



CHAPTER 4 OPEN ADOPTION PRACTICE

4.1 Background

Under the provisions of the *Adoption of Children Act 1935*, adoptive parents were provided with an adoption order which contained the name of their child's birth parent/s, and it was up to them whether or not this information was provided to the adopted person.

Queensland's *Adoption of Children Act 1964*, which was largely consistent with Australian model adoption law at that time, introduced a completely closed adoption system. Adoptive parents were not given an adoption order containing the names of their child's birth parent/s after the 1964 Act became effective.

The *Adoption of Children Act 1964* was a response to the social values and attitudes toward women, the mothering of children and the family unit that generally existed at that time. Attitudes toward single parenthood and social values began to change in the 1970s resulting in changes to adoption legislation, policy and practice.

Since the mid-1970s, there has been a move away from confidential adoption arrangements, closed adoption records and the assumption that such arrangements are in the best interests of children requiring adoption and birth or adoptive parents. Adoption practice reflects social, political, economic and moral changes in society¹⁴ and the move towards more open adoption practice is part of a trend towards more openness in society generally.¹⁵

Queensland adoption records remained completely closed until the Act was amended in 1990 and 1991. Parents who subsequently consented to the adoption of their child and people who were subsequently adopted were then entitled to receive identifying information when the adopted person turned 18. These amendments also made it possible for identifying information to be provided to birth parents who consented to the adoption of their child prior to 1991 and to persons who were adopted prior to 1991 if an objection to the release of identifying information had not been lodged by the adopted person or birth parent.

Entitling birth parents and adopted persons to access information when the adopted person reaches 18 years of age (or providing limited entitlement for adoption orders made prior to 1991) is not open adoption practice. The 1991 amendments represented the first real consideration of the desire of birth parents and adopted persons to exercise choice regarding access to identifying information and making contact with birth relatives. Until then, the ongoing interest adopted persons and birth parents had in each other's well-being and circumstances was not recognised or considered appropriate. While the 1991 amendments provide for this choice to be exercised, they also recognise that decisions made by adopted people and birth parents not to obtain information and/or make contact are also valid choices.

¹⁴ D. Brodzinsky and M. Schechter (eds), *The psychology of adoption*, Oxford University Press, United Kingdom, 1990, p. 323.

¹⁵ H. Grotevant and R McRoy, *Openness in adoption*, Sage Publications, USA, 1998, p.196.

4.2 What is open adoption?

Open adoption does not describe a single practice or refer to only one part of the adoption process. Adoption services may be provided within a continuum of openness. Open adoption practice can incorporate:

- mediated and direct contact between birth families and adoptive families after a child has been adopted;
- mediated contact leading to direct contact; or
- variations of direct and mediated contact.

One view of open adoption is expressed by Brodzinsky and Schlechter:

The practice of open adoption begins with the first contact of both the prospective adoptive parents and the birth parents. It is discussed as an integral part of agency procedure in the adoption of all children. Open adoption is a process in which the birth parents and adoptive parents meet and exchange identifying information. The birth parents relinquish legal and basic child rearing rights to the adoptive parents. Both sets of parents retain the right to continuing contact and access to knowledge on behalf of the child. Within this definition, there is room for greater and lesser degrees of contact between the parties. The frequency and meaning of the communication will vary during different times in the lives of the individuals involved, depending on their needs and desires and the quality of the established relationship.¹⁶

Open adoption practice recognises that:

- adopted children have birth parents and adoptive parents;
- adoption does not remove the existence of children's birth parents from their lives;
- adoption results in children having one set of legal parents, their adoptive parents;
- children benefit from knowing about their birth parents and the circumstances of their adoption; and
- the interests of birth parents and adoptive parents in the adoption arrangements deserve equal respect.

Open adoption does not create a 'shared care' or joint care arrangement between adoptive parents and birth parents.

Family composition and the significance of relationships between biologically related and unrelated people in the lives of children varies, and many non-traditional family arrangements and relationships are common in Queensland today. If future legislation makes provision for open adoption, such arrangements will be positioned within the continuum of familial relationships in Queensland, as they are in other Australian states and territories.

¹⁶ D. Brodzinsky and M. Schechter, *The Psychology of Adoption*, Oxford University Press, USA, 1990 p 318.



4.3 Current law and practice

4.3.1 Consideration of birth parents' preferences in matching adoptive parents with children requiring adoptive placements

Consideration must be given to the wishes expressed by birth parents for their child's religious upbringing when approved prospective adoptive parents are matched with children in accordance with the provisions of section 18 of the *Adoption of Children Act 1964*,

Previously, the Act did not specifically entitle birth parents to express any other preferences for the child's future care. In practice, a range of factors were considered to enable the Chief Executive to fulfil the obligation (under section 10 of the Act) to ensure the child's welfare and interests are paramount in the adoption process. However, the Act has been amended to require the Chief Executive to consider this range of factors, which may include:

- the birth parents' preferences regarding the child's religious upbringing;
- characteristics of the prospective adoptive parents and the composition of the adoptive family;
- the desire to participate in the voluntary exchange of non-identifying correspondence via the Department; and
- other specific preferences which promote the child's best interests.

4.3.2 Birth parents' status after making an adoption order

Under the current provisions of section 41(1) of the *Adoption of Children Act 1964*, a birth parent cannot:

- influence the upbringing of their child after the child has been adopted; or
- communicate with the child or with the adoptive parents, except with the prior approval of the Chief Executive or where the adoptive parent or one of the adoptive parents is a relative of the child; or in accordance with part 4A (provisions regarding access to identifying information once the adopted person turns 18).

The Chief Executive cannot approve a communication application unless the child's adoptive parents consent to the communication.

Section 41(4) provides for more open adoption practices where children requiring adoptive placements are declared as having special needs. The Chief Executive is able to approve or restrict communication between the birth parents, the child with special needs and the adoptive parents.

Under the Act, 'communicate' means making contact by any means or being in the company of the person.¹⁷

4.3.3 Open practice within current legislation

Current Queensland adoption services are provided within a closed (or confidential) model. A limited amount of non-identifying information is provided to birth and adoptive parents by the Department at the time an adoption order is made.

Although current legislation generally requires a closed model of practice, it has been possible to provide mediated contact (or a level of openness) to some families within the provisions of the Act. Mediated contact refers to the ongoing exchange of non-identifying information, letters, gifts etc., mediated through the Department after an adoption order is made.

¹⁷ *Adoption of Children Act 1964* section 41

The Act does not specifically allow for the ongoing exchange of non-identifying information but does not prohibit this exchange as it is within the spirit of section 41 of the Act.

In a very small number of cases, approval has been given under section 41 for adoptions to be fully 'opened'. This means that, upon the request of the child's birth and adoptive parents and with the consent of the child's adoptive parents, a child's birth and adoptive parents can have direct contact with each other, prior to the adopted person turning 18.

Intercountry adoption is generally considered to be more 'open' than domestic adoption because it usually involves adoptive parents becoming the parents of children who do not share their ethnic and cultural background. Intercountry adoption is more likely to be acknowledged and adoptive parents are more likely to be aware of the need to help the child develop his/her cultural identity and to assist the child's psychological adjustment to his/her adopted status.

Although current legislation makes no provision for more open adoption practice when children from overseas are adopted by Queensland families, adoptive parents may know of, or be in contact with, their child's birth parents or members of the child's family. Adoptive parents of children from overseas may be provided with identifying information through a number of channels.

In many instances, the identity of a child's birth parents overseas may be unknown and/or language barriers may make information exchange and opportunities for open adoption arrangements difficult or impossible. However, in a small number of instances, birth relatives have sought contact some time after a child, thought to have no living or known relatives, has been adopted. Open adoption practices would be of benefit the child, the adoptive family and the child's birth relatives in these circumstances.

4.4 Open adoption practices

Open adoption can incorporate all or some of the following situations:

- the birth parents' expressed preferences forming the basis for selecting and matching prospective adoptive parents with the child;
- birth parents directly participating in selecting their child's adoptive parents;
- processes which enable the degree of openness in an adoption arrangement to be arrived at through mutual agreement;
- birth parents, children requiring adoption (where they are old enough to be involved in decision-making) and prospective adoptive parents meeting prior to the placement of the child;
- full disclosure of identifying information between birth parents and prospective adoptive parents at the time of a child's adoption;
- agreed plans for ongoing contact (e.g., the exchange of information, photographs, ongoing meetings) between birth parents, the child to be adopted (where he/she is old enough to be involved in decision-making) and prospective adoptive parents negotiated at the time of adoption;
- agreed adoption plans providing for either direct contact between birth parents, the adopted child and adoptive parents, or contact between the parties mediated by the adoption agency;
- agreed adoption plans which provide for arrangements for the child's physical, educational, medical and/or religious upbringing and/or other matters to be mutually agreed by birth and adoptive families;
- processes for regularly reviewing and/or negotiating alterations to adoption plans after they come into effect; and
- adoption plans with status in law and associated processes for resolving disputes which may arise.



Negotiating open adoption arrangements

Research indicates that the success of open adoptions increases with planning and support and that parties to open adoption may require support before, during and after contact, or at least in the early stages of the arrangement.¹⁸ Written plans may lend themselves more easily to indirect or mediated contact arrangements and, once direct contact is established, it is more likely to be directed by the individuals and the plan may assume less significance.¹⁹

Providing appropriately timed and detailed information to birth parents before they commit to an adoption decision, and providing information and support when the adoption decision is made is crucial for effective open adoption. Similarly, providing prospective adoptive parents with information about open adoption and parenting children in an open adoption arrangement - and appropriately assessing their capacity to do so - is crucial for open adoption to be effective.

4.5 Concerns about and benefits of open adoption

Concerns are sometimes expressed that open adoption practice may:

- prolong or intensify feelings of loss experienced by birth parents;
- affect the adoptive parents' feelings of entitlement to be the child's parent, leading to insecurity in their role as permanent/legal/psychological parents; and
- prevent the child from developing a secure attachment with his/her adoptive parents.

Advocacy for open adoption practice is sometimes expressed in terms of benefits such as:

- it provides the same degree of respect for the preference of both birth and adoptive parents in processes to secure a family for children requiring adoptive placements;
- it enables children to grow up knowing their birth parents and with opportunities to obtain knowledge first hand;
- it may help reduce feelings of loss and rejection experienced by many adopted persons at various times in their lives;
- it may assist the child's psychological adjustment by enabling his/her birth and adopted identities to be integrated within his/her self-image;
- it may assist birth parents to better come to terms with the adoption decision and alleviate distress caused from 'not knowing' about their child's well-being;
- it may assist adoptive parents to feel secure in their role, as birth parents have 'endorsed' the selection of the adoptive parents to be the child's permanent legal parents;
- it enables adoptive parents to better respond to a child's need for information and to talk with the child about his/her adoption; and
- it removes anxieties about the impact that access to identifying information and possible contact may have on familial relationships when the child turns 18 and such information can be accessed.

Available research indicates that the quality of relationships between children and their adoptive parents are not eroded by the existence of other relationships in the child's life, and that open practice does not cause children to have 'divided loyalty'.²⁰

According to Brodzinsky and Schechler:

*No claim should be made that all adoption problems will be solved under the open adoption plan. However, open adoption addresses some very basic dilemmas and offers a psychologically healthier way to handle the needs of the individuals involved.*²¹

¹⁸ H. Grotevant and R. McRoy, *Openness in Adoption*, Sage Publications, USA, 1998, p. 196

¹⁹ Grotevant and McRoy, p.75

²⁰ Grotevant and McRoy, p.196.

²¹ M. Brodzinsky and M. Schechler, *The Psychology of Adoption*, Oxford University Press, USA, 1990, p.331

4.6 Discussion

4.6.1 Open adoption practice in other Australian jurisdictions

Although openness relates to more than arrangements for ongoing information exchange and/or contact after making an adoption order, these aspects are particularly significant to many stakeholders because they are currently absent from Queensland legislation.

Legislation in New South Wales and Western Australia provides for:

- birth parents' preferences to be considered in selecting prospective adoptive parents for their child;
- an adoption plan - relating to the exchange of information, ongoing contact and any other matters relating to the child's well-being - to be negotiated between parties to an adoption;
- the Court, upon application, to review an adoption plan and vary, revoke or confirm the plan (in Western Australia the Court can also enforce the plan);
- in Western Australia (only), legislation requires that a representative for the child be involved in negotiating the adoption plan; and
- in New South Wales (only) an adoption plan is mandatory if Indigenous children are placed with non-Indigenous families.

Legislation in Victoria and the Australian Capital Territory does not specifically provide for adoption plans. However, adoption orders can be made subject to agreed conditions relating to information and contact and/or other matters relating to the child's well-being. In these jurisdictions, conditions must be mutually agreed by birth and adoptive parents and the Court may vary or revoke a condition.

Legislation in Tasmania and the Northern Territory does not specifically provide for adoption plans. However, the Court must be satisfied that the Department has taken into account arrangements between birth and adoptive parents for the exchange of information and contact and any other matters relating to the child, when making an order.

Legislation in South Australia provides for birth and adoptive parents to enter into an arrangement about the ongoing exchange of information and contact after an adoption order is made, and any other matters relating to the child's well-being. Arrangements must be in writing and a Register of Arrangements must be maintained by the South Australian Department. The arrangements are not enforceable in a Court.

4.6.2 Selection and assessment of prospective adoptive parents

If future legislation provides for open adoption practice in Queensland, the selection and assessment of adoptive parents will need to include consideration of the prospective adoptive parents':

- attitudes to contact with a child's birth parents; and
- interpersonal skills and potential capacity to successfully engage in open/direct contact.

Information and education services provided to prospective adoptive parents would also need to incorporate issues relating to the concept of open adoption and its practical application.

If future legislation supports open adoption practice, assessing the suitability of prospective adoptive parents will become more complex, and consideration will need to be given to what assessment tools are required to support it.



4.6.3 Respect for personal information

Open adoption practice enables parties to an adoption to exchange information with each other in agreed ways. The circumstances of the adoption and the negotiated adoption plan remain the confidential information of the adopted person, the birth parents and the adoptive parents.

Open adoption practice requires parties to an adoption to consider the impact that sharing information publicly may have on all parties to the adoption arrangement.

4.6.4 Resources required to support open practice

Apart from facilitating mediated contact and the exchange of non-identifying correspondence between more than 800 adopted persons and birth or adoptive family members, the range of services required to facilitate and support open adoption practice is not currently available in Queensland.

Significant resources would be required to provide open adoption services. The Review's Terms of Reference require it to:

... identify implications for departmental practice, human resources and ... develop strategies to support the implementation of new legislation.

If future adoption practice provides for open arrangements, the resource implications will need to be identified and costed.

4.6.5 Impact on existing adoptions

There may be a number of birth and adoptive parents affected by past adoptions (where the adopted person is under 18 years of age) who would seek to participate in open adoption arrangements if such arrangements were provided for in legislation. Consideration would need to be given to extending provisions enabling birth parents, adopted children (where applicable) and adoptive parents to negotiate an agreement about information exchange and/or contact with each other where an adoption order is already in place. This provision would only be possible if the negotiation of such agreements, like all open adoption plans, was sought and agreed to by all parties.

Making provision for existing adoptions to be 'opened' may cause distress for some birth parents, adopted persons under 18 and adoptive parents if only one or some of the parties wanted it. Services to assist people experiencing such distress would need to be considered.

4.7 Future direction

Legislative provision for open adoption practice needs to be considered to provide contemporary, child-focused adoption legislation in Queensland that is comparable with other Australian jurisdictions.

The legislative framework supporting open adoption practice and the administrative arrangements which facilitate it vary between Australian States and territories. The models operating in New South Wales and Western Australia appear to respond to many of the key issues outlined above.

The benefit of mutually agreed, self regulated arrangements between birth and adoptive parents for the exchange of information, contact and other matters regarding the child's welfare after adoption is limited if such arrangements provide parties with limited or no access to redress if arrangements are not honoured.

There are a number of ways in which issues arising from open adoption arrangements which require mediation and/or determination could be dealt with including:

- administratively by the Chief Executive;
- by a Court; or
- by another body such as a tribunal.

These issues are discussed in more detail in Chapter 11 (The Legal Process for Adoption).

Should Queensland legislation provide a framework to support open adoption practice, as is the case in other States?

Should future adoption legislation enable:

- *birth parents to have the option of being provided with information about prospective adoptive parents to help them participate in selecting suitable adoptive parents for their child (the privacy of prospective adoptive parents would be protected in this process);*
- *prospective adoptive parents to indicate the type of adoption arrangement they may consider, including the possibility of a range of open adoption arrangements;*
- *birth parents and adoptive parents to be provided with relevant information, education and support regarding open adoption;*
- *matters to be regarded in assessing the suitability of prospective adoptive parents to include issues relevant to open adoption arrangements;*
- *adoption plans, relating to the exchange of information and contact and any other matters relating to the child's upbringing, to be negotiated between birth parents, adoptive parents, the Department and other parties if relevant, prior to an adoption order being made;*
- *adoption plans to be required if Indigenous children are adopted by non-Indigenous adoptive parents (the child placement principle would provide further direction);*
- *parties to an existing adoption (where the adopted person is under 18 years of age) to negotiate an agreement about information exchange and/or contact if all parties to the adoption agree;*
- *adoption plans to have a legal status;*



- *adoption plans to be lodged with the Court/Tribunal/Chief Executive, depending on the jurisdiction in which adoption orders are made in the future;*
- *ongoing support to be provided by the Department or agent of the Department for families participating in open adoption arrangements; and*
- *disputes arising from adoption plans to be addressed through application to the relevant Court/Tribunal/Chief Executive (depending on the provisions of future legislation)?*