The court must consider your child's wishes when deciding whether adoption is right for them.
- If your child is 12 years or more, capable of giving consent, and has been cared for by the proposed adoptive parent for at least 2 years, the child's consent to adoption is the only consent needed.
- If your child is 12 years or more and not capable of giving consent, then the non-custodial parent's(s') consent to adoption is required. Any person who has parental responsibility for your child also needs to give consent to adoption.

### Do both parents have to give consent?

Yes. Adoption law states that both parents and anyone holding parental responsibility for a child must consent to the child's adoption. In a step-parent adoption the custodial parent's consent is not required if they are also one of the proposed adoptive parents in a joint adoption application with their spouse.

There are provisions in the Adoption Act 2000 which allow the Supreme Court to make a 'consent dispense order', if it is satisfied that it is in the best interests of the child to do so. This means that an adoption order can be made without your consent.

In intrafamily adoption matters the court may decide to dispense with a parent's consent in any of the following situations (where the court is satisfied that it is in the best interests of the child):

- the mother or father cannot be found, or identified
- the mother or father are unable to give consent due to their physical or mental condition
- there are 'serious concerns for the welfare of the child'

Should an order to dispense with the consent of a parent be sought, all reasonable efforts are required to be made to give the parent notice of the legal proceedings. The parent then has an opportunity to put their views before the Supreme Court. They may wish to seek legal advice or can be self-represented.

### **What do I need to do to give consent to my child's adoption?**

If you make the decision to give consent to your child's adoption the following needs to occur:

- You must receive a copy of this 'Mandatory Written Information on Adoption' at least 14 days before giving consent.
- You will need to see a Registered (adoption) Counsellor. They will make sure that you have been given this 'Mandatory Written Information on Adoption' and must make sure that you understand the legal effect of adoption and both the short and long term emotional effects of adoption on you and your child.
- You can give consent 72 hours after receiving registered counselling but no more than 30 days after.
- Consent is given when you sign a specific adoption consent document which is called an 'Instrument of Consent'. A copy of the Instrument of Consent is towards the back of this document.
- A suitably qualified person, who is separate and independent of the registered counsellor, must witness your consent. The witness must not be the solicitor who acts for the applicant prospective adoptive parent(s) or a partner or employee of the solicitor's firm.
- You will be given a copy of the 'Instrument of Consent' you completed and signed and a written notice informing you of the date on which the 30 day revocation period ends. During these 30 days you may revoke (withdraw) your consent at any time.
- Once your adoption consent has been given, and the 30 day revocation period has passed, you cannot change your mind about the adoption. If you change your mind you should seek legal advice.

If your child is Aboriginal or Torres Strait Islander you will also be asked if you wish to speak with a suitably qualified Aboriginal or Torres Strait Islander worker about how adoption is seen within these cultures, and the alternatives to adoption. If you do not want to speak with an Aboriginal or Torres Strait Islander worker, you will be given the 'Written Information on Adoption: Additional Information for Parents of an Aboriginal / Torres Strait Islander Child'. You will then be asked to sign a document that confirms you did not speak with an Aboriginal or Torres Strait Islander worker but have read and understood the written information given to you.

## **Children over 12 years**

If your child is aged 12 or more the following needs to occur:

- They must receive a copy of the 'Mandatory Written Information on Adoption for a Child or Young Person' at least 14 days before giving consent.
- They will need to see a Registered (adoption) Counsellor who will make sure that they have been given the 'Mandatory Written Information on Adoption for a Child or Young Person', make sure that they understand the legal effect of adoption and both the short and long term emotional effects of adoption on themselves and you.
- They can give consent 72 hours after receiving registered counselling but no more than 30 days after.
- Your child's capacity to give an informed consent must be assessed by the Registered Counsellor.
- Consent is given when they sign an 'Instrument of Consent'.
- A suitably qualified person, who is separate and independent of the registered counsellor, must witness their consent. The witness must not be the solicitor who acts for the applicant prospective adoptive parent(s) or a partner or employee of the Solicitor's firm.
- They will be given a copy of the 'Instrument of Consent' they completed and signed and a written notice informing them that they can revoke their consent at any time up until an adoption order is made.

If your child is Aboriginal or Torres Strait Islander they will also be asked if they wish to speak with a suitably qualified Aboriginal or Torres Strait Islander worker about how adoption is seen within these cultures, and the alternatives to adoption. If they do not want to speak with an Aboriginal or Torres Strait Islander worker, they will then be asked to sign a document that confirms they did not speak with an Aboriginal or Torres Strait Islander worker.

### **How do I revoke (withdraw) my consent?**

There is a period of 30 days during which you have the right to revoke (or take back) your consent to adoption.

You will receive a 'revocation notice' at the time of signing consent. You will also receive a written reminder no less than 7 days prior to the end of the revocation period. If you change your mind and want to revoke your consent, you must inform the Supreme Court by filling out the revocation notice.

The address of the Supreme Court is:

Attention: Adoption Clerk  
The Registrar of the Equity Division  
Supreme Court of NSW  
Queens Square  
184 Phillip Street, (PO Box 3)  
Sydney, NSW 2000

You can take the revocation notice to the Supreme Court yourself, send it by ordinary mail or by courier. The revocation notice must be in writing and must reach the Supreme Court by 5pm no later than the 30th day after you signed the consent documents. If the end of the revocation period falls on a weekend or public holiday, then the 30th day is taken to be the next business day.

Do not worry if you have lost or misplaced the revocation notice. You can write a letter stating clearly, **'I wish to revoke my consent to the adoption of my child'** with the following details:

- the name of your child
- your child's date and place of birth
- your name, address, phone number
- the date you gave consent to adoption
- sign and date your letter before sending it to the Court.

If you are worried or unsure about how to revoke your consent, you can ask for help from the adoption clerk at the Supreme Court or from a solicitor.

## 9. Report for the Court

If your child is under the age of 18 years the NSW Supreme Court will require a report from an approved Independent Assessor regarding the proposed adoption.

The Independent Assessor is trained by DCJ to prepare reports for the Court in adoption matters. During interviews the assessor will speak with your child, to explore their thoughts about the proposed adoption. The assessor will also try to speak with you to seek your opinion about the proposed adoption. The assessor will prepare a written report and send it to the Supreme Court.

The assessor's report will evaluate the reasons for the proposed adoption, the relationship between the applicants and your child, the role of you the non-custodial parent, and the benefits or disadvantages of adoption for your child (as opposed to any other legal order).

## 10. What is an Adoption Plan?

An Adoption Plan is a written agreement about what things will be like after adoption and outlines some or all of the following areas:

- the name your child is to be known by should an adoption order be made
- how your child is going to learn about who they are and where they came from – things like their culture and religion
- the contact your child will have with you and any other important family members like sisters, brothers, grandparents, aunts or uncles. The Adoption Plan will say when you will meet, where, how often and who will be there
- what kinds of information you will receive about your child – things like important life events

### Who is involved in an Adoption Plan?

In an intrafamily adoption an Adoption Plan is a plan agreed to by two or more of the following people:

- the child (for whom adoption is being proposed)
- the birth parent(s)
- the adoptive parent(s)

A parent who has not given consent to the child's adoption can also be involved and agree to the Adoption Plan. By signing the Adoption Plan the parent can demonstrate to the Court their agreement to the plan which means that they will be treated as if they were a party to the adoption.

### How is an Adoption Plan reviewed?

If an adoption occurs, and things change and contact arrangements are no longer meeting the needs of the child, you or any person who is named in the Adoption Plan, can seek the support of a post adoption service. See section 17 'Contacts'.

It is important that you, your child and your child's adoptive parents try to talk about the things that are not working so that you can all try to reach an agreement that best suits everyone's needs. If an agreement about changes cannot be made, any of the people named in the Adoption Plan are able to apply to the Supreme Court for the plan to be reviewed. If the Adoption Plan is registered at the time of the adoption order then a non-consenting parent who has not agreed to the Adoption Plan may still be able to enforce the Adoption Plan.

## **Registering an Adoption Plan**

Adoption Plans can be registered by the Supreme Court if those involved, who have agreed to the Adoption Plan, request this. If the Adoption Plan is registered it becomes part of the adoption order, meaning it is a legal order and everyone needs to comply with the arrangements agreed to in the Adoption Plan.

Should an adoption order be made, an Adoption Plan that you have signed gives you more certainty to ensure contact and information exchange continues through your child's growing years.

## **11. Step parent adoption**

A step parent adoption is where the parent caring for your child (the custodial parent) has remarried or established a stable de facto relationship and the custodial parent and/or their spouse apply to adopt your child.

Adoption may be being considered because they hope to:

- encourage a stronger parent-child bond between the step parent and your child
- create a legal relationship between the step parent and your child, so that the child will have equal rights with other children in the family to child support and inheritance
- allow the step parent to show their long term commitment to your child
- assist the step parent to demonstrate commitment to their partner by adopting your child
- distance your child from his/her non-custodial parent
- give a child who has no father recorded (on his/her birth certificate) a father figure.

Some of these motivations may not be in the best interests of your child or may have unintended consequences for your child.

### **The two ways that a step parent adoption application can be made:**

#### **1. Joint application by a parent and new spouse**

The custodial parent may apply to adopt your child jointly with their spouse (the child's step parent). If an adoption order is granted they will both be your child's adoptive parents. Subsequent children to the relationship will have full sibling status at law. For birth registration purposes, your child may be recorded as an older sibling on the birth registrations of younger children born to the relationship.

You are able to maintain involvement in your child's life and be a party to the adoption with roles and responsibilities set out in the Adoption Plan.



## **2. Sole application by the step parent**

The step parent may apply as a sole applicant to adopt your child. However the custodial parent's written consent to the application for the adoption order is required.

If the Court makes an adoption order in favour of your child's step parent alone, the custodial parent with whom the step parent is living does not cease to be the legal parent of your child. The parent and the adoptive parent will both have parental responsibility for your child (*section 95(1) & 95(3) Adoption Act 2000*).

You are able to maintain involvement in your child's life and be a party to the adoption with roles and responsibilities set out in the Adoption Plan.

## **12. Relative adoption**

A relative is defined in the Adoption Act 2000 as a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt, whether the relationship is of the whole blood or half blood, by marriage or by adoption.

When unable to care for your child, you may have requested that your parents, brother or sister temporarily care for your child. Many families care for a relative's child in this way, with the hope of the child eventually returning to the care of the mother or father. Relatives do not need to be authorised as foster parents to care for a child if their parents have made the arrangement

In some situations, relatives seek a Parental Responsibility Order (under the Family Law Act 1975 through the FCFCOA) so that they can make parenting decisions for the child, for example medical treatment, education and interstate or overseas travel. They may also need a court order to prove their entitlement for certain benefits or support services. When the placement of your child with a relative becomes long-term, some families ask about the child being adopted by the relative. Families considering this type of adoption arrangement should ask themselves:

- What ongoing contact will the mother and father have with their child?
- How will the mother and father adjust to permanently losing parental rights?
- How will the child interpret the adoption decision and handle feelings of rejection by the mother and father?
- What effect would adoption have on the family relationships?
- What will be the effect of the change in legal relationships within the family? For example: if an aunt becomes the mother, the mother becomes the aunt; your child's cousin becomes a brother or sister, etc.

- Why would adoption be preferable to other court orders available, such as parenting or parental responsibility orders made under the Family Law Act 1975?
- The reassignment of parental rights and genealogical relationships within the family across a generation. Your child's grandparents become mother and father; your child's parent and aunt or uncle become sisters or brothers; your child's cousins become nieces or nephews, etc.
- Your role with your child may not be acknowledged. You and your child are both stigmatised by having your legal parent-child relationship removed
- The relationship reflected on the amended birth certificate issued following adoption is likely to be confusing for your child and may influence the family or other adults to hide your child's true status.

### **13 Requirements for intrafamily adoption applicants**

Applicants must meet the following legal requirements:

- if the applicant(s) are a parent and step parent, the child must have been in their care for at least 2 years immediately before the application is filed unless the child is over 18 years of age or more at that time.
- if the applicant(s) are relatives, the child must have an established relationship with the applicant(s) of at least 2 years
- if the applicants are applying as a couple, they must have been living together for at least 2 years, immediately before the application for an adoption order
- be 21 or more years of age and 18 or more years older than the child, unless the court considers it is desirable to make the order even though the person(s) do not fulfil this age requirement
- be of good repute and a fit and proper person to fulfil the responsibilities of parents
- be resident or domiciled in the state of NSW when the application is filed or for a period of at least 3 months immediately before the day on which the application is filed.

The child to be adopted:

- must be present in the state of NSW when the application is filed or for a period of at least 3 months immediately before the day on which the application is filed.
- must be at least 5 years old (for a step-parent adoption application)
- as noted above must have been cared for by the applicants as their child before turning 18 for a step-parent adoption application
- must have an established relationship of more than 2 years for an intrafamily adoption application

- must give consent to their own adoption if they are aged 12 years or more and have been assessed as having the capacity to make an informed decision.

If the child was not born in Australia there may be special provisions that the court will need to consider

## **14. What does your child need to know?**

It is expected in open adoption practice that your child is aware of his/her origins, who their birth parents are and the proposed adoption application.

For step parent adoption applications, your child will be more than 5 years old at the time of the adoption application and therefore it is expected that both parents will have been helping your child to learn about all their family members and the different roles each parent, relative or step parent has in their life.

If your child is unaware or only has a limited understanding of his/her status, you and your child's other parent may need help with how to tell him/her. There are many helpful books available through libraries and bookstores. Books about human reproduction can help parents begin to explain the child's status.

## **15. Who prepares the adoption application?**

The Court may make an adoption order on an application made by a relative or step parent. Relatives and step parents may prepare and file their own application. It is strongly recommended that competent legal advice is obtained.

## **16. Costs**

To locate current fees for the provision of a Court Report by Independent Assessors and for Registered Counselling, please go to the DCJ website:

<https://dcj.nsw.gov.au/children-and-families/adoption/adopting-a-child/adopting-within-the-family.html>

Please note that there are filing fees payable by the parent making an application to the Supreme Court and if you choose to use a solicitor to assist you with the preparation of your application there may also be associated fees.

Parents who are not seeking the adoption order but are required to provide consent will be served notice of the application and can file a notice with the Supreme Court if they do not agree with the proposed adoption.

## 17. Helpful Contacts

### **Department of Communities and Justice: Open Adoption Records Access**

Postal address: Locked Bag 5000, Parramatta NSW 2124

Phone: (02) 9716 3003

Email: [adoption.permanentcare@dcj.nsw.gov.au](mailto:adoption.permanentcare@dcj.nsw.gov.au)

Website: <https://dcj.nsw.gov.au/children-and-families/adoption.html>

### **Department of Communities and Justice - Post Adoption Information Unit (PAIU)**

Post: Locked Bag 5000, Parramatta NSW 2124

Phone: 1300 799 023 or +61 2 9716 3005 (from overseas)

Email: [Adoption.Information@dcj.nsw.gov.au](mailto:Adoption.Information@dcj.nsw.gov.au)

Website: <https://dcj.nsw.gov.au/children-and-families/adoption/finding-information-on-past-adoptions.html>

### **The Benevolent Society Post Adoption Resource Centre (PARC)**

PARC provides information, counselling and support to people affected by adoption. PARC also has a bookshop and library on this site with a range of information on adoption.

Address: Level 2, 7-11 The Avenue, Hurstville NSW 2220

Phone: (02) 9504 6788 OR 1800 236 762

Email: [PARC@Benevolent.org.au](mailto:PARC@Benevolent.org.au)

Website: [www.benevolent.org.au](http://www.benevolent.org.au)

### **Relationships Australia**

Relationships Australia provide counselling services for families experiencing problems with marital relationships, separation and divorce, and parenting children in blended families.

NSW Head Office: Suite 102, 68 Waterloo Road MACQUARIE PARK NSW 2113

Phone: (02) 8874 8000 or 1300 364 277

Fax: (02) 9887 2809

Website: [www.relationships.org.au](http://www.relationships.org.au)

### **The Law Society of NSW**

This service can refer callers to private law firms practising in a particular area of law in a location convenient to the caller, as well as to firms with solicitors or staff who speak community languages. The service also refers callers to a wide range of government and non-government agencies that can provide free information or help.

Street address: 170 Phillip Street, Sydney NSW 2000

Phone: (02) 9926 0333

Website: [www.lawsociety.com.au](http://www.lawsociety.com.au)

### **Law Access**

Law Access is a telephone based legal information and referral service.

Phone: 1300 888 529

Website: [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### **Legal Aid NSW**

The Legal Aid Commission provides a free legal advice service at all Legal Aid offices. Legal representation is available in most areas of the law subject to a means and merit test. Appointments must be made for advice.

Street address: Branch offices are located around the state

Phone: 1300 888 529

Website: [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### **Community Justice Centres**

Community Justice Centres provide free mediation services to the community to help people resolve their own disputes. The service is free and confidential. Matters suitable for mediation are family and neighbour disputes, some workplace disputes and financial disputes.

Street address: Level 5, Parramatta Justice Precinct,

160 Marsden Street,

PARRAMATTA 2150

Phone: (02) 8688 7455 or 1800 990 777 (for general enquiries)

Email: [cjc\\_info@agd.nsw.gov.au](mailto:cjc_info@agd.nsw.gov.au) Website: [www.cjc.justice.nsw.gov.au](http://www.cjc.justice.nsw.gov.au)

### **Federal Circuit and Family Court of Australia**

The Federal Circuit and Family Court provides a confidential counselling service for parents who are separating or divorced and who have made application to the court regarding arrangements for their children in relation to residence, contact or other specific issues.

Street address: Level 2, 97–99 Goulburn Street, Sydney NSW 2000

National Enquiry Centre Phone: 1300 352 000

Email: [enquiries@familylawcourts.gov.au](mailto:enquiries@familylawcourts.gov.au)

Website: <https://www.fcftoa.gov.au/>

### **Intellectual Disability Rights Service**

This service is involved with the rights of people with intellectual disabilities. It provides legal advice, education, resources and publications to those with a disability, their family, carers and friends. It also assists solicitors working with people with an intellectual disability. Interviews are by appointment.

Ability Rights Centre

Legal Help and General Enquiries

Phone: (02) 9265 6350 (9am – 5pm, Monday to Friday)

Email: [arc@idsr.org.au](mailto:arc@idsr.org.au)

### **Centrelink**

If you feel you are unable to care for your child because of financial pressures, Centrelink delivers a range of payments and services for people at times of major change. Contact Centrelink to enquire about what payments and services you may be entitled to support parenting.

Phone: 136 150 - Centrelink Family Line

Website: [www.servicesaustralia.gov.au](http://www.servicesaustralia.gov.au)