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Access to Adoption Information: Adoption Bill 2009 (Qld)

The Adoption Bill 2009 (Qld) repeals the Adoption of Children Act 1964 (Qld). The Explanatory Notes state that the Bill provides for a “more contemporary process for adoption of children in Queensland”. Amongst other things, the Bill reforms the access to adoption information provisions.

The Bill enables all adopted persons and birth parents to access adoption information. However, adopted persons and birth parents are able to register a contact statement expressing their wish not to be contacted. If an adoption occurred prior to 1 June 1991, identifying information may only be released if the person applying for the information has attended an interview and signed a document acknowledging that the other person does not wish to be contacted and that it is an offence to do so.

This Research Brief examines the access to adoption information provisions in Part 4A of the Adoption of Children Act 1964, discusses the Government’s review of Part 4A, summarises the relevant provisions in the Bill, and provides a comparison of the access to adoption information legislation in Australia.

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Research Brief No 2009/12

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ISSN 1443-7902

ISBN 978-1-921056-76-5

MAY 2009

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EXECUTIVE SUMMARY

The Hon Phil Reeves MP, Minister for Child Safety and Minister for Sport, introduced the Adoption Bill 2009 (Qld) (the Bill) into the Queensland Legislative Assembly on 22 April 2009. Amongst other things, the Bill provides for access to adoption information. **Part 1 of this Research Brief** looks at the background to the Bill. It notes that the Bill resulted from the Queensland Government's desire to make the state's adoption legislation reflect "contemporary community standards", and it outlines the consultation that took place between 2002 and 2008 regarding Queensland's adoption legislation.

Part 4A of the *Adoption of Children Act 1964* (Qld) currently provides for access to adoption information. It enables people who were adopted prior to 1 June 1991, and their birth parents, to either object to contact being made with them by certain people or to object to contact being made with them as well as object to the disclosure of identifying information to certain people. **Part 2 of this Research Brief** discusses the operation of the current provisions. **Part 3 of this Research Brief** highlights some of the results of the consultation regarding Part 4A of the *Adoption of Children Act 1964* (Qld).

The Bill repeals the *Adoption of Children Act 1964* (Qld). **Part 4 of this Research Brief** summarises the access to adoption information provisions in the Bill. An extract of some of the key provisions with respect to access to adoption information in the other Australian States and Territories is provided in **Part 5 of this Research Brief**, as is some information about the number of applications for adoption information and the number of vetoes lodged and in place in 2007-08. The table in the **Appendix** (which is reproduced from Queensland Government, *Balancing Privacy and Access: Adoption Consultation Paper*, pages 15-16) compares the access to information and contact provisions throughout Australia.

1 INTRODUCTION

The Hon Margaret Keech MP, then Minister for Child Safety and Minister for Women, introduced the [Adoption Bill 2009 \(Qld\)](#) into the 52nd Queensland Parliament on 10 February 2009. It lapsed on 23 February 2009 when the Queensland Governor dissolved the Legislative Assembly, but was reintroduced (with minor alterations)¹ into the 53rd Queensland Parliament on 22 April 2009 by the Hon Phil Reeves MP, Minister for Child Safety and Minister for Sport.

The [Adoption Bill 2009 \(Qld\) \(the Bill\)](#) resulted from the Queensland government's desire to reform Queensland's adoption legislation ([Adoption of Children Act 1964 \(Qld\)](#)) because the current Act was largely drafted in the 1960s and it, according to the [Explanatory Notes](#) to the Adoption Bill 2009 (Qld), does not "reflect contemporary community standards".²

Public consultation on the Act commenced in 2002 when the Department of Child Safety published the [Adoption Legislation Review Consultation Paper](#). The paper sought views on many aspects of the Queensland adoption legislation, such as the selection of adoptive parents and intercountry adoptions, but it did not seek comment on the provisions pertaining to access to adoption information. [The Report: Public Consultation on the Review of the Adoption of Children Act 1964](#), which was published in April 2003, provides an overview of the responses received in relation to the issues raised in the paper.

The Government widened the scope of the review of Queensland's adoption laws in July 2008 to include the provisions covering the rights of those who were involved in pre-1 June 1991 adoptions to access identifying information. Public comment was invited in response to the [Balancing Privacy and Access: Adoption Consultation Paper](#). The [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), which collated the responses to the consultation paper, was published in December 2008.

The Hon Phil Reeves MP said in his [Second Reading Speech](#) that "the government engaged extensively with the community in developing reforms".³ According to

¹ See, for eg, clauses 275 and 276.

² Adoption Bill 2009 (Qld), [Explanatory Notes](#), p 2.

³ Hon Phil Reeves MP, Adoption Bill 2009 (Qld), Second Reading Speech, Queensland Parliamentary Debates, 22 April 2009, pp 72-76, p 73.

the Explanatory Notes, the Bill provides for “an updated and more contemporary process for adoption of children in Queensland”.⁴ Amongst other things, the Bill:

- **repeals** the Adoption of Children Act 1964 (Qld);⁵
- provides for **open adoption** practices which enable the child’s birth family and adoptive family to know each other’s identities from the time of the adoption. Under the Bill, the chief executive will facilitate an agreement between the parties about the level of openness in the arrangement. The parties may, for example, decide not to have in-person contact, and instead communicate by letter. Alternatively, the parties may still choose a closed adoption arrangement;⁶
- incorporates the principles and obligations relevant to **adoption consents** in the *United Nations Convention on the Rights of the Child* and the Hague Convention (these are currently reflected in Queensland adoption practice);⁷
- **expands the category of persons eligible to lodge expressions of interest** to adopt a child to include de facto couples who have been in a committed relationship for at least two years;⁸
- requires **adoption orders be made by a court** (these orders are currently made administratively by the chief executive of the relevant government department);⁹
- gives adopted people and birth parents **access to identifying information**, regardless of when the adoption occurred.¹⁰

This Research Brief focuses only on the topic of the last bullet point.

⁴ [Explanatory Notes](#), p 2.

⁵ [Explanatory Notes](#), p 2.

⁶ [Explanatory Notes](#), p 3.

⁷ [Explanatory Notes](#), pp 3-4.

⁸ [Explanatory Notes](#), p 8.

⁹ [Explanatory Notes](#), p 11.

¹⁰ [Explanatory Notes](#), pp 12-14.

2 CURRENT ACCESS TO ADOPTION INFORMATION PROVISIONS

Part 4A of the [Adoption of Children Act 1964 \(Qld\)](#), which currently regulates access to identifying information, enables people who were adopted after 1 June 1991 and their birth parents to access identifying information about each other once the adopted person reaches 18 years of age. Relatives, who have attained the age of 18 years, of an adopted person and adoptive parents may also access certain identifying information.¹¹

The regime is different for people who were adopted prior to 1 June 1991 and their birth parents. Under section 39AA(2) of the *Adoption of Children Act 1964 (Qld)*, for adoptions that occurred prior to 1 June 1991, a birth parent of an adopted person or an adopted person who is at least 17 years and 6 months old may:

- *object to contact* being made with the person by certain persons; or
- *object to contact as well as object to the disclosure of information* to certain persons, as provided in section 39B of the *Adoption of Children Act 1964 (Qld)*.

Thus, birth parents of adopted persons and adopted persons are entitled, under section 39B of the *Adoption of Children Act 1964 (Qld)*, to access certain identifying information about each other *unless* a party has lodged an objection to information being released under sections 39AA(2)(b) and (3) of the *Adoption of Children Act 1964 (Qld)* in relation to the other person.

2.1 HISTORY OF THE DIFFERENCES BETWEEN PRE-1 JUNE 1991 AND POST-1 JUNE 1991 ADOPTIONS

The [Adoption of Children Act 1964 \(Qld\)](#), as passed in 1964, provided “total anonymity”¹² for adopted parents and birth parents. The Hon Anne Warner MP, in her Second Reading Speech on the Adoption of Children Act Amendment Bill 1990, identified the objectives of total confidentiality:¹³

1. *To protect adopted persons from the stigma of illegitimacy.*
2. *To protect the anonymity of the birth parents in the hope that they would later marry and have children within marriage.*

¹¹ Section 39B of the [Adoption of Children Act 1964 \(Qld\)](#).

¹² Hon Anne Warner MP, then Minister for Family Services and Aboriginal and Islander Affairs, Adoption of Children Act Amendment Bill 1990 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 10 May 1990, pp 1351-1354, p 1352.

¹³ Hon Anne Warner MP, Adoption of Children Act Amendment Bill 1990 (Qld), Second Reading Speech, p 1352.

3. *To protect adoptive parents from public focus on their infertility and from intrusion by ... birth parents.*

4. *To allow the adoptive parents to raise the child as though the child was born to them in lawful wedlock.*

In her speech she also pointed out that, in the intervening years, “Queensland has become a more tolerant society, so the stigmas of unmarried motherhood, illegitimacy and infertility are no longer as significant.”¹⁴ She noted that the policy of anonymity had not been in the interests of the any of the parties to an adoption, particularly birth mothers and adopted people.¹⁵

She said that the principle on which the Adoption of Children Act Amendment Bill 1990 was based is:¹⁶

...that all adult persons have the right to know their identity or the identity of their child. That is, while individuals have a right to privacy, they do not have the right to prevent people from knowing about their identity. This Bill will give people the right to object to any attempt at contact, but not the right to exclude another person from that knowledge.

The *Adoption of Children Act Amendment Act 1990 (Qld)*, which was passed by the Queensland Parliament in May 1990, provided for “unqualified access to identifying information for birth parents and adult adoptees after 1 March 1991”.¹⁷

However, those people who were adopted prior to 1 March 1991, and their birth parents, were able to lodge objections to contact being made by certain people.¹⁸ Pursuant to section 17 of the 1990 amending act, a contact objection expired after a maximum of five years, although it could be renewed. It was an offence to contact a birth relative if he or she had lodged an objection to contact.¹⁹

¹⁴ Hon Anne Warner MP, Adoption of Children Act Amendment Bill 1990 (Qld), Second Reading Speech, p 1352.

¹⁵ Hon Anne Warner MP, Adoption of Children Act Amendment Bill 1990 (Qld), Second Reading Speech, p 1352.

¹⁶ Hon Anne Warner MP, Adoption of Children Act Amendment Bill 1990 (Qld), Second Reading Speech, p 1352.

¹⁷ Hon Anne Warner MP, Adoption Legislation Amendment Bill 1991 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 19 February 1991, pp 6195-6196, p 6195. The commencement date was changed to 1 June 1991 by the *Adoption Legislation Amendment Bill 1991 (Qld)*.

¹⁸ Section 17 of the *Adoption of Children Act Amendment Act 1990 (Qld)*.

¹⁹ Section 18 of the *Adoption of Children Act Amendment Act 1990 (Qld)*.

In February 1991, the Hon Anne Warner MP described the public reaction to the *Adoption of Children Act Amendment Act 1990 (Qld)*:²⁰

The provisions of the Act have caused much public comment... In particular, many people have expressed fear and distress over the possible disruption caused by contact with, or release of information to, a birth relative. While overseas and interstate experience leads me to believe these fears are baseless, Government cannot ignore them and must respond to the distress that is being experienced. These further amendments to the Adoption of Children Act ... should redress public concern over the balance between the right to information and the right to privacy.

Thus the *Adoption Legislation Amendment Act 1991 (Qld)*, which was passed by the Queensland Parliament in February 1991, made further amendments to the access to identifying information provisions in the *Adoption of Children Act 1964 (Qld)*.

Section 6 of the 1991 amending Act allowed adult adopted people, who were adopted prior to 1 June 1991, and their birth parents “not only to object to contact but also to object to the disclosure of identifying information about themselves”.²¹ It remained an offence to contact a person who had lodged an objection to contact.²² The 1991 amending Act also provided that objections exist in perpetuity, unless revoked by the person who lodged the objection.²³

2.2 VIEWS ON PART 4A OF THE ADOPTION OF CHILDREN ACT 1964

The current provisions regarding access to identifying information for people who were adopted prior to 1 June 1991 are described in the [Balancing Privacy and Access: Adoption Consultation Paper \(Consultation Paper\)](#) as “the most restrictive” in Australia because Queensland is the only state that allows one person to block another person’s access to identifying information indefinitely.²⁴ By contrast, the Adoption Privacy Protection Group strongly objects to the term “restrictive” being

²⁰ Hon Anne Warner MP, *Adoption Legislation Amendment Bill 1991 (Qld)*, Second Reading Speech, pp 6195-6196.

²¹ *Adoption Legislation Amendment Bill 1991 (Qld)*, Explanatory Notes, p 2.

²² Section 9 of the *Adoption Legislation Amendment Act 1991 (Qld)*.

²³ Section 6 of the *Adoption Legislation Amendment Act 1991 (Qld)* and Hon Anne Warner MP, *Adoption Legislation Amendment Bill 1991 (Qld)*, Second Reading Speech, p 6196.

²⁴ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Paper \(Consultation Paper\)](#), July 2008, p 6.

used; it views Queensland as the most “protective” of birth mothers and adopted people.²⁵

The [Consultation Paper](#) discussed the operation of Part 4A:²⁶

Part 4A of the Act recognised adopted people and birth parents’ fundamental entitlement to information about themselves and their origins or descendants. Part 4A also attempted to balance the interests of people wanting to remain anonymous by enabling them to lodge objections to information being released to another party to the adoption and/or to being contacted by another party to the adoption.

Part 4A has not achieved the anticipated balance. In effect, part 4A places the interests of people objecting to information being released, even after their death, before the interests of people seeking information about themselves, their origins or their descendants. ... Part 4A provides a birth father and an adopted person with an entitlement to receive identifying information about each other, only if the birth father consented to the adoption or if his consent was dispensed with in accordance with the law at the time the adoption order was made. This prevents information being provided to, or about, fathers whose paternity was established at the time the adoption occurred but whose consent was not given or dispensed with by a court.

In addition, information and contact objections, which prevent adopted people seeking up-to-date family medical information to enable them to take preventative health measures for possibly inherited conditions, place the interests of a person wishing to remain anonymous before the interests of the adopted person.

...

Part 4A rightly attempts to respect the historical context in which adoption orders were made and in particular the expectation some people had that their identity would forever remain confidential from other parties to the adoption and from the world at large. ...

3 REFORM OF THE ACCESS TO ADOPTION INFORMATION PROVISIONS

In July 2008, the Queensland government commenced a review of the laws concerning the release of information about adoptions that occurred prior to 1 June 1991.²⁷ Submissions were sought in response to the Department of Child Safety’s [Balancing Privacy and Access: Adoption Consultation Paper \(Consultation Paper\)](#).

²⁵ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), December 2008, p 36.

²⁶ Department of Child Safety, [Consultation Paper](#), p 5.

²⁷ Hon Margaret Keech MP, then Minister for Child Safety and Minister for Women, ‘Minister’s Message’ in Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Paper](#), p 1.

The [Balancing Privacy and Access: Adoption Consultation Feedback Report \(Feedback Report\)](#) collates the responses contained in the 452 submissions received by the Department of Child Safety in response to the [Consultation Paper](#).²⁸ Thirteen of the submissions were from organisations and 439 submissions were from individuals. Of the 439 people who provided information, 242 are directly affected by Part 4A of the *Adoption of Children Act 1964* (Qld). Of those 242:²⁹

- 91 people had received identifying information;
- 71 people had been refused identifying information;
- 60 people had lodged an objection to the release of identifying information; and
- 6 people had revoked an objection.

The majority of submissions favoured the proposed reforms to Part 4A of the *Adoption Act 1964* (Qld) but, as the report noted, “the level of support for reform ... was not overwhelming”.³⁰

The Feedback Report contains statistical breakdowns of the responses to the seven questions posed in the Consultation Paper as well as summaries of submissions made by various groups. Some of the responses are discussed below.

3.1 BALANCING INTERESTS

Sixty-five percent of the respondents believed that the *Adoption of Children Act 1964* (Qld) does not achieve a fair balance between the interests of the various parties to an adoption with respect to the right to information and the right to privacy.³¹

²⁸ Department of Child Safety [Balancing Privacy and Access: Adoption Consultation Paper](#) sets out seven questions on page 8 which relate to the proposals for reform of Part 4A outlined on page 7.

²⁹ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 4. The Feedback Report notes: “total may equal more or less than 100 percent as one individual may not have received or been refused identifying information or lodged or revoked an objection or may have lodged and revoked an objection prior to receiving identifying information”.

³⁰ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 5.

³¹ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 9. Further details about views of different groups of submitters in relation to balancing privacy and access are available on pp 9-10.

3.2 OBJECTIONS

Fifty-five percent of the respondents did not believe that an adopted person or a birth parent should be allowed to continue to lodge an objection that prevents information that identifies them from being given to another person who is associated with the same adoption.³²

The responses relating to objections depended very much on a person's individual experiences: for example, 96% of people who had lodged information objections believe a person should be able to continue to lodge an objection that prevents information that identifies them from being given to another person who is associated with the same adoption. Conversely, 87% of people who have been refused identifying information do not believe that an adopted person or birth parent should be allowed to continue to lodge an objection that prevents information that identifies them from being given to another person who is associated with the same adoption.³³

The Feedback Report summarised some of the comments made by respondents with respect to objections to the release of identifying information. For example, some of those who had been refused identifying information because of an objection said they felt:³⁴

- *hurt, rejected, angry, long lasting grief ...*
- *incomplete ...*
- *frustrated by being unable to access genetic and medical information*
- *frustrated that they had been denied the opportunity to explain the circumstances of the adoption to their child; and*
- *there was an assumption they would intrude on the other person's life when they were willing to respect the person's privacy.*

By contrast, some of those who had lodged information objections commented that they:³⁵

- *"did not hold a grudge about being adopted" but wanted the right to privacy*
- *lodged the objection because they 'could not cope' with contact at that time*

³² Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 11. Further details about views of different groups of submitters in relation to objections are available on pp 11-14.

³³ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 13.

³⁴ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), pp 13-14.

³⁵ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 14.

- were assured of the right to privacy when the adoption order was made
- were fearful of unknown people ‘turning up’ on their doorstep
- risked losing their spouse or family who did not know about the adoption if identifying information was given out, and
- lodged the objection because they could not bear to be reminded of the distressing circumstances surrounding the adoption.

With respect to the issue of whether objections to the release of identifying information should be renewed, submissions contained a variety of views including:³⁶

“Upon the death of the objecting person, it is reasonable to suggest the rights of the living parties to the adoption be considered.”

“I thought I could go to my grave with my untold secret. I can’t begin to imagine what destruction it would bring about in my family.”

“I strongly believe my birth mother’s objection should be cancelled upon her death and all information ... given to me ... so I may have a chance of finding and connecting with any living blood relatives regardless of whether they knew of the adoption or not.”

3.3 CONVERSION OF OBJECTIONS TO RELEASE OF IDENTIFYING INFORMATION TO OBJECTIONS TO BEING CONTACTED

Fifty-seven percent of respondents believed that the law should be changed so that all existing objections that prevent identifying information from being released are changed into objections to being contacted only.³⁷ However, a person’s stance depended very much on his or her personal experience. For example, 94% of people who have lodged information objections do not believe the law should be changed so that all existing objections that prevent identifying information from being released are changed into objections to being contacted only, compared with 16% of people who have been refused identifying information.³⁸

³⁶ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 14.

³⁷ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 15. Further details about views of different groups of submitters in relation to objections are available on pp 15-18.

³⁸ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 17.

Sixty-one percent of respondents considered that objections to being contacted should have to be renewed on a regular basis, such as every five years.³⁹ It is interesting to note that less than half of the respondents (47%) believed people who receive identifying adoption information about a person who has an objection to contact in place will respect the person's privacy and not attempt to contact them. These figures, however, depend very much on a person's actual experience: 92% of people who have been refused identifying information believe that people who receive identifying adoption information about a person who has an objection to contact in place will respect the person's privacy and not attempt to contact them, compared to only 6% of people who have lodged information objections.⁴⁰

3.4 PROCEDURES

If information that identifies a person with a contact objection is to be given to another person:⁴¹

- 55% of respondents thought that a person who is to receive identifying information should first have to attend an interview with a counsellor or the Department of Child Safety; and
- 50% of respondents thought that a person who is to receive identifying information should first have to sign a legally enforceable undertaking stating they have been told the person who lodged the objection does not want to be contacted and that they agree not to contact the person.

3.5 REFUSAL TO RELEASE INFORMATION

Forty-nine percent of respondents believed that there are some circumstances in which a person should be refused access to adoption information that identifies someone else, such as where giving the information to the person will put the safety of the person who is identified at risk.⁴²

³⁹ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 15.

⁴⁰ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 17.

⁴¹ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 19. Further details about views of different groups of submitters in relation to objections are available on pp 19-23.

⁴² Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 24. Further details about views of different groups of submitters in relation to objections are available on pp 24-25.

3.6 BIRTH FATHERS

Seventy percent of respondents agreed that, for the purposes of providing access to identifying adoption information, the law should be changed to recognise a man who did not consent to his child's adoption as the birth father of the adopted person if:⁴³

- there is evidence in the Department of Child Safety's records to show he acknowledged his paternity at the time of the adopted person's birth or adoption; or
- he is recorded as the father on the adopted person's original birth certificate held by the Registry of Births, Deaths and Marriages; or
- he is able to provide some other evidence that he is the adopted person's father.

3.7 MEDICAL INFORMATION

Seventy-six percent of respondents considered that the Department of Child Safety should be allowed to contact adopted people and birth parents to ask for up to date family medical information, or to pass on up to date family medical information, when an objection prevents these people from contacting a person to ask for, or provide, this information themselves.⁴⁴

4 THE ACCESS TO ADOPTION INFORMATION PROVISIONS IN THE BILL

Part 11 of the Bill provides for access to adoption information.

4.1 SOME DEFINITIONS

Information that identifies a person includes information that is likely to lead to the identification of the person. Information may identify a person, if given to another person, because of information that the other person has or is able to obtain: **clause 248**. The example given in the clause is:

⁴³ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), p 26. Further details about views of different groups of submitters in relation to objections are available on pp 26-29.

⁴⁴ Department of Child Safety, [Balancing Privacy and Access: Adoption Consultation Feedback Report](#), December 2008, p 30. Further details about views of different groups of submitters in relation to objections are available on pp 30-31.

A person's first name may identify the person if given to someone else who is able to obtain information about the person's family and the area in which the person lives.

A man is defined as the biological father of an adopted person if (**clause 250**):

- the man is shown as the adopted person's father in the register of births under the [Births, Deaths and Marriages Registration Act 2003 \(Qld\)](#); or
- the man consented to the adoption, or the need for his consent was dispensed with, under the law in force at the relevant time; or
- 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
- the chief executive is otherwise satisfied, on the balance of probabilities, the man is the adopted person's biological father.

This definition "enhances access to information" by including "a man who did not consent to a person's adoption in circumstances where he acknowledged his paternity at the time of an adopted person's birth or adoption or his paternity can otherwise be proven".⁴⁵

4.2 ACCESS TO INFORMATION

The Bill generally removes the distinction between adoptions that occurred before 1 June 1991 and those that occurred after 1 June 1991 when it comes to providing access to information. **Division 2** of Part 11 of the Bill applies in relation to particular identifying information while the adopted person is a child.⁴⁶ **Division 3** of Part 11 applies if the adopted person is an adult.

4.2.1 Adopted Person is Still a Child

Part 4A of the [Adoption of Children Act 1964 \(Qld\)](#) does not provide for access to identifying information unless the adopted person has attained the age of 18 years.⁴⁷ As discussed below, the Bill enables an adopted person who is still a child, an adoptive parent of an adopted child, and a birth parent to obtain pre-adoption information if certain consents are obtained.

⁴⁵ [Explanatory Notes](#), p 12.

⁴⁶ 'Child' is defined in the [Acts Interpretation Act 1954 \(Qld\)](#) as an individual who is under 18.

⁴⁷ Sections 39A and 39B of the [Adoption of Children Act 1964 \(Qld\)](#).

Request by, or on behalf of, adopted child

Either the adoptive parent of the adopted child or the adopted child (but only with the consent of an adoptive parent) may ask the chief executive for pre-adoption information about the adopted child: **clause 256(1)**. The chief executive may give the requested information if written consent is given by each birth parent who is identified by the information: **clause 256(2)**. If the birth parent has died, an adult relative⁴⁸ may give the consent, or if the birth parent does not have the capacity to consent, a guardian or adult relative may give the consent: **clause 256(6) and 97)**. If a birth parent has asked for, and received, information about the adopted child under **clause 257** (see below), the birth parent is taken to have given consent: **clause 256(3)**. Provided consent has been given, the chief executive must comply with the applicant's request by giving the applicant any of the following held by the chief executive (**clause 256(4)**):

- the adopted child's name before the adoption;
- a copy of any of the following:⁴⁹
 - a parent's consent to the adoption;
 - an order dispensing with the need for a parent's consent to the adoption;
 - an adoption order;
- the birth parent's name at the time of the adoption;
- the birth parent's date of birth;
- the birth parent's last known name and address;
- in relation to any other adopted person who is an adult and who has at least one birth parent who is also a birth parent of the adopted child:
 - the person's date of birth;
 - the person's name immediately after the person's adoption;
 - the person's last known name and address, but only with the person's written consent.

If a person's consent is required under **clause 256** but the person has died, an adult relative⁵⁰ of the person may give consent: **clause 256(6)**. If a person does not have capacity to consent, a guardian or adult relative of the person may give consent: **clause 256(7)**.

⁴⁸ "Relative" is defined in **clause 249** to mean a spouse, parent, sibling or child.

⁴⁹ Prescribed documents as defined by **clause 252**.

⁵⁰ "Relative" is defined in **clause 249** to mean a spouse, parent, sibling or child.

Request by Birth Parent

Clause 257 enables a birth parent of an adopted child to ask the chief executive for information about the adopted child. The chief executive may provide the requested information if (**clause 257(2)**):

- written consent is given by an adoptive parent of the child; and
- the chief executive has considered the adopted child's views (if the child is able to form and express views); and
- the chief executive is satisfied that giving the information is not likely to be contrary to the child's wellbeing and best interests.

If the adoptive parent has asked for, or given consent for the adopted child to ask for, information about the birth parent under **clause 256** and the information was given under that section, the adoptive parent is taken to have given consent: **clause 257(3)**.

If an adoptive parent of the child does not have capacity to consent to the information being given, a guardian of the adoptive parent or a parent of the child at the time the request is made may give the consent: **clause 257(7)**. Parent of a child, for the purposes of **clause 257**, includes the chief executive (child safety), or a corresponding officer in another jurisdiction, who is a guardian of the child: **clause 257(10)**. If a birth parent of the adopted child has died, an adult relative of the birth parent may make a request under **clause 257(1)** in place of the birth parent: **clause 257(8)**. If a birth parent of the adopted child does not have capacity to ask for information, a guardian or adult relative of the birth parent may make a request under **clause 257(1)** in place of the birth parent: **clause 257(9)**.

The chief executive must comply with the request under **clause 257(1)** by giving the birth parent any of the following held by the chief executive (**clause 257(4)**):

- the adopted child's name immediately after the adoption;
- the adopted child's last known name and address;
- the name, at the time of the adoption, of an adoptive parent of the adopted child;
- a copy of any of the following:⁵¹
 - a parent's consent to the adoption;
 - an order dispensing with the need for a parent's consent to the adoption;
 - an adoption order.

⁵¹ Prescribed documents as defined by **clause 252**.

Procedures

Clause 259(1) obliges the chief executive to provide the appropriate information, support or counselling to persons seeking information and persons whose consent to the disclosure of information is sought. The Bill states that the purpose of providing the information, support or counselling to a person is to help the person decide whether to seek the information, or consent to the disclosure of the information, at that time: **clause 259(2)**.

Clause 260 enables a person to include consent or a request not to be asked for consent in an adoption plan. The provision uses the terms *information consent* and *non-contact request*. An **information consent** means the person's consent to the giving of information under Division 2 (Access to particular identifying information while adopted person is a child). A **non-contact request** means a request to the chief executive not to contact the person for the purpose of asking the person if he or she wishes to consent to the giving of information under Division 2.

4.2.2 Adopted Person is an Adult

Once an adopted person reaches adulthood the adopted person and birth parent have the right to request and receive pre-adoption information. In certain circumstances, pre-adoption siblings may also request and receive certain information.

Request by Adopted Person

The adopted person may ask the chief executive for pre-adoption information about the person: **clause 263(1)**. The chief executive must provide any of the following held by the chief executive (**clause 263(2)**):

- the adopted person's name before the adoption;
- the birth parent's name at the time of the adoption;
- the birth parent's date of birth;
- the birth parent's last known name and address (but only with his or her written consent, or the consent of an adult relative if the birth parent has died, or the consent of an adult relative or guardian if the person does not have the capacity to consent);
- in relation to any other adopted person who is an adult and who has at least one birth parent who is also a birth parent of the first adopted person:
 - the person's date of birth;
 - the person's name immediately after the person's adoption;

- the person's last known name and address (but only with the person's written consent or the consent of an adult relative if the person has died, or the consent of a guardian or an adult relative if the person does not have the capacity to consent);
- a copy of any of the following documents:⁵²
 - a parent's consent to the adoption;
 - an order dispensing with the need for a parent's consent to the adoption;
 - an adoption order.

Request by Adult Relative in Place of Adopted Person

If the adopted person has died or does not have capacity to ask for information, an adult relative of the adopted person may make a request under **clause 263** for pre-adoption information about the adopted person: **clause 264**.

Request by Birth Parent

A birth parent of the adopted person may ask the chief executive for information about the adopted person: **clause 265(1)**. The chief executive must comply with the request by giving the birth parent any of the following held by the chief executive (**clause 265(2)**):

- the adopted person's name immediately after the adoption;
- the adopted person's last known name and address (but only with the adopted person's written consent, or the consent of an adult relative if the adopted person has died, or the consent of a guardian or an adult relative if the adopted person does not have the capacity to consent);
- the name, at the time of the adoption, of an adoptive parent of the adopted person;
- a copy of any of the following:⁵³
 - a parent's consent to the adoption;
 - an order dispensing with the need for a parent's consent to the adoption;
 - an adoption order.

⁵² Prescribed documents as defined by **clause 252**.

⁵³ Prescribed documents as defined in **clause 252**.

Request by Adult Relative in Place of Birth Parent

If a birth parent of an adopted person has died or does not have capacity to ask for information, an adult relative of the birth parent may make a request under **clause 265** for information about the adopted person: **clause 266**.

Request by Pre-adoption Sibling

“Sibling” is defined in proposed **Schedule 3** as a brother or sister. The definitions of “brother” and “sister” in proposed **Schedule 3** include a half-brother and half-sister, respectively.

An adult person may ask the chief executive for information about the adopted person if (**clause 267(1)**):

- the applicant would be a sibling of the adopted person if the adoption had not happened; and
- the applicant is not also an adopted person.

The chief executive may give information in compliance with the request only if written consent is given by the adopted person: **clause 267(2)**.

Clause 267(3) prohibits the chief executive from providing the requested information if:

- the adoption happened before 1 June 1991; and
- a birth parent of the adopted person has made a contact statement that the birth parent does not wish to be contacted by the adopted person.

Clause 267(4) provides that, subject to subclauses (2) and (3), the chief executive must comply with the request by giving the person any of the following held by the chief executive:

- the adopted person’s date of birth;
- the adopted person’s last known name and address;
- a copy of any of the following documents:⁵⁴
 - a parent’s consent to the adoption;
 - an order dispensing with the need for a parent’s consent to the adoption;
 - an adoption order.

If an adopted person gives consent, it may relate to all the information under subclause (4) or to all the information other than the adopted person’s last known name and address: **clause 267(5)**.

⁵⁴ Prescribed documents as defined in **clause 252**.

If an adopted person has died, an adult relative of the person may give the consent: **clause 267(6)**. If an adopted person does not have the capacity to consent, a guardian or adult relative of the person may give the consent: **clause 267(7)**.

4.3 CONTACT STATEMENTS

In relation to contact statements, the [Explanatory Notes](#) state:⁵⁵

The Bill ... enables any person, irrespective of when the adoption occurred, to express their wish about being contacted, including that the person does not wish to be contacted, and to specify arrangements that suit their individual circumstances.

This is a new entitlement for parties to adoptions that took place after 1 June 1991 because under Part 4A of the [Adoption of Children Act 1964 \(Qld\)](#) only parties to an adoption that occurred prior to 1 June 1991 can lodge an objection to another person contacting him or her.

Clause 269 enables an adopted person who is at least 17½ years old, or a birth parent of an adopted person, to give the chief executive a **contact statement** (a signed document in the approved form). **Clause 269(2)** sets out what statements may be made in a contact statement:

- the person does not wish to be contacted by another stated person; or
- the person wishes any contact with another stated person to happen only in a stated way.

With respect to this, the examples provided in the Bill are:

- contact is to happen only by telephone;
- in-person contact is to happen only at a neutral place in the presence of a mediator.

Clause 269(3) provides that a contact statement may also state the person's wishes about being contacted by the chief executive in relation to giving consent to the disclosure of information about the person under Division 2 (Access to particular identifying information while adopted person is a child) or Division 3 (Access to particular information when adopted person is an adult).

4.3.1 Currency and Revocation of Contact Statements

Once a person has given a contact statement to the chief executive, the contact statement remains in force until it is revoked by the person or the person dies: **clause 273**. This is a change from the position under the [Adoption of Children Act](#)

⁵⁵ [Explanatory Notes](#), p 13.

[1964 \(Qld\)](#) because under that Act, an objection continues in force until it is revoked by the person⁵⁶ so it may continue indefinitely.

4.3.2 Presumed to be Alive

In the absence of evidence to the contrary, the chief executive must presume that the person who has given the chief executive a contact statement, and not revoked it, is still alive: **clause 274**.

Clause 274(3) obliges the chief executive to take steps to find out whether the person is still alive if:

- the chief executive receives a request from someone (the applicant) for information about the person under Division 3 (Access to particular information when adopted person is an adult); and
- the contact statement is that the person does not wish to be contacted by the applicant; and
- the chief executive is aware of information indicating the person has died or may have died.

4.3.3 Contact Statement Obligations for Post-1 June 1991 Adoptions

Clause 270 applies if:

- a person (the applicant) asks the chief executive, under Division 3 (Access to particular information when adopted person is an adult), for information about another person (the second person) who is an adopted person or a birth parent of an adopted person; and
- the second person has given the chief executive a contact statement concerning contact with the applicant; and
- the adoption happened on or after 1 June 1991.

Clause 270(2) obliges the chief executive to pass on to the applicant the following documents before giving the applicant any of the requested information:

- the contents of the contact statement; and
- if the contact statement is that the second person does not wish to be contacted by the applicant:
 - the explanation for that wish (except to the extent that the chief executive knows the second person does not want the explanation to be passed on); or

⁵⁶ Section 39AA(6) of the Adoption of Children Act 1964 (Qld).

- if the chief executive is not aware of the explanation, reasons that are typically given by persons who do not wish to be contacted.

Although the Bill allows parties to post-1 June 1991 adoptions to make contact statements, it does not make it an offence if contact subsequently occurs (unlike the situation for pre-1 June 1991 adoptions which are discussed below).

4.3.4 Pre-1 June 1991 Adoptions

Information and Contact Objections Currently in Place

The Bill removes the right of an adopted person and the birth parents of an adopted person to object to the disclosure of identifying information about them to certain people. The [Explanatory Notes](#) state:⁵⁷

Existing information objections will be transitioned so that they automatically become a contact statement expressing the person's wish not to be contacted by another person or persons.

Clause 343 is the relevant transitional provision. It applies to a current objection under section 39AA of the [Adoption of Children Act 1964 \(Qld\)](#) to the extent that it relates to contact being made with the objector by a stated person or class of persons. It states that the objection continues in force as a contact statement for Part 11 (Access to adoption information), that the person does not wish to be contacted by the stated person or class of persons, until it is withdrawn or otherwise ends under the Bill.

With respect to the Bill no longer permitting parties to a pre-1 June 1991 adoption to lodge an objection to prevent identifying information about them from being disclosed to other parties to the adoption, the [Explanatory Notes](#) acknowledge:⁵⁸

This adversely affects the rights of all adopted people and birth parents associated with pre-1 June 1991 adoptions, to prevent others from accessing identifying information about them. However, this retrospective removal of their rights must be balanced with the benefits that arise by allowing other parties to those adoptions access to information about their identity, family and heritage. The change in the law also ensures that parties to adoptions are treated equally, regardless of when the adoption occurred, as there is no longer any entitlement to object to the release of identifying information.

⁵⁷ [Explanatory Notes](#), p 12.

⁵⁸ [Explanatory Notes](#), p 20.

Contact Statement Obligations for Pre-1 June 1991 Adoptions

Clause 271 applies if:

- a person (the applicant) asks the chief executive under Division 3 (Access to particular information when adopted person is an adult) for information about another person (the second person) who is an adopted person or a birth parent of an adopted person; and
- the second person has given the chief executive a contact statement concerning contact with the applicant; and
- the adoption happened before 1 June 1991.

Before giving any of the requested information to the applicant, the chief executive must pass on the contents of the contact statement to the applicant: **clause 271(2)**.

Clause 271(3) provides that if the contact statement is that the second person does not wish to be contacted by the applicant, the chief executive must not give any of the requested information about the second person to the applicant unless:

- a qualified officer⁵⁹ speaks with the applicant, in person or by telephone⁶⁰ to:
 - advise of the second person's wish not to be contacted; and
 - pass on the explanation for the second person's wish not to be contacted (except to the extent that the chief executive knows the second person does not want the explanation to be passed on) or, if the chief executive is not aware of the explanation, reasons that are typically given by persons who do not wish to be contacted; and
 - explain the offence to contact or attempt to contact the person under **clause 272**; and
- the applicant gives the chief executive a signed statement, in the approved form, that:
 - on a stated day, a qualified officer spoke with the applicant about the above matters; and
 - the applicant acknowledges the second person's wish not to be contacted and acknowledges that it is an offence for the applicant to contact or attempt to contact, or arrange or attempt to arrange contact with, or procure someone else to contact or arrange contact with, the second person or a relative of the second person.

⁵⁹ 'Qualified officer' is defined in **clause 271(6)** as an officer of the department who the chief executive is satisfied has appropriate qualifications or experience to carry out interviews under **clause 271**.

⁶⁰ 'Telephone' is defined in **clause 271(6)** as including any technology allowing reasonably contemporaneous and continuous communication between two or more persons.

If the chief executive considers it appropriate, the chief executive may delay giving the applicant the requested information for the reasonable period required for the chief executive to (**clause 271(4)**):

- advise the second person that the applicant has asked the chief executive for the information; and
- offer the second person an opportunity to give the chief executive information, or further information, about why the second person does not wish to be contacted by the applicant; and
- if this information is given, pass it on to the applicant to help the applicant better understand the second person's wishes about contact.

Clause 271(5) provides that the chief executive may, either before or after the chief executive discloses the information, offer the applicant or the second person other information, counselling or support that the chief considers appropriate.

Offence About Contact for Pre-1 June 1991 Adoptions

Under **clause 272(1)**, a person (the first person) commits an offence if:

- the first person knows that another person (the second person) has given the chief executive a contact statement stating that the second person does not wish to be contacted by the first person; and
- the contact statement is current; and
- the second person is an adopted person, or a birth parent of an adopted person, for an adoption that happened before 1 June 1991; and
- the first person does any of the following in relation to another person, knowing that the other person is the second person or a relative of the second person:
 - contacts or attempts to contact the other person;
 - arranges or attempts to arrange contact with the other person;
 - procures someone else to contact or arrange contact with the other person.

The maximum penalty for breaching **clause 272** is 100 penalty units (\$10,000) or two years imprisonment.

Clause 272(2) provides that it is a defence for a person charged with an offence under **clause 272(1)**, in relation to contact with another person, to prove the person charged with the offence had contact with the other person (the previous contact) before the person charged with the offence acquired the knowledge mentioned in **clause 272(1)** and the contact is a continuation of, or equivalent to, the previous contact.

The examples of this given in the legislation are:

- the person had contact with the other person in the course of the person's employment before knowing the other person was the second person or a relative of the second person;
- the person had contact with the other person before the relevant contact statement was given to the chief executive.

4.4 OTHER MATTERS

4.4.1 Court Orders

An adopted person, a birth parent, an adoptive parent of an adopted person or the chief executive may make an application to the Childrens Court for an order that the chief executive must not give access to particular identifying information to a stated person under Division 2 where the adopted person is still a child or under Division 3 where the adopted person is an adult: **clauses 275(1)-(2)**. The court may make the order if it is satisfied there would be an unacceptable risk of harm to the applicant (other than the chief executive) or someone else if the information were given: **clause 275(6)**.

4.4.2 Non-identifying Medical Information

Clause 276 permits the chief executive to:

- contact a biological parent of an adopted person for the purpose of obtaining information about the medical history of the biological parent or another biological relative of the adopted person; and
- disclose to an adopted person (or to an parent of the adopted person if the adopted person is a child) information about the medical history of a biological relative of the adopted person; and
- disclose to a biological relative of an adopted person, information about the adopted person's medical history that relates to a condition that may have been inherited from a biological relative.

Clause 276 does not require a person to give or receive information.

4.4.3 Mailbox Service

Division 6 of Part 11 institutes the **mailbox service** which is conducted by the chief executive to enable parties to an adoption and other particular parties to exchange information.

5 OTHER JURISDICTIONS

5.1 SUMMARY OF KEY DIFFERENCES

Some of the key provisions with respect to access to information in the adoption legislation of the other Australian states and territories are extracted below. By way of summary:

- **Access to identifying information:** In most Australian jurisdictions, an adopted person must have attained the age of 18 years for an adopted person or a birth parent or another party to be able to obtain identifying information without the consent of the other party.
- **Counselling:** Some Australian jurisdictions require persons to attend counselling before they are permitted to access adoption information.
- **Identifying Information Vetoes:** In South Australia and the Northern Territory, certain persons (depending on the date of the adoption) are able to lodge a direction that information that would enable that person to be identified not be disclosed. In the Northern Territory, a notice of prohibition remains in force for a maximum of 3 years, but may be renewed. In South Australia, a direction has effect for a period of five years but may be renewed.
- **Contact Veto:** In the Australian Capital Territory, New South Wales, Tasmania and Western Australia, certain persons are able to lodge an objection to contact. This means that if identifying information is released, it is released on the condition that the applicant does not contact the person who lodged the contact veto.

The table in the Appendix, which is reproduced from pp 15-16 of Queensland Government, [Balancing Privacy and Access: Adoption Consultation Paper](#), compares the access to information and contact provisions in the jurisdictions.

5.2 AUSTRALIAN CAPITAL TERRITORY

Division 5.3 of Part 5 of the [Adoption Act 1993 \(ACT\)](#) deals with identifying information, including contact vetoes.

5.2.1 Access to Identifying Information

Under the [Adoption Act 1993 \(ACT\)](#), the following people (called “associated persons” in the Act) are entitled to access to, and to apply for, identifying information about an adoption:⁶¹

- the adopted child; or
- an adoptive parent; or
- a birth parent or birth relative of the adopted child; or
- a child or other descendent of the adopted child.

“Identifying information”, in relation to an adoption, is defined in s 58 as:

- a copy of, or an extract from, an entry in a register of births relating to the adopted child; or
- information from which a birth parent, a birth relative or the adopted child may be identified (not being information that consists of the address of a place of residence).

Adopted Child

An adopted child who has not attained the age of 18 years may obtain identifying information only if approval in writing has been obtained from each adoptive parent and each birth parent.⁶²

Birth Parent

A birth parent of an adopted child who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each adoptive parent.⁶³

⁶¹ Sections 58 and 66 of the [Adoption Act 1993 \(ACT\)](#).

⁶² Section 68(1) of the [Adoption Act 1993 \(ACT\)](#).

⁶³ Section 68(3) of the [Adoption Act 1993 \(ACT\)](#).

Birth Relative

A birth relative of an adopted child⁶⁴ is not entitled to identifying information unless:⁶⁵

- if the information sought consists of a copy of, or an extract from, an entry in the register of births relating to the period before the person's adoption – the person can demonstrate that he or she knows the names of each birth parent of the child who is named in the register; and
- if the adopted child has not attained the age of 18 years – approval in writing has been obtained from each adoptive parent.

Adoptive Parent

An adoptive parent of an adopted child who has not attained the age of 18 years is not entitled to identifying information unless approval in writing has been obtained from each birth parent.⁶⁶

Approval of a Person Not Required

The approval of a person is not required for Division 5.3 (Identifying information) if the chief executive or the registrar-general, as the case requires, is satisfied that:⁶⁷

- the person is dead; or
- the location of the person is not known and could not with reasonable enquiries be ascertained.

Withholding of Information

Section 68(7) provides that the chief executive may withhold information from a birth parent if the chief executive believes, on reasonable grounds, that the child has been subjected to sexual or physical abuse from that birth parent.

⁶⁴ “Birth relative”, in relation to an adopted child, means a person who was a grandparent, brother, sister, uncle or aunt of the child, whether or not the relationship is traced through birth or depends on adoption or, for a brother or sister, of the whole blood or half-blood, before the child was adopted: s 58 and Dictionary of the [Adoption Act 1993 \(ACT\)](#).

⁶⁵ Section 68(4) of the [Adoption Act 1993 \(ACT\)](#).

⁶⁶ Section 68(5) of the [Adoption Act 1993 \(ACT\)](#).

⁶⁷ Section 68(6) of the [Adoption Act 1993 \(ACT\)](#).

5.2.2 Contact Veto

An objection to contact may be made by:⁶⁸

- an adopted person who has attained the age of 17 years and 6 months; or
- an adoptive parent; or
- a birth relative who has attained the age of 18 years; or
- an adoptive relative who has attained the age of 18 years; or
- a child or other descendent of an adopted person, being a child or other descendant, who has attained the age of 18 years; or
- a birth parent;

The objection to contact may relate to a stated person or a stated class of persons (being a person who is, or a class of persons each of whom is, an associated person). The Chief executive must enter the particulars of objects and revocations in the contact veto register.⁶⁹ An objection remains in force until it is revoked by the person who lodged it.⁷⁰

If a person stated in, or included in a class of persons stated in, a contact veto requests information, and an objection to contact is in force, the chief executive must not divulge the information unless that person:

- has attended a counselling service under s 72;⁷¹ and
- signs a declaration that he or she will not:
 - contact or attempt to contact the person who lodged the objection; or
 - arrange or attempt to arrange contact with that person; or
 - procure another person to contact, attempt to contact, or attempt to arrange contact with, that person;

while the objection remains in force.⁷²

⁶⁸ Section 70(1) of the [Adoption Act 1993 \(ACT\)](#).

⁶⁹ Section 70(3) of the [Adoption Act 1993 \(ACT\)](#)

⁷⁰ Section 70(2) of the [Adoption Act 1993 \(ACT\)](#).

⁷¹ Section 72 provides that the chief executive must not give a document or information to an applicant stated in, or included in a class of persons stated in, a contact veto under Part 5 of the Act unless the applicant has attended an interview with an approved counsellor. This is not necessary if the chief executive is satisfied that the adopted person and another person mentioned in the original birth certificate relating to the adopted person have already exchanged information that may identify that birth parent or a birth relative of the adopted person.

⁷² Section 73 of the [Adoption Act 1993 \(ACT\)](#).

Section 75 provides that if:

- a person would, under Division 5.3 (Identifying information), be entitled to identifying information with the approval in writing of another person; and
- that other person has refused to give that approval;

the first person may apply to the court for an order declaring that the applicant is entitled to access to, and to apply for, the identifying information specified in the order.

Section 76 enables a person who is not entitled under any other provisions of Part 5 (Access to information) of the Act to have access to, and to apply for, information may apply to the court for an order declaring that the applicant is entitled to access to, and to apply for, the information stated in the order.

5.2.3 Non-identifying Information

The adopted child, an adoptive parent, a birth parent or birth relative of the adopted child or a child, or other descendent of the adopted child is entitled to access to non-identifying information about an adoption.⁷³

5.3 NEW SOUTH WALES

Chapter 8 of the [Adoption Act 2000 \(NSW\)](#) provides for access to adoption information. Certain provisions of the [Adoption Amendment Act 2008 \(NSW\)](#) amend Chapter 8, but as at the date of writing, the amending provisions have not commenced.

The amendments to Chapter 8 in the *Adoption Amendment Act 2008* (NSW) seek to facilitate open adoption practices for future adoptions. In her Second Reading Speech, the Minister said:⁷⁴

The Government acknowledges the historical and social context in which decisions to adopt have been made, and the very personal way [access to adoption information] law impacts on the lives of people. The bill preserves and ensures the continuation of the access entitlements applying to adoptions that have occurred in the past. ...

... The bill seeks to establish equitable and open rights to access information [for future adoptions] ... Under this new scheme, adoptive parents, adopted children,

⁷³ Sections 58 and 63 of the [Adoption Act 1993 \(ACT\)](#).

⁷⁴ Hon Linda Burney MP, Minister for Community Services, Adoption Amendment Bill 2008 (NSW), [Second Reading](#), *New South Wales Parliamentary Debates*, Legislative Assembly, 25 September 2008, pp 10109-10112, pp 10110-10111.

birth parents, and siblings will be more easily able to access adoption information. To enable adopted children to have an accurate picture of their identity from an early age, the new scheme allows for adoptive parents ... to automatically be entitled to receive adoption information. ...

Birth parents of an adopted person over the age of 18 years and adopted persons over 18 years will similarly have open access entitlements to information such as birth certificates, birth records and other identifying information. To ensure adopted children under the age of 18 years have the appropriate support when accessing information, the bill makes provision for information to be accessed, with their adoptive parents' consent. ...

The bill also makes provision for non-adopted and adopted birth siblings to have reciprocal rights to access information. ...

5.3.1 Access to Identifying Information

Section 134 of the [Adoption Act 2000 \(NSW\)](#) provides that an adopted person is entitled to receive:

- the person's original birth certificate; and
- the person's adopted person's birth record; and
- any prescribed information⁷⁵ relating to the person's birth parents held by an information source; and
- any prescribed information relating to a sibling or an adopted brother or sister of the person held by an information source.

However, an adopted person who has not attained 18 years of age is not entitled to receive this information except with the consent of:⁷⁶

- his or her surviving adoptive parents and surviving birth parents; or
- the Director-General if there are no surviving adoptive parents or birth parents or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.

Adoptive Parent

An adoptive parent of an adopted person is entitled to receive:⁷⁷

- the adopted person's original birth certificate; and

⁷⁵ Division 1 of Part 11 of the [Adoption Regulation 2003 \(NSW\)](#) sets out the 'prescribed information' to which persons are entitled. Regulation 46 provides the information that is prescribed under s 134.

⁷⁶ Section 134(3) of the [Adoption Act 2000 \(NSW\)](#).

⁷⁷ Section 135 of the [Adoption Act 2000 \(NSW\)](#).

- the adopted person's adopted person's birth record; and
- any prescribed information relating to the adopted person held by an information source.

However, the adoptive parent is not entitled to receive the original birth certificate or adopted person's birth record unless the adopted person is aged 18 years or older and consents to the adoptive parent receiving it.⁷⁸

Birth Parent

A birth parent of an adopted person who has attained the age of 18 years is entitled to receive:⁷⁹

- the amended birth certificate of the adopted person;
- the adopted person's birth record; and
- any prescribed information relating to the adopted person or the adoptive parents held by an information source.⁸⁰

Relatives and Others

Section 137 provides for access to adoption information by relatives and others after the death of an adopted person or birth parent.

⁷⁸ Section 135(3) of the [Adoption Act 2000 \(NSW\)](#).

⁷⁹ Section 136 of the [Adoption Act 2000 \(NSW\)](#).

⁸⁰ 'Information source' is defined in the Dictionary of the [Adoption Act 2000 \(NSW\)](#) as:

- the Department of Community Services; or
- the Department of Health; or
- an accredited adoption service provider; or
- a hospital; or
- the Office of the Registrar; or
- the Supreme Court; or
- any other institution, body or person prescribed as an information source for the purposes of this Act.

Discretion to Supply or Withhold Adoption Information

The Director-General may supply adoption information before an entitlement to it arises under Part 2 (Access to birth certificates and other information) of Chapter 8 (Adoption information) of the [Adoption Act 2000 \(NSW\)](#) if, in the opinion of the Director-General, it would promote the welfare and best interests of either or both of the parties concerned.⁸¹ If the information is subject to a contact veto, the Director-General may, as a condition of the supply of adoption information, require the person to sign an undertaking that the applicant will not (while the contact veto remains in force):⁸²

- contact or attempt to contact the person who lodged the contact veto; or
- procure another person to contact or attempt to contact the person.

Pursuant to s 141, certain people⁸³ may request the Director-General to use his or her discretion to refuse to issue an authority authorising an information source to supply adoption information to which an entitlement arises under Part 2 of Chapter 8 of the [Adoption Act 2000 \(NSW\)](#) or supply such information subject to conditions. The Director-General may only refuse to issue an authority to supply adoption information under section 141 if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned.

5.3.2 Advance Notice

Part 3 of Chapter 8 of the [Adoption Act 2000 \(NSW\)](#) provides for an advance notice system. Section 144 explains that the object of Part 3 is:

... to provide for an advance notice system that enables the release of personal information under [Chapter 8] to be delayed for a fixed period to give the person requesting the delay the opportunity to prepare for the release and any impact this might have on the person or the person's family or associates.

A request to be given advance notice before personal information relating to the person is given to another person may be lodged by:⁸⁴

⁸¹ Section 140 of the [Adoption Act 2000 \(NSW\)](#).

⁸² Section 164(1) and (4) of the [Adoption Act 2000 \(NSW\)](#).

⁸³ The following people may request the Director-General to act under s 141 of the [Adoption Act 2000 \(NSW\)](#): an adopted person who is 18 or more years old; a birth parent; an adoptive parent of a person who is less than 18 years of age; an adoptive parent of a person who is 18 or more years of age and who has consented to the request being made.

⁸⁴ Section 146 of the [Adoption Act 2000 \(NSW\)](#).

- an adopted person who has reached the age of 17 years and 6 months; or
- a birth parent; or
- an adoptive parent.

5.3.3 Contact Veto

If an order for adoption was made prior to 26 October 1990, a contact veto may be lodged by an adopted person who has reached the age of 17 years and 6 months or a birth parent.⁸⁵ The contact veto sets out the person or class of persons by whom the person objects to being contacted.⁸⁶

A contact veto expires if:⁸⁷

- the person who lodged the contact veto cancels it by notification in writing to the Director-General; or
- the person who lodged the contact veto dies.

Section 162 requires the Director-General to notify a person who has lodged a contact veto of an application for the supply of adoption information made by any person with whom contact is refused, unless the Director-General is unaware of the application or it is not reasonably practicable to notify the person.

The Director-General is required to notify a person of any cancellation or variation of a contact veto that affects the person if the person requests the Director-General to do so at the time the person receives adoption information subject to the contact veto.⁸⁸

The Director-General or other information source is not to supply an original birth certificate or amended birth certificate endorsed with a contact veto against contact by the applicant unless the applicant has signed an undertaking that the applicant will not (while the contact veto remains in force):⁸⁹

- contact or attempt to contact the person who has lodged the contact veto; or
- procure another person to contact or attempt to contact the person.

⁸⁵ Sections 154-155 of the [Adoption Act 2000 \(NSW\)](#).

⁸⁶ Section 156 of the [Adoption Act 2000 \(NSW\)](#).

⁸⁷ Section 160 of the [Adoption Act 2000 \(NSW\)](#).

⁸⁸ Section 163 of the [Adoption Act 2000 \(NSW\)](#).

⁸⁹ Section 164 of the [Adoption Act 2000 \(NSW\)](#).

5.4 NORTHERN TERRITORY

5.4.1 Access to Identifying Information

Section 61 of the [Adoption of Children Act \(NT\)](#) provides that an adopted person,⁹⁰ a relinquishing parent or an adoptive parent may apply to the Minister to request information relating to the adoption of the adopted person. In instances in which one of these people has died, a relative (i.e. a mother, father, brother, sister or a child of the person) may apply in place of that person. The Minister shall provide the person with the following information relating to the adoption:⁹¹

- the names (including a name given at birth) and last known address of a person he or she specifies in the application;
- where the last known address is not known or is incorrect, any information that may assist in ascertaining the whereabouts of a person he or she specifies in the application; or
- details of a notice of prohibition against the provision of information (if any) that has been lodged with the Minister pursuant to section 65.

The Minister is not permitted to provide information to a person under Part 6 (Access to Information) of the Act where he or she is satisfied that there are reasonable grounds for believing that the personal safety of another person may be endangered as a result of the provision of the information.⁹²

A person who applies for information under Part 6 must receive counselling from an approved person before he or she is supplied with the information.⁹³

Adoption Order Made Prior to 3 May 1994

The Northern Territory legislation has different regimes for adoption orders made before the Act commenced on 3 May 1994 and those made after that date.

Where an order for adoption was made before 3 May 1994:⁹⁴

⁹⁰ If the adopted person has not attained the age of 16 years, he or she is not permitted to apply for the information specified in s 62(1) for information concerning one or both of his or her relinquishing parents except with the consent of his or her adoptive parents: s 64.

⁹¹ Section 62(1) of the [Adoption of Children Act \(NT\)](#).

⁹² Section 62(3) of the [Adoption of Children Act \(NT\)](#).

⁹³ Section 63 of the [Adoption of Children Act \(NT\)](#).

⁹⁴ Section 65(1) of the [Adoption of Children Act \(NT\)](#).

- the adopted person may only apply for the information specified in s 62(1) in respect of his or her relinquishing parents, except that, where the adopted person has not attained the age of 16 years, he or she may only apply for the information if his or her adoptive parents have given consent;
- an adoptive parent may only apply for the information specified in s 62(1) in respect of the relinquishing parents, but the adoptive parent is not permitted to receive identifying information about the relinquishing parents;
- a relinquishing parent may only apply for the information specified in s 62(1) in respect of the adopted person and the adoptive parents, except that, where the adopted person has not yet attained the age of 18 years, that information shall not be of such a nature that it identifies the adopted person or one or both of the adoptive parents;

and the Minister shall, except if the information is subject to a notice of prohibition, provide the information requested in the application.

Notice of Prohibition

Where an order for adoption was made before the Act commenced on 3 May 1994, a relinquishing parent or an adopted person may lodge a notice of prohibition that will disallow the provision of information that would identify him or her.⁹⁵ Where a person has lodged a notice of prohibition, the Minister shall not provide information as specified in the notice of prohibition.⁹⁶ The notice of prohibition remains in force for a maximum of three years, but may be reinstated for further periods, each of which cannot exceed three years.⁹⁷

5.5 SOUTH AUSTRALIA

Part 2A of the *Adoption Act* 1988 (SA) provides for access to adoption information. Despite anything contained in Part 2A, the Minister may authorise disclosure of any information if the disclosure is necessary in the interests of the welfare of an adopted person.⁹⁸

Section 27E states that a requirement under Part 2A that the consent of a person be obtained before information may be disclosed is waived on the death of that person.

⁹⁵ Section 65(2) of the [Adoption of Children Act \(NT\)](#).

⁹⁶ Section 65(3) of the [Adoption of Children Act \(NT\)](#).

⁹⁷ Section 65(4) of the [Adoption of Children Act \(NT\)](#).

⁹⁸ Section 27D of the *Adoption Act* 1988 (SA).

The Chief Executive may, before providing information to a person or accepting a direction from a person under Part 2A, invite the person to participate in an interview with a person authorised by the Chief Executive.⁹⁹

5.5.1 Access to Identifying Information

Adopted Person

An adopted person who has attained the age of 18 years (or, if the adopted person consents or is dead or cannot be located, a lineal descendant of the adopted person) may obtain:¹⁰⁰

- the names and dates of birth (if known) of the person's birth parents;
- any other information in the possession of the Chief Executive relating to the birth parents and the circumstances of the adoption;
- any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adopted person;
- information in the possession of the Chief Executive relating to a sibling (whether of the whole or half blood) of the person who has been adopted and who has also attained the age of 18 years.

Birth Parent

If an adopted person has attained the age of 18 years, a birth parent of the person (or if the birth parents consent or are dead or cannot be located, a person who would have been a relative of the person if the adoption order had not been made) may obtain:¹⁰¹

- the names of the adoptive parents and the adopted person;
- any other information in the possession of the Chief Executive relating to the adoptive parents and the adopted person;
- any message, information or item given to the Chief Executive by an adopted person or an adoptive parent with instructions that it be provided to the birth parent.

⁹⁹ Section 27C of the *Adoption Act 1988* (SA).

¹⁰⁰ Section 27(1) of the *Adoption Act 1988* (SA).

¹⁰¹ Section 27(2) of the *Adoption Act 1988* (SA).

Adoptive Parent

If an adopted person has attained the age of 18 years, an adoptive parent of the person may, with the consent of the adopted person, obtain:¹⁰²

- any information in the possession of the Chief Executive relating to the adopted person's birth parents;
- any message, information or item given to the Chief Executive by a birth parent with instructions that it be provided to the adoptive parents.

Discretion to Withhold Information

The Chief Executive has discretion to withhold information which the Chief Executive has determined would be an unjustifiable intrusion on the privacy of the person to whom the information relates were it to be disclosed.¹⁰³

Early Disclosure of Information

Section 27A permits the disclosure of information to an adopted person or a birth parent before an entitlement to the information arises under section 27 if consent to the disclosure is given by:

- in the case of disclosure to an adopted person:
 - the adoptive parents; and
 - if the name of a birth parent is to be disclosed – that parent; or
- in the case of disclosure to a birth parent:
 - the adoptive parents; and
 - if the adopted person has attained the age of 12 years – the adopted person.

As noted above, a requirement for consent is waived on the death of the person whose consent was required.¹⁰⁴

¹⁰² Section 27(3) of the *Adoption Act 1988* (SA).

¹⁰³ Section 27(5) of the *Adoption Act 1988* (SA).

¹⁰⁴ Section 27E of the *Adoption Act 1988* (SA).

5.5.2 Information Veto

Adopted Person

If a person was adopted before 17 August 1989, he or she may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the person to be traced not be disclosed.¹⁰⁵

Birth Parent

A birth parent of a person adopted prior to 17 August 1989 may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the birth parent to be traced not be disclosed.¹⁰⁶

Adoptive Parent

An adoptive parent of a person adopted prior to 17 August 1989 may lodge with the Chief Executive a direction that information in the Chief Executive's possession that would enable the adoptive parent to be traced not be disclosed.¹⁰⁷

Where:

- a direction has been lodged by an adoptive parent; but
- a direction has not been lodged by the adopted person;

the adoptive parent's direction does not operate to prevent the disclosure of information that is relevant to the welfare or whereabouts of the adopted person.¹⁰⁸

Written Reasons

A person who lodges a direction under s 27B may provide the Chief Executive with written reasons for the direction and, if so provided, the reasons must be released by the Chief Executive if a request for information about the person is subsequently made under Part 2A of the *Adoption Act 1988* (SA).

¹⁰⁵ Section 27B(1) of the *Adoption Act 1988* (SA).

¹⁰⁶ Section 27B(2) of the *Adoption Act 1988* (SA).

¹⁰⁷ Section 27B(3) of the *Adoption Act 1988* (SA).

¹⁰⁸ Section 27B(5) of the *Adoption Act 1988* (SA).

Period of Direction

A direction made under s 27B:¹⁰⁹

- has effect for a period of five years, unless revoked earlier;
- may, on the expiration of a period for which it has effect, be renewed.

5.6 TASMANIA

5.6.1 Counselling

In Tasmania, a relevant authority is not permitted to provide a document or information to an applicant under Part VI of the [Adoption Act 1988 \(Tas\)](#) unless the applicant has received counselling from an approved counsellor.¹¹⁰

5.6.2 Access to Identifying Information

Adopted Person Aged Under 18 Years

Adopted Person

An adopted person who is under the age of 18 years may apply to a relevant authority¹¹¹ for information about himself or herself. The application must be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent of the adopted person. However, no information may be given to the adopted person from which the identity of the natural parent¹¹² of the applicant

¹⁰⁹ Section 27B(7) of the *Adoption Act 1988* (SA).

¹¹⁰ Section 74 of the [Adoption Act 1988 \(Tas\)](#).

¹¹¹ ‘Relevant authority’ is defined in section 3 of the [Adoption Act 1988 \(Tas\)](#) as the Secretary of the Department; or where the application relates to information contained in records, or a copy of a birth certificate, in the possession, or under the control, of an agency, that agency.

¹¹² ‘Natural parent’, in relation to an adopted person, is defined in section 3 of the [Adoption Act 1988 \(Tas\)](#) as:

- a person who is named in the entry relating to the adopted person in a register of births, whether in Tasmania or in a place outside Tasmania, as a parent of the adopted person;

may be ascertained, unless the relevant authority has obtained the agreement in writing, or evidence of the death, of that natural parent.¹¹³

Natural Parent or Relative

A natural parent or natural relative¹¹⁴ of an adopted person who is under the age of 18 years may apply to a relevant authority for information about the adopted person.¹¹⁵ A natural parent or relative is not entitled to information about the adopted person from which his adoptive parents may be identified or his whereabouts ascertained, unless the relevant authority:¹¹⁶

- has considered any wishes expressed by the adopted person; and
- has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death, of each adoptive parent of the adopted person.

A natural parent or natural relative is not entitled to information about the adopted person if the relevant authority is of the opinion that, in order to give effect to any wishes of the adopted person or conditions imposed by an adoptive parent, that information ought not to be disclosed.¹¹⁷

Adopted Person Aged 18 years and Older

Adopted Person

-
- a man who is declared to be the father of the adopted person under a declaration of paternity in force under section 10 of the *Status of Children Act 1974*, if a copy of the declaration is filed in the office of the Registrar under section 9(3) of that Act;
 - a man who is named in an instrument filed in the office of the Registrar under section 9(1) of the *Status of Children Act 1974* that acknowledges that he is the father of the adopted person; or
 - in relation to an application under section 83, 84, or 90, a man who satisfies a relevant authority that there is evidence that the man is the father of the adopted person.

¹¹³ Section 81 of the [Adoption Act 1988 \(Tas\)](#).

¹¹⁴ ‘Natural relative’, in relation to an adopted person, is defined in section 3 of the [Adoption Act 1988 \(Tas\)](#) as a grandparent, brother, sister, uncle, aunt or lineal descendant of the adopted person, where the relationship is of the whole blood or half-blood.

¹¹⁵ Section 83(1) of the [Adoption Act 1988 \(Tas\)](#).

¹¹⁶ Section 83(2) of the [Adoption Act 1988 \(Tas\)](#).

¹¹⁷ Section 83(3) of the [Adoption Act 1988 \(Tas\)](#).

An adopted person aged 18 years and older may apply to a relevant authority for information about himself or herself. He or she may apply whether or not one of his natural parents or natural relatives may be identified from that information.¹¹⁸ Before an adopted person is given any information that identifies, or identifies the whereabouts of, one of his or her natural parents or natural relatives, he or she is to undertake in writing not to contact that natural parent or natural relative if that natural parent or natural relative:¹¹⁹

- has entered a contact veto in an Adoption Information Register in respect of the adopted person; and
- has not withdrawn the contact veto from the Register.

Contact vetoes are discussed below.

Natural Parent or Relative

A natural parent or natural relative of an adopted person who is aged at least 18 years may apply to a relevant authority for information about the adopted person.¹²⁰

Before a natural parent or natural relative of an adopted person is given any information that identifies, or identifies the whereabouts of, the adopted person or an adoptive parent of the adopted person, the natural parent or natural relative is to undertake not to contact the adopted person or adoptive parent if the adopted person or adoptive parent:¹²¹

- has entered a contact veto in an Adoption Information Register in respect of the natural parent or natural relative; and
- has not withdrawn the contact veto from the Register.

Adoptive Parents

An adoptive parent of an adopted person may apply to a relevant authority for information about the adopted person.¹²² An adoptive parent is not entitled to identifying information about a natural parent or natural relative of the adopted person unless:¹²³

¹¹⁸ Section 82(1) of the [Adoption Act 1988 \(Tas\)](#).

¹¹⁹ Section 82(2) of the [Adoption Act 1988 \(Tas\)](#).

¹²⁰ Section 84(1) of the [Adoption Act 1988 \(Tas\)](#).

¹²¹ Section 84 of the [Adoption Act 1988 \(Tas\)](#).

¹²² Section 86(1) of the [Adoption Act 1988 \(Tas\)](#).

¹²³ Section 86(2) of the [Adoption Act 1988 \(Tas\)](#).

- the relevant authority has obtained the agreement, or evidence of the death, of that natural parent or natural relative; and
- if the adopted person has attained the age of 18 years, the relevant authority:
 - has notified the adopted person of its intention to give the information; or
 - has evidence of the death of the adopted person.

5.6.3 Contact Veto

Section 90(1) of the [Adoption Act 1988 \(Tas\)](#) provides for the establishment of an Adoption Information Register. Adopted persons, natural relatives of adopted persons, natural parents of adopted persons and adoptive parents of adopted persons are able to express their wishes in relation to:¹²⁴

- obtaining information about, or meeting or providing information to; and
- whether or not to release the name and address of, or any information about, the person to; and
- being contacted by;

another person whose name is, or may at any time be, entered in the Adoption Information Register.

A person whose name is on the Adoption Information Register may register a contact veto which specifies any person or class of persons by whom the registered person does not wish to be contacted.¹²⁵ If a contact veto has been registered, the person applying for information must sign an undertaking not to contact the person before the information is provided.¹²⁶

Power of Judge to Order Release of Information

Sections 87 and 88 provide that a judge in chambers may, in certain circumstances, make an order directing a relevant authority to release specified information.

¹²⁴ Section 90(3) of the [Adoption Act 1988 \(Tas\)](#).

¹²⁵ Section 90(3)(c) of the [Adoption Act 1988 \(Tas\)](#).

¹²⁶ Department of Health and Human Services, '[Adoption and Information Service – Access and Information Provisions](#)'.

5.7 VICTORIA

5.7.1 Counselling

Section 87 of the [Adoption Act 1984 \(Vic\)](#) prohibits a relevant authority¹²⁷ from supplying a document or information to an applicant under Part VI (Access to Information) of the Act unless the applicant has attended an interview with an approved counsellor.

5.7.2 Access to Identifying Information

Adopted Person Has Attained 18 Years

Adopted Person

An adopted person who has attained the age of 18 years may apply to a relevant authority for information about the adopted person, whether or not a natural parent¹²⁸ or a natural relative¹²⁹ of the adopted person may be identified from that information.¹³⁰

If the information to which the application relates:¹³¹

¹²⁷ ‘Relevant authority’ in relation to an application for information is defined in s 82 of the [Adoption Act 1984 \(Vic\)](#) to mean:

- the Secretary;
- where the application relates to information contained in records in the possession or under the control of an approved agency – that approved agency; or
- where the Secretary declares in writing that an approved agency is a relevant authority for the purposes of Part VI for the time being or in relation to particular applications for information – an approved agency to which the declaration relates.

¹²⁸ ‘Natural parent’ in relation to an adopted person is defined in s 82.

¹²⁹ ‘Natural relative’ in relation to an adopted person is defined in s 97 as a grandparent, brother, sister, uncle or aunt of the adopted person where the relationship is of the whole blood or half-blood.

¹³⁰ Section 93(1) of the [Adoption Act 1984 \(Vic\)](#).

¹³¹ Section 93(2) of the [Adoption Act 1984 \(Vic\)](#).

- is not contained in records that are in the possession or under the control of a relevant authority; and
- is information from which, whether directly or indirectly, the whereabouts of a natural parent or a natural relative of the adopted person may be ascertained;

the relevant authority must not give the information to the applicant unless:

- the relevant authority has obtained the agreement in writing of the person whose whereabouts would be disclosed; and
- if the agreement was given subject to any condition, the relevant authority has complied with the condition.

However, if the person is dead or the relevant authority has made all enquiries that in the circumstances of the case ought reasonably to be made and the person cannot be found, the relevant authority is not required to obtain the agreement of the person whose whereabouts would be disclosed.¹³²

Natural Parent

A natural parent of an adopted person who has attained the age of 18 years may apply to a relevant authority for:¹³³

- information about the adopted person (other than information from which whether directly or indirectly the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained); or
- information about the adopted person from which the adoptive parents of the person may be identified or the whereabouts of the adopted person ascertained (identifying information).

The applicant may not be given:¹³⁴

- any identifying information unless the relevant authority has obtained the agreement in writing (which may be given subject to conditions), or evidence of the death, of the adopted person; or
- any part of the identifying information where the relevant authority determines that, in order to give effect to any conditions imposed by the adopted person, that part of the information ought not to be disclosed.

¹³² Section 93(3) of the [Adoption Act 1984 \(Vic\)](#).

¹³³ Section 96(1) of the [Adoption Act 1984 \(Vic\)](#).

¹³⁴ Section 96(2) of the [Adoption Act 1984 \(Vic\)](#).

Adopted Person Under the Age of 18 Years

Adopted Person

An adopted person who has not attained the age of 18 years may make application to a relevant authority for:¹³⁵

- information about the adopted person (other than information from which the identity of either of the natural parents of the adopted person may be ascertained, whether directly or indirectly); and
- information from which the identity of either of the natural parents of the adopted person may be ascertained.

The application is to be accompanied by the agreement in writing, or evidence of the death, of each adoptive parent or the agreement in writing of the adopted person's guardian.¹³⁶ The relevant authority must not provide the adopted person with any information from which the identity of a natural parent of the applicant may be ascertained unless the natural parent has given consent, or the relevant authority has evidence of the death of that natural parent.¹³⁷

Natural Parent

A natural parent of an adopted person who has not attained the age of 18 years may make application to a relevant authority for:¹³⁸

- information about the adopted person (other than information from which, whether directly or indirectly, the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained); or
- information about the adopted person from which the adoptive parents of the person may be identified or the whereabouts of the adopted person ascertained (identifying information).

Before identifying information may be given to an applicant under section 95, the relevant authority must:¹³⁹

- consider any wishes expressed by the adopted person; and

¹³⁵ Section 94(1) of the [Adoption Act 1984 \(Vic\)](#).

¹³⁶ Section 94(2) of the [Adoption Act 1984 \(Vic\)](#).

¹³⁷ Section 94(3) of the [Adoption Act 1984 \(Vic\)](#).

¹³⁸ Section 95(1) of the [Adoption Act 1984 \(Vic\)](#).

¹³⁹ Section 95(2) of the [Adoption Act 1984 \(Vic\)](#).

- obtain the agreement, which may be given subject to conditions, or evidence of the death of, each adoptive parent of the adopted person or of the guardian of the adopted person.

The relevant authority is not to give the applicant any part of the information where the relevant authority determines that, in order to give effect to any wishes of the adopted person or conditions imposed by an adoptive parent, that part of the information ought not to be disclosed.¹⁴⁰

Child of an Adopted Person has Attained 18 Years

A person who:

- has attained the age of 18 years; and
- is the natural child¹⁴¹ of an adopted person;

may apply to a relevant authority for information about the adopted person, whether or not a natural parent or a natural relative of the adopted person may be identified from the information.¹⁴²

If the information to which the application relates is information from which, whether directly or indirectly, the identity of a natural parent or natural relative of the adopted person may be ascertained, the relevant authority must notify the adopted person in writing that it intends to give that information to the applicant.¹⁴³

Section 96A(4) provides that if the information to which the application relates:

- is not contained in records that are in the possession or under the control of a relevant authority; and
- is information from which, whether directly or indirectly, the whereabouts of a natural parent or natural relative of the adopted person may be ascertained;

the relevant authority must not give the information to the applicant unless:

- the relevant authority has obtained the agreement in writing of the person whose whereabouts would be disclosed; and
- if the agreement was given subject to any condition, the relevant authority has complied with the condition.

¹⁴⁰ Section 95(2) of the [Adoption Act 1984 \(Vic\)](#).

¹⁴¹ ‘Natural child’ in relation to an adopted person is defined in s 96A of the [Adoption Act 1984 \(Vic\)](#) as a son or daughter of the adopted person where the relationship is of the whole blood.

¹⁴² Section 96A(2) of the [Adoption Act 1984 \(Vic\)](#).

¹⁴³ Section 96A(3) of the [Adoption Act 1984 \(Vic\)](#).

The relevant authority is not required to obtain the agreement of the person whose whereabouts would be disclosed if it is satisfied that:

- the person is dead; or
- the relevant authority has made all enquiries that in the circumstances of the case ought reasonably to be made and the person cannot be found.¹⁴⁴

Natural Relative's Right to Information

A natural relative of an adopted person may make an application to a relevant authority for:¹⁴⁵

- information about the adopted person (other than information from which (whether directly or indirectly) the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained); or
- information about the adopted person from which the adoptive parents of the adopted person may be identified or the whereabouts of the adopted person ascertained (identifying information).

The applicant must not be given:¹⁴⁶

- any identifying information unless the relevant authority:
 - is satisfied that circumstances exist which make it desirable so to do;
 - where the adopted person has attained the age of 18 years – has obtained the agreement in writing, which may be given subject to conditions, or evidence of the death, of the adopted person; and
 - where the adopted person has not attained the age of 18 years, has considered any wishes expressed by the adopted person, or where the adopted person has died, has obtained evidence of the death of the adopted person; and has obtained the agreement (which may be given subject to conditions) or evidence of the death of, each adoptive parent of the adopted person or of the guardian of the adoptive person; or
- any part of the identifying information where the relevant authority determines that, to give effect to any wishes of the adopted person or conditions imposed by the adopted person or of an adoptive parent, that part of the information ought not to be disclosed.

¹⁴⁴ Section 96A(5) of the [Adoption Act 1984 \(Vic\)](#).

¹⁴⁵ Section 97(2) of the [Adoption Act 1984 \(Vic\)](#).

¹⁴⁶ Section 97(3) of the [Adoption Act 1984 \(Vic\)](#).

Adoptive Parent's Right to Information

Section 98(1) provides that an adoptive parent of an adopted person may apply for:

- information about the adopted person (other than information from which a natural parent of the adopted person may be identified whether directly or indirectly); or
- information about the adopted person from which a natural parent of the adopted person may be identified (identifying information).

An applicant shall not be given:¹⁴⁷

- any identifying information unless the relevant authority has obtained the agreement (which may be given subject to conditions) or evidence of the death, of that natural parent; or
- if the adopted person has attained the age of 18 years, any identifying information unless the relevant authority:
 - has notified the adopted person of the relevant authority's intention to give the information; or
 - has evidence of the death of the adopted person; or
- any part of that information where the relevant authority determines that, in order to give effect to conditions imposed by a natural parent, that part of the information ought not to be disclosed.

Applications to Court

Application may be made to the County Court for an order relating to the release of information.¹⁴⁸

5.8 WESTERN AUSTRALIA

5.8.1 Access to Identifying Information

Section 82(1) of the [Adoption Act 1994 \(WA\)](#) enables a person wishing to have access to information under the Act to apply to the chief executive officer of the Department (CEO). Section 82(2) obliges the CEO to give his or her authority for the applicant to have access to the requested information unless there is a good reason for not doing so, and in that case, the CEO may give the authority on

¹⁴⁷ Section 98(2) of the [Adoption Act 1984 \(Vic\)](#).

¹⁴⁸ Sections 99 and 100 of the [Adoption Act 1984 \(Vic\)](#).

condition that the applicant may or may not have access to the information specified in the authority.

A party to an adoption may apply to the Court for an order to prevent the CEO from giving his or her authority under section 82(2) in relation to a person who would otherwise have a right of access to information under the Act. The Court may make the order if it is satisfied that the person's access to the information would be likely to place the applicant or the person to whom the applicant is married, or in a de facto relationship with, or the applicant's children at serious risk.¹⁴⁹

5.8.2 Contact Veto

It is not currently possible for a party to an adoption to lodge a contact veto under the [Adoption Act 1994 \(WA\)](#), but some contact vetoes which were registered prior to 1 June 2003 remain in place.¹⁵⁰ A contact veto is a statement that was registered by 1 June 2003 under Part 4 Division 4 of the *Adoption Act 1994 (WA)* by which a person forbids another person to contact the first-mentioned person.¹⁵¹ A contact veto ceases to have effect in the following instances:¹⁵²

- at the expiry of the period stated by the person who lodged the statement of wishes;
- upon the death of the person who lodged the statement of wishes;
- if it is cancelled by the person who lodged the statement of wishes;
- when an adoptee attains 19 years of age if the statement of wishes was lodged by a guardian on behalf of an adoptee who was less than 18 years of age at the time of lodgement, unless the adoptee provides the CEO with written statement seeking to continue the effect of the statement of wishes within 12 months after attaining the age of 18 years.

The CEO may arrange for a party affected by a contact veto to be offered such counselling as the CEO thinks will assist in the matter.¹⁵³

If a contact veto has been registered that forbids the applicant from contacting the person, s 103 prohibits the CEO from giving authorisation for an applicant to have

¹⁴⁹ Section 83 of the [Adoption Act 1994 \(WA\)](#).

¹⁵⁰ Section 59 of the [Adoption Amendment Act \(No 2\) 2003 \(WA\)](#) amended the law so that information vetoes were ineffective from 1 June 2005.

¹⁵¹ Section 4 of the [Adoption Act 1994 \(WA\)](#).

¹⁵² Section 100 of the [Adoption Act 1994 \(WA\)](#).

¹⁵³ Section 102(3) of the [Adoption Act 1994 \(WA\)](#).

access to the requested information unless the applicant signs an undertaking that the applicant will not, while the contact veto remains in force, contact, or request another person to contact on his or her behalf, the person who lodged the contact veto. The penalty for breaching an undertaking under s 103 or harassing the person who lodged the contact veto is \$10,000 and 12 months' imprisonment.¹⁵⁴

5.8.3 Information Veto

Prior to 1 June 2003, parties to an adoption in Western Australia were able to place an information veto to prevent the release of identifying information to certain people. Parties to adoptions are no longer entitled to lodge information vetoes.¹⁵⁵

The Explanatory Memorandum to the Adoption Amendment Bill (No 2) 2002 (WA) discussed some of the findings of the Adoption Legislative Review (which reviewed the *Adoption Act 1994* (WA)), in relation to access to identifying information. The Review report, which was published in 1997, commented that more than two thirds of the submissions received by the Review "stated that they did not think that vetoes should exist".¹⁵⁶ The Explanatory Memorandum continues:¹⁵⁷

There was strong support in the submissions for the right of adoptees to have information about their origins. None of the birth parents who responded to the market survey had placed an information veto and all felt that if vetoes exist they should be for a limited time. The Adoption Legislation Review Committee concluded that information vetoes should no longer exist because the basic right for all people to access information about themselves and know of their origins should take precedence over the continuance of secrecy. It is acknowledged that removal of information vetoes may cause distress to some people. ...

5.8.4 Non-identifying Information

If the CEO receives certain requests for current non-identifying information (which may include medical information), the CEO may approach the person in relation to

¹⁵⁴ Section 104 of the [Adoption Act 1994 \(WA\)](#).

¹⁵⁵ Western Australia, Department for Community Development, [Information About Past Adoption Services](#).

¹⁵⁶ Adoption Amendment Bill (No 2) 2002 (WA), [Explanatory Memorandum](#), clause 44 citing Adoption Legislative Review (Adoption Act 1994) [Final Report](#), 1997, p 83.

¹⁵⁷ Adoption Amendment Bill (No 2) 2002 (WA), [Explanatory Memorandum](#), clause 44 citing Adoption Legislative Review (Adoption Act 1994) [Final Report](#), 1997, p 83.

whom the information is requested to seek the information. The person may decline to provide some or all of the requested information.¹⁵⁸

5.9 COMPARISON OF ACCESS TO INFORMATION AND CONTACT PROVISIONS

The table in the Appendix compares the access to information and contact provisions in each Australian jurisdiction. It is reproduced from pp 15-16 of Queensland Government's [Balancing Privacy and Access: Adoption Consultation Paper](#).

5.10 STATISTICS ON ACCESS TO ADOPTION INFORMATION IN 2007-08

The Australian Institute of Health and Welfare produces an annual publication entitled *Adoptions Australia* that, amongst other things, contains useful information about access to adoption information. For example the most current edition indicates that in 2007-08:

- In relation to access to information applications:
 - There were 2,832 information applications made in Australia – 86% for identifying information and 14% for non-identifying information. This is the lowest number recorded (data dates back to 1992-93).¹⁵⁹
 - 75% of information applications were made by an adopted person, 12% by a birth parent and 6% by other relatives.¹⁶⁰
 - 75% of adopted persons seeking identifying information were aged 35 years or older.¹⁶¹
- In relation to contact and identifying information vetoes:
 - There were 140 contact and identifying information vetoes lodged throughout Australia.¹⁶²
 - The number of vetoes lodged each year has fluctuated, but generally declined over time from a peak of 584 in 1994-95.¹⁶³

¹⁵⁸ Section 109 of the [Adoption Act 1994 \(WA\)](#).

¹⁵⁹ Australian Government, Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', *AIHW Child Welfare Series*, No 46, Canberra, 2009, pp 27, 28 and 51.

¹⁶⁰ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 27-28.

¹⁶¹ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 27 and 29.

¹⁶² Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 30-31.

¹⁶³ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 30 and 51.

- There were 8,782 contact and identifying information vetoes in place at 30 June 2008.¹⁶⁴
- For both vetoes lodged in 2007-08 and vetoes in place at 30 June 2008, the large majority of vetoes were lodged by the adopted person (55% and 56% respectively) and the birth parents (41% and 40% respectively).¹⁶⁵
- As in previous years, in 2007-08 the number of applications for information far exceeded the number of vetoes lodged against contact or the release of identifying information – 2,832 compared with 140.¹⁶⁶

6 CONCLUSION

Under the current [Adoption of Children Act 1964 \(Qld\)](#), a birth parent or an adopted person for adoptions that occurred before 1 June 1991 may not only object to contact being made with the person by a specified person or class of persons, but may also object to the disclosure of certain information to the person or those persons.¹⁶⁷

The [Adoption Bill 2009 \(Qld\)](#) brings Queensland into line with the majority of Australian states and territories by enabling all adopted persons and birth parents to access adoption information regardless of when the adoption occurred. Under the Bill, adopted persons and birth parents are able to register a contact statement expressing their wish not to be contacted. If a contact objection is in place, identifying information may only be released to the applicant if the applicant has attended an interview with a qualified officer and signed a document acknowledging that the other person does not wish to be contacted. In addition, for adoptions that occurred before 1 June 1991, the applicant has to sign a document recognising that it is an offence to contact the other person. With respect to new provisions regarding access to identifying information, the [Explanatory Notes](#) state:¹⁶⁸

[The] new legislation ... strikes a fairer balance between the interests of those people who wish to access information and those who do not wish to be contacted.

¹⁶⁴ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 30 and 32.

¹⁶⁵ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 30-32.

¹⁶⁶ Australian Institute of Health and Welfare, 'Adoptions Australia 2007-08', pp 30 and 51.

¹⁶⁷ Section 39AA(2) of the [Adoption of Children Act 1964 \(Qld\)](#).

¹⁶⁸ [Explanatory Notes](#), p 14.

APPENDIX

Jurisdiction	Queensland		New South Wales		Victoria	Western Australia		South Australia		Tasmania	Australian Capital Territory		Northern Territory		
	Date of Adoption:	Pre-1991	Post-1991	Pre-1990	Post-1990	Any year	Pre-1995(4)	Post-1995(4)	Pre-1989	Post-1989	Any year	Pre-1990	Post-1990	Pre-1994	Post-1994
Access to identifying information – under 18	No	No	Yes (1)	Yes (1)	No	Yes (5)	Yes	No	No	Yes (9)	No	No	No	No	Yes
Access to identifying information – after 18	Yes	Yes	Yes	Yes	Yes (3)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Counselling before being given access to information	No	No	No	No	Yes	Yes (6)	Optional	Optional	Optional	Yes	Yes (10)	No	Yes	Yes	Yes
Information	yes	No	No (2)	No	No	No (7)	No (7)	Yes	No	No	No	No	No	Yes	No

Jurisdiction	Queensland		New South Wales		Victoria	Western Australia		South Australia		Tasmania	Australian Capital Territory		Northern Territory	
Date of Adoption:	Pre-1991	Post-1991	Pre-1990	Post-1990	Any year	Pre-1995 (4)	Post-1995(4)	Pre-1989	Post-1989	Any year	Pre-1990	Post-1990	Pre-1994	Post-1994
Objection (veto)														
Duration of information objection	Beyond death							5 years, renewable					3 years, renewable	
Contact objection (veto)	Yes	No	Yes	No	No	Yes (8)	No	No	No	Yes	Yes	No	No	No
Duration of contact objection	Lifetime		Lifetime			Stated date or lifetime				Stated date or lifetime	Lifetime			
If contact objection in place, required to sign undertaking not to contact?	No		Yes			Yes				Yes	Yes			

Comparison of Access to Information and Contact Provisions: reproduced from Queensland Government, “Balancing Privacy & Access: Adoption Consultation Paper”, 2008, pp 15-16.

Notes

- (1) In New South Wales (NSW), an adopted person under 18 is entitled to identifying information with the approval of adoptive parents and willingness of adoptee and birth parents – post February 2003, this can be documented in an adoption plan.
- (2) In NSW, a person can request advance notice of the release of identifying information, which will delay the release by 2 months, by registering an Advance Notice.
- (3) In Victoria, a birth parent does not have the right to access identifying information about an adopted person. A birth parent can only obtain information if the adopted person obtains information and then contacts the birth parent. A birth parent can request up to date non-identifying information about his or her child. A departmental counsellor will approach the adopted person to seek this information.
- (4) All existing information vetoes ceased to have effect from 1 June 2005.
- (5) In Western Australia, an adopted person under 18 is entitled to identifying information with the approval of adoptive parents.
- (6) In Western Australia, people must receive counselling before being given access to information about a person who had an information veto in place pre 1 June 2005.
- (7) In Western Australia, the release of identifying information can only be prevented by a court order where it is believed the release of the information will place the person, their marriage partner or their children at serious risk.
- (8) Since 2003, no new contact vetos have been able to be lodged in Western Australia. Contact vetos that were in force prior to 2003 remain in force.
- (9) In Tasmania, an adopted person under 18 is entitled to identifying information with the written agreement of the person's adoptive parents and birth parents. At the adopted person's request, the department approaches the birth parents to seek this agreement.
- (10) In the Australian Capital Territory, people must receive counselling before being given access to information about a person who has a contact veto in place.

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This Publication:

RBR 2009/12 *Access to Adoption Information: Adoption Bill 2009 (Qld)*
(QPL, May, 2009)