

Adoption Legislation Review
Public Consultation



OVERVIEW
of Key Issues
March 2003



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Introduction

The Department of Families is in the process of reviewing and developing new legislation to replace the *Adoption of Children Act 1964*. The new legislation will provide a contemporary legal framework for the adoption of children in Queensland.

To assist the review process, a statewide consultation was undertaken from July to November 2002. This involved the preparation of a consultation paper identifying key issues in adoption law and practice and the responses of other states to these issues. It reflected the input of the Adoption Legislation Review Reference Group, which included selected community members who have been affected by adoption or have an interest in adoption.

The consultation strategy involved the dissemination of more than 1500 copies of the Consultation Paper throughout the State, the holding of nine public forums attended by a total of 178 people, 13 consultative forums with Aboriginal and Torres Strait Islander communities attended by 87 people, 13 focus group meetings with community stakeholder groups attended by a total of 111 people, and 20 meetings with external and internal government stakeholders.

Feedback on the Consultation Paper was received through feedback forms, written submissions and participation in consultation forums. More than 130 feedback forms and 51 written submissions were received. These were from a range of stakeholders, including birth parents, adoptive and prospective adoptive parents, adopted persons, relatives of adoptive persons, practitioners, academics and a variety of organisations.

This report does not pre-empt future policy directions of Government but provides a brief overview of the responses received around key issues raised in the Consultation Paper. It also gives a broad indication of the levels of support and opposition to these issues.

The effect of objections under the current legislation to the release of identifying information between parties to an adoption before 1 June 1991, was consistently raised as important in the public consultations. However, the issue was excluded from the Terms of Reference for the Review and is therefore not canvassed in this report.

For a more in-depth summary and analysis of the data that was received, readers should refer to: The Report: Public Consultation on the Review of the Adoption of Children Act 1964. This report is available on the Department of Families' website at: www.families.qld.gov.au/departments/reviews/adoptions_about.html

The concept of adoption and general principles

An overwhelming majority of those participating in the consultation strategy agreed that adoption should be retained in law as an option for the permanent care of children in Queensland and born overseas. A similarly large number agreed that legislation should require all other options for meeting a child's placement needs to be considered before an adoption order is made.

There was almost universal support for the best interests and needs of a child both in childhood and throughout life, to be given paramount consideration in adoption law

and practice. Equally strong support was given for legislation to recognise the life-long impact of adoption by providing for parties to adoptions to access information and support.

Other principles proposed to inform and guide legislation and adoption practice were strongly supported. These were that:

- adoption is a service to protect the interests and meet the needs of children;
- a child has a right to information about family background and cultural heritage and to develop a positive cultural identity;
- all parties involved in adoption have a right to engage in information exchange and contact;
- Aboriginal and Torres Strait Islander child placement principles;
- the right of children and birth parents to participate in adoption decision-making.

The principles were widely supported as applicable and relevant to adoptions of children in Queensland and children born overseas. Equally, a majority supported the application of the same criteria and standards for those seeking to adopt children within Queensland to those seeking to adopt children from overseas.

Adoption of Aboriginal and Torres Strait Islander children

A key theme in the consultation forums with Aboriginal and Torres Strait Islander peoples throughout the State was that adoption, as conceived in the *Adoption of Children Act 1964*, is not a culturally appropriate care option for Aboriginal and Torres Strait Islander children.

However, the clear majority of those consulted agreed that future legislation should include Indigenous Child Placement Principles. These will ensure that where an

Aboriginal or Torres Strait Islander child is in need of an adoptive placement in the future, priority is given to placement within families and communities. This safeguards the right of the child to maintain his or her cultural heritage.

A strong majority also supported the right and need for Aboriginal and Torres Strait Islander persons and agencies to be involved in decisions and processes for adoptions of Indigenous children.

Information exchange and contact arrangements

An overwhelmingly positive response was received to what was termed in the Consultation Paper “open adoption” but which, in legislation and practice, involves the option of parties to an adoption voluntarily agreeing to engage in information exchange and/or contact arrangements in relation to an adopted child.

The support for information and contact arrangements reflected a commonly held view that these arrangements are in the best interests and well being of adopted children. Many supportive comments were also received linking provision for these arrangements to what was widely regarded as a child’s fundamental right to information about her or his family and cultural identity.

A minority expressed concerns that information and contact arrangements could give rise to unduly complex relationships. This reinforced views that birth and adoptive parents be provided with information, education and support about the option of negotiating information exchange and contact before an adoption order is made.

Adoption Plans

A clear majority was in favour of legislation providing for information and contact arrangements that are agreed between parties, to be recorded as adoption plans. There was also strong support for legislation

to ensure that those who are parties to an existing adoption, where an adopted person is under 18 years of age, are given the opportunity to negotiate and agree on adoption plans.

Court involvement in adoption plans

There was a more mixed response to proposals relating to what should happen to plans once they are agreed between parties. The majority agreed that adoption plans should have legal status but there was less support for a legislative requirement that the plans are lodged with a court.

There was general consensus that adoption plans should be sufficiently resourced and supported, not only in their negotiation but also in operation. However, a significant number suggested that the use of a court to enforce plans might be alienating for parties. The most preferred body for supporting adoption plans was the Department of Families, but with provision specifically made for the involvement of child representatives in the negotiation of plans and for legislation to provide for dispute mechanisms where parties to plans are experiencing difficulties.

Step Parent/ Relative adoption

The majority supported legislation allowing relative and step parent adoptions to occur only after the following:

- leave of the Family Court is obtained (step parent only);
- the adoption is in the child's best interests; and
- exceptional circumstances relating to the child exist, rendering an adoption order more in the child's interests than any other parenting order.

Selection of Adoptive Parents

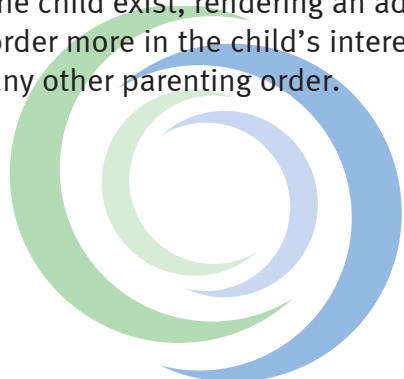
Under the provisions of the *Adoption of Children Act 1964*, people seeking to adopt a child must meet prescribed eligibility criteria before their suitability to become adoptive parents may be assessed. There was general agreement that, on their own, current eligibility criteria relating to age, number of years married, health, infertility or the number of children in a person's care were not generally good indicators of a person's potential to provide a suitable family for a child or children requiring adoption.

Eligibility and suitability

Over three quarters of all participants provided feedback on matters associated with the selection of adoptive parents. There was widespread agreement that eligibility criteria served in a general way to safeguard the needs of children and young people. There was overwhelming support for the application of basic eligibility criteria that required people to be resident or domiciled in Queensland and an Australian citizen or married to an Australian citizen.

Marital Status

Broad support was given to the proposal that couples in stable relationships, irrespective of marital status should be eligible to be assessed as prospective adoptive parents. There was a mixed response to specifying a minimum relationship period as an eligibility requirement. Preference was given to including consideration of the length, nature and quality of relationships in assessment of suitability. While the restrictive nature of the current eligibility criteria was a constant theme in forum discussions and feedback comments, the response to the proposal to broaden the pool of prospective adoptive parents to include single people was divided. It was preferred that single people be considered only in exceptional circumstances or where a child has special needs.





Age

There was widespread agreement that current age eligibility criteria did not necessarily best meet the differing needs of children both in Queensland and overseas. Preference was given to the proposal to include an appropriate age differential between the child and prospective adoptive parents, rather than setting an upper age as an initial eligibility criteria. Participants agreed that the effect of a person's age on their capacity to provide high level, stable long term care for a child should be considered in conjunction with other factors in suitability assessment.

Health

There was a mixed response to the continued inclusion of health as an initial eligibility criteria.

On the one hand, the majority considered that the criterion of health should be considered and assessed as one factor in a broader assessment of a person's suitability to adopt and provide long term and high quality care for a child.

On the other hand, there was also agreement that legislation should allow a person to be assessed solely on the basis of health where it appears that because of the person's health she or he would not have the capacity to provide a high level of stable and long term care for a child.

Other matters

Overall participants agreed that infertility and the number of children in a person's care should not continue to be included as initial eligibility criteria. Preference was given to the proposal to consider these matters in conjunction with a range of other factors in suitability assessment. The proposed framework for the assessment of suitability was widely supported, with comments confirming the important role of assessment in safeguarding the needs of children requiring adoptive placements.

Selection processes


Broad support was given to the proposal for panels, comprising departmental officers and external members with relevant expertise to be involved in consideration of a range of selection matters. Responses favoured an advisory role for panels with matters such as suitability, eligibility, the selection of adoptive parents for a child and whether adoption is in a child's best interests being the preferred matters for consideration. More limited support was given to the involvement of panels in matters such as review of open adoption plans and consideration of placement proposals made by overseas adoption authorities. Although, organisations expressed differing views about panel involvement in consideration of eligibility matters there was consensus that panels would serve to enhance accountability and decision-making processes.

Comments frequently noted the need for procedural fairness, openness and accountability in decision making processes associated with the selection of prospective adoptive parents. There was strong agreement that decisions made by the Department about eligibility and suitability matters should be open to independent, external merit review.

Responses favoured the retention of the Children Services Tribunal as the preferred independent review body.

Placement considerations

The majority of responses supported the application of the proposed child-focused basis for making decisions about a child's placement. It was generally agreed that the following matters be considered:

- the child's age, gender, religion, ethnic and cultural background and specific needs;
 - the characteristics of the prospective adoptive parents, their family composition, their capacity to meet the
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specific needs of a child and their willingness to participate in the voluntary exchange of information and/or contact;

- birth parents' expressed preferences and their desire to participate in the voluntary exchange of information and/or contact;
- the child's expressed views about the proposed adoption and the nature and extent of the child's relationships with siblings; and
- any relevant information provided by the overseas adoption authorities

The proposed requirement for the adopted child to be the youngest child in the family, while supported by the majority, received some criticism as being prescriptive and limiting possible placement options for children. Similar comments were made in regard to the proposal to require adoptive parents to personally care for a child for at least 12 months after the child enters their care. While this proposal was broadly supported strong divergent views were expressed by many about the appropriateness of this requirement.

Consent

There was strong support for proposals aimed at ensuring that consent to adoption is given on an informed and voluntary basis. This included the proposal that birth parents be required in legislation to undertake pre-consent counselling. Majority support was also given for the inclusion of safeguards to ensure that the rights of young people and those with decision making disabilities during the consent process are protected.

Extended time frames

Proposals to extend the minimum period for consent and the revocation period, were generally supported. However, two key stakeholder agencies highlighted the need to

ensure that extensions to these periods do not adversely impact on children's capacity to bond with adoptive families as a result of prolonged periods spent in pre-adoptive foster care.

Counselling and witnessing consents

There was strong support for pre-consent counselling and the witnessing of consents to adoption to be undertaken as separate processes. The majority preferred pre-consent counselling to be provided by a service provider independent of and accredited by the Department. The preference was for the Department's role to centre on witnessing consents and ensuring the following:

- information and counselling has been provided;
- counsellor has stated an opinion that the parent understands the effect of consent; and
- the identity of the birth parent has been confirmed.

Consent of Birth fathers

Reflecting contemporary notions that parenting is a joint responsibility, the majority supported a legal requirement for a birth father's consent to either be obtained or dispensed with, regardless of the nature or status of the relationship with the birth mother. However, it was also agreed by a large majority that consent should not be required in certain circumstances, namely where conception related to sexual violence or where the father is unable to be identified or found.

Children's Consent

A positive response was received in relation to children's rights to participate in decision-making about adoption. There was clear support for the legislation to provide that children of sufficient maturity receive counselling and information in relation to a proposed adoption.

However, there was a more mixed response about whether legislation should require a child of sufficient maturity and age to consent to a proposed adoption. A strong minority opposed this requirement, preferring provision for a child's views to be expressed and given proper consideration by the relevant decision-maker. The difference in opinion reflected concerns to ensure on the one hand, the genuine participation of children, and on the other hand, that children are not made to bear undue responsibility for adoption.

The majority agreed that provisions about the validity, witnessing and revoking of consents applying to adults should also apply to children. Strong support was also expressed for legislation to provide for an independent child advocate to become involved in processes relating to a child giving consent or expressing views about a proposed adoption.

Decision-making and review

A majority supported the responsibility for the making of the adoption orders be removed from the Chief Executive of the Department of Families. Of the various options that were proposed, a clear majority favoured the Children's Court as the court with the most appropriate experience in child welfare matters to make adoption-related decisions. The second preference was for a mixed member panel to be established.

However, some organisations supported continuation of the current practice in relation to decision-making and reviews around adoption orders. Their main concerns were that reliance on a court for decision-making could cause added expense and delay for parties.

Representation for the Child

There was strong support for legislation to provide for the appointment of an independent representative to participate in the adoption process, including processes relating to consent, oversight of pre-adoptive care, selection of prospective adoptive parents and negotiations for adoption plans. The majority was opposed to the involvement of a child representative in the process of dispensing with a parent's consent.

There was strong agreement that the role of the representative should be to act in the child's best interests and that the role should be shared by a social worker and lawyer.

Name change

There was widespread support for the inclusion of a statement of principle that a child's given name/s should be retained as far as possible. The majority opposed any legislative requirement for a child's change of name to be approved by the decision-making body at the time of an adoption order. There was strong support for an older child having to consent to any change of name and for a child's wishes about the name to be given due consideration by the decision-making body.

Post-Adoption Support

There was widespread support for the life-long nature and impact of adoption to be specifically recognised and for the legislation to provide for information, education and support services to people affected by adoption. It was widely agreed that the support services should be extended to those who receive, or are unable to receive, identifying information and to people seeking to contact birth relatives. There was also support for financial assistance to be made available to adoptive parents to assist in caring for a child with a disability or high support needs.



Future Service Delivery

There was a mixed response to proposals concerning fees for different services. The majority opposed the imposition of fees for post placement assessment services provided during an interim order or period of supervision. However, there was majority support for fees to be paid in relation to a broad range of services associated with intercountry adoption, including information and education services, suitability assessments, eligibility determinations, and the preparation of applicant files for forwarding overseas.

The competing concerns for those who responded to the questions about fees were that:

- the best interests of a child in need of an adoptive placement are not compromised by a requirement that prospective adoptive parents pay fees;
- there is some capacity to recover for costs associated with adoption services; and
- there is provision for assistance to those unable to pay costs because of financial hardship.

Research and evaluation

Responses relating to proposals concerning the Department's responsibility for researching and evaluating adoption outcomes were generally supportive. The main concern was that adoptive families are not compelled to provide or respond to Department requests for information and that legislation clarify that adoptive families and children participate in Departmental research and evaluation on a voluntary basis.

Where to from here?

The feedback from the consultation strategy provides one important data source for the development of legislative and policy proposals. This consultation data will be considered in conjunction with current research and legislative approaches in other relevant countries and states. With the conclusion of the public consultation, work has already begun on the development of policy options that will inform and shape new adoption legislation in Queensland.

The Report: Public Consultation on the Review of the Adoption of Children Act 1964 and up-dates on the progress of the Review can be accessed on line at www.families.qld.gov.au/department/reviews/adoptions_about.html

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