
Adoption, surrogacy and fostering

Summary

- There are laws that control the adoption of children in Australia and from overseas. Current adoption law recognises that children have the right to maintain links with their past, including their culture of origin.
 - In the adoption process, the birth parents voluntarily transfer all of their parental responsibilities and rights to the adoptive parents.
 - Children placed in permanent care come through child protection services and a court order transfers parental responsibilities and rights to the permanent caregivers.
 - Foster and other out-of-home care options are temporary arrangements that may be voluntary or result from a court order.
 - Altruistic surrogacy, where only out-of-pocket pregnancy expenses are covered, is legal in Victoria. A surrogacy arrangement between an intended parent and a surrogate is not legally binding.
 - Commercial surrogacy, where a fee is involved, is not legal within Australia but is legal in some other countries.
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When an infant or child becomes part of your family through adoption, foster care, surrogacy or other arrangements, there are laws and legal agreements that will outline your rights and responsibilities as a parent.

Adoption services

Adoption in Victoria is a permanent legal arrangement that provides a family for a child who cannot be cared for by his or her birth family. Adoptions, including the adoption of children from overseas, are arranged within a highly regulated framework.

Current adoption law recognises that children have the right to maintain links with their past, including their culture of origin.

For more information see the [Adoption](#) fact sheet.

Adoption law in Victoria

Adoption is the legal responsibility of the states and territories rather than a federal responsibility. Victorian adoption arrangements can only be made through the Department of Health & Human Services or an approved private adoption agency. The relevant law in Victoria is the *Victorian Adoption Act 1984* (the Act).

A child can be adopted if adoption consents have been signed or if the **County Court** has dispensed with the birth parent's consent. By law, if the birth father is known, he must be informed that an adoption consent has been signed. If he then establishes paternity, he must sign the adoption consent before the child can be adopted.

After the court grants an adoption order, a new birth certificate is issued which recognises the adoptive parents as the child's legal parents.

Infant adoption

Infant adoption programs generally involve children aged between two months and one year. The number of infants available each year for adoption is very limited. There is a particular need for families who can care for locally born children from disrupted backgrounds or children with disabilities.

Adoptive arrangements can sometimes start before birth. If everyone involved agrees to continue, a legal arrangement is made to cover issues such as prenatal care and contact after birth.

Health concerns and special needs

Sometimes infants placed for adoption may have minor health or medical problems. There may be some concerns

about the child's development or family background. If there are significant concerns the child is usually placed through the special needs program.

Placing a child for adoption

Anyone considering placing a child for adoption should arrange to see a social worker at an approved private adoption agency or through the Department of Health & Human Services Adoption and Permanent Care Services. All options will be discussed. If adoption is the final decision, arrangements will be made for formal consent and temporary care of the child.

Family rights and responsibilities

In the adoption process, the birth parents voluntarily transfer their full parental responsibilities and rights to the adoptive parents. The County Court of Victoria makes an adoption order giving the child the same rights and privileges as if born into the adoptive family, including the right of inheritance. The adoptive parents will have the right to make decisions about their child's healthcare, education and other long- and short-term issues.

Contact between birth and adoptive families

Adoption law has changed over the years. Current law recognises that adoption is a lifelong process and an adopted child has a past that should be acknowledged rather than hidden. 'Open adoptions' are encouraged, where adoption orders include:

- specified periods of face-to-face time between birth families and the child
- sharing of information between families throughout the child's life.

Eligibility for adoptive parents

There are no special qualifications for an adoptive parent. However, the Act requires that parents have been married or in a stable de facto relationship for at least two years before they apply to adopt.

In 2015, the state government commissioned a review to consider the legislative amendments required to permit adoption of children by same-sex couples under Victorian law.

International adoption

Adopting a child from another country can be a complex and sometimes frustrating process. Many children in the developing world are not legally available for adoption, although they may be separated from their parents.

The Victorian Intercountry Adoption Service (ICAS) works with a number of different overseas adoption programs. They offer a range of resources to help families find out about the different programs, requirements and eligibility criteria.

Permanent care

Unlike adoption, permanent care is not voluntary. Children placed in permanent care come through child protection services.

A permanent care order by the Children's Court transfers the custody and guardianship of the child to the permanent caregivers. In some situations, a parenting order may be granted. Legally, the permanent care parent will be responsible for both the day-to-day responsibilities and the long-term decision-making about issues such as education, health and residence. A permanent care order continues until the child is 18, although of course once the child becomes part of the family, the emotional bond and commitment continues for life.

For more information see the [Permanent care](#) fact sheet.

Foster and out-of-home care

Temporary care arrangements where children are placed with relatives, foster parents or in residential care facilities are called out-of-home care placements. These placements include:

- **foster care** – placement with foster parents and supported by community service organisations
- **kinship care** – placement with relatives and support from the Department of Health & Human Services or community service organisations

- **residential care** – placement in a residential care home staffed by a community service organisation
- **voluntary care** – placement where the parent consents to a voluntary arrangement for the child to live out of their care.

For more information see the [Foster care](#) and [Kinship care](#) fact sheets.

Foster care law in Victoria

Foster care is a temporary arrangement where a child is cared for by trained, assessed and accredited foster carers. Fostered children come from various cultural, religious and socio-economic backgrounds and can be any age (up to 18 years).

The Victorian Government funds foster care agencies, also known as community service organisations, to operate the foster care programs. The *Children, Youth and Families Act 2005* governs the role of foster carers and how foster care services are provided in Victoria.

Family rights and responsibilities

Foster and other out-of-home care can result from a:

- court order
- voluntary arrangement between the child's parent and a community service organisation.

If the placement is voluntary, the birth parent remains the child's legal guardian and is encouraged to visit the child regularly. If the placement is involuntary, a court order will outline legal rights and responsibilities as well as when the birth parents can have contact with the child.

Surrogacy

Surrogacy is an arrangement where a single person or a couple (the intended or commissioning parents) enter into an arrangement with a woman to carry their child. Usually, one or both of the intended parents provide the DNA for the child. After the birth, the surrogate voluntarily surrenders care of the baby to the intended parents.

For more information see the [Surrogacy](#) fact sheet.

Surrogacy law in Victoria

Surrogacy laws vary from state to state in Australia. In Victoria, surrogacy is generally dealt with by the *Status of Children Act 1974* and the *Assisted Reproductive Treatment Act 2008*. The Assisted Reproductive Treatment Act includes a number of requirements for both the intended parents and the surrogate when accessing assisted reproductive treatment services.

Assisted reproduction and surrogacy

The *Assisted Reproductive Treatment Act 2008* removed some of the access and inequality issues for in-vitro fertilisation (IVF) and artificial insemination (AI) services.

In Victoria, there are several registered Assisted Reproductive Treatment providers. A specialist panel, known as the Patient Review Panel, must approve a surrogacy arrangement before the provider can start treatment on a surrogate.

Altruistic surrogacy

Altruistic surrogacy is where the surrogate mother is not paid a fee or reward, apart from reimbursement for out-of-pocket costs during the pregnancy. Victoria has legislation dealing with altruistic surrogacy. Altruistic surrogacy arrangements are not illegal. However, they are not enforceable in a court.

If the surrogate mother refuses to hand the child to the intended parents after birth, the only legal option for the intended parents is to apply to the Family Court for a parenting order to allow the child to live with them.

Commercial surrogacy

Commercial surrogacy arrangements involve a fee. It is illegal to enter into commercial surrogacy arrangements within Australia.

It is not illegal for residents of Victoria to enter into overseas commercial surrogacy arrangements.

However, under the *Family Law Act 1975*, the surrogate mother will be considered as a parent of the child born in a commercial surrogacy arrangement. If the surrogate mother was in a married or de facto relationship at the time of conception and her partner consented to the procedure, then her partner will also be considered as a parent of the child.

Surrogacy arrangements and legal advice

A surrogacy arrangement between a commissioning parent and a surrogate is not legally binding. Therefore, all parties need to be fully aware of their legal rights and must seek legal advice and counselling before they enter into any surrogacy arrangement.

Where to get help

- Your doctor
- **Department of Health & Human Services Adoption and Permanent Care Services**
- Counsellor

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