



Special Circumstances Policy

Background

The Department of Communities (Communities) is required within Section 80 of the *Adoption Act 1994* (the Act) to take reasonable steps to notify relevant parties of the death of an adopted person, or one of the parties to an adoption or a sibling of the adopted person.

Depending on the individual circumstances of the adoption and the life circumstances of the parties involved, it may be inappropriate to inform a party of a death. The Act provides the Director General of Communities with powers not to proceed with a notification of death in special circumstances.

This document outlines Communities' Special Circumstances Policy, including information about the role and responsibilities of Communities under the Act and the factors considered when determining whether to proceed with a notification of death.

Legislative mandate

Under section 80 of the Act, Communities is required to undertake a death notification process in relation to adoptions where Communities receives information that an adopted person, or one of the parties to an adoption, or a sibling of the adopted person has died.

Communities is required to inform the other parties where the Director General considers that it is reasonable and practicable to do so (s.80(1)(a) and it is appropriate to do so, after taking into account the provisions of the relevant Adoption Plan (s.80(1)(b).

Under section 80(3)(b), the Director General has discretionary powers not to proceed with a notification of death in special circumstances. The Director General also has discretionary powers not to proceed with a notification if the person has previously notified Communities that they do not wish to be notified (s.80(3)(a).

The Act and Adoption Act Regulations 1995 do not provide a definition of what factors constitute special circumstances.

The role of Communities in determining whether parties will be notified

When the death of an adopted person occurs in WA, the Registry of Births, Deaths and Marriages (the Registry) informs Communities and provides them with the available information and records about the individual, including a copy of the person's death certificate.

The Registry is only required to notify Communities about the death of an adopted person where the Order of Adoption was granted in WA and the death of the adopted person occurred in WA. There is no legislative requirement for the Registry to inform Communities of the death of a birth parent, sibling or other biological relative.

Family members with prior involvement or knowledge of the adoption may also contact Communities to inform of the death of an adopted person or other parties to an adoption, or a sibling.

Once all the available information about the adoption and relevant parties has been received, a decision will be made as to whether it is appropriate for Communities to notify the relevant parties. Communities' Adoption Services is responsible for undertaking notifications of death and for enacting Communities' Special Circumstances Policy.

Decisions to enact the special circumstances provisions in the Act are infrequent and made on balance with the best interests of the individuals involved in mind.

Factors considered in the enactment of special circumstances

Communities' Adoption Services consider a range of legal, social and psychological factors when determining whether to enact the special circumstances provisions. The presence of one or more of these factors does not necessarily mean that the special circumstances provisions will be enacted.

Importantly, a person's lack of awareness of an adoption is not considered to be a special circumstance.

The key factors considered by Communities when making a decision to enact the special circumstances provisions are provided in the table below.

Factor	Considerations
Previously expressed wishes	<ul style="list-style-type: none"> If the person to be notified has previously advised Communities that they do not wish to be contacted specifically in relation to being notified about a death (s.80(3)(a). <ul style="list-style-type: none"> Careful consideration is given in circumstances where the deceased had a congenital disease or illness and there may be a genetic pre-disposition to the disease or illness.
Physical and psychological safety	<ul style="list-style-type: none"> If the person to be notified has a known history of violence, sexual violence or family and domestic violence. <ul style="list-style-type: none"> Careful consideration is given to the safety of individuals who may be involved in the notification process

Internal and external review of decisions

The Act provides legislated pathways for internal and external reviews of decisions made by Communities, including decisions regarding the enactment of the special circumstances provisions. Where a person does not agree with a decision made by Communities, that person may apply to the Director General to review the decision.

Where a person is unsatisfied with the outcome of that review, they may apply to the State Administrative Tribunal for a review of the Director General's decision.

Communities respects the right of any person who is dissatisfied about a service to make a formal complaint through Communities' Complaints Management Unit. Complaints can be made by telephone on 1800 333 325 or online via [Communities Complaints and Feedback](#).