



# ADOPTION PAST and PRESENT

By Isabel Andrews

Adoption has always been a state responsibility and so laws and practices vary across Australia. This article focuses on WA; however, the principles apply nationally, and the history of legislative and cultural change is similar in each state.

**F**or much of the last century, secrecy was considered crucial to the adoption process. Consequently, people are often surprised to learn that an estimated one in ten people have been personally involved in adoption. At the peak of adoption in Australia, 1971-72, there were nearly 10,000 new adoptions.<sup>1</sup> As each adoption directly affects up to five people (the child, two birth and two adoptive parents), another 50,000 people were personally touched by adoption in that one year alone. If you consider that each party to an adoption is part of a wider family and friendship group, then most people have a link to adoption.

Today, there are very few adoptions of Australian babies (known as local adoption). In WA, for example, there are usually two to eight babies adopted per year; the majority of adoptions are step-parent, foster parent or overseas adoptions. All states have very low numbers of local adoptions, and not all states allow step-parent adoptions.

### AN HISTORICAL PERSPECTIVE

In order to understand current adoption policies and practice, it is important to place them within an historical perspective. Adoption itself is as old as society, with different cultures using adoption for different social purposes. In some societies, adoption was a means of ensuring an heir. Formal adoption grew from the practice of removing children from neglectful parents and securing families for orphans and illegitimate children. Generally the child was not considered part of the adoptive family and worked for his or her keep. Children were often exploited, and adoptive law was initially founded to protect children from economic exploitation and to clarify inheritance rights.

The first modern adoption law was passed in Massachusetts, USA, in 1851. New Zealand was the first country in the British Empire to legalise adoption in 1881. Western Australia was the first Australian state to pass legislation in 1896, with other states following suit in the 1920s and 1930s.

### ACCESS TO ADOPTIONS INFORMATION

Adopted people have two birth certificates, an original one that records their mother, her age and address and their original name (generally the father's name is recorded only if they were married). When a child is adopted, a new 'birth' certificate is issued, recording their new adoptive name and their adoptive parents as 'the' parents.

In 1985, Victoria was the first state to allow access to the original birth information; in the next few years, all states followed. The next wave of legislation allowed birth parents to access the new certificate and, by the mid-1990s, all states except Victoria allowed such access. In Victoria, the Department for Human Services must obtain permission from the adoptee to release the amended birth certificate.

In order to search for their birth family, the searching party must apply to the appropriate state government adoption service for the relevant documents. Costs, procedures and the type of information accessible vary between states.

### Adoption in WA

**1896** – *Adoption of Children Act 1896* was passed. It did not provide for the confidentiality of the parties to the adoption. Adopted children retained their original names and simply added their adoptive parents' surname to their own.

**1921** – Adoption records became sealed for the first time. The rationale behind this was that secrecy would serve the interests of all parties. However, some have argued that sealing was never intended to restrict information between parties to the adoption, but rather to protect the records from public scrutiny. Adoptees had one birth certificate on which the adoption details were added.<sup>2</sup>

**1926** – Amendment to the *Adoption Act* introduced a second birth certificate. For the first time, an adoptee (regardless of age) could not access their original birth certificate. They received a new, amended certificate which named only their adoptive parents. This new secrecy was the result of lobbying from adoptive parents, and reflected the belief that all links with the birth family should be severed. Over the next 40 to 50 years, legislative amendments in WA and elsewhere led to the total closure of adoption records.

**1945** – Reciprocal arrangements were made with other states and territories to have original birth records closed on the granting of an adoption in any state.

**1949 to 1953** – Various amendments were made to ensure secrecy for all adopted children, including those born overseas.

**1970** – *New Adoption of Children Rules* amended forms so that the details of the relinquishing parents were not included. Before that, adoptive parents could usually see the birth parents' names on the forms they signed (although the names were sometimes covered or added after signing). In private adoptions, the relinquishing parent's name and address remained part of the 'Notice of Intention to Apply for Adoption Order', and was consequently available to adoptive parents.

**1985** – WA was the second state (Victoria was the first in 1984) to give adopted adults the right to identifying information about their adoption; that is, a copy of their original birth certificate, subject to there being no veto from a birth parent. Adoptees first had to attend a mandatory interview. Only non-identifying information was available if a birth parent had lodged an information veto. Birth parents could access only non-identifying information. Birth parents could lodge both an information or a contact veto (see below for definitions).

**1994** – A new *Adoption Act* enabled birth parents (subject to a veto by the adoptee) to have access to identifying information; that is, the amended birth certificate. Adult adoptees could lodge a veto, adoptive parents could lodge a veto effective until the child turned 18.

**2003** – No new contact vetoes could be placed after 1 June 2003; vetoes prior to this time were still valid.

**2005** – All information vetoes were removed on 1 June 2005 after the Department for Community Development (now Child Protection) attempted to inform each person with a veto.

A major difference between states concerns vetoes. Both adoptees and birth parents can place a veto. There are two types of veto:

- Information veto: no identifying information will be given at all (only in QLD, NT and SA).
- Contact veto: identifying information is given if the person signs a legally binding undertaking not to attempt to make contact with the objector.

Where vetoes exist, it is a criminal offence to contact, attempt to contact, intimidate or harass the person who lodged the objection. It is also an offence for a person subject to an objection to ask another person to act on his or her behalf by contacting the objector. Penalties can be quite severe: for example, in WA, breaches carry a maximum of 12 months' imprisonment or a \$10,000 fine.

Various contact veto arrangements apply around the country; Victoria is the only state that has never had any vetoes but, as discussed above, it is also the only state that has not given birth mothers access to identifying information. In QLD, vetoes are lifelong and continue beyond the death of the objector (their act is currently under review). In NT, they have to be renewed every three years and, in SA, every five years.

#### Birth fathers

Past adoption practice and the law have largely ignored birth fathers. Generally, a birth father's name was recorded on the

birth certificate only if the parents were married, regardless of his or the birth mother's wishes. It has been a source of great pain to many people to discover that their birth father is recorded as 'unknown', or is left blank, on the birth certificate, even when he consented to the adoption. Courts regularly dispensed with his consent, and there are many instances of men not knowing that they fathered a child.

Thus, an adoptee could be prevented from accessing half their biological history because the birth father was not involved in the initial adoption, or because the birth mother – for myriad reasons – was not prepared to divulge his name. As a mediator in WA, I have contacted many men who were unaware that they had fathered a child, or who knew about the child but did not consent to the adoption. While it is obviously a shock at first, most men are willing to discuss the situation and participate in DNA testing. Some have been quite delighted to discover that they are a father and have established a good relationship with the adult child.

In NSW, Victoria, Tasmania and SA, a birth father is recognised if his name was registered on the adoptee's original birth certificate; if his paternity has been established under the relevant state's status of children law; or if the relevant authority is satisfied that there is evidence that he is the birth father.

In QLD, identifying information about an adopted person's birth father can be released to an adoptee only >>

# AUSTRALIAN LAWYERS ALLIANCE Online Services Directory

Lawyers

AUSTRALIAN  
LAWYERS  
ALLIANCE

for the People

Do you need to find reliable and trustworthy service-providers for your clients?

- Actuarial Services
- Engineering & Ergonomics Experts
- Financial Services
- Forensic Accountants
- Legal Lending
- Litigation Consultants
- Medico-Legal Reports
- Occupational Therapists
- Software Consultants
- ... and more

Visit our Online Services Directory for a simple, user-friendly way to identify companies in the following areas:

[www.lawyersalliance.com.au/services](http://www.lawyersalliance.com.au/services)

No log-ins or passwords needed

## Secrecy was traditionally seen as crucial to the adoption process.

if the father gave his consent to the adoption and only if he did not lodge an information veto before 1 June 1991. Similarly, a birth father can obtain identifying information about his child only if he consented to the adoption and there is no veto.

WA allows the most access to information. It is the only state where an adoptee can access the birth mother's affidavit which, in most cases, records the name of the birth father, whether or not he knew he was named. Similarly, a birth father can access information about the adoptee if he was named in the affidavit or other documents.

### Licensing

In WA, only the parties to an adoption or a licensed mediator can contact another party to an adoption. Other states have no restrictions on who can contact another party to the adoption.

### Search and mediation

Every state adoption service produces some information on the search process and advice on contacting another party, but assistance is limited. Some states have post-adoption agencies that can help with all aspects of the process. Adoption Jigsaw provides an extensive service of search, mediation and support during the process. A licensed mediator, who is also a counsellor, makes the contact and supports both parties.

### LANGUAGE

While 'adoptive parent' and 'adoptee', or 'adopted person' are widely understood, great debate surrounds how we define biological parents who do not raise their child. Possibilities include biological, genetic, relinquishing, natural, birth or first mother/father. In WA, we have embraced the term 'birth mother/father'; some eastern states' agencies use 'natural mother/father'. Interestingly, the term 'real' is used by some to denote the birth parents and by others, the adoptive parent.

This may smack of semantics, but it has incited enormous debate, anger and divisiveness in some circles. In 2006, the convenors of an adoption conference in New York refused to accept my paper on 'birth mothers and infertility' unless I changed the term to 'natural or first mothers'. A keynote speaker at the conference pulled out because the conference organisers would not allow her to use the term 'birth mother'. It is a passionate issue for many, as it goes to the heart of what we mean by 'mother' and 'father'.

### A SOLUTION GONE WRONG

Adoption has historically been a solution to an unplanned pregnancy, plus it had the built-in bonus of providing a

child for infertile couples and, of course, a home for the baby. Families, doctors, lawyers and priests conspired to convince a pregnant woman that it was 'best for her and best for the child', regardless of her age, competence or future plans. Prior to 1973, there was no systematic, widely accessible financial assistance; unless the woman had her parents' financial support, there was in effect no alternative. While there were some dissenting voices that claimed that separating a baby and mother was unnatural and harmful, generally the community accepted that it was 'for the best'.

However, adoption has not proved to be a happy solution for many. Although often portrayed as a happy event, adoption is firmly mired in loss. In 1984, some groundbreaking research explored the long-term consequences of relinquishment of a child by its birth parents.<sup>3</sup> It found that birth mothers had decreased physical and psychological health and, unlike other forms of grief, for many it increased with time.

With death there is finality, but with adoption there is a lifetime of 'not knowing'. The child may indeed be loved, happy and supported by a family, or they may be deceased, abused or living with the psychological demons of not 'fitting anywhere'. When a baby dies, there is an outpouring of family and community grief; however, when a birth mother relinquishes her baby, she is supposed to feel grateful and lucky that her shame is no longer exposed. The study found that many women initially felt numb and were then overwhelmed with grief.

In 2006, I produced the first research paper on 'infertility and birth mothers'.<sup>4</sup> Because of the nature of my work, I was able to obtain a random sample of birth mothers. I found that 15 to 20 per cent relinquished their only child, leaving them with the additional grief of secondary infertility (the inability to have another child).

Adoptees are often seen as lucky – a bizarre notion when you consider that, in effect, they lose their entire family. Many presume that there is no 'real loss', as they have no conscious memory of their birth mother. Nancy Verrier, an American adoptive parent, teacher and psychologist, wrote *The Primal Wound*, a seminal book that explores the psychic wound for the child when mother and child are separated.<sup>5</sup> Many of my clients tell me she is describing their life. Adoptees are over-represented in gaols, guidance clinics, and other clinical settings.

Adoptive parents also struggle with the issues of raising a child who does not mirror their genes. Adoption gives the opportunity to parent, but it does not necessarily heal infertility. Adoptive parent, Ann James, writes with great honesty about the challenges of raising a son and daughter born to someone else.<sup>6</sup>

It is not possible here to give a real sense of the complexity of emotions and challenges for all the parties involved in adoption. It is never a simple legal transfer of a child from one family to another. In *Lifelong Issues in Adoption*, Silverstein and Kaplan assert that there are seven core issues for everyone involved: loss, rejection, guilt/shame, grief, identity, intimacy and mastery/control.<sup>7</sup> The presence of these issues does not indicate pathology;

rather, they are issues that evolve logically from the nature of adoption.

A testament to the need to 'connect' is seen in our reunion figures. Since 1978, when Adoption Jigsaw WA was established by adoptees desperate to find their roots, we have been responsible for 3,900 reconnections. Add to this the work of other agencies, government services and the unknown numbers of people who organise their own search and reunion, and it is evident that the 'need to find our roots' is deeply ingrained. Our oldest clients looking for their birth family were 85-year-old twins. They were delighted when we found their three birth siblings.

### ADOPTION NOW

Current adoption practice has been influenced by the knowledge that secrecy and past practice have had negative consequences, particularly for the adopted child.

Today, there are few local baby adoptions, and openness for new adoptions varies on a state-by-state basis. Openness varies from zero in QLD to WA's legally enforceable Adoption Plan, outlining agreed contact between the parties.

Around Australia, adoption orders are granted by different courts; WA is the only state where the Family Court is responsible. In other states it may be the Supreme, Magistrates or County Court. QLD still operates under a 1965 Act, whereby adoptions are processed by the director-general, and is an administrative process. It is currently reviewing this Act.

### STEP-PARENT ADOPTIONS

These are often lumped in with local adoption statistics, thus inflating the figures. In the past, step-parent adoptions were widely accepted. Today, professionals in adoption work generally support the notion that adoptees have a right to knowledge of and, if possible, a relationship with their biological family. The need for security and authority can usually be accommodated by legal orders other than adoption, which do not require a severing of legal ties.

In SA, Victoria and NSW a step-parent adoption can occur only in exceptional circumstances. In Tasmania, children under 12 can be adopted only in exceptional circumstances and, if over 12, with the child's consent. In QLD and ACT, adoptions can occur. The family is assessed in a similar manner to a 'stranger' adoption. In WA and NT, the Family Court has to approve an application for 'intent to adopt'. However, the Family Court has no mechanism to interrogate people itself, and consequently most have been approved. A recent review in WA resulted in the recommendation that if step-parents wish to adopt, they be subject to the same procedures as other adoptive applicants.

### OVERSEAS ADOPTION


This is now the most widespread form of adoption, and there has been considerable lobbying to increase the numbers of children being adopted. It is outside the scope of this article to address these issues. However, there have been many reports of illegal child-trafficking. For example, the US embassy in Hanoi issued a report in April 2008 on illegal

practices. Worldwide, there are more applicants for babies and toddlers than children requiring an adoptive home, while special needs children continue to languish in care. At the 9th Adoption Conference in Sydney in September 2008, Dr Ron Federici reported that in the USA over 30,000 adopted intercountry children had been returned to State care, tragically compounding the children's losses. Intercountry adoption creates even greater challenges for all concerned. ■

**Notes:** **1** *Putting the Pieces Together*, proceedings of the 7<sup>th</sup> Australian Adoption Conference, Hobart, 2000. **2** *Hansard*, 1921. **3** Robin Winkler and Margaret van Keppel, *Relinquishing Mothers in Adoption: Their Long-term Adjustment*, Institute of Family Studies, 1984. **4** Isabel Andrews, *Secondary Infertility in Birthmothers*, Jigsaw, 1987. **5** Nancy Verrier, *The Primal Wound: Understanding the Adopted Child*, Gateway Press, 1997. **6** Ann James, *Teddy Bear in the Corner: The True Story of An Adoptive Parent*, PARC, 1998. **7** Deborah Silverstein and Sharon Kaplan, *Working with Older Adoptees*, edited by Coleman, Tilbor, Hornby and Boggis, University of Southern Maine, 1990.

Additional information about adoption and links to all the relevant agencies and government departments can be accessed through Jigsaw's website at [www.jigsaw.org.au](http://www.jigsaw.org.au)

**Isabel Andrews** is the co-ordinator of adoption Jigsaw in WA.  
**PHONE** (08) 9388 1922 **EMAIL** [jigsaw@jigsaw.org.au](mailto:jigsaw@jigsaw.org.au)



# SCHOOLS

**Expert Reports on Bullying, Supervision, School Safety, Risk Management, Student Injury and Educational Administration at Pre-School, Primary, Secondary and TAFE Levels Plus School Organisational Risk Management Audits**

**DR KEITH TRONC**  
**BARRISTER-AT-LAW**  
 BA, BEd (Hons), MEd, MPubAdmin (Qld), MA (Hons), DipEdAdmin (New England), PhD (Alberta), LLB (Hons), GradDipLegPrac (QUT), FACEL, FQIEL, FAIM.

Contact: Dr Keith Tronc, PO Box 6490, Upper Mt Gravatt, Brisbane Q 4122, DX 40351 Upper Mt Gravatt QLD  
 Ph: 07 3849 2300 Fax: 07 3849 2500

**Dr Keith Tronc**, Barrister-at-Law and an APLA/ALA member of long standing, who has been invited to speak at seven APLA/ALA National Conferences, is a former teacher, school principal, TAFE teacher, university lecturer, solicitor and Associate Professor of Education. He assists numerous Australian law firms in educational litigation involving personal injuries, discrimination, bullying, sex abuse, breaches of contract, and TPA matters. Dr Tronc appears frequently in court in several States providing independent expert opinion on matters concerning education and the law. Dr Tronc has published four national textbooks and looseleaf services on schools, teachers and legal issues.