

CHAPTER 10 SELECTION OF ADOPTIVE PARENTS

10.1 Current arrangements

Under the *Adoption of Children Act 1964*, people seeking to be assessed as prospective adoptive parents must meet the prescribed eligibility criteria. If people meet eligibility criteria, their suitability to become prospective adoptive parents may be assessed.

If people seeking to adopt a child from Queensland or a child from overseas are favourably assessed and their eligibility is maintained, they may remain on the Assessment Register until a child is placed with them and an adoption order is made in their favour. This process does not apply to people seeking to adopt a child with special needs who remain on the Special Needs Children's Adoption List for two years only.

10.2 Eligibility

10.2.1 Current eligibility criteria

The *Adoption of Children Act 1964* and *Adoption of Children Regulation 1999* prescribe eligibility requirements for people seeking to be assessed as prospective adoptive parents. If these criteria are not met, people cannot have their suitability to be an adoptive parent assessed and cannot have an adoption order made in their favour.

Eligibility criteria for people expressing interest in adopting a child in Queensland or a child from overseas and for Relative Children's Adoption and Special Needs Children's Adoption applicants differ. The specific criteria are set out in Appendix 5.

10.2.2 Purpose of eligibility criteria

The purpose of eligibility criteria is to specify minimum requirements for prospective adoptive parents that are reasonable and relevant to the task of adoptive parenting and that will meet the needs of children requiring adoption. However, it is unclear whether the current eligibility criteria achieve this purpose.

The eligibility criteria currently prescribed in the Act and Regulation exclude people solely because of their age, marital status, impairment or sexuality which is inconsistent with the intention of the *Queensland Anti-Discrimination Act 1991*. Any automatic exclusion of people because they do not have certain individual characteristics must be based on sound evidence that the absence of these characteristics mean they would not be able to meet the needs of children requiring adoption.

The purpose of adoption and the 'paramount principle' means adoption is a service for children, not a service for adults wishing to acquire the care of children⁶⁵, so adoption agencies must avoid using stereotypes that may exclude people who could provide a family for a child. When considering this issue in its Report on the Review of the *Adoption of Children Act 1965* (NSW), the New South Wales Law Reform Commission concluded:

*The process of selecting adoptive parents and the need to avoid unlawful discrimination are fundamentally in harmony. Both considerations require that the law be based on grounds that relate to the best interests of the child (being the essential consideration), rather than on stereotypes or grounds that are otherwise unrelated to the child's welfare ... The assessment of applicants should be conducted in a way which is consistent with the ADA (Anti-Discrimination Act 1977 (NSW)) and with similar Commonwealth laws and international agreements to which Australia is a party, so long as it is also applied consistently with the principles that the child's best interests are paramount and adoption is a service to children and not to adults.*⁶⁶

⁶⁵ *National Minimum Principles in Adoption* 1993, Council of (Australian) Social Welfare Ministers p.5; Adoption Act 2000 (NSW), section 8 (1) (b).

⁶⁶ NSW Law Reform Commission Report 81 p. 208



Therefore, adoption legislation should contain reasonable requirements which provide a suitable basis for ensuring children requiring adoption are provided with families that are best able to meet their needs.

10.2.3 Future eligibility requirements

Individual factors such as a person's age, marital status, number of years married, health, fertility/infertility or the number of children in the person's care alone are generally not good predictors of a person's potential to provide a suitable family for a child or children requiring adoption.⁶⁷ These factors are more meaningfully considered in association with other characteristics such as a person's emotional capacity to parent an adopted child, parenting experience, support networks and links with a child's cultural background etc.

However, it may be necessary to specify some basic eligibility criteria for prospective adoptive parents (i.e., residency, citizenship, age) to safeguard children's interests and support efficient service delivery. Other relevant factors could be addressed when assessing the suitability of people seeking to adopt a child.

Determining a person's eligibility would be relatively simple if eligibility criteria were minimised and issues more closely linked with suitability considered in the assessment process.

10.3 Eligibility criteria

This section reviews current eligibility criteria and asks whether they are relevant and appropriate minimum requirements for meeting the needs of children requiring adoptive families.

10.3.1 Requirement to be resident or domiciled in Queensland and to be an Australian citizen or married to an Australian citizen

Current eligibility criteria require prospective adoptive parents to be resident or domiciled in Queensland, and either an Australian citizen or married to an Australian citizen. These criteria ensure Queensland law is applied to people in Queensland and that children born in overseas countries adopted by Queenslanders automatically acquire Australian citizenship.

Should the eligibility criteria requiring prospective adoptive parents to be resident or domiciled in Queensland and to be an Australian citizen or married to an Australian citizen be retained?

10.3.2 Marriage

Current eligibility criteria require people seeking to adopt a child in Queensland or a child in an overseas country to have been married for at least two years at the time they apply. People who are not married or have not been married for two years cannot become prospective adoptive parents.

⁶⁷ R. Hoskbergen, *Understanding and preventing failing adoptions*, in E. Hibbs (ed) *Adoption International Perspectives*. International Universities Press, United States of America, 1991;

R. Barth, and M. Berry, *Adoption and Disruption rates, risks and responses*. Aldine De Gruyter, Inc, United States of America, 1988;

Triseliotis, J. Shireman, and M. Hundleby, *Adoption theory, policy and practice*. Cassell, United Kingdom, 1997;

D. Brodzinsky, M. Schechter, *The psychology of adoption*. Oxford University Press United States of America, 1990

T. Festinger, *Necessary risk. A study of adoptions and disrupted adoptive placements*. Child Welfare League of America, Inc. United States of America, 1986.

One of the motivating factors for birth parents and/or overseas adoption authorities considering adoption for a child is the desire to ensure the child can be adequately supported by, and grow up in, a stable two parent family. Unlike the 1960s when the current legislation was drafted, there now are many stable, two-parent families in Queensland in which the partners are not legally married to each other.

Requirements in other States

In some States, people in a defacto relationship can be assessed as prospective adoptive parents. In these States, people who are married or in defacto relationships must have been together for a minimum specified period to be assessed as prospective adoptive parents. The specified period ranges from two years in Victoria and the Northern Territory; to three years in Tasmania, New South Wales, Western Australia and the Australian Capital Territory; to five years in South Australia.

The purpose of specifying a minimum duration for the relationship ensures demonstrated stability in the prospective adoptive parents' relationship which may provide stability for a child requiring an adoptive family.

Placement of children with unmarried couples

Many overseas adoption authorities specify that people seeking to adopt children from their country must be married for a minimum period, so removing marriage from Queensland's eligibility criteria may not mean unmarried couples could be considered as prospective adoptive parents for children from overseas.

Similarly, recognition of Queensland birth parent's preferences in selecting adoptive parents for their child may result in them requesting that married couples be matched with their child.

Eligibility or suitability issue?

The requirement for people to be legally married in order to be eligible to express interest in adopting a child is inconsistent with the intention of the *Queensland Anti-Discrimination Act 1991*. Given today's high rate of marital breakdown, marriage is no longer a useful indicator of relationship stability or of a person's potential to provide a suitable family for a child requiring adoption. Therefore, it may be more appropriate for marital status and duration of relationship to be considered during the assessment of a couple's suitability rather than in initial eligibility.

Should couples in stable relationships, regardless of their marital status, be eligible to express interest in being assessed as prospective adoptive parents?

Should there be an eligibility requirement for couples to have been in a stable relationship for a specified period to be eligible to express interest in being assessed as prospective adoptive parents; or should the length of time a couple has been in a stable relationship be a matter that is considered in assessing the couples suitability to be approved as prospective adoptive parents?

10.3.3 Eligibility of single persons

In Queensland, single people can only have their names entered in the Special Needs Children's Adoption List. Single people are not eligible to express interest in adopting a child in Queensland or a child from overseas.



A person's life experiences, values, parenting experience, work experience and support network - regardless of their marital status - may equip them to understand the needs of children and to provide a high quality placement for a child requiring adoption.

In some Australian jurisdictions (including Queensland), an adoption order may be made in favour of single persons only in exceptional circumstances or where the child has specific needs and the person has been assessed as being able to provide the most suitable placement for the child.

Some overseas adoption authorities do not allow single people to adopt children from their country or specify the circumstances in which a single person may be matched with a child. Some overseas adoption authorities will match a child with a single person only if the child has special needs and could not otherwise be placed with an adoptive family.

Because single people in Queensland are currently ineligible to express interest in adopting a child from overseas, they cannot be matched with a child requiring adoption, even where the overseas adoption authority may consider such a placement.

Should single people be eligible to be assessed as prospective adoptive parents:

- *only in exceptional circumstances or where a child with special needs would otherwise not be able to be provided with an adoptive family; or*
- *for any child requiring adoption?*

10.3.4 Health

One of the eligibility criteria specified in the Regulation is that a person must not be suffering from a physical or mental condition/disability, to an extent that he/she could not provide a high level of stable, long term care (i.e., at least until the child becomes an adult).

The Terms of Reference for the Adoption Legislation Review require consideration to be given to responses which promote the welfare and best interests of adopted persons throughout their lives. Consideration of prospective adoptive parents' health and its likely effect on the adopted person's life.

Consideration of applicants' health in the adoption process

The appropriate time for considering the health of prospective adoptive parents in the adoption process is problematic. At present, Queensland legislation includes consideration of health in determining people's initial eligibility rather than in the assessment process.

Where prospective adoptive parents have a terminal illness, a condition which reduces their life expectancy or seriously impairs their capacity to care for a child, consideration of health alone would preclude that person from being approved as a prospective adoptive parent. Considering health in eligibility helps ensure they are not subjected to the unnecessary intrusion of an assessment when there can be no favourable outcome.

It would be poor practice to raise expectations of a favourable outcome by engaging people in a full assessment process when their health alone would preclude them from being approved as prospective adoptive parents. People seeking to become adoptive parents should be informed that their health would preclude them as soon as possible after expressing interest.

In many instances, however, the extent to which a person's health affects his/her capacity to provide a high level of long term care for a child cannot be determined from the examination of medical information alone. Often it is only by considering health in conjunction with other factors such as lifestyle, family circumstances and support networks, that the impact a person's health has on their capacity to care for child can be determined.

It may be more appropriate to include health in the assessment of a person's suitability to be approved as a prospective adoptive parent rather than in matters determining eligibility. However, some initial consideration of a person's health would need to occur prior to their assessment to ensure people who could not be approved as prospective adoptive parents because of a serious health issue are not subjected to an extensive assessment process with no hope of a favourable outcome. This would also be the case where people seek to adopt a child from overseas where the relevant adoption authority provides guidelines indicating people with specific medical conditions will not be considered as prospective adoptive parents.

Should consideration of the health of a person seeking to adopt a child continue to be an initial eligibility criteria or should it be a matter that is considered in assessing a person's suitability to be approved as a prospective adoptive parent?

10.3.5 Number of children in the care of people seeking to adopt children

At present, a couple must not have more than one child in their custody to be eligible to express interest in adopting a child from Queensland, and a couple must not have more than four children in their custody to be eligible to express interest in adopting a child from overseas.

The number of children already in a family's care and the specific needs of the children in a family's care are relevant in determining whether people have the physical resources and emotional capacity to adequately provide for the needs of a child requiring adoption. The effect of the number of children in the family's care on their suitability to be approved as prospective adoptive parents would be best determined in the assessment process.

Should the number of children in the care of people seeking to adopt a child continue to be an initial eligibility criteria; or should this be a matter that is considered in assessing a person's suitability to be approved as a prospective adoptive parent?

10.3.6 Age

Current eligibility requirements

People expressing interest in adopting a child in Queensland must satisfy the following age criteria at the time they express interest:

- if neither of the applicants have custody of a child, they must be less than 40 years old; or
- otherwise, less than 36 years old.

People expressing interest in adopting a child from overseas must satisfy the following age criteria at the time they express interest:

- if neither of the applicants are a previous adoptive parent, one of them must be less than 41 years old and the other must be less than 47 years old;
- if either of the applicants are a previous adoptive parent, one of them must be less than 43 years old and the other must be less than 47 years old.



Age of parents in the general community

Many couples are now waiting longer to start families and this is often cited as a rationale for maximum age criteria to be removed from adoption legislation.

Parents of children born in Queensland who choose to secure a permanent family for their child through adoption typically request that the child be matched with adoptive parents who are within the average age range of parents in the community.

The Australian Bureau of Statistics publication, *Births Australia 2000*, reports there were 249,600 births registered in Australia during 2000. The median age mothers in 2000 was 29.8 years and the median age for Indigenous mothers was 24.5 years. Women aged 30 to 34 had the highest rate of fertility in Australia in 2000.

The median age of fathers was 32.2 years in 2000, while the proportion of fathers aged 40 years and over increased from five per cent in 1980 to 11 per cent in 2000. This increase was attributed to some fathers delaying parenthood and others starting their second family with a different partner.

Age criteria specified by overseas adoption authorities

Overseas adoption authorities specify maximum (and often minimum) age criteria for prospective adoptive parents or the maximum allowable difference between the age of a child and the prospective adoptive parents.

At present, people must meet age criteria specified by the relevant overseas adoption authority in addition to the age-related eligibility criteria prescribed in Queensland legislation. This sometimes means people who are ineligible under Queensland legislation because of their age, cannot be assessed as prospective adoptive parents for overseas children, even though they are within the age criteria specified by an overseas adoption authority. The reverse also applies.

Consideration of age

People are at increased risk of dying in their 60s and 70s than they are in their 40s and 50s⁶⁸. Children's interests are not best met if they lose one or both of their parents in their childhood, teenage years or early adulthood.

It is not in the interests of children requiring adoptive families to be at greater risk of prematurely losing their parents than other children in the community. Nor would being at greater risk of prematurely losing an adoptive parent promote the welfare and interests of an adopted person throughout his/her life.

The purpose of age eligibility criteria and/or considering the age of prospective adoptive parents in assessment of their suitability is to help secure the best possible adoptive placements by reducing the risk of adopted children prematurely losing one or both parents.

Arrangements in other States

In South Australia, an adoption order can be made in favour of a person aged between 18 and 55 years of age. Under the New South Wales legislation, an adoption order may be made in favour of a person who is 21 or more than 18 years older than the child to be adopted.

In the Northern Territory an adoption order can be made in favour of a person who is:

- at least 25 years old; and
- at least 25 years older than the child to be adopted; and
- no more than 40 years older than the first child to be adopted; and
- no more than 45 years older than a subsequent child to be adopted.

⁶⁸ Australian Bureau of Statistics, Australian Life Table 1995-97

Eligibility or suitability issue?

The effect a person's age has on his/her suitability to be approved as a prospective adoptive parent might best be determined in the assessment process and in conjunction with other factors including his/her health, lifestyle and support networks.

However, specifying a maximum allowable age difference between children requiring adoptive placements and prospective adoptive parents may help reduce the risk of an adopted person losing one or both parents in childhood, adolescence or early adulthood. It would also ensure that people seeking to adopt a child, who are outside the usual age range of parents in the community, do not have their expectations of adoption unfairly raised.

Should legislation specify:

- *that people seeking to adopt children must be under a specific age to be eligible to express interest in being assessed as prospective adoptive parent; or*
- *a maximum allowable age difference between a child to be adopted and the adoptive parents?*

10.3.7 Infertility

Currently, only infertile⁶⁹ people are eligible to express interest in adopting a child in Queensland. This is not a requirement for people expressing interest in adopting a child from overseas under Queensland legislation, although some overseas adoption authorities prefer to place children with prospective adoptive parents who are infertile.

Although the interests of children must be the paramount consideration in adoption, specifying that only infertile couples are eligible to adopt children born in Queensland suggests adoption is a service for infertile couples, rather than a service for children.

Due to the lengthy waiting period and uncertainties associated with adoption, many people commence or continue to pursue fertility and assisted reproductive treatments after expressing interest in adopting a child. In these instances, people hope to be able to withdraw their expression of interest upon the safe delivery of a child born to them.

In some other States, people who enter the adoption application and assessment phase are required to provide advice from their treating medical practitioner to confirm that they are not pregnant and/or have ceased fertility treatment (where applicable). This information is considered to be an indication that the people's focus at that time is on pursuing adoption.

Considering a person's adjustment to infertility and participation in fertility treatment must be currently considered when assessing their as a prospective adoptive parent.

Although infertility is not an eligibility criterion for people expressing interest in adopting a child from overseas, many (but not all) people who seek to adopt children from overseas experience infertility. Considering adjustment to infertility and participation in fertility treatment is often relevant in assessing people's suitability to be approved as prospective adoptive parents for children from overseas, although it is not specifically prescribed in the matters to be considered in assessment.

Infertility, the presence of children who are biologically related to a couple within a prospective adoptive family, and the potential for children to enter the family in the future, are all matters which may be more effectively considered in the assessment process rather than as initial eligibility considerations.

⁶⁹ Infertility is defined in schedule 2, Adoption of Children Regulation 1999.



Should infertility continue to be an eligibility criterion for people seeking to adopt children in Queensland; or should issues related to fertility be considered in assessing their suitability to be approved as a prospective adoptive parent?

10.4 Assessment of suitability

10.4.1 Current law and practice

After eligibility is established, the *Adoption of Children Act 1964* requires an assessment to be undertaken of people seeking to adopt a child in Queensland or a child from overseas to ensure they are “of good repute and are fit and proper people to become adoptive parents.”

The Act also requires applicants on the Relative Children’s Adoption List and the Special Needs Children’s Adoption List to be assessed to decide if the welfare and interests of the child to be adopted would be best met by making an adoption order in favour of the applicants.

People seeking to adopt a child must disclose their criminal history as requested by the Chief Executive to enable their application to be assessed. The Act allows for the Chief Executive to assess whether an applicant would be a “fit and proper person” to be a prospective adoptive parent based on his/her criminal history alone.

Assessing people’s suitability to become prospective adoptive parents is a complex undertaking with information from a number of sources contributing to the assessment. An assessment of people’s personal qualities and lifestyle is a major component contributing to the overall assessment.

In assessing people’s suitability to be approved as prospective adoptive parents, consideration is given to:

- the criminal history of the person;
- references of the person;
- client and child protection information recorded by the Department of Families, where applicable;
- information provided by the person including a family profile;
- the person’s participation in education programs;
- the assessment undertaken by the Adoption Contract Worker or Adoptions Officer;
- the child’s Adoption Life Story Book completed by people seeking to adopt a child from overseas; and
- other relevant information.

The officer undertaking an assessment is required to consider the matters to be considered in assessing people as prescribed in the *Adoption of Children Regulation 1999*. These are:

- the quality of the couple’s marriage, including its stability;
- each person’s capacity to be an adoptive parent, including –
- their emotional capacity and other personal qualities;
 - › financial stability and other financial capacity;
 - › their capacity to ensure a child’s safety and well-being; and
 - › any other matter relevant to their capacity to provide for a child’s emotional, physical, educational, recreational and social needs.
- each person’s attitudes to, and understanding of –
 - › children and their physical and emotional development;
 - › the responsibilities and duties of parenthood;
 - › the issues relevant to adoptive parenting, including issues about informing a child of his/her adoption; and
 - › the significance of an adopted child’s birth parents and their families.

- if the couple have applied to adopt a child of a particular Indigenous, ethnic or cultural background - their ability and willingness to understand the child's background and to develop or maintain the child's Indigenous, ethnic or cultural identity is assessed; and
- the extent of their participation in educational programs relevant to adoption, including any programs conducted by the Department.

Assessment of people seeking to adopt a child from Queensland must also consider the applicants' adjustment to, and acceptance of, the infertility of the person or the person's spouse and whether the infertile person is pursuing fertility treatment.

The assessment of people seeking to adopt a child from overseas must also consider:

- the couple's understanding of, and interest in, the country from which the child is to be adopted and the culture of that country; and
- the couple's ability and willingness to continue to learn about the country and its culture, after placement of an adoptive child from that country with the couple, and to help the child to learn about the country and its culture.

The assessment of Relative Children's Adoption applicants must also consider:

- the nature of the applicant's relationship with the child;
- the circumstances in which the applicant obtained custody of the child;
- the likely effect on the child of separating him/her from a parent, sibling or other person with whom the child is or has been living; and
- if there is a natural parent who does not have custody of the child, that parent's views on making an adoption order in favour of the applicant, so far as the Chief Executive is reasonably able to obtain those views.

Departmental guidelines also require particular consideration to be given to the following matters when assessing whether the interests and welfare of a child with special needs will be promoted by making an adoption order in favour of a person/couple:

- the person/s' previous experience in caring for a child with a physical or intellectual disability, or a child with multiple disabilities, an older child or a child from a culturally diverse background;
- the person/s' capacity to provide and plan for the child's long term care and support needs into adulthood; and
- the availability of support services, to provide for the child's specific needs, in the person/s' locality.

People are advised of the outcome of their assessment in writing. They may be favourably assessed, unfavourably assessed or a decision may be made to defer a final assessment decision so the person/s' can address specific issues within a specified timeframe. The person/s' suitability will be further assessed after the period of deferment has expired.

If people are favourably assessed their names remain on the relevant adoption applicant list until an adoption order is made in their favour and their file is updated as necessary, where relevant.⁷⁰

If people are unfavourably assessed, they are advised of the grounds for the assessment and their right of review by the Children's Services Tribunal. The names of people who are unfavourably assessed are removed from the Expression of Interest Register or the relevant adoption applicant list. If a review is successful, their names are re-entered in the Register or relevant adoption applicant list.

People's approval as prospective adoptive parents may be withdrawn if their circumstances change and they no longer satisfy eligibility requirements or the requirements for favourable assessment, or if it becomes apparent that information provided by people in the assessment process was substantially false.

⁷⁰ Process differs for Special Needs Children's Adoption applicants, see section 10.4.1 for discussion.



10.4.2 Future assessment of suitability

The matters which must currently be considered in assessing whether a person should be approved as a prospective adoptive parent as prescribed in the Regulation, provide a sound foundation for assessing prospective adoptive parents and are largely consistent with assessment procedures in other States.

While it is possible to prescribe a range of matters in legislation which should be addressed in assessing prospective adoptive parents, it is not possible or desirable to be overly prescriptive. The issues and factors relevant to specific people's suitability vary and professional judgement must be exercised and practice guidelines employed to ensure all matters relevant to a specific person are assessed.

The assessment of suitability usually considers all factors associated with a person's circumstances and does not rely on one piece of information alone. However, a person can currently be assessed on the basis of their criminal history alone and future consideration may be given to providing assessment based only on the applicants' health (see section 6.3.5).

The matters to be considered in assessing prospective adoptive parents in the future will need to reflect the outcome of feedback relating to the questions posed in Sections 10.3.2 to 10.3.7 of this consultation paper. Depending on the outcome of feedback, it may be appropriate to refine the prescribed matters to be considered in assessing the suitability of prospective adoptive parents to include:

- relationship stability and duration;
- a single person's capacity to parent a child requiring adoption;
- a person's health and its effect on his/her capacity to parent a child requiring adoption;
- the number of children in the custody of people seeking to adopt a child and the effect this has on their capacity to adequately meet the needs of a child requiring adoption and those of children already in the family;
- the views and understanding children already in the family may have in relation to adoption and to another child entering the family through adoption, and their preparedness for the possible placement of a child requiring adoption in the family;
- a person's age and the effect this has on their capacity to parent a child requiring adoption; and
- the effect a person's fertility or infertility has on his/her capacity to parent a child requiring an adoptive placement.

Should it be possible for an assessment, based on a person's health alone, to be made of the person's suitability to be a prospective adoptive parent where it appears that, because of his/her health, he/she would not be able to provide a high level of stable, long term care for a child?

In addition to the matters already prescribed, should the assessment of prospective adoptive parents include consideration of the matters outlined in 10.4.2 above?

10.5 Matching children in Queensland with prospective adoptive parents

Initial amendments to the *Adoption of Children Act 1964*, effective from July 2002, require the Chief Executive to regard the following when matching prospective adoptive parents with a child in Queensland requiring adoption:

- (a) The needs of the specific child, including his/her:
- age and gender;
 - Indigenous or cultural background;
 - medical needs, including known medical conditions, disabilities or potential future health conditions or disabilities;
 - specific educational needs;
 - the requirement for the adopted child to be the youngest child in the family (see 10.7.1 Spacing of Children); and
 - any other specific needs.
- (b) Characteristics of the prospective adoptive parents including:
- the age and gender of child they have been approved as having the capacity to parent;
 - whether they have been approved as having the capacity to parent siblings;
 - their religion;
 - their Indigenous or cultural background;
 - their willingness to parent a child with known medical conditions, disabilities or potential future health conditions or disabilities;
 - their willingness to parent a child from a particular social background, including a child with particular birth circumstances (i.e., paternity unknown, conception resulting from an unlawful act);
 - their willingness to participate in exchanging non-identifying correspondence (via the Department) with the child's birth family after an adoption order has been made, if applicable;
 - the age of the other children in the prospective adoptive family, if applicable; and
 - other relevant factors.
- (c) The child's birth parents' expressed preferences, including:
- the child's religious upbringing;
 - characteristics of prospective adoptive parents and composition of the adoptive family;
 - their 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.

Feedback about open adoption practice (see Chapter 4) will need to be considered when developing the legislative framework guiding decisions about matching prospective adoptive parents with children requiring adoptive placements.

Do the matters outlined above provide a child-focused and comprehensive framework for making decisions about which prospective adoptive parents can best meet the needs of a child in Queensland requiring adoption? Should other matters be considered?



10.6 Framework for considering the placement of children with prospective adoptive parents in Queensland proposed by overseas authorities

The Department is responsible for forwarding approved prospective adoptive parents' applications to overseas adoption authorities for consideration. Matching a child with prospective adoptive parents is the responsibility of the overseas adoption authority.

In accordance with the Hague Convention, the proposed adoption of a child can proceed only if the arrangement is agreed to by both the overseas adoption authority and the adoption authority in the State in which the child is to be placed.

The Department of Families is the adoption authority in Queensland, therefore, the Chief Executive must agree to the proposed placement of a specific child with prospective adoptive parents in Queensland for the placement and subsequent adoption of the child to proceed.

After matching prospective adoptive parents with a child, the overseas adoption authority advises the Department of the proposed placement and seeks the Department's views about it. The Department reviews the proposed placement to ensure the characteristics and/or needs of the child are consistent with the prospective adoptive parents' assessed parenting capacity and expressed preferences. Additional information may be sought from the overseas authority and/or the prospective adoptive parents to clarify the appropriateness of the proposed placement.

The characteristics and/or needs of a child the overseas adoption authority proposes to place with prospective adoptive parents may vary from the assessed parenting capacity or expressed preferences of the prospective adoptive parents in some instances. The Chief Executive must then consider whether the potential placement of the child would be in his/her best interests and whether a successful adoption outcome would be likely.

In a small number of cases, the Chief Executive has advised an overseas adoption authority that the proposed placement of a child is not supported because there is a significant (and critical) difference between the assessed parenting capacity and expressed preferences of the prospective adoptive parents and the child's characteristics and/or needs. If a proposed placement cannot be supported, the Department is obliged to respect the confidentiality of information regarding the child. If the Department cannot support the placement of a child with prospective adoptive parents as proposed by the overseas adoption authority, the proposed placement is not discussed with the prospective adoptive parents.

In most instances, the proposed placement of a child is consistent or largely consistent with the assessed parenting capacity and expressed preferences of the prospective adoptive parents. In these instances, the Department discusses the characteristics and needs of the child with the prospective adoptive parents who are then able to decide whether they are willing and able to meet the child's needs.

In determining whether the placement of a child with prospective adoptive parents proposed by an overseas adoption authority will be supported, the Chief Executive currently considers:

(a) Information about the needs of the individual child including, where known:

- the child's age and gender;
- the child's cultural background and religion;
- the child's medical needs, including known medical conditions, disabilities or potential future health conditions or disabilities;
- the child's specific educational needs;
- whether the child has siblings and, if so, the child's position in the sibling group;

- the requirement for the adopted child to be the youngest child in the adoptive family (see 10.7.1 of this consultation paper); and
 - any other specific needs.
- (b) The prospective adoptive parents' characteristics including:
- the age and gender of child they have been approved as having the capacity to parent;
 - whether they have been approved as having the capacity to parent siblings;
 - their religion;
 - their cultural background;
 - their willingness and capacity to parent a child with known medical conditions, disabilities or potential future health conditions or disabilities;
 - their willingness to parent a child from particular social backgrounds, including a child with particular birth circumstances (i.e., paternity unknown, conception resulting from an unlawful act);
 - their willingness to provide ongoing information about the child's progress to the overseas adoption authority after an adoption order has been made, where applicable;
 - the age of other children in the prospective adoptive family, where applicable; and
 - other relevant factors.

Do the matters outlined in 10.6 above provide a child-focused and comprehensive framework for making decisions about determining whether the placement of a child with prospective adoptive parents, as proposed by an overseas adoption authority, should be accepted by the Chief Executive? Should other matters be considered?

10.7 Placement policy and practice issues

A range of policies and practices are implemented to assist the Chief Executive fulfil the responsibility to:

*facilitate securing for children who are available for adoption the best possible placements, having regard to the welfare and interests of the children, and to protect the rights and to provide for servicing the needs of all parties to the adoption process.*⁷¹

While not specifically prescribed in adoption legislation, these policies and practices are based on evidence from practice and research and are designed to ensure the welfare and interests children are the paramount consideration in adoption, and that efficient and accountable services are provided to all parties.

10.7.1 Spacing of children

On the basis of research and practice experience, and in an attempt to promote healthy attachment between children and their adoptive families, the Department requires a minimum two year age gap between a child to be adopted and other children in a family. This means that when a child is being placed within a family:

- the adopted child must be the youngest child in the family at the time the adoption order is made;
- the adopted child must be two years younger than any other child in the family;
- the female applicant must not be pregnant at the time of placement; and
- a subsequent child must not be placed with the family if another child has already joined the family through adoption less than two years earlier.

⁷¹ *Adoption of Children Act 1964*, section 5A



While there are understandable reasons for people seeking to adopt a child not disclosing pregnancy or participation in fertility treatment, failure to disclose this information is not in the best interests of children requiring adoption. Assessment and placement decisions are flawed where people withhold information about their ongoing participation in fertility treatment and desire to achieve a pregnancy.

The assessment of a couple's circumstances and their capacity to parent an adopted child is undertaken on the premise that the couple are committed to adoptive parenthood, that a biological child will not be entering the couple's family soon after the adopted child's placement in the family, and that the adopted child will be the primary focus of the couple's attention for at least 12 months after placement.

A different set of issues (and consideration of a couple's motivation) would need to be considered if assessing a couple proposing to adopt a child shortly prior to giving birth to a child.

People who continue fertility treatment and don't provide accurate information to the Department about this and/or pregnancy create difficulties between the Department and overseas adoption authorities who match children with Queensland couples in good faith and on the understanding that the female partner is not pregnant.

10.7.2 Requirement to provide information about fertility treatment/pregnancy

In some other States, couples are eligible to be assessed and/or considered for the placement of a child only if they are not participating in fertility/assisted reproductive treatment and only if the female is not pregnant.

Prospective adoptive parents are required to provide the relevant State Department with evidence that they are not participating in fertility/assisted reproductive treatment and that they are not pregnant (i.e., a report from a specialist medical practitioner, results of recent pregnancy test). In Victoria, prospective adoptive parents are also required to sign an undertaking indicating that they will not become pregnant for at least 15 months after an adopted child is placed with them.

Under the present provisions of section 18 of the *Adoption of Children Regulation 1999*, prospective adoptive parents are required to advise the Department immediately about changes in their circumstances. It is an offence for a person to make a false statement for the purposes of or in connection with an adoption or any other matter under the Act but, despite this, some prospective adoptive parents do not advise the Department of their ongoing participation in fertility/assisted reproductive treatment or of a pregnancy.

If there is a time-limited application and assessment process which results in a moderate waiting time for prospective adoptive parents, is it reasonable to require a person seeking to adopt a child to provide evidence from a treating medical practitioner that:

- *the person, or the female partner of the couple, is not pregnant at the time she expresses interest in being assessed as a prospective adoptive parent; and/or*
- *that the person has completed, or discontinued, fertility treatment at the time the person expresses interest in being assessed as a prospective adoptive parent, and, if approved as a prospective adoptive parent, shortly before they take custody of the adopted child?*

10.7.3 Prospective adoptive parents' commitment to personally provide full time care for a child for 12 months after placement

To promote healthy attachments between children and their adoptive families and to provide stability for children, the Department and most overseas adoption authorities require adoptive parents to personally provide care for their adopted child for at least 12 months from the time he/she enters their care.

Where both parents work, they may choose to share the responsibility of caring for the child by taking consecutive periods of six months leave from their employment, or one parent may choose to take a longer period of leave from work.

The child must be in the care of one parent at all times for at least 12 months after he/she enters the adoptive parents' care, regardless of the child's age at the time of the placement. This means that prospective adoptive parents/adoptive parents cannot place a child in child care, with a babysitter or in a friend or relative's care etc, while they work or study. Of course, prospective adoptive parents/adoptive parents may make suitable child care arrangements for short periods if necessary in the twelve month period after a child is placed.

Should legislation required adoptive parents to personally care for their adopted child for at least 12 months after the child enters their care?

10. 8 Administrative processes for selection of adoptive parents

Prior to amendments to the *Adoption of Children Act 1964*, effective from July 2002, anyone who sought to adopt a child could lodge an application at any time and applications were usually required to be processed in chronological order. Unlike other States, there was no capacity to control applicants' entry into and progress through Queensland's adoption process, resulting in a number of problems for the delivery of adoption services in the contemporary context. These are discussed below and in sections 10.8.1 to 10.8.3.

The process for selecting adoptive parents should be characterised by the following:

- a focus on achieving outcomes for children that will best meet their needs;
- a time-limited process for applicants with clear timeframes for each stage of the process;
- openness and accountability in decision-making; and
- efficient use of resources.

10.8.1 Waiting time for assessment of suitability

The Act's previous requirements resulted in long adoption applicant lists. As at 30 June 2001, 919 applicants had their names entered in adoption application lists in Queensland, comprising 303 General Children's Adoption applicants, 471 Foreign Children's Adoption applicants, 20 Special Needs Children's Adoption applicants and 125 Relative Children's Adoption applicants.

General Children's Adoption

The discrepancy between the number of people seeking to adopt children born in Queensland and the number of children requiring adoption has resulted in General Children's Adoption applicants waiting for long periods to be assessed and matched with a child. People currently being considered applied to adopt a child approximately 10 years ago and it is impossible to estimate how long people who applied in 2002 may wait to be matched with a child.



Special Needs Children's Adoption

A few of the small number of children born in Queensland requiring adoption have serious medical conditions, physical and/or intellectual disabilities, are older children or children from particular cultural backgrounds, i.e., they have special needs. Adoptive parents are matched with children with special needs through the Special Needs Children's Adoption process.

The waiting period for people seeking to be assessed as prospective adoptive parents for a child with special needs differs from the waiting period for people seeking to adopt other children. The Act provides for the assessment of applicants' suitability to be approved as prospective adoptive parents for a child with special needs to be commenced only when:

- the particular needs of a child requiring an adoptive placement are known or can be anticipated; and
- it appears that an individual or couple may 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. If applicants want to be considered for the placement of a child with special needs for another two year period, they can reapply to have their names entered in the Special Needs Children's Adoption List.

Foreign Children's Adoption

The waiting time for people seeking to adopt a child from another country has been increasing in proportion to the increasing number of applicants on the list. People currently being assessed applied two to three years ago. Recent amendments to the *Adoption of Children Act 1964* and the commitment of additional resources to intercountry adoption will help reduce the waiting period for people to be assessed.

10.8.2 Postponement and withdrawal of applications

A further problem associated with the current provisions, is that they encourage people to express interest or to lodge applications when they are still unsure whether adoption is their preferred option for creating or extending their families.

It is not currently necessary for people who gain entry to the adoption process to be ready to proceed or to be committed to pursuing adoptive parenthood (although many applicants are both). Given the current legislative arrangements, it would be unreasonable, for example, to require people to have ceased fertility treatment prior to expressing interest (or previously prior to lodging an adoption application) because they may wait indefinitely to be matched with a child.

This results in the postponement and withdrawal of couples' applications after education and assessment services have been provided and significant resources being expended for no outcome for children.

10.8.3 Recent amendments to the Act

Alternative application and assessment processes are needed to minimise the resources directed to administrative and assessment activities that do not result in placements for children and to avoid lengthy waiting periods for people seeking to adopt children. An 'expression of interest process' combined with an efficient and accountable adoption assessment process would provide an effective method of addressing these issues.

Recent amendments to the Act attempt to address these problems. They:

- enable expressions of interest in being assessed as prospective adoptive parents to be called for when there is a need to increase the number of people available to meet the placement needs of children;
- remove the requirement to assess applicants in the chronological order of their applications (although applicants on the Foreign Children's Adoption List prior to commencement of the amendments will continue to be assessed generally in chronological order); and
- remove the requirement to match children born in Queensland with prospective adoptive parents in the chronological order of their applications and replace it with guidelines relevant to the needs and interests of children requiring adoptive placements.

The amendments establish an Expression of Interest Register and an Assessment Register to replace the General Children's Adoption List and the Foreign Children's Adoption List. All applicants on these lists prior to the commencement of the amendments were automatically transferred to the relevant register, depending on whether they had been assessed at the time the amended Act commenced.

The new process established by the amendments will, over time, reduce the number of people on the Expression of Interest Register and the waiting time for assessments. It will ensure a greater focus on the general needs of children requiring adoption and on the needs of individual children when making decisions about placement with prospective adoptive parents.

This process is similar to processes established in other States, however, feedback is sought as to whether it will best achieve the objectives set out above.

10.8.4 Expression of interest in applying to adopt a child

In New South Wales, South Australia and Western Australia, people may express interest in applying to adopt a child and/or the Director-General of the relevant department may call for expressions of interest from people who wish to be considered as prospective adoptive parents. People who have expressed interest may be invited to lodge an application to be assessed as a prospective adoptive parent.

There was no provision for an expression of interest process to precede application in Queensland prior to the amendments effective from 1 July 2002. Any person who wished to apply could do so; there was no capacity to regulate the number of people entering the application process so a moderate waiting period for prospective adoptive parents could be achieved. This prevented the delivery of efficient, child-focused adoption services and business practices and did not directly benefit children.

Should legislation provide for:

- *any person who wishes to express interest in applying to adopt a child to be able to do so to the Chief Executive at any time; or*
- *the Chief Executive to call for expressions of interest from people who wish to be assessed as prospective adoptive parents when more prospective adoptive parents are required to meet the anticipated placement needs of children?*



10.8.5 Requirements for lodging expression of interest

In Western Australia, a person may lodge an expression of interest within 12 weeks of having attended an information seminar on adoption. The Chief Executive may invite people who attended an information seminar and expressed interest in applying to adopt a child, to proceed with being assessed as prospective adoptive parents. Attendance at an information seminar prior to lodging an expression of interest/application is also required in Victoria.

In Queensland, potential applicants may have little understanding of the reality of adoptive parenthood and parenting a child from overseas at the time they express interest (or previously, at the time they lodged an adoption application). Requiring people to participate in an information seminar prior to expressing interest would ensure they have information on which to base their decision about expressing interest in adoption.

Should people be required to attend an information session prior to lodging an expression of interest?

10.8.6 Determining when assessment will occur

When determining when an application from a person who has expressed interest may proceed, the Western Australian Director-General considers the number and requirements of children who have become available, or are likely to become available, for adoption during a particular period. The Director-General also considers the number and attributes of people who have expressed interest when determining when any application may proceed.

In Victoria, the Department of Human Services has administrative guidelines for determining when a person's application may proceed to assessment.

In Queensland, because of the previous legislative requirement to generally assess applicants in the chronological order of their applications, the Chief Executive has had only a limited capacity to consider the number and requirements of children requiring adoption and the number and attributes of adoption applicants when determining when an application may proceed to assessment.

Initial amendments to the Act (effective from 1 July 2002) enable the Chief Executive to invite an appropriate number of people who have expressed interest to proceed to be assessed as prospective adoptive parents when there is a need to meet children's anticipated placement needs. This process will enhance efficiency and maximise the resources directed towards activities that secure placements for children, reduce waiting times for people engaged in application and assessment, and provide a straight forward, relatively rapid and time-limited process for prospective adoptive parents.

When determining when persons who have expressed interest may proceed to being assessed as prospective adoptive parents, should legislation require the Chief Executive to consider:

- *the number and requirements of children who require, or may reasonably be expected to require, adoptive placements during a particular period; and/or*
- *the number and attributes of persons who have expressed interest in applying to adopt a child?*

Education seminars

In addition to providing information to people seeking to express interest in adoption, education seminars for people who express interest in being assessed as prospective adoptive parents may also facilitate a more effective process. Such seminars ensure people have sufficient information about the adoption program and adoptive parenthood prior to engaging in the assessment phase, and are similar to education seminars currently provided to couples prior to assessment.

In New South Wales, people who have expressed interest: *are invited into an adoption program ... when applications are required to meet the placement needs of children coming available for adoption... Couples included in a program are invited to adoption education seminars ... Both husband and wife must attend.*⁷²

Should people be required to participate in education seminars before being assessed as prospective adoptive parents?

10.8.7 Expiry of expressions of interest

The length of time an expression of interest remains current needs to be considered to ensure waiting lists do not become extensive and that the assessment of people ready to proceed can be done as quickly as possible. It may also be necessary to consider how long would be reasonable to expect people who have been invited to be assessed to accept an invitation to an education seminar and to make themselves available for assessment.

Currently, couples can indefinitely postpone their applications at any stage of the process (see 10.8.3 of this consultation paper), so it may be more efficient for expressions of interest to expire at a specified time and/or under specific circumstances. It may be reasonable for an expression of interest to expire if people invited to be assessed do not attend education seminars within 12 months of being invited to do so.

It may also be reasonable for an application to expire if the people invited to be assessed as prospective adoptive parents:

- do not provide requested information within a specified time frame; or
- do not make themselves available for assessment; or
- are not in a position to be assessed within two years of lodging the application.

New adoption legislation in New South Wales proposed that *an expression of interest is effective for a period of 12 months after it is submitted.*⁷³

Should an expression of interest expire if:

- *the person who has been invited to be assessed does not attend an education seminar within 12 months of the invitation;*
- *the person who has been invited to be assessed does not provide requested information within a specified time?*
- *the person who has been invited to be assessed does not make him/herself available for assessment or is not in a position to be assessed within two years of being invited to lodge an application?*

⁷² *Considering adoption*, NSW Department of Community Services, 1999.

⁷³ Proposed Adoption Regulation 2001 and Regulatory Impact Statement, NSW Department of Community Services, 2001.



10.8.8 Assessment process

Assessment Register

Recent amendments to the Act also establish a register of people who are favourably assessed as a mechanism to assist the timely matching of children with prospective adoptive parents, or preparation of applications for overseas adoption authorities.

In using an Assessment Register, the number and characteristics of approved prospective adoptive parents need to be sufficient to meet the anticipated needs of children requiring adoption. The process for maintaining and/or adding to the number of approved prospective adoptive parents in the Assessment Register needs to ensure a sufficient number of families with a range of backgrounds and characteristics are available for children, and that waiting times for approved prospective adoptive parents are moderate.

It may be reasonable for an application to expire if a prospective adoptive parent on the Assessment Register is not in a position, or is unlikely to be in a position, to:

- consider the placement of a child within 12 months of favourable assessment; or
- have their application forwarded to an overseas adoption authority within 12 months of favourable assessment.

Should an application by a prospective adoptive parent expire if the person who has been assessed is not in a position, or it is reasonably expected that they will not be in a position, to consider the placement of a child or to have their file forwarded to an overseas adoption authority (where relevant), within 12 months of being favourably assessed?

Unfavourable assessment

As is currently the case, the names of unfavourably assessed people would need to be removed from the Expression of Interest Register and their application closed. Unfavourable assessment may be subject to review, similar to previous provisions. Reviewable decisions are discussed further in section 10.10 below.

10.8.9 Transitional arrangements

To maximise services provided to children requiring adoption and to provide a moderate waiting time for people engaged in application and assessment activities, it is necessary to consider what transitional arrangements should be included in new adoption legislation.⁷⁴ Transitional arrangements would need to provide for the move from the existing large expression of interest register, previously applicant lists, and lengthy waiting times to a more timely and efficient process for people seeking to adopt a child.

Transitional arrangements could include options including:

- indefinitely maintaining the names of people who have lodged an application or expression of interest or whose names are entered in an assessment register prior to the new legislation coming into effect in the applicant list or on the expressions of interest register or assessment register;
- ceasing to accept applications or calling for expressions of interest when new legislation comes into effect until people whose names are on applicant lists or who have expressed interest in being assessed as prospective adoptive parents have been assessed;

⁷⁴ Transitional arrangements discussed in this section refer to arrangements which would apply when new a adoption Act came into effect in Queensland. The discussion does not refer to transitional arrangements contained in the *Adoption of Children Amendment Act 2002*.

- maintaining the names of people who have lodged an application or expression of interest or who are seeking to adopt a child in Queensland⁷⁵ and whose names are entered in the assessment register prior to the new legislation coming into effect, in an applicant list or on an expressions of interest register or assessment register for a period not exceeding two years after the new legislation commences;
- making provision for a staggered time frame in which: the expiry of the names of people who have lodged an application or expression of interest; or who are seeking to adopt a child in Queensland and whose names are entered in the assessment register prior to the new legislation coming into effect; expire.

The first two options would provide no direct benefit to children requiring adoption and would create a ‘closed pool’ of prospective adoptive parents. Such arrangements may prevent the best possible placement for children requiring adoption. Other people could not be considered to provide an adoptive placement for a child, even if they were better able to meet the child’s needs than applicants on an adoption list or people whose names were on the expression of interest register at the time new legislation came into effect.

If a time-limited expression of interest process was introduced, what transitional provisions (see 10.8.9 above) should future legislation contain regarding existing applications/expressions of interest?

10.9 Administrative decision-making processes

10.9.1 Current law and practice

The Department currently makes all administrative, case planning and legal decisions relating to the adoption process, other than decisions about dispensing with the consent of a parent or guardian and discharge of adoption orders, which are made by the Courts.

Section 11 of this paper considers the issue of openness and accountability in legal decision-making and canvasses a range of options for making adoption and related orders. However, a number of administrative decisions must be made prior to an adoption order being made, including:

- determining the eligibility of people seeking to adopt a child;
- determining the suitability of people seeking to adopt a child;
- decisions about the pre-adoptive placement and care of children for whom general adoption consents have been given;
- determining which prospective adoptive parents a child born in Queensland should be matched with; and
- approving decisions of overseas adoption authorities to match a child with particular prospective adoptive parents in Queensland.

Other than administrative review of unfavourable eligibility or suitability decisions, there is little external oversight of or input into administrative decision-making.

⁷⁵ The discussion in this section does not include reference to people seeking to adopt a child from overseas whose names are entered in the assessment register at the time new legislation comes into effect because it is usual for applications to remain in overseas countries for varying periods prior to overseas adoption authorities matching applicants with a child requiring an adoptive placement.



10.9.2 Options for future administrative decision-making

There are a number of ways in which administrative decision-making could occur, including:

- by the Chief Executive, as is currently the case;
- by a panel comprising departmental representatives and external members with adoption and other relevant expertise authorised to make recommendations to the Chief Executive in relation to these decisions; or
- by a panel comprising departmental representatives and external members with adoption and other relevant expertise authorised to make these decisions.

A panel model comprising departmental officers and external members with adoption and other relevant expertise could promote better decision-making and ensure greater scrutiny of decisions in a system in which either the Chief Executive or another body makes adoption orders.

Tasmanian and Western Australian legislation enables the establishment of panels by the Department or by a licensed adoption agency to consider the suitability of applicants. In Western Australia, an Adoptions Applications Committee decides whether to approve prospective adoptive parents. In Tasmania, the role of the panel is advisory only.

Panels are also used in the United Kingdom to advise agencies on a range of adoption matters including the approval of prospective adoptive parents, approval of adoption plans and matching individual children with prospective adoptive parents.

Panels could perform a range of functions now performed solely by the Department, such as advising or deciding on:

- case plans for children requiring adoption, including whether adoption is the best alternative care arrangement or legal order to meet the needs of a child (see 11.1 in this consultation paper);
- the eligibility of people seeking to adopt a child (see 10.2 in this consultation paper);
- whether to approve persons as prospective adoptive parents (see 10.4 in this consultation paper);
- whether a child should be placed with particular prospective adoptive parents (see 10.5 in this consultation paper);
- decisions of overseas adoption authorities to match a child with particular prospective adoptive parents (see 10.6 in this consultation paper); and/or
- open adoption plans (see 4.4 in this consultation paper).

The consideration of eligibility decisions by a panel may not be warranted if the decisions are limited to factors which are easily demonstrated, as suggested in 10.2.3 in this consultation paper. In these circumstances, determination of eligibility by the Department may provide for the most simple and timely response.

Having a panel consider suitability and matching decisions may enhance the decision-making process by utilising the expertise of people with a range of relevant professional and personal experiences in the complex task of considering a person's suitability to be approved as a prospective adoptive parent and selecting adoptive parents for a child. It would facilitate more open and inclusive decision-making and would be consistent with moves towards more open adoption practice.

The purpose, functions and composition of a panel would need to have a legislative basis and the participation of panel members would need to be supported by the development of administrative aids including:

- a statement of panel members' roles and responsibilities;
- the provision of information about current adoption legislation, policy and practice to panel members;
- the development of operating guidelines;
- the development of decision-making guidelines to ensure consistency in decision-making; and
- access to a complaints process.

An advisory or determinative role?

If the inclusion of panels in the administrative decision-making process would be beneficial, the issue becomes whether the role of panels should be advisory or determinative.

An advisory role would ensure greater scrutiny of departmental decision-making and enable the provision of a broader range of advice to departmental decision-makers than is currently available. It would ensure some external contribution to administrative decisions that are not appropriate for external merits review by another body, such as the decision to place children with particular prospective adoptive parents (if adoption orders continue to be made administratively). However, an advisory body is not, and would not be seen to be, independent, and it lacks power to enforce any recommended course of action.

A determinative role would increase independence and accountability but it may not be appropriate for all decisions to be made by panels. For example, it is the role of the Department under international agreements to approve or not approve decisions by overseas adoption authorities to match children with particular prospective adoptive parents. It may not be appropriate under these agreements for a body comprising external persons to make these decisions.

Should legislation establish panels comprising departmental officers and external members with relevant expertise to consider matters like:

- *whether adoption is in the best interests of a child;*
- *the eligibility and suitability of prospective adoptive parents;*
- *the selection of prospective adoptive parents for a specific child;*
- *proposals of overseas adoption authorities to match a child with particular prospective adoptive parents; and/or*
- *open adoption plans?*

Should the role of the panels be to:

- *advise the Department?*
- *make decisions?*

10.10 Administrative review

10.10.1 Current law and practice

External review of administrative decisions made under the *Adoption of Children Act 1964* relating to eligibility and suitability of people seeking to adopt a child is currently provided by the Children's Services Tribunal. Section 14D of the Act provides that where the Chief Executive decides to remove a person's name from an adoption list or makes an assessment that ...

- a person is not of good repute or a fit and proper person to become an adoptive parent (for persons seeking to adopt a child in Queensland or a child from overseas); or
- the interests and welfare of a child to be adopted will not be promoted by making an adoption order in favour of a person (for persons whose names are on the Special Needs Children's Adoption List or the Relative Children's Adoption List);
- the person may apply to the tribunal to have the decision or assessment reviewed.

The Children's Services Tribunal was established under the *Children's Services Tribunal Act 2000*. Its function is to review the merits of certain administrative decisions made under a number of Acts relating to children and it has the power to substitute its own decision for that of the original decision-maker.



The Tribunal was initially established in 1997 under the *Children's Commissioner and Children's Services Appeals Tribunal Act 1996*. Since then, it has dealt with four applications under the *Adoption of Children Act 1964*, two of which were withdrawn by the applicants.

All applications were related to decisions to remove a person's name from an adoption list on the basis of his/her health. No applications for review have been made in relation to unfavourable assessments. As discussed above, it is proposed that in the future people's health be considered as part of the assessment process rather than as an initial eligibility criterion.

10.10.2 Issues

All States and Territories except New South Wales, Western Australia and the Northern Territory, provide external administrative review of unfavourable assessments and, in those jurisdictions with accredited adoption agencies, of decisions about the licensing or approval of those agencies.

Western Australia has Adoption Applications Committees that make decisions about applicants' suitability and therefore does not provide for external review. No other jurisdiction provides review of eligibility decisions because these criteria are straightforward questions of fact and do not involve exercising judgement or discretion.

Decisions of the New South Wales Department of Community Services regarding the approval of prospective adoptive parents are not currently subject to external review but the legislation provides for internal review by the Director-General. The New South Wales Law Reform Commission recommended this system be retained in its Report on the Review of the *Adoption of Children Act 1965* for the following reasons:

- the current system is consistent with the fact that adoption is not a service to adults;
- it is inappropriate for intending adoptive parents to challenge selection decisions through an external administrative appeals process, such as a tribunal; and
- the actions of the Department are subject to ministerial responsibility and scrutiny by the Ombudsman.⁷⁶

The Commission cited the following submission made by the New South Wales Committee on Adoption:

The major issue for the Community Services Appeals Tribunal is likely to be appeals from applicants against being declared unsuitable adoptive parents – usually for an unknown child. In such situations the appellants are articulate and generally present their desire to be parents in compelling ways. The unknown child is silent and unrepresented. It is the experience of the COA (Committee on Adoption) that in a similar case before the Community Welfare Appeals Tribunal where none of the tribunal members had specific adoption knowledge that the members were confused by the issues of adoption and focussed on the provision of services to the persons before them. What was known about the needs of children to be generally placed within community norms etc was overlooked. Priority was given to the needs of the applicants – not to the needs of the unknown, silent and unrepresented child.⁷⁷

Similar issues have arisen in Queensland in the past where none of the members of the Children's Services Tribunal reviewing decisions under the Act had specific adoption expertise.

One of the options proposed above regarding decisions about applicants' eligibility and suitability, is the establishment of a panel (similar to the Western Australian system) comprising departmental officers and persons external to the Department with relevant expertise to make these decisions. This decision-making process may obviate the need for external merits review by the Tribunal.

⁷⁵ The discussion in this section does not include reference to people seeking to adopt a child from overseas whose names are entered in the assessment register at the time new legislation comes into effect because it is usual for applications to remain in overseas countries for varying periods prior to overseas adoption authorities matching applicants with a child requiring an adoptive placement.

Should decisions made by the Department be reviewable on their merits by an independent external body such as the Children's Services Tribunal?

Should reviewable decisions include:

- *eligibility of prospective adoptive parents; and/or*
- *the assessment of prospective adoptive parents' suitability?*

Should review by the Tribunal be retained if decisions relating to eligibility and suitability of people seeking to adopt a child are made by a panel which would include members external to the Department with specific expertise in adoption?

If review by the Children's Services Tribunal is retained, what changes should be made to ensure a focus on the identified general needs of children requiring adoptive families?