

## Information about Discharging an Adoption Order in Qld

Under the *Adoption Act 2009*, a person may apply for the discharge of an adoption order by making an application to the Supreme Court.

An adopted person (adult), a biological parent of the adopted person, an adoptive parent of the adopted person or the chief executive (\*delegated officer of the Department of Child Safety, Youth and Women) may apply for the discharge of an adoption order.



If you were born in an overseas country and adopted by Australian citizens, it will be important for you to seek appropriate advice on how a discharge of your adoption may impact you personally including your citizenship status.

Applying for a discharge of an adoption order can be a very stressful and emotional process which can raise many issues regarding a person's sense of their own identity and place within their family and their community. It is highly recommended that the person wishing to apply to discharge an adoption order links in with Jigsaw Queensland or another post adoption support service.

### What does the 'discharge of an adoption order' mean?

The 'discharge of an adoption order' means the undoing or reversal of the legal effect of an adoption order. When an adoption is discharged by the Supreme Court, the legal effects are as though the adoption order was never made.

The biological parent/s become the legal parents again and the adoptive parents are no longer the legal parents.

A new birth certificate is issued which contains the name/s of the biological parent/s - the adoptive parent's names are no longer listed. This becomes the person's legal birth certificate and may be used for official purposes.

The effects of discharging an adoption order can be profound and an application should only be made after full consideration has been given to what the outcome will involve. Consideration should be given to the changes in relationships which will occur, including with adoptive siblings, children and subsequent generations of an adopted person, grandparents and extended family members etc. Consideration will also need to be given to how this may impact on legal documents such as a marriage certificate or children's birth certificates (where applicable).

### What are the grounds for the discharge of an adoption order?

Section 219 of the *Adoption Act 2009* states that an adoption order may be discharged if:

- (a) the order was made, or something was done for the purpose of making the order –
  - i. because of a false or misleading document or representation; or
  - ii. because a person acted fraudulently or used undue influence on another person; or
  - iii. in another improper way
- (b) a consent required for the adoption was not given freely and voluntarily by a person with capacity to give the consent;
- (c) there are other exceptional circumstances that warrant the discharge.

### **How do I make an application to the Queensland Supreme Court?**

You are able to make an application to the Supreme Court on your own however, seeking legal advice is strongly recommended. There are services available in Queensland which may provide free legal support and advice. A legal service provider may lodge the application on your behalf and attend the hearing as your advocate.

If you choose to apply for a discharge of an adoption order without legal support, you will need to complete and lodge an application with the Queensland Supreme Court.

An application form can be found on their website: <http://www.courts.qld.gov.au/about/forms>

Once in the list scroll down to Uniform Civil Procedures and select Form 005 for the application and Form 046 for the affidavit that you complete to accompany the application. An affidavit is required to accompany the application being made and it must be completed in accordance with the *Adoption Act 2009* (s219, s220). [www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2009-029](http://www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2009-029)

Your affidavit should be witnessed by a Justice of the Peace before you attend the Registry of the Queensland Supreme Court with your documents.

#### **Queensland Supreme Court Registry**

415 George St, Brisbane City QLD 4000

Telephone: 3247 4313

[www.courts.qld.gov.au/courts/supreme-court/supreme-court-registry](http://www.courts.qld.gov.au/courts/supreme-court/supreme-court-registry)

An application for the discharge of an adoption can be made without the permission of other parties such as biological parents or adoptive parents. However, the applicant will need to serve the other parties with copies of the application. This includes the adoptive parents, biological parents and the adopted person. The Department of Child Safety, Youth and Women (Adoption and Permanent Care Services) must also be served, and they may become a party to the court proceedings.

A discharge of an adoption order may still be made even if the other parties do not respond to the application and/or do not attend the court hearing.

Other parties to the adoption have a right to oppose the application for the discharge of an adoption order. In such cases the application may proceed to a contested hearing in the Court.

For further information about how to apply, please see section 221-226 of the *Adoption Act 2009* by following the link; [www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2009-029](http://www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2009-029)

### **What happens after an adoption order is discharged?**

After an adoption order has been discharged by the courts, Adoption and Permanent Care Services will be notified by the courts and provided with a copy of the discharge order. Adoption and Permanent Care Services will update all the relevant information held by this Department and the original adoption order will no longer be legally valid.

Adoption and Permanent Care Services will notify the Registry of Births, Deaths and Marriages (BDM) of the discharge and that the adoption is no longer in place. BDM will update the birth register with the information and will issue a new, legal, birth certificate containing the names of the parents at birth and the adoptive parents' names will no longer appear on the person's official birth certificate. As part of the court application, the person may ask for a preferred name to be included on this new birth certificate.

### **Legal advice or representation**

Independent legal advice and/or representation is highly recommended to anyone considering applying for the discharge of an adoption order.

The following is information about some of the possible services you may wish to contact, and the services can sometimes be provided pro bono (for free).

**Law Right** (formerly known as **QPILCH**) is a non-profit, community based legal service that coordinates the provision of pro bono legal services for individuals and community groups. Their website and contact details are provided below:

[www.lawright.org.au](http://www.lawright.org.au)

**Law Right (formerly QPILCH)**

Brisbane - PO Box 3631

SOUTH BRISBANE QLD 4101

Phone: (07) 3846 6317

Email: [admin@lawright.org.au](mailto:admin@lawright.org.au)

**Caxton Legal Centre** is an independent community organisation which provides legal advice and, in some cases, legal representation for people who are disadvantaged or on a low income. If unable to support your individual needs, Caxton Legal Centre may also make a referral for you to another available legal service:

**Caxton Legal Centre**

1 Manning Street

South Brisbane Qld 4001

Phone: (07) 3214 6333

Website: <https://caxton.org.au/>

**Legal Aid Queensland** give legal help to financially disadvantaged Queenslanders about criminal, family and civil law matters. Their website and contact details are provided below:

[www.legalaid.qld.gov.au/Home](http://www.legalaid.qld.gov.au/Home)

**Legal Aid Queensland**

Telephone: 1300 65 11 88 - for the cost of a local call (from a landline in Australia).

Monday to Friday, 8.30am to 5pm EST

Online enquiries: [www.legalaid.qld.gov.au/System-Pages/Contact-us](http://www.legalaid.qld.gov.au/System-Pages/Contact-us)

You may also be able to access a **Community Legal Centre** in your local area. Community Legal Centres Queensland provides support and advocacy for 33 independent, community legal centres operating across Queensland. To find a local centre, please follow the link:

[communitylegalqld.org.au/find-legal-help/find-centre/view-map](http://communitylegalqld.org.au/find-legal-help/find-centre/view-map)