



### 2.1 Background and history of adoption legislation and practice

Adoption legislation was developed in the late 1800s to help improve the care and circumstances of orphaned children or those not receiving adequate parental care in Australia. The *Infant Life Protection Act 1905* made provision for illegitimate children in Queensland to be adopted. Adoption was privately arranged until the Act was amended in 1921. The amendments introduced requirements for:

- parents to consent to their child's adoption;
- prospective adoptive parents to make application to the (then) State Children's Department
- the Department to assess the suitability of prospective adoptive parents; and
- adoption orders to be registered by the Registry of Births, Deaths and Marriages.

The *Adoption of Children Act 1935* was Queensland's first adoption-specific legislation. It included the provision, retained in the *Adoption of Children Act 1964*, which provides the Director-General of the Department with the authority to make adoption orders. It also gave adopted children the same rights as children born within a marriage including, to some extent, inheritance rights.

The *Adoption of Children Act 1964* resulted from an attempt to improve uniformity in Australian adoption law and came into effect in 1965. Under the provisions of the Act, private adoption became unlawful and adoptive parents no longer received a copy of the adoption order containing the name/s of the child's birth parent/s.

The Act has been altered many times since 1965, including amendments in:

- 1967 to provide an adopted person with the right to inherit property from his/her adoptive parents in the case of intestacy;
- 1974 to reduce the maximum age at which a person could be adopted from 21 to 18;
- 1988 to create separate applicant lists for General Children's Adoption, Special Needs Children's Adoption, Foreign Children's Adoption and Relative Children's Adoption;
- 1991 to provide for adults who were adopted prior to 1991 and parents who consented to their child's adoption prior to 1991 to receive identifying information unless an objection to contact and the release of identifying information was lodged;
- 1991 to entitle people who are adopted after 1991 and parents who consent to their child's adoption after 1991 to receive identifying information once the adopted person turns 18; and
- 1999 to facilitate Queensland's implementation of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

Although the Act has occasionally been subject to major amendment, it has not been subjected to a comprehensive review and aspects of the legislation remain largely unchanged from provisions dating back to the 1960s.

### 2.2 Provision of adoption services in Queensland

There have been more than 50,000 adoption orders made in Queensland since 1917. It is estimated that more than 350,000 Queenslanders are directly affected by adoption, and that adoption affects the lives of many hundreds of thousands of others.

Since the 1960s, there have been significant changes in demographics, social values and community views that impact on the provision of Queensland adoption services. Significant changes include:

- the introduction of income support for single parents;
- the availability of reliable contraception;
- the introduction of the *Family Law Act 1975*;
- the introduction of the *Status of Children Act 1978*;
- increasing social acceptance of single parenthood;

- recognition of fathers' rights and responsibilities;
- Australia's ratification of the United Nations' Convention on the Rights of the Child (UNROC);
- recognition of the information and support needs of adults affected by adoption;
- increasing community interest in intercountry adoption;
- increasing openness in family relationships;
- increasing acceptance of variously constructed families; and
- Australia's ratification of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

### 2.3 Current adoption practice

#### 2.3.1 Services to parents considering adoption for their child and children requiring adoptive placements in Queensland

The Department of Families provides information to help parents considering adoption for their child make an informed decision about whether adoption is the best option for securing their child's future care. Information can be provided at any time before or after the birth of the child.

The Department is responsible for ensuring that any parent considering adoption fully understands the range of care options available for children, the implications of signing an adoption consent in relation to their child, and the effect of an adoption order<sup>1</sup>.

If parents decide adoption is the best way to secure a permanent family for their child, they must formally consent to their child's adoption. An adoption consent can be signed only after the child's birth. An authorised officer of the Department of Families must explain the implications of consenting to the adoption of a child and the effect of making of an adoption order to the parents before they give consent for their child to be adopted.<sup>2</sup> (See Chapter 9 for more information on consent.)

All parents are required by law to register their child's birth as soon as possible after the event. This also applies to parents considering adoption for their child.

The *Adoption of Children Act 1964* entitles parents to specify the religious upbringing they want for their child. Parents may also indicate any factors they consider significant in the kind of family they would like to care for their child and these preferences are considered when selecting a suitable adoptive family. The Act has been amended to formally require the Department to take into account preferences expressed by birth parents that promote the best interests of the child when matching him/her with prospective adoptive parents. This amendment is expected to come into effect on 1 July 2002.

Parents are also asked to provide as much detailed information as possible about their family and medical history for their child's reference in the future. This information is provided to adoptive parents at the time the child is placed with them.

After consenting to the adoption of their child, birth parents are advised they have 30 days in which they can revoke their consent. During this period, the child is placed with pre-adoptive foster carers and birth parents can choose to have contact with their child. If the birth parents decide they want to revoke their consent to the adoption, they advise the Department of Families and arrangements are made for the child to return to his/her parents' care.

Where birth parents do not revoke their consent to their child's adoption, a suitable family from the list of approved prospective adoptive parents is matched with the child. After suitable adoptive parents

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<sup>1</sup> *Adoption of Children Act 1964* (sections 23,24 and 50)

<sup>2</sup> *Adoption of Children Act 1964* (section 50)



have been selected for the child, he/she is placed with them and an adoption order is made in favour of the adoptive parents.

Under the Act, the effect of an adoption order is that the child becomes the child of the adoptive parents and the adoptive parents become the permanent legal parents of the child as if the child had been born to them.

After an adoption order has been made, the child's original birth certificate is sealed in the Registry of Births and cannot be accessed by any person until the child turns 18. The child is provided with a new certificate of birth, naming his/her adoptive parents as the child's parents.

Information about the identity of an adopted person's birth parents is not available to that person until he or she turns 18. Similarly, information about the identity of the adopted person is not available to his/her birth parents until the adopted person turns 18.

Birth parents who sign an adoption consent after June 1991 and all persons who were adopted after June 1991 have an unqualified entitlement to receive identifying information about each other when the adopted person turns 18.

A child's birth family and adoptive family may correspond with each other via the Department before a child turns 18 years of age if both parties agree to participate in exchanging information. Birth families and adoptive families who correspond with each other have no direct contact and can communicate only non-identifying information.

### 2.3.2 The General Children's Adoption program

Adoptive parents are needed to provide a permanent family for a small number of infants born in Queensland each year. Children requiring adoptive placements under the General Children's Adoption program are aged from birth to two years of age, with the majority of children requiring placement shortly after birth.

Couples who seek to adopt a child through the General Children's Adoption program have previously been required to apply to have their names entered in the General Children's Adoption List. Under provisions of the *Adoption of Children Act 1964*, a list of General Children's Adoption applicants was maintained in chronological order by the date of application. However, the Act has been amended to remove this requirement and to enable the Department to call for expressions of interest when there is a need to increase the number of prospective adoptive parents available to meet placement needs. These amendments are expected to come into effect on 1 July 2002. (See section 10.8.4 of this consultation paper for further information).

The number of Queensland parents choosing adoption as a permanent care option for their child has decreased each year since 1971-72 when there were 1,774 Queensland in children requiring adoptive placements, to nine in 2000-01.<sup>3</sup>

As at 30 June 2001, 303 Queensland couples had their names entered in the General Children's Adoption List. General Children's Adoption applicants who applied to adopt a child born in Queensland approximately 10 years ago are currently being considered.

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<sup>3</sup> Refers to the number of children in a particular year where there is a valid consent for a child's adoption (i.e., both parents have consented to the child's adoption or the necessary consent has been dispensed), where a suitable family has been located and where adoption is being sought for the child. There may be more children whose parents consented to their adoption in the year and there may be more children in pre-adoptive foster care than the number of children who required an adoptive placement in the year.

### 2.3.3 The Special Needs Children's Adoption program

A very small number of Queensland infants born with special needs require adoptive parents. Only one child with special needs required and adoptive family in Queensland in 2000-01.

The Chief Executive of the Department of Families may declare a child requiring adoption to have special needs if he/she:

- has a serious medical condition;
- has physical and/or intellectual disabilities;
- is over two years of age; or
- is from an Indigenous or different cultural background.

Older children rarely require adoptive placements and there are often suitable applicants entered in the General Children's Adoption List or Foreign Children's Adoption List who share a child's cultural background and can be matched with the child.

Sometime, a sibling or half-sibling of an adopted child will also require an adoption. Such a child may be declared to have special needs to enable consideration about whether it would be in the interests of the child to be matched with his/her sibling's adoptive parents.

Special Needs Children's Adoption applicants may be married couples, people in long term relationships or single people. Strict age-related eligibility criteria do not apply to Special Needs Children's Adoption applicants.

The assessment of applicants' suitability to be approved as prospective adoptive parents for a child with special needs is only commenced when:

- the particular needs of a child requiring adoption are known or can be anticipated; and
- the applicants appear to have the capacity to parent the child.

If Special Needs Children's Adoption applicants are not assessed within two years of their date of application, their names are withdrawn from the Special Needs Children's Adoption List in accordance with the provisions of section 8 of the Act. A second or subsequent application may be lodged.

Twenty individuals and/or couples had their names entered in the Special Needs Children's Adoption List at 30 June 2001.



### 2.3.4 The Relative (Step Parent) Children's Adoption program

The *Adoption of Children Act 1964* provides for a child to be adopted by his/her step-parent where it is in the child's best interests. In exceptional circumstances, a child can be adopted by a relative other than a step-parent.

Because an adoption order can only be made in favour of a relative who is not a step-parent in exceptional circumstances, Relative Children's Adoption is often called 'step-parent adoption' or 'adoption into marriage'.

An adoption order may be made in favour of a child's step-parent or relative only if the Chief Executive is satisfied that the child's welfare and interests would be better served by an adoption order rather than by an order made by the Family Court of Australia.

Thirteen Queensland children were adopted by their step-parents in 2000-01.

When an adoption order is made in favour of a step-parent, the child's step-parent becomes his/her legal parent, as if the child had been born to the step-parent and birth parent with whom the child lives. The child's other birth parent ceases to be the child's parent.

When the *Adoption of Children Act 1964* came into effect, the only way a step-parent could be legally recognised as having parental rights and responsibilities in relation to a step-child was for him/her to adopt the child. Such rights and responsibilities can now be conferred under the *Family Law Act 1975*, providing the same benefit as adoption without legally extinguishing the relationship between the child and the other birth parent.

There were 125 people in Queensland with their names entered in the Relative Children's Adoption List seeking to adopt their step-child at 30 June 2001.

### 2.3.5 The intercountry adoption program

Adoption can provide children who are legally available for adoption in some overseas countries with a new legal family in Queensland. Children from countries which have negotiated adoption agreements with Queensland or countries that have acceded to or ratified the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the Hague Convention) may be adopted by approved Queensland applicants.

At present, the Department is a party to adoption agreements with 13 countries. These agreements have been negotiated with authorities in countries where suitable adoptive families cannot be found.

Although Australian States can now arrange intercountry adoptions with the central authority of any Hague Convention country requiring placements for children, the majority of intercountry adoptions continue to be arranged with countries with which Australia has negotiated adoption agreements. Many countries that have acceded to or ratified the Hague Convention, including Australia, seek to provide adoptive placements for children within the country, rather than arrange for their children to be placed overseas. As at 31 March 2002, 46 countries had acceded to or ratified the Hague Convention.

Couples who seek to adopt a child through the intercountry adoption program have previously been required to have their names entered in the Foreign Children's Adoption List. Under the provisions of the Act, a list of Foreign Children's Adoption applicants was maintained in chronological order of date of application. However, the Act has been amended to remove the requirement to consider chronological order of application in relation to people who express interest in being assessed as prospective adoptive parents in the future.

A transitional clause in the amendments provides for the continued but more flexible consideration of chronological order for assessing applications made prior to the amendments. The Act is also being amended to enable the Department to call for expressions of interest when there is a need to increase the number of prospective adoptive parents available to meet children's placement needs. These amendments are expected to come into effect on 1 July 2002. (See section 10.8.4 of this consultation paper for further information).

There were 471 couples with their names entered in the Foreign Children's Adoption List at 30 June 2001. (See Chapter 8 for more information on intercountry adoption.)

The number of people in Queensland seeking to adopt children from overseas has increased by 141 per cent since 1995. The number of children being placed with families in Queensland and other States by overseas adoption authorities has not increased at the same rate.

In 2000-01, Queensland families adopted 40 children from overseas.

### 2.3.6 Services for adults affected by adoption

The *Adoption of Children Act 1964* was amended in 1991 to make it possible to release identifying adoption information, in certain circumstances, to people affected by Queensland adoption orders.

The Act makes different provisions for the release of identifying information to adults who have been adopted and to parents who have consented to their child's adoption, depending on whether the adoption order was made before or after June 1991. The introduction of different information release and objection provisions for people affected by adoption orders made before or after June 1991 was the result of an attempt to balance the diverse and conflicting views expressed in the community about this issue.

#### Adoption orders made after 1991

Birth parents who sign or have signed an adoption consent after June 1991 and persons who were adopted after June 1991 have an unqualified entitlement to receive identifying information about each other once the adopted person turns 18.

When the adopted person turns 18, identifying information can be provided upon application to the adopted person or to the birth parent/s who signed the adoption consent.

#### Adoption orders made prior to 1991

Identifying information can be provided to birth parents who signed an adoption consent before June 1991 and persons who were adopted before June 1991 if an objection to the release of identifying information has not been lodged by either party.

Birth parents who consented to the adoption of a child before June 1991 and adults who were adopted before June 1991 may lodge an 'objection to contact' or an 'objection to contact and to the release of information'.

If an objection to contact is lodged by a birth parent or an adopted person, identifying information can be provided to the other party upon application but contact between the parties is prohibited.

If an objection to contact and to the release of identifying information is lodged by a birth parent or an adopted person, identifying information cannot be provided to the other party to the adoption and contact between the parties cannot occur.



Birth parents who consented to the adoption of a child before June 1991 and adults who were adopted before June 1991 may revoke an objection to contact or an objection to contact and the release of identifying information. An objection remains in place unless revoked.

## 2.4 Delivery of services

Until 1994, adoption services were provided by staff in the Department of Families' area offices throughout Queensland and co-ordinated by the Adoption Services Unit in the Department's central office. A centralised service delivery model for the delivery of adoption services was implemented in 1994.

The centralised model was introduced to help alleviate difficulties associated with prioritising adoption services in area offices which had competing priorities including providing child protection and youth justice services.

Since 1994, the Adoption Services Unit has been responsible for co-ordinating and delivering services to:

- children requiring adoptive placements;
- parents considering adoption for their child;
- people seeking to adopt children in Queensland or children from overseas; and
- adults affected by adoption in Queensland.

A number of adoption-related services continue to be provided by staff in many of the Department's area offices, although they are usually provided by the Adoption Services Unit in Brisbane. These services include:

- providing information and support services to parents considering adoption for their child;
- witnessing the consent of parents who choose adoption for their child;
- supporting children's placement in pre-adoptive foster care; and
- supervising arrangements for adoptive parents to take custody of children.

The *Adoption of Children Act 1964* provides for the Chief Executive to contract suitably qualified and experienced people to act as agents (Adoption Contract Workers) of the Chief Executive in assessing and reporting on the suitability of adoption applicants. All other adoption services are provided by staff of the Department.