Adoption and Other Legislation Amendment Bill 2016

Report No. 28, 55th Parliament
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
October 2016
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Amendment Bill 2016

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### Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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**Staff**  
Ms Lucy Manderson, Acting Inquiry Secretary  
Mr Karl Holden, Research Director  
Mr James Gilchrist, Principal Research Officer  
Ms Julie Fidler, Committee Support Officer

**Technical Scrutiny Secretariat**  
Ms Renée Easten, Research Director  
Mr Michael Gorringe, Principal Research Officer  
Ms Kellie Moule, Principal Research Officer  
Ms Lorraine Bowden, Senior Committee Support Officer

**Contact details**  
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee  
Parliament House  
George Street  
Brisbane  
Qld  
4000

**Telephone**  
+61 7 3553 6626

**Fax**  
+61 7 3553 6639

**Email**  
hcdfsdfvp@parliament.qld.gov.au

**Web**  
www.parliament.qld.gov.au/hcdfsdfvp
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# Abbreviations

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<td>AASW</td>
<td>Australian Association of Social Workers</td>
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<td>ACL</td>
<td>Australian Christian Lobby</td>
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<td>ACP</td>
<td>American College of Paediatricians</td>
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<td>the Act</td>
<td>Adoption Act 2009 (Qld)</td>
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<td>ACT</td>
<td>Australian Capital Territory</td>
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<td>ADCQ</td>
<td>Anti-Discrimination Commission Queensland</td>
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<td>AIFS</td>
<td>Australian Institute of Family Studies</td>
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<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
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<td>APA</td>
<td>American Psychological Association</td>
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<td>the Bill</td>
<td>Adoption and Other Legislation Amendment Bill 2016</td>
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<tr>
<td>BLAG</td>
<td>Brisbane LGBTIQ (Lesbian, gay, bisexual, trans, intersex and queer) Action Group</td>
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<td>the committee</td>
<td>Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>the department</td>
<td>Department of Communities, Child Safety and Disability Services</td>
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<tr>
<td>EOI</td>
<td>expression of interest</td>
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<tr>
<td>EOI register</td>
<td>expression of interest register</td>
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<td>FIN SEQ</td>
<td>Family Inclusion Network South East Queensland</td>
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<td>FIN Townsville</td>
<td>Family Inclusion Network (Townsville) Queensland Inc</td>
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<td>FLP</td>
<td>fundamental legislative principle</td>
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<tr>
<td>the former Act</td>
<td>Adoption of Children Act 1964 (Qld)</td>
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<tr>
<td>the Hague Convention</td>
<td>Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption</td>
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<tr>
<td>LGBTI</td>
<td>lesbian, gay, bisexual, trans and/or intersex</td>
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<td>the Minister</td>
<td>Hon Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
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<td>NT</td>
<td>Northern Territory</td>
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<td>PASQ</td>
<td>Post Adoption Support Queensland</td>
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<td>POQA</td>
<td>Parliament of Queensland Act 2001 (Qld)</td>
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<td>QFCC</td>
<td>Queensland Family and Child Commission</td>
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<td>SA</td>
<td>South Australia</td>
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<td>SA Bill</td>
<td>Adoption Review Amendment Bill 2016 (SA)</td>
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<td>SDA</td>
<td>Sex Discrimination Act 1984 (Cth)</td>
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<tr>
<td>Standing Orders</td>
<td>Standing Rules and Orders of the Legislative Assembly (Qld)</td>
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<td>WA</td>
<td>Western Australia</td>
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Chair’s foreword

On behalf of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, I present this report on the committee’s examination of the Adoption and Other Legislation Amendment Bill 2016.

The objective of the Bill is to ensure the Adoption Act 2009 provides a contemporary and flexible legal framework for adoption in Queensland. The proposed amendments were informed by detailed consultation with stakeholder groups and individuals and key government agencies, as part of a comprehensive government review of the Act.

In examining the Bill, the committee’s task was to consider the policy to be given effect by the proposed amendments, and whether the Bill has sufficient regard to the fundamental legislative principles in the Legislative Standards Act 1992. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

This report summarises the committee’s examination of the Bill, including information provided by the Department of Communities, Child Safety and Disability Services, and the differing views and perspectives expressed in written submissions and at the public hearing.

As is often the case where the interests and wellbeing of children and families are involved, this included at times impassioned commentary both in support of and against the Bill’s proposals, drawing on distinct research findings and personal experiences of adoption.

After considering the submitted evidence, the committee was unable to reach a majority decision on the Bill. While government members were supportive of the proposed amendments, non-government members did not support a recommendation that the Bill be passed.

On behalf of the committee, I wish to extend my sincere thanks to those individuals and organisations who lodged written submissions and appeared at the committee’s public hearing.

The committee also wishes to acknowledge the assistance provided by the Department of Communities, Child Safety and Disability Services, Technical Scrutiny of Legislation Secretariat staff, the Queensland Parliamentary Library and Research Service and the committee secretariat.

Finally, I would like to thank my fellow committee members for their contributions during the examination of the Bill.

I commend this report to the House.

Leanne Linard MP
Chair
Adoption and Other Legislation Amendment Bill 2016

1. **Introduction**

1.1 **Role of committee**

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the committee) is a portfolio committee of the Queensland Legislative Assembly.\(^1\) The committee’s areas of portfolio responsibility are:

- health and ambulance services
- communities, women, youth and child safety
- domestic and family violence prevention, and
- disability services and seniors.\(^2\)

The committee is responsible for examining each Bill in its portfolio areas to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles (FLPs).\(^3\)

Further information about the work of the committee can be found on its [website](#).

1.2 **Inquiry referral and committee process**

On 14 September 2016, the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence, the Hon Shannon Fentiman MP (the Minister), introduced the Adoption and Other Legislation Amendment Bill 2016 (the Bill) into the Queensland Legislative Assembly.\(^4\) The Bill was referred to the committee in accordance with Standing Order 131, and the committee was required to report to the Legislative Assembly by 26 October 2016.

During its examination of the Bill, the committee:

- invited submissions from stakeholders and subscribers. A list of the 45 submissions received by the committee is at [Appendix A](#).
- received written advice on the Bill from the Department of Communities, Child Safety and Disability Services (the department), including information in response to issues raised in submissions and in questions from the committee
- held a public hearing on 12 October 2016 to hear from departmental officers and submitters. A list of witnesses who appeared at the hearing is at [Appendix B](#), and
- received written correspondence from stakeholders following the hearing, which was also considered.

Copies of the material published in relation to this inquiry are available on the committee’s [website](#).

1.3 **Outcome of committee considerations**

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After its examination of the Bill and consideration of the information provided by the department and from submitters, the committee was unable to reach a majority decision as to whether the Bill should be passed.

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\(^1\) The committee was formerly the Health and Ambulance Services Committee, which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly (Standing Orders). On 16 February 2016, the Parliament amended the Standing Orders, renaming the committee and expanding its areas of responsibility.

\(^2\) POQA, section 88 and Standing Orders, Standing Order 194 and Schedule 6

\(^3\) POQA, section 93(1)

\(^4\) Introductory Speech, Queensland Parliament, Record of Proceedings, 14 September 2016, pp 3478-3479
2. **Background to the Bill**

2.1 **Adoption in Queensland**

Adoption is a legal process that provides a recognised avenue to establishing a permanent legal family for children who, for various reasons, cannot live with their birth family.5

The process transfers all legal rights and responsibilities for the permanent care of a child under 18 years of age from a child’s birth parent or parents, to their adoptive parent or parents. Accordingly, when an adoption order is finalised, the legal relationship between the child and their biological parents and family ceases, and any legal rights from birth regarding the birth parents, such as inheritance, are removed. In relation to the adoptive parent or parents, the adopted child assumes the same legal rights as a birth child and may also assume the surname of the adoptive family.6

A new birth certificate is issued for the child, which records each adoptive parent as a legal parent of the child, and records the new name of the child if their name is changed.7

In Australia, adoption is regulated under State and Territory laws, with State and Territory government agencies or approved adoption agencies also responsible for managing adoption processes.8

The relevant legislation in Queensland is the [Adoption Act 2009](#) (the Act),9 which commenced on 1 February 2010, replacing the former [Adoption of Children Act 1964](#) (the former Act).

Adoption Services, within the department, holds responsibility for managing adoption applications, assessing the eligibility of those seeking to adopt, and processing applications in accordance with the Act, with final adoption orders determined by the Childrens Court.10

It is unlawful to arrange a private adoption in Queensland, though some foreign private adoptions may be recognised.11

In 2015-16, there were 48 final adoption orders made in Queensland, across three program areas:

- local adoption – adoption of children within Queensland
- intercountry adoption – adoption of children born overseas, and

The following table sets out statistics for each category of adoption over the five years to 2015-16.

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<td>7</td>
<td>13</td>
<td>9</td>
<td>10</td>
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<tr>
<td>Step-parent</td>
<td>6</td>
<td>10</td>
<td>10</td>
<td>9</td>
<td>13</td>
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<tr>
<td>Intercountry</td>
<td>20</td>
<td>25</td>
<td>15</td>
<td>19</td>
<td>26</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>33</strong></td>
<td><strong>48</strong></td>
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<td><strong>38</strong></td>
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Source: Department, *Written briefing*, 26 September 2016, p 1; Department, *Response to questions*, 18 October 2016, p 10

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5 Department of Communities, Child Safety and Disability Services (Department), *Written briefing*, 26 September 2016, p 1
7 Department, *Queensland and intercountry adoption handbook: information for people considering adoption*, Queensland Government, March 2016, p 21
9 The accompanying Adoption Regulation 2009 also commenced on 1 February 2010.
10 Department, *Written briefing*, 26 September 2016, p 1
11 Part 13 of the Act makes provision for the conversion or recognition of adoptions granted in foreign countries in certain circumstances.
12 Department, *Response to questions*, 18 October 2016, p 10
2.2 The current legislative framework

The main objective of the Act is to provide for the adoption of children and for access to information about parties to adoptions in Queensland, in a way that:

- promotes the wellbeing and best interests of adopted persons throughout their lives
- supports efficient and accountable practice in the delivery of adoption services, and
- complies with Australia’s obligations as a ratifying country to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention).13

On its commencement, the Act made significant changes to the legislative regime governing adoption in Queensland, replacing the former Act – made in the 1960s – with an updated and more open framework for the adoption of children in Queensland and children from overseas.

The considerable reforms contained within the Act were developed following extensive community engagement on a consultation paper in 2002, and through further public consultation in 2008.14

In responding to identified issues, the Act also brought Queensland adoption laws into line with other Australian States and Territories, by:

- introducing open adoption (allowing the child, adoptive parents and birth parents to know each other and the circumstances of the adoption), opening an avenue for people to access information about their family history and identity
- improving birth parent consent processes, by requiring the provision of certain information and counselling to birth parents, to support more informed consent decisions
- amending the expression of interest register and modernising eligibility criteria and assessment processes, and
- introducing Childrens Court oversight of key adoption processes and court ordered adoptions.15

Given the significant changes made by the Act, a statutory requirement was included that the Minister review its operation, as soon as practicable, five years from its commencement.16 The requirement included that the review must include a review of the effect of the Act on parties to an adoption and their families.17

The review of the operation of the Act commenced on 17 September 2015 and was completed on 8 August 2016, with the tabling of the Review of the Operation of the Adoption Act 2009 final report (the Review Report) in the Legislative Assembly.

The Review Report found that while the Act is operating as intended, there are opportunities to enhance the legislation to provide a stronger and more effective framework for adoption in Queensland, and thereby better satisfy the needs and best interests of children requiring adoption, now and into the future.18

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14 Adoption and Other Legislation Amendment Bill 2016, Explanatory Notes (Explanatory Notes), p 1; Adoption Bill 2009, Explanatory Notes, p 2

15 Department, Review of the operation of the Adoption Act 2009 (Review Report), Queensland Government, July 2016, p 4; Ms Megan Giles, Executive Director, Legislative Reform, Department, Public hearing transcript, 12 October 2016, pp 2-3

16 Act, s 327

17 Act, s 327(2)

18 Review Report, p 3
The key themes or areas identified for improvement in the Review Report, as submitted by individuals and stakeholders, were:

- the eligibility criteria to adopt a child, including recognition of the importance of safeguards, but also overall support for revisiting criteria to allow single parent families and same-sex couples to adopt
- the suitability and assessment of applicants, including discussion surrounding the appropriateness, complexity and level of involvement associated with these processes
- timeframes in administering adoption processes
- issues surrounding access to adoption information, including a focus on the timely release of medical information on behalf of adoptees; the possibility of improving access to information about birth fathers; and scope for extending provisions to include family members, and
- consent and dispensation processes, including mixed views on the use of contact statements and penalty provisions for breaches of contact statements.  

2.3 Objective of the Bill

The objective of the Bill is to ensure the Act provides a contemporary and flexible legal framework for adoption in Queensland, which is consistent with modern community expectations and legislation in other States and Territories, and which provides for open and transparent adoption practices.

2.4 Key features of the Bill

In keeping with the results of the review, the Bill seeks to achieve its policy objectives by:

- broadening eligibility criteria to allow same-sex couples, single persons and persons undergoing fertility treatment to have their name entered and remain in the expression of interest register
- improving processes for adoption of a child by a step-parent
- improving access to information by:
  - broadening the definition of ‘relative’ for the purposes of accessing or consenting to the access of information, to include future generations and persons recognised as parents and children under Aboriginal tradition and Torres Strait Island custom
  - expanding when information about a person who may be an adopted person’s biological father may be provided to the adoptee, and
  - enabling the chief executive to consider the release of identifying information without consent from adoptive or birth parents in exceptional circumstances
- removing the offence and associated penalty for a breach of a contact statement for adoptions that occurred before June 1991
- enabling the chief executive to facilitate contact between children and their birth parents during an interim adoption order
- requiring the Childrens Court to be satisfied that exceptional circumstances exist before including a change to a child’s first name in a final adoption order
- making minor technical amendments to clarify the intent of existing provisions; correcting drafting errors; and making consequential amendments based on the endorsed policy objectives; and
- requiring a further review of the operation of the Act in five years’ time.

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19 Review Report, pp 12-17
20 Explanatory Notes, p 1
21 Explanatory Notes, p 2; Department, Written briefing, 26 September 2016, pp 3-4
2.5 Consultation on the Bill

Consultation for the review of the Act was conducted over a period of six months from 17 September 2015 to 31 March 2016. The department published a discussion paper to help guide review discussions and invited feedback from individuals and organisations through an online survey, a written submission process, interviews, and focus group sessions.22

A total of 356 individuals and organisations from across Queensland contributed to the public consultation process, comprising:

- 216 individuals who responded to the online survey
- 77 individuals and organisations who provided a written submission, and
- 63 individuals who participated in an interview or focus group.23

In addition, feedback from government departments and departmental working groups also ‘assisted the department to understand the implications of the current legislation on day-to-day operations and the issues experienced by staff or reported by clients’.24

During the subsequent development of the Bill, targeted consultation was conducted with key non-government stakeholders and post-adoption stakeholders, who were provided with an exposure draft of the proposed legislation and invited to comment on both the draft provisions and the broader policy intent.25

In addition, the department conferred further with each of the Department of Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney General, Department of Aboriginal and Torres Strait Islander Partnerships, Office of the Public Guardian, and Queensland Family and Child Commission (QFCC).26

The department advised that ‘there is broad support from government and non-government stakeholders for the amendments’.27

2.6 Approaches in other jurisdictions

Since the commencement of the Act, New South Wales (NSW), Victoria and South Australia (SA) have all reviewed their adoption legislation and there has also been a Commonwealth senate inquiry into former forced adoption policies and practices.28 NSW and Victoria have made notable changes following their respective reviews, while a bill is currently before the SA Parliament which would seek to implement largely similar reforms, as per the recommendations of its review.29

The Bill is broadly consistent with these and other recent legislative amendments in Australian States and Territories, particularly in relation to extending eligibility criteria to include same-sex couples,

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22 Review Report, pp 7-9
23 Department, Written briefing, 26 September 2016, p 2
24 Review Report, p 5
25 Department, Written briefing, 26 September 2016, p 2
26 Department, Written briefing, 26 September 2016, p 3
27 Department, Written briefing, 26 September 2016, p 3
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supporting open adoption, and removing ‘contact vetoes’,30 or offences associated with breaches of contact preferences and statements.31

NSW, Tasmania, Western Australia (WA), the Australian Capital Territory (ACT) and Victoria all allow for same sex couples to adopt, with enabling Victorian reforms having commenced most recently (on 1 September 2016), under the Adoption Amendment (Adoption by Same-Sex Couples) Act 2015 (Vic).32 The SA Adoption (Review) Amendment Bill 2016 (SA Bill), if passed, would also have the same effect.33

NSW, WA and the ACT also make explicit provision for single persons to adopt.34 In other jurisdictions, including Queensland, courts may currently only make an adoption order in favour of a single person where there are special or exceptional circumstances in relation to the particular child (including where the child has cohabited with the person for some time).35 However, the SA Bill proposes the removal of the rules regarding ‘special circumstances’ for single parent adoption, such that single people in SA would also be treated similarly to couples who apply to adopt (as in NSW, WA and the ACT).36

All States and Territories allow parties to adoption to apply to access adoption information and to outline particular wishes or preferences regarding any contact with other parties. Previously, this has typically included provision for a party to register a contact veto prohibiting contact, or a contact statement with an associated offence provision that may operate with the same effect. However, as part of the shift towards more open adoption processes, a number of states have repealed these offences and penalties or made amendments phasing out provisions for ‘contact vetoes’ to be lodged in relation to adoptions beyond a specific point of time.

WA repealed its offence provision by way of the Adoption Amendment Act 2012 (WA), ‘in the spirit of decriminalising contact between parties to adoptions’.37 On 25 August 2015, amendments to the Victorian legislation commenced which also repealed penalties for birth parents who attempt to contact their adult adopted children contrary to their recorded wishes.38 In addition, the SA Bill also proposes to shift from the existing ‘contact veto’ system over a five-year transition period, such that parties similarly will still be able to make a statement of wishes regarding their contact preferences so that other parties are aware, but will not be able to prevent the release of their identifying information.39

An interjurisdictional comparison of adoption laws is available at Appendix C.

30 Historically, most jurisdictions have provided for a birth parent or an adopted person to register a ‘contact veto’ to prevent another party to the adoption from making contact with them. The effect of a veto may also extend to preventing the release of identifying information. See: AIHW, Adoptions Australia 2014-15, 2015, pp 83-88; NSW Government, Family & Community Services, Contact Veto Fact sheet, October 2012, <http://www.community.nsw.gov.au/__data/assets/pdf_file/0009/335457/adopt_veto_fact.pdf>.
31 Explanatory Notes, p 12
32 Review Report, p 13
34 Adoption Act 2000 (Nsw), ss 26, 27; Adoption Act 1993 (ACT), s 13; Adoption Act 1994 (WA), s 38(2).
35 Act, s 89(6); Adoption Act 1984 (Vic), s 11(3); Adoption Act 1988 (SA), s 12(3); Adoption Act 1988 (Tas), s 20(4); Adoption of Children Act 1994 (NT), s 14
36 Adoption (Review) Amendment Bill 2016 (SA), 12, s 12(3)
37 Adoption Amendment Bill 2011 (WA), Explanatory Memorandum, p 16. Note: The legislation did retain a penalty, however, in relation to licensed contact and mediation agencies who breach a registered contact veto of which they were advised. In such circumstances, the licensee faces a penalty of $10,000 and 12 months’ imprisonment, and if convicted, the chief executive officer may also cancel that licensee’s licence (see Adoption Act 1994 (WA), s 108)
38 Department, Written briefing, 26 September 2016, p 3
3. Examination of the Bill

3.1 Eligibility to adopt – clauses 7, 13, 17, 18, 28 and 29

Under section 75 of the Act, the chief executive is required to keep a register of persons who have expressed interest in adopting a child. The department can consider selecting persons from this expression of interest register (EOI register) to be assessed for their suitability as an adoptive parent, based on the placement needs of children requiring adoption. Persons who are assessed as being suitable adoptive parents are removed from the EOI register and entered in the suitable adoptive parents register.

For the Queensland adoption program, Adoption Services considers all persons entered in the suitable adoptive parents register to determine which couple best meet the needs of a child requiring adoptive parents. For persons who have expressed an interest in intercountry adoption and have been entered in the suitable adoptive parents register, Adoption Services prepares the file of these persons to be sent to the overseas adoption authority.

In addition to this standard EOI (expression of interest) and assessment pathway, the Act allows the chief executive to invite a couple or person who is not on a register but who can meet certain eligibility criteria to be assessed as a prospective adoptive parent, as necessary to meet the needs of a particular child. This may include, for example, where the child has siblings who have previously been adopted, or where persons are approved carers of children with complex medical or unique cultural needs. Additionally, a person may apply directly to adopt a step-child (bypassing the EOI selection pathway), if they meet certain eligibility criteria.

Sections 68 and 76 of the Act respectively set out who may make an EOI and the eligibility criteria for inclusion on the EOI register; while sections 89 and 92 establish consistent eligibility criteria in relation to the selection and assessment of persons who are not on a register, to meet the needs of a particular child or for the adoption of a step-child.

Currently, to make an EOI, a person must have a spouse (married or de facto) and must make the EOI jointly with their spouse. In addition, the person must not already be named in the EOI register or have custody of a child under an interim adoption order.

Further, to be eligible for inclusion in the EOI register:

- the person’s spouse must not be the same gender
- the couple must have been living together as spouses continuously for two years and be currently living together
- at least one member of the couple must be an Australian citizen
- the female spouse must not be pregnant
- the person must not be undergoing fertility treatment or have undergone fertility treatment within the previous six months
- the person must not be an intended parent under a surrogacy arrangement, and if they were previously an intended parent, the arrangement must have ended more than six months earlier, and

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40 Adoption Act 2009 (Qld) (Act), s 88
41 Department, Queensland and intercountry adoption handbook, 2016, p 8
42 Department, Queensland and intercountry adoption handbook, 2016, p 9
43 Act, s 89
44 Department, Queensland and intercountry adoption handbook, 2016, p 7
45 Act, s 68
For persons who are not on the EOI register, to be eligible for assessment to meet the needs of a particular child or to adopt a step-child, these individuals:

- must be an adult
- must be an Australian citizen or have a spouse who is an Australian citizen
- must be resident or domiciled in Queensland, and
- if they have a spouse, must have a spouse who is not the same gender and must be living with the spouse.

The Bill proposes to amend these eligibility requirements to allow single persons, same-sex couples and persons undergoing fertility treatment to express their interest and have their names entered and remain in the EOI register (clauses 7 and 13), and to be assessed and selected as prospective adoptive parents (clauses 17, 18, 28 and 29). Upon commencement, the amended eligibility criteria would apply both to any new EOI and in relation to any persons currently on a register or being assessed for suitability as an adoptive parent (including step-parent adoptions).47

3.1.1 Single persons and couples – clauses 7, 13, 28 and 29

Clauses 7 and 13 remove the section 68 and 76 requirements for a person to have a spouse, allowing single persons to express their interest and be eligible for the EOI register.

The amendments clarify that if a person does have a spouse, that person must still express interest jointly with their spouse.48 Further, if a person has made an expression of interest jointly with their spouse and that spousal relationship ends, the person is no longer eligible to remain in the EOI register.49 The Explanatory Notes state that this means that where a person who is already in the EOI register ‘enters into or ends a spousal relationship, the person will be removed from the register and may then express interest as a single person or jointly with their new spouse’.50

Clause 13 also replaces the section 76 requirement that a couple must have been in a spousal relationship for two years and have been living together for two years prior to expressing interest, to require only that ‘the person and the spouse are living together’.51

The department advised that this will allow a person who has been on the EOI register as a single person to make a joint EOI with their spouse immediately upon entering a new relationship.

The department also emphasised, however, that ‘the stability in the relationship will be considered in making a decision whether to select the couple for assessment’, as required by section 128 of the Act (‘Quality of relationship with spouse’).52

In addition, the Explanatory Notes state:

The same rigorous assessment process applied to couples will also apply to single persons. This includes considerations such as financial position, health and attitudes to children and parenting.53

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46 Act, s 76; Department, Queensland and intercountry adoption handbook, 2016, pp 4-5
47 Adoption and Other Legislation Amendment Bill (Bill), clause 65, ss 349-353
48 Bill, clause 7, s 68(2)
49 Bill, clause 13, s 76(3). Clause 27 also makes a complementary amendment to section 146 of the Act to clarify that such a change in relationship status is grounds for removal from the EOI register.
50 Explanatory Notes, p 3
51 Bill, clause 13, s 76(h)(iii)
52 Department, Written briefing, 26 September 2016, p 5
53 Explanatory Notes, p 2

8 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Proposed amendments to sections 153 and 159 (clauses 28 and 29) will ensure that these changes to eligibility criteria are also reflected in provisions governing the chief executive’s selection of a prospective adoptive parent.  

3.1.2 Same-sex couples – clauses 13, 17 and 18

Clause 13 removes the section 76 requirement for a person to have a spouse who is not the same gender in order to be eligible for inclusion in the EOI register, and clauses 17 and 18 remove this eligibility requirement in relation to the selection of persons to meet the needs of a particular child or persons wishing to adopt a step-child.

In its written briefing on the Bill, the department noted that in 2013, the Sex Discrimination Act 1984 (Cth) (SDA) was amended to protect people from discrimination on the grounds of sexual identity and intersex status. A 12-month exemption was provided for all State and Territory legislation, to allow time for State and Territory laws ‘to be reviewed for consistency with the introduction of protection on the grounds of sexual orientation, gender identity or intersex discrimination’. This exemption has twice been extended, but finally expired on 31 July 2016. Accordingly, the provisions excluding same-sex persons from eligibility to adopt may now be inconsistent with the SDA.

During the review of the Act, it was reported that there was broad support to improve the fairness and equity of the eligibility criteria, with the majority of respondents who commented on same-sex adoption supporting a change to allow adoption by same-sex couples. In addition, the department cited the conclusions of the 2013 Australian Government Report, Same-sex parented families in Australia, which reviewed over 40 years of national and international research and found that the research ‘supports positive outcomes for children in same-sex parented families’.

3.1.3 Persons undergoing fertility treatment – clause 13

Clause 13 removes the section 76 restriction that prevents a person who is undergoing fertility treatment or who has undergone fertility treatment in the last six months from having their name entered, or remaining in the EOI register for selection for assessment.

The Explanatory Notes state that:

A person may remain on the expression of interest register and, if assessed as suitable, the suitable adoptive parent register, for a significant period of time with no certainty of adoption. It is not considered fair to prevent a person from pursuing parenthood through other means, such as fertility treatment, during this period.

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54 Bill, clause 28, s153 and clause 29, s 159
56 The exemption period was extended for a further 12 months by each of the Sex Discrimination Amendment (Exemptions) Regulation 2014 (Cth) and the Sex Discrimination Amendment (Exemptions) Regulation 2015 (Cth).
58 Department, Written briefing, 26 September 2016, p 4
59 Review Report, p 13
60 Department, Written briefing, 26 September 2016, p 4; Department, Response to Questions on Notice, 14 October 2016, p 12
61 Explanatory Notes, p 3
Despite these amendments, a number of other eligibility requirements regarding parenthood and pregnancy will remain. Specifically:

- a person may not be entered or remain in the EOI register if the person is pregnant or has custody of a child under one year of age (excluding children for whom the applicant is an approved carer)\(^{62}\)
- a person may not remain in the suitable adoptive parents register if the person is pregnant\(^{63}\)
- a person is not eligible to be selected as a prospective adoptive parent if they are pregnant (at least 14 weeks’ gestation),\(^{64}\) and
- an interim adoption order cannot be granted to a person who is pregnant.\(^{65}\)

The department advised that these existing requirements are retained as they recognise that it is in an adopted child’s best interests for an adoptive parent not to be pregnant or to be caring for another child under one year of age at the time an adoption order is made.\(^{66}\) These requirements are clearly communicated to persons who express interest in adopting or who are selected for assessment, ‘so that they are able to make a fully informed decision about whether to continue with fertility treatment’.\(^{67}\)

### 3.1.4 Submitter views

The proposed amendments to eligibility criteria were the primary focus of the overwhelming majority of submissions on the Bill. A significant number of submissions addressed these amendments exclusively, with the core of their focus on the eligibility of same-sex couples.\(^{68}\)

**Same-sex couples**

Although strong views were expressed both for and against the amendments, submitters were united in their emphasis on legislating to protect the rights and best interests of children. Both sides of the same-sex adoption debate considered that their respective positions would best align with this central legislative principle, citing a number of key studies and research analyses on child and family outcomes in support of their views.

Much of the cited research literature is highly contested due to a range of methodological limitations and questions of ideological bias, which were acknowledged by submitters on both sides of the debate. Queensland State Director of the Australian Christian Lobby (ACL), Ms Wendy Francis, for example, noted:

> When you are coming from an understanding and a worldview, you are going to draw from the research that you most align with yourself in one way. We have to draw our attention to the examples of the research. Whilst there is research that says that there is no difference in the outcomes for children raised in same-sex families, many of those research documents, I would submit, have serious flaws in their methodology. People would say the same about the research that I am working from, as well. I think it is incumbent upon the committee to look at both...\(^{69}\)

In methodological terms, it was recognised that studies examining same-sex parent outcomes tend to involve children who were conceived in the context of a previous heterosexual relationship or marriage which ended before a parent entered into the same-sex relationship, and which fail to account for the

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\(^{62}\) Act, ss 76, 80  
\(^{63}\) Act, s 146  
\(^{64}\) Act, s 159  
\(^{65}\) Act, ss 183, 196  
\(^{66}\) Department, *Written briefing*, 26 September 2016, p 5  
\(^{67}\) Department, *Written briefing*, 26 September 2016, p 5  
\(^{68}\) See submissions 1, 2, 3, 4, 5, 6, 7, 8, 10, 15, 16, 18, 19, 20, 22, 24, 25, 28, 29, 30, 32, 35, 37, 38, 40, 41, and 45  
\(^{69}\) Ms Wendy Francis, Queensland State Director, Australian Christian Lobby (ACL), *Public hearing transcript*, 12 October 2016, p 14
significant impacts of the divorce or family breakdown.\textsuperscript{70} Few studies examine same-sex couples who have jointly parented a child from birth, and where this is the case, submitters noted that such studies may rely on small sample sizes that may not be representative of the population\textsuperscript{71} – a consistent challenge faced by social researchers when the population of interest is a diverse numeric minority.\textsuperscript{72}

Key studies and findings cited by those opposed to the amendments included those of Regnerus (2012), Marks (2012), the American College of Paediatricians (2013), Sullins (2015) and others, who have reported that children raised by their two biological parents within a stable marriage enjoy advantages across various health, educational, behavioural, relationship and career attainment outcomes over children raised in other family forms – single parent, de facto, step family or same-sex parent families.\textsuperscript{73}

More specifically, these submitters noted:

- Regnerus, in a 2012 self-report survey of 3,000 young adults aged 18 to 39 looked at 40 different physical, emotional and developmental outcome measures for children with female same-sex parents, male same-sex parents, and heterosexual couple parents. Regnerus found outcomes for children of same-sex couples were ‘suboptimal’ on 77 out of the combined 80 outcome measures for children of male and female same-sex parent families, controlling for income and a variety of other factors.\textsuperscript{74}

- Sullins, in a study published in the \textit{British Journal of Education, Society and Behavioural Science} in January 2015, examined a representative sample of 207,000 children, including 512 children with same-sex parents, from the US National Health Interview Survey. Sullins found that on eight out of ten measures, children raised by same-sex couples had nearly double the risk of emotional, mental health or development problems compared with children raised by their two natural parents.\textsuperscript{75}

- The American College of Paediatricians (ACP), in 2013, published a research review reporting that same-sex partnerships are more prone to dissolution and that same-sex marriages tend to last for shorter periods than the average heterosexual marriage; that violence between same-sex partners is two to three times more common than among married heterosexual couples; and that same-sex individuals are more likely to experience mental illness, substance abuse and shortened life span.\textsuperscript{76}

- Marks in 2012, published a review examining the American Psychological Association’s (APA) 2005 assertion that no studies have found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Examining 59 relevant APA studies, Marks found that the assertion was not empirically warranted and reported that studies indicating favourable child outcomes have critical design flaws including non-longitudinal design, inadequate sample size, biased selection, lack of proper controls, failure to account for confounding variables, and flawed hypotheses.\textsuperscript{77}

- A range of other studies or published data indicate that LGBTI (lesbian, gay, bisexual, trans, and/or intersex) individuals are more prone to substance abuse and depression and that rates of sexual abuse of children may be higher in same-sex households.\textsuperscript{78}

Conversely, supporters of the amendments submitted that there is no empirical foundation for discriminatory beliefs or stereotypes about same-sex parenting, citing key research findings and
reviews published by the NSW, Tasmanian and Victorian Law Reform Commissions (1997, 2003, 2004), the Australian Institute of Family Studies (AIFS) (2013, 2016), the University of Melbourne (2014), and Colombia Law School (2016). Rather, they submitted, the overwhelming body of research demonstrates that children raised in same-sex parented families are as healthy, happy and well-adjusted as those raised by heterosexual couples, and may also experience certain additional benefits.79

More specifically, these submitters noted:

- The NSW, Tasmanian and Victorian Law Reform Commissions have all examined the empirical data regarding same-sex parenting and provided extensive reports on the topic. All three bodies concluded that there is no established connection between people’s sexual orientation and their suitability as adoptive parents, and that while much research in the area is controversial and flawed, family functioning rather than family structure is the critical factor determining children’s outcomes.80

- The AIFS, as the Australian Government’s key research body in the area of family wellbeing, has released a range of publications in relation to same-sex families, including a 2013 study and 2016 study which respectively concluded that:
  - o children in same-sex couple families progress emotionally, socially and educationally at the same rate as their peers from heterosexual couple families, and
  - o ‘there are benefits for children raised by lesbian couples in that they experience higher quality parenting, sons display greater gender flexibility, and sons and daughters display more open-mindedness towards sexual, gender and family diversity’.81

- Crouch et al (2014), in examining parent-reported measures of child health and wellbeing, found that children of same-sex parented families scored higher on measures of general behaviour, general health and family cohesion compared to population normative data. The researchers concluded ‘children can thrive in a range of family contexts and the ways that these families are constructed can bring their own particular benefits to child health and wellbeing’.82

- A 2016 Columbia Law School review of 77 scholarly studies on the wellbeing of children with gay or lesbian parents which were identified as meeting methodological thresholds, found that of the 77 studies, 73 concluded that children of gay or lesbian parents fare no worse than other children, and just four concluded that the children of gay or lesbian parents face added disadvantage. The review acknowledged that many of the sample sizes were small and some lacked a control group, but stated that ‘researchers regard such studies as providing the best available knowledge about child adjustment and do not view large, representative samples as essential’. The review noted that all four contrary studies took their samples from children who endured family breakups.83

- Research published by Regnerus has been widely discredited for serious methodological flaws and bias, including by the American Sociological Association, American Medical Association, a US Federal Court, and many fellow scholars.84

For submitters opposed to and supportive of the amendments alike, many of the arguments outlined in their oral and written evidence came as natural conclusions of the results of these distinct research positions. In keeping with their cited research – but also, informed by a range of cited personal experiences and stories – submitters outlined a range of different arguments in opposition to or supportive of the amendments respectively.

79 Submissions 2, 10, 13, 19, 34; Mr Phil Browne, Convenor, Brisbane LGBTIQ Action Group (BLAG), Public hearing transcript, 12 October 2016, pp 16-18
80 Submission 10
81 Submissions 10, 24
82 Submissions 10, 24
83 Submission 10
84 Mr Phil Browne, Convenor, BLAG, Public hearing transcript, 12 October 2016, p 17
Key views and concerns cited by those opposed to extending eligibility to same-sex parents, are outlined below.

- **A child needs both a mother and father:** Submitters stated that a parent of each gender preserves the natural biological and psychological context for a child’s development, and that male and female parents fulfil unique and complementary roles within the child-parent relationship that both offer distinct benefits to the development of children. While having other relatives with relationships with the child is beneficial, it was stated that such relationships generally do not afford the same degree of depth or familial security to the child.

- **A stable heterosexual couple relationship provides the best environment for raising children:** Submitters cited findings from a wide range of research and studies indicating that children fare best on a range of emotional, mental and developmental outcomes in the long term when raised by their own biological father and mother in a loving and stable marriage. Whilst acknowledging that alternative family structures do not preclude good outcomes for children, submitters asserted that a stable heterosexual couple offers the best approximation of this family model.

- **Adoption should strive to provide the child with the optimum family environment:** Submitters highlighted that children up for adoption have by definition already been through the trauma of being removed from their biological parents, and stated that the most responsible approach to the practice is to provide a household model that minimises further challenges for a child and gives them the best start at life. Submitters considered that given cited research evidence that the best environment for raising a child is within the stability of married heterosexual couple relationship, the adoption process should aim as far as is practicable to place children into the care of such a couple.

- **Children have a right to a mother and a father:** Submitters stated that given the cited research evidence, the proposed amendments appear to reflect an emphasis on adult rights over and above the best interests of the child, contrary to the fundamental principles of the Act, and to article 3 of the United Nations Convention on the Rights of the Child (CRC), which similarly emphasises the pre-eminence of the best interest of a child in all actions concerning children.

- **The traditional relationship model remains best representative of Australian families:** Submitters noted that while relationship models have evolved and the number of same-sex couple households are increasing, the Australian Bureau of Statistics reported in 2013 that children from these families represented one in one thousand. Submitters considered that such families remain ‘atypical’, and that adopted children of same-sex parents may be more likely to be bullied or face peer stress associated with being in an atypical household.

- **There is already a surfeit of eligible couples looking to adopt:** Submitters noted that the number of parent applicants on the EOI and suitable adoptive parents registers already greatly exceeds the number of children requiring adoption. Submitters questioned the need to look beyond the cohort of existing applicants, noting that this would only add to what is already a large pool of prospective parents available for adoptive children, making it more difficult for many loving parents to adopt.

- **Relatively few international jurisdictions allow same-sex couples to adopt:** Submitters highlighted that same-sex couples are only eligible to adopt in 25 of the world’s 196 countries. It was suggested...
that this largely reflects a persisting global concept of family as underpinned by the complementary male and female family dynamic in the creation and rearing of a child.\footnote{Ms Wendy Francis, Queensland State Director, ACL, \textit{Public hearing transcript}, 12 October 2016, p 12}

- \textbf{The views of relinquishing parents may not be reflected:} Submitters noted that the amendments may be contrary to the religious views or traditional relationship model preferences of relinquishing parents, who may have chosen adoption specifically to ensure that their child is supported by a mother and father.\footnote{Submissions 7, 25}

Further to these arguments, Family Voice Australia submitted that if the proposed amendments are implemented:

- the legislation should account for faith-based concerns and exempt both current and potential future service providers from placing children with same-sex couples, noting that Victoria permits private agencies – including AngliCare and CatholicCare – to provide adoption and permanent care services
- professionals participating in the adoption process should have a right of conscientious objection against participating in the adoption process involving same-sex adoptive parents,\footnote{Family Voice Australia, Submission 13, pp 10-11} and
- the rights of biological parents to determine the religious and moral upbringing of their children should be respected, by giving due weight to the values and beliefs of relinquishing parents when considering the placement of children.\footnote{Family Voice Australia, Submission 13, pp 7-10}

In contrast, key comments from those individuals and groups who supported the amendments,\footnote{Submissions 2, 3, 10, 14, 17, 19, 24, 26, 27, 33, 34, 37, 42} included:

- \textbf{Legislation must reflect the modern composition and attitudes of society.} Submitters noted that there has been a significant evolution in family composition and societal attitudes in recent decades, and emphasised that the proposed amendments will bring the legislation in line with modern community expectations and views.\footnote{Submissions 8, 10, 19; Mr Thomas Clark, Director of Law Reform, LGBTI Legal Service, \textit{Public hearing transcript}, 12 October 2016, p 16}
- \textbf{The amendments will remove discriminatory requirements within the Act:} Submitters stated that the current provisions are ‘anachronistic and unfairly discriminatory’, allowing same-sex parents to be treated as second class parents and causing LGBTI couples emotional and legal pain. Submitters noted that the law must apply equally and not cause favour or disadvantage to any person or group. In addition, they asserted that the amendments are in keeping with anti-discrimination statutes and key human rights instruments and represent significant progress towards equal human treatment for members of Queensland’s LGBTI community.\footnote{Submissions 2, 3, 10, 24, 36, 27, 34, 37, 43}
- \textbf{Children from same-sex parented families fare consistently and sometimes better on developmental outcome measures than children from heterosexual parent families:} Submitters highlighted the wide range of research findings and empirical data indicating that children from same-sex parented families progress emotionally, socially and educationally at the same rate as their peers from heterosexual couple families, and may also display more open-mindedness towards sexual, gender and family diversity and other positive psychosocial outcomes. Submitters asserted that there is no empirical foundation for discriminatory stereotypes, and that family functioning, rather than family structure, is the critical factor determining children’s outcomes.\footnote{Submissions 2, 3, 10, 13, 19, 34}
- \textbf{A male and female couple relationship does not equate to an optimum family situation:} In keeping with cited research findings, submitters stated that respective gender or sexual orientation of a
parent is no determinant of whether a family situation is optimal. Rather, they submitted, it is the quality of the parenting that is the defining criteria for how well children do, and an optimal family situation involves a loving couple who look after a child for its entire life in the best way possible.¹⁰¹

- **The current provisions are inconsistent with other legislation and send conflicting messages:** Submitters noted that LGBTI individuals are allowed to foster children and many act as foster parents often for considerable periods of time, including caring for minors with significant psychological and behavioural challenges and needs. Equally, they are able to access surrogacy arrangements enabling them to have their own children. Submitters noted that despite their eligibility for long-term foster care roles and to access surrogacy arrangements, same-sex couples are not considered eligible to adopt.¹⁰²

- **The amendments will provide legal recognition and greater certainty to existing same-sex parented families:** Submitters noted that many same-sex couples in loving relationships are already raising a child together and have often done so since the child’s birth, and that these families are currently denied the legal recognition and security that adoption would afford. In particular, submitters noted that in couples where one member of the couple has borne a biological child (including via surrogacy) and the child is a minor, the non-birth parent may be precluded from providing the authorisation of a guardian in a wide variety of scenarios, including when enrolling the child at school; providing consent for vaccinations; and consenting to emergency medical treatment in the case of an unexpected illness or incident. Submitters stated that the retention of the law has a material detrimental impact on LGBTI families and that to deny same-sex couples the possibility of adopting the children they are currently raising – or fostering – is denying that child the emotional and legal certainty they deserve.¹⁰³

- **Expanding the pool of prospective adoptive parents will provide more options to meet children’s needs:** Submitters stated that limiting the pool of prospective parents because of irrelevant criteria diminishes the overall depth and quality of the pool available to children requiring adoption. The amendments, it was submitted, could only increase the scope for a child requiring adoption to be matched with the family home that will best meet their unique needs, on a case-by-case basis. Submitters acknowledged the small numbers of children as compared with persons wishing to adopt, but submitted that this is not an acceptable reason for preventing the full range of available parents to be considered and assessed to identify the best options for individual children, recognising that the child’s interests must be foremost.¹⁰⁴

- **The amendments are consistent with the principle that the child’s rights and interests are paramount:** Submitters stated that given the cited research evidence, and the negative impacts of legal instability for children in many existing same-sex families, allowing same-sex couples to adopt is in accordance with the rights and best interests of children.¹⁰⁵

- **The amendments will bring Queensland in line with other national and international jurisdictions:** Submitters noted that five other Australian States and Territories allow same-sex couples to adopt, with the Northern Territory the only jurisdiction without either the legislation in place or a Bill before Parliament. In addition, submitters noted that same-sex couples are already eligible to adopt in 25 of the world’s 196 countries.¹⁰⁶

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¹⁰¹ Mr Phil Browne, Convenor, BLAG, *Public hearing transcript*, 12 October 2016, p 17
¹⁰² Submission 10; Mr Thomas Clark, Director of Law Reform, LGBTI Legal Service, *Public hearing transcript*, 12 October 2016, pp 17-18
¹⁰³ Submissions 10, 16, 19, 34; Mr Thomas Clark, Director of Law Reform, LGBTI Legal Service, *Public hearing transcript*, 12 October 2016, pp 16-20; Mr Phil Browne, *Tabled Paper*, 12 October 2016
¹⁰⁴ Submissions 2, 3, 8, 24; Mr Phil Browne, Convenor, BLAG, *Public hearing transcript*, 12 October 2016, p 16; Mr Thomas Clark, Director of Law Reform, LGBTI Legal Service, *Public hearing transcript*, 12 October 2016, p 20
¹⁰⁵ Submissions 8, 10, 27, 34
¹⁰⁶ Submissions 10, 17, 19; Mr Phil Browne, Convenor, BLAG, *Public hearing transcript*, 12 October 2016, p 19
Single persons

Submitters’ respective positions on single parent eligibility largely mirrored those outlined in relation to same-sex parent eligibility.

Those who supported the proposed provisions noted that the amendments are in keeping with most other Australian jurisdictions and may allow many individuals who already act as carers for children to apply to adopt.

Conversely, those who opposed the extension of eligibility to single parents echoed arguments outlined in relation to same-sex parents – that is, that single-parent families lack a relationship model and complementary parent dynamic or the necessary family stability and security to provide an ideal environment for an adoptive child. Some submitters particularly expressed a concern for possible disruptive effects for children of single parents in relation to any short-term partner relationship their parent forms. Further, in addition to cited research that children do best with a stable heterosexual couple relationship, Family Voice Australia also referred to permanent care abuse data for 2009-10, indicating higher rates of child abuse in single parent families than in two-parent families.

The ACL, Australian Family Association and Family Voice Australia all supported allowing for single parent adoption only in exceptional or extraordinary circumstances, in keeping with current provisions allowing the chief executive to assess a step-parent or other individual as a prospective adoptive parent in keeping with the needs of a particular child. Family Voice Australia submitted that this should be restricted to instances where a child has an existing relationship with a potential adoptive parent including, ‘but not be limited to, tragic circumstances such as the child becoming an orphan due to an accident’.

The Australian Family Association also suggested that ‘to uphold the best interests of the child’, criteria should also involve restricting eligible applicants to married couples only, and/or increasing the relationship/marriage duration to a minimum five-year duration.

Persons undergoing fertility treatment

Fewer submitters expressed views on the proposed extension of eligibility to adopt to persons undergoing fertility treatment.

The Queensland Law Society and Legal Aid Queensland submitted that they support the proposed amendment, while the QFCC stated that it had ‘no objection’ to the proposed provision, noting that

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107 Submissions 8, 17, 26, 27, 33, 34, 37, 42; Mr Thomas Clark, Director of Law Reform, LGBTI Legal Service, Public hearing transcript, 12 October 2016, p 20; Mr Phil Browne, Convenor, BLAG, Public hearing transcript, 12 October 2016, p 20

108 Submissions 7, 10; Mr Phil Browne, Convenor, BLAG, Public hearing transcript, 12 October 2016, p 19. The QFCC stated: ‘this is also in keeping with most other jurisdictions across Australia, although some, like the Northern Territory, only allow adoption by single persons in ‘exceptional circumstances’. (See: QFCC, Submission 17, p 2)

109 Submissions 1, 5, 7, 13, 15, 16, 22, 28, 29, 38, 43; Ms Wendy Francis, Queensland State Director, ACL, Public hearing transcript, 12 October 2016, p 12

110 Submissions 1, 22, 28, 29, 39; Ms Wendy Francis, Queensland State Director, ACL, Public hearing transcript, 12 October 2016, p 12

111 Kevin Zagami, Submission 43, p 1

112 Family Voice Australia, Submission 13, p 2

113 Submissions 13, 16, 30

114 Family Voice Australia, Submission 13, p 11

115 Australian Family Association, Submission 16, p 3

116 Queensland Law Society, Submission 37, p 1; Legal Aid Queensland, Submission 33, p 1
‘this would allow people, who may be on the suitable adoptive parent register for a significant period of time, to pursue parenthood by other means’.117

However, the Australian Association of Social Workers (AASW) and Griffith University expressed concerns that it may not be in the best interests of adopted children for a parent to be pursuing adoption in such circumstances, noting that fertility treatments are disruptive and physically and emotionally taxing life events. The AASW submitted that ‘while supporting expanding the eligibility criteria for same-sex couples and single persons, we believe including persons undergoing fertility treatment needs greater research and consultation’.118 Professor Karen Healy AM, National President of the AASW, submitted:

We are aware that that is a time of grief, loss and a lot of family stress and when people are also applying for adoption at that time it is a time when they do need a lot of support and help in making a decision about whether this is the right thing for the child and for the family. For example, a person may be lucky enough to have the opportunity to adopt and then find that they are pregnant through the fertility treatment cycle. How are they going to manage that—possibly not just one child but an adopted child and a child achieved through fertility treatment? ....

The situation I am envisaging is that things could happen simultaneously or people’s situations could have changed. I recall many years ago when I was still a practising social worker that a couple had been on the adoption list. They then were fortunate enough to have a child adopted to them and they actually relinquished that child back into the system because their life had moved on so much and they had not received counselling at the time of the adoption to realise that. They had the child for a week. People’s circumstances can change and the fertility treatment process can be very challenging for people. It is important that they are supported through that. Is this in the best interests of the child that they may take to be currently maintaining their place on the adoption list?119

Griffith University similarly submitted that ‘acute grief about the loss or lack of a pregnancy, child, or fertility can be debilitating, and is incompatible with giving full attention to adoptive parenting’.120 Rather, ‘the best family environment for an adoptive child can only be assessed after fertility treatments have ceased and full parenting attention is on meeting the needs of an adoptive child’.121

Griffith University recommended the Act should accordingly be amended to ‘close a loophole arising from section 76(1)(e) and make it clear that the requirement for individuals or couples undergoing fertility treatments to have completed treatments before having their name entered into the EOI register applies at all stages of the adoption process.’122

3.1.5 The department’s response

In response to the submissions received, the department stated that the amendments reflect ‘the best available evidence’, which ‘indicates that meeting the best interests, needs and welfare of a child is not dependent on whether a child has a mother and father, same-sex parents or a single parent’.123

The department submitted that when providing information to government ‘the department routinely considers evidence and data from prominent research bodies, such as the Australian Institute of Family Studies and the Australian Bureau of Statistics’.124

117 Queensland Family and Child Commission (QFCC), Submission 17, p 3
118 AASW, Submission 42, p 3
119 Professor Karen Healy AM, National President, AASW, Public hearing transcript, 12 October 2016, p 22
120 Griffith University, Submission 31, p 3
121 Griffith University, Submission 31, p 3
122 Griffith University, Submission 31, p 1
123 Department, Response to submissions, 14 October 2016, p 3
124 Department, Response to questions on notice, 14 October 2016, p 11
For example, the department noted:

- Crouch et al’s 2014 cross-sectional survey of Australian children with same-sex attracted parents found these children scored higher than population samples on a number of parent-reported measures of child health.
- In an overarching research paper produced for the Australian Government’s Child Family Community Australia information exchange, a vast array of studies and literature were reviewed to reach the conclusion there is strong evidence that same-sex parented families constitute supportive environments in which to raise children (Dempsey, 2013).
- The 2009 New South Wales Standing Committee on Law and Justice’s inquiry into adoption by same-sex couples concluded, based on their extensive research, that ‘evidence is weighted in favour of family functioning as the primary determinant of outcomes for children, regardless of gender and sexuality’. This committee also reported that ‘research demonstrates that the development of positive relationships, and the provision of a supportive, nurturing and loving environment, benefit children most in both the short and longer term’, and
- Most recently, a study from the United States (US) used data from the 2011–2012 National Survey of Children’s Health to compare children in households of female same-sex parents with those in households with heterosexual parents. The study found there were no differences in outcomes for children from the different family structures (Bol et al, 2016).125

In addition, the department noted with respect to single parent families, which now make up around 15 percent of all families,126 that:

The Australian Institute of Family Studies reported on sole parent families and attached stereotypes in the Family Matters 2009 issues paper No. 82 and acknowledged that being a single-parent family does not necessarily lead to adverse outcomes for children. The Australian Institute of Health and Welfare, in its A picture of Australia’s children 2012 report, found that family functioning and the relationships that children have with their families are the most important influences on child development and psychological wellbeing. The emphasis in that report is placed on the benefits to a child of living in strong and stable families, including with single parents.127

Further, the amendments also have regard to ‘feedback from the community, through the consultation process’, and to ‘inquiries and reviews undertaken in other jurisdictions, such as the South Australian Adoption Act 1988 (SA) Review report’.128

Given the complexities of adoption—these are children whose parents have consented or the court has dispensed with the need for their consent and they require a permanent legal and stable family arrangement—we need to have the best pool of people that we possibly can in order to match them. Having a look at all of the information that we received through submissions, having a look at all of the recent amendments that have occurred in other legislation in other parts of Australia and internationally and having a look at the research literature, we felt that it is potentially in the best interests of a child to broaden that pool of people that the department can select prospective adoptive parents from.129
In any case, the department emphasised that the Act ‘will continue to be administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of their lives, are paramount’. 130

Eligibility for entry on the EOI register, it was noted, ‘does not confer any entitlement on a person to then be selected for suitability to be an adoptive parent and be assessed’. 131 All remaining criteria in section 76 of the Act, which are not proposed to be amended by the Bill, must be satisfied for a person to be eligible to enter or remain in the EOI register; and ‘the same rigorous assessment process applied to heterosexual couples, will apply to same-sex couples and single people who express interest in adopting a child’. 132

This assessment process involves, as a first stage:

- personal history checks including criminal, domestic violence, traffic and child protection history for all adult household members to ensure there is no unacceptable risk of harm to a child, and
- health checks to determine whether a couple can provide stable, high-level care for a child until they reach adulthood. 133

Further, if couples are assessed as meeting these bases of suitability, they must participate in a minimum of four to five face-to-face interviews in their home, and the chief executive will consider:

- whether a person or a member of the household would pose an unacceptable risk of harm to a child adopted by the person
- whether the person has good health and is of good character
- the person’s capacity to be an adoptive parent, including the person’s attitude to and understanding about children and their physical and emotional development and the responsibilities and duties of parenthood their attitudes to children and parenting, as well as adoptive parenting
- the quality of the person’s relationship with their spouse (if they have a spouse), and
- the person’s adjustment and acceptance of their infertility (if applicable). 134

In response to Family Voice Australia’s concerns regarding the need to respect the beliefs and wishes of relinquishing parents, the department noted that Part 7, Division 2 of the Act, specifies other factors the chief executive must consider when selecting a person for assessment. This includes ‘the preferences of parents in relation to matters such as the child’s religious upbringing, characteristics of the adoptive parents and family and the degree of openness they would like in any adoption arrangement’. 135 The department advised:

Prior to a placement decision being made birth parents are provided with a number of couples de-identified profiles to allow them to engage in the matching process for them to have a say in which family they feel best aligns with their preferences. This is part of contemporary open adoption practices.

A further safeguard is that the Children’s Court is required to make an interim adoption order before a child can be placed with a couple and the requirements of making an interim adoption order (section 183) require the court to only make an order if satisfied that the department has complied with the relevant sections in selecting the couple. 136

130 Department, Response to submissions, 14 October 2016, p 4
131 Ms Cathy Taylor, Deputy Director-General, Child, Family and Community Services, Department, Public hearing transcript, 12 October 2016, p 8
132 Department, Response to submissions, 14 October 2016, p 4
133 Department, Response to submissions, 14 October 2016, pp 5-6
134 Department, Response to submissions, 14 October 2016, pp 5-6
135 Department, Response to submissions, 14 October 2016, p 4
136 Department, Response to submissions, 14 October 2016, pp 7-8
Finally, in response to submitters’ concerns regarding the extension of eligibility to women undergoing fertility treatment, the department stated:

*It is considered unreasonable to prevent a person from pursuing parenthood through other means, such as fertility treatment, during this time when there is no certainty of adoption.*

_The existing requirement in the Act to have regard to the person’s adjustment to, and acceptance of, their infertility, when assessing the person’s suitability to become an adoptive parent will continue. Consideration is commonly given to how a person has dealt with infertility in the past, including loss and grief; and that the person has processed the fact emotionally that they may be unable to conceive their own biological child._

Further, existing restrictions preventing a person who is pregnant from being added to or remaining on the EOI register or suitable adoptive parents register or from being granted an interim adoption order, will remain in place.\(^{138}\)

\(^{137}\) Department, *Response to submissions*, 14 October 2016, p 11

\(^{138}\) Department, *Response to submissions*, 14 October 2016, p 11
3.2 Adoption by a step parent – clauses 19, 20, 22, 23, 26, 41, 42 and 65

The Bill aims to improve the step-parent adoption process by:

- clarifying and refining provisions governing the closure of a step-parent application
- introducing timeframes for applying for adoption orders following receipt of a suitability report, and
- clarifying the scope of exceptional circumstances that may be considered when assessing the validity of a step-parent application.139

3.2.1 Closure of a step-parent application – clauses 19 and 20

Under section 100, a step-parent application lapses if it is inactive for six months due to a lack of consent from a birth parent, or a failure by the applicant to provide requested information. If a step-parent application becomes inactive for reasons other than this – for example, if a step-parent does not pay the required assessment fee and does not pursue their application – the application remains active and is not able to be finalised.140

Clause 20 seeks to address this anomaly by replacing section 100 with new sections 100 (automatic lapsing of application) and 100A (other lapsing of application).

The new sections extend the circumstances in which a step-parent application will lapse to include when the applicant fails to pay the required assessment fee. In addition, section 100A also provides greater procedural fairness to an applicant by requiring the chief executive to issue a show cause notice in relation to an inactive application, unless the application has lapsed because appropriate parental consent was not provided (‘automatic lapsing’ under new section 100).141 To accompany the provisions, clause 62 amends section 319 to allow a right of review to a decision under section 100A in relation to a notice that an application has lapsed.142

Clause 19 also inserts new section 95A into the Act, to allow a step-parent who has applied to the chief executive to adopt their step-child to withdraw the application at any time, by giving the chief executive notice that they do not wish to proceed with the adoption. This will allow for situations where a step-parent has decided not to pursue an application that has already been commenced.143

The Explanatory Notes state that this amendment mirrors a similar ability afforded to persons listed on the EOI register under section 79(1)(b), to have their name removed from the register upon providing a written request to the chief executive.144 The department advised that in 2013-14, 2014-15 and 2015-16, 14 couples, 15 couples and 12 couples respectively withdrew their EOI for local adoption.145

3.2.2 Timeframe for application after suitability report – clauses 26, 41 and 65

Step-parents are encouraged to apply promptly for adoption orders when their suitability report is completed by the department and provided to them. However, the department advised that there is presently no requirement for making an application in a timely way, to ensure the information in the suitability report remains current.146

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139 Explanatory Notes, pp 6-7
140 Department, Written briefing, 26 September 2016, p 8
141 Department, Written briefing, 26 September 2016, p 8; Bill, clause 20, ss 100-100A
142 Bill, clause 62, s 619(3). The Explanatory Notes state that this will ‘allow a person to apply to the Queensland Civil and Administrative Tribunal to have the decision reviewed’. See: Explanatory Notes, p 25
143 Department, Written briefing, 26 September 2016, p 8
144 Explanatory Notes, p 16
145 Department, Response to questions, 18 October 2016, p 13
146 Department, Written briefing, 26 September 2016, p 8
Adoption and Other Legislation Amendment Bill 2016

The Bill introduces a timeframe in which a step-parent who has been assessed as suitable and provided with a suitability report must apply to the Childrens Court for a final adoption order.

Clause 41 amends section 204 to require an application for a final adoption order to be made to the Childrens Court within 12 months of a suitability report being issued to the step-parent, and clause 26 inserts new subsection 135(8) which clarifies that the report ‘remains current for one year after the day it is given to the person’.

After this 12-month period has passed, the step-parent will no longer be able to apply for the final adoption order, and if they wish to pursue the adoption at a later date, must first apply to the chief executive, at which point a new assessment may be conducted.

Clause 65 establishes transitional arrangements for the commencement of such provisions in new section 254, which specifies that step-parents who have been provided with a suitability report before the commencement of the amendments, will have 12 months from commencement to make an application to the Childrens Court for a final adoption order.

Issues of fundamental legislative principle associated with clause 65 are discussed at chapter 4.1.1.

### 3.2.3 Exceptional circumstances – clause 42

Section 208 of the Act provides that a final adoption order in favour of a step-parent should be granted only if there are exceptional circumstances that warrant the making of the order. The Act does not define ‘exceptional circumstances’, and as a result, there is the potential for the term to be inconsistently applied.

Clause 42 inserts the following example of exceptional circumstances at 208(f), ‘to provide guidance to the court’:

Example for paragraph (f)—

a parent of the child has died or can not be located after making all reasonable enquiries.

### 3.2.4 Submitter views

Submitters noted the Bill’s clarification of the existing framework for step-parent adoptions.

The QFCC submitted that it supported the improvements to the provisions, and particularly the clearer definition of the ‘exceptional circumstances’ in which a step-parent adoption can occur. Gary (surname suppressed) stated of the amendment:

I support this amendment, though I am puzzled that the wisdom of the court did not extend to such a definition in the past and that such a definition was required in the Act. In the end I am grateful for the clarification it provides as the writer is currently an applicant step parent, and the other biological parent has not been located: not since before the birth of the child.
Elizabeth O’Keefe also noted the amended definition, submitting that in the right circumstances step-parent adoption can bring security to families, but ‘should be, as much as possible, done with the consent of that child and the natural parent’.  

In relation to the amendments governing application timeframes, Gary noted that while the amendments include application time limitations for an applicant, ‘there is no compulsion for the department to act in a timely matter’. Gary noted that Family Court’s consideration and granting of leave for him to adopt was concluded within a period of six months, but that the department’s assessment processes have been ‘excessively long and drawn out’ and have been projected to take an additional two years to finalise. Gary submitted that the department could proceed with greater haste to reduce stress on families and recommended an additional amendment to establish a six-month timeframe in which the chief executive must complete a suitability report. This timeframe, he submitted, should apply unless the chief executive is ‘unreasonably delayed by the applicant or extraordinary circumstances prevail.

3.2.5 The department’s response

In response to the comments of Elizabeth O’Keefe regarding the importance of securing the consent of the natural parent and the child as much as possible, the department noted that under amended section 208, the consent of a birth parent will be required in all but the ‘exceptional circumstances’ specified, or where the need for consent has been dispensed with by the court. In addition:

When a child is able to express their views, the child’s views about the adoption are provided to the court for consideration when making an adoption order or discharging an adoption.

In response to submitter Gary’s recommendation for the introduction of a six-month time frame for suitability reports, the department highlighted that the completion of a suitability report is just one component of the adoption process and stated that it is not possible to establish a limit on reporting or associated assessment processes. The department further advised:

Placing a timeframe on such an important, life altering decision for a child would not be in the best interests of a child. Step-parent adoption, like other forms of adoption, permanently changes the legal identity of a child. The department must ensure the same rigorous assessment is undertaken regardless of the diverse nature and complexities of different families.

156 Elizabeth O’Keefe, Submission 8, p 2
157 Gary, Submission 36, p 3
158 Gary, Submission 36, p 2
159 Gary, Submission 36, p 1
160 Department, Response to Submissions, 14 October 2016, p 17
161 Department, Response to Submissions, 14 October 2016, p 18
3.3 Access to information – clauses 44-46 and 48-52

Part 11 of the Act sets out the processes and requirements governing who may access adoption information, and the circumstances and manner in which it may be provided.

In particular, the Part allows for any of the following persons to apply to access certain pre-adoption information:

- an adult adopted person
- an adopted child, with the consent of an adoptive parent
- an adoptive parent of the adopted child
- a birth parent, or
- an adult who is a pre-adoption sibling of the adopted person (a person who would have been the adopted person’s sibling had the adoption not occurred).  

The pre-adoption information that may be provided includes:

- the person's date of birth
- their name at the time of birth and at the time of/immediately after adoption
- their last known name and address, and
- a copy of any of: a parent’s consent to adoption, an order dispensing with the need for a parent’s consent to the adoption, or an adoption order.

Generally, when a person requests pre-adoption information, it can only be provided with the consent of the person who is identified by the information. For example, where the request is made by an adopted person or their adoptive parent, the chief executive may give information in compliance with the request only if written consent is given by each birth parent who is identified by the information.

Equally, where a birth parent asks the chief executive for information about the adopted person, the chief executive may give information only with the consent of the adopted person – or if the person is a child, with the consent of an adoptive parent on their behalf.

The Act also allows for an adult relative to make a request for information or to give consent on behalf of an adopted person or birth parent where the relevant individual has died, or lacks the capacity to ask for information or consent to the release of information.

The Part provides specific definitions of a 'relative' and defines when a man is considered to be the person’s biological father, and therefore a birth parent, for these purposes.

The Bill proposes to make a number of various amendments to these provisions to improve processes for parties to an adoption to access information, by relaxing thresholds for consent or access to information, to make better allowance for the diversity of personal circumstances and family relationships that may exist within birth and adoptive families.

The department advised that:

*The results of consultation suggested access to information had improved since the Adoption of Children Act 1964 was repealed, but more could be done to further support people to gain as much information as possible regarding their identity and circumstances surrounding an adoption…*

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162 Act, Part 11, Divisions 2 and 3
163 Act, ss 256, 257, 263, 264, 265, 267
164 Act, ss 256, 263
165 Act, ss 257, 265
166 Act, ss 256-257, 253-266
167 Department, *Written briefing*, 26 September 2016, p 6
The amendments to Part 11 recognise that ‘for all adopted persons, family history is an invaluable aspect of their identity’. Importantly, in each case where a person is seeking information or where a person’s consent is sought, the chief executive will continue to be required to provide the person with any information, support or counselling considered appropriate in order to help the person decide whether to seek the information or consent to the disclosure of information at that time.

Issues of fundamental legislative principles associated with amendments to Part 11 are discussed at chapter 4.1.1.

3.3.1 Definition of a relative – clause 44

Section 249 of the Act defines the term ‘relative’ as it relates to persons who may give consent or request access to pre-adoption information on another’s behalf. Currently, the section specifies that a relative ‘means a spouse, parent, sibling or child’.

Clause 44 of the Bill extends the definition of a relative to include a grandparent or grandchild of the person; and, for an Aboriginal person or Torres Strait Islander, a person who is regarded as a parent or child under Aboriginal tradition or Island custom.

The department noted that during the review it heard from grandparents and grandchildren ‘who told us about the ongoing legacy of not being able to get information about birth relatives and adoption experiences’ due to an inability to access records of other generations or relatives who have been part of an adoption.

The department advised of the amendment:

This acknowledges that, in some circumstances, future generations or specified persons recognised under Aboriginal tradition or Island custom may wish to support an adopted person to access information about their birth family. This amendment will allow this extended group of people to obtain adoption information if birth parents or the adopted person is deceased, so that information regarding the family’s history may be preserved.

The amendment is also consistent with definitions in other jurisdictions – Queensland is currently the only state that excludes grandparents from its definition of a relative.

3.3.2 Records of the birth father – clauses 46 and 49

Section 250 of the Act defines when a person is considered to be the adopted person’s biological father in relation to references to a birth parent in the Part.

Currently, this includes where:

- the person is shown as the adopted person’s father in the register of births
- the person consented to adoption, or the need for his consent was dispensed with under the law at the time
- the chief executive holds a record or other sufficient evidence that the man accepted paternity of the adopted person before or at the time of the adoption, or

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168 Department, Written briefing, 26 September 2016, p 7; Explanatory Notes, p 9
169 Act, s259
170 Act s249
171 Bill, clause 44, s 249
172 Ms Megan Giles, Executive Director, Legislative Reform, Department, Public hearing transcript, 12 October 2016, p 5
173 Explanatory Notes, p 4
174 Review Report, p 15
the chief executive is otherwise satisfied, on the balance of probabilities, that the person is the adopted person’s biological father.\textsuperscript{175}

The department advised that currently, the chief executive may hold information related to the identity of a person’s father which does not satisfy the definition in section 250 – including, for example, a name recorded on a document where there is no evidence the name is actually that of the person’s biological father. Feedback provided from stakeholders throughout the review consultation process highlighted that for earlier adoptions in particular, various external pressures or social stigma may have prevented a birth mother from formally naming the biological father, and that onus of these threshold requirements is too high and not sufficiently flexible to account for such circumstances.\textsuperscript{176}

Stakeholders indicated that the resulting restrictions on accessing information about a person’s birth father have, in some instances, caused prolonged anguish.\textsuperscript{177}

Clauses 46 and 49 insert new sections 256A and 263A, which provide that where an adopted person has requested pre-adoption information (as per sections 256 and 263), the chief executive must provide any information they hold about the identity of a person who may be the adopted person’s biological father, even where the person is not considered the biological father because of section 250. This will allow an adopted person to receive any information on their adoption file that may assist them in identifying their possible father.\textsuperscript{178}

Importantly, in providing this information, new sections 265A(3) and 263A(3) specify that the chief executive must also provide the adopted person with a notice stating that the information given is not confirmation of the identity of their biological father and ‘if appropriate in the circumstances, the reasons why the information is not confirmed’.\textsuperscript{179}

\textbf{3.3.3 Consent where a person cannot be located – clauses 45, 48, 50 to 52}

The Bill also proposes to expand the circumstances in which an adult relative may give consent on behalf of an adopted person or birth parent. In addition to circumstances in which the relevant individual is deceased or lacks the capacity to give consent, clauses 45, 48, and 50 to 52 extend these provisions to also include instances in which the chief executive is satisfied the person cannot be located after all reasonable enquiries have been made.\textsuperscript{180}

A complementary amendment to section 280 of the Act (clause 59) will also allow for an adult relative of a birth parent to take part in the department’s mailbox service\textsuperscript{181} if the chief executive cannot locate the birth parent after all reasonable inquiries.\textsuperscript{182}

\begin{itemize}
\item \textsuperscript{175} Act, s 250
\item \textsuperscript{176} Ms Megan Giles, Executive Director, Legislative Reform, Department, \textit{Public hearing transcript}, 12 October 2016, p 4
\item \textsuperscript{177} Department, \textit{Written briefing}, 26 September 2016, p 6; Explanatory Notes, p 9
\item \textsuperscript{178} Explanatory Notes, p 9
\item \textsuperscript{179} Bill, clause 46, s256(3) and clause 49, s 263(3)
\item \textsuperscript{180} Department, \textit{Written briefing}, 26 September 2016, p 7
\item \textsuperscript{181} The mailbox service is an information exchange service provided by Adoption Services to receive and forward correspondence and other items between people who are parties to an adoption in Queensland. See: Department of Communities, Child Safety and Disability Services, \textit{Using the Mailbox Service: Information for adoptive parents, birth families and people who have been adopted}, Fact Sheet, April 2015. <https://www.qld.gov.au/community/documents/caring-child/using-mailbox-service.pdf>
\item \textsuperscript{182} Explanatory Notes, p 25
\end{itemize}
3.3.4 Discretion in exceptional circumstances – clauses 45, 48 and 51

Clauses 45, 48 and 51 amend sections 256, 263 and 265 to introduce discretion for the chief executive to consider providing access to information without consent in ‘exceptional circumstances’. The amendments provide that exceptional circumstances may include:

- the person and all adult relatives of the person have died
- an adult relative of the person unreasonably withholds consent

In addition, the clause 45 amendments provide that when considering whether there are exceptional circumstances, the chief executive may decide that the consent of the birth parent is not required in relation to all of the prescribed pre-adoption information, or all information other than the birth parent’s last known name and birth parent’s address.

The Explanatory Notes state that this discretion for the chief executive is considered necessary and appropriate to allow for the preservation of a person’s identity and family history, acknowledging the difficulties in locating and engaging with surviving relatives of parties to an adoption, sometimes many years after the adoption has been finalised.

3.3.5 Submitter views

The department noted that throughout the review process, stakeholders highlighted the importance of enabling parties to adoption to be able to access information about themselves ‘because it tells them a story about their birth and adoption experience’. The provision of greater and more flexible access to information to support open adoption processes was also widely favoured by submitters to the inquiry, as informed by learnings from the consequences of secrecy surrounding past adoptions, and by increased recognition and respect for people’s right to know their origins and identity.

In relation to expanded definition of relative in clause 44, the Family Inclusion Network Queensland (Townsville) Inc (FIN Townsville) submitted that the amendment was important for non-Indigenous and Aboriginal and Torres Strait Islander relatives alike, noting that ‘grandparents suffer greatly when their grandchildren are adopted’.

A confidential submitter to the inquiry revealed that her grandmother was adopted as a young girl and tried without success for many years to retrieve information about her biological father, but was unable to do so during her lifetime due to the restrictions in place at the time. The submitter noted that her elderly mother is now ailing, and would appreciate the opportunity to learn the identity of her biological grandfather before her death, ‘purely to know who he was, what he did with his life, what nationality he was, what religion, any illnesses, just for the knowledge and nothing more’. The submitter stated that she hoped her story might contribute to changing the law.

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183 Bill, clauses 45, 48 and 51, ss 256(8), 263(5), 265(5)
184 Explanatory Notes, pp 21-22
185 Explanatory Notes, pp 23-24
186 Ms Megan Giles, Executive Director, Legislative Reform, Department, Public hearing transcript, 12 October 2016, p 4
187 Confidential, Submission 6; Elizabeth O’Keefe, Submission 8, p 3; FIN Townsville, Submission 14, p 2; Confidential, Submission 21; Judith Glover, Submission 26, p 1; Professor Karen Healy AM, National President, AASW, Public hearing transcript, 12 October 2016, p 22
188 Judith Glover, Submission 26, p 1; FIN Townsville, Submission 14, p 2; Confidential, Submission 21; Professor Karen Healy AM, National President, AASW, Public hearing transcript, 12 October 2016, p 22
189 FIN Townsville, Submission 14, p 2
190 Confidential, Submission 11
A number of other individuals and groups also similarly supported the amendments as helping to enable future generations to gain information about their own or their family’s history and ancestry, including for identification of Aboriginality.\(^{191}\)

The AASW noted, however, that whilst supporting the reform, it considered the Act still requires greater clarity in relation to the processes and guidelines used to determine who may be deemed a relative under Aboriginal and Torres Strait Islander custom. Additionally, the AASW called for greater consideration to be given to ‘broadening the concept of ‘relative’ to also include significant relationships for the child, which may not be covered by the amendments’.\(^{192}\)

In relation to the amendments to allow access to information about a possible birth father, adoptee Elizabeth O’Keefe submitted that the provisions recognise that knowing the identity of both biological parents is important and that the search for this information can be ‘an instinct and necessary for identity and feeling secure about oneself’.\(^{193}\) FIN Townsville and Ms O’Keefe also highlighted that the proposed amendments are consistent with calls for access to biological information from those affected not only by adoption, but also by donated genetic material (including ova, sperm, embryos, or surrogacy arrangements).\(^{194}\)

Adoptee Judith Glover also supported the amendments, including the provision for a notice stating that the information is not confirmed.\(^{195}\) Ms Glover further highlighted scope for additional action, in keeping with the recommendations of the 2012 Federal Senate Community Affairs Reference Committee’s report, *Commonwealth Contribution to Former Forced Adoption Policies and Practices*:

Recommendation 14

12.36 The committee recommends that:

- All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers’ identities were not originally recorded; and
- Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.\(^{196}\)

Further, there was support for provisions for an adult relative to provide consent to the release of pre-adoption information on behalf of a person who cannot be located after all reasonable enquires, with submitters citing benefits drawn from their personal experiences.\(^{197}\) Judith Glover submitted that the expanded requirement is important as many adoptees of the closed and forced adoption era are now parents and grandparents themselves, and there is a higher likelihood of the adopted person or birth parent being deceased, unable to be located, or lacking capacity to consent.\(^{198}\)

 Provision for the chief executive to dispense with consent in ‘exceptional circumstances’ was also recognised as extremely important.\(^{199}\) with Elizabeth O’Keefe and Griffith University submitting that this should include releases of information in instances of inherited disease or life-threatening health problems and a need for associated medical history information.\(^{200}\)

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\(^{191}\) Elizabeth O’Keefe, Submission 8, p 1; QFCC, Submission 17, p 4; AASW, Submission 42, p 4

\(^{192}\) AASW, Submission 42, p 4

\(^{193}\) Elizabeth O’Keefe, Submission 8, p 2

\(^{194}\) Elizabeth O’Keefe, Submission 8, p 2; FIN Townsville, Submission 14, p 2

\(^{195}\) Judith Glover, Submission 26, p 4

\(^{196}\) Judith Glover, Submission 26, p 4

\(^{197}\) Confidential, Submission 6; Judith Glover, Submission 26, p 4

\(^{198}\) Judith Glover, Submission 26, p 3

\(^{199}\) Judith Glover, Submission 26, p 4

\(^{200}\) Elizabeth O’Keefe, Submission 8, p 1; Griffith University, Submission 31, p 4
FIN Townsville submitted that the discretion should also apply to adopted persons under 18 years of age, noting research indicating challenges and sometimes worrying behaviour in many adopted young people in adolescence. FIN Townsville submitted:

*Where adoptees as young people are so troubled by identity issues that they are heading towards mental ill health, self-harm, or anti-social behaviour, then the requirement for the consent of an adoptive parent to a request for information from an adopted young person should be waived.*  

In addition, FIN Townsville submitted that supportive counselling should be offered to all affected by such consent decisions.  

### 3.3.6 The department’s response

In response to the AASW’s concerns regarding the lack of clarity and guidelines surrounding who may be considered a relative under Aboriginal and Torres Strait Islander custom, the department advised that relevant operational policies will be updated to assist in determining who may be deemed a relative. This will include updating chapter nine of the *Adoption Practice Manual*, which deals with access to information and applications for identifying information.

In response to the AASW’s suggestions that the definition of relative also incorporate certain other significant relationships that may not be covered, the department noted that the Bill’s introduction of discretion for the chief executive regarding consent will enable appropriate releases of information in circumstances that include where a relative cannot be located or they unreasonably withhold consent.

The department also clarified that the introduction of discretion for the chief executive to consider when the need for consent is not required, is applied to adopted persons both under and over 18 years of age, and may also extend to circumstances involving serious health issues and valuable medical history information:

*The examples of ‘exceptional circumstances’ provided in the Bill regarding when consent is not required to release information, are not exclusive and will be determined on a case-by-case basis.*

In addition, where appropriate, the department may provide information, support and/or counselling to an adopted child, an adoptive parent or a birth parent who has applied for information or whose consent is sought for the release of information, as is provided for under section 259 of the Act. The section clarifies that the purpose of this provision is to ensure the person receives the support considered ‘appropriate’ and necessary in the circumstances in order to assist the person to decide whether to seek the information or consent to its release. Further:

*Post Adoption Support Queensland (PASQ) can also provide counselling and support to anyone affected by an adoption. PASQ is funded by the department and offers:*

- telephone counselling and support
- face-to-face counselling
- support and information during the search process
- mediation and assistance for people wishing to make contact with relatives.
3.4 Contact statements and offence and associated penalty—clauses 53, 54, 55 and 56

Section 269 of the Act provides that a birth parent or an adopted person who is at least 17 years and 6 months old may give the chief executive a signed contact statement document setting out their wishes about being contacted by another person, or people, to the same adoption. For example, the section specifies that a contact statement may state:

- that the person does not wish to be contacted
- that contact should occur only in a certain way— for example, in writing, by telephone, or for in-person contact, at a neutral place in the presence of a mediator, or
- that the person wishes to be contacted by the chief executive in order to give consent to the disclosure of information about them.209

These provisions allow for the recognition of an ‘objection’ (also called a ‘contact veto’ in some other jurisdictions), as was provided for under the former Act.210 Upon the commencement of the Act in 2010, an objection automatically became a contact statement expressing a wish not to be contacted.211

The Act also sets out ‘contact statement obligations’ for the chief executive to communicate information contained in a contact statement, including a person’s reasons for providing a contact statement, to a relevant party to the adoption who has applied to access identifying information about the person.212

Contact statements under the Act currently operate differently depending on whether the adoption order was made before or after June 1991. Under section 272, it is an offence to breach a contact statement for adoptions occurring before June 1991, with a maximum penalty of 100 penalty units ( $12,190),213 or up to two years’ imprisonment.214 Section 271 also establishes a ‘contact statement obligation’ for the chief executive to explain the offence provision when communicating information about a contact statement in relation to pre-June 1991 adoptions.

In contrast, there is no offence provision for breaching a contact statement for post-June 1991 adoptions.

3.4.1 Proposed amendments

Clause 56 omits section 272 to remove the offence and penalty relating to breaches of contact statements for pre-June 1991 adoptions. After the commencement of the amendments, a person would not be able to be charged with an offence committed prior to its commencement, as is provided by section 11 of the Criminal Code Act 1899.215

To reflect this change, clauses 54 and 55 remove the related section 271 requirement for the chief executive to explain the offence provision to a person seeking identifying information in relation to a pre-June 1991 adoption, and establish consistent ‘contact statement obligations’ for the chief executive for all adoptions.

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209 Act, s 269; Explanatory Notes, p 4
210 Adoption Act 1964 (Qld) (repealed), s 39AA
211 Department, Written briefing, 26 September 2016, p 5
212 Act, ss 270, 271
213 Section 5A of the Penalties and Sentences Act 1992 (Qld) provides that a regulation may prescribe the monetary value of a penalty unit. Under the Penalties and Sentences Regulation 2015, the prescribed value of a penalty unit from 1 July 2016 is $121.90.
214 Act, s 272
215 Department, Written briefing, 26 September 2016, p 6
The department emphasised that ‘the Bill does not remove contact statements, because many people entering into an adoption may still wish to have a formal record of their wishes with regard to contact’. However, the department advised:

*People who are parties to adoption, including adoptions that happened within that [pre-June 1991] time frame, have said to us that they respect another party’s wishes in terms of a contact statement that may be in place and that they did not feel that there was the need for there to be an offence provision contained in the legislation.*

The department noted that feedback received throughout the review consultation process revealed that ‘people feel quite intimidated and fearful of the inclusion of such an onerous penalty provision in the legislation about contact statements’. The department advised that stakeholders impacted by past forced adoption policies and practices had expressed particularly strong views in this regard, reporting that the legislative penalties ‘cause considerable trauma’ and ‘are felt by some to be another rejection and inappropriate state intervention in the life of adoptees and birth families’. In addition, the Jigsaw organisation, which works to connect adopted people with their birth families, highlighted that parties’ views around being contacted can change throughout their life course, but may not necessarily be reflected in updated contact statements.

The department also submitted that it is not aware of any prosecutions under the offence provision having occurred, and highlighted similar moves to repeal penalties in other States and Territories, including Victoria.

Consequential to these amendments, the Bill also proposes to amend section 267, which deals with information requests by adults who would be a sibling of the adopted person if the adoption had not occurred (pre-adoption siblings). In keeping with the removal of the offence penalty in section 272, clause 53 removes the subsection 267(3) provision which prohibits the chief executive from releasing pre-adoption information about an adopted person to pre-adoption sibling where the adoption occurred before 1 June 1991, and a contact statement is in place which states that the birth parent does not wish to be contacted by the adopted person. The consent of the adopted person would still be required for the chief executive to provide the requested information to the pre-adoption sibling. However, the department advised:

*As it is no longer an offence for a person to knowingly contact a birth parent who has a contact statement in place, it is not necessary to legislate a bar to providing information to a pre-adoption sibling about the adopted person.*

Fundamental legislative principle issues associated with these amendments are examined at chapter 4.1.1.

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216 Department, *Written briefing*, 26 September 2016, p 6
217 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public hearing transcript*, 12 October 2016, p 4
218 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public hearing transcript*, 12 October 2012, p 4
219 Department, *Written briefing*, 26 September 2016, p 6
220 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public hearing transcript*, 12 October 2012, p 6
221 Ms Megan Giles, Executive Director, Legislative Reform, Department, *Public hearing transcript*, 12 October 2016, p 4
222 Act, s67(3); Explanatory Notes, p 9
223 Department, *Written briefing*, 26 September 2016, p 11
3.4.2 Submitter views

There was broad support for the removal of the offence penalty amongst submitters and other stakeholders,\(^{224}\) who generally recognised the amendments as being ‘in keeping with the principles of open adoption’ and with legislation in other Australian jurisdictions.\(^{225}\)

Just one submitter expressed reservations about the removal of the penalty offence.

Citing Australian Institute of Health and Welfare (AIHW) figures indicating there were 2978 contact statements in place in Queensland as of 30 June 2015, Ms Bridget McCullagh submitted that the removal of the penalty provision could have serious consequences for a significant number of individuals and their families.\(^{226}\) Ms McCullagh acknowledged that the currently penalty has never been implemented, but submitted that ‘the fact a penalty could apply may possibly have had some deterrent effect’. Ms McCullagh stated that the proposed removal of the penalty provision would mean the loss of an important privacy safeguard and may allow for a person to ‘actually totally disregard these written directions’.\(^{227}\)

For the most part, however, submitters considered the penalty provision to be unduly punitive and ‘excessive’ – ‘especially the 2 years imprisonment’, the AASW noted – and to have ‘historically discouraged individuals from accessing adoption information’.\(^{228}\)

Adoptee submitters and stakeholders viewed the penalty provision as an ‘archaic’ leftover from a past area of closed and forced adoptions, which had helped ‘prop up’ illegal and destructive adoptive practices with severe and lasting intergenerational effects on Queensland families.\(^{229}\) A confidential submitter to the inquiry noted that many birth mothers are marginalised and disadvantaged and have underachieved due to mental health issues and the profound grief caused by their forced adoption experience. The submitters stated that the retention of the penalty provision has harmful negative connotations which only exacerbate their distress.\(^{230}\)

In addition, it was submitted to the committee that many adoptees had established vetoes in 1991 which they believed would be five-year vetoes, in keeping with the five-to-eight-year vetoes established in other States. However, a last minute change saw them established instead as a non-expiring ‘lifetime veto’ in Queensland, and that many remain in place today.\(^{231}\)

The proposed amendments were supported as a much needed and significant reform, in light of such instances and practices. Elizabeth O’Keefe submitted:

\[
\textit{Past adoptions were something which was forced on people in the past and people in the present should not be suffering from past restrictions, which impact on their mental health and their need to know their identity and self-esteem. Adopted people can struggle with their identity/self esteem issues, which can lead to depression. In the case of natural parents, I believe most want contact with their child that was adopted and some may suffer from ongoing trauma from losing this child.}\]

\(^{224}\) Elizabeth O’Keefe, Submission 8, p 1; Family Inclusion Network Townsville (Queensland) Inc, Submission 14, p 1; QFCC, Submission 17, p 3; Confidential, Submission 21; AASW, Submission 42, p 4; Judith Glover, Submission 26, pp 2-3

\(^{225}\) FIN Townsville, Submission 14, p 1; QFCC, Submission 17, p 3; AASW, Submission 42, p 4, Confidential, Submission 21.

\(^{226}\) Bridget McCullagh, Submission 39, p 2

\(^{227}\) Bridget McCullagh, Submission 39, p 2

\(^{228}\) AASW, Submission 42, p 4

\(^{229}\) Confidential, Submission 21; Judith Glover, Submission 26, p 2

\(^{230}\) Confidential, Submission 21; Judith Glover, Submission 26, p 2

\(^{231}\) Confidential, Submission 21

\(^{232}\) Elizabeth O’Keefe, Submission 8, p 3
In addition, Judith Glover noted that the amendments are in keeping with recommendation 15 of the final report of the Commonwealth Senate Community Affairs References Committee report, *Commonwealth Contribution to Former Forced Adoption Policies and Practices:*

**Recommendation 15**

> 12.104 The committee recommends that the Community and Disability Services Ministers Conference agree on, and implement in their jurisdictions, new principles to govern post-adoption information and contact for pre-reform era adoptions, and that these principles include that:

- All adult parties to an adoption be permitted identifying information;
- All parties have an ability to regulate contact, but that there be an upper limit on how long restrictions on contact can be in place without renewal; and
- All jurisdictions provide an information and mediation service to assist parties to adoption who are seeking information and contact.\(^{233}\)

The AASW, the QFCC, Elizabeth O’Keefe and Judith Glover submitted that the removal of the penalty provision ‘provides a more appropriate balance, while still providing the necessary safeguards’,\(^{234}\) noting that the retention of contact statements will continue to allow people to express ‘how and if they wish to be contacted’.\(^{235}\)

Elizabeth O’Keefe noted that ‘if people wish no contact, (which I believe is rare), there are other alternatives’, and submitted that ‘also, counselling should be offered to those who are worried about contact’.\(^{236}\)

The AASW also sought to highlight the significant need for the provision of appropriate supports from qualified professionals when an applicant is requesting access to information contained in the contact statement. The AASW submitted that ‘this is a complex issue that raises numerous issues for individuals and the Act must recognise that ensuring access to counselling and support by qualified and skilled professionals must be a priority’.\(^{237}\) The AASW submitted that it ‘believes that governments have responsibilities to provide adequate and appropriate life-long adoption services for families’, recognising that individuals and families involved in the adoption process require varying forms of support at different times throughout their lifespan.\(^{238}\)

In relation to the related amendment to section 267(3), a confidential submission from an adoptive parent couple stated that their teenage adopted child is currently unable to contact two older adult birth siblings, as the birth mother is unable to be located to provide consent. The couple noted that this is despite these individuals being consenting adults who are aware of the circumstances of the adoption. The couple supported reform:

> ...to allow the department, on behalf of the adoptive family, to make contact with the adult birth siblings to allow ongoing, non identifying contact through the department’s mailbox system, if they are willing for this to happen.

> We believe this would help our daughter to better cope with all the teenage psychological adoption/abandonment issues as well as put her in a better place to ease into the contact

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\(^{233}\) Judith Glover, Submission 26, pp 3-4

\(^{234}\) AASW, Submission 42, p 4

\(^{235}\) AASW, Submission 42, p 4; QFCC, Submission 17, p 3; Elizabeth O’Keefe, Submission 8, p 1; Judith Glover, Submission 26, pp 3-4

\(^{236}\) Elizabeth O’Keefe, Submission 8, p 1

\(^{237}\) AASW, Submission 42, p 4

\(^{238}\) AASW, Submission 42, p 8
situation when it comes around [as she reaches the age of 18] as she will have built up a relationship with the birth family.\textsuperscript{239}

### 3.4.3 The department’s response

In response to the issues raised in submissions, the department reaffirmed that it is unaware of any prosecutions for the statutory offence under the current provision and acknowledged that the penalty provision appears to be a source of considerable fear and trauma for stakeholders impacted by past forced adoption policies and practices in particular.\textsuperscript{240}

The department stated that the removal of the offence and associated penalty for breach of a contact statement for adoptions which occurred prior to June 1991 ‘will allow for the consistent operation of all contact statements in Queensland regardless of when the adoption occurred and align Queensland with other States and Territories that have made changes to their legislation in recent years’.\textsuperscript{241} In addition, the department noted that ‘the obligation under existing section 271 on the chief executive to communicate information contained in a contact statement to a person affected by the statement who makes a request for information, is maintained’.\textsuperscript{242}

In response to the AASW’s comments regarding the need for qualified professional support for parties in relation to contact statements, the department advised:

\textit{Under section 271 of the Act, a qualified officer means an officer of the department who the chief executive is satisfied has appropriate qualifications or experience to carry out interviews under this section. The Bill retains these provisions. Adoption Officers providing services to clients under the Act are required to hold a relevant tertiary qualification in psychology, social work or human services. In addition, the department will continue to encourage affected persons to seek support from relevant support services, such as Post Adoption Support Queensland and Jigsaw Queensland Inc.}\textsuperscript{243}
3.5 Contact during interim orders – clauses 30-36 and 57-61

An interim adoption order, granted by the Childrens Court, is necessary for most adoptions and is required to be in place for at least 12 months before a final adoption order can be made. During an interim adoption order, the chief executive retains guardianship of the adoptive child and the prospective adoptive parents have custody of the child.\textsuperscript{244}

The department advised that consultation with stakeholders had identified that the Act is currently unclear about whether a child can have face-to-face contact with their birth parents during an interim adoption order.\textsuperscript{245} The Bill seeks to remove any doubt that face-to-face contact between a child and their birth parents can occur during an interim order and specifies that it may occur through the adoption plan framework.\textsuperscript{246}

An adoption plan is a written record agreed to by the parties to an adoption which may set out any matters relating to the adopted child’s wellbeing and interests, including guiding the degree of openness there will be in the adoption and how and when a party may communicate with another party.\textsuperscript{247}

Currently, the Act states that an adoption plan is required only when:

- a birth parent and prospective adoptive parent wish to have in-person contact
- a child protection order is, or has been in force for the child, or
- if the child is an Aboriginal or Torres Strait Islander child and the adoptive parents are not from the child’s community or language group.\textsuperscript{248}

Clause 33 inserts new section 169A, which clarifies that an adoption plan must also be agreed to if a birth parent and a prospective adoptive parent have advised the chief executive that they wish for there to be face-to-face contact between the child and birth family while an interim order is in place.\textsuperscript{249}

New section 169A provides that an adoption plan that is agreed to by the birth parent and prospective adoptive parents must address ‘how the contact will happen and the nature and frequency of the contact while the interim order is in force’.\textsuperscript{250}

The department submitted:

\begin{quote}
This will ensure an avenue exists to support the transition to adoption for a child. During this period, the chief executive will maintain oversight as the guardian of the child, ensuring that the wellbeing and best interests of the child are paramount, as per the guiding principles of the Act (section 6).
\end{quote}\textsuperscript{251}

Clauses 30 to 32 and 34 to 36 make consequential amendments to provisions governing adoption plans to ensure their application in relation to a ‘proposed adoption’, ‘prospective adoptive parents’ and in-person contact ‘after adoption’, as per any adoption plan agreed to by parties to an interim order under new section 169A.\textsuperscript{252}

\textsuperscript{244} Department, Written briefing, 26 September 2016, p 7
\textsuperscript{245} Department, Written briefing, 26 September 2016, p 7
\textsuperscript{246} Explanatory Notes, p 6
\textsuperscript{247} Act, s 165
\textsuperscript{249} Bill, clause 33, s 169A
\textsuperscript{250} Bill, clause 33, s 169A
\textsuperscript{251} Department, Written briefing, 26 September 2016, p 8
\textsuperscript{252} Bill, clauses 30-32 and 40-46
Additionally, clauses 57 to 61 make consequential amendments to clarify that the existing mailbox service administered by the department may be used to facilitate the exchange of information between parties to a proposed adoption during an interim adoption order.\textsuperscript{253}

The amendments specify that the chief executive must provide written consent in order for a child for whom an interim order is in force to take part in the mailbox service, and for each of the parties to the proposed adoption to exchange information.\textsuperscript{254} Clause 60 clarifies that the chief executive may provide consent in such circumstances ‘if the chief executive is satisfied that exchanging identifying information is not likely to be contrary to the child’s wellbeing and best interests’.\textsuperscript{255}

Further, each participating party will be required to give a notice of intent stating that they wish to exchange identifying information while the interim order is in force.\textsuperscript{256}

Clause 60 amendments to section 282(3) also clarify that if the participants have exchanged information while an interim adoption order was in place, they may still exchange the same type of identifying information after a final adoption order is made, as is in keeping with their notice of intention. This means that participants who exchanged identifying information during an interim adoption order will not have to cease exchanging the same type of identifying information after a final adoption order because the participants have not yet made a request for information under division 2 or 3 of Part 11 of the Act.\textsuperscript{257}

The Explanatory Notes state:

\textit{Extending the use of the mailbox service to enable further information exchange supports open adoptions and the use of adoption plans during interim adoption orders under new section 169A.}\textsuperscript{258}

3.5.1 \textit{Submitter views}

Submitters generally expressed support for the amendments and the ‘removal of doubt’ and ‘much needed clarity they provide’.\textsuperscript{259} The QFCC submitted that it ‘has no objections to the amendments’, while Legal Aid Queensland submitted that the provisions proposed would ‘help to ensure ongoing contact for birth parents in appropriate circumstances’.\textsuperscript{260}

Adoptee Elizabeth O’Keefe, in supporting the amendments, emphasised that ‘contact should be maintained between natural parents/adoptive parents and be continue to be maintained for the sake of the child, wherever possible’.\textsuperscript{261} FIN Townsville similarly noted its support for the use of plans to facilitate such early contact. FIN Townsville submitted that it is in favour of adoption plans being drawn up to support open adoption in all but ‘very exceptional circumstances’.\textsuperscript{262}

FIN Townsville further recommended the introduction of accompanying post adoption services to facilitate these ongoing arrangements, ‘as per the model recommended by eminent UK researchers Neil, Beek and Ward (2014)’.\textsuperscript{263} The AASW, similarly, emphasised the importance of the provision of support services from professional staff ‘that are appropriately qualified and trained to understand the complexities of adoption’,\textsuperscript{264} noting that complex decisions surrounding the need for and the

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\textsuperscript{253} Department, \textit{Written briefing}, 26 September 2016, p 8
\textsuperscript{254} Bill, clause 59, s 280(1AB), clause 60, s 282(1)(b)
\textsuperscript{255} Bill, clause 60, s 282(5)
\textsuperscript{256} Bill, clause 60, s 282(1)(c)
\textsuperscript{257} Explanatory Notes, p 25
\textsuperscript{258} Explanatory Notes, pp 6, 25
\textsuperscript{259} FIN Townsville, Submission 14, p 2; AASW, Submission 42, p 8
\textsuperscript{260} QFCC, Submission 17, p 4; Legal Aid Queensland, Submission 33, p 1
\textsuperscript{261} Elizabeth O’Keefe, Submission 8, p 2
\textsuperscript{262} FIN Townsville, Submission 14, p 2
\textsuperscript{263} FIN Townsville, Submission 14, p 2
\textsuperscript{264} AASW, Submission 42, p 8
\end{flushright}
frequency of contact, must be made ‘in the child’s best interests and in consultation with all key parties’. 265

3.5.2 The department’s response

In response to FIN Townsville’s call for the use of adoption plans in all but exceptional circumstances, the department noted that a plan is currently required in a number of specific circumstances under the Act, but may not be appropriate in all cases, including where it is not considered to be in the child’s best interests. 266

The agreement, rather than the compulsion of parties to finalise a plan, may support better contact experiences, in keeping with the guiding principles for the Act, which ‘promote openness and honesty about the child’s adoption and encourage ongoing contact between a child and their family’. 267

The department further noted:

*The process used in developing an adoption plan for a child is already very similar to the practice model recommended by the well-known ‘Contact after Adoption’ study that the submission references. The principles underpinning the model are that contact should be purposeful; individualised, and that contact is a relationship-based process that is dynamic across time.* 268

In addition, that department highlighted that birth parents are provided with the names of post-adoption support services that can assist them after their child has been adopted.

*The department also offers support to birth families when they engage in the mailbox service and can refer them to the support services again at this time. Adoptive parents are encouraged to connect with the adoption community to access support and to help their child adjust to being adopted. Many adoptive families engage in post-adoption support or meetings with local adoption support groups.* 269
3.6 Retaining name and identity – clause 43

Section 215 of the Act provides that when a final adoption order is made by the Childrens Court, the order may include that the child keeps an existing given name, or that the child has another given name agreed to by the child’s adoptive parents, either in addition to or instead of their current given name.270

The section specifies that the court must make the order that will promote the child’s wellbeing and best interests and must not make an order that the child have another another given name instead of their existing given name ‘unless it would harm the child’s wellbeing or best interests to keep their existing given name’.271

During the review of the Act, views were expressed regarding the right of a person to know and keep, as much as possible, a connection with their birth identity.272 The Explanatory Notes also highlight that article 8.1 of the United Nations CRC, to which Australia is a signatory, contains an undertaking for State Parties to respect the right to preserve a child’s identity, including their name, as recognised by law.273

The Bill replaces section 215 of the Act to better emphasise the importance of preserving a child’s birth name and provide greater guidance as to the limited circumstances in which it may be acceptable for a child’s first name to be changed in the order. Clause 43 provides that a final order must (rather than may) include an order that the child keep their existing first given name, unless the court is satisfied that there are ‘exceptional circumstances’. New subsection 215(3) includes, as an example of ‘exceptional circumstances’:

\[ \text{a child’s existing first given name is harmful to their wellbeing because the name may be culturally inappropriate} \]  

In addition to this strengthened guidance, the section retains the existing requirement that the court make the order that will best promote the child’s wellbeing and best interest.275 Further, in making an order under the section, the court will continue to be required to have regard to the child’s right to preserve their identity and to consider whether the child is generally known by, or identifies with, any of their existing given names.276

A transitional provision in new section 355 (clause 65) provides that upon commencement, amended section 215 will apply if an application for a final adoption order has been made and the final adoption order has not yet been granted.277

3.6.1 Submitter views

Submitters broadly supported the amendment to section 215,278 as ‘an important measure to ensure a child’s identity, including language, cultural and religious ties, is preserved by law’.279

270 Act, s 215  
271 Act, ss 215(2), 215(5)  
272 Review Report, p 18  
273 Explanatory notes, p 5  
274 Bill, clause 43, ss 215(2)  
275 Bill, clause 43, s215(3). See also Act, s 215(2)  
276 Bill, clause 43, s215(3). See also Act, s 215(3)-(4)  
277 Explanatory Notes, p 27  
278 Elizabeth O’Keefe, Submission 8, p 2; FIN Townsville, Submission 14, p 1; QFCC, Submission 17, p 4; AASW, Submission 42, p 4; Judith Glover, Submission 26, p 1  
279 QFCC, Submission 17, p 4
Elizabeth O’Keefe and the AASW respectively submitted that the amendment recognises that changing a child’s name is a ‘huge step’ and ‘can have numerous detrimental consequences’, 280 and therefore ‘should not be done lightly’. 281

Judith Glover also submitted:

*It is quite commonplace in society today for members of a family group residing at the same address to have different surnames. As such, there is no “need” to change a child’s name to protect them from “illegitimacy” when they are adopted.* 282

The QFCC noted that updated section 215 is also in keeping with law in some other Australian jurisdictions, such as NSW and WA, 283 and the QFCC, FIN Townsville, the AASW and Judith Glover also endorsed its adherence to the principles of the CRC. 284

The ACL also submitted that it understands the proposed provision reflects ‘consideration for what is best for the adopted child’. 285

However, submitters also saw room for more specific guidance to be included in the Bill, to provide greater direction to the courts.

The QFFC expressed concern that the example of ‘exceptional circumstances’ to be introduced in s215 (2)– “a child’s first given name is harmful to their wellbeing because the name may be culturally inappropriate” – is ambiguous, and does not fully explain the intent of the provision. QFCC submitted that the Bill may be improved by a more specific example, such as a situation where an adopted child’s first name is perceived as offensive. 286

The AASW similarly submitted that presenting a situation where a child’s cultural name may be harmful within a Western context is ‘is too vague and many examples that could fall under this classification would not meet a standard for ‘exceptional circumstances’. Besides extreme examples where a name may undeniably be deemed harmful to a child’s wellbeing, the AASW considered that the determination of harm is too subjective and needs to be clearer in this respect. The AASW submitted:

*The Act must detail a much clearer set of criteria about what exceptional circumstances include and that key to this is maintaining the child’s cultural identity and heritage and that wherever possible the child’s views must be considered.* 287

Judith Glover also called for the requirement to be extended to the surnames of children who are up for adoption. Ms Glover submitted that original birth certificates should be retained, with the names of birth parents in place, and that an ‘Order of Adoption’ should instead be issued for the purposes of identification. Ms Glover submitted that:

*In this respect it would be used like a woman uses her marriage certificate to prove her change of name. In the case of adoption it would show the change of legal guardianship of the child.* 288

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280 Elizabeth O’Keefe, Submission 8, p 2; AASW, Submission 42, p 4
281 Elizabeth O’Keefe, Submission 8, p 2
282 Judith Glover, Submission 26, p 4
283 QFCC, Submission 17, p 4
284 Judith Glover, Submission 26, p 5; QFCC, Submission 17, p 4; FIN Townsville, Submission 14, p 1; AASW, Submission 42, p 4
285 Ms Wendy Francis, Queensland State Director, Australian Christian Lobby, *Public hearing transcript*, 12 October 2016, p 12
286 QFCC, Submission 17, p 4
287 AASW, Submission 42, p 4
288 Judith Glover, Submission 26, p 4
Ms Glover stated that such additional reforms would be consistent with recommendation 13 of the Senate Community Affairs References Committee report, *Commonwealth Contribution to Former Forced Adoption Policies and Practices*. 289

3.6.2 The department’s response

In response to submitters’ comments on proposed section 215, the department advised that the example of ‘exceptional circumstances’ provided in the Bill is included to provide guidance to the court in interpreting section 215 and is not exclusive. While the specific example provided in the Bill is intended to include circumstances where the name is perceived as offensive, exceptional circumstances will be determined by the court on a case-by-case basis. 290

In addition, the department highlighted:

> Existing provisions in the Act (section 215(2)-5)) are maintained in clause 43 (replacement section 215(3)), which require the court to make the order that will best promote the child’s wellbeing and best interests; have regard to the child’s right to preserve the child’s identity; and consider whether the child is generally known by, or identifies with, any of the child’s existing names. 291

The department also confirmed that it ‘will continue to work with the Department of Justice and Attorney-General (the department responsible for administering the Registry of Births, Deaths and Marriages) to investigate options regarding birth certificates for adopted persons’. 292

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289 Judith Glover, Submission 26, p 5
290 Department, *Response to submissions*, 14 October 2016, p 16
291 Department, *Response to submissions*, 14 October 2016, p 16
292 Department, *Response to submissions*, 14 October 2016, p 18
3.7 Minor and technical amendments and further review

The Bill makes additional minor, technical and consequential amendments, including:

- correcting an oversight regarding a person’s eligibility to remain on the suitable adoptive parents register when transitioning the suitable adoptive parents register from the former Act to the register under the Act, such that persons transferred from the register of the former Act who are no longer eligible may be removed from the suitable adoptive parents register (clause 65, new section 353)

- correcting an oversight to allow long-term guardians under the *Child Protection Act 1999* to be selected for assessment of suitability to adopt a particular child, in the same way that approved carers under the *Child Protection Act 1999* may be selected (clauses 17, 37 and 660)

- amending pre-consent timeframes in section 19 to reflect the difference between the date when a person has received pre-consent counselling and the date when a counsellor swears a statement confirming the counselling has been received (clause 4)

- clarifying that the chief executive may place a child awaiting adoption in the care of one or more of the child’s parents under section 60(1)(b) if it is at least 30 days since at least one parent’s consent (rather than each parent’s consent) for adoption was obtained, or the need for their consent has been dispensed with (clause 5)

- clarifying that the chief executive’s guardianship does not end when the chief executive is a child’s guardian under section 57 at the time the child dies (clause 6 and clause 65), such that the chief executive may act in relation to matters such as religious ceremonies and burial, taking into consideration the preferences of parties to adoption where appropriate, and

- updating terminology and definitions.

In addition, clause 63 removes section 327 and replaces it with a new section to require the Minister to ensure the operation of the Act is reviewed as soon as practicable after the day that is five years after the commencement of the Bill.

In keeping with requirements for the recent statutory review, the review must include a review of the effect of the Act on parties to adoptions and their families, and the Minister must table a report on the outcome of the review in the Legislative Assembly.

3.7.1 Updated terminology and definitions

Following amendments to the SDA in 2013, states were required to conduct an audit of laws including language or provisions that discriminate against a person because of their gender (see also chapter 3.1.2). The Bill amends sections throughout the Act to remove gender specific language, replacing use of personal pronouns ‘he’ or ‘she’ with references to ‘the person’. This shift to more gender neutral terminology is not without challenges, as the previous use of such language is deeply ingrained in legal frameworks. It is anticipated that this change will require careful consideration and adaptation in key areas of the Act to ensure that it remains inclusive and accessible to all individuals.
Adoption and Other Legislation Amendment Bill 2016

and inclusive language will help ensure the Act’s consistency with the SDA and with contemporary drafting practice.301

Key definitional changes proposed include:

- a definition of long-term guardian is inserted which refers to the definition under Schedule 3 of the Child Protection Act 1999, to reflect the correction to allow long-term guardians to be selected for assessment of suitability to adopt302
- a definition of member of a person’s household is inserted into the dictionary to allow the appropriate levels of assessment to be conducted on adult members of a person’s household, as is required under section 111 of the Act,303 and
- a clarification in relation to the definition of spouse is provided under new section 9A Part 1, division 2, which states that a person who has a spouse, but has separated from the spouse, is considered to be single for the purposes of the Act— including individuals who are still legally married but living ‘separately and apart’.304

Issues of fundamental legislative principle associated with the definition of ‘member’ inserted by clause 66 are examined at chapter 4.1.1.

3.7.2 Submitter views

The LGBTI Legal Service submitted that it strongly supports the proposed amendments to remove all references to the opposite gender requirement, and ‘agree that any necessary references to adoption requirements should be made using more appropriate gender neutral language’:

“We appreciate the Parliament’s acknowledgement that language within legislation plays an important role in defining social values and community acceptance of LGBTI people... As such, the LGBTI Legal Service fully supports the proposed replacement of the words ‘he’ or ‘she’ with ‘party’ or ‘person’ within the legislation.”305

The renewal of the statutory commitment in section 327 was also welcomed by submitters, who identified a raft of further changes and suggestion for consideration in the next review.

The Family Inclusion Network South East Queensland (FIN SEQ) expressed concern, however, about the amendment to include long-term guardians in provisions which permit the chief executive to select an approved carer for assessment of their suitability to adopt a particular child. FIN SEQ submitted that approval processes for carers and guardians are not sufficiently rigorous to qualify them for assessment as distinct from any other prospective parents.306

3.7.3 The department’s response

In response to FIN SEQ, the department noted that the amendment to include long-term guardians in provisions relating to approved carers is ‘merely correcting an oversight to bring the legislation in line with the original intent of the Act’. Where selected, these individuals are required to undergo the same suitability assessment as any applicant under the Act.307

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302 Explanatory Notes, p 7
303 Explanatory Notes, p 7
304 Explanatory Notes, p 13. The Explanatory Notes state that the effect of this amendment is that ‘a person who has separated from their spouse will be able to express interest, and be assessed for suitability, as a single adoptive parent’.
305 LGBTI Legal Service, Submission 34, p 2
306 Family Inclusion Network South East Queensland (FIN SEQ), Submission 44, p 6
307 Department, Response to submissions, 14 October 2016, p 25
In addition, the department acknowledged and addressed many of submitters’ additional recommendations in its response to submissions, including outlining various current provisions and initiatives and plans for ongoing consultation and review.\textsuperscript{308}

\textsuperscript{308} Department, \textit{Response to submissions}, 14 October 2016, pp 19-26
4. **Compliance with the Legislative Standards Act 1992**

4.1 **Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* states that the fundamental legislative principles (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill and brings the following potential FLP issues to the attention of the Legislative Assembly.

4.1.1 **Rights and liberties of individuals**

*Clause 44 – definition of a relative*

Clause 44 broadens the definition of ‘relative’ in section 249(1), as it applies to provisions allowing an adult relative to apply for pre-adoption information or consent to the sharing of information on another person’s behalf, in limited specified circumstances. This includes when a birth parent of the adopted person is deceased, cannot be located after reasonable enquiries, or does not have capacity to consent.

Under amended section 249(1), a relative will include, in addition to a spouse, parent, sibling or child:

- a grandparent or grandchild of the person, and
- for an Aboriginal or Torres Strait Islander person, a person who, under Aboriginal tradition or Island custom, is regarded as a parent or child of the person.

This amendment arguably breaches the fundamental legislative principle that sufficient regard be given to an individual’s right to privacy and confidentiality, by expanding the group of people who are potentially able to obtain private and confidential information about the parties to an adoption.

In respect of this, the Explanatory Notes state that the expanded definition:

> ... is considered necessary for preserving family history and a person’s identity, and is only applied where birth parents or the adopted person is deceased, cannot be located after reasonable enquiries, or does not have capacity to consent.309

*Clauses 46 and 49 – records of the birth father*

Clauses 46 and 49 insert new sections 256A and 263A into the Act to require the chief executive to provide an applicant with any information held about the identity of a person who may be the adopted person’s biological father, regardless of whether the person meets the threshold requirements to be considered a birth parent under section 250 of the Act.

The new sections prescribe that if the chief executive gives such information, it must be accompanied by a notice stating that the identity of the adopted child/person’s biological father is not confirmed, and, if appropriate, the reasons why the information is not confirmed.

This amendment arguably breaches the fundamental legislative principle that sufficient regard be given to an individual’s right to privacy and confidentiality, by permitting the release of identifying particulars about a person who may or may not actually be an adopted child/person’s biological father.

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309 Explanatory Notes, p 8
This potential breach of privacy is acknowledged in the Explanatory Notes, which advise:

The nature of past forced adoption policies and practices resulted in some birth mothers providing false information as to the identity of the child’s birth father, in order to protect a birth father’s identity. There is considerable evidence of trauma to those persons who were subject to forced adoption. Restrictions on accessing information about a person’s birth father have in some instances caused prolonged anguish. The amendment recognises that for all adopted persons, family history is an invaluable aspect of their identity.

This amendment may, in some instances, be contrary to the privacy rights of individual as a man who may be identified by this information is not required to provide consent before the information is provided to the adopted person. This may result in information being disclosed in favour of one person, potentially contrary to the privacy or views of another person. However, this amendment is considered appropriate to align with the guiding principles of the Act, including the promotion of openness and honesty about a person’s adoption.\(^{310}\)

**Clauses 53 and 56 – contact statements and offences**

Section 269 of the Act allows for an adopted person or a birth parent to give the chief executive a signed contact statement that sets out their wishes about being contacted by another person. Section 272 makes it an offence to make contact against the wishes expressed in a contact statement for pre-June 1991 adoptions.

Clause 56 removes the section 272 offence provision, and to align with its removal, clause 3 removes section 267(3), which had prohibited the release of information about pre-June 1991 adoptions to an adult pre-adoption sibling, where a contact statement advised that the birth parent did not wish to be contacted by the adopted person.

Removing section 267(3) will allow information to be accessed by a pre-adoption sibling regardless of whether the birth parent has made a contact statement that the birth parent does not wish to be contacted, in breach of the birth parent’s expectation of privacy and confidentiality.

The Explanatory Notes advise:

The omission of the subsection allows for information to be more openly shared in relation to the adopted person...

As it is no longer an offence for a person to knowingly contact a birth parent who has a contact statement in place, it is not necessary to legislate a bar to providing information to a pre-adoption sibling about the adopted person.\(^{311}\)

**Clause 66 – definition of a ‘member’ of a household**

An assessment of a person’s suitability to be a prospective adoptive parent under Part 6 of the Act includes the assessment of a ‘member’ of a person’s household (section 111).

Clause 66 inserts into the Schedule 3 Dictionary a definition of a ‘member’ of a person’s household, to include for assessment purposes: someone who lives in the person’s home, as well as an adult who, because of the nature of their contact with a child who may be adopted by the person and the context in which that contact is likely to happen, may pose an unacceptable risk of harming the child.

This clarification potentially expands the range of persons who may be assessed under section 111.

Section 116(1) allows the chief executive to ask the police commissioner for any police information about an adult member of the person’s household, including information about the person’s criminal history, investigative information about the person, the person’s domestic violence history, and

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\(^{310}\) Explanatory Notes, p 9

\(^{311}\) Explanatory Notes, p 10
information about whether the person is/has been the subject of a disqualification order or respondent for an offender prohibition order.

This amendment is a potential departure from the principle that sufficient regard be given to an individual’s right to privacy.

The Explanatory Notes advise:

_This potential infringement of privacy is considered necessary to ensure the safety and wellbeing of a child who may be placed in the household. The provision seeks to ensure children who require an adoptive placement are protected and kept safe from any identified risks._

_The amended definition will allow the chief executive to request police information (in assessing a person’s suitability to become an adoptive parent) relating to the household member, if the member consents. However, the person must provide consent to the assessment. If no consent is provided, the assessment may not be conducted._

**Clauses 41 and 65 – transitional provisions**

Clause 41 of the Bill amends section 204 of the Act to prescribe that an application by a step-parent to the Childrens Court for a final adoption order must be made within one year after the day that a suitability report is given to the step-parent.

Clause 65 inserts transitional provisions, including _inter alia_, section 354(3), which provides that step-parents who have already been given a suitability report before the commencement of the Amendment Act will have one year from the date of commencement of the Amendment Act, to make an application to the Childrens Court for a final adoption order.

Section 4(3)(g) of the _Legislative Standards Act 1992_ provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or the imposition of obligations, retrospectively.

The introduction of the one-year timeframe for making the application for a final adoption order may breach this fundamental legislative principle, by retrospectively imposing an obligation on step-parent applicants.

The Explanatory Notes advise of the policy behind this:

_This timeframe is however, considered necessary to avoid unnecessarily long delays between when a step-parent has been provided with a suitability report, and when the step-parent makes an application to the court. This ensures that a suitability report remains current and reflects an accurate account of the person’s circumstances. Assessment of suitability and currency of a suitability report is necessary to determine if the adoption is in the child’s best interests. DCCSDS will communicate changes to stepparents who have received a suitability report to advise of the one year timeframe in which to apply to the Childrens Court for a final adoption order._

**4.1.2 Explanatory Notes**

Part 4 of the _Legislative Standards Act 1992_ requires that Explanatory Notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the Explanatory Notes should contain.
Explanatory Notes were tabled with the introduction of the Bill. The Explanatory Notes are fairly detailed and contain the majority of the information required by Part 4 of the *Legislative Standards Act 1992*, and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.
## Appendix A – List of submitters

<table>
<thead>
<tr>
<th>Sub #</th>
<th>Submitter</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Jill Antuar</td>
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<tr>
<td>002</td>
<td>Simon Tinkler</td>
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<tr>
<td>003</td>
<td>Yolande Stiffel</td>
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<tr>
<td>004</td>
<td>Janelle Patch</td>
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<td>005</td>
<td>Mark Northage</td>
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<tr>
<td>006</td>
<td>Confidential</td>
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<tr>
<td>007</td>
<td>Janice de Bruyn</td>
</tr>
<tr>
<td>008</td>
<td>Elizabeth O’Keefe</td>
</tr>
<tr>
<td>009</td>
<td>Ian and Claire Murray</td>
</tr>
<tr>
<td>010</td>
<td>Brisbane LGBTIQ Action Group</td>
</tr>
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<td>011</td>
<td>Confidential</td>
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<td>012</td>
<td>Adopt Change</td>
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<td>013</td>
<td>Family Voice Australia</td>
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<tr>
<td>014</td>
<td>Family Inclusion Network Queensland (Townsville) Inc</td>
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<td>015</td>
<td>Australian Marriage Forum</td>
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<td>016</td>
<td>Australian Family Association</td>
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<td>017</td>
<td>Queensland Family and Child Commission</td>
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<td>018</td>
<td>John Chapman</td>
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<td>019</td>
<td>Robert Ferguson</td>
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<td>020</td>
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<td>022</td>
<td>Tavia Seymour</td>
</tr>
<tr>
<td>023</td>
<td>Adrian Watter</td>
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<tr>
<td>024</td>
<td>Alastair Lawrie</td>
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<tr>
<td>025</td>
<td>Anna Fabian</td>
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<tr>
<td>026</td>
<td>Judith Glover</td>
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<tr>
<td>027</td>
<td>Anti-Discrimination Commission Queensland</td>
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<tr>
<td>028</td>
<td>Sharan Hall</td>
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48 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
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<tbody>
<tr>
<td>029</td>
<td>Peter Nally</td>
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<tr>
<td>030</td>
<td>Australian Christian Lobby</td>
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<tr>
<td>031</td>
<td>Griffith University</td>
</tr>
<tr>
<td>032</td>
<td>Jolea Rogers</td>
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<tr>
<td>033</td>
<td>Legal Aid Queensland</td>
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<tr>
<td>034</td>
<td>LGTBI Legal Service</td>
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<tr>
<td>035</td>
<td>Robyn Stout</td>
</tr>
<tr>
<td>036</td>
<td>Gary</td>
</tr>
<tr>
<td>037</td>
<td>Queensland Law Society</td>
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<tr>
<td>038</td>
<td>Paul Byrne</td>
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<tr>
<td>039</td>
<td>Bridget McCullagh</td>
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<tr>
<td>040</td>
<td>Kerri-Ann Caswell</td>
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<tr>
<td>041</td>
<td>Frankie Pepper</td>
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<tr>
<td>042</td>
<td>Australian Association of Social Workers</td>
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<tr>
<td>043</td>
<td>Kevin Zagami</td>
</tr>
<tr>
<td>044</td>
<td>Family Inclusion Network South East Queensland</td>
</tr>
<tr>
<td>045</td>
<td>Leo Goggins</td>
</tr>
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</table>
## Appendix B – Witnesses who appeared at the public hearing

<table>
<thead>
<tr>
<th>Wednesday 12 October 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Department of Communities, Child Safety and Disability Services</strong></td>
</tr>
<tr>
<td>• Ms Megan Giles, Executive Director, Legislative Reform</td>
</tr>
<tr>
<td>• Ms Cathy Taylor, Deputy Director-General, Child, Family and Community Services and Southern Regions</td>
</tr>
<tr>
<td><strong>Australian Christian Lobby</strong></td>
</tr>
<tr>
<td>• Ms Wendy Francis, Queensland Director</td>
</tr>
<tr>
<td><strong>Brisbane LGBTIQ Action Group</strong></td>
</tr>
<tr>
<td>• Mr Phil Browne, Convenor</td>
</tr>
<tr>
<td><strong>LGBTI Legal Service</strong></td>
</tr>
<tr>
<td>• Mr Thomas Clark, Director of Law Reform</td>
</tr>
<tr>
<td><strong>Australian Association of Social Workers</strong></td>
</tr>
<tr>
<td>• Professor Karen Healy AM, National President</td>
</tr>
<tr>
<td>Ms Bridget McCullagh</td>
</tr>
</tbody>
</table>
# Appendix C – Interjurisdictional comparison of adoption laws in Australia

<table>
<thead>
<tr>
<th>Broad legislative provisions</th>
<th>Queensland</th>
<th>NSW</th>
<th>Victoria</th>
<th>ACT</th>
<th>Tasmania</th>
<th>NT</th>
<th>SA</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the adoption legislation promote the interests and/or welfare of the adopted person as paramount?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Are there specific provisions for Aboriginal and Torres Strait Islander children?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is open adoption encouraged?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

## Criteria to adopt

<table>
<thead>
<tr>
<th>Are single people eligible to apply?</th>
<th>No</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unless the chief executive invites a person to be assessed to meet the needs a particular child</td>
<td>Where special circumstances exist in relation to the child which make it desirable to do so</td>
<td>Where exceptional circumstances exist in relation to the welfare and interests of the child</td>
<td>Where the person cohabitated with a birth or adoptive parent for 5 years or there are special circumstances</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Queensland</td>
<td>NSW</td>
<td>Victoria</td>
<td>ACT</td>
<td>Tasmania</td>
<td>NT</td>
<td>SA</td>
<td>WA</td>
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<tr>
<td>Can de facto couples apply?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Must be married or in a significant relationship which is the subject of a deed of relationship registered under Part 2 of the Relationships Act 2003</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can same-sex couples apply?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum length of relationship</td>
<td>2 years living together</td>
<td>2 years living together</td>
<td>2 years living together</td>
<td>3 years living together</td>
<td>3 years living together</td>
<td>2 years married</td>
<td>5 years unless special circumstances exist</td>
<td>3 years living together</td>
</tr>
<tr>
<td>Can the person be undergoing fertility treatment?</td>
<td>No</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Not specified</td>
<td>No</td>
<td>Not specified</td>
<td>Not specified</td>
<td>No</td>
</tr>
<tr>
<td>Can the female applicant be pregnant?</td>
<td>No</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Not specified</td>
<td>No</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>Post-adoption</td>
<td>Queensland</td>
<td>NSW</td>
<td>Victoria</td>
<td>ACT</td>
<td>Tasmania</td>
<td>NT</td>
<td>SA</td>
<td>WA</td>
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</tr>
<tr>
<td>Can all parties to an adoption apply to access information?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can a party to an adoption record their wishes about contact with another party to the adoption</td>
<td>Yes – conditions apply</td>
<td>Yes – conditions apply</td>
<td>Yes – conditions apply</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes – conditions apply</td>
<td></td>
</tr>
<tr>
<td>Are there penalties attached to breaching registered contact wishes or preferences?</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes for contact or mediation licensees</td>
</tr>
</tbody>
</table>

Source: Queensland Parliamentary Library and Research Service