Analysis of Proposed Legislative Amendment: The Regulatory Legislation Amendment (Reform) Bill 2025 – changes to the Adoption Act 1984 (Vic)

Contents

Key Points & Recommendations

What is being changed?

The Regulatory Legislation Amendment (Reform) Bill 2025 (the Bill) seeks to add four new sections (83A, 97A, 90A, 79C[1]) to the existing Adoption Act 1984 (Vic), (the Act/the Adoption Act).

Why?

These changes have generally been framed as -

- necessary adjustments
- minor adjustments
- the result of past reviews
- only allowing "limited" discretion.

A "nothing to see here, folks" approach has been taken.

But while some changes may appear straightforward and well-intentioned, on examination, questions arise about the justifications or explanations given for them.

- These changes are not merely administrative adjustments — they alter rights to personal information, access to identity documents, and protections around information sharing.
- Seven years ago, the Victorian Law Reform Commission (VLRC) Review of the Adoption Act 1984 recommended creation of a new access to information scheme, (including the incorporation of contemporary standards of transparency, accountability and fairness in the management of personal information, instead of "piecemeal amendments to the current provisions"), so why are piecemeal amendments being pushed through using omnibus bills, without these protections?

[1] 79C has not been examined here – it gives the Secretary access to adoption information held by the Births, Deaths & Marriages Department (BDM).

- The framing of reasons for the proposed changes uses generalised language like ‘family reunion’ with vague mentions of addressing shame and stigma, without providing clear justifications or showing direct links to relevant reviews and recommendations.
- Human rights concerns arise under the Charter of Human Rights and Responsibilities Act 2006 (Vic), that haven’t been acknowledged, particularly regarding the right to privacy, a fair hearing, cultural rights, and protection of life.

There has been no public education or consultation.

These changes are significant, and should have required public education and the opportunity for consultation of stakeholders. The Department of Justice and Community Safety (DJCS) has responded selectively to questions in two emails sent to them enquiring about aspects of this Bill. The question about whether there had been public education and public consultation on these changes was ignored both times.

Section 97A Summary of issues:

- Removing a right to be notified or consent before information is released to adult children or natural relatives is a significant change.
- Changing the amount of information an adult child or natural relative can receive is a significant change.
- Misleading statements in the Bill’s explanatory documents claim alignment with past inquiries but that doesn’t appear to be accurate.
- Balancing and tailoring information release and protections were discussed at length in the VLRC Review Report, Chapter 16, Access to adoption information. Any recommendations by the Commission were in the context of their recommendation of a new access to information scheme, which was to include extensive rewriting of the information section of the Act to incorporate contemporary standards of transparency, accountability and fairness in the management of personal information.
- Previously unresolved issues of information release and notification discussed in the VLRC Report appear to have now been decided behind closed doors by the DJCS, and will be brought in, piecemeal, without those protections.
- This amendment’s blanket approach is at odds with privacy and information rights recognised elsewhere in Victorian law.
- Under section 7(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic.), rights may be limited in certain circumstances, but this must be reasonable, necessary, justified and proportionate.
- These may or may not be acceptable changes, but the issues are that the changes are significant, they were not recommended in previous reviews, they are not in line with VLRC recommendations to resolve any changes like this as part of wider reform, and there has been no current consultation.

Section 90A Summary of issues:

- **90A(1)** is described as an introduction of powers to withhold access to information where there is a likelihood of causing harm or a risk to safety including from family violence, and it has been claimed by the DJCS that nothing in the current Adoption Act does this.
- But Section 91 of the current Act can be interpreted as enabling information to be withheld where there is possible risk to safety - see further discussion about this below under 'Section 90A - Added restrictions…'.
- If Section 91 already can be interpreted as having the power to prevent release of information when it is unreasonable to disclose, then bringing in 90A(1)(b) seems to be a duplication of existing powers, creating unnecessary complexity in the Act.
- The proposed placement of proposed Section 90A also means that consideration of release of information for any applicant outside of Division 2 would be insulated from other unreasonable disclosure considerations under Section 91 that might make release more likely. What is the reason for this placement when every other applicant (including organisations under 100A) are dealt with under Division 2?
- Why is the wording "causing harm" added at 90A(1) (a), and are there potentially even wider discretionary powers made available to prevent disclosure of information with the addition of this wording? What is the definition of "harm"?
- 90A(1) raises many questions including about the necessity of and reasons for its introduction, especially in the context of the potential amendment of the Limitations of Actions Act 1958 (Vic).

- **90A(2)** introduces a blanket discretionary power not to notify a person about release of their information. But the requirement to notify is already quite limited, and the proposed introduction of Section 97A limits notification requirements further.
- Under section 7(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic.), rights may be limited in certain circumstances, but this must be reasonable, necessary, justified and proportionate, which the introduction of 90A(2) does not appear to satisfy.
- This also raises questions about the necessity of, and reasons for its introduction.

Section 83A Summary:

- The stated intention of 83A is to allow the Secretary to release information, but even without 83A, a court or Royal Commission could compel disclosure lawfully.
- While it isn't strictly legally necessary, it may provide legal clarity, which could perhaps be a reasonable justification.
- But if the only goal was legal clarity for the Secretary, this could have been achieved much more simply without structurally separating the substance of 83A from Division 2.
- 83A is placed outside Division 2, insulating it from potentially wider fairness and openness tests under Section 91.
- This raises questions about the reasoning behind the application of 83A.

- The questions raised about Section 90A (1) also lead to further questions about its potential interaction with Section 83A, in terms of information release. This is in the context of pressure on the government to follow Recommendation 23 of the Inquiry into responses to historical forced adoptions in Victoria and amend the Limitations of Actions Act 1958 (Vic), which would increase wrongful abduction claims.

The fact that these changes and this Bill could get to the point it has without public knowledge, and the need for scrutiny, public education about the proposed changes, as well as the need for involvement of lived experience stakeholders and other organisations and stakeholders, only shows how overlooked and vulnerable those tied to the Adoption Act are. New legislation like this is not questioned, or it is only superficially examined, further compounding the effects of historical injustice.

Recommendations:

- These proposed amendments should be withdrawn, properly explained, and subjected to full public consultation before any further action is taken.

- There needs to be an explanation of how and why these changes were drafted and introduced with no involvement or consultation with or notification of stakeholders.

Introduction

This omnibus Bill seeks to amend over 14 Acts, including Acts related to recycling, environmental sustainability, domestic animals, electricity, minerals and housing, as well as adoption. Omnibus bills combine diverse issues into a single piece of legislation, which can reduce the opportunity for thorough scrutiny of individual components, raising transparency concerns and creating a risk that some provisions may be approved that would not succeed if debated independently.

According to the Explanatory Memorandum, the Bill "amends the Adoption Act 1984 to facilitate access to and the disclosure of information relating to adoptions.."

In the Statement of Compatibility, tabled in the Legislative Assembly 5th Feb 2025 there is the statement:

> "The Bill will amend the Adoption Act 1984 in line with recommendations from various inquiries and reviews. Firstly, amendments will ensure that the Secretary of the Department of Justice and Community Safety is able to disclose adoption information in response to a court order, subpoena, or request from a Royal Commission…… Amendments will also allow natural relatives of adopted persons to access identifying information about the adopted person, allowing them to contact family from whom they have been separated by adoption. This is consistent with government policy to assist in reuniting families and address shame and stigma around the Stolen Generations and other forced adoptions."

Section 97A Release of information to adult child/relative of adoptee

97A affects the release of information to the adult child of the adopted person under Section 96A; or a natural relative of the adopted person (defined as grandparent, brother, sister, uncle or aunt (whole or half-blood)), under Section 97.

The changes include that any requirements that the adopted person consent to or be notified about the release are overridden, and also the type of information the adult child or relative is provided is being restricted.

Under proposed Section 97A, the information to be provided to the adult child of an adopted person about the adopted person is:

- names (before/after adoption)
- DOB
- natural parents' names
- date of adoption
- adoption agency

Under proposed Section 97A, the information to be provided to the specified relative (the grandparent, brother, sister, uncle or aunt) of the adopted person is:

- names (before/after adoption)
- DOB
- natural parents' names
- date of adoption
- adoption agency
- "any other prescribed information"

This will be released with no consultation with or notification of the adopted person, or in the case of "known"[2] information when the adult child applies, without consent of the person whose whereabouts could be found (e.g., the natural mother).

In comparison to release of information under the Freedom of Information Act 1982 (Vic), (FOI Act), where third party consultation requirements are subject to very limited, specified exceptions - with extensive reference to case law, (see 1.57 to 1.79 in the FOI Guidelines), in this change under proposed Section 97A, no consultation - or even notification, of the adopted person about an application for their information by their adult children and the adopted person's natural relatives will be required in any application at all (except when the adopted person is under 18).

[2] "Known information" is defined as information that is not held in records, but the caseworker is aware of which could lead to finding out the whereabouts of a natural parent or relative of the adopted person. The concept of "known information" is unique to the Victorian Adoption Act, with other jurisdictions only legislating for release of recorded information. As such it raises separate questions about its interpretation and how often it is actually applied.

Summary of changes under Section 97A (where the adopted person is over 18).

Applicant	**Current Legislation**	**Proposed Changes (97A)**
Adult child of adopted person (Section 96A)	- All held information must be provided. No discretion is allowed. - The adopted person must be notified in writing. - if it's "known" information (not in records) and whereabouts would be disclosed, the consent of the person whose whereabouts would be disclosed needs to be obtained (e.g., the natural mother).	- Information will be provided and is: names (before/after adoption), DOB, natural parents' names, date of adoption, adoption agency. - No notification of the adopted person is required. - No consent to "known information" release is required.
Natural relative grandparent, sibling, aunt/uncle (Section 97)	- Caseworker discretion applies. - Release only if "desirable." - Written consent of adopted person required if alive and over 18 (this requires notification).	- Information must be provided and is the same list of information as above, plus "any other prescribed information." - No requirement for consent of the adopted person (and therefore no notification is required).

<u>Piecemeal additions instead of a new access to information scheme</u>

The following excerpts from suggestions about the proposed 'New access to information scheme', as described in the VLRC Report, demonstrate the concerns that the Commission had in 2017 about the lack of usual access to rights and protections of transparency, accountability and fairness in the management of personal information in the Act:

16. Access to adoption information

> 16.12 The Commission considers that there is no reason why a person applying for access to information under the Adoption Act should not have the same rights of review and correction as they would have if they made a request under the Freedom of Information Act. Similarly, there is no reason why the Department of Health and Human Services (DHHS) should be subject to different standards of accountability.

16.13 In addition, the Part VI access scheme does not incorporate the features of subsequent legislation that regulates the handling of personal information by government agencies and protects privacy:

• The Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) recognises the right of a person not to have their privacy arbitrarily interfered with.

• The Privacy and Data Protection Act 2014 (Vic), and its predecessor legislation the Information Privacy Act 2001 (Vic), requires government agencies to collect, store, use and disclose personal information in accordance with a set of Information Privacy Principles. 'Personal information' is information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

16.16 The Commission considers that the changes necessary to modernise the structure, language and content of Part VI are so extensive that the current access scheme should be replaced with a new one. While DHHS should be responsible for designing the new scheme, and has long experience and significant responsibilities under the current scheme, it should consult with the Privacy and Data Protection Commissioner, the Health Services Commissioner and the Ombudsman to ensure that it incorporates contemporary standards of transparency, accountability and fairness in the management of personal information by Victorian government agencies.

Trying to add piecemeal legislation without the protections that apply to those who aren't bound to the Adoption Act further compounds the human rights abuses inherent in adoption.

Claims that previous reviews made these recommendations are misleading:

Knowledge of the history of previous investigations in this area is essential to understanding why the changes associated with 97A that are proposed in this Bill are of such concern.

"The Bill will amend the Adoption Act 1984 in line with recommendations from various inquiries and reviews," Statement of Compatibility, tabled in the Legislative Assembly 5th Feb 2025. But these changes are NOT "in line with recommendations from various inquiries and reviews."

Issues around consent, notification and what information is provided were comprehensively investigated in the Review of the Adoption Act 1984 by the VLRC. Around half of Chapter 16: 'Access to adoption information' in that report is taken up with discussions on these topics.

Issues of notification were discussed in the VLRC report at 16.57 to 16.62. The removal of notification provisions in releasing identifying information to natural relatives was not proposed or recommended by the VLRC.

Under ‘Notification’ considerations, the VLRC stated:

> 16.58 VANISH proposed that people should be notified when information about them is going to be released under the Adoption Act. Ordinarily, people are notified if a relevant authority needs their agreement or consent to disclose the information, or is acting as an intermediary for someone who is seeking contact with a family member. Consent may be given subject to conditions.
>
> 16.60 Introducing a more general obligation to notify would be consistent with a requirement placed on the Registrar of BDM by the ART Act, which provides that:
>
> If the Registrar intends to disclose identifying information under this Division, the Registrar must make all reasonable efforts to give notice of the intended disclosure to the person to whom the information relates.

The VLRC recommendation about notification (again, as part of the wider reform of the new access to information scheme) was:

> Recommendation 79. When providing access to information under the Adoption Act which does not require the consent of the person to whom the information relates, the Secretary should be required to:
>
> > a. make all reasonable efforts to give notice of the intended disclosure to the person to whom the information relates and
> >
> > b. where practicable, give the person a reasonable opportunity before the information is disclosed to correct or add comments to any of the information that is inaccurate, incomplete, out of date or would give a misleading impression.

Access by natural relatives was discussed at 16.89 to 16.98 of the report, and this was in terms of removal of consent. All the VLRC suggested was that access for natural relatives be made “easier” but a decision of how to do this was not resolved, and any resolution was to be discussed in the context of wider reforms. VANISH argued that consent of the natural parent and the adopted person should be sought when releasing information to relatives:

From the VLRC Report:

> 16.95 The Commission considered whether consent requirements should be retained. VANISH submitted that it is important that the consent of both the adopted person and natural parent be sought. It told the Commission about situations, ‘in both closed adoption and open adoption’, where an adopted person and natural parent have become ‘isolated and disconnected from each other’ because ‘well-meaning relatives’ have made contact with the adopted person against the natural parent’s wishes. VLRC Report
>
> 16.97 “The Commission is not in a position to reach a conclusion, because it did not receive any evidence from adopted people on this question. It should be considered in the design of the new scheme. The Commission notes that the records of an

> adoption concern the adopted person and natural parent foremost. There is a question whether natural relatives should be entitled to all of this information, as opposed to information that simply identifies the adopted person. VANISH proposed that natural relatives should have differing levels of access to information, according to their connection to the adopted person. It proposed that the Adoption Act specify a 'hierarchy of rights', whereby the natural relatives most closely affected by the adoption—grandparents and siblings—have greater access to information than other relatives, such as uncles and aunts. A model like this may be appropriate. The degree of access and specific information that should be available to applicants under the new access to information scheme should be reviewed and decided in the design of the scheme.

So why were the deliberations and recommendations of the VLRC Review of the Adoption Act disregarded in proposed amendment 97A, and how can the DJCS justify that they have taken it upon themselves to make a final decision on this - and without the recommended protections of wider reform?

Another relevant review that these changes might have arisen from is the later Inquiry into responses to historical forced adoptions in Victoria with the Committee Final Report released in 2021 and the Government Response in 2022. But there were no recommendations about making these changes in that review either. The 'Rights of persons to access information under the Adoption Act 1984 (Vic)' were summarised at pages 271-272. Other than a summary, there was no discussion or recommendations about amending relative and adult child access in that review.

This begs the question of what "various inquiries and reviews" - as claimed in the Statement of Compatibility, this is actually claimed to be in line with?

Burden on resources as a reason

One reason given for the proposed 97A amendment is that it "relieves the current discretionary system of providing information, which is a considerable burden on the resources of the DJCS" (Statement of Compatibility, tabled in the Legislative Assembly 5th Feb 2025.).

On one hand, with 97A, the DJCS is arguing for removal of the discretionary system in release of information to relatives, but on the other hand they are arguing for wide discretionary powers under 90A. Apart from the issue of these powers already being available under Section 91, this appears to be contradictory.

Interestingly, of all possible changes discussed in the VLRC Review, and the absence of the recommended overhaul of information access in the Act seven years later, what is prioritised as needing to change is where administration of the Act is a "considerable burden on resources".

But convenience and workload is not an acceptable reason when making decisions about limiting rights.

Vague justifications and misleading statements in the Statement of Compatibility:

> "Amendments will also allow natural relatives of adopted persons to access identifying information about the adopted person, allowing them to contact family from whom they have been separated by adoption. This is consistent with government policy to assist in reuniting families and address shame and stigma around the Stolen Generations and other forced adoptions." Statement of Compatibility, tabled in the Legislative Assembly 5th Feb 2025.

This statement is misleading because anyone unfamiliar with the Adoption Act (and most are) would assume this amendment was newly opening up access by relatives, yet the entitlement of specified natural relatives of adopted persons to apply for access to information has been in the Act since 1984.

Instead, the change actually limits the right of the adopted person, (and, in some situations, the natural mother or other third party), to have control over their personal information, a move that is in contrast to how personal information is handled under the FOI Act. Under the FOI Act, third party consultation requirements (see 1.57 to 1.79 in the FOI Guidelines) are subject to very limited, specified exceptions, with extensive reference to case law and proper access to review. With these changes, there is a blanket removal of consultation and notification (except when the adopted person is under 18).

Using the general sentiment of 'family reunion' to justify this change to what has been shown in the past to be a controversial aspect of adoption legislation appears to be blatantly taking advantage of the lack of public education and consultation about these proposed changes. It also appears to be - sadly, taking advantage of the fact that many advocates involved in the VLRC review, who would have given attention to this, are no longer with us.

Introducing amendments that make significant changes like these (especially in the absence of a direct recommendation from previous reviews) without even properly informing, let alone consulting those affected — represents a serious overreach. Again, these changes aren't merely administrative.

Other points about Section 97A

- 97A introduces lists of information that can be provided to each applicant, so it appears it will likely reduce the amount and type of information that the majority of adult children and specified natural relatives are entitled to access. Where has this blanket reduction been addressed and discussed?
- Why have DJCS deemed the adult child of an adopted person entitled to less information than relatives of the adoptee? The list of information able to be provided to the adult child of the adoptee is different to that of the relatives. The relative list includes "prescribed information" and no information has been given about what this prescribed information will be defined as in the Regulations, or why the adult child is not to receive it.
- Why aren't other descendants of the adopted person not added as being entitled to information – e.g. their grandchildren? Surely, they would have more right to the

information than an aunt or uncle of the adoptee? Yet they must apply to the County Court under Section 100 with a report from the Secretary or an approved counsellor – a complex process. If DJCS is going to just add whatever they believe should change in the Act, why not this?

- Unlike the child of an adopted person, the age of the relative who can make the application is not restricted to over 18. Why not?

Some Human Rights implications of 97A

Under section 7(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic)., rights may be limited in certain circumstances, but this must be reasonable, necessary, justified and proportionate.

It is arguably not reasonable or proportionate to move from a 100% notification requirement about release of information, to zero notification requirements. This is not adequately justified as it is not the result of recommendations, and no consultation and education has been undertaken.

Section 97A - Human Rights concerns under the ***Charter of Human Rights and Responsibilities Act 2006 (Vic)*.**
Section 13 Protection of personal privacy Restricts unlawful or arbitrary access, disclosure or interference. **Section 24 Right to a fair hearing** Amendments to change access and notification regarding personal information and third-party information also engage the right to a fair hearing because of the lack of acceptable review processes and protections in that area under the Adoption Act. Adding further piecemeal amendments, while ignoring the need for oversight, statute, case law, and accessibility of adequate review processes in information release outside of a re-written access to information scheme and Adoption Act - as recommended by the VLRC, further limits rights by compounding the historical inequality inherent in the Adoption Act.

Section 90A Added restrictions on release of information generally

"Public officials will be empowered to better protect members of the community, with amendments to the Adoption Act 1984 allowing the Secretary of the Department of Justice and Community Safety to not disclose certain adoption information where they believe it may increase the risk of harm to another person, including family violence. Further amendments will allow the Secretary to not notify or seek consent from a party, thereby 'alerting' a person, in certain cases where a request for adoption information is received, and where the Secretary believes this action would increase a risk of harm." Statement of Compatibility, tabled in the Legislative Assembly 5th Feb 2025.

Section 90A (1). Release of information.

Proposed Section 90A (1) provides that if the Secretary/delegate reasonably believes that disclosure of information is likely to (a) cause harm to anyone who might be identified from the information, or (b) increase any risk to the safety of a person who may be identified from the information they will have discretion not to disclose that information.

The DJCS states that this does not exist in the Adoption Act currently:

> Currently the Information Provisions in Part VI of the Adoption Act 1984 provide no protections in circumstances where there is a possible risk of harm to a person, including from Family Violence. The new protection brings Part VI of the Adoption Act 1984 up to date with Family Violence provisions generally, relying on the definition of the Family Violence Protection Act 2008. (DJCS email 25/03/2025)

DJCS argue that the proposed discretion is consistent with broader principles of Freedom of Information (FOI) law, and that "[as] an example of a similar discretion, the FOI Act permits the Minister to refuse to disclose documents that would involve the unreasonable disclosure of information relating to the personal affairs of any person." (DJCS email 25/03/2025)

> From the FOI Act:
>
> > 33. Document affecting personal privacy
> > (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

But the wording at Section 91 in the existing Adoption Act about unreasonable disclosure of information relating to personal affairs is essentially the same:

> Division 2—Persons entitled to birth certificates or information
> 91 Interpretation
>
> > In this Division, a reference to information about an adopted person is a reference to information about the adopted person or the natural parents or

the relatives of the adopted person which the relevant authority is satisfied—
(a) is reasonably likely to be true; and
(b) does not unreasonably disclose information relating to the personal affairs of a natural parent, a relative or any other person.

Following DJCS using "broader principles of FOI law", as this same wording exists, then when interpreting the assessment of "unreasonable disclosure" in the Adoption Act, it is reasonable to refer to the guidelines for Section 33 of the FOI Act Would disclosure be unreasonable? for guidance. These guidelines comprehensively explain how to assess whether disclosure of personal information would be unreasonable and this includes consideration of risk to safety among other considerations.

So this power already exists in the Adoption Act. Also, in interpreting "unreasonable disclosure of information relating to personal affairs" at 91(b), as the Adoption Act has no published guidelines, this potentially gives even wider discretionary powers than if there were.

One difference that DJCS might argue for the addition of 90A(1)(b) is that in the FOI Act Section 33(2A) specifies that it is mandatory for the Minister to consider whether disclosure of information would endanger life or physical safety of a person:

> (2A) An agency or Minister, in deciding whether the disclosure of a document under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person, must take into account, in addition to any other matters, whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.

But 90A(1) doesn't enable this extra requirement, as it only says a relevant authority "may" determine not to disclose information, it doesn't say "must". Under existing Section 91 the Secretary "may" already be able to consider this, so 90A(1) adds nothing in that context.

What is not broken down or explained at all by DJCS, or in the Statement of Compatibility is the introduction at 90A(1)(a): that the disclosure of information is likely to "cause harm" to anyone who might be identified from the information. The possibility of the very wide application of this wording, especially as nothing similar appears the FOI Act legislation, is of grave concern. It allows questionably wide further discretion, particularly because it is being placed within an Act that the VLRC recommended - seven years ago - needed rewriting to bring it up to date with contemporary standards of transparency, accountability and fairness.

Except for the highly questionable proposed amendment at 90A(1)(a) about "causing harm" to a person, 90A(1) adds nothing to the Adoption Act that is not already there.

As there isn't a reason why Section 91 would not already be able to prevent release of information based on safety concerns, more questions arise:

- Why present 90A(1) as if it "fills a safety gap" — when this safety gap can already be covered by existing legislation?
- Why is Section 91 being ignored when claiming there is no capacity to prevent disclosure?
- If any change was needed at all, then why wasn't Section 91 adjusted or added to?
- Why is risk of "harm" added at 90A(1) (a) as part of the amendment,when it is not similarly included at Section 33(2A) of the FOI Act - which DJCS advise is "an example of a similar discretion"? (DJCS email 25/03/2025).
- Are there potentially even wider discretionary powers made available to prevent disclosure of information with the addition of "risk of harm"?
- With FOI information releases, risk to safety is a mandatory consideration as part of a raft of unreasonable disclosure considerations, which also include public interest. So why wouldn't risk to safety be similarly specified as a mandatory consideration under the umbrella of unreasonable disclosure in the Adoption Act?
- Why add this outside of Division 2?
- What are the other consequences of having this added outside of Division 2 if information can already be withheld?
- Is this intentional, so that the release of information for any applicant outside of Division 2 is insulated from other unreasonable disclosure considerations that might otherwise make release more likely?
- Does the placement and wording of 90A(1) have other effects that have not been declared, or are there effects that are not intended?

One difference that the introduction of 90A(1) makes:

The right of the adopted person to their original birth certificate becomes conditional under 90A(1).

Because the interpretation of "information" at Section 91 does not include the birth certificate of the adopted person, introducing Section 90A(1) effectively changes what appears to be the adopted person's right to their original birth certificate in the current Act into a conditional right.

This is a significant change that limits the rights of adopted persons and should have had extensive public consultation. Perhaps this restriction was the intention – or perhaps it wasn't intended at all?

Some Human Rights implications of the adopted person not being able to access their original birth certificate due to 90A(1):

Limiting the right of an adopted person to their original birth certificate potentially limits the right to life, as well as cultural rights under the Charter of Human Rights and Responsibilities Act 2006 (Vic), (the Charter). Also, under section 32(2) of the Charter, international law and comparative law may be considered in interpreting a human right, including the principle that every person has the right to recognition as a person before the law.[3]

The rights limitations of proposed Section 90A(1), in limiting the right to an original birth certificate, potentially restrict access to vital information and limit the right to form a full legal and personal identity. This fails to acknowledge the unique, identity-forming character of access to records for adopted persons. This information may be fundamental to medical, cultural, familial, and personal development.

Section 90A(1) - Human Rights concerns under the ***Charter of Human Rights and Responsibilities Act 2006 (Vic)*.**
Section 9 Right to life Denial of adopted persons access to information essential for discovering hereditary medical risks (e.g. genetic disorders, family history of cancer, heart disease, etc.) increases the risk that some people will be unaware of life-threatening conditions, miss early intervention, and die avoidably. By enacting a law that permits this risk the state is arguably failing its positive duty to protect life. **Section 17(1) Right to protection of families and children**. Any interference with family life (such as withholding access to family information) must not be arbitrary. **Section 19 Cultural rights** Rights are limited by preventing the adopted person from either knowing what their culture is or accessing information - limitation of the right to enjoy culture.

[3] For a discussion of Human Rights under Australian Adoption Acts, including relevance to recognition as a person under the law, see **Human Rights of Adult Adoptees in South Australia A Review of the Provisions of the Adoption Act 1988 (SA)** and Author Summary

Section 90A (2). Notification about information release.
If the Secretary/delegate reasonably believes that disclosure of information is likely to (a) cause harm to anyone who might be identified from the information, or (b) increase any risk to the safety of a person who may be identified from the information" they will have discretion not to notify or obtain the agreement of that person to give the information.

Yet there are already only quite limited situations where notification is required so this broad power appears disproportionate and unnecessary. If it was to be added, surely it could have been targeted where it didn't exist:

Current notification requirements

Notification/agreement IS NOT required when:
- the **natural parent** applies for the adult adopted person's information.
- the **adult adopted person** applies for their information, except where it is "known information".[4]

Notification and/or consent (which implies notification) IS required:

- when the adopted person is under 18, and the **adopted person or natural parent** apply for information, the adopters' consent is required.

- when the **adopters** apply, no information can be given about the natural parent unless the natural parent agrees in writing. If the adopted person is over 18, it is required that the adopted person is notified in writing before information is given to the adopters.

- when the **adult child of the adopted person** applies and the information could identify a natural parent or defined natural relative of the adopted person, the adopted person must be notified in writing. There is also another clause about "known information".[5] - **this notification requirement would be removed under proposed Section 97A.**

- when the **defined natural relative** applies for information about the adopted person, there is a requirement for the agreement of the adult adopted person, or if under 18, agreement in writing of the adopters. Also, the delegate has discretion that information is only released if they are "satisfied that circumstances exist that make it desirable so to do". **- this notification requirement would be removed under proposed Section 97A.**

[4] "Known information" is defined as information that is not held in records, but the caseworker is aware of which could lead to finding out the whereabouts of a natural parent or relative of the adopted person.

The concept of "known information" is unique to the Victorian Adoption Act, with other jurisdictions only legislating for release of recorded information. As such it raises separate questions about its interpretation and how often it is actually applied.

[5] If the information is "known information" and the whereabouts of the relative or natural parent may be ascertained from that information, agreement in writing from that person is required (unless they are dead or can't be found). If it is information from the records themselves (not "known information"), this will not trigger the requirement for agreement in writing.

- Because the proposed Section 97A means the requirement to notify or get the consent of the adopted person or natural parent when releasing information to other relatives is removed, then this only leaves needing consent or notification if the adopted person is under 18, or if the adopters apply – (unless the "known information" trigger is a common feature of information release[6]).
- But if there will hardly be any notification/consent requirements left after proposed amendment 97A is introduced, then why would the 'blanket' Section 90A(2) be proposed?
- Also, the same considerations about the interpretation of "risk of harm" as mentioned in 90A(1) are needed here. It allows concerningly wide discretion, particularly because it is being placed within an Act that the VLRC recommended - seven years ago, needed rewriting to bring it up to date with contemporary standards of transparency, accountability and fairness.

Some Human Rights implications of 90A(2)

Under section 7(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic)., rights may be limited in certain circumstances, but this must be reasonable, necessary, justified and proportionate.

The human rights limitations under 90A(2) are not reasonable, necessary, justified or proportionate, due to the limited applications already where notification is required. If 97A is passed, then this will further reduce these circumstances. Unless "known" information is common, then this is even less justified or proportionate. Less rights-restrictive, more tailored alternatives exist.

Section 90A(2) - Human Rights concerns under the ***Charter of Human Rights and Responsibilities Act 2006 (Vic).***
Section 13 Protection of personal privacy Restricts unlawful or arbitrary access, disclosure or interference. **Section 24 Right to a fair hearing** Amendments to change access and notification regarding personal information and third-party information engage the right to a fair hearing because of the lack of acceptable review processes and protections in that area under the Adoption Act. Adding further piecemeal amendments, while ignoring the need for oversight, statute, case law, and accessibility of adequate review processes in information release outside of a re-written access to information scheme and Adoption Act - as recommended by the VLRC, further limits rights by compounding the historical inequality inherent in the Adoption Act.

[6] This "known information" trigger is probably rare, but information from and consultation with DJCS would allow stakeholders to make an informed decision on its relevance to these proposed amendments.

Section 83A Release of records to court, investigatory/authorised entity

Section 83A allows disclosure of adoption records to a court for legal proceedings, and to other authorised entities, e.g., Royal Commissions etc.

It is claimed in the Statement of Compatibility that "Part VI of the Adoption Act establishes a strict regime for access to adoption records which restricts the Secretary from disclosing adoption information even with a court order or subpoena." But even without 83A, under general legal principles, courts and commissions can override confidentiality obligations and compel disclosure unless there is a successful objection determined by the court. Despite this, a good faith argument for why 83A has been introduced (in the absence of an explanation arising from public consultation and education) is that while it may not necessarily be required, 83A may remove a risk to the Secretary in obeying court or Commission demands.

But more information is needed on the background, justification for, and reasons for wording and placement of this section:

- If the only goal was simple legal clarity for the Secretary, couldn't this have been achieved much more simply and consistently by putting the substance of 83A in Division 2, where every other application for information release is covered (e.g. in the same way as when 100A was added in 2022[7])?
- What are the differences between 83A and 100A? Could they have been combined?
- Why wasn't this done at the same time, in 2022?
- Is it relevant that because 83A is placed outside Division 2, this insulates it from a wider "unreasonable disclosure" consideration under Section 91?
- The inclusion of Section 90A (1)(a) – which raises concerns about its wide discretionary power and the lack of similar wording including "risk of harm" in the FOI Act, and its positioning outside of Division 2 also, raises questions about its relationship with Section 83A. How does this proposed Section 83A interact with the proposed Section 90A(1)(b), if at all?
- The inclusion of Section 90A (1)(b) – which, on examination, appears to duplicate unreasonable disclosure at Section 91, and its positioning outside of Division 2 also, raises questions about its relationship with Section 83A. How does this proposed Section 83A interact with the proposed Section 90A(1), if at all?
- These questions are raised also in the context of pressure on the government to follow Recommendation 23 of the Inquiry into responses to historical forced adoptions in Victoria and amend the Limitations of Actions Act 1958 (Vic), which would increase wrongful abduction claims.

[7] Section 100A was added to Division 2 in 2022 to allow information sharing "at the request of a person, other than an individual". 100A covers release of information to organisations, either on request or on the initiative of the Secretary/Delegate.

Comments on the Dept Justice & Community Safety (DJCS) email explanations

"Most information sharing frameworks have such a discretion to ensure that people are protected from reasonable and foreseeable harm." DJCS email 25/03/2025

There is a practical and legal difference between information *sharing* frameworks and information *release* frameworks. Information is generally shared between prescribed organisations (Information Sharing Entities – ISEs). In information sharing frameworks, the information is shared because of a risk of violence, and it stays within a closed system of professionals, bound by privacy, security, and record-keeping obligations.

Part VI of the Adoption Act 1984 (Vic) – Access to information, has most similarities with the Births, Deaths and Marriages Act 1996, which does not include "such a discretion". And again, as discussed above under 90A, Section 91 already prevents release of information.

"The new protection brings Part VI of the Adoption Act 1984 up to date with Family Violence provisions generally, relying on the definition of the Family Violence Protection Act 2008." DJCS email 25/03/2025

The DJCS has referenced the amendments of other legislation due to the Family Violence Protection Act 2008 (Victoria) as a justification for adding Section 90A to the Adoption Act. But these focus on inter-agency sharing of information, not release of information to individuals.

Also, the Family Violence Protection Act 2008 was developed with the assumption that it works together and in association with other Acts, and that those Acts it affects have the usual, associated rights that provide the required human rights protections (oversight, statute, case law, accessibility of review process etc). These specific protections - instead of vague assurances of minimal application, are provided to the general population for very good reasons. This was why the VLRC recommended that a new access to information scheme should replace existing information access (and the whole Act should be replaced). Arguments about bringing the Adoption Act "up to date" by bringing in piecemeal legislation from elsewhere without the protections that legislation assumes (especially when there is already availability to prevent release of information) are unconvincing.

“In practice, it is intended that an Advanced Case Manager (ACM) in the Adoption Services Victoria (ASV) would assess the risk on the known facts of the application. Where possible and appropriate, the ACM would outreach to the person(s) whose identifying information is to be disclosed to determine if they have any real concerns. The person’s wishes would be taken into consideration in making a final decision.” DJCS email 25/03/2025

“It is expected that this provision would only apply in very minimal circumstances, where known facts of a case would trigger an assessment to be made. It is not intended that ASV will investigate or outreach to every person before their identifying information is disclosed.” DCJS email 25/03/2025

The following is the history of changes to the Act that were fought for by mothers and adoptees, and that needs to be known in the context of the above claims - from https://www.vic.gov.au/forced-adoption-history Forced Adoption Timeline, 2010's:

> Removal of requirement to obtain consent from an adult adopted person
>
> The Adoption Amendment Act 2013 (Vic) removed the requirement to obtain an adult adopted person’s consent before giving identifying information about the person to their birth parent. The 2013 Amendment Act introduced ‘contact statements’, which allowed an adult adopted person to specify their wishes in relation to contact by a birth parent, created an offence for the birth parent to contact the adopted person in breach of their wishes, and imposed a penalty of 60 penalty units (up to $9100 at the time). Parents, particularly those who had had their children forcibly removed, regarded the contact statements as hurtful and discriminatory.
>
> Removal of contact statements and offences
>
> After a public campaign, provisions relating to contact statements and the associated offence were removed by the Adoption Amendment Act 2015 (Vic). Adult adopted people can no longer make contact statements. However, the adopted person, parents and other parties are able to record their wishes regarding contact on the Adoption Information Register. As all contact is mediated by agencies, efforts are made to ensure an adopted person’s wishes are known and honoured.

Bearing in mind that there is already the ability for information not to be released under Section 91, so safety is already covered, the proposed wording of Section 90A appears more like an ability to reinstate a “version” of contact vetoes. This is *not* an argument that these changes are *the same as* the previous contact vetoes, instead it is an argument that they could lead to interpretations and situations where outcomes are very similar to the application of contact vetoes.

It seems likely that this would affect cases where contact vetoes had previously existed - because this information would be more likely to be on the record as “known facts” and because those who previously had contact vetoes may be more likely to advise DJCS of the possible harm they could suffer if they were able to be identified.

The possibility of the very wide application of the word “harm” in 90A(1) (a), especially as this wording does not appear in the FOI Act legislation, is of concern in this context. If provision will apply in only “very minimal circumstances” why isn’t the requirement of risk to safety enough? Why go further and add “risk of harm” which isn’t in the FOI Act?

The Adoption Act has no requirement for published guidelines on interpreting information release, no accountability requirements on information release, and no accessible review rights (VLRC Report). This already contravenes human rights principles of fairness, transparency, and proportionality. Even FOI law with all its protections including oversight, accessibility of review processes and transparent, clear and published guidelines backed by case law, etc., can be misinterpreted, so these protections around the application of FOI law are provided for very good reasons. In contrast, without corresponding protections, good intentions and vague assurances of minimal application of this law are understandably not reassuring.

Unfortunately, many of those who would be questioning this have since passed away or are aging and cannot be as involved, or just have not been made aware of this.

“It is important to note that appeal to the Court is available of any decision made by the Secretary/relevant authority about the release of information to an eligible individual: refer section 99 of the Adoption Act 1984. So if a decision was made not to disclose specific information, the information applicant (such as the adopted person) can appeal.” DJCS email 25/03/2025

Being forced to make an application to the County Court is not an appropriate or adequate avenue of appeal. When comparing the FOI Act with the Adoption Act, the difference is that discretion is strictly limited by detailed legislative criteria, and there are clear review rights in the FOI Act, whereas there are no similar protections under the Adoption Act. The FOI review process allows an applicant or affected third party to seek internal review by the agency, external review by the Office of the Victorian Information Commissioner, and final appeal to the Victorian Civil and Administrative Tribunal.

The FOI Act has comprehensive guidelines (publicly available) for making decisions about the release of personal information: Section 33 - Document affecting personal privacy. These guidelines reference extensive case law from the Victorian Civil and Administrative Tribunal (VCAT) ensuring that decision-making processes are consistent, transparent, and accountable.

As found by the VLRC in the Adoption Act Review, Chapter 16. Access to adoption information:

> 16.126 This procedure [appealing to the County Court] is not expressly a means for reviewing the relevant authority’s decision but does enable the applicant to challenge the result. The Commission is aware of only one application being made to the County Court, and it resulted in the applicant being granted access. This cannot be seen as a measure of the level of applicants’ satisfaction with information decisions. Going to court is a formal, intimidating and expensive experience.

As noted earlier in Chapter 16 of the VLRC Adoption Act review:

> 16.12 The Commission considers that there is no reason why a person applying for access to information under the Adoption Act should not have the same rights of review and correction as they would have if they made a request under the Freedom of Information Act. Similarly, there is no reason why the Department of Health and Human Services (DHHS) [now DJCS] should be subject to different standards of accountability.
>
> 16.13 In addition, the Part VI access scheme does not incorporate the features of subsequent legislation that regulates the handling of personal information by government agencies and protects privacy:
>
> • The Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) recognises the right of a person not to have their privacy arbitrarily interfered with.[12]
>
> • The Privacy and Data Protection Act 2014 (Vic), and its predecessor legislation the Information Privacy Act 2001 (Vic), requires government agencies to collect, store, use and disclose personal information in accordance with a set of Information Privacy Principles. 'Personal information' is information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.[13]
>
> • The Health Records Act 2001 (Vic) requires a person's health information to be handled in accordance with a set of Health Privacy Principles. 'Health information' includes personal information or opinion about a person's health, disability, use of health services, donation of body parts, organs or body substances, and genetic information.[14]

Section 8 of the Charter also provides for the right to equality before the law.

By adding piecemeal amendments outside of a re-written access to information scheme and Adoption Act - as recommended by the VLRC, this Bill allows the continuation of, and compounds the historical inequality inherent in the Adoption Act.

Section 90A(1) - Human Rights concerns under the ***Charter of Human Rights and Responsibilities Act 2006 (Vic)*****.**
Section 24 Right to a fair hearing Section 24 of the Charter protects the right to a fair hearing. Where the Secretary/delegate exercises discretion to withhold information based on undisclosed or untested claims, and the affected individual has no opportunity to be heard or to challenge the decision (or limited opportunity, eg County Court), this right is limited.

Note on Framing and Terminology in the Statement of Compatibility

It is also a concern that throughout the Statement of Compatibility for the Regulatory Legislation Amendment (Reform) Bill 2025 'Stolen Generations' seems to have become the descriptor used – almost interchangeably, when talking about "Forced Adoptions" in the context of amending the Adoption Act. For example: "This is consistent with government policy to assist in reuniting families and address shame and stigma around the Stolen Generations and other forced adoptions." While significant intersections do exist between Stolen Generations and Forced Adoptions, (and cultural considerations are essential), the Stolen Generations is not an interchangeable term for Forced Adoption. The lack of recognition in this Statement of Compatibility of *all* those who suffered harm, distress, loss of identity, loss of family connections, and missing or incomplete information due to Forced Adoption/unlawful abduction – as acknowledged in the Inquiry into responses to historical forced adoptions in Victoria and recognised in the official apologies effectively erases Forced Adoption and its victims from the historical record.

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Date: 30 April 2025