

Discussion paper



Public consultation for the review of the operation of the *Adoption Act 2009*

Message from the Minister

Every child deserves to grow up in a stable and secure environment, with parents who support them to reach their full potential. For a small number of children, adoption is one way of achieving this.

Adoption is a sensitive and complex issue. There is a great need for continuous review of the legislative framework around adoption to ensure that adoption practice remains contemporary and reflects lessons learned.

The *Adoption Act 2009*, which commenced on 1 February 2010, was a major reform to adoption legislation in Queensland.

A provision was included in the new Act to undertake a five-year review to consider the impact of Queensland's adoption legislation on children and families.

Adoption remains a topic of interest in the community. Reforms have continued in other Australian jurisdictions and at a national level since the new Act commenced more than five years ago.

It is vital that we continue to reflect on the experiences of those impacted by adoptions to ensure that adoption in Queensland is best able to support the interests of children. Your stories are important and will be a vital part of informing the review.

I encourage you to participate in this review of the operation of the Act to ensure your views and experiences are considered.



The Honourable Shannon Fentiman MP

Minister for Communities, Women and Youth

Minister for Child Safety

Minister for Multicultural Affairs



Contents

Undertaking a review	2
National and state influencers	4
Adoption in Queensland	5
The consent process	6
The expression of interest and assessment process	8
Providing information about adoption	
Eligibility and suitability matters	
The step-parent application process	12
Openness and information sharing	13
National uniformity in adoption laws	16
Make a submission	17
Appendix: Adoption in Australia — Inter-jurisdictional analysis of legislative provisions	18

Undertaking a review

Adoption is a way for children to experience a permanent family placement between a child and his or her adoptive parents. Adoption changes the legal relationship between the child and his or her birth parents and extended family.

Adoption in Queensland is guided by the legislative principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount. Adoption forms part of a larger continuum of care options for a small number of children, who, for a variety of reasons, cannot be cared for by their families of origin. Since the commencement of the *Adoption Act 2009* (the Act), 170 children have had new and permanent families through adoption.

The Act requires the Minister to ensure the operation of the Act is reviewed, as soon as practicable, five years after commencement. Section 327 of the Act states that:

- the Minister must ensure the operation of this Act is reviewed as soon as practicable after the day that is five years after the commencement of this section
- the review must include a review of the effect of this Act on parties to adoptions and their families
- the Minister must table in the Legislative Assembly a report on the outcome of the review.

The Act commenced on 1 February 2010 and represented major reform to adoption legislation in Queensland. Queensland's previous adoption laws (*Adoption of Children Act 1964* repealed) dated back to the 1960s, and still largely reflected community values from that time. The then Queensland Government recognised the need for new adoption laws to support contemporary, child-focused and efficient adoption practice.

Based on community consultation and investigation of adoption best practice that spanned approximately 10 years, the *Adoption Act 2009* introduced:

- contemporary eligibility criteria and assessment processes
- improved birth parent consent requirements
- court-ordered adoptions
- open adoption
- reforms to give adopted people and birth parents greater access to identifying adoption information.

The review will examine the operation of the Act with specific reference to:

- the extent to which the Act has improved birth parent consent requirements, including to what extent the introduction of the decisions made at the Childrens Court provide for an additional and independent oversight in an adoption process
- the operation of the eligibility criteria of the Act and how the operation of the Act has impacted on couples expressing an interest to adopt, including those excluded from expressing interest
- the operation of the Act as it provides for how children can be adopted by a step-parent
- open adoption practices in Queensland
- how the operation of the Act has impacted on parties and eligible relatives to an adoption accessing adoption information, including the operation of contact statements.

The following sits outside the scope of the review and will not be explored:

- Obligations under the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, to which Australia is a signatory.
- Matters relating to intercountry adoption reforms being led by the Australian Government and matters falling under the Commonwealth's obligations as set out in the Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Programme.
- Matters relating to surrogacy in Queensland (*Surrogacy Act 2010*).

You are invited to make submissions about your experience of the operation of the *Adoption Act 2009*. To assist in guiding your responses, key questions have been posed throughout this paper. For some people, there may be parts of the paper that they feel does not apply to them, and there is no expectation that all issues are answered in the one response. Your responses will be kept confidential unless expressly stated otherwise.

National and state influencers

Adoption remains a topic of interest in the community, and is impacted by social services reforms underway both in Queensland and at a national level.

The National and Queensland apologies for forced adoptions followed recommendations made by the Senate Community Affairs Reference Committee report on the Commonwealth Contribution to Former Forced Adoption Policies and Practices, on 29 February 2012.

On 27 November 2012, the former Premier of Queensland, the Honourable Campbell Newman MP, made an apology for past forced adoption policies and practices in Parliament, on behalf of the Queensland Legislative Assembly.

The National Apology was delivered on 21 March 2013 by the then Prime Minister Julia Gillard, on behalf of the Australian Government.

The Australian Government invested \$11.5 million over four years (2013–17) to assist those affected by forced adoption practices as part of its response to the recommendations in the Senate Community Affairs Reference Committee report on the Commonwealth Contribution to Former Forced Adoption Policies and Practices.

Intercountry adoption reforms have been initiated by the Australian Government Attorney-General's Department. The reforms comprise a range of measures including:

- a national service to assist families and adoptees throughout the intercountry adoption process
- establishing a new intercountry adoption program between Australia and South Africa (in addition to consideration of the other priority countries identified in the Report of the Interdepartmental Committee on Intercountry Adoption)
- amendments to the *Australian Citizenship Act 2007* so that obtaining Australian citizenship can happen in a child's country of origin.

The Queensland Child Protection Commission of Inquiry considered at length the needs of children in out-of-home care, in cases where reunification is no longer a feasible case-plan goal, including exploring adoption, which is included in the recommendations. The Queensland Government has committed to implementing the recommendations from the Queensland Child Protection Commission of Inquiry.

Legislative reviews are underway in South Australia and Victoria, with both states addressing the specific issue of amending eligibility criteria to allow adoption by same-sex couples.



Adoption in Queensland

Adoption in Queensland must comply with the requirements of the *Adoption Act 2009* and the *Adoption Regulation 2009*. Adoption can only be arranged through Adoption Services which is part of the Department of Communities, Child Safety and Disability Services. It is an offence to privately arrange an adoption in Queensland.

Adoption services are provided to:

- parents considering adoption for their children
- children requiring adoptive placements
- people seeking to adopt children
- people seeking information or to lodge a contact statement in relation to a past adoption.

Key activity since the commencement of the Act are summarised in this paper for the period February 2010 to February 2015, to support the understanding of the adoption program and service activities. The data included can be provided without compromising the confidentiality requirements of the *Adoption Act 2009*. In some instances, data sets will be too small and unable to be shared.

The consent process

The *Adoption Act 2009* introduced significant steps and improvements to the consent process, and placed additional requirements and timeframes required for consent to be valid.

A birth parent cannot sign an Adoption Consent form until at least 30 days after the birth of their child, and at least 14 days after information has been given and pre-consent counselling has been completed. After signing an Adoption Consent form, a birth parent has 30 days in which they can revoke the consent.

During this time, a child may reside with his or her birth parent or family, or may be placed with foster carers approved by the department. Birth parents are encouraged to have contact with their child.

Birth parents can express preferences about the type of adoptive family they would like their child to be placed with, including the religion, cultural background, age and lifestyle of the couple.

Once birth parents' consents have been witnessed and the revocation period has ended, birth parents will be invited to contribute to the decision-making process regarding which couple may be best able to meet the long-term care needs of their child. There is no obligation for birth parents to contribute to the placement decision-making process. However, if birth parents feel they have the capacity or desire to be engaged in this process, they will be supported to do so.

Adoption is not always the outcome for a child during this time. A number of families may choose to resume care for their child or make arrangements for their child to be cared for with family.

Since the commencement of the Act, there have been 132 birth families who have engaged with Adoption Services while considering adoption for their child.

The introduction of the Act included amendments so that administrative decision-making was replaced with the Childrens Court responding to a range of matters. Adoption of a child holds significant and permanent legal consequences which makes it an appropriate matter to be decided by a court. The Childrens Court is a closed court.

The Childrens Court makes decisions about dispensation of consent, interim adoption orders, final adoption orders and orders about a child's name. In addition to the making of interim orders and the finalisation of adoption orders, the Childrens Court plays a role in recognising consent, and ensuring that the legislative requirements have been met.



The Queensland Government is committed to ensuring former forced adoption policies and practices are not repeated. One way of achieving this may be to ensure robust processes to obtain consent.

The Act also allows the court to dispense with the need for a parent's consent where specific criteria are met in certain circumstances, such as situations where the location or identity of the birth parent/s is unknown. Maintaining robust processes in the consent process is vital to ensuring the child's best interests are the paramount consideration, and that birth parent's rights and interests are protected.

55 applications for dispensation have been heard before the Childrens Court.



1. How has the Act impacted on people who have considered or who have given consent to adoption?

The expression of interest and assessment process

Providing information about adoption

Adoption Services holds information sessions for couples who want to receive information about expressing interest in Queensland or Intercountry adoption. The sessions provide information including how to adopt a child in Queensland, or from overseas.

Providing information is vital to make sure couples understand the process, have realistic expectations and have an understanding of the needs of the children in these programs.

There have been 15 information sessions held in Brisbane since the commencement of the Act. A total of 925 expressions of interest have been received between 2010 and 2015.

Eligibility and suitability matters

To be eligible to express interest a range of criteria must be met:

- The person is an adult.
- The person or the person's spouse is an Australian citizen.
- The person is resident or domiciled in Queensland.
- For a woman, the person is not pregnant.
- The person is not undergoing fertility treatment and has not undergone fertility treatment within the previous six months.
- The person does not have custody of:
 - a child aged less than one year
 - a child who has been in the person's custody for less than one year.
- The person has a spouse who:
 - is also eligible
 - is not the same gender as the person
 - has been the person's spouse for at least two years.
- The person and the person's spouse:
 - are living together
 - lived together for a continuous period of at least two years up to the time they made an expression of interest under division two.



2. Do you consider the eligibility criteria provisions of the Act to be fair and continue to meet the needs of children who require adoptive families?

If eligible, the couple's names are entered into the Expression of Interest Register. The couple then may be selected from the Expression of Interest Register to have their suitability assessed. If the couple don't receive a notice of selection for assessment within two years, their expression of interest expires. Couples can then lodge another expression of interest if they want to.

The number of couples to be selected for assessment from the Expression of Interest Register varies each year. This is due to the number of assessments being based on the anticipated needs of children likely to require adoptive placements.

Over the last five years, there have been a total of 420 couples who have expressed interest to adopt a child from overseas. 126 couples were assessed and their names entered onto the Suitable Adoptive Parents Register in that time. There have been a total of 130 adoptions.

For the Queensland program, there have been a total of 465 couples who have expressed interest to adopt a child. 79 couples were assessed and their names entered onto the Suitable Adoptive Parents Register in that time. There have been a total of 40 adoptions.

It is clear that in contemporary society, the number of prospective adoptive parents will continue to be higher than the number of children who require adoptive placements.

Broader social trends and changing social attitudes, which have made it easier for children to stay with their family or in their country of origin, may also impact on the number of children who are adopted. Also, the number of adoptions may be impacted by policy and legislative changes, such as the increased use of alternative legal orders in Australia, and improvements in local adoption practices in countries of origin.

44 in 130 adoptees from overseas were under 12 months of age at the time of placement. 25 out of 40 adoptees from the Queensland program were less than 12 months old at the time of placement.

58 in 130 adoptees from overseas were aged between one and four years at the time of placement. 14 out of 40 adoptees from the Queensland program were aged between one and four years at the time of placement.

28 in 130 adoptees from overseas were aged five and over at the time of placement. One adoptee from the Queensland program was aged over five years at the time of placement.

To best meet the needs of children, the assessment of prospective adoptive parents is a comprehensive process. It involves information being gathered and analysed from various sources so that adoptive parents are best prepared to meet the needs of a child or children throughout his or her life. The assessment is made against domains outlined in the Act. Information gathered for the assessment may include:

- criminal, domestic violence, traffic and child protection history checks
- home visits for assessment interviews
- talking with applicants, children and other adult household members and nominated referees, if required
- obtaining health information
- for Aboriginal or Torres Strait Islander children, having regard to the person's ability and willingness around a variety of domains to preserve a child's culture
- for a child of a particular ethnic or other cultural background, having regard to the person's ability and willingness around a variety of domains to preserve a child's culture.

The Act provides a clear statement about Aboriginal and Torres Strait Islander child placement, and ensures that information and counselling is provided in a culturally sensitive manner. The Act also places onus on the department to consult with an appropriate Aboriginal or Torres Strait Islander person in the selection and assessment of a couple to be considered to be the child's prospective adoptive parents, by ensuring the couple has a willingness to:

- help the child develop and maintain contact with the child's community or language group, Aboriginal tradition or Island custom
- preserve and enhance the child's sense of Aboriginal and/or Torres Strait Islander identity.

The Act also makes a mandatory requirement for an adoption plan for an adoption of a child who is Aboriginal or Torres Strait Islander, to ensure that the child might be assisted to develop a cultural identity and establish links with the child's cultural heritage.

A small number of Aboriginal children have been adopted since the commencement of the Act. This is consistent with the experience of all Australian jurisdictions.



3. Are there any additional aspects that should be considered in a suitability assessment?



The step-parent application process

A step-parent adoption severs the legal relationship between the child and their birth parent and is a significant and permanent legal decision. Eligibility criteria also extend to an application to adopt a child where the applicant is a step-parent.

A person may apply to the Chief Executive to arrange an adoption of a stated child if:

- the person is the spouse of a parent of the child
- the person, the person's spouse and the child are living together (have applied for a continuous period of at least three years up to the time of the application)
- the person has been granted leave under the *Family Law Act 1975* (Cwlth)
- the person is an adult
- the person or the person's spouse is an Australian citizen
- the person is resident or domiciled in Queensland
- the person's spouse is not the same gender as the person
- the child is at least five years old and has not yet turned 17 (the chief executive may accept an application relating to a child who has turned 17, in certain circumstances).

Eligible step-parent applicants also participate in rigorous assessment against the same criteria as local and intercountry applicants. The assessment also considers a range of matters including the significance of the child's non-custodial parent and family.

Because of alternatives available to recognise family relationships, many step-families formalise family relationships without adoption, through:

- parenting orders made under the *Family Law Act 1975* (Cwlth)
- legally changing the child's surname
- making arrangements to secure the child's inheritance rights.

Over the last five years, there have been 77 applications to adopt a child by a step-parent and 75 applications accepted. There have been a total of 40 adoptions of step-children since the commencement of the Act. The difference in numbers is explained by a number of factors, such as applications that are not finalised due to the applicant withdrawing from the process, a court not making an order in favour of the adoption proceeding, or the application taking an extended period of time to complete due to the complexities involved in step-parent adoptions.



4. What has been your experience of the step-parent adoption process?

Openness and information sharing

The *Adoption Act 2009* introduced a more open framework for future adoptions. This allowed the degree of openness in an adoption arrangement before the adopted person turns 18, to be arrived at through agreement between the birth family and the adoptive family.

Open adoption arrangements are voluntary and must be mutually agreed to by all parties to the adoption. When considering open adoption, it may be beneficial for contact between parties to commence through non-identifying correspondence (via the Mailbox Service), and incorporate more openness as parties become comfortable with having greater contact with each other.

Out of the 40 local adoptions, 39 had agreed to some contact at the time the adoption order was made over the last five years.



5. How has the Act impacted on those who are parties to an adoption or an eligible relative in accessing adoption information?

The Act recognises an objection that was in place under the *Adoption of Children Act 1964* (repealed). The objection automatically becomes a contact statement expressing a wish not to be contacted.

At the commencement of the Act, a number of contact statements transitioned over. This amounted to 2979 contact statements that transitioned. Since the commencement of the Act, 194 contact statements have been lodged, and 202 contact statements revoked.

A contact statement sets out a person's wishes about being contacted by another person, or people, to the same adoption. It may state that the person wishes:

- to have contact only by telephone
- to have contact with another person only at a neutral place in the presence of a mediator
- not to be contacted at all.

A contact statement remains in place until it is revoked by the person who lodged it, or until that person dies. It can be updated, replaced or revoked by the person who made it, at any time.

Where an adoption occurred before 1 June 1991, the Act allows identifying information to be provided about one person to another person only if they:

- have participated in an interview (in person or by phone) with an adoption officer
- have signed a document acknowledging they have been told the other person does not want to be contacted and it would be an offence to do so
- have been given the contents of the other person's contact statement, if applicable.

If a contact statement relates to an adoption that occurred after 1 June 1991, the Act requires the contents of the contact statement to be given to a person who asks for information, and to explain the other party's wish not to be contacted before providing the person with identifying information.

It is an offence (carrying a maximum fine of \$10,000 or up to two years imprisonment) for a person to contact or try to contact another person who they know has registered a contact statement expressing a wish not to be contacted. To date, this has not been enforced.



6. Should there be restrictions for how parties to the same adoption are able to make contact with each other?

Adopted people, adoptive parents, birth parents, birth relatives and birth siblings (a brother or sister who was not adopted) can request information about past adoptions in Queensland.

Requirements and processes for making an application are different, depending on whether the adopted person is a child, an adult (the adoption order was made before 1 June 1991) or an adult (the adoption order was made after 1 June 1991).

After an adopted person or birth parent (or eligible relative) applies for adoption information and copies of relevant documents, the information and documents will be provided to the person in a letter.

The number of people who apply for identifying information each year indicates a decreasing trend.

Applications for identifying information by adults, by person lodging the application and year of application 2009–10 to 2013–14 are as follows:

Figure 1: Applications for identifying information, by adults

2009–10	2010–11	2011–12	2012–13	2013–14
711	585	537	518	393

In total, there were 2963 persons who were provided information about their adoption experience, or that of a close relative. 850 applications were ineligible to receive adoption information under the Act.

The term ‘ineligible application’ includes those applicants who later submit a valid application, or where no adoption is recorded in Queensland, or applications are made by ineligible relatives.

Figure 2 also illustrates the number of applications that have been made for identifying information since the Act commenced in 2010. Adopted persons made the most applications for adoption information.

Figure 2: Number of applications for identifying information since 2010, by applicant

Applicant	Number of applicants
Adopted person	2152
Adoptive father	11
Adoptive mother	20
Birth father	67
Birth mother	363
Other birth relative(s)	294
Other adoptive relative(s)	10
Child of adopted person	16
Unknown (not recorded in system)	30
Total	2963

Some people may make an application for non-identifying medical information. Non-identifying medical information is information about a person’s medical background which does not include information about the person’s identity or anything that would allow them to be identified.

An adopted person or adoptive parent (depending on the child’s age) can send a written request for non-identifying medical information to Adoption Services, who may then contact the birth parent or other biological relative to ask them to provide up-to-date family medical information.

A contact statement does not prevent Adoption Services asking for the information.

There have been 76 exchanges of non-identifying medical information since the commencement of the Act.



Image: davidf / iStock

National uniformity in adoption laws

Although Queensland's legislation is largely consistent with other jurisdictions, there are some areas where national consistency has not been achieved, presenting an opportunity for review. Refer to Appendix: *Adoption in Australia — Inter-jurisdictional analysis of legislative provisions*.

The information in the appendix shows a comparative summary of key areas across state and territory adoption legislation. It is not intended to provide in-detail analysis for each particular legislation, as this can be sourced by contacting the jurisdictions directly.



7. Are there approaches in other jurisdictions that Queensland could consider?
8. What is your experience or views of adoption in Queensland over the last five years?
9. Is there anything else about your experience with adoption in Queensland that you would like to tell us?

Make a submission

To ensure we understand the impacts of the operation of the *Adoption Act 2009*, you are invited to make submissions about your experience over the last five years.

Submissions can be made by:

Email: adoptionactreview@communities.qld.gov.au

Mail: Department of Communities, Child Safety and Disability Services
Child and Family Legislative Review
PO Box 806,
Brisbane Qld 4001

Submissions close Friday 11 March 2016 at 5 pm.

Please indicate whether you would prefer any parts of your feedback to remain confidential. Submissions not marked as confidential may be published in full or quoted in public documents. Please indicate your interest in adoptions, for example, if you are an adopted person, please tell us in your response.

Appendix: Adoption in Australia – Inter-jurisdictional analysis of legislative provisions

(This information is current at the time of publication and subject to change. It is therefore recommended that confirmation of the information below is made by accessing the relevant legislation)

	Queensland	New South Wales	Victoria	ACT	Tasmania	Northern Territory	South Australia	Western Australia
Broad legislative provisions								
What is the adoption legislation?	<i>Adoption Act 2009</i> <i>Adoption Regulation 2009</i>	<i>Adoption Act 2000</i> <i>Adoption Regulation 2003</i>	<i>Adoption Act 1984</i> <i>Adoption Regulation 2008</i>	<i>Adoption Act 1993</i> <i>Adoption Regulation 1993</i>	<i>Adoption Act 1988</i> <i>Adoption Regulation 2006</i>	<i>Adoption of Children Act 1994</i> <i>Adoption of Children Regulations 1994</i>	<i>Adoption Act 1988</i> <i>Adoption Regulations 2004</i>	<i>Adoption Act 1994</i> <i>Adoption Regulations 1995</i>
Does the adoption legislation promote the interests and/or welfare of the adopted person as paramount?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are there specific provisions for Aboriginal and Torres Strait Islander children?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is open adoption encouraged?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criteria to adopt								
Can single people apply?	No — unless the Chief Executive invites a person to be assessed to meet the needs of a particular child	Yes	No — unless the applicant meets the placement needs of a particular child	Yes	Yes	Yes	No — exceptions apply	Yes
Can de facto couples apply?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Can same-sex couples apply?	No	Yes	No	Yes	Yes	No	No	Yes
Minimum length of relationship	2 years living together	2 years living together	2 years living together	3 years living together	3 years living together	2 years married	5 years — exceptions apply	3 years living together
Can the person be undergoing fertility treatment?	No	No	No	Not specified	No	Not specified	Not specified	Not specified
Can the female applicant be pregnant?	No	No	Not specified	Not specified	No	Not specified	No	Not specified
Post-adoption								
Can all parties to an adoption apply to access adoption information?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Can a party to an adoption record their wishes about contact with another party to the adoption?	Yes — conditions apply	Yes — conditions apply	Yes	Yes — conditions apply	Yes	Yes	Yes	Yes — conditions apply
Are there penalties attached to breaching registered contact wishes or preferences?	Yes	Yes	No	No	Yes	No	No	No

© The State of Queensland (Department of Communities, Child Safety and Disability Services) 2015

Copyright protects this publication. Excerpts may be reproduced with acknowledgment of the State of Queensland (Department of Communities, Child Safety and Disability Services).

Department of Communities, Child Safety and Disability Services

GPO Box 806

Brisbane QLD 4001

www.communities.qld.gov.au