Can a Child Who Has Been Adopted Out Make a Claim Against Their Biological Parent's Estate?

Ordinarily, when a person has been adopted by another family, they are no longer legally considered a child of their biological parent and are therefore not entitled to make a claim against that parent's estate.

However, in the recent decision *Lise v Boulton* [2026] QSC 176 (read the case **here**), the Queensland Supreme Court found that, in some circumstances, the answer could be yes. In that matter, the applicant was successful in applying for her adoption to be legally discharged, **after** her biological father died. Whilst it is not yet determined as to whether the applicant will get anything from the estate, it was decided that the discharge of the adoption order gives her the "standing" to make a claim against her biological father's estate.

So, what happened exactly?

The applicant was adopted as a 1-year-old baby. She later reconnected with her biological father and maintained a strong relationship with him for roughly 40 years. The DNA test showed a probability of paternity being 99.99%. Her biological father attended her wedding, drove her bridal car and was

seated at the parents' table.

When he died in January 2025, his estate was worth approximately $1.52 million. His Will left Lise $50,000. After his death, Lise obtained an order in Western Australia (birth state) discharging her adoption and then sought further consideration from the estate.

Is she still his 'child' though?

The executor argued that she wasn't…at the date of death, the adoption order was still in place, meaning she was not legally the deceased's child. Reasonable thinking but, the Court disagreed.

Under Western Australian laws, once the adoption was discharged, the legal relationship was now treated 'as if the adoption order had never been made.' *(*Adoption Act 1988 (SA) s 14(7)) and *Lise v Boulton* [2026] QSC 176, [26]– [27].

Treston J ruled that this wording had 'retrospective effect' essentially meaning 'the text is to treat the adoption as if it had never taken place'. It also found that once the adoption was discharged, 'the applicant had never stopped being a child of the deceased'.

This meant she was able to apply for further provision from her biological father's estate through ss 40 and 41 of the Succession Act 1981 (Qld), to which our South Australian equivalent is Part 6 — Family provision of the Succession Act 2023 (SA), specifically, s 115(1)(e)… being a **child of the deceased person.**

So did the Court give her more from the estate?

Short answer. Not yet determined. This was a separate matter entirely. The decision in this matter dealt with eligibility. Whether the $50,000 gift already provided enough remained a question for another trial that considered her circumstances, estate size, competing claims and further evidence.

Basically, this decision opened the door for the claim. It was not the claim itself.

Could this apply in South Australia?

Lise v Boulton is a Queensland decision and does not bind South Australian courts BUT it may provide good guidance if similar circumstances arise here. Especially, in relation to ss 14(7)– (8) of the Adoption Act 1988 (SA) as this was directly referenced by Treston J.

This section explains simply, after the adoption discharge, the legal relationship is as if the adoption never happened.

This is important...because

s 115(1)(e) of the Succession Act 2023 (SA) identifies a 'child of the deceased person' as a person entitled to make a family provision claim. Section 16 then allows the Court to make rulings where an eligible person has been left inadequate provision for proper maintenance, education or advancement in life.

A South Australian court would need to answer this question for itself. But the matter of *Lise* gives us an awesome argument that a discharged adoption may 'looking back' restore the legal relationship between adopted child and biological parent... even after the parent's death.

What does this mean for you?

One of the key lessons from this case is that a biological child who was adopted may still need to be considered when preparing an estate plan, particularly where an ongoing relationship exists. Failing to consider these circumstances could increase the risk of a dispute after death.

If you are preparing a **Will**, **administrating an estate**, or are concerned about your eligibility to make a **family provision claim**, obtaining legal advice early can help you understand your rights and options.

The **Wills and Estates team** at Andersons can assist with tailored advice to your circumstances, **contact us** for more information.