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LIST OF ABBREVIATIONS

AAC Adoption Applications Committee
ABS Australian Bureau of Statistics
Adoption Services The Adoption Service Unit within the Department for Child Protection
AIHW Australian Institute of Health and Welfare
ARMS Association Representing Mothers Separated from their Children by Adoption Inc.
ARCS Adoption Research and Counselling Service Inc.
ASFC Adoption Support for Families and Children Inc.

DCP or “the Department” The newly-established Department for Child Protection (formerly known as the Department for Community Development or DCD)
Hague Convention Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoptions
Jigsaw Adoption Jigsaw of WA Inc.
UNCROC United Nations Convention on the Rights of the Child
Chapter 1 Introduction

Western Australia’s adoption laws and services are centrally focused around the needs of children. The study of child development demonstrates that much of a person’s capacity for resilience in later life is set in early childhood. Wellbeing in both children and adults is a function of parenting practices that promote the fulfilment of important psychological needs, particularly for love and acceptance, stability, safety, and security. Hence, when a child is relinquished for adoption it is paramount that appropriate laws and Government procedures ensure that a child is provided with a safe, nurturing, stable and enduring parenting relationship intended to last into adulthood.

The implications of severing a child’s original family connections can have significant ramifications and should not be done lightly. However, it’s also clear that it is undesirable for a child to be subjected to long-term insecurity in family relationships. Instability, particularly in parenting relationships in a child’s early years can have a lasting impact.

It is vital that the relinquishment and matching process is managed appropriately. In this regard, it is important that a relinquishing parent is involved in the process of matching the child with the adoptive parents. This can have a positive effect in the success of adoption plans in which ongoing contact between the adoptee, relinquishing and adoptive parents is facilitated. Adoption plans are a feature of adoption in Western Australia designed to overcome the secrecy of the past and to assist in giving an adoptee security in their sense of identity. Adoption plans are a relatively new feature of adoption which recognise that a child’s best interests are served by the child knowing their family origins and connections.

It is important to acknowledge that many parents considering relinquishing children do not proceed to adoption, these children are successfully raised by birth parents and sometimes by broader family networks. Today, much of the focus of the Department for Child Protection’s provision of adoption services at the relinquishment stage is on ensuring that birth parents are provided with the opportunity to form the best possible attachment with their child to foster a successful ongoing parent-child relationship.

In cases where adoption is proceeded with, it is important that consent to adoption is given freely or dispensed with as part of a court process. Unfortunately, this can sometimes cause delays in the eventual placement of a child with adoptive parents. Foster parents may care for an infant for some time before the child is placed in a permanent family.

Prospective adoptive parents are eager to provide a loving home for a child who needs one. However, the assessment process is lengthy and can represent a significant invasion of privacy. The criteria that prospective parents are assessed against to ensure that each child placed has the best match possible can cause significant anxiety, particularly as people age and fall outside the age placement criteria. The strength of the criteria ensuring that the best parents possible are chosen is of fundamental importance when dealing with the fate of a child who has already suffered the dislocation of being unable to be cared for by birth family.

Western Australia currently has age limits placed on adoptive parenthood which relate to a maximum permissible age difference between the adoptive parent and child at the time the child is placed with a view to adoption. It should be noted that while applicants tend to be within the upper age limits, relinquishing parents and sending countries generally have a preference for younger parents. There is a therefore a need for greater awareness for prospective adoptive parents who should be encouraged to initiate an adoption application earlier in life, rather than as a last resort, after the failure of attempts to create a family with reproductive technologies.

The assessment process can cause additional stress on top of other issues that may be affecting prospective adoptive parents, such as infertility and the long wait to fulfill their desire to have a child. Whilst tensions and disappointments may be part of an applicant’s journey, procedures should be understandable and transparent, and reduce unrealistic expectations about adoption. Where there are grievances regarding procedures, or dissatisfaction with a decision regarding suitability for adoptive parenthood, opportunities for review should be available.
Today it is recognised as desirable for parties to an adoption to have information about each other. Adoption plans are now a formal part of the adoption process designed to facilitate information exchange and sometimes contact between parties to an adoption. This is an important development as it means that adoption is “open” and facilitated in a way that is designed to minimise the difficulties of finding information and making contact with birth family. This has been a valuable advance in adoption laws recognising that people should not be precluded from knowing about their origins and having contact where contact is agreed upon.

In the case of adoptions from oversea’s adoption plans are frequently dispensed with. This is often due to the limited information available about a child’s origins or the laws of the sending country. A child’s birth name can form an important part of their identity and should be retained in some way where appropriate.

The Adoption Act 1994 also covers the rights of people who are party to past adoptions prior to the introduction of adoption plans. The laws covering information exchange and contact for these adoptions has changed over time as the importance of people being able to make contact with birth family has been recognised. For most past adoptions, practices were vastly different to what they are now and secrecy was often built into the process.

Care and sensitivity is required to assist parties to past adoptions who are seeking to make contact with each other or family members. The Adoption Act 1994 seeks to make sure that people have the appropriate mediation and counselling available to them.

Carers and step-parents may seek to adopt a child already in their care. The Committee has noted that such adoptions may proceed where it is in the best interests of the child. It is important to recognise that subsequent relationships break down more often than first marriages and that adoption should not be used to alter existing functioning familial relationships. The Family Court must therefore be supported with all the appropriate information when considering approving such adoptions.

While many may view adoption as preferable to foster care, review of the evidence demonstrates that it is difficult to compare outcomes for children placed in these different care arrangements. Many children taken into care have experienced trauma, abuse and neglect which affects their well-being long after they are taken in to care. It is often these factors that are likely to impact on outcomes for a child, not simply the nature of their care or the legal relationship with their caregivers. However, the Committee believes that there should be a focus on stable and permanent care for children, who can’t be cared for by their own family, and that adoption is one of a range of permanent care options available.

Overseas adoptions are today more common than local adoptions. State Governments currently have the responsibility for all parts of the adoption process including working with overseas countries that match children with adoptive parents. With the resources of High Commissions, Embassies, the Department of Immigration and Citizenship and formal responsibility for the signing the Hague Convention regarding the adoption of children the Federal Government is best placed to be the lead organisation managing relationships with countries sending children to Australia for adoption. This would enable more effective negotiation and monitoring of programmes with sending countries.

The Adoption Act 1994 has been reviewed a number of times in recent decades resulting in significant and positive changes to adoption in Western Australia.

It is of fundamental importance that the Adoption Act 1994 remains relevant to the needs of adoptees and other parties to adoption as changing the fundamental social and legal connection between a parent and a child is of profound significance and consequence to people’s lives.
LIST OF RECOMMENDATIONS

Chapter 2 - Background to the Review and Overview of Adoption

**Recommendation 1** Future statutory reviews of the Adoption Act 1994 should be carried out every 5 years following the next Amendment Act. The Minister should have the power to call for a review to occur sooner if he or she considers it is required.

Chapter 3 - The Relinquishment and Matching Process

**Recommendation 2** The timeframe for commencement of the CEO’s provision of compulsory information to persons involved in step-parent, adult and carer adoptions under s.16(l)(a) should be increased from “within 7 days of the request” to “within 28 days of the request”.

**Recommendation 3** Adoption Services should consider, as a matter of practice, commencing an application to dispense with a person’s consent if consent is not received within 2 months of notification of the proposed adoption.

**Recommendation 4** Section 59 should be amended to require notification of as many relatives listed under s.59(2) as is reasonably practicable about the proposal to file an application for adoption.

Chapter 4 - Applicant Eligibility, Assessment & Placement Criteria

**Recommendation 5** Section 39(1)(d) of the Act should be amended to enable a person who is married or was in a de facto relationship to apply as a single person if the person is separated from their partner and does not intend to resume cohabitation.

**Recommendation 6** If an applicant’s relationship status changes and this is disclosed in a timely manner the applicant should not be required to return to the start of the assessment process unless the person’s eligibility under s.39(1)(a) or (c) is also affected.

**Recommendation 7** A specific provision should be inserted in the Act which enables the AAC to access a broad range of criminal record information for the purpose of assessing the suitability of applicants for adoptive parenthood under s.40.

**Recommendation 8** Section 39 should be amended to prevent persons convicted of a Class 1 offence (as defined by the Working with Children (Criminal Record Checking) Act 2004), committed as an adult, from making an application for adoptive parenthood under s.38.

**Recommendation 9** Section 40(2)(e) should be amended to require a person to provide evidence that he or she has not been convicted of a Class 2 offence or is not the subject of any pending charges for a Class 1 or Class 2 offence, as defined by the Working with Children (Criminal Record Checking) Act 2004.

**Recommendation 10** The Act should be amended so that, in the case of inter-country adoptions, placement criteria are applied at the time an allocation is offered by a sending country. For local adoptions, placement criteria should be applied at the time when the child is due to be physically placed with the adoptive parents.
Recommendation 11  The current age restrictions at the time of placement should remain in place, subject to the following:
- If a couple makes a joint application, the age restrictions at placement should only apply in relation to the youngest applicant.
- The age restrictions at placement should be the same for couples who already have a child, whether or not that child was adopted.

Recommendation 12  The Adoption Act 1994 should contain a provision requiring parties to adoption to provide full and frank disclosure of relevant facts throughout the adoption process, up to the date of the adoption order. If a relevant change is disclosed in a timely manner the applicant should not be required to return to the start of the assessment process unless the person’s eligibility under s.39(1)(a) or (c) is also affected.

Chapter 5 - Adoption Applications Committee

Recommendation 13  The Adoption Act 1994 should be amended to require the AAC to have a majority of independent members.

Recommendation 14  The Adoption Act 1994 should be amended to require the AAC to have a Chairperson who is independent of the Department.

Recommendation 15  Additional independent members appointed to the AAC should have relevant expertise or experience, as is currently required by s.14(2) of the Adoption Act 1994.

Recommendation 16  Consideration should be given to the appointment of a member with legal expertise to the AAC.

Recommendation 17  AAC procedures should be more transparent. In particular, applicants attending the assessment seminar should be provided with written information about the AAC’s role, procedures for submitting further information for the AAC’s consideration, procedures for review of AAC decisions and the grounds on which a review may be sought.

Recommendation 18  AAC decision-making should be more transparent. In particular, the Adoption Act 1994 should require the AAC to automatically provide applicants with:
- a copy of the applicant’s assessment report after the AAC’s decision is made;
- written reasons for decisions to not approve an application;
- written reasons for decisions to approve an application where restrictions on the category of child who can be adopted have been imposed under s.15(2), if these conditions are more restrictive than the applicant requested.
Recommendation 19  If applicants are given notice that the AAC is considering not approving their application, they should be given the option of appearing in person before the AAC to address the Committee’s concerns and to speak to their written submission.

Recommendation 20  To provide transparency in the performance of its statutory duties, the AAC should report on an annual basis about the:
- number of cases considered;
- number of cases approved or not approved;
- average length of time for decisions;
- number of cases in which further information was requested;
- number of cases approved or not approved after the applicant is given the opportunity to respond to the AAC’s concerns and
- number of applications for review of AAC decisions and outcome of these reviews.

Recommendation 21  Given the importance of the AAC’s decisions to applicants’ lives, the Committee considers that an AAC decision to not approve an application should be subject to external review by the State Administrative Tribunal on matters of procedure and on the merits of the decision.

Chapter 6 - Adoptions & Diverse Family Formations

Recommendation 22  The practice of applicants being permitted to apply for an order in the nature of a declaration that adoption is preferable to a parenting order prior to the determination of the adoption application as a whole should cease.

Recommendation 23  The written information provided to parents considering adoption, pursuant to Schedule I, should be tailored to the specific issues arising in relation to adoption by a step-parent and should include information about the lifelong nature and implications of adoption, including inheritance issues.

Recommendation 24  The exemption for step-parents under section 37(2) should be removed. The Act should require prospective adoptive step-parents to be provided with oral and written information, and counselling if requested, in relation to a proposed adoption by a step-parent. The information provided should be tailored to the particular issues arising in relation to adoption by a step-parent.

Recommendation 25  There should be an operative provision in the Adoption Act 1994 for the CEO to approve placements for the purpose of adoption by a carer. The CEO should be able to approve a placement at any time during the placement period but the placement period must have been at least 5 years before an application may be made to adopt the child.

Chapter 7 - Adoption Plans & Adoption Orders

Recommendation 26  Section 47 of the Adoption Act 1994 should be amended to require the CEO to provide assistance to persons who seek a review of the operation of an adoption plan. The review should be carried out in accordance with any review provisions included in the adoption plan, or as otherwise agreed by the parties to the plan.
Recommendation 27  The principle in s.74(2)(aa) of the Adoption Act 1994 should be amended to provide that the Court should have regard to the principle that the child’s first name should be retained within the child’s name.

Recommendation 28  Matters to be taken into account by the Court when making an order about the child’s name should include:
- any views expressed by the adoptee on the subject;
- the adoptee’s relationship with birth parents and any other persons (including grandparents or other relatives);
- the adoptee’s age, maturity and level of understanding and the weight to be given to the adoptee’s views; and
- the value of and need for cultural continuity for the child.

Recommendation 29  Arrangements be made with the Registrar of Births Deaths and Marriages with a view to ensuring that adoptive parents are not permitted to override an order of the Family Court made pursuant to s.74 of the Adoption Act 1994.

Chapter 8 - Adoption Information and Past Adoptions

Recommendation 30  Affidavits filed with an application for adoption which name a person as the birth parent of an adoptee should be released to persons entitled to identifying information under the Adoption Act 1994. The information and education process associated with a person obtaining access to such records should educate searching persons about possible denial of parenthood and a person’s right to privacy and right not to be harassed.

Recommendation 31  Consideration should be given to allowing siblings to have access to identifying information about an adopted sibling.

Recommendation 32  The Adoption Act 1994 should be amended so that it is no longer an offence for a person to contact another person who has placed a contact veto against that person.

Recommendation 33  Existing contact vetoes should be converted into ‘Statements of objection to contact’ and placed on a register.

Recommendation 34  Persons who have placed an existing contact veto should be offered counselling prior to the repeal of the offence provisions.

Recommendation 35  Searching persons must attend an interview with the Department (or a counsellor approved by the Department for this purpose) where identifying information about a person who has registered a ‘Statement of objection to contact’ is to be released. At the interview, the person should be provided with information about an individual’s right to privacy and the reasons, if known, for the other person’s ‘Statement of objection to contact’. If these reasons are not known, the searching person should be provided with general information about the possible ramifications of contacting a person against their wishes.

Recommendation 36  Persons who wish to provide contact and mediation services relating to adoption in WA must continue to comply with the Adoption Act 1994 and the Code of Practice. However, those who have a tertiary qualification in social work or psychology, and who satisfy other current licensing criteria in Regulation 61, should be approved to practice as a contact and mediation licensee, but should not be required to re-apply for a licence every 5 years.
### Chapter 9 - Adoption as part of the Continuum of Care

**Recommendation 38** In line with Recommendation 59 of the Ford Report, the Committee supports the development of a permanency planning policy for children in the care of the CEO of the Department. This policy should include adoption, consistent with section 50(c) of the Adoption Act 1994, in circumstances where there is no other appropriate alternative for the child.

### Chapter 10 - Administration of the Adoption Act & Other Matters

**Recommendation 39** A review of the Department’s Adoption Services unit complaints management process should be included in the Department’s implementation of recommendation 50 of the Ford Report.

**Recommendation 40** The Department of Child Protection’s Adoption Services unit should remove restrictions on numbers of interested persons who can attend compulsory information sessions provided pursuant to section 57 (1).

**Recommendation 41** Regulation 38 should clearly enable the CEO of the Department to progress expressions of interest to the assessment stage outside chronological order to meet the needs of locally relinquished children.

**Recommendation 42** The Department’s Adoption Services unit should retain supervision of placements under ss 54 and 139 of the Adoption Act 1994. However, consideration should be given to separating placement support services and placement supervision. These support services could either be provided separately by the Department or contracted out.

**Recommendation 43** Terminology in the Adoption Act 1994 should be updated to be consistent with that used in the Children and Community Services Act 2004.
Chapter 2 Background to the Review and Overview of Adoption

2.1 TERMS OF REFERENCE
This Review has been carried out under the terms of reference provided for in section 146 of Adoption Act 1994. This section provides that the Minister must carry out a review of the operation and effectiveness of the Adoption Act 1994 taking into account:

- the implementation and administration of the Act;
- the extent to which members of the public are aware of the effects of the Act;
- the effect of the Act on birth parents, adoptees and prospective adoptive parents and the relatives of parties to adoptions; and
- any other matters as appear to the Minister to be relevant to the operation and effectiveness of the Act.

One issue discussed in Chapter 9 of this Report, which may be considered peripheral to these terms of reference, concerns the options available to provide permanence and stability for children in the care of the CEO of the Department under the Children and Community Services Act 2004. One of these options may be adoption. The Committee considers it appropriate to make some comments about the issue of adoption from care as such adoptions must still occur under the Adoption Act 1994.

2.2 REVIEW COMMITTEE
The Adoption Act Legislative Review Committee was appointed by the Hon. David Templeman, the former Minister for Community Development, in July 2006. The Committee reports directly to the Minister and, in this respect, have conducted the Review of the Act independently of the Department.

The Committee consisted of:

- Hon Louise Pratt MLC (Chairperson)
- Justice Carolyn Martin (Family Court Judge)
- Mercurio Cicchini (Clinical Psychologist)
- Tara Gupta (Director, Legal Services and Legislation, Department for Child Protection)

The Committee’s role was to manage the Review process, receive submissions, report on issues arising from consideration of the terms of reference and make recommendations about those issues to the Minister.

The Committee was supported in its work by Ms Felicity Bunt, Senior Policy and Project Officer.

2.3 REVIEW METHODOLOGY
The Committee chose to inform itself in a variety of ways about the matters to be examined under the terms of reference.

A public submission process took place between 13 October 2006 and 15 December 2006. The Committee placed an advertisement in the government notices section of the West Australian newspaper on Friday, 13 October 2006. The submission process was also publicised through a press release made by the Minister for Community Development resulting in some print media coverage of the Review in metropolitan and regional WA. The Chairperson was interviewed on commercial radio and made a presentation to the South West Adoption Support Group about the review.

The Committee also established a website (hosted by the Department through its website www.community.wa.gov.au) and produced an electronic flyer about the submission process which
was sent to various adoption-related organisations and support groups for distribution to members and publication in newsletters.

The Committee wrote to individuals, interest groups, government departments (WA, interstate and Commonwealth) and other organisations with an interest or involvement in adoptions and invited them to make a submission to the Review.

The Committee received 39 written submissions from:

- 4 adoption-related organisations - Adoption Support for Families and Children (ASFC), Adoption Research and Counselling Service (ARCS), Adoption Jigsaw of WA Inc (Jigsaw), Association Representing Mothers Separated from their children by adoption (ARMS)
- 4 government or statutory bodies – Department for Child Protection’s Adoption Services unit, Adoption Applications Committee (AAC), Law Reform Commission of WA and Equal Opportunity Commission of WA
- 18 adoptive parents or prospective adoptive parents (included both singles and couples)
- 9 persons connected with past adoptions – adoptees who are now adults, relinquishing birth parents, biological and adopted siblings of adoptees
- 2 professionals with an interest in adoptions – Dr Barbara Meddin, Ms Trudy Rosenwald

In addition to reviewing the written submissions, the Committee invited representatives of the adoption-related organisations and the AAC to attend hearings before the Committee, to expand upon their written submissions and respond to questions from the Committee. The Committee also invited representatives of Aboriginal organisations and relevant Departmental officers with particular knowledge or expertise to meet with the Committee and provide feedback about specific issues.

The Committee also sought statistical data from the Department’s Demand Planning, Research and Evaluation directorate and Adoption Services.

Committee members reviewed the legislation, relevant research and background information on topics to be discussed at each Committee meeting.

2.4 Deliberations

The Committee was established in July 2006 and held its first Committee meeting at the start of August 2006. A further 26 Committee meetings were held to receive briefings on particular topics, consider the submissions, conduct hearings and deliberate on the issues. Each Committee member reviewed the submissions received and considered other evidence presented to the Committee prior to the commencement of deliberations. The few issues where the Committee was unable to reach a consensus have been noted in the Report.

2.5 Future Reviews

The Adoption Act 1994 has now been reviewed on two occasions. Many of the major policy directions in adoption in this state have not changed since the trend towards open adoption, which began in the 1980’s, continued with significant reforms introduced under the Adoption Act 1994. This trend has been extended further under the current government following the most recent amendments to the Act in 2003.

Western Australia has already implemented major reforms relating to the strengthening of consent requirements, the introduction of adoption plans to foster an ongoing connection between an adoptee and the birth family, broadening the scope of persons who can apply to adopt (eg single persons, same sex couples) and removing many of the barriers preventing parties to past adoptions from finding out about the circumstances of the adoption. The reforms allow parties to explore the possibility of reunification within a regulated mediation framework.
The Committee has concluded, having now thoroughly reviewed the Act, that there are unlikely to be any further significant issues arising which would require a full statutory review within three years of the next amendments to the Act. The Committee therefore recommends that the period before the next statutory review be increased to 5 years following the next set of amendments to the Act.

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 1** Future statutory reviews of the Adoption Act 1994 should be carried out every 5 years following the next Amendment Act. The Minister should have the power to call for a review to occur sooner if he or she considers it is required.

2.6 **ADOPTION AS A SERVICE FOR CHILDREN IN NEED OF A FAMILY**

The Act specifies that the paramount considerations which must be taken into account in the administration of the Act are:

- the welfare and best interests of a child who is an adoptee or prospective adoptee;
- the principle that adoption is a service for a child who is an adoptee or a prospective adoptee; and
- the adoption of a child should only occur in circumstances where there is no other appropriate alternative for that child. (s.3(1)).

Further to this, the Act acknowledges that adoption is not part of Aboriginal or Torres Strait Islander culture and therefore the adoption of a child from these cultures should only occur where there is no other appropriate alternative for the child (s.3(2)).

The general principles were amended by the *Adoption Amendment Act (No.2) 2003* to strengthen the focus of the Act on adoption as a service to the child and acknowledge traditions for care of children from Aboriginal or Torres Strait Islander cultures. As was acknowledged in the Explanatory Memorandum to these amendments, there are 3 key parties to an adoption whose needs may differ and conflict – the child to be adopted, the adoptive parent/s and the biological parents. It is appropriate that the general principles give precedence to the interests of adoptees and provide focus for the delivery of services under the Act as the voice of the child is not always present in adoption in the early stages. Many children are adopted when they are very young and are unable to participate in decision-making about their future. In contrast, many of the adults involved have a strong voice and presence in the process and can advocate and create a profile for their interests in the public arena. Conflict in service delivery can also arise, particularly where the focus of some adoptive parents is to use adoption to create or extend their family where they are otherwise unable to do so and the focus of the Department, AAC and the Family Court in administering the Act is to uphold the child’s welfare and best interests in the long-term. This may lead to dissatisfaction with the length of time involved and the invasive nature of aspects of the process, such as the supervision of pre-adoptive placements.

There are also challenges in ensuring that the general principles are effectively implemented despite the complex issues which often arise for the birth parents when considering the relinquishment of their child for adoption. There is a delicate balancing act to be achieved in respecting the birth parent’s rights, engaging both parents in considering the child’s future, encouraging them to explore appropriate alternatives to adoption and providing the child with a stable, loving and secure placement (wherever that may be) in a timely fashion to ensure the child has the opportunity to form secure attachments early in life.

2.7 **OVERVIEW OF BODIES INVOLVED IN ADMINISTRATION OF ACT**

The Chief Executive Officer (CEO) of the Department for Child Protection is responsible for the provision of adoption services and may delegate functions to officers of the Department or other persons whom the CEO thinks are suitable (s.6(1)).

- 11 -
The term “adoption services” refers to the following functions:

- making arrangements for, or with a view to, the adoption of a child;
- conducting negotiations for, or with a view to, the adoption of a child;
- arranging or participating in a change of a child’s place of residence with a view to the adoption of a child; and
- assisting in the preparation or mediation of an adoption plan or a variation of an adoption plan. (s.4, s8 (1)).

The Act provides for the Minister to grant a licence to an organisation to provide adoption services, although this provision has not been used since the 2003 amendments (s.9).

Other decision-makers or service providers under the Act, in addition to the Department, include the Minister, Family Court of Western Australia, State Administrative Tribunal, Adoption Applications Committee (AAC) and contact and mediation licensees appointed under Part 4, Division 5.

Where a child is relinquished for adoption in WA, the following may be involved:

- Department for Child Protection – usually the Adoption Services unit (based in East Perth), but country offices are often involved in regional relinquishments;
- ARCS or other independent counsellors – to provide counselling to birth parents, where requested, under Schedule 1;
- Child representatives – to represent a child who is a birth parent and considering relinquishing the child, the child in the negotiation of the adoption plan, a child with a disability or where the CEO otherwise considers it appropriate;
- Yorganop Child Care Aboriginal Corporation – the agency consulted in relation to the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander, as required under s.16A of the Act; and
- Family Court of Western Australia – has jurisdiction in relation to all applications for orders under the Act, including applications to dispense with consent, determine parentage, grant or discharge an adoption order.

When a child is relinquished overseas, to be adopted by a WA resident, the relinquishment process is carried out under the laws of the sending country. An adoption agency in the sending country is responsible for matching the child with approved WA applicants whose files have been sent to them.

The main service providers or institutions with which a prospective adoptive parent interacts are the Adoption Services unit of the Department, information seminar providers such as ARCS and ASFC, contracted assessors, the AAC and the Family Court of Western Australia. There will be close contact between Adoption Services and the applicants during the application, assessment, allocation and post-placement supervisions stages of the adoption process.

At the post-adoption order stage, Adoption Services provides a “message box” service for parties to an adoption plan who want to use it for the exchange of information. Adoption Services also provides support and mediation in disputes relating to adoption plans and for the variation of an adoption plan.

For parties to a past adoption, the Past Adoptions team within the Adoption Services unit provides identifying and non-identifying information about the other parties and circumstances of the adoption, where permitted under the Act and counselling upon release of information, where required. They also offer the “message box” service to parties to past adoptions. Messages can be left in case another party is seeking reunification. Adoption Services also refers searching persons

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1 An overseas country which has an agreement with Australia to send children to Australia for adoption.
to organisations such as Jigsaw and ARCS, who employ persons licensed to conduct contact and mediation services under the Act.
Chapter 3 The Relinquishment and Matching Process

Relinquishment is the first formal step in the adoption process. The Adoption Act 1994 relates to the relinquishment of children born in Western Australia. Children adopted from overseas are relinquished for adoption under the laws of that country. This chapter relates primarily to processes involved in “unknown” adoptions, where the child is to be adopted by unrelated and previously unknown persons. This is typical for inter-country adoption and a small number of local adoptions. The other types of adoptions, “known” adoptions, involve a child being adopted by a person with whom the child already has an established relationship and is already providing day to day care for the child, such as adoption by a step-parent or carer. Adult adoptions are also considered to be known adoptions because they are only permitted by persons who were either a step-parent or carer of a child immediately before the child turned 18. Particular issues relating to the relinquishment process for known adoptions are discussed in Chapter 6 of this report.

3.1 Outline of Relinquishment Process

In Western Australia, the birth parents of the child being relinquished are first provided with information, and if requested, counselling about their decision to relinquish the child (s.16). Following this, the parents must give formal, written consent to the proposed adoption. Both parents, if known, must consent to the adoption (s.17). Once adequate consents have been obtained (or dispensed with by the Court in certain circumstances), there is a mandatory “cooling off” period of 28 days (revocation period), to allow the parents to reflect upon their decision (s.22). At the end of this period, the child is placed in pre-adoptive foster care and is now legally under the guardianship of the CEO of the Department (s.27 (5)). The birth parents then begin to consider the characteristics and qualities of the adoptive parents with whom they would like their child placed (s.45).

Adoption Services reviews the range of persons who have been approved as suitable adoptive parents, and who have indicated an interest in adopting a locally-born child, to identify those who most closely match the parent/s’ preferences. Once the birth parent/s select adoptive parent/s from those identified, Adoption Services works with both sets of parent/s to develop an adoption plan for the child (s.46).

The adoption plan is a document which sets out the intentions of the birth parents and adoptive parents in order to share information about the child and it governs contact between the parties over the child’s lifetime. Once the plan is agreed upon, preparations are made for the placement of the child with the prospective adoptive parents (s.48). There is a minimum 6 month supervision period following placement of the child with the prospective adoptive parent before the adoption can be finalised by the granting an adoption order by the Family Court (s.56).

As outlined above, the relinquishment process is lengthy with many stages requiring the formal involvement of a number of persons. There are a number of points in the process where lengthy delays may occur, as various persons are notified or consulted about the proposed adoption.

The law in this area is complicated by the need to achieve a balance between the rights of relinquishing parents and the best interests of the child. Research indicates that the inability of a child to form secure attachments early in life has lifelong effects. Insecure children tend to have difficulties in making friends and are at greater risk of being aggressive, depressive and antisocial. Insecure adults are more likely to suffer from mental illness, separate and divorce and, as parents, to act in a frightening, rejecting or abandoning manner. From this perspective, the best interests of the child are served by ensuring that the number of placements and length of time spent in pre-adoptive foster care are kept to a minimum. However, the best interests of the child are also served by ensuring that possibilities for the child, other than adoption, are also fully explored. To do this, birth parents need to establish a relationship of trust in working with the Department and may also need to work towards resolving complex family issues before deciding whether to continue moving towards adoption. The general principles of the Act acknowledge that adoption should be explored

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2 Cassidy & Shaver, 1999
3 Cassidy & Shaver, 1999 cited in James 2003, p.143
as a “last option” for a child, where there is no other appropriate alternative (s.3). If adoption is pursued, it is in the child’s best interests to closely match the birth family’s preferences for adoptive parents and an adoption plan. Each of these factors can extend the time the process takes.

The Act and bodies involved in administering the relinquishment and matching process must also respect the right of both birth parents to be involved in making decisions about their child. Care must be taken to ensure that mistakes of the past are not repeated whereby some birth parents were not given adequate information or independent counselling about alternatives to adoption or sufficient opportunity to reflect upon their decision to relinquish their child for adoption.

Significant changes have occurred in adoption laws and practices over the years and efforts have been made to reduce the trauma, shame and inhumane practices associated with relinquishment processes in the past, where mothers were advised not to view or hold their baby so as not to allow emotional responses to cloud their pre-birth decision to place the child for adoption.\(^4\) Research indicates that women who relinquished a first child for adoption when they were young and single experience negative and long-lasting effects as a result of the relinquishment.\(^5\) Change for the better in this area is acknowledged by the Association Representing Mothers Separated from their Children by Adoption Inc (ARMS), which is one of the key support groups for women who have relinquished a child for adoption. The membership is committed to ensuring that no child is unnecessarily “taken” from their mother for adoption, especially under circumstances of duress or where consent has been obtained in a suspicious manner.\(^6\)

In its submission, ARMS notes that the Department takes considerable care to ensure that young, possibly confused, pregnant women and, where possible, their extended family, are made aware of the ramifications of the drastic step of adoption. ARMS is satisfied that the guidelines for adoption set out in the Act are being followed and that the focus is now upon the child’s long-term welfare. ARMS considers the Act is at present being properly administered with regard to local children.

However, tension still exists under modern adoption laws between respecting the wishes of birth parents (in particular, the birth mother in the context of relinquishment) and acting in the best interests of the child. Adoption Services notes in its submission that the Department has an overriding duty under s.127 of the Act to respect a birth mother’s desire for confidentiality surrounding a proposed adoption, but that this confidentiality provision can prevent it from accessing important information that may assist the child later in life. Sometimes it prevents the Department from accessing information about a child’s birth family which may assist staff in making decisions about the child. There is a complex balance to be achieved between the birth mother’s wishes and the best interests of the child. This is particularly so when a parent is considering relinquishing an Aboriginal or Torres Strait Islander child for adoption. This issue is examined in section 4.4.5.

3.2 INFORMATION & COUNSELLING FOR RELINQUISHING PARENTS

CURRENT LAW
The CEO must provide a birth parent who is considering relinquishing a child for adoption with oral and written information about:

- alternatives to adoption;
- community supports available whether or not the child is relinquished for adoption;
- social implications of adoption for the parties to an adoption;
- legal process of adoption; and
- rights and responsibilities of the parties to an adoption, including access to information about, or contact with, the other parties to the adoption (s16(1)(a), s.18 and clause 1(a), Schedule 1).

\(^4\) Department for Community Services Issues Paper 1989, p.15
\(^5\) Winkler & van Keppel, 1984.
\(^6\) ARMS submission
If requested, the CEO must also:

- provide counselling services;
- assist the birth parents to make arrangements for the child’s care;
- before the revocation period expires, provide the birth parent with appropriate opportunities for access to the child;
- assist in arrangements to obtain information likely to be relevant to the child’s medical needs; and
- give the parent/s opportunity to provide information relevant to child’s placement and adoption (s.16 (1)).

If a birth parent requests these services or information, the CEO (acting through the Department) must start to provide them within 7 days of the request (s.16 (2)).

Adoptions involving an Aboriginal or Torres Strait Islander child

If the child to be relinquished is an Aboriginal person or a Torres Strait Islander a departmental officer who is an Aboriginal person or Torres Strait Islander must be involved at all relevant times to assist in the adoption process (s.16A(1)). In addition to this, the CEO must consult an Aboriginal or Torres Strait Islander Agency (currently Yorgaun Child Care Aboriginal Corporation) about the prospective adoption of that child (s.16A(2)). Issues surrounding the relinquishment and placement of Aboriginal and Torres Strait Islander children are discussed in section 4.4.5

SUBMISSIONS RECEIVED

ARCS submitted that, before a relinquishing parent signs consent to an adoption, there is a need for an early clinical programme to make assessment and provide strategies to promote attachment, with a view to the goal of eventual reunification. In a hearing before the Committee, representatives from ARCS expanded upon this, based upon their professional knowledge and experience of working in this area. They consider that relinquishing parents are often not emotionally processing the issues surrounding the adoption at the time and suffer grief and emotional pain afterwards which impacts upon their ability to relate to others, including their partner and children. They also noted the complex psychological issues involved with adoption following a concealed pregnancy. They consider that the implementation of a therapeutic programme while the child was in pre-adoptive foster care, to fully explore the development of some attachment between the parent and child, would be a good investment for future contact in the adoption and can also provide the parent with a “real” experience of the child to grieve about in the future.

Adoption Services is concerned about the amount of resources currently devoted to providing “Schedule 1” information and counselling in relation to known child adoptions. Section 16(2) of the Act requires the CEO to commence providing this information and counselling to the relinquishing parents within 7 days of the request. Adoption Services considers that in “known” child adoptions, there is no urgency to provide these services, as the child is already being cared for in his or her own home. It was argued that priority should be given to providing services to children in pre-adoptive foster care and that different timeframes should exist for information and counselling to be provided in cases of “known” and “unknown” adoptions. For “known” adoptions, it was considered that this timeframe could be “as soon as practicable”, or something similar.

ADDITIONAL INFORMATION

Some indication of the demand for the provision of compulsory Schedule 1 information in relation to known child adoptions and local unknown child adoptions over the last 5 years can be seen from the number of local adoption orders granted, as set out in the following table. During this time, the vast majority of local adoption orders granted related to known child adoptions.
### Table 3.1: Known and Unknown adoption orders granted 2001-2006

<table>
<thead>
<tr>
<th>Type of Adoption</th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2004-05</th>
<th>2005-06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local unknown</td>
<td>13 (26%)</td>
<td>6 (11.5%)</td>
<td>3 (20%)</td>
<td>4 (20%)</td>
<td>9 (34.6%)</td>
</tr>
<tr>
<td>Local known (total)</td>
<td>37 (74%)</td>
<td>46 (88.5%)</td>
<td>12 (80%)</td>
<td>16 (80%)</td>
<td>17 (65.4%)</td>
</tr>
<tr>
<td>Step-parent</td>
<td>26</td>
<td>28</td>
<td>2</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Carer</td>
<td>3</td>
<td>5</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Adult</td>
<td>8</td>
<td>13</td>
<td>8</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Total Local</td>
<td>50 (100%)</td>
<td>52 (100%)</td>
<td>15 (100%)</td>
<td>20 (100%)</td>
<td>26 (100%)</td>
</tr>
</tbody>
</table>

Source: DCD Annual Report 2005-06

These figures cannot provide a complete indication of demand. They are likely to underestimate the number of services provided given that relinquishment services were also provided to persons who did not proceed with the adoption. For example, in 2002-03 a relinquishment service was provided in relation to 11 local children whose parents were considering adoption and, if proceeded with, would have been counted as unknown adoptions. Only 3 of these children were ultimately placed for adoption, with 8 returning to the care of the birth family. ⚫

### COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

**Information requirements**

The timeframe for the Department to provide compulsory Schedule 1 information to those involved in “known” adoptions (i.e. step-parent, carer and adult adoptions) and “unknown” adoptions is the same – within 7 days of request. The Committee agrees with the Adoption Services’ submission that the 7-day period, set out in s.16 (2), is too short for known child adoptions. In such cases, the child is already in a stable family placement and there is not the imperative to proceed as quickly with the relinquishment process. With unknown child adoptions, the child does not yet have a stable placement and there is merit in retaining short timeframes to ensure the child has the best opportunity for early attachment to its future permanent carers.

**Counselling requirements**

Although counselling for relinquishing parents is important in the initial stages of relinquishment to assist birth parents to determine whether they have the capacity, or can develop the capacity, to parent the child, counselling can never be forced upon a person. The Committee considers that counselling for relinquishing parents should be promoted, but should remain optional. There is also a fine balance to be achieved in the exploration of options with the relinquishing parents and the timely placement of the child for adoption. Children are already developing attachments within the first 3 months of life. A child’s future well-being can be jeopardised by making significant changes during this process. Therefore, as a matter of practice, if the birth parents are not responding to assistance and counselling within the first few months of this child’s life, the primary focus of the adoption services provided following this period needs to shift to securing a stable placement for the child.

### COMMITTEE’S RECOMMENDATIONS

**Recommendation 2** The timeframe for commencement of the CEO’s provision of compulsory information to persons involved in step-parent, adult and carer adoptions under s.16(1)(a) should be increased from “within 7 days of the request” to “within 28 days of the request”.

### 3.3 PEOPLE WHO MUST CONSENT TO THE ADOPTION

**CURRENT LAW**

Each birth parent and guardian of the child to be adopted must provide effective consent to the adoption, unless the Court dispenses with this requirement. The child to be adopted must also provide effective consent where the child is, or will be, aged 12 years or more at the time the adoption application is lodged with the Court (s.17(1)). A person’s consent is not effective unless it

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*Statistics provided by Adoption Services for period 2000-2005, as at April 2006*
is provided in accordance with section 18. This section provides for, amongst other things, mandatory waiting periods before consent can be given of at least 28 days after the child is born and at least 28 days after Schedule 1 information and counselling is provided. Other formal requirements for effective consent are that it must be:

- in writing, in the approved form and witnessed in the manner set out in clause 2, Schedule 1;
- provided by a person who was physically and mentally capable of giving consent on the day they signed the consent; and
- delivered to the CEO (or in the case of a step-parent adoption, to the prospective adoptive parent). (s.18(1))

Where the birth parent relinquishing the child is less than 18 years of age (i.e. the birth parent is still a child), a parent or guardian of the birth parent must also agree with the proposed adoption. If the birth parent’s relationship with his or her parent or guardian has broken down, the CEO must agree with the proposed adoption. (s.18 (7))

3.3.1 Notifying the Birth Father of the Proposed Adoption

The Adoption Act 1994 recognises the rights of both parents to be involved in decisions about their child. In affording rights to birth fathers where an adoption is proposed, the Act also ensures that the child’s best interests are served by requiring the father’s consideration of the impact of adoption on the child and his potential future involvement with the child. As the law currently stands, the CEO must notify the following persons of the proposed adoption within 7 days after receiving the first completed consent to the child’s adoption:

- any man who might be presumed to be the birth father of the child under s.188 or 189 of the Family Court Act 1997 \(^8\);
- any man named as the birth father of the child;
- any man who claims to be the birth father of the child; or
- any person who has been named or who has claimed to be a child’s parent under s.6A of the Artificial Conception Act 1985 \(^9\).

The CEO must inform this person that if, before the proposed adoption proceeds, he/ she wants to apply for a parenting order or a determination of the child’s parentage, he / she must do this within 21 days of receiving notice of the proposed adoption (although the Court may extend this time period) (s21, s.26(3), s.26D(1)(a)). Where a person chooses to pursue a parenting order, the Court must act expeditiously in determining the application (s.26 (1) (b)).

Notification of the birth father is not required if the child’s conception was the result of an offence committed by him or where the birth father is a lineal relative of mother (s.21 (3) and (4)).

The 7-day time period in which the CEO must provide notice can be extended by the Court (s.25 (3)). An application may also be made to the Court to dispense with the requirement to serve notice on a birth father and the Court may do this where there are exceptional circumstances (s.25 (2)).

Submissions Received

A number of submissions expressed concern over the length of time which a child relinquished for adoption may spend in pre-adoptive foster care awaiting resolution of some aspects of the relinquishment process, such as obtaining the birth father’s consent. Jigsaw’s submission asserts that lengthy pre-adoptive foster care placements were not the intention of previous law makers and that it was intended that all babies be placed by 3 months. Jigsaw recommends that the Committee investigate the reasons for delays in placement and consider whether anything can be done to ensure that if a placement is going to occur, the child is placed within 3 months of birth.

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\(^8\) These sections provide for presumptions of paternity in circumstances such as where a child is born to a woman who is married or within a specified period after a woman has been living with a man.

\(^9\) This section provides for parentage where same sex couples have a child via artificial fertilisation procedures.
Adoption Services is concerned that provisions dealing with birth parent consent, particularly for the father, appear to be more adult-focussed than child-focussed. The submission acknowledges that it is necessary for both birth parents to have fair and informed rights to consent to adoption or other care options for the child. However, it is considered that the contact, engagement and decision phases with the birth father can lead to undesirably long periods of time during which the child is in foster care awaiting final consent. The submission states a lack of time limits in the Act for gaining consent, which means that this process can take months or years. Adoption Services reports that since 1995:

- Out of the 85 locally-born adoptions, 52 cases (61%) had dispensation of birth father consent.
- The average time in foster care was 7 months, and the maximum time was 22 months. (Adoption Services believes this will increase as, at the time of the submission, children over 2 years old were in pre-adoptive foster care).
- 16% of children were in the adoption process for longer than 12 months.

Adoption Services submits that lengthy periods in foster care are not in the best interest of the child and that research indicates the importance of encouraging early and secure attachments to the new family. Adoption Services is concerned that, in such cases, the rights of adults seem to be given priority over the needs of the child to be adopted. It is suggested that the Committee consider amending the consent provisions to ensure consents are given more quickly, and if this is not possible, that applications for dispensation of consent should occur promptly.

**ADDITIONAL INFORMATION**

Adoption Services reports that the factors which may affect the length of time a child spends in pre-adoptive foster care are the level of engagement of birth parents, whether this occurs together or separately, the need for sensitivity to cultural and ethnicity issues, whether the child is relinquished in a metropolitan or regional area and whether there are other legal processes taking place (e.g. paternity testing). Since the *Adoption Act 1994* came into effect on 1 January 1995 and up until 20 November 2006, 130 children were placed in a relinquishment service. Of these:

- 33 children (25%) returned to live with the birth family;
- 85 children (65%) became available for adoption;
- 6 children (5%) were still in pre-adoptive foster care; and
- 6 children (5%) were either placed in the care of the CEO of the Department, were placed for adoption by carers and 1 child died due to medical reasons.

The following table compares the length of time these children spent in foster care before resolution of their care arrangements.

**Table 3.2: Children in relinquishment process 1 Jan 1995 – 20 Nov 2006**

<table>
<thead>
<tr>
<th>Outcome</th>
<th>No. of children(a)</th>
<th>Average time in foster care</th>
<th>Median time in foster care</th>
<th>Max. period in foster care</th>
<th>Child in process for more than 12 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child adopted</td>
<td>85</td>
<td>7 months</td>
<td>6 months</td>
<td>22 months</td>
<td>14 (16% of 85)</td>
</tr>
<tr>
<td>Child returned to family or other non-adoptive care arrangement</td>
<td>39</td>
<td>7.5 months</td>
<td>6 months</td>
<td>25 months</td>
<td>8 (21% of 39)</td>
</tr>
</tbody>
</table>

Source: DCP Adoption Services

(a) – Does not include 6 children still in pre-adoptive foster care.

**3.3.2 REVOCATION OF CONSENT**

The Act recognises the significance of the decision that parents are making when they relinquish a child for adoption. As a safeguard to ensure a child is given every opportunity to remain with the birth parents, the Act allows a birth parent to revoke their consent to the adoption within 28 days.

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10 Information provided by Adoption Services for period 2000-2005, as at April 2006
of all required consents being delivered to the CEO. (s.22) This revocation period is extended where the birth father has made an application for a parenting order or for determination of child’s parentage. In such cases, the revocation of consent is permitted within 14 days of the final court order on the matter. (s.22 (3))

Where a person wishes to revoke their consent, they must do so in writing, in the authorised form and witnessed in accordance with clause 2, Schedule 1. The notice of revocation must be received by the CEO before the revocation period expires (s.23 (1)).

Birth parents can only move onto selecting prospective adoptive parents for their child after formal consent has been signed. The CEO must provide the parent/s with this opportunity within 14 days after the revocation period expires (s.45).

**SUBMISSIONS RECEIVED**

ARCS submits that birth parents should not begin the selection of prospective adoptive parents immediately after providing consent (i.e. during the revocation period) as it considers that this is counter to the general principle in s.3(1)(c) of the Act. This principle states that adoption should only occur in circumstances where there is no appropriate alternative for the child. ARCS submits that the revocation period should be a time for the birth parents to consider their own emotional and psychological needs, those of the child, the relationship between them and how the child can retain its identity within the biological family. ARCS considers that it is in the best interests of the child that every opportunity is taken to develop a relationship between mother and child and to find a family placement for the child. It is important that this occurs before the parents move psychologically and emotionally to the consideration and selection of prospective adoptive parents.

ARCS suggests that the time period for relinquishing parents to express their wishes about the preferred attributes of prospective adoptive parents for their child should be not less than 18 days after the signing of consent.

**3.3.3 DISPENSING WITH THE REQUIREMENT FOR A PERSON’S CONSENT**

In order to proceed with the adoption in a timely manner, the birth parents’ rights to be involved in the decision to relinquish their child for adoption must be balanced against the best interests of the child. In some circumstances, this must be done without consent from one or both birth parents. To this end, the Act allows the CEO, a prospective adoptive parent or a person acting on behalf of the child to apply for an order dispensing with the requirement under s.17(1) for a person’s consent. The Court may dispense with the requirement for a person’s consent where it is satisfied that:

- the person cannot be found or contacted and reasonable enquiries have been made to do this;
- steps have been taken to try to establish a parent-child relationship between the person and child during the 12 months leading up to the application, but the person has either failed to establish or maintain an acceptable relationship with the child, or has seriously ill-treated or persistently neglected the child;
- the child is at least 16 years old and consents to being adopted by either a step-parent or carer;
- the person is not capable of giving effective consent due to his or her mental condition, and is unlikely to be capable of doing so within the time required for the adoption proceedings;
- the child’s conception resulted from an offence committed by the birth father (where applying to dispense with the birth father’s consent);
- the birth father is a lineal relative of the child’s mother (where applying to dispense with the birth father’s consent);
- the person is a birth parent who does not have responsibility for the day-to-day care of the child, does not have a parent-child relationship with the child and is unreasonably withholding consent to the child’s adoption (this does not apply where the adoption is by a step-parent); or
there are special circumstances which make it proper to dispense with the requirement for the person’s consent. (s.24)

**SUBMISSIONS RECEIVED**

ARCS submitted that at least 2 years may be required in which to build capacity in a family and to assist a child to develop a sense of identity and emotional attachments to the family. This is considered critical, given the lifelong implications of adoption for the child’s sense of identity. For this reason, ARCS suggest that the grounds for dispensation under section 24(2)(b) be increased to not less than 2 years. Dispensation of the requirement for consent only occurs under this provision when the Court is satisfied that steps have been taken to try and establish a parent-child relationship between the person and child during the 12 months leading up to the application, but the person has either failed to establish or maintain an acceptable relationship with the child, or has seriously ill-treated or persistently neglected the child.

Adoption Services recommends the consent provisions be amended so that consents could be given more quickly, and if this is not possible, that applications for dispensation of consent should occur promptly.

**ADDITIONAL INFORMATION**

Adoption Services reports that of the 85 locally-born children adopted between 1 January 1995 and 20 November 2006, the birth father’s consent was dispensed with in 52 cases. In 1 case the consent of both the birth mother and birth father was dispensed with. That is, the birth father’s consent was obtained in 39% of local unknown adoptions during this time. In 32 (61.5%) of the 52 cases where the birth father’s consent was dispensed with, the birth father was recorded as unknown in the court documents. In 8 of the 20 cases where the birth father was named but his consent was dispensed with, attempts had been made to notify the birth father about the proposed adoption. The Court dispensed with the fathers’ consents in these cases for reasons including a lack of response to the notification or a lack of engagement. For these 8 cases, the median relinquishment process time was 11 months due to the time required to attempt to engage the birth father. Where both birth parents signed consent, the median time in the relinquishment process was 5 months.\(^{11}\)

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS (SECTIONS 3.3.1 - 3.3.3)**

The court dispenses with consent of one party (usually the birth father) in local unknown adoptions in a large number of cases. Since 1995, the birth father’s consent was dispensed with in 61% of local adoptions. During the same period, the average time children spent in pre-adoptive foster care was 7 months, with a maximum time of 22 months. Extended periods of time in pre-adoptive foster care are concerning as they can hinder the child’s ability to form secure attachments to the adoptive family.

Adoption Services has expressed concern about the manner in which the process of obtaining a birth father’s consent is extending the period of time a child is spending in pre-adoptive foster care. However, delays in the relinquishment process also result from dealing with increasingly complex cases involving concealed pregnancies or with drug and lifestyle issues. In cases involving a concealed pregnancy, it can take months to assist a mother to attach to the child and to determine whether the parents are going to care for the child. This protracts the length of time the child is in care.

Adoption Services has reported that delays also occur when a child is relinquished in a regional area (which is the case in approximately 50% of current local relinquishments). The Adoption Services unit is based in Perth and reports a lack of resources to attend in person in order to manage all regional relinquishment processes. Regional Departmental offices find it difficult to prioritise adoption work, such as pursuing a birth father for consent, ahead of urgent child protection cases.

The Committee suggests that one possible solution could be for Adoption Services to seek dispensation of a person’s consent much earlier in the relinquishment process, provided that one of

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\(^{11}\) Statistics provided by Adoption Services on 22 January 2007
the reasons listed under s.24 can be established. The person whose consent is involved may defend
the application and provide the Court with legitimate reasons why consent should be obtained.

The converse risk is that if the process is rushed, long-term damage and distress could be caused to
the birth parent, and opportunities to place the child within its family may not be fully explored.
Adoption Services and ARCS warn against applying too early to dispense with a person’s consent as
it is in the child’s best interests to maintain a possible future connection between parties to the
adoption. When providing relinquishment services, Adoption Services is involved in a delicate
balancing act to engage the birth parents and obtain as much information as possible for the future
benefit of the child (including exploring alternatives to adoption) and to ensure that, where
adoption is the likely outcome, the process is completed as soon as possible.

Even if dispensation of the birth father’s consent is granted, Adoption Services tries to provide as
much information about the birth father to the child’s future adoptive parents. Adoptive parents
may seek further information from the birth father after adoption is finalised and as the child
grows up. Birth parents often agree to pass on information about siblings. The Department talks
with relinquishing parents about the importance for children to remain connected with their
biological heritage.

The Committee recommends that, given the delicate issues to be balanced during the
relinquishment process, the Act should continue to provide flexibility in order to maximise the
opportunities for preservation of the child’s family connections. It is therefore considered
inappropriate to insert further legislative restrictions on the consent process. However, some cases
may be assisted by changes in the practice of Adoption Services to pursue dispensation of consent
earlier in the adoptions process.

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 3** Adoption Services should consider, as a matter of practice, commencing an application to
dispense with a person’s consent if consent is not received within 2 months of notification of the proposed adoption.

**3.3.4 NOTIFICATION OF OTHER RELATIVES WHERE BIRTH PARENT IS DECEASED OR CANNOT BE FOUND**

**CURRENT LAW**

Where a birth parent is deceased, or where the requirement for a birth parent’s consent has been
dispensed with because the person cannot be found or contacted, other relatives of the child must
be notified about the proposed adoption. Section 59 provides a list of relatives to be contacted in
order of priority, starting with the person’s birth parents, followed by his/her brother or sister and
then uncles or aunts. A relative may apply to the Court for permission to intervene in the adoption
proceedings in relation to that child (s.63).

**SUBMISSIONS RECEIVED**

A Departmental officer was concerned that s.59 only requires the Department to notify one other
relative of the proposed adoption and that the list of relatives provided under s.59 is too narrow.
It was suggested that the list be extended to require all birth parents of the deceased relinquishing
parent to be notified about the proposed adoption.

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

The Committee considers that the current order of notification needs to be re-examined as it has
operated quite arbitrarily in practice. For example:

- the relatives specified in s.59(2) may not have been close to, or in contact with, the birth
  parent and may therefore be unsuitable persons to notify; and

- attempts to track down those relatives who are required to be contacted as a matter of
  priority may increase delays in the child’s adoption.
COMMITTEE’S RECOMMENDATIONS

**Recommendation 4**  
Section 59 should be amended to require notification of as many relatives listed under s.59(2) as is reasonably practicable about the proposal to file an application for adoption.

### 3.3.5  CONFIDENTIALITY IN THE RELINQUISHMENT PROCESS

#### CURRENT LAW

Under s.127 of the Act, information in relation to many aspects of the adoption process regarding a specific case must not be communicated to others. This includes information about a proposed adoption and the parties to a proposed adoption. A breach of this provision may attract a fine of up to $10 000 and 12 months imprisonment.

#### SUBMISSIONS RECEIVED

ARCS is concerned that the birth parent’s rights to confidentiality should not override the rights of the child in the exploration of opportunities for the child to be placed within family. It considers that this approach would be in line with the general principle in s.3(1) of the *Adoption Act 1994* that adoption should be seen as the last option for a child in the continuum of placement decision-making. ARCS acknowledges that adoption can be an early placement goal where it is not possible to fully facilitate the parent’s capacity to care for the child in the long term or a family placement.

Adoption Services reports that it respects the wishes of birth parents in relation to a proposed adoption. However, it is noted that there is often a complex balance between a birth parent’s wishes and the welfare and best interests of the child. These wishes may prevent Adoption Services staff members from accessing information which may be of benefit in decision-making about the child or in the child’s future.

#### COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

The Committee is concerned about the impact of a birth parent’s rights to confidentiality during the relinquishment process on the child’s best interests. For example, the information which Adoption Services can collect for the child about the child’s origins can be limited in situations where a birth mother chooses to keep the identity of the birth father secret or instructs the Adoption Services not to contact her birth relatives. This also limits Adoption Services’ exploration of possibilities for the child’s placement with, or future connection to, its extended family. This right to privacy can override the fundamental principle of the Act that adoption should only occur in circumstances where there is no other appropriate alternative for the child.

The Committee acknowledges that in some cases, a birth mother may have compelling reasons to insist on confidentiality where the mother or child’s safety could be put at risk by other relatives having knowledge of the child’s birth.

The preservation of confidentiality in the adoption process sits uncomfortably with reforms in other areas of family law, which provide greater rights to extended family to be informed of events, and involved in decision-making, affecting a child.

However, given that the child to be adopted is in no immediate danger at the relinquishment stage and has the right to access information about their birth family, it is hard to justify the State intervening to override a birth parent’s wishes and desire for privacy.

The Committee also notes the link between these relinquishment issues and issues which arise in past adoptions in relation to sibling and grandparent rights to information and contact. Under other provisions of the Act, such as those dealing with access to information, the connection with extended family is recognised. This is in contrast to the priority given to the birth parents wishes at the point of relinquishment.

Although the Committee is not currently proposing to recommend changes to s.127, it considers that this issue should be revisited in future reviews to ensure that adoption laws, where appropriate, reflect the trend towards increased involvement of extended family in decision-making about a child’s future.
3.3.6 SELECTION OF PROSPECTIVE ADOPTIVE PARENTS

CURRENT LAW

Once a birth parent signs a formal consent to the child’s adoption, Adoption Services can begin to explore that parent’s preferences for a prospective adoptive family and the child’s upbringing. Adoption Services provides the birth parent/s with a selection of profiles of registered prospective adoptive parents to match, as closely as possible, the parent’s wishes (s.45).

To ensure that there is a sufficient pool of approved and registered persons from which birth parents can choose prospective adoptive parents, the regulations provide flexibility for the CEO to select the order in which applications can proceed to assessment, taking into account:

- the number and requirements of children who may reasonably be expected to become available for adoption;
- the number and attributes of prospective adoptive parents who are already on the register; and
- any other relevant matter (reg.38(2)).

However, the general principle is that applicants will be considered in chronological order according to when they lodged an expression of interest unless:

- the CEO is trying to meet the wishes of a birth parent and selecting prospective adoptive parents who have attributes consistent with those wishes; or
- the applicant has expressed an interest in adopting children who are siblings, a child with a disability, a child who is more than 12 months old or an overseas child (reg.38(3)(b)).

As outlined in section 7.1, once a match occurs, relinquishing parents must attempt to negotiate an adoption plan with the prospective adoptive parents who they have selected. This must occur within 21 days after negotiations begin, unless the CEO approves otherwise (ss 46(3) and 49(b)). If these negotiations fail, the birth parent/s are given one more opportunity to select and negotiate with a different adoptive parent or set of parents (s.46(3)-(4)). Once the adoption plan is agreed, the child is placed with the prospective adoptive parent/s, as long as the parents meet the other placement criteria in the Act (s.48-52).

ADDITIONAL INFORMATION

In 2005-06, in 100% of cases, local birth parents selected adoptive parents who were married and under the age of 40. One third of the selected adoptive parents were aged 30-34 years and the remaining two thirds were aged 35-39 years. The median age of the selected adoptive parents was 37 years. By comparison, during the same period, only 44% of adoptive mothers and 47% of adoptive fathers were under 40 years old at the time of placement of a child in an inter-country adoption. 22% of adoptive mothers and 6% of adoptive fathers were aged 45 years or over in inter-country adoptions during this time.12

COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

The Committee is concerned about the size and composition of the pool of prospective adoptive parents from which a birth parent can choose adoptive parents for their child. Although many of the persons registered as prospective adoptive parents indicate they are willing to adopt a child locally or from overseas, approximately 80% of these people have a current application waiting overseas according to Adoption Services. Anecdotal evidence from the Adoption Services unit staff members is that many of the applicants who seek to be approved for both the local and inter-country programmes do not complete the local adoption profile sent to them, choosing instead to focus on inter-country adoption. Despite this, it is reported that during the last year there were 3 cases where couples were successfully matched with a local child while they had an overseas application in process.

Adoption Services’ submission notes that many local relinquishing parents prefer selecting younger parents for their child and so far none have selected an approved person who is single.

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12 Statistics provided by Adoption Service for Financial Year 2005-06
There is also reportedly a lack of persons approved to adopt local children with special needs. This can be partly addressed by ensuring that this issue is covered during the assessment. The Act provides sufficient flexibility for the CEO to place a child in these circumstances where the child cannot otherwise be placed (s.53).

Adoption Services is cautious about using the capacity under regulation 38 to actively identify applicants and assess them as a matter of priority where an applicant has expressed an interest in adopting a special needs child. They are concerned that applicants would use this as a way to “jump the queue” and be assessed early. However, the Committee supports legislative reform in this area to enable a greater pool of suitable assessed applicants who meet the desires of relinquishing parents to be available. This issue is further discussed in section 10.2 of this report which contains the Committee’s recommendations in relation to this issue.
Chapter 4 Applicant Eligibility, Assessment & Placement Criteria

One of the critical steps in the adoption process is the receipt and assessment of applications from people who are interested in adopting a child. In WA, this function is carried out by a number of bodies, including the Adoption Services unit within the Department for Child Protection, contracted assessors, the Adoption Applications Committee (AAC) and the CEO of the Department.

The WA adoption process has comprehensive criteria applied to prospective adoptive parents at 3 points – initial eligibility, assessment of suitability and placement. The process is lengthy and thorough and the legislation sets out strict criteria which must be applied to determine who can provide homes for adopted children in WA. This chapter outlines the process involved and examines in greater detail some of the controversial legislative requirements, such as age restrictions for adoptive parents.

The criteria and supporting processes must be robust to ensure that adopted children, who are already vulnerable due to separation from the biological families and often also from their culture, are placed with the best possible parents. The Committee notes that the provision of certain adoption services is exempt from the Equal Opportunity Act 1984. This means that for the purposes of assessment and placement, issues such as age, religion, ethnicity, gender and sexuality may be considered. However, the Adoption Act 1994 does not discriminate in these areas in relation to a person’s eligibility to make an application for adoptive parenthood. Unlike some other states and countries, single persons and same sex couples are not prevented from applying to adopt a child in WA. Many countries which currently send children to WA for adoption will not consider an application from such persons.  

The assessment of an applicant’s suitability for adoptive parenthood and decisions about the placement of a child for adoption are parts of the adoption process which are, understandably, closely scrutinised by those seeking to create or extend their family through the adoption of a child. Applicants going through these processes may experience elevated levels of anxiety, especially where adoption is seen as a “last chance” to create a family by persons with fertility issues. Often, applicants have spent many years going through the physically and emotionally demanding process of trying to conceive a child with medical assistance.

There are difficulties in policy formation in this area as a balance must be struck between changing community expectations about family formation and making assessment and placement decisions in the best interests of the child. Persons who pursue adoption as a means to acquire a family feel disadvantaged and discriminated against when criteria in this area are maintained or made more restrictive. The Committee considers that the continuance of community education which promotes adoption as a service for children in need of a family is essential to counter these perceptions amongst those involved in the process, as well as in the media. The reality is that the number of children relinquished for local adoption is likely to remain very low and overseas programs are becoming more restrictive, often more so than conditions imposed by state legislation. The Committee notes the observations of ARMS on this issue:

*It is not the fault of the Adoption Act nor of those implementing it that there are so few babies available; the real problem lies in the idea that generalised baby-swapping arrangements are the answer to infertility.*

ARMS supports the education of prospective adoptive parents so that they can understand the many reasons why children are not available for adoption, to try and prevent these persons from advocating that they are being discriminated against. The Committee supports this approach and acknowledges the efforts of the Department in providing this information in a responsible manner.

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13 The exceptions are Ethiopia which accepts single applicants. Hong Kong accepts single applicants with special parenting skills. The Philippines will accept single applicants for older children or children with special needs.

14 ARMS Submission
4.1 **Outline of the Application, Assessment and Placement Process**

The Department for Child Protection (formerly the Department for Community Development) accepts and processes applications. The application process occurs in a number of stages.

When a person first expresses interest in adopting a child, the CEO is required to provide the person with oral and written information about adopting a child. This occurs through distribution of an initial information pack (approximately 500 per year are requested), followed by an information seminar presented by Adoption Services and 3 education seminars, run by ARCS and ASFC. The education seminars relate to:

- Preparation for adoptive parenting (ARCS);
- Separation and attachment (ARCS); and
- Inter-country adoption (ASFC).

Fees of $110 per person or $220 per couple are charged to persons attending the ARCS seminars and $90 per person or $120 per couple to attend the ASFC seminar. All seminars provided by Adoption Services are free of charge.

A large number of persons who request an information pack do not continue with the adoption process. Of the approximately 500 persons who request an information pack, approximately 125 persons (25%) express an interest in attending the information seminar.\(^\text{15}\) There are many reasons why people do not proceed, including the realisation that they don't meet the eligibility criteria, losing interest in adoption after reading about some of the complex family and parenting issues associated with it, being deterred by the length of the process or adoption may no longer meet their personal circumstances (for example, if they fall pregnant).

There are currently significant numbers of persons on waiting lists of 12 months to attend the compulsory information seminar and commence the assessment process. This issue is discussed in more detail in Chapter 10 of this report.

Upon completion of the information and education seminars, interested persons are invited to lodge an expression of interest with the Department within 12 weeks. At this stage, the person must provide information to satisfy the eligibility requirements in s.39 (outlined at section 4.2 below) regarding issues such as citizenship and relationship history and nominating whether they are interested in local and/or inter-country adoption (reg. 37).

Once a person demonstrates that they meet the eligibility requirements, the CEO decides when the person may proceed to the application and assessment stage. Persons are invited to attend a pre-assessment seminar and written invitations to make an application are usually issued according to the order in which the applications were lodged. Exceptions to the order may occur if:

- the birth parent of a child has expressed certain wishes about the selection of the adoptive parents (s.45) and the CEO is seeking parents whose attributes are consistent with those wishes; or
- the applicant has expressed an interest in adopting:
  - children who are siblings;
  - a child with a disability;
  - a child who is more than 12 months old; or
  - a child from overseas (reg. 38).

When lodging an application, the person must pay the relevant fees (unless exempt) and provide information relevant to the assessment of suitability of the applicant for adoptive parenthood and the placement of prospective adoptees with the applicant. This includes financial information, a medical report, consent to undergo a criminal record check and the names of 3 referees. Fees are

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\(^{15}\) Statistics provided by Adoption Services for Financial Year 2005-06
currently $750 for registration as a prospective adoptive parent and $986 for preparation of an assessment report if the applicant has not previously adopted. For those who have previously adopted, the assessment fee is reduced to $650 (reg.87). Persons adopting a disabled child are exempt from all fees and those who adopt a local child are exempt from paying the fee for the assessment report (r.88).

Once medical, criminal record checks and referee reports have been completed, an assessor is appointed to prepare the assessment report. This report rates the applicant against 10 key competencies for adoptive parenthood (set out in full at Annexure 1 to this report). The competencies reflect the assessment criteria set out in s.40 of the Act (outlined at section 4.3 below) and are endorsed by the AAC as a matter of policy. They are based on psychological and parenting research and can be updated to reflect advances in these areas. The assessment focuses on the person’s background and ability to provide support and a suitable family environment for the child until the age of 18. This report is provided to the Adoption Applications Committee (AAC) for consideration.

The AAC considers the assessor’s report and any other relevant information (s.40(2)) and may approve or not approve an application for adoptive parenthood. If the AAC is considering not approving a person, the person is given an opportunity to address the AAC’s concerns before a final decision is made. AAC procedures are examined in greater detail in Chapter 5 of this report.

In addition to satisfying the Western Australian criteria, persons applying to adopt a child from another country must also satisfy that country’s eligibility criteria. Adoption Services provides applicants with information about other country’s requirements and it is up to the applicant to choose the country to which they wish their file to be sent.

Following approval by the AAC, an approved applicant awaits the offer of a child. This may take months or years, and may not happen at all for persons who only apply to adopt a child locally, as there is no guarantee that relinquishing parents will select the person from the prospective adoptive parent register. Also, in the case of both local and inter-country adoptions, a child cannot be allocated to a person if, at the time the child is to be placed, the person no longer satisfies the criteria for WA or the sending country. In WA, the placement criteria are set out in s.52 of the Act (outlined at section 4.4 below) and include restrictions on the age of parents with whom a child can be placed. It is possible for a person to be approved as a prospective adoptive parent but for no child to be placed with them because by the time a child is offered, the person is too old (under s.52) for the child to be placed. However, there is limited flexibility for the CEO to place a child with a prospective adoptive parent who does not meet these criteria, such as where the child is to be placed with its biological sibling (s.53).

The following table demonstrates the disparity between the number of those applying to adopt an unrelated child over the last 6 years and the number of children placed with a view to adoption in the same period.

<table>
<thead>
<tr>
<th>Table 4.1: Unrelated applicants and number of children placed 2000-2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No. of persons who lodged application to adopt</strong></td>
</tr>
<tr>
<td>61</td>
</tr>
<tr>
<td><strong>No. of children placed with prospective adoptive parents</strong></td>
</tr>
<tr>
<td>32</td>
</tr>
</tbody>
</table>

Source: Statistics provided by Adoption Services
4.2 **ELIGIBILITY CRITERIA**

**CURRENT LAW**
To apply to adopt a child in Western Australia, a person needs to meet the eligibility criteria set out in s.39 of the Act. The person must be:

- over 18 years old;
- a resident or domiciled in Western Australia; and
- an Australian citizen.

If the person is in a married or de facto relationship the person must make a joint application with his or her partner and demonstrate that:

- the relationship has existed for at least 3 years;
- the person is not married to or in a de facto relationship with another person; and
- at least one person is an Australian citizen and the other person is a citizen of a country that gives similar rights to adopted persons. \(^{16}\)

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**
The Committee did not receive any submissions relating to the eligibility criteria. However, the Committee reviewed the criteria as part of its deliberations and wishes to highlight the following issue.

4.2.1 **JOINT AND SINGLE APPLICATIONS**
Persons who are married and have separated (possibly for many years), but not divorced, cannot lodge an application as a single applicant.

The eligibility criteria allows persons who have recently left a de facto relationship to apply as a single applicant, whereas married persons must wait at least 12 months before their divorce is finalised to apply as a single applicant.

It is undesirable to have different criteria applying to people who have been in a de facto relationship or to those who have been in a marriage. Currently under WA law both married and de facto couples generally have the same legal entitlements, it is therefore undesirable to treat separated persons differently depending on the status of their previous relationship.

However, the effect of any previous relationship breakdown should form part of the assessment process. This might relate to legal, financial and emotional issues.

The Committee therefore recommends an amendment to section 39(1)(d) of the Act to enable a person who is married or was in a de facto relationship to apply as a single person if they are separated and do not intend to resume cohabitation.

There are similar provisions in Queensland, South Australia and Tasmania. \(^{17}\)

On a related matter, the Committee believes that the current assessment process does not adequately deal with the situation where a couple has been approved as adoptive parents and the relationship breaks down after approval, but before placement of a child. Currently, it would seem that if a person no longer satisfies the criteria under s.39 of the Act, the person’s name is to be deleted from the register of persons approved by the AAC (s.44(2), reg.44(c)). The Committee considers that the automatic removal of approved applicants from the register in these circumstances deters people from revealing relationship problems prior to the placement of a child.

\(^{16}\) Where applying jointly, either both persons must be Australian citizens or one person must be an Australian citizen and the other person must be a citizen of a country which gives rights to adopted persons that are not inferior to the rights of non-adopted persons in relation to entry into, residence, education and medical care in that country (s.39(2)).

\(^{17}\) Section 12(4) Adoption of Children Act 1964 (Qld); Section 12 Adoption Act 1988 (SA); Section 20(5) Adoption Act 1988 (Tas)
Applicants should be encouraged to disclose such matters and in order to achieve this, the Committee believes the Act should be amended to allow re-assessment of a person who wants to continue with the application, rather than automatic removal from the register. This should be supported by a positive duty on applicants to disclose such factors throughout the adoption process (discussed further at section 4.5 below). Automatic removal from the register should still occur where a person no longer satisfies the criteria relating to Australian citizenship and WA residency (s.39(1)(a) & (c)).

**COMMITTEE’S RECOMMENDATIONS**

- **Recommendation 5** Section 39(1)(d) of the Act should be amended to enable a person who is married or was in a de facto relationship to apply as a single person if the person is separated from their partner and does not intend to resume cohabitation.

- **Recommendation 6** If an applicant’s relationship status changes and this is disclosed in a timely manner the applicant should not be required to return to the start of the assessment process unless the person’s eligibility under s.39(1)(a) or (c) is also affected.

### 4.3 ASSESSMENT CRITERIA

The assessment process has 2 preliminary stages:
- criminal record check, medical check and referee checks; and
- payment of fees to have an assessment carried out by a qualified assessor.

The medical check involves an independent Honorary Medical Panel reviewing the medical examination report provided by the person’s doctor. The Panel may recommend that the AAC seek a more involved medical assessment or specialist advice in certain cases.

During preparation of the assessment report, an applicant may be asked by the assessor to provide any information about their suitability for adoptive parenthood, including evidence that the applicant (s.40):
- has continuing eligibility under s.39;
- has the physical and mental ability to care for and support a child until the child turns 18;
- is of good repute;
- if a joint application, has a stable relationship with the other person;
- has the desire and ability to provide a suitable family environment for a child; and
- has not been found guilty of:
  - an offence punishable by imprisonment (in the 5 years before the assessment);
  - an offence punishable by life imprisonment, strict security life imprisonment or imprisonment for 20 years or more (at any time); or
  - an offence involving an assault or sexual offence against a child, committed when the person was over 18 (at any time).

The assessment of an application for suitability for adoptive parenthood is a government service that is excluded from the services covered by the *Equal Opportunity Act 1984*.

#### 4.3.1 CRIMINAL RECORD CHECKS

The AAC does not currently view an applicant’s criminal record. Section 40 requires an applicant to provide evidence relating to their criminal record and “good repute” to the assessor (not the AAC) for the purposes of the assessment report. As a matter of practice, to satisfy these requirements, applicants are currently asked to consent to a criminal record check conducted through the Department’s Record Screening Unit (RSU). Information about the outcome of the criminal record check is relayed to the assessor.
The offences referred to in s.40 are potentially narrower than those considered relevant in other legislation relating to the provision of services to, or care of, children. For example, the Children and Community Services Act 2004 in relation to child care providers and the Working with Children (Criminal Record Checking) Act 2004 in relation to many persons working with children, including foster carers and child care providers allow for a wider consideration of offences. These Acts also provide a framework for considering prescribed offences in decision-making. They both contain provisions enabling (in the case of the Children and Community Services Act 2004, in regulations) the CEO to undertake criminal record checks. The relevant prescribed offences are more specifically identified for these purposes, although both Acts permit a general consideration of any offence.

In contrast, the Adoption Act 1994 does not contain a specific provision enabling a criminal record or the provision of criminal records to the AAC. This has implications for the effective implementation of this part of the assessment process because the CrimTrac Agency, which provides criminal record information to the RSU, requires a legislative basis for the release of criminal record information. The Adoption Act 1994 could be improved in this respect to ensure that an up-to-date and specific legislative basis is provided for the release of relevant information. It is arguable that the current “good repute” provision in s.40(2)(c) allows for a wider release of information than the offences specified in s.40(2)(e), but this could be clarified by future amendments. A provision with a similar scope to s.232(e) of the Children and Community Services Act 2004, but tailored to adoptions, would be suitable. This section provides for regulations to empower the CEO to:

...conduct any check (including a criminal record check) that the CEO considers appropriate as to the character and background of a person for the purpose of determining whether the person is a fit and proper person to provide or be involved in the provision of a child care service or to associate with children, as the case requires...

The Committee also considers that the Adoption Act 1994 should reflect government policy in relation to the type of criminal records which automatically prevent persons being approved to work with children as foster carers under the Working with Children (Criminal Record Checking) Act 2004. To achieve this, the eligibility criteria in s.39 would need to be amended to specify that a person convicted of a Class 1 offence, as defined under the Working with Children (Criminal Record Checking) Act, which was committed while that person was an adult cannot make an application under s.38. These offences predominantly involve the sexual penetration of a child under 13 by an adult. Such persons could never be considered suitable for adoptive parenthood and this could be made clear through the eligibility criteria.

The Committee has also considered updating the offences under s.40(2)(e) to achieve consistency with offences which are likely to result in a foster carer being issued with a negative notice, preventing them from working with children, under the Working with Children (Criminal Record Checking) Act 2004. To this end, the Committee believes that s.40(2)(e) should refer to pending charges for a Class 1 or Class 2 offence and convictions for a Class 2 offence under the Working with Children (Criminal Record Checking) Act 2004.

Given the broad range of criminal record information which the Committee proposes should be made available, it is important that natural justice is afforded to a person if the person’s criminal record is considered in the assessment of their suitability for adoptive parenthood. This currently occurs as part of the assessment process, when applicants are asked about their record and afforded the opportunity to respond to the AAC’s concerns before a final decision is made. However, the Committee considers it necessary to emphasise this point as the recommended change could result in a significant increase in the level of criminal record information provided to the AAC.
Eligibility, Assessment & Placement Criteria

COMMITTEE’S RECOMMENDATIONS

Recommendation 7  A specific provision should be inserted in the Act which enables the AAC to access a broad range of criminal record information for the purpose of assessing the suitability of applicants for adoptive parenthood under s.40.

Recommendation 8  Section 39 should be amended to prevent persons convicted of a Class I offence (as defined by the Working with Children (Criminal Record Checking) Act 2004), committed as an adult, from making an application for adoptive parenthood under s.38.

Recommendation 9  Section 40(2)(e) should be amended to require a person to provide evidence that he or she has not been convicted of a Class 2 offence or is not the subject of any pending charges for a Class 1 or Class 2 offence, as defined by the Working with Children (Criminal Record Checking) Act 2004.

4.3.2  USE OF BODY MASS INDEX (BMI)

The “Body Mass Index” or “BMI” is a ratio of a person’s weight to height\(^2\) and is used to measure a person’s body fat. It is calculated by dividing a person’s weight (kilograms) by height squared (metres\(^2\)). A person’s BMI may be relevant in assessing whether the person is physically able to care for and support a child until the child reaches 18 years of age (s.40(2)(b)). A BMI of 35 or above is considered morbid obesity. Currently, a person’s BMI is considered as part of the medical examination report provided by an applicant to the Honorary Medical Panel. The Panel may seek a specialist’s opinion where there are concerns. Following this, the Panel will provide a report on the person’s overall health to the AAC as to the person’s medical fitness.

SUBMISSIONS RECEIVED

Adoptive parents have complained that the AAC places heavy reliance on BMI when it is not specified in the legislation. Some consider this to be unjustified discrimination against overweight people.

- One couple note that a BMI limit is not specified in the legislation but is constantly used in a discriminatory manner to disqualify large people.
- Another couple believes that, in practice, the BMI is being used to determine whether an individual is capable of meeting the requirement under s.40(2)(b), regardless of evidence to the contrary.
- One submission noted that, if an applicant has a BMI over 35, a medical clearance from the applicant’s GP is not sufficient to gain approval from the medical panel and such persons have to undergo extensive testing by specialists to gain approval. They are concerned that this is not stated anywhere in the Act or Regulations.

Suggestions made in the submissions include:

- The BMI should not be used to consider an applicant’s suitability to adopt.
- BMI limits should be abolished for adoption applications because the Act already contains a requirement for a person to be physically and medically able to support the child until the child reaches the age of 18.
- Either the Regulations should stipulate that BMI is not to be used to evaluate an applicant’s health, or the medical form should note which tests are required in addition to a standard medical appraisal for those who exceed a particular BMI.

ADDITIONAL INFORMATION

In a response to a parliamentary question from the Hon. Dr Elizabeth Constable MLA, the Hon. David Templeman MLA (the former Minister for Child Protection) stated that no prospective adoptive parents had their applications to adopt rejected on the grounds of weight between 2001 and 2007.\(^1\)

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\(^{2}\) WA Legislative Assembly 20 March 2007, Hansard pp.404-405
COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS
The Committee acknowledges concern from some that using the BMI discriminates against those who are obese. However, the Committee considers BMI is a relevant factor to be taken into consideration as part of a person’s assessment and is satisfied that the AAC does not have arbitrary rules in relation to the use of BMI. Each individual case needs to be considered on its merits. As was recently acknowledged in Parliament, no applications are rejected solely on the grounds of weight. Rather, applicants are not approved on the basis of failing to meet the criteria set out in s.40. The AAC appears to be properly informed by the medical panel on issues relating to BMI as part of a holistic assessment of a person’s physical capacity to parent a child until 18.

4.4 PLACEMENT CRITERIA
The Act provides an extensive set of placement criteria. When placing a child with a view to the child’s adoption, the CEO must not do so unless (s.52 / reg.41):

- the prospective adoptive parents are listed on the register (ie suitability assessment has been approved by the AAC);
- the placement meets, as far as is practicable, the wishes of birth parent/s;
- the applicant/s age does not fall outside the restrictions (outlined at section 4.4.2 below);
- on a joint application – the couple can show that the relationship is stable;
- where relevant, the child’s wishes are met;
- the applicant/s recognise the value of, and need for, cultural and ethnic continuity for the children;
- the applicant/s have a desire and ability to continue the child’s established cultural, ethnic, religious and educational arrangements;
- if the applicant is female, that she is not pregnant or undertaking treatment for infertility at the time of the proposed placement;
- the adoption of any other child by the person/s has been finalised;
- the child belongs to a category of children in respect of whom the prospective adoptive parent has been approved;
- if the child to be placed is an Aboriginal person or Torres Strait Islander, the placement is in accordance with the adoption principle set out in Schedule 2A;
- where the child is 2 years or older, the nature and implications of the adoption have been explained to the child in an appropriate manner;
- where siblings are relinquished for adoption, all reasonable steps have been taken to place them with the same parents;
- if there are other children in the family:
  ➢ the child is to be the youngest;
  ➢ the second youngest child must be at least 12 months or more older; and
  ➢ each of the other children must have been in the family for at least 2 years.

The CEO has the flexibility to place a child with prospective parents, even if the placement does not fulfil some of the criteria outlined in s.52, if:

- the child is a sibling of a adoptee who is resident in WA; or
- the child cannot otherwise be placed.(s.53)

The placement of a child for adoption, or with a view to the child’s adoption, is a government service that is excluded from the services covered by the Equal Opportunity Act 1984.
4.4.1 **Timing of Application of Placement Criteria**

The Committee has received evidence that there are difficulties in the application of the placement criteria under s.52 of the Act regarding inter-country adoptions. It is unclear when “the time of the proposed placement” occurs in relation to these adoptions. In the case of inter-country adoptions, Adoption Services is notified that a child has been allocated to a WA applicant. Adoption Services assesses whether the placement with that applicant meets the s.52 criteria, and if so, the applicant is offered the allocation. Difficulties arise if an applicant’s circumstances change after this point, but before the person has picked up the child, and Adoption Services has already verified that the applicant meets the placement criteria. At present, the Act is unclear about whether these criteria must be satisfied at time of allocation, the date at which the applicant leaves the country to pick up the child or the date when the applicant returns to WA with the child. The committee believes this should be clarified as set out in the following recommendation.

**Committee’s Recommendations**

**Recommendation 10** The Act should be amended so that, in the case of inter-country adoptions, placement criteria are applied at the time an allocation is offered by a sending country. For local adoptions, placement criteria should be applied at the time when the child is due to be physically placed with the adoptive parents.

4.4.2 **Age Restrictions**

The restrictions on the age of a parent at the time a child is placed with them for adoption were relaxed under the 2003 amendments to the Act. Currently, persons applying to adopt their first child are restricted as follows:

- For couples - the maximum age difference allowed between the child and the:
  - youngest applicant is 45 years, and
  - oldest applicant is 50 years.

- For single persons - the maximum age difference allowed is 45 years.

The age restrictions are even more relaxed for persons applying to adopt their second child or subsequent children:

- For couples – the maximum age difference allowed between the child and the:
  - youngest applicant is 50 years; and
  - oldest applicant is 55 years.

- For single persons – the maximum age difference allowed is 50 years.

As these are restrictions on placement, the age limit is applied at the time the child is placed in a person’s care, not at the time of application. Consequently, a person or couple may be approved to adopt a child when they are in their mid to late 40’s, but with increased waiting times, they face an increased risk that they will be too old by the time a child is allocated to them. Many applicants are not approved to adopt a child older than 2 years, therefore the chances of having a child allocated to them are reduced.

The age restrictions do not apply if a person adopts as a carer or a step-parent.20

**Submissions Received**

15 of the submissions received raised the issue of age restrictions. The 9 submissions in favour of retaining the current age restrictions raised the following issues:

- The desires of older parents can conflict with the needs of the child. The focus should be on the child’s needs, rather than the older parents’ “wants”.

- People may be younger in their approach to life these days, but they are still approaching the “senior years of life” and starting to slow down around the age of 45-50 years.

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20 The restrictions on placement in section 52 only apply to placements made by the CEO with a view to the child’s adoption. In the case of adoption by a step-parent or carer, the child is already “placed” at the time the adoption application is made. A report on the suitability of the proposed adoption arrangements for such children is made to the Family Court under s.61 in relation to the matters outlined in s.68(1) and (2).
- Caring for children is physically and mentally hard work. It is not in a child's best interests to remove age barriers. People adopting at age 50 are going to be a burden on their children later in life.
- The current age restrictions are reasonable, especially because they relate to the age difference between parent and child and do not prevent people from adopting. Older persons just need to consider adopting an older child.
- People adopted by older parents can feel a disconnection with them and live with the fear of returning home from school to find them dead.
- Adoption is rightly treated as a service for the child, not a service for infertile people. Given that there are many more people wanting to adopt than children available for adoption, the "best" parents should be chosen to be adoptive parents. The "best" parents include those who are statistically likely to be available to the child throughout childhood and well into adulthood. It is common sense that risk of loss of life and ill-health increases with age.
- It is hard to understand how having older parents could be in the best interests of an adopted child as this child has already suffered great loss. Why choose older parents for that child? The average age for first-time parents is 29. Statistically very few women give birth at 40-45 years of age and almost none after 45 years of age.
- The following problems may arise when choosing older adoptive parents:
  - Older people tend to have health problems which require support and assistance. If a person adopts at 55 years, when the child is 20 and trying to establish independence, they may be called upon to be a carer to their parents.
  - Children of older adoptive parents are more likely to be only children. Therefore when their adoptive parents die, many will be left with no family. If they were adopted from overseas, they will be unlikely to find their birth family and may become "orphans" at a young age.
  - Possible differences between the age of the adopted child’s parents and those of the child’s peers.
  - When this child has his or her own family (eg at 29) and requires assistance, the focus may be more on obtaining assistance for elderly parents.
  - The chance of the adopted child’s offspring having grandparents is almost zero.
  - Adopted people report grief and a “generation gap” between them and older parents, despite loving them.
- Jigsaw’s experience is that birth parents are often upset and angry to discover their child was placed with older parents.
- The push to remove age restrictions is to appease applicants and has nothing to do with providing a service to children. It is a waste to use limited adoption service resources to assess “old” applicants. If the priority was to help children, there would be a decrease in current age limits and age restrictions would not be abolished.
- One person noted the steady increase in the permitted age difference between adoptive parents and the child, from 30-35 years to 40 plus years now. This person would consider it “appalling” if age restrictions were completely removed and queries whether in doing so, the government would be bowing to the pressure of adults who want a child at any cost.
- Children need parents who are active and physically and emotionally fit to parent a child until the child reaches young adulthood and independence. The age at which children are reaching this stage of life is increasing, with young adults currently needing parental support and care into the mid to late twenties. It is queried how we can be certain that adoptive parents in their aged between 50 and 70 could do this.
- Adoption Services notes that the paramount consideration under s.3(1)(a) is the welfare and best interests of the child, but it sometimes appears that implementation of the Act is focussed on adult needs, for example, in relation to the age criteria. Adoption Services queries whether allowing a 4-5 year old child to be adopted by someone who is close to 60 years old is in the best interests of the child. The submission notes that other countries have
more restrictive criteria, partly due to increased demand and reduced availability of children, but is also due to what is desirable for children.

- Although age restrictions raise equity and discrimination issues, if the paramount consideration is the best interests of the child, age is a valid consideration.

The 6 submissions which argued for further relaxation or removal of the age restrictions raised the following issues:

- One submission asserts that WA is the only Australian state which restricts the age of applicants for adoption. It is argued that age should be the subject of individual assessment. Age restrictions complicate the process for those applying from overseas and mistakes are not uncommon, which can result in a child not being allocated to a particular couple.

- The age restrictions apply in an inequitable manner where one person in a couple is much older than his or her partner (compared to a single applicant) and where a couple already has a biological child and is adopting for the first time (compared to adoptive parents who are applying for a subsequent adoption).

- With inter-country adoption, sending countries should have the right to decide the age of the parents they will accept. The majority of sending countries have tighter limits than WA.

- With local adoptions, the majority of birth mothers choose applicants in their early 30’s, therefore legislation is not necessary.

- Applicants in most other states are assessed on their ability, not their age. Each couple should be assessed individually.

- Age restrictions should reflect the changing profile of parents, who are now starting families in the 30’s and 40’s and parenting children into their 60’s. Many people have almost reached the age threshold for adoption before they finish with fertility treatments and turn to adoption to establish a family.

- Age restrictions are not required because the Act already requires a person to be physically and mentally able to care for, and support, a child until the age of 18.

- Age restrictions discriminate against physically and mentally capable older parents.

- There are no restrictions on those who have the physical capacity to bear children into their 60’s and 70’s.

- The Hon. Bob Kucera MLA asserts that “couples over 40 are virtually barred from adoption” and that “very loose criteria are being applied to people over 50 in the case of fostering”. He notes that the UN and the International Federation on Ageing are trying to combat “ageist” policies. He believes an age criterion in relation to adoption and fostering is wrong and discriminatory.

- He also notes the increasing number of “grand families” in WA, where grandchildren are raised by their grandparents due to death of birth parents, drug and alcohol abuse and other social issues. These persons are often in retirement, some in their 70’s & 80’s and manage to successfully fulfill requirements to bring up children. It is asserted that adoption and fostering by older people in Africa is now the norm due to HIV AIDS because there is no other option.

**ADDITIONAL INFORMATION**

The profile of applicants for adoptive parents in WA has changed dramatically since relaxation of the age restrictions in 2003. There has been a significant increase in the age profile of parents. In 43% of placements since 2003 there is an age gap of 40 years or more between the child and one parent. Placement of an adopted child with a parent of this age would not have been possible prior to the 2003 amendments.

Nationally, in 2005-2006 the vast majority of adoptive mothers and fathers participating in inter-country adoptions were aged 35 years and older (84% and 87% respectively) and two thirds of
these were aged 40 years and older. Between 20-30% of these adoptive parents were aged 45 years or over. Also, 52% of children adopted from overseas were adopted into families where there was no other child in the family.

There was also a high proportion of adoptive mothers and fathers aged 35 years or older (71% and 80% respectively) who adopted locally. However, only one third of these mothers and half of these fathers were aged 40 years or older. Approximately 10% of these parents were aged 45 years or over. Children adopted locally were slightly more likely than those from overseas to be adopted into a family with no other children (54%). Overall, the age profile of adoptive parents across Australia in 2005-06 is represented in the following table.

Table 4.2: Local and inter-country adoptions- Age of adoptive parents 2005-06

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Adoptive mothers</th>
<th>Adoptive fathers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>25-29</td>
<td>12 (2.49%)</td>
<td>4 (0.85%)</td>
</tr>
<tr>
<td>30-34</td>
<td>71 (14.76%)</td>
<td>60 (12.82%)</td>
</tr>
<tr>
<td>35-39</td>
<td>146 (30.35%)</td>
<td>119 (25.43%)</td>
</tr>
<tr>
<td>40-44</td>
<td>144 (29.94%)</td>
<td>169 (36.11%)</td>
</tr>
<tr>
<td>45+</td>
<td>105 (21.83%)</td>
<td>114 (24.36%)</td>
</tr>
<tr>
<td>Unknown</td>
<td>3 (0.62%)</td>
<td>2 (0.43%)</td>
</tr>
<tr>
<td>Total</td>
<td>481 (100%)</td>
<td>468 (100%)</td>
</tr>
</tbody>
</table>

Source: AIHW Adoptions Australia report 2005-06

It is interesting to compare these statistics with extracts from the national births and deaths data collected by the Australian Bureau of Statistics. On a national basis, during 2005 the number and proportion of births were registered to mothers and fathers in certain age groups was as follows:

Table 4.3: Australian births 2005 – Age of mother and father

<table>
<thead>
<tr>
<th>Age (years)</th>
<th>Mother</th>
<th>Father</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25</td>
<td>47 226 (18.15%)</td>
<td>24 668 (9.81%)</td>
</tr>
<tr>
<td>25-29</td>
<td>69 420 (26.65%)</td>
<td>51 616 (20.53%)</td>
</tr>
<tr>
<td>30-34</td>
<td>89 158 (34.32%)</td>
<td>85 212 (33.89%)</td>
</tr>
<tr>
<td>35-39</td>
<td>44 873 (17.27%)</td>
<td>56 814 (22.60%)</td>
</tr>
<tr>
<td>40-44</td>
<td>8376 (3.22%)</td>
<td>23 168 (9.21%)</td>
</tr>
<tr>
<td>45+</td>
<td>353 (0.16%)</td>
<td>9768 (3.88%)</td>
</tr>
<tr>
<td>Unknown</td>
<td>380 (0.15%)</td>
<td>185 (0.07%)</td>
</tr>
<tr>
<td>Total</td>
<td>259 791 (100%)</td>
<td>251 431 (100%)</td>
</tr>
</tbody>
</table>

Source: ABS Births Australia 2005

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21 Adoptions Australia 2005-06, (AIHW).p.15
22 ibid. Figure 4.4: Intercountry adoptions, by age of adoptive parent(s) 2005-06
23 ibid. Table 4.3: Inter-country adoptions, by type of adoption, by composition of adoptive family 2005-06
24 ibid.p.19
25 ibid. Figure 4.7: Local adoptions, by age of adoptive parent(s) 2005-06
26 ibid Table 4.7: Local adoptions, by composition of adoptive family 2005-06
27 ibid Table A11: Local and intercountry adoptions, by age of adoptive parent(s) 2005-06
28 ABS 2006 Births, Australia,2005 Table 7.3, p.55
These 2 sets of figures are compared in the following graphs:

**Figure 4.1: Age of Adoptive and Biological Mothers**

![Figure 4.1: Age of Adoptive and Biological Mothers](image1)

**Figure 4.2: Age of Adoptive and Biological Fathers**

![Figure 4.2: Age of Adoptive and Biological Fathers](image2)

Other figures of interest from the Australian Bureau of Statistics are:

- The median age of all mothers who gave birth in 2005 was 30.7 years and the median age of all fathers in 2005 was 32.9 years.\(^{29}\)
- For six consecutive years, women aged 30-34 years experienced the highest fertility rate, across all ages of women, of 117.5 babies per 1000 women.\(^{30}\)
- The fertility rate of women aged 35-39 years has increased to 57.4 babies per 1000 women, which is the highest rate for this age group since 1962. This fertility rate is currently higher than the fertility rate of women aged 20-24 years.\(^{31}\)

\(^{29}\) ibid, p.7  
\(^{30}\) ibid, p.7  
\(^{31}\) ibid, p.7
The fertility rate of women aged 40-44 years declines to 10.9 babies per 1000 women and for women aged 45 or older the fertility rate declines even further to 0.5 births per 1000 women.32

In WA in 2005, 3.15% of confinements33 related to women aged over 40 and 0.1% of confinements related to women aged 45 and over.34

Life expectancy rates have increased over the past 20 years, with a boy born in 2003-05 expected to live 78.5 years and a girl born at the same time can expect to live 83.3 years.35

In 2005 the median age at death was 76.8 years for men and 82.9 years for women.36

The death rate of males was 6.8 per 1000 at age 55-64, increasing to 18.8 per 1000 head of population in the 65-74 age bracket and further increasing to 54 per 1000 in the 75-84 age bracket. For females in the same age brackets the rates were 4.1, 11 and 35.4 deaths per 1000 head of population respectively.37

A man’s life expectancy at age 45 years is 35.6 years (total 80.6 years) and a woman of the same age can expect to live another 39.6 years (total 84.6 years).38

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

Adoption is a service for children who need a family, and not a service for adults wishing to acquire a child. The guiding principles in adoption should be the best interests of, and long term consequences for, children needing families by adoption.

Currently, a person’s age is not a specific part of the assessment criteria in section 40 of the Act. However, a person’s physical ability to care for and support a child until adulthood is assessed.

The criteria requiring an increase in age following amendments to the Act in 2003 has resulted in a large proportion (43%) of adoptions having an age gap of more than 40 years between them and the child. Previously, these persons would not have had a child placed with them. Currently, 57% of applicants have one or both persons already aged over 40. Older applicants are becoming a larger proportion of the applicant pool.

As can be seen from the submissions above, the Committee has been presented with arguments from both sides in relation to age restrictions for adoptive parents, which are further explored below.

**Changing family structures in Australia**

The age at which people are becoming parents for the first time is getting higher. The median age for birth mothers is now 30.7 years and 20.63% of registered births are to mothers aged 35 years or older, with 3.36% of registered births to mothers aged 40 or over. This is due to a number of factors:

- Women and men wanting to establish and pursue careers for longer before “settling down” to start a family; and
- Advances in medical technology which has resulted in more couples seeking to start a family later in life using medical fertility intervention.

These advances in medical technology allow people to pursue biological parenthood options for longer before considering adoption. Therefore, people are coming to adoption at older age.

There are also an increasing number of “second-time-around” families in Australia with an older parent39 and “grand-families” where children are cared for by their grandparents.

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32 ibid Table 2.12, p.20
33 A pregnancy which results in at least one live birth
34 ibid, Table 8.2
35 ABS 2006 Deaths, Australia,2005 p.8
36 ibid, p.13
37 ibid, Table 4.1
38 ibid, Table 4.1
39 ABS Births op.cit., p.14
Those who support further relaxation or removal of the age restrictions argue that, given the current increase in the number of older parents, a child adopted by older parents is less likely to feel different as has been reported by past adoptees. They also argue that, as people are now living longer, they often have a younger outlook on life compared with older people from past generations. For example, it is said that “today’s 40 is yesterday’s 30”.

The countering argument is that it is irrelevant, when deciding what is in the best interests of the child, that a person can become a parent in old age. Adoption is a service for children in need of a family, not a service for adults wanting a child. The criteria should reflect the best interests of, and long term consequences for, children needing an adoptive family. It is not in the best interests of a child to have elderly parents as they grow up. Grandparents do not raise children by choice, it is not the norm, nor is it desirable.

There is also anecdotal evidence from Adoption Services staff members who are involved in ascertaining the preferences of birth parents about prospective adoptive parents for their child, that birth parents prefer that their child is placed with younger applicants.

**Effect on child of having older parents**

Agencies that are involved with past adoptions, such as Jigsaw, argue that the main consideration in determining policy in this area should be the best interests of the child and experiences of past adoptees suggest that having older parents is not in the best interests of a child. Adoptees with older parents provided feedback to Jigsaw, which was presented in a letter to members of Parliament in 2002 when amendments to relax the age restrictions were introduced. This anecdotal evidence suggests that children with older parents:

- feel fearful that their parents may die;
- are unhappy at being different from their peers; and
- feel their parents are less likely to understand them.\(^{40}\)

Jigsaw has also pointed out that with older parents:

- there are often 2 generation gaps, not one;
- teenagers will become carers for their parents, rather than vice versa; and
- many adoptees will miss having grandparents for their children, which continues a cycle of loss already experienced by the adopted child.

To counter some of these concerns, others argue that at some point in their childhood, especially during adolescence, it is common for children to feel the effects of a generation gap, as though their parents do not understand them. As outlined above, it is also argued that feelings of difference from peers are less likely these days given the changing profile of Australian families.

**Other arguments**

There are some who argue for removal of age restrictions on the basis that placing age restrictions in the legislation unfairly discriminates against older couples who are otherwise suitable to be adoptive parents. There is a counter argument that, because adoption is a service to children, providing equal opportunity for adults is irrelevant. The adoption legislation and supporting practices should be structured to provide the best possible outcome for the child.

Even if age restrictions were maintained, some argue that the current age restrictions operate in an inequitable manner for:

- couples where one partner is much older than the other partner, compared to single applicants (see Example 1 below); and
- couples with biological children who want to adopt a child, compared to couples with an adopted child who want to adopt again (see Example 2 below).

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\(^{40}\) Letter from Isabel Andrews, Adoption Jigsaw of WA Inc. to Members of WA Parliament, as cited by the Hon. Sheila McHale MLA, Second Reading speech, *Adoption Amendment Bill (No.2) 2002* (WA), Legislative Assembly, 14 August 2002, Hansard p.100-101
A number of submissions argued that the legislation already contains sufficient criteria to assess whether a person is physically or mentally unfit to care for a child until adulthood. It is argued that if a person's age has resulted in, or is likely to result in, physical or mental incapacity to adequately care for the child until the child reaches adulthood, this has already been taken into account.

Another point of view is that the greater the pool of adoptive parents to choose from, the more likely that a child in need of a family will be able to find a suitable family, rather than “languishing in an institution”. It is argued that age restrictions limit the numbers of those who might otherwise be available to provide a stable, loving family environment for a child and therefore act against the best interests of children.

The counter argument to this is based on practical considerations. Removing age restrictions is likely to result in greater numbers of applicants for adoptive parenthood when there is already a significant backlog of persons waiting to be assessed. In addition to this, greater rigour would be required in assessments to properly assess the risks associated with a person's age. This may increase current waiting times for assessment and eventually, for allocation of a child. It may also result in resources being used to assess many older applicants who are more likely to not be approved.

Some argue that older adoptive parents are often more financially secure than when younger and tend to fulfil more senior positions, which can result in more flexibility to take time off to care for the child and a greater capacity to provide for the child. It is also argued that older adoptive parents are often more committed to the idea of parenting and more passionate about it because they have waited a long time to become parents and have spent time thinking and researching adoption.

It is argued that age restrictions limit the ability of adoptive parents to be able to adopt a sibling for the first child. Siblings can be important to the long term wellbeing of children.

It has been argued that many other states have removed age restrictions and WA should follow suit. Age restrictions still apply in the Northern Territory\(^4\) and it is arguable that each State is entitled to develop its own policies relating to adoption. If the Adoption Act 1994 was modelled on what other jurisdictions decided in relation to adoption policy, single applicants might only be

\(^4\) Under s.16 of the Adoption of Children Act (NT), where the child to be adopted is to be the first child of the applicant, the maximum age difference is 40 years. Where there are other children in the family (including adopted children), the maximum age difference is 45 years.
permitted in limited circumstances. A summary of age restrictions or other relevant criteria in other Australian jurisdictions is included at Annexure 2 to this report.

Those who would like to see the removal of age restrictions argue that if another country has determined that an older parent fits their criteria, WA should abide by this and not impose additional restrictions. The Committee notes that, in recent times, sending countries are tightening age restrictions (e.g., China will no longer place children with applicants aged over 50, or 55 years where the child has special needs).

**Conclusions**

There are two ways of dealing with the age limits in the adoption process. A policy position can be assumed that younger parents are more desirable for an adopted child and an arbitrary limit on age can be imposed through legislative restrictions, as is currently the case. Alternatively, each case can be assessed on its merits, considering the person’s age and its implications for their health, longevity and capacity to care for the child. The AAC is already required to consider longevity as an important factor to be considered when assessing a person’s suitability, as is the case in some other jurisdictions such as Victoria\(^{42}\) and the ACT.\(^{43}\)

One of the main arguments for removing the current age restrictions is that they arbitrarily discriminate against older persons who would like to adopt a child. The Committee has debated whether it is more important to address concerns about discrimination in the adoption process, which is an applicant-centred view, than it is to design a process which is guided by the best interests of the child. The Committee has concluded that it is in the best interests of children that the current age restrictions remain in place for the reasons outlined below. The Committee notes that older applicants are not currently prevented from applying and being assessed for their suitability to become adoptive parents. However, if an older applicant were approved, age becomes a factor for consideration at the time of the proposed placement of the child. The Committee also notes the capacity of the CEO, under s.53 of the Act, to place a child with a person who does not meet some of the placement criteria under s.52 (such as the age criteria) if a particular child cannot otherwise be placed or if the child’s sibling has been adopted in WA.

While the Committee notes the arguments that age restrictions should be removed and acknowledges the trend towards this in other states (see Annexure 2), the Committee is concerned that the removal of age restrictions would make the AAC’s assessment and decision-making processes more difficult and protracted. Having to include longevity issues without age restriction at the time of placement would increase the complexity and the length of time taken to complete assessments. There is also a risk that already limited resources would have to be devoted to defending applications for review of AAC decisions (if the Committee’s Recommendation 21 is accepted that applicant’s should be able to apply to the SAT for a merits-based review of AAC decisions).

The Committee would like to draw attention to the fact that relinquishing parents and sending countries have a preference for younger parents in contrast to the growing trend towards older applicants. The Committee is therefore concerned about amending age restrictions in a manner which would create unrealistic expectations for applicants in an older cohort.

Although it would be possible to lift age placement restrictions and further emphasise age and longevity at the AAC assessment stage of an application, the Committee would be concerned that this would falsely encourage a large cohort of older people to apply.

The Committee would like to recommend amendment of certain aspects of the current age restrictions so they do not operate in an inequitable manner between different applicants of equivalent age. It is clear from Example 1 and Example 2 (outlined previously in this section) that joint applicants are disadvantaged where one partner is significantly older than the other partner compared with single applicants. The Committee considers that this inequity should be removed by only imposing age restrictions at placement with respect to the youngest applicant in a joint

\(^{42}\) Regulation 35 Adoption Regulations 1998 (Vic)

\(^{43}\) Section 19(1)(c) Adoption Act 1993 (ACT)
application. If the age of the older applicant affects the suitability of the applicants as a couple, this can be addressed as part of the assessment process.

In relation to first-time joint applicants who already have a biological child, it also seems unfair that stricter age restrictions apply to such a couple compared with those who have already adopted and would like to adopt a subsequent child. The Committee believes that inequity in this area should also be removed.

**COMMITTEE’S RECOMMENDATIONS**

<table>
<thead>
<tr>
<th>Recommendation II</th>
<th>The current age restrictions at the time of placement should remain in place, subject to the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- If a couple makes a joint application, the age restrictions at placement should only apply in relation to the youngest applicant.</td>
<td></td>
</tr>
<tr>
<td>- The age restrictions at placement should be the same for couples who already have a child, whether or not that child was adopted.</td>
<td></td>
</tr>
</tbody>
</table>

**4.4.3 PREGNANCY TESTING**

A female prospective adoptive parent must undergo pregnancy testing just before a child is placed with her for adoption. Some adoptive parents want this requirement abolished as they consider people can parent more than one child at a time (for example, parenting twins) and suggest that there is no research to support the view that adopting a child and having a natural child close together results in bad outcomes for the adopted child. Other adoptive parents would like the timing changed, so the test does not place so much stress on a person at a time when they should be looking forward to the placement of their adopted child.

Past adoption experiences and the fields of developmental psychopathology and clinical psychology indicate that it is not in the best interests of a child to be placed in a family where another baby is to be born within a short time of the adoptive placement. All children require a focus of attention on their needs to form secure attachments and develop a healthy personality. This is more so where an attachment injury has already occurred. Insufficient admiration and attention in early life are the precursors of narcissistic personality disturbance, and attachment insecurity leads to lifelong anxiety. Furthermore, adopted children have special needs and problems to overcome following placement that require the adoptive parent’s full attention, and which create enormous stresses. In responding to such demands the parent’s responsiveness towards their own biological child could suffer, and with it, that child. It is prudent that in solving one social problem, a second not be created.

The Committee acknowledges the emotional distress which can arise from pregnancy testing at this stage of the process, especially where it impinges on infertility issues. However, the Committee has been unable to find a better solution which ensures the best interests of the child to be placed.

**4.4.4 FERTILITY TREATMENT**

Under regulation 41, there is a restriction upon placing a child with a view to adoption where a prospective adoptive parent is undertaking treatment for infertility at the time of the proposed placement. Adoption Services asked the Committee to consider whether a person should be required to have finished fertility treatment before applying to adopt.

The Committee considers that, from a child-focussed point of view, prospective adoptive parents who have not dealt with their infertility and desire to have their own biological child are less likely to make desirable parents for an adopted child compared with those who have resolved these issues.

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44 “When the baby arrives from another setting or another culture, he’s likely to be hypersensitive and overwhelmed by the change. No matter how poor the previous environment has been he’s bound to grieve. At four months, I would expect one month of grieving and readjustment. At one year, at least two months. Because of his hypersensitivity, the baby turns away from these eager new adoptive parents. He won’t look at them. He won’t accept their overtures. He won’t eat. He is withdrawn or fragile. The parent’s vulnerability is reinforced.” Brazelton and Greenspan (2000, p33).
However, it would be unfair to require persons applying to become adoptive parents to have finished fertility treatments as there is no guarantee they will be approved as prospective adoptive parents or, once approved, have a child allocated to them. There is also the risk that applicants would apply for adoption at older ages than they are now which could result in even older approved applicants. This would not be in the best interests of prospective adoptees.

The degree to which a person has come to terms with infertility is currently assessed under the competencies for adoptive parenthood (see Annexure 1). People who are affected by infertility need to come to some acceptance about this before coming to adoption, due to the psychological impact it may have on any adopted child who may feel “second best” or “unwanted” if the parents later succeed with IVF or other medical intervention.

4.4.5 Aboriginal and Torres Strait Islander Child Placement Principle

Current Law
The Adoption Act 1994 was amended in 2003 to insert the “Aboriginal and Torres Strait Islander children - placement for adoption principle” (ATSICPP) as Schedule 2A of the Act. The principle states:

The objective of this principle is to maintain a connection with family and culture for children who are Aboriginal persons or Torres Strait Islanders and who are to be placed with a person or persons with a view to adoption by the person or persons.

If there is no appropriate alternative to adoption for the child, the placement of the child for adoption is to be considered in the following order of priority.

1. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander in the child’s community in accordance with local customary practice.

2. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander.

3. The child be placed with a person who is not an Aboriginal person or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, family.

At the same time, provisions were also inserted to ensure that:

- an Aboriginal person or Torres Strait Islander is involved at all relevant times in the adoption process of a child who is an Aboriginal person or a Torres Strait Islander (s.16A(1)); and
- the Department consults with an approved Aboriginal or Torres Strait Islander agency about the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander (s.16A(2)).

The general principles in s.3 of the Act also acknowledge that adoption is not part of Aboriginal or Torres Strait Islander culture and therefore, the adoption of a child who is an Aboriginal person or Torres Strait Islander should only occur in circumstances where there is no other appropriate alternative for that child (s.3(2)).

These provisions do not limit the opportunities for an indigenous birth parent to relinquish a child for adoption. The amendments were intended to ensure culturally appropriate placement decisions are made about the placement of the child. Where a child who is an Aboriginal person or a Torres Strait Islander is to be placed for adoption, the placement must be in accordance with the ATSICPP (s.52(1)(ab)). However, this does not override the wishes of the birth mother, either as to placement of the child or if she would like to keep the adoption or proposed adoption confidential from her family and community (s.45; s.52(1)(a)(ii); s.127).

Submissions Received
One person considers that the principle in s.3(2), that “adoption is not part of Aboriginal and Torres Strait Islander culture”, discriminates against indigenous children and denies them a
stable, nurturing family environment and protection from abuse and neglect based on their ethnic and cultural background. This person asserts that adoption is being unjustly blamed for pain and suffering caused by the appalling forcible removal of part-Caucasian children from their Aboriginal parents in the past, but that few of these children appear to have been legally adopted. This person also claims that customary adoption was part of indigenous culture prior to the Adoption of Children Act 1896 and that s.3(2) ignores this fact.

In its submission, the Law Reform Commission of Western Australia reiterated the findings and recommendations of the Final Report of the enquiry into Aboriginal Customary Laws in relation to the concerns and requirements of Aboriginal people regarding care and custody of their children, and in particular, where adoption was concerned. They referred the Committee to recommendation 86 of that Report, which seeks to clarify the ATSICPP:

**Recommendation 86** – That following clause 3 of Schedule 2A of the Adoption Act 1994, a new paragraph be added:

*In applying this principle [that regard be had to local customary practice and must be satisfied prior to the placement of the child] all reasonable efforts must be made to establish the customary practice of the child’s community in regard to child placement. Subject to the birth mother’s signed direction to the contrary, this must include consultations with the child’s extended family and community to ensure that, where possible, a placement is made with Aboriginal people who have correct kin relationship with the child in accordance with Aboriginal customary law.*

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

The concept of exclusive possession of a child, which has traditionally underpinned the legal arrangement of adoption, goes against notions of family in Aboriginal and Torres Strait Islander culture. This is acknowledged in the general principles of the Adoption Act 1994.

The paramount considerations which must be taken into account in any functions performed under the Adoption Act 1994 include the welfare and best interests of the child and that adoption should only occur in circumstances where there is no other appropriate alternative for the child. These principles apply to decisions about the placement for adoption of an Aboriginal person or Torres Strait Islander and override the ATSICPP.

The Committee discussed current Departmental practice and the application of the Adoption Act 1994 regarding a mother considering relinquishing an indigenous child for adoption with representatives of Adoption Services, a Senior Adviser Aboriginal Services, a Senior Policy Officer from the Department’s Indigenous Policy Directorate and a representative of Djooraminda Centrecare (which provides residential care and supportive services for aboriginal children who are not able to live within their own family). The Committee was advised that if a mother is considering relinquishing an indigenous child for adoption, extensive efforts are made to explore options with her for placing that child within family according to correct kin relationships. In line with cultural practices, when such a placement is made it would not involve the relinquishment of the child for adoption.

Indigenous applicants for adoptive parenthood are extremely rare. This makes it difficult for an indigenous child who is relinquished for adoption to be placed according to clauses 1 and 2 of the ATSICPP. However, it does not prevent fulfilment of the ATSICPP as an indigenous child can still be placed in accordance with clause 3, which requires:

*The child be placed with a person who is not an Aboriginal person or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, family.*

The Committee also heard evidence that it can also be difficult to satisfy clauses 1 and 2 of the ATSICPP if the birth mother directs that the pregnancy is to be kept secret from her relatives.
A mother may have legitimate reasons for insisting on this. However, in such cases, the Department works closely with the mother to help her understand the identity issues her child may face in the future if adopted and placed outside of family and community.

The Law Reform Commission suggests an amendment to the ATSICPP which requires the Department to consult with the child’s extended family to ensure placement in accordance with customary law, unless the birth mother signs a written direction to the contrary. The Committee considers that the first part of the recommendation already takes place in practice and is a preliminary consideration to the principles applied under Schedule 2A. These principles relate to a child who is being placed with a view to adoption. The Department’s practice is to involve a Senior Adviser Aboriginal Services, Yorganop and consult with the birth mother’s family at the pre-relinquishment stage, where the Department is not prevented from doing so by the mother’s desire for confidentiality.

The mother is not asked to sign a declaration about her instructions regarding confidentiality. It is considered sufficient that she verbally directs the Department about this issue. Relinquishing mothers may feel threatened by a formal requirement to sign such a declaration, fearing the Department may talk to her family or community unless she signs. This requirement would not be conducive to building a relationship of trust between the mother and Department, which is required to assist the mother in working through the issues surrounding a proposed adoption. In cases of concealed pregnancies, presenting a mother with a declaration that directs the Department not to communicate with her family and community about the proposed adoption may be counterproductive. In these cases, the Department works intensively with the mother to try to overcome issues surrounding secrecy and to encourage family contact.

For these reasons, the Committee does not believe the Act should regulate pre-relinquishment discussions with the birth parent of an indigenous child, apart from acknowledging a birth parent’s rights to confidentiality and continuing the involvement of indigenous advisers.

4.4.6 CULTURAL & ETHNIC CONTINUITY

CURRENT LAW
The 2003 amendments to the Adoption Act 1994 emphasised cultural and ethnic awareness and continuity provisions in the placement criteria. These amendments were made following recommendations of the 1997 Review that the legislation should emphasise the importance of valuing and continuing an adopted child’s cultural, ethnic, religious and educational background.\(^{46}\) The CEO must now be satisfied before placing a child with a view to the child’s adoption that the prospective adoptive parent:

- recognises the value of, and need for, cultural and ethnic continuity for the child; and
- shows a desire and ability to continue the child’s established cultural, ethnic, religious or educational arrangements (s.52(1)(a)(va) and (vb)).

SUBMISSIONS RECEIVED
Two submissions raised the issue of cultural continuity for adoptees:

- One person asserts that the cultural continuity requirement is arbitrary and there is no conclusive empirical research to show that it is essential for the long-term well-being of adoptees.
- The other person expresses concern that most inter-country adoptions appear to involve the placement of children from culturally and linguistically diverse (CALD) backgrounds with white, middle-class Australian families. It is noted that such placements are contrary to the child placement principles under the Children and Community Services Act 2004, which requires both indigenous children and other children from CALD backgrounds to be placed within their cultural community. This person considers that the government is bowing to pressure from adults in this regard and applying a double-standard in relation to the care of children. It is asserted that research into failed adoptions indicates the importance of

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\(^{46}\) Final Report of the Adoption Legislative Review – Adoption Act (1994), November 1997, Recs 41 and 42, p.74

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children being part of their own culture and maintaining a strong identity within it. This person considers that the Department should actively recruit families for overseas children within appropriate cultural communities.

**Committee’s analysis of the issues & findings**

Cultural continuity is strongly promoted among adoptive parents. This is beneficial for children who are adopted outside their culture of birth. The development of a positive racial identity must be cultivated. Research suggests that a trans-racially adopted child’s difference needs to be acknowledged in order to build a positive self-image which includes the child’s racial identity, as opposed to adopting a “colour-blind approach” within the family. Anecdotal evidence also suggests that adoptees with little or no awareness of their birth culture may experience feelings of fear or awe towards their race, or embarrassment or shame about lack of knowledge of their cultural origins. The Committee considers that the Department should encourage applications by people who have the same cultural and ethnic background as those available for adoption. However, the overriding goal is to find adoptive placements for children in need, in a timely fashion that are either culturally and ethnically consistent or that promote cultural and ethnic continuity.

**4.5 Disclosure of relevant information during the adoption process**

**Current law**

Applicants are required to provide certain information as part of the assessment process (s.40). The AAC also has the capacity to consider “new evidence” in relation to an application (s.42). Approved prospective adoptive parents can be removed from the register of approved applicants if they no longer meet the eligibility criteria specified in s.39 of the Act or the AAC no longer considers the applicant to be suitable for adoptive parenthood (s.44(2); reg.44(b)-(c)). However, there is no requirement in the Adoption Act 1994 for ongoing disclosure of information which may be relevant to determine these issues.

**Submissions**

Adoption Services has recommended changes in this area. In particular, the Committee was asked to consider whether:

- an applicant should be required to sign a statement that all information provided is accurate;
- an applicant should be required to advise Adoption Services if there is a relevant change in circumstances (eg marriage no longer stable); and
- there should be a sanction for withholding information, or giving false information, such as cancelling the application to adopt.

**Additional information**

Duties of disclosure apply in other legislation related to ensuring the best interests of children. For example, in the Family Law Rules 2004 (Cth) the following general duty of disclosure applies:

**13.01 General duty of disclosure**

(1) Each party to a case has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the case, in a timely manner.

Note: Failure to comply with the duty may result in the court excluding evidence that is not disclosed or imposing a consequence, including punishment for contempt of court.

This Chapter sets out a number of ways that a party is either required, or can be called upon, to discharge the party’s duty of disclosure, including:

(a) disclosure of financial circumstances (see Division 13.1.2);
(b) disclosure and production of documents (see Division 13.2.1); and
(c) disclosure by answering specific questions in certain circumstances (see Part 13.3).

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47 Miller, 2005, pp 416-418
49 Armstrong & Slaytor 2002, p.13
(2) The duty of disclosure starts with the pre-action procedure for a case and continues until the case is finalised.

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

The Act could be improved to ensure that relevant changes in an applicant’s circumstances are assessed by Adoption Services, AAC or Court, depending on the stage of the process the applicant has reached. As outlined above, an applicant does not have a statutory duty to disclose relevant matters to the assessor, Adoption Services or the AAC. These matters may relate to such things as a relevant change in a person’s financial circumstances, relationship status or residency. The Act should encourage applicants to fully disclose relevant changes in circumstances in a timely manner. Careful consideration should be given to the question of whether a sanction should apply in the event of non-disclosure. The Committee is of the view that if there is to be a sanction this should not be the automatic cancellation of the person’s application. The AAC has the capacity to re-assess a person where “new evidence” exists. This can be used to reconsider whether a person should remain as an approved prospective adoptive parent following a relevant change in circumstances.

There are some circumstances in which automatic removal from the register of approved applicants should still occur, such as where a person no longer satisfies the criteria relating to Australian citizenship and WA residency under s.39(1)(a) and (c).

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 12** The Adoption Act 1994 should contain a provision requiring parties to adoption to provide full and frank disclosure of relevant facts throughout the adoption process, up to the date of the adoption order. If a relevant change is disclosed in a timely manner the applicant should not be required to return to the start of the assessment process unless the person’s eligibility under s.39(1)(a) or (c) is also affected.

4.6 **APPLICATION OF THE EQUAL OPPORTUNITY ACT 1984**

As noted in sections 4.3 and 4.4 of this report, assessment and placement services provided under the Adoption Act 1994 are excluded from the operation of the Equal Opportunity Act 1984. It is the Committee’s view that this is justified as relinquishing parents may wish to consider factors such as religion or marital status when working with Adoption Services to consider the placement of their child for adoption. This is an important principle as the Adoption Act 1994 seeks to facilitate future contact between adoptees, adoptive parents and relinquishing parents. The Committee also supports the capacity of the AAC to discriminate in its assessment of candidates for adoptive parenthood in the best interests of children to be adopted, for example, taking a person's age into account where it is relevant. This is consistent with the principle in section 3(1) that adoption is a service for a child who is an adoptee or a prospective adoptee.
Chapter 5 Adoption Applications Committee

The Adoption Applications Committee (AAC) is established to consider and determine applications from people who are seeking to become adoptive parents (s.13). The AAC considers:

- a person’s criminal record (if relevant under the Act);
- personal references;
- a report from a medical panel;
- a report from an assessor assigned by CEO, who has typically conducted at least 5 interviews of 2–3 hours, each in the applicant’s home; and
- any other relevant information.

The AAC is the only decision-making body in the assessment process which considers the merits of an application by a person. All other bodies involved in the process make recommendations to the AAC.

Given the principles outlined in s.3 of the Act, it is clear that in carrying out its functions, the AAC’s paramount consideration must be the welfare and best interests of children who are prospective adoptees and that the AAC is providing a service for such children. However, it is acknowledged that prospective adoptive parents are an integral part of the process to ensure that safe, stable and loving families are available for the permanent placement of these children.

The Review Committee met with 6 of the 7 current members of the AAC and discussed a number of the issues raised in submissions with them.

5.1 Membership of the AAC

Current Law

Part 2, Division 3 of the Act and Part 3 of the Regulations set out the requirements for membership of the AAC. The key points are:

- There must be at least 4 members (s.14(1)), and no more than 8 members (r.25(1)), with relevant expertise or experience.
- There must be at least one member who is independent of the Department (s.14(2)).
- A person may be appointed as a member by virtue of the position or office held (eg the Manager of Adoption Services in the Department) (r.25(2)).
- The CEO of the Department appoints the presiding member (r.26).
- Members are appointed for up to 3 years and are eligible for re-appointment (r.28).
- The AAC may invite a person with relevant knowledge and experience to assist with a particular application (r.25(3)).
- The CEO may remove a member for various reasons, including:
  - physical or mental inability to satisfactorily perform the duties of office;
  - neglect of duty;
  - misconduct;
  - persistent absence without leave or reasonable excuse; or
  - a member ceases to hold relevant qualifications or office (r.29).

The AAC currently consists of 7 members, 3 of whom are independent of the Department.
SUBMISSIONS RECEIVED
All submissions received about the composition of the AAC came from adoptive parents or related support groups. Some of the submissions expressed concerns that:

- AAC members do not have an appreciation of what it is like to be involved in the adoption process, as there is no member of the AAC who has adopted a child.
- The Act does not require at least half of the AAC to be independent of the Department, which presents the risk of the AAC being dominated by Departmental ideology, rather than representing the views of the wider community.
- The presiding member, who has a casting vote when decisions are tied, is not required to be an independent member.

Suggestions were made that:

- Adoptive parents should be recruited as AAC members.
- The number of independent members should be greater than the number of Departmental officers.
- The presiding member should be independent of the Department.
- There should be 2 or 3 committees to ensure equity when approving applicants.

ADDITIONAL INFORMATION
In most of the rest of Australia, either the Minister, Head of the Department administering the adoption laws or the Principal Officer of an approved adoption agency is the decision-maker regarding a person’s suitability to adopt. In Tasmania, the Secretary of Department (or principal officer of an approved agency) may refer an assessment report and other relevant material about an applicant to a panel of at least 3 persons approved by the Minister as having suitable qualifications and experience in child welfare, adoption practice and related matters. This panel may make a recommendation to the Secretary of the Department (or principal officer of an approved agency) concerning the suitability of the applicant.\textsuperscript{50} No other state or territory appears to have a separate, legislatively-established decision-making body responsible for the assessment of an applicant’s suitability for adoptive parenthood.

COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

5.1.1 INDEPENDENT MEMBERSHIP
There is a perception among applicants for adoption that the AAC is not sufficiently independent of the Department. Applicants have had previous dealings with Adoption Services before their application is considered by the AAC. The perception of a lack of independence can lead to dissatisfaction with the assessment and approval process. These persons would like to see a more independent AAC and representation of adoptive parents.

The Committee recognises the good work of the current AAC to ensure that the interests of children are the focus of their deliberations. However, given the importance of the decision that is being made, the Committee considers that independence may be a relevant issue for applicants and could be addressed through additional independent members.

COMMITTEE’S RECOMMENDATIONS

Recommendation 15 The Adoption Act 1994 should be amended to require the AAC to have a majority of independent members.

5.1.2 INDEPENDENT CHAIRPERSON
The AAC has experienced a high turnover in the position of chairperson over the last 2 years. The position is currently held by the Director of Fostering and Adoptions, a newly-created position within the Department. The Committee considers that it may be beneficial for the AAC to be

\textsuperscript{50} Regulation 19 Adoption Regulations 2006 (Tas)
chaired by a person independent of the Department. Given the importance of the decision being made by the AAC, the AAC must be seen to be an objective decision-making body, separate from the Department’s Adoption Services unit. An independent chairperson would provide applicants with confidence that the decision about their suitability to adopt is being overseen by an “independent umpire”. Having a person independent of the Department could ensure greater continuity of leadership and decision-making. An independent person is also more likely to be robust when views need to be challenged. Many other Committees relevant to the work of the Department have independent chairpersons, such as the Case Review Panel\(^{51}\) and the Child Death Review Committee.\(^{52}\)

The Committee notes that if the Act required an independent chairperson, the Government would need to provide sufficient remuneration to attract someone of suitable calibre to this position.

**COMMITTEE’S RECOMMENDATIONS**

| Recommendation 14 | The Adoption Act 1994 should be amended to require the AAC to have a Chairperson who is independent of the Department. |

### 5.1.3 INVOLVEMENT OF COMMUNITY MEMBERS

Some of the submissions suggested that the views of adoptive parents, or the wider community, should be represented on the AAC. The Committee does not support these suggestions, believing them to reflect a misunderstanding of the AAC’s role. The AAC is not a community reference group; rather it is a professional decision-making body that must be objective in promoting the best interests of the child. Adoptive parents, adopted persons or general community members who have a personal interest in adoptions may find this role difficult to fulfil. The Act already enables the AAC to invite advisers to be involved in deliberations when required.

The Committee considers these suggestions may have arisen because applicants do not feel as though their general concerns are understood by the AAC which is a separate decision-maker. Adoption Services should be encouraged to continue to meet regularly with all interest groups to understand their views and concerns and to pass relevant feedback to the AAC. If an independent chairperson were appointed to the AAC, adoptive parents and support groups could have a direct, independent link to provide feedback to the AAC on general issues (ie not case-specific issues).

**COMMITTEE’S RECOMMENDATIONS**

| Recommendation 15 | Additional independent members appointed to the AAC should have relevant expertise or experience, as is currently required by s.14(2) of the Adoption Act 1994. |

### 5.1.4 MEMBER WITH LEGAL EXPERTISE

The Committee received some submissions expressing concern over the procedures employed by the AAC when making decisions. From these submissions, it appears that some procedural issues and disputes with applicants could have been avoided if legal input had been available at the time the AAC made the decision, rather than upon review by the CEO. To address these issues, the Committee believes consideration should be given to appointing a member with legal expertise who can ensure due process is addressed as part of the AAC’s deliberations and who would also bring additional objectivity to decision-making. Many other committees have a legal member for these reasons. Applicants have a right to procedural fairness as part of the adoption process. The Committee is not suggesting that procedural fairness does not currently exist for applicants dealing with the AAC. However, the perception of impartiality and objectivity is important. The inclusion of a lawyer will assist both reality and perception.

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\(^{51}\) The Case Review Panel reviews case planning decisions in care planning development by the Department for children in the care of the CEO.  
\(^{52}\) The Child Death Review Committee is established to assist the CEO and the Department in the provision of quality services to vulnerable children and their families. It is also established to facilitate accountability of the Department’s operations through the provision of an additional quality assurance mechanism in particular cases where children have died.
COMMITTEE’S RECOMMENDATIONS

Recommendation 16  Consideration should be given to the appointment of a member with legal expertise to the AAC.

5.2 PROCEDURES OF THE AAC

CURRENT LAW
The Act provides that the AAC’s constitution, procedures and other matters relating to the committee’s business may be prescribed by regulation or determined by the committee (s.15). The Regulations set out some procedural matters, such as:

- The AAC may hold ordinary meetings and special meetings, as required for the performance of its functions (r.30).
- Quorum for a meeting is 4 members, which must include either the presiding member or the deputy presiding member and at least 1 independent member (r.31).
- Each member who is present at the meeting has one vote, and if votes are equal, the presiding member has an additional casting vote (r.32).
- The presiding member must ensure an accurate record of AAC proceedings at each meeting is kept and preserved (r.33).
- Members must disclose any direct or indirect interests in matters before the AAC as soon as practicable after the person becomes aware of the matter. The disclosure must be recorded in the minutes and the person must not take part in any discussion or decision in relation to the matter without the approval of the AAC (r.34).

Other procedures determined by the AAC are set out in the Standing Procedures of the AAC. This document is not provided to applicants.

The CEO must provide applicants with written advice of the AAC’s decision. Once the decision is made, the applicant is entitled, upon request, to be provided with written reasons for the decision and a copy of the assessment report (s.43).

SUBMISSIONS RECEIVED
The submissions received on this issue related to 2 aspects of AAC operations – transparency of procedures and delays in dealings with the AAC.

5.2.1 TRANSPARENCY OF PROCEDURES & DECISION-MAKING
Some of the concerns raised in submissions related to:

- AAC procedures not being available for public scrutiny, yet appeals from AAC decisions must relate to matters of procedure.
- Applicants not automatically being provided with reasons for decisions or copies of their assessment report.

Suggestions for reform in this area included:

- Greater opportunity for applicants to receive constructive feedback during the assessment process.
- All procedures of the AAC should be prescribed in the Regulations.
- The AAC should be required to automatically provide applicants with justification for the AAC’s decision and a copy of the assessment report.
- Adoptive parents should be provided with a charter of rights.
- Relevant parts of the minutes should be provided to each applicant to ensure transparency.
- The AAC should not be allowed to make a decision which goes against the assessor’s recommendation unless they are able to provide strong grounds, which should be provided to the applicant.
AAC views about transparency of AAC procedures & decision-making

The Committee met with AAC members to discuss the concerns raised in the submissions and the AAC's functions under the Act. AAC members spoke of the tension they identify between viewing adoption as a service for children and taking into consideration the rights of the adults involved in the process. AAC members considered reasonable efforts are made to help applicants understand the AAC's proposed and final decisions, especially where the decision is to not approve an applicant. It was stated that where the proposed decision is to not approve an applicant, the applicant is:

- provided with a letter that states this and outlines the AAC's concerns;
- invited to meet with 2 representatives of the AAC to have these concerns explained to them in more detail; and
- invited to make a written submission to the AAC addressing the AAC's concerns before a final decision is made in their case.

It was also noted that the decision-making process is explained to applicants as part of the assessment seminar and that applicants are given information in writing before the assessment begins.

The AAC considered that current processes, which involve the applicant making written submissions to the AAC rather than having a right to appear in person, were fairer to applicants because an in-person hearing before the entire committee could be a daunting and stressful experience for many applicants. It was noted that recent trends in decision-making show that, where the AAC has expressed concerns about an applicant, and the applicant has taken the opportunity to respond to these concerns in writing, most applicants have been able to satisfactorily address the AAC's concerns and have been approved. It was reported that only 1 application was not approved last year, out of the 5-6 applications which the AAC initially considered should not be approved,

The AAC considered that some applicants expect the AAC to act as a “rubber stamp” in relation to the recommendations of the assessment report and do not understand the AAC's role in scrutinising assessments, despite that role being explained during the assessment information seminar. It was noted that the AAC's role is to use the expertise of its members to review assessments comprehensively, not to necessarily agree with them. The AAC considered that part of the problem arises because applicants develop close relationships with the assessors during the assessment process. It was noted that efforts are being made to educate the newly-recruited assessors about this issue.

Committee’s analysis of the issues & findings

The prime function of the AAC is to make decisions about the suitability of applicants to become adoptive parents, with paramount consideration given to the best interests of adoptees and prospective adoptees. Although the AAC perceives tensions in performing its functions caused by the need to consider both the applicant's rights and the child's best interests, the Committee notes that these considerations are not mutually exclusive. The AAC can make decisions in the best interests of children and also respect the procedural rights of those involved in the process. By carrying out its functions in a transparent manner, the AAC can promote community confidence in the important decisions that it makes.

Transparency - Procedures

The Committee believes it would be beneficial for AAC procedures to be more transparent to applicants. From the submissions received, it is apparent that there is a level of confusion among applicants about their rights and the review processes. Although the Committee does not consider it necessary for the AAC to prescribe all procedures in regulations, the AAC should make its Standing Procedures available to applicants upon request. The Committee considers that applicants are not provided with sufficient written information at the start of the assessment process about the AAC's role and procedures and an applicant's rights during the assessment and decision-making process.
The written information provided to applicants at the assessment information seminar should include information about:

- the AAC’s role in scrutinising assessment reports and other information presented to it;
- an applicant’s right to present further information to the AAC if the applicant disagrees with the assessor’s recommendation and the procedures to follow if an applicant wishes to do this;
- the AAC’s procedures if it is considering not approving an applicant, an applicant’s rights to make further submissions if this is the case and how the applicant should do this; and
- an applicant’s rights to seek a review of the AAC’s final decision and the grounds on which an application for review may be made.

The Committee also considers that insufficient information is provided to applicants in the letters informing them of the AAC’s decision about the avenues available for review of the AAC’s decision, including how to apply for a review. This information should be provided in letters to applicants who have not been approved to adopt as well as to those where the applicant is approved to adopt a child from a more restrictive category than that for which they applied.

It is important that procedures are transparent and made available to all applicants so that if procedures are breached, the manner of the breach is apparent to the person affected. For example, the Committee received complaints that, in some cases, documents submitted for the AAC’s consideration were not given to the AAC. Both the Standing Procedures and written information provided to applicants needs to be clear about such processes.

If the AAC is considering not approving an applicant, the Committee is of the view that some applicants may benefit from being able to speak to their written submissions. Therefore an applicant should have the option to appear before the AAC in-person if they wish. This ensures the AAC’s procedures are transparent and fair. Currently, the only time at which an applicant meets with AAC representatives is to have the reasons explained to them about the proposed non-approval. The AAC were clear that this is a “feedback giving” session, not an opportunity for applicants to provide them with information to take back to the Committee. It is of some doubt whether applicants hold the same view about such sessions.

**Transparency - Decision**

There is a need for greater transparency in AAC decision-making, especially where a person’s application has been approved but where restrictions on the category of child to be adopted have been imposed, if these conditions are more restrictive than the applicant requested. For example, an applicant may seek approval to adopt a child up to the age of 4 years but is only approved to adopt a child up to the age of 2 years. Written reasons for these restrictions are not currently provided to applicants, although they are informed that they can seek a review of the AAC’s decision.

Another transparency issue is that the Act does not require applicants to be automatically provided with reasons for decisions as to why their application was not approved. They are only entitled to these reasons upon request. However, as a matter of good practice, the AAC Chairperson always outlines the reasons for not approving the application in the letter informing them of that decision.

Some adoptive parents misunderstand the role of the AAC and believe it should endorse an assessor’s recommendation unless there are strong grounds against endorsement. The AAC is a panel of experts which scrutinises the assessment and considers other relevant material. This point could be highlighted in written materials provided to applicants at the assessment information seminar.
Committee’s recommendations

Recommendation 17 AAC procedures should be more transparent. In particular, applicants attending the assessment seminar should be provided with written information about the AAC’s role, procedures for submitting further information for the AAC’s consideration, procedures for review of AAC decisions and the grounds on which a review may be sought.

Recommendation 18 AAC decision-making should be more transparent. In particular, the Adoption Act 1994 should require the AAC to automatically provide applicants with:
- a copy of the applicant’s assessment report after the AAC’s decision is made;
- written reasons for decisions to not approve an application;
- written reasons for decisions to approve an application where restrictions on the category of child who can be adopted have been imposed under s.13(2), if these conditions are more restrictive than the applicant requested.

Recommendation 19 If applicants are given notice that the AAC is considering not approving their application, they should be given the option of appearing in person before the AAC to address the Committee’s concerns and to speak to their written submission.

5.2.2 Timeliness of AAC Meetings & Processes generally

Some submissions raised concerns about the delays in the adoption process which specifically related to processes involving the AAC. People found these delays stressful and unacceptable.

Some believed that AAC actions, such as holding matters over to the following month’s meeting and having to wait up to 2 weeks after a decision is made to be notified by mail, demonstrate the AAC’s lack of sensitivity to the experiences of those going through the process and the impact delays can have on applicants who are approaching age limits. Some people considered it unacceptable that the AAC does not meet in January.

The 2 main suggestions for reform were:

- The AAC should sit every month and any outstanding business from an ordinary meeting should be dealt with at a special meeting within the same month.
- Ensure that all AAC members have an understanding of the time lines and processes involved with adoption.

The Committee members met with AAC members, who seemed to have a good understanding of the processes involved and time taken for various steps in the adoption process. The AAC members asserted that they worked very quickly and matters were rarely held over to next month’s meeting. It was the AAC’s understanding that delays in the assessment process related to the number of assessors and this was being addressed. It was reported that once an assessment was completed it was put before the next AAC meeting. Outstanding applications were reportedly a rare occurrence and in such cases, the AAC often scheduled a meeting the following week to consider such applications. The AAC acknowledged that delays could be experienced if it sought further information before making a decision. However, every effort is made to expedite the seeking, obtaining and considering of further information, which could add a couple of months to the process, particularly if applicants or assessors go on leave or do not respond in time for the next AAC meeting.

Committee’s analysis of the issues & findings

Adoptive parents believe applications are not considered quickly enough. In particular, it is claimed that unnecessary and stressful delays are caused by the fact that the AAC does not sit in January. The Committee is satisfied that the AAC deals with applications in a timely manner, as soon as is practicable and usually at the next month’s meeting following completion of an assessor’s report. Delays can arise where the Committee requests further information before making a decision or during the assessment process where an applicant or assessor goes on leave. The Committee considers that some of the complaints about the AAC could be resolved with more transparency about the decision-making timelines and outcomes.
The Committee is satisfied that it is the practice of other committees not to sit in January and that there is merit in ensuring continuity in AAC composition for decision-making. A legislative requirement for the AAC to meet every month may not be sufficiently flexible.

**COMMITTEE’S RECOMMENDATIONS**

<table>
<thead>
<tr>
<th>Recommendation 20</th>
<th>To provide transparency in the performance of its statutory duties, the AAC should report on an annual basis about the:</th>
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<tr>
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<td>- number of cases considered;</td>
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<td>- number of cases approved or not approved;</td>
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<td>- average length of time for decisions;</td>
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<td>- number of cases in which further information was requested;</td>
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<td>- number of cases approved or not approved after the applicant is given the opportunity to respond to the AAC’s concerns and</td>
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<td></td>
<td>- number of applications for review of AAC decisions and outcome of these reviews.</td>
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**5.3 ROLE AND POWERS**

**CURRENT LAW**

As previously stated, the AAC is established to consider whether applicants are suitable to become adoptive parents and to approve those applicants as prospective adoptive parents (s.13). When approving applicants, the AAC may restrict the approval by reference to:

- the age, origin or ethnic background of the child they are approved to adopt; and
- specific medical, behavioural or psychological care needs of the child (s.13(2)).

These powers to restrict approval were introduced by the *Adoption Amendment Act (No.2) 2003.*

When making decisions about an applicant’s suitability to adopt, the AAC must consider information and recommendations in the assessment report and any other relevant information (s.41(2)).

**SUBMISSIONS**

Many of the submissions commented on the AAC’s powers to restrict the approval of applicants, especially in relation to the age of the child to be allocated to an approved applicant. In general, the submissions did not support the AAC’s use of these powers. In particular, submissions noted that:

- Applicants are often assessed as suitable to adopt children from a less restrictive category than that imposed by the AAC. Applicants find it difficult to understand how the AAC makes a more restrictive decision when the assessor has spent a lot of time conducting an in-depth assessment and has made recommendations based on this.

- There appears to be a default approval of “a child up to 2 years” applied by the AAC. There is a perception that this restriction is imposed in line with the Department’s policy for the adoption of children which prefers the adoption of younger children, rather than on the basis of the awareness and ability of applicants.

- Restrictions in relation to a child’s country of origin or ethnic background may cause problems for applicants if that country’s programme changes and the applicants need to move their file to another country (such as if the applicants no longer meet age restrictions for that country).

- The competencies against which applicants are assessed do not contain criteria and procedures for determining eligibility to adopt children of a particular age or older children. Given this and the fact that the AAC does not meet the applicant in person, it is alleged that AAC decisions about the age of a child that an applicant can care for are arbitrary and applicants do not have adequate means to challenge decisions of the AAC on this issue.
Suggestions made in submissions included:

- The AAC’s powers to restrict approvals by reference to age, origin or ethnic background of the child should be removed from the Act. Applicants would still need to demonstrate to an assessor their ability to manage issues that may arise in adopting an older child.

- If the AAC uses its powers to restrict approvals with regard to age and country of the child, the AAC should be required to provide justification and the applicant should be able to appeal for justification by addressing these concerns.

- The ability to parent a child should be the paramount consideration. The preparedness to parent and self-education of the applicant should be considered when determining age restrictions.

- Assessments should relate to the age of the child that the applicant intends to adopt.

- Clarification is required of terms such as “normal care needs” and “special needs”.

The Committee met with representatives of the AAC to discuss some of the concerns raised in submissions. The point was made that the assessors are not decision-makers and that applicants seem to misunderstand that the role of the AAC is to apply its extensive expertise to scrutinise assessments from a child-focused perspective. This can result in the AAC decision differing from the assessor’s recommendation.

The adopted child’s needs are the determining factors when the AAC limits its approval of applicants to adopt children of a certain age. Older children have higher needs and therefore applicants require a greater skill level and capacity to parent a child with higher level needs. The AAC also noted that the older a child at the time of placement, the greater the risk of breakdown of the adoption; the younger the child, the “safer” the placement. The AAC considers that applicants had to be “exceptional” to be considered for a child older than 2 years old.

Regarding older applicants, the AAC stated that consideration is given to the applicant’s suitability to adopt an older child and every effort is made for the applicant to become an adoptive parent. However, the AAC noted that it is not the AAC’s purpose to find suitable children for applicants and that it has to act in the best interests of the child.

AAC members noted that a very low number of applications are not approved. It was reported that in most cases where the AAC has doubts about approving an applicant and the person takes the opportunity to address the AAC’s concerns, the applicant is subsequently approved.

**ADDITIONAL INFORMATION**

Over the last 7 years, only 23 applications for adoptive parenthood were not approved by the AAC, whereas 508 applications were approved during this time. This equates to a 95.47% approval rate of applications which come before the AAC. Since the 1 June 2003, when the AAC was granted capacity to place restrictions on an approval, approximately 88% of approved applications have had restrictions imposed upon them.\(^3\)

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

Some adoptive parents have criticised the AAC’s use of its new powers (introduced in 2003) to restrict categories of children for which a person is approved. They believe arbitrary restrictions are being placed on applicant approvals, especially where the approval is more restrictive than that recommended by the assessor. They would like these powers removed.

The Committee considers that these powers are appropriate and provide the AAC with necessary flexibility for decision-making in the best interests of the child. The Committee notes that the restrictions placed by the AAC relate to the child’s needs and known risk factors associated with breakdowns in adoptions. Although the AAC is aware of inter-country program restrictions and tries to accommodate applicant’s needs in this regard, the primary concern is the best interests of the child to be adopted.

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\(^3\) Statistics provided by Adoption Services, on 10 May 2007
As outlined in section 5.2.1, the Committee believes that there should be more transparency in decision-making when placing restrictions on approved applicants. The Committee also considers that concerns in this area may be addressed by providing applicants the opportunity for a merits-based review of AAC decisions (see section 5.4.2).

5.4 **REVIEW OF DECISIONS**

**CURRENT LAW**

5.4.1 **INTERNAL REVIEW OF AAC DECISIONS**

A person aggrieved by a decision of the AAC can apply in 2 ways for review of that decision. They can:

- ask the AAC to review its decision (s.42(1)); and
- apply to the CEO to direct the AAC to review the procedure by which the decision was made.

The AAC may review its decision to approve or not approve an applicant:

- if it is of the opinion that there is new evidence that it should consider (s.42(1)); or
- following a direction from the CEO to review a procedure by which it made a decision (s.42(2)).

The CEO must direct the AAC to review procedures involved in making a decision if:

- the CEO considers that the decision was made without complying with a procedure prescribed by relevant regulation; or
- the decision was made under a procedure determined by the AAC under s.15(b) and the CEO thinks the procedure was unfair, defective or inadequate.

In such cases, the CEO may give the AAC a direction as to the procedure that he or she thinks is appropriate and the AAC must comply with this direction (s.113).

An applicant must be provided with written advice of the AAC’s decision after a review is conducted, and if requested, written reasons for the decision (s.113(4)).

5.4.2 **EXTERNAL REVIEW OF AAC DECISIONS**

Other than the internal review processes, and external review under s.114 as set out below, AAC decisions cannot be reviewed, questioned or affected except by way of judicial review (s.42(3)).

Section 114(2) allows an appeal to the Family Court in relation to a procedure by which the AAC reached the decision. The appeal must relate to

- a question of law;
- a question of fact; or
- a question of mixed law and fact (s.114(2)).

The appeal must be made within 28 days of receiving the decision, or within any further time allowed by the Court (rule 17).

A person aggrieved by a decision of the Family Court may, with leave granted in accordance with rules of court, appeal to the Court of Appeal on the ground that the Family Court made an error of law (s.118).
SUBMISSIONS
The submissions contained a number of criticisms in relation to the provisions dealing with review of AAC decisions. Some of the issues raised were:

- Adoption Services would like the legislation to be clearer about the AAC’s capacity to reconsider a person’s continuing suitability before the person’s approval “expires” (after 24 months) where the approval was given on the basis of false or misleading information.

- The AAC is concerned about the scope of the review on the basis of “new evidence” which is possible under s.42. It believes that a broad interpretation of this section, where “new evidence” can emerge at any time, allows for open-ended applications for review of AAC decisions.

- One submission raised concerns that, since 2002 the Department and the AAC have effectively been shielded from an investigation by the Equal Opportunity Commission in respect of discrimination complaints under the Equal Opportunity Act 1984 (WA) regarding the assessment of applications from people wanting to adopt a child or to the placement of a child for adoption under the Act. The submission considered that the services of the Department and the AAC, in considering applications for adoptive parenthood, making assessments, and approving or disapproving a placement of a child for adoption, should be seen as services to prospective adoptive parents as well as to the child. It is noted that section 3 of the Adoption Act 1994 was amended in 2003 to affirm the principle that adoption is a service for a child who is an adoptee or prospective adoptee.

Suggestions made in the submissions include:

- The AAC should be required to provide reasons for any decision to restrict an applicant’s approval with regard to age and country of the child to be adopted. The applicant should be entitled to appeal this decision and address these concerns.

- Applicants should be able to appeal the merits of an AAC decision and address the concerns of the AAC.

- There should be a limit of 28 days within which an applicant can apply for review of the AAC’s decision under s.113, consistent with Rule 17.

- A definition of “new evidence” should be inserted in s.42.

- A time limit should be inserted in s.42, restricting the time in which applicants can apply for review on the basis of “new evidence”.

- The definition of “services” in the Equal Opportunity Act should be amended to remove the reference to adoption, and to restore the general intent of the wording.

- The Regulations should be more explicit about the AAC’s power to review an applicant’s suitability.

ADDITIONAL INFORMATION
Although in many other parts of Australia the decision about an applicant’s suitability to adopt is decided by the Minister, Head of Department or Principal Officer of an approved adoption agency, the decision can often be reviewed by a qualified panel. Sometimes this is an internal review, and the original decision-maker will reconsider the initial decision based on the findings of an external panel. In other cases, it is an external review process, where the merits of the decision are reconsidered and the original decision is confirmed or varied by a tribunal or panel.

Internal review processes in other States
In the Northern Territory, a person who has been considered not suitable to adopt may apply to the Minister to have the Minister’s decisions reviewed. The Minister must establish a panel, consisting of a lawyer and 2 others with qualifications and relevant experience in social work, psychology or child welfare (1 must be employed by the Department), to review the decision. The panel conducts its review and makes a recommendation to the Minister. The Minister must review his/her decision, taking into account the recommendations of the panel.54

54 Sections 22-23 Adoption of Children Act 1994 (NT)
In the Australian Capital Territory, if the Director of the Department refuses to include an applicant on the register of persons seeking to adopt, the person may ask the Minister to review the decision. The Minister may convene a Committee of no more than 3 persons to review the decision and make recommendations to the Director to confirm or vary the decision. On receiving the recommendation, the Director may confirm or vary the decision.55

**External review processes in other States**
A merits-based review is available on decisions about an applicant’s suitability to be an adoptive parent in some other jurisdictions, including:
- Queensland – through the Children Services Tribunal;56
- Victoria – through the Victorian Civil and Administrative Tribunal57; and
- South Australia – through the South Australian Adoption Panel58.

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

**Exemption from the Equal Opportunity Act 1984**
The Committee supports the existing exemption of certain adoption services from the *Equal Opportunity Act 1984*. The Committee considers that adoption is a service to children, not a service for the adults applying to adopt a child. However, despite this capacity to discriminate, the Committee notes the importance of natural justice in decision-making about a person’s suitability to adopt. This exemption does not negate the need for adoption services to be delivered in a transparent and fair manner, with applicants having the right to a voice in the decision-making process.

**Rights of Review**
Current rights to review of AAC decisions are very limited. The AAC has the power to review its own decisions if presented with new evidence about an application. The AAC is concerned that this allows for open-ended applications for review of a decision.

Other than this, the CEO can direct the AAC to review its decision if procedures are considered to be unfair, defective or inadequate or an applicant may apply to the Family Court for review on a matter of procedure. To date, it is believed that the latter has not occurred.

There is no provision for an external review of the merits of an AAC decision to not approve an applicant or restrict the approval of an applicant. In a number of other states, there is an opportunity for external review of the decision to approve a person as fit and proper to adopt or to be included on a register of approved persons.

The review of decisions of many government bodies now takes place at the State Administrative Tribunal (SAT), which can appoint specialist members. For example, the SAT can review a decision to issue a person with a negative notice under the *Working with Children (Criminal Record Checking) Act 2004*. This is an example of an area in which the SAT already conducts a merits-based review in relation to decisions relating to the involvement of adults with children.

Although rare, an unfavourable decision by the AAC about the suitability of a person to become an adoptive parent can have a significant impact on both the person and the person’s family. At present, unless a person can present new evidence to the AAC or demonstrate procedural unfairness, there is no opportunity for review of this decision. Given the importance of this decision to a person and the family, the Committee considers that applicants should be able to apply to an independent body for a review of the merits of the AAC’s decision or the procedure by which a decision was made. The SAT appears to be the appropriate body to undertake such a review and could appoint specialist members with relevant qualifications or experience to make such decisions. The Committee considers that any external review should take place soon after the

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55 Section 17 Adoption Act 1993 (ACT)
56 S.14D Adoption of Children Act 1964 (Qld)
57 S.129A Adoption Act 1984 (Vic)
58 Regulations 16-19 Adoption Regulations 2004 (SA)
AAC’s final decision, in accordance with the timelines provided under the State Administrative Tribunal Rules 2004 (WA). This will ensure the review takes place in a timely manner.

Although approximately 95% of applicants are approved by the AAC, nearly all of those persons have restrictions imposed on their approval. In some cases, these restrictions have a significant impact on a person because the restrictions may severely limit the person’s chances of having a child placed with them for adoption. The Committee was divided on whether the grounds of appeal should be extended to a review of merits of the AAC’s decision to impose restrictions on the person’s approval.

The Committee considers that the AAC should retain its capacity to review its decisions based on new evidence which arises after the original decision is made. This could occur whether the new evidence is favourable to the applicant, or otherwise. To place an inflexible time limit upon such review would render the AAC unable to revisit its decision in the event of changed circumstances such as a relationship break-up or serious police charges.

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 21**  Given the importance of the AAC’s decisions to applicants’ lives, the Committee considers that an AAC decision to not approve an application should be subject to external review by the State Administrative Tribunal on matters of procedure and on the merits of the decision.

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99 Rule 9 provides that an application made to the SAT under its review jurisdictions must be made within 28 days of the decision-maker giving the person notice of the decision and their right to apply for review.
Chapter 6 Adoption & Diverse Family Formations

6.1 ADOPTIONS BY STEP-PARENT

CURRENT LAW
A step-parent who is proposing to adopt a child is not required to attend the adoption information seminars which are compulsory for most other prospective adoptive parents. However, a step-parent may request information and counselling about adoption from the Department (s.37(2)).

For adoption by a step-parent, the same consent provisions apply as with other adoptions; i.e. each birth parent and guardian and the child (where the child will be 12 or more at the time of the application) must provide consent or that consent must be dispensed with by the Court (s.17). Consenting persons must also have received the information and, if requested, the counselling mentioned in clause 1, Schedule 1 (s.18(1)(b)).

Further to this, the parties to the adoption must agree to an adoption plan within 28 days of all consents having been obtained (s.55(1)). As with all other adoption plans, the adoption plan must have regard to the principles in Schedule 2 (s.55(2)). The CEO must be given sufficient time to comment on the proposed adoption plan before the application for an adoption order is filed with the Court and may appoint a child’s representative to protect the child’s interests in the making of the adoption plan (s.18(1)(da), s.55(1)).

A step-parent is not subject to the eligibility requirements in s.39 and is not required to undergo the usual application, assessment and placement procedures for prospective adoptive parents (s.38(4)). Instead, a report is prepared for the Court that includes information to assist the Court to determine whether:

- all required consents and notices have been obtained or dispensed with;
- the child’s adoption is preferable to a parenting order, an order in respect of the welfare of the child or an order in respect of the appointment or removal of a guardian of the child;
- a parent and child relationship exists between the step-parent and the child, and the child is treated as a member of the family formed by the child’s parent and step-parent’s relationship;
- the child’s parent and step-parent’s relationship is stable;
- the step-parent is a fit and proper person to adopt the child; and
- the adoption plan is reasonable, promotes the child’s long-term welfare and adequately balances the rights and responsibilities outlined in Schedule 2 (s.68).

The requirement that the Court must be satisfied that the child’s adoption is preferable to alternative care orders under the Family Law Act 1975 or the Family Court Act 1997 was introduced in 2003, in response to a recommendation of the 1997 Adoption Legislative Review. That review highlighted concerns about the severing of pre-existing family relationships which occur when a step-parent adoption takes place and the Review concluded that “in many cases the needs of the child and family can best be achieved by legal means other than adoption”.

The included issues relating to security, parental responsibility, the child’s name and inheritance.

SUBMISSIONS RECEIVED
The only submission received about adoption by a step-parent was made by Adoption Services. The submission raises 2 issues in this area:

- From a practical point of view, Adoption Services is concerned about the order of processes involved in obtaining a step-parent adoption. Adoption Services currently advises prospective adoptive parents that if they wish to apply to adopt as a step-parent, they need to obtain a determination from the Family Court that adoption is preferable to a parenting order before commencing the adoption application. However, there is a view that the application can be

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60 Adoption Legislative Review – Adoption Act (1994), 1997, op.cit., p.69
commenced at the same time as seeking the determination and this creates a workload issue because Adoption Services must provide services and prepare a court report about the proposed adoption before the determination is made. Adoption Services acknowledges that the Court often needs a report to make the initial determination about whether adoption is preferable.

- Adoption Services believes “failed” step-parent adoptions are not adequately recorded in adoption statistics because there are often insufficient grounds for discharging the adoption. If the parent’s relationship with a step-parent breaks down, the child often wishes to reverse the adoption but relationship breakdown is not a sufficient ground for discharge of an adoption. Adoption Services also receives anecdotal reports from past adoptees inquiring about discharging a step-parent adoption order where the adoptee felt that, as a child, they could not oppose the adoption.

Adoption Services suggests to the Committee that:

- Section 68(1)(fa) should be clarified. They consider it would be useful if the Court’s determination as to whether adoption by a step-parent is preferable to a parenting order could be given before the adoption application formally begins.

- The issue of adoption by a step-parent should be considered carefully.

**ADDITIONAL INFORMATION**

The impact of the 2003 reforms can be seen in the numbers of step-parent adoption orders granted over the last 5 years, with numbers decreasing dramatically following the commencement of the amendments from June 2003.

**Table 6.1: Step-parent adoptions 2001 – 2006**

<table>
<thead>
<tr>
<th>Step-parent adoption orders</th>
<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
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<tr>
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<td>26</td>
<td>28</td>
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Although numbers have decreased, with 75% less step-parent adoption orders last financial year than before the reforms took effect, Adoption Services report that numbers are increasing each year. They provide the following information for the current financial year to 31 March 2007:

- 7 step-parent adoption orders have been granted by the Family Court;

- a further 7 applications for adoption by a step-parent have significantly progressed (at the stage of preparation of s.61 court report or lodgement of court documents);

- a further 2 applications for adoption by a step-parent are delayed from progressing to this stage due to Departmental workload management pressures; and

- in total, Adoption Services is in the process of carrying out statutory functions in relation to 36 cases of proposed step-parent adoptions (such as providing an information package to prospective adoptive parents, providing Schedule 1 information to those from whom consent is required, obtaining consents, assisting with the development of an adoption plan, preparation of court documents). 61

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

The Committee recognises the role step-parents play in many families. However, as acknowledged by the 2003 reforms, it is considered preferable in many cases that the parental responsibility and rights of step-parents in relation to a child should be recognised through legal orders, such as parenting orders, other than adoption. The concern is that there is an even higher rate of breakdown in second marriages, and if this occurs after a step-parent has adopted a child, the child’s links with one of the birth parents will have been permanently severed unless there are grounds for the adoption to be discharged. Despite these concerns, the Committee considers that

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61 Statistics provided by Adoption Services between 26-30 April 2007
adoption by a step-parent should remain available as an option for those cases where it is in the child’s best interests. For example, where one of the child’s birth parents is deceased, the child has no relationship with that parent’s extended family and has a long-standing and strong relationship with the step-parent, adoption may be the most appropriate care order for that child.

Anecdotal evidence provided by Adoption Services staff indicates that inheritance and child maintenance issues are factors in decisions to pursue adoption by a step-parent. Inheritance issues can be resolved by inclusion of the child in a will. Issues often arise if the relationship between the step-parent and birth parent breaks down and the step-parent does not want to be responsible for supporting the child in the long-term. The Committee understands that these issues are currently addressed by Adoption Services in the provision of oral information to relinquishing parents under Schedule 1. This schedule appears adequate insofar as it requires the CEO to provide the relinquishing parents with information about, amongst other things, the alternatives to adoption, the legal process of adoption and the social implications of adoption for the parties. The written information provided to relinquishing parents in relation to a step-parent adoption is currently the same as the written information provided to all other relinquishing parents. Although it contains information about alternative care orders, inheritance issues and the lifelong nature of adoption, it is largely tailored to circumstances where a parent relinquishes a baby. Ideally, written information which is tailored to the particular circumstances of adoption by a step-parent should be provided under Schedule 1.

The Committee notes that under section 37(2), the prospective adoptive step-parent does not have to be provided with oral and written information and counselling in relation to adoption unless the person requests it. This is not satisfactory, given the feedback provided about issues which arise for all parties following breakdown in the parent’s relationship where a step-parent adoption has occurred. The Act should require all prospective adoptive step-parents to be provided with written information, and counselling if requested, in relation to the proposed adoption. This information should be tailored to the particular issues arising in relation to step-parent adoptions.

The 2003 reforms, requiring the Court to determine whether an adoption is preferable to other types of orders for the care of the child, have had the intended effect of significantly reducing the number of step-parent adoptions. Adoption Services has raised concerns about the implementation of these provisions and would like applicants for step-parent adoption to seek the Court’s determination before commencing the application for adoption. The Committee appreciates that greater resources are required for the processes to run in parallel, as they can under the current provisions. However, the issue is not resolved by requiring parties to seek the determination before commencing the application as the Court will often still require similar information to that which is provided in the s.61 report to make its determination that step-parent adoption is preferable under s.68(1)(fa). If a comprehensive report is not provided to the Court at the determination stage, the Court will usually only have evidence from the parties to the proposed adoption which supports their application. This is not sufficient information for the Court to be able to determine what is in the child’s best interests.

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 22** The practice of applicants being permitted to apply for an order in the nature of a declaration that adoption is preferable to a parenting order prior to the determination of the adoption application as a whole should cease.

**Recommendation 23** The written information provided to parents considering adoption, pursuant to Schedule I, should be tailored to the specific issues arising in relation to adoption by a step-parent and should include information about the lifelong nature and implications of adoption, including inheritance issues.

**Recommendation 24** The exemption for step-parents under section 37(2) should be removed. The Act should require prospective adoptive step-parents to be provided with oral and written information, and counselling if requested, in relation to a proposed adoption by a step-parent. The information provided should be tailored to the particular issues arising in relation to adoption by a step-parent.
6.2 **CARER ADOPTIONS**

Sometimes a person who has been responsible for the day-to-day care of a child for an extended period of time decides he or she would like to adopt the child. This is known as a carer adoption and tends to occur in one of the following 2 scenarios:

- Foster carers apply to adopt a child in their care. The child is in foster care because a Court decided that the child was in need of care and protection and made a protection order under the *Children and Community Services Act 2004*, placing the child in the care of the CEO of the Department for Child Protection.

- Other carers of a child may apply to adopt the child. The child may have been living under a long-term care arrangement with a distant relative or family friend such as may occur following the death of the child’s parents. These carers may already have a parenting order in relation to the child. The Department will not necessarily be aware of the existing care arrangements, for example if the child has moved to WA from another state and the Department was not involved in arranging care for that child upon, for example, the death of the child’s parents.

Issues surrounding the identification of children in the CEO’s care for adoption are discussed in Chapter 9 of this Report, which deals with “Adoption as part of the Continuum of Care”.

Since the implementation of the *Children and Community Services Act 2004* from 1 March 2006, a new type of protection order has been available to long-term carers of a child who is in need of protection. These orders are known as “Protection orders (enduring parental responsibility)” and provide the carers with parental responsibility for the child, to the exclusion of all other persons, until the child reaches 18. The carers effectively become the legal guardians of the child until 18.62 This is a new alternative to adoption for carers seeking autonomy and legal certainty in decision-making about the child in their long-term care and provides permanency in the care arrangements for that child as the child grows up. However, unlike adoption,

- the child’s legal links to their biological family are not severed; and

- the Children’s Court may make an order requiring the Department to make payments to the “enduring parental carer” at a rate prescribed as between $251.93 - $405.45 per fortnight, depending on the age of the child.63

Similar to the adoption plan, a protection order (enduring parental responsibility) can provide for ongoing contact with the child’s birth family.64

**CURRENT LAW**

A person is a “carer” and can apply to adopt the child if, for at least 3 years, they have had:

- daily care and control of the child to be adopted; and

- responsibility for making decisions about the daily care and control of the child,

under a placement arranged or approved by the Department (s.4; s.67(1)(b)). If the carer is married or in a de facto relationship, they must have been in this relationship for at least 3 years before they can adopt the child (s.67(2)).

As with step-parent adoption, a carer who is proposing to adopt a child is not required to attend the adoption information seminars which are compulsory for most other prospective adoptive parents. However, a carer may request information and counselling about adoption from the Department (s.37(2)).

The child’s birth parents must give their consent for the adoption, unless the Family Court dispenses with this requirement (s.17). For a child in foster care, following a court order that the

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62 Section 60 *Children and Community Services Act 2004* (WA)
63 Regulation 21 *Children and Community Services Regulations 2006* (WA)
64 Section 63 *Children and Community Services Act 2004* (WA)
child is in need of care and protection, adoption by the carer might be allowed to proceed without the consent of the child’s parents in circumstances including:

- during the preceding 12 months, steps have been taken to establish or re-establish a relationship between the child and its birth parent/s but the parent has either seriously ill-treated or persistently neglected the child or the parent has failed to establish or maintain an acceptable relationship with the child (s.24(2)(b)); or
- the parent does not have responsibility for the day-to-day care of the child, does not have a parent and child relationship with the child and is unreasonably withholding consent to the adoption. (s.24(2)(f)).

If the child will be 12 years old or more at the time of the adoption application, the child must also consent to the adoption. If the child is 16 years or older and consents to the proposed adoption, the Court may determine that this is a sufficient reason to dispense with the requirement for the child’s parents to provide consent. (s.17, s.24).

Consenting persons must receive the information and, if requested, the counselling mentioned in clause 1, Schedule 1 (s.18(1)(b)).

An adoption plan must be agreed to by the parties within 28 days of all consents having been obtained. As with all other adoption plans, the adoption plan must have regard to the principles in Schedule 2. A person may be appointed to represent the interests of the child in the making of the plan (s.55).

A carer is not required to satisfy the eligibility, assessment and placement criteria that apply to most other prospective adoptive parents (s.38(4)). However, before the Court can make an adoption order in favour of a carer, the Court must be satisfied that:

- all required consents and notices have been obtained or dispensed with (s.68(1));
- the carer is of good repute and is a fit and proper person to fulfil the responsibilities of adoptive parenthood;
- the carer is a suitable person to adopt the child, having regard to such matters as:
  - the ages of the child and prospective adoptive parent;
  - the states of health of the child and prospective adoptive parent;
  - the ability of the prospective adoptive parent to satisfy the child’s educational needs (including future needs); and
  - the size and stability of the prospective adoptive family;
- if a joint application, that the parent’s relationship is stable (s.68(2)(b)); and
- the adoption plan is reasonable, promotes the child’s long-term welfare and adequately balances the rights and responsibilities outlined in Schedule 2 (s.68(2)(d)).

The Department appoints a person to prepare a report about these matters for the Court (s.61).

**SUBMISSIONS RECEIVED**

Adoption Services is concerned that the current provisions relating to carer adoptions are not tight enough and may permit “back-door adoptions”, where a birth parent makes a private arrangement for someone to care for their child with a view to applying for adoption after 3 years. In these cases, a legal relinquishment and selection process has not taken place.

Adoption Services believes that the definition of “carer” in s.4 is unclear, especially in relation to the role of the CEO in determining who is a carer and to the Department’s ability to approve placements retrospectively. It is also noted that the lack of a time limit for the approval of placements can raise issues if the placement was approved many years ago under less rigorous check and assessment processes which may not be acceptable today.
Adoption Services recommends that:

- The definition of “carer” should be reviewed to provide clarity about these issues.
- Consideration should be given to whether this issue should be covered in more detail, giving a power in the Act, for example, for the CEO to undertake or delegate the assessment of the proposed carer before making a decision.
- Consideration should be given to whether a time limit should be placed on “placements arranged or approved by the Department”.

**ADDITIONAL INFORMATION**

Carer adoptions have remained steady over the last 5 years, as the following table shows, with no more than 5 orders granted each year. Up to 31 March 2007, there have been no carer adoption orders granted this financial year.\(^65\)

### Table 6.2: Carer adoptions 2001 – 2006

<table>
<thead>
<tr>
<th>Year</th>
<th>2001/02</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carer adoption orders</td>
<td>3</td>
<td>5</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
</tbody>
</table>


Since their introduction, 15 Protection orders (enduring parental responsibility) had been granted between 1 March 2006 and 31 March 2007. Eight of these were granted to foster carers, and the remaining 7 orders were granted either to grandparents or to other relatives.\(^66\) It is not clear whether any of the foster carers were also considering adoption as an option for the long-term care of the child.

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

The definition of “carer” in s.4 of the *Adoption Act 1994* was amended in the 2003 to require that the placement of the child with the carers be arranged or approved by the Department. The additional requirement was inserted to ensure the Department scrutinises all carer placements prior to the adoption application, with the aim of preventing private arrangements which bypass the eligibility, assessment and placement criteria applying to most other persons seeking to adopt a child. The *Children and Community Services Act 2004* also seeks to protect young children from being subject to “back-door” care arrangements. Under s.104 of this Act, it is an offence for a person to provide care for a young child (under school-age) unless the person:

- is the child’s parent or adult relative;
- has applied for or has a parenting order in respect of the child; or
- is the carer of the child under a placement arrangement made with the CEO of the Department (eg a foster carer).

If the Department becomes aware of a care arrangement for a young child that does not fall within these categories, the Department may approve the arrangement to continue for up to 12 months. However, approval under s.104 should not be approval for the purpose of a carer adoption. The Department’s capacity to approve the arrangement for up to 12 months is temporary approval, intended to provide the carers with time to apply to the Family Court for a parenting order.

The Committee agrees with Adoption Services that clarification of these provisions would be beneficial. In particular, the Committee believes that as the *Adoption Act 1994* does not contain an operative provision relating to the Department’s power to approve a placement for the purpose of a carer adoption, some confusion has arisen about the link between arrangements approved by the CEO under s.104 of the *Children and Community Services Act 2004* and placements arranged or approved for the purposes of a carer adoption. This could be rectified by the Act containing a

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\(^65\) Statistics provided by Adoption Services on 27 April 2007

\(^66\) Statistics provided by DCP Demand Planning, Research and Evaluation directorate on 2 May 2007
provision which sets out the manner in which the CEO or Department arranges or approves placements for the purposes of a carer adoption.

Although there is concern about retrospective approval of placements for the purpose of a carer adoption, the Committee considers that it is important that the CEO retain the power to approve carer arrangements for the purpose of adoption which were made without initial Departmental involvement. For example, the Department is unlikely to have been involved in arranging or approving the placement of a child where the arrangement was made prior to the child’s family moving to WA. Alternatively, a child may have been temporarily in the care of close family friends during a single parent’s illness and following the parent’s death. This arrangement may continue for some time before it becomes evident that there are no family members who can permanently care for the child and the carers decide to investigate options to become the legal carers themselves. In both these examples, the carers should not be precluded from applying to adopt the child in their care merely because the Department did not arrange or approve the child’s placement at the outset. Carers who later apply for adoption cannot be expected to have always known that adoption would be the outcome. However, as outlined in the previous paragraph, the Act is currently unclear about the process for obtaining Departmental approval and could be amended to improve this.

At the moment, the Court does not have to determine that adoption by a carer would be preferable to alternative orders for the care of the child, as is currently required in relation to adoption by a step-parent. There are 2 points of view about whether the same standard should apply for carer adoption and step-parent adoption. There are those who consider that it is in the child’s best interests to maintain the child’s legal links with its biological family as the preferred option and consider that the Act should reflect this, as it does for step-parent adoption. However, there are also relevant differences between adoption by a step-parent and by a carer. One of the concerns about adoption by a step-parent is that step-parent relationships are more likely to break down, leaving the child with legal links to a step-parent who is no longer present, having severed the link to the biological parent. When a carer seeks to adopt, it is often the case that the child’s relationship with the carer has arisen either because:

- the parents are unable to adequately provide for the child’s care and the child has been in long-term foster care;
- of the death of the child’s parents; or
- the child has been abandoned by his / her parents.

In such cases there may be little connection between the child and the child’s biological family and therefore less concern over the severing of these legal links, although it is acknowledged that a parent may be unable to adequately provide for the child’s care (eg due to mental illness) but may retain regular contact with the child.

Foster carers who might previously have considered adoption may now investigate whether a Protection order (enduring parental responsibility) might be a more appropriate long-term care arrangement for a child in their care. One of the advantages of pursuing a Protection order (enduring parental responsibility) ahead of adoption is the ability of the Court to make an order for financial support from the Department until the child turns 18. The Court does not have the power to make such an order in respect of adoption, but the CEO may provide financial assistance under s.140. Active consideration of other options is more likely to occur when the Department is involved.

The Committee is therefore not convinced that a similar provision to that relating to step-parents is required.
6.3 **ADOPTION BY A RELATIVE**

In the past, people were able to adopt a child who was related to them. For example, in the days when there was stigma attached to the birth of a child out of wedlock, some illegitimate children born to young mothers were adopted by the child’s maternal grandmother or aunt. These children grew up thinking that their mother was their sister or cousin, respectively. This practice is no longer allowed in WA and is discouraged in most other Australian states, due to the familial relationship distortion caused by such adoptions. This can contribute to identity and role confusion for the child.

**CURRENT LAW**

In 2003, section 66 of the Act was amended to prohibit a person being adopted by a relative, unless the “relative” is a step-parent of the person. Previously relatives wanting to adopt a child were able to apply under the carer adoption provisions, if they could satisfy the relevant criteria for carer adoption. This amendment was made following concerns expressed in the 1997 Adoption Legislative Review and by the 1989-91 Review Committee, that:

- adoptions by relatives distort biological relationships; and
- parenting orders, under family law legislation, are more appropriate for securing the care of relatives.\(^67\)

Under s.4 of the *Adoption Act 1994*, a “relative” is defined as follows:

“relative”, in relation to a person, means each of the following people —

(a) the person’s —

(i) spouse or de facto partner;
(ii) parent or other ancestor;
(iii) child or other descendant;
(iv) step-parent or step-child;
(v) sibling;
(vi) uncle or aunt,

whether the relationship is of the whole or half blood, established by, or traced through, marriage, a written law or a natural relationship;

(b) in the case of an Aboriginal person, a person regarded under the customary law or tradition of the person’s community as the equivalent of a person mentioned in paragraph (a);

(c) in the case of a Torres Strait Islander, a person regarded under the customary law or tradition of the Torres Strait Islands as the equivalent of a person mentioned in paragraph (a)”

**SUBMISSIONS**

Three submissions complained about the prohibition of adoption by a relative:

- One couple reflected that it would be “heartbreaking” if a child were to lose, or be relinquished by, their parents and no family member was allowed to adopt the child, particularly if the child was orphaned overseas.

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\(^{67}\) Adoption Legislative Review – Adoption Act (1994), 1997 op.cit.,pp.75-77; Explanatory memoranda to clause 35(2) of the Adoption Act Amendment Bill (No.2) 2002
One person considered that the prohibition of relatives adopting is particularly pertinent to immigrant families where the child lives overseas and is not orphaned, but is in need of an alternative family. This person noted that the prohibition on adoption by a relative and the fact that adoption visas are not available for these children prevents them from being able to access permanent kinship care. It was claimed that this disadvantages migrant families or those with relatives living overseas.

The Hon. Colin Barnett MLA stated that WA has the harshest adoption laws in Australia with respect to adoption by a relative. He acknowledged the policy behind these laws related to distortion of family relationships, but considered that appropriately assessed relatives could provide children in care with a stable and loving family environment. He considers that this opportunity should override the possibility of distortion and confusion of family relationships. He noted that the Adoption Act 1994 provides that other types of Family Court orders, such as parenting orders, are favoured as the final step in the process of permanent family placement. However, he considers that extended family members should be entitled to adopt a child when the birth parents cannot, and are likely to never be able to, provide the appropriate level of care and protection to that child.

**ADDITIONAL INFORMATION**

Adoption by a relative is still permitted in limited circumstances in all other parts of Australia. It is usually only available if a court has determined that the adoption would be preferable to other orders, such as parenting or custody orders. For example:

- In the Australian Capital Territory, a relative can only adopt a child if the relinquishing parents consent to adoption by that particular relative and the Court considers that there are circumstances which justify the re-defining of relationships within the family (as would be the effect of the adoption order) and considers it would not be preferable to make an order relating to guardianship or custody of the child. 68

- In South Australia and Queensland, relative adoption orders are not available unless satisfied the adoption is clearly preferable, in the interests of the child, to alternative orders that may be made, for example, guardianship or custody orders. 69

- In Tasmania, Victoria and the Northern Territory relative adoption orders are not available unless:
  - a custody or guardianship order would not make adequate provision for the welfare and interests of the child; and
  - an adoption order would better serve the welfare and interests of the child than a custody or guardianship order; and
  - special circumstances in Tasmania, or exceptional circumstances in Northern Territory and Victoria, exist which warrant the making of the adoption order. 70

- In New South Wales, the Court must not make an adoption order in favour of a relative of a child unless:
  - specific consent to the adoption of the child by a specific relative has been given;
  - the child has established a relationship of at least 5 years’ duration with this relative; and
  - the Court is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the child (eg a parenting order under family laws or a care order under child protection laws). 71

During 2005-06, only 5% of “known” child adoptions throughout Australia were adoptions by a relative. This figure includes cases where the “relative” adopting the child was a commissioning

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68 Section 18(5) Adoption Act 1993 (ACT)
69 Section 10 Adoption Act 1988 (SA) and Section 12 Adoption of Children Act 1964 (Qld)
70 Section 21 Adoption Act 1988 (Tas); Section 15(3) Adoption of Children Act 1994 (NT); Section 12 Adoption Act 1984 (Vic)
71 Section 29 Adoption Act 2000 (NSW)
Review of Adoption Act 1994 (WA)

parent under a surrogacy arrangement. Adoption by a relative accounted for less than 1% of adoption orders made in Australia last year.

**Committee’s Analysis of the Issues & Findings**

The submissions reveal that adoption by a relative is still seen by some as the best means of securing a stable placement for a child in need of a family. However, it is policy in all Australian jurisdictions that alternative parenting, guardianship or custody orders are preferable to an adoption order. In WA, this has been enshrined in the prohibition on relative adoption contained in the Act. The Committee is satisfied that children in WA can be provided with relatively permanent and stable care arrangements under other legal orders and that this prohibition should continue.

Adoption by a relative has been raised as a means of resolving certain difficulties with immigration laws. Some people are concerned that children orphaned or abandoned overseas should have the opportunity to be cared for by relatives in Australia. The Committee notes that migration issues are a matter for the Federal Government. The Committee is aware that a special class of visa is available for children orphaned overseas to immigrate to Australia. Children who are not orphans may still be eligible for the “orphan relative visa” if it can be demonstrated that both parents are unable to look after the child because the parents are deceased, permanently incapacitated or their whereabouts is unknown. The “orphan relative” must be the brother, sister, grandchild, niece, nephew or step equivalent of the sponsor in Australia. In WA, more permanent orders for the care of that child can then be sought through the Family Court, rather than pursuing adoption. Other than in the circumstances described by this visa, there is usually no other means of migration to Australia, unless the child is adopted by the relatives (either under the laws of the child’s country of residence or the laws of the relevant state of Australia). This is not permitted in WA. The Committee supports the current circumstances in which an “orphan relative” visa is available and does not consider that relative adoption should be made available in WA as a means of overcoming poverty for relatives living in other parts of the world.

6.4 **Surrogacy**

A surrogacy arrangement is one where a woman agrees to become pregnant and bear a child for another person (or couple) and intends to transfer care of the child to that person (or couple) shortly after the birth of the child. In the past, some people have considered that the Adoption Act 1994 should provide for the legalisation of surrogacy arrangements and the Committee received one submission advocating this position. This is not the intention of the Adoption Act 1994, which recognises that adoption is a service for children who have been relinquished for adoption and are in need of a family. In contrast, the call for adoption in relation to surrogacy arrangements relates to the legalisation of the parentage of children brought into existence specifically for the purpose of creating a family for an infertile couple.

On 1 March 2007 the Surrogacy Bill (2007) was introduced into Parliament. This Bill provides a legal framework for the parentage of children born as a result of surrogacy arrangements. As with the Adoption Act 1994, the Surrogacy Bill (2007) provides for the consent of birth parents to the transfer of parentage to the arranged parents, the making of plans about ongoing communication between the child and its birth parents, alteration of the birth certificate to reflect parentage orders made by the Court, the effect of a parentage order, orders as to a child’s name and parties rights to information and copies of birth registration.

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72 Adoptions Australia 2005-06 op.cit., Table 4.9: “Known” child adoptions, by relationship of adoptive parent (s)
73 ibid. Figure 3.1: Adoptions in Australia 2005-06
74 Orphan Relative Visa (Offshore) (subclass 117)
76 Legislative Assembly Second reading speech, Surrogacy Bill 2007, Hansard, 1 March 2007, p. 193, (the Hon. J.A. McGinty MLA)
Chapter 7 Adoption Plans & Adoption Orders

7.1 ADOPTION PLANS

CURRENT LAW
As part of the adoption process, once the revocation period has expired, an adoption plan for the child is negotiated between the birth parent/s who consented to the adoption and the person/s selected as the prospective adoptive parent/s of the child (section 46). There is flexibility for others to be involved in the making of the plan, such as the child’s representative (section 46), a birth parent whose consent was dispensed with or certain other relatives of the child (section 70). Where there is a step-parent or carer adoption, an adoption plan must also be prepared (s.55).

An adoption plan is a key element of the open adoption scheme operating in WA. It is intended to facilitate the sharing of information about the child between his or her birth family and adoptive family. It may also provide for contact between the families. However, the Act also contemplates that under some adoption plans there will be no exchange of information or contact (s.46(2)). Schedule 2 of the Act sets out rights and responsibilities of the child, birth parents and adoptive parents which must be taken into account when negotiating an adoption plan (s.46(5)). The schedule recognises significant features of each stage in life for an adopted child, from infancy to adulthood.

Once prospective adoptive parents have been selected, the Act encourages the speedy resolution of the placement of the child by limiting the time for negotiation of the adoption plan to 21 days after negotiations begin, unless the CEO approves otherwise (ss 46(3) and 49(b)). If these negotiations fail, the birth parent/s are given one more opportunity to select and negotiate with a different adoptive parent or set of parents (s.46(3)-(4)). Once the adoption plan is agreed, the child is placed with the prospective adoptive parent/s, providing the parents meet the other placement criteria in the Act (s.48).

The adoption plan must be lodged with an application to the court for an adoption order. When making the adoption order, the court must be satisfied that the adoption plan adequately balances the rights and responsibilities in Schedule 2, is reasonable in the circumstances and promotes the child’s long-term welfare (s.68(2)(d)). The CEO is required to provide assistance and mediation services to persons who are negotiating or attempting to vary an adoption plan (s.47).

Once an adoption plan has been approved by the Court, if a breach is alleged by one of the parties, the Family Court can order the parties to participate in mediation and may enforce a provision of an adoption plan as though it were a court order made under the Family Court Act 1997. Persons breaching an adoption plan can also be treated as though they are in contempt of court or breaching a court order (s.72(2)).

The Court may dispense with the requirement for an adoption plan, or that a particular birth parent be a party to the plan, where:

- a birth parent is unable, unwilling or incapable of participating in a plan;
- after sufficient inquiries, a birth parent cannot be found or contacted; or
- there are special circumstances (s.73)

SUBMISSIONS RECEIVED
One submission related a personal experience of working within an adoption plan. This submission noted that plans are not always adhered to and that the start of the birth parent / adoptive parent relationship was difficult, but they continued to work on it. It was noted that, at the time of the making of the plan, one of the birth parents felt pressured by Adoption Services to request a certain level of contact. On the other hand, higher than stipulated levels of contact are occurring with the other birth parent.
Another submission was received from a couple who relinquished a child in the past. Although they considered that a child must have access to their “genetic legacy” as the child develops, this couple considered that there was “little or no way” to implement open adoption agreements for a child to have contact with their birth family. They considered that the loss associated with adoption continues for the birth family and child for as long as the adoption is in place.

ARCS recommends that the adoption plan should be reviewed after 2 years, given the high emotional states of both adoptive parents and birth parents at the time it is first made. ARCS argues that this would also provide opportunity for monitoring of plans to see how they were being implemented.

Adoption Services notes that there is no sanction for non-compliance with adoption plans. Some parents agree to adoption plans, but do not maintain the agreed level of contact and information sharing once the child is legally in their care. Adoption Services recommends mandatory compliance with adoption plans and penalties for non-compliance. However, Adoption Services notes that birth parents often struggle to comply with plans due to emotional distress over the adoption.

**ADDITIONAL INFORMATION**

For the 9 local adoption orders granted in 2005-06, both parents gave consent in only 2 cases. In the remaining 7 cases the Court dispensed with the requirement for the birth father’s consent and participation in the adoption plan.77

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

Adoption plans are intended to be a significant element of open adoption in WA. However, for the significant number of inter-country adoption orders made in WA, the requirement for an adoption plan is dispensed with due to the birth parents being unknown, unwilling or incapable of participating in a plan. Also, open adoption involving an adoption plan may not be possible under the laws of the sending country.

Adoption plans are negotiated for local adoptions following selection of the prospective adoptive parents. However, there are difficulties with the dynamics of this situation as adoptive parents are often willing to agree with many things at this point in time so the adoption will proceed. Also, birth parents often want the process to be over as quickly as possible and are unable to connect with their possible future feelings about the child in order to develop a plan that will meet the child’s needs and their needs on an ongoing basis.

Despite the Act providing sanctions for breach of an adoption plan, there is no formal monitoring of compliance to ensure adoption plans are being implemented by the parties, as agreed. Neither the Family Court nor the Department are resourced to do this. In this respect, adoption plans are no different from many other court orders as parties must apply to the Court to have the plan enforced. Although Adoption Services offer mediation and assistance with the negotiation and variation of adoption plans, it reports that it is rarely asked to mediate in disputes over the implementation of an adoption plan. Adoption Services operates a “message box” service through which parties can exchange information under an adoption plan. This receives approximately 57 messages per year in relation to approximately 32 adopted children78, which is some indication of the level of activity under adoption plans. However, it is not known whether this figure is a true indication of the level of information sharing under adoption plans because parties to all local adoptions do not necessarily use this service and may exchange information directly. Adoption Services also gathers information from persons coming back for subsequent adoptions to gauge how the other adoption plan is working.

The overriding issue in relation to adoption plans appears to be that regular monitoring and review of these plans does not take place. Although the Department is required to provide assistance and mediation in the negotiation and variation of adoption plans, it has no mandate in the Act to write to parties to seek review of the plan and it is therefore debatable whether the Act is operating to

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77 Statistics provided by Adoption Services for Financial Year 2005-06
78 Statistics provided by Adoption Services on 22 May 2007
ensure the child’s best interests in this regard. Regular, direct contact from Adoption Services
about the implementation of the plan may be considered as unwelcome interference by adoptive
parents who have completed the lengthy adoption process. On the other side of the equation, birth
parents may be suffering emotional trauma in the years following the adoption and may not be
capable of pursuing information-sharing or contact with the child or the adoptive family. The
Committee considers that more should be done to monitor compliance with adoption plans but is
concerned with the practical issues, including resource implications, of imposing a legislative
requirement to do so in all cases. The Committee considers that ongoing monitoring is best dealt
with during the formation of the adoption plan where parties could be encouraged to agree upon
the inclusion of a review provision in the plan. This provision should specify that the review is to
take place at a certain time and the parties should have the right to obtain assistance from
Adoption Services for these purposes. Where Adoption Services has been asked to assist in such a
review by one of the parties to the adoption plan, the provision of these services should be required
under the Act.

COMMITTEE’S RECOMMENDATIONS

Recommendation 26 Section 47 of the Adoption Act 1994 should be amended to require the CEO to provide
assistance to persons who seek a review of the operation of an adoption plan. The review should be carried out in
accordance with any review provisions included in the adoption plan, or as otherwise agreed by the parties to the plan.

7.2 NAME OF ADOPTED CHILD

CURRENT LAW

As part of the adoption order, the Court is required to make an order declaring the name by which
the adopted child is to be known (s.74(1)). If the child to be adopted is aged 12 or more, the child’s
name cannot be changed without the child’s consent, unless the child is mentally incapable of
providing this consent (s.74(3)). The general principle the Court applies when making this order is
that the child’s first name should not be changed unless there are special circumstances to do so.
This principle was included following amendments in 2003. Other factors which can be taken into
account are:

- the child’s wishes;
- the provisions of the adoption plan; and
- prohibited names under s.34(3) of the Births, Deaths and Marriages Registration Act 1998
  (WA). (s.74(2))

The Act does not prevent subsequent changes of name for the child under other laws (s.74(4)).

SUBMISSIONS RECEIVED

Six submissions raised the issue of the name of the child and suggested that either:

- Section 74(2)(aa) should be removed and adoptive parents be given the right to decide their
  child’s name; or
- Section 74 should be amended to provide greater flexibility in naming of the child, and
  require the child’s original first name to be retained within the name, but not necessarily as
  their first name.

Many of the persons making these submissions acknowledged the importance of the child’s name
in relation to the child’s history and culture. However, the following arguments were also presented
to support the suggestions outlined above:

- The Act should recognise the importance of the child’s name, but parents should be allowed
to “claim the child” to their family by naming the child if they wish to do so, possibly
including it in a pattern of family naming.
- The current naming provisions are not flexible enough to deal with the many variables of
  foreign names.
Adoptive parents are discriminated against because they have chosen adoption as the way of creating their family.

Adoptive parents want to give their child a first name which has meaning and value for their family.

Adoptive parents are concerned about ensuring their child’s assimilation into the Australian community and wish to avoid any teasing associated with unusual, embarrassing or seemingly offensive foreign names.

Adopted children are often named by the institution they were placed with, rather than having a name given to them by their birth parent/s.

Most other Australian jurisdictions are not as restrictive as WA on this issue.

Not all adoptees are hurt by the loss of their original name. Some adopted adults reflect positively or are indifferent about their name having been changed. Some note that it is a way of belonging to their new family.

Despite the adoption order, parents can still change the child’s name by deed poll, rendering the naming provisions in the Adoption Act 1994 ineffective.

A child’s official first name may not be the name used by the child’s carers.

Most of these submissions appear to relate to the circumstances arising in relation to inter-country adoptions. One submission commented that it was sad to hear about parents who change a child’s name by deed poll in relation to a local adoption. This submission noted that it would be very hard to have to face the birth parents and explain this to them.

**Additional Information**

A recent decision of the Family Court of Western Australia considered whether special circumstances existed under s.74(2)(aa) to justify changing the child’s first name. This was the first case in which the Court decided to publish reasons in relation to such a decision. It was published to provide guidance to adoptive couples on the issue.

In this case the Court considered an application from adoptive parents to change the first name of a child they had adopted from overseas. The child had recently turned 2 years old. The parents argued that:

- they are devout Christians and want to give their child a name associated with their religion;
- they have called the child by another name since the child arrived in Australia;
- the child’s name is not common in WA and will be difficult to spell;
- a person’s name can exacerbate their sense of difference;
- the name of their other adopted child was changed at the time of her adoption and she was given a Christian name; and
- the name they have chosen for the child has a special meaning.

The Judge did not consider that any of these reasons amounted to “special circumstances” which would justify an order to change the child’s first name. In particular, the Court noted that:

- Many children adopted in WA come from overseas where Christianity is a minority religion and many of these children will therefore not have Christian names.
- The child was still young enough to become accustomed to being called by a name other than that which the parents have used for him since he arrived in Australia. Although the Court makes an order about the name by which the child is to be known, this does not require the parents to address the child by that name. Many families have a “nickname” for a child.
- Australia is an increasingly multicultural nation with increasing diversity of names, some of which are unique and may be spelt or pronounced in a number of ways.

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79 O and O [2006] FCWA 121
- The child is a dark-skinned child who will be living with dark skinned parents. Calling him by his original name is more consistent with his racial origin and celebrates the sense of difference of children who come to Australia from overseas.
- A child’s first name is an important symbol of the child’s past and a link to the child’s cultural background and identity.
- The order in relation to the sister’s name was made before the naming provisions were amended.
- The attachment of meaning to names does not constitute “special circumstances”.

The Judge also noted that one of the policy considerations underpinning the naming provision, as cited in the Explanatory Memorandum when the Act was amended, was the United Nations Convention on the Rights of the Child which includes the right of the child to preserve his or her identity including nationality, name and family relations. He also noted that:

Adopting parents should not treat the naming provision as being an inconvenient irritation to be ignored at their whim. Prospective adoptive parents have a choice. They are not obliged to adopt children if they do not feel they can comply with the laws governing the process. They are placed in a very privileged position when given the opportunity to adopt a child from overseas. The community expects not only that they will provide the child with...loving care...but it also expects that they will comply with the requirements of the law.\(^{80}\)

The Judge was also concerned that parents were undermining the intent of Parliament by changing the first name of their child by deed poll (under the Births, Deaths and Marriages Registration Act 1998) after the adoption order was made. Although s.74(4) of the Adoption Act 1994 provides that:

An order under this section does not prevent a subsequent change of name under a law of the State or Commonwealth,

the Judge found it odd that the intention of Parliament could be so easily circumvented by this provision. However, he also noted that under s.34(3) of the Births, Deaths and Marriages Registration Act 1998 the Registrar can prevent a change of name if the new name would be a “prohibited name”, which includes a name that is, in the opinion of the Registrar, “contrary to the public interest for some other reason”. He considered it may be arguable that this would be the case where a court has previously determined that a child should be known by another name.

**Committee’s analysis of the issues & findings**

Although past adoption practice encouraged secrecy surrounding adoption which was reflected in such things as changing the child’s name, this is not the case for modern adoptions under the Adoption Act 1994. Adoptive parents must now acknowledge the child’s past and introduce the story of the child’s origins and adoption to it as it grows up. Many adoptive parents support the principle that a child’s first name should be retained but consider the current naming provisions are not flexible enough to deal with common circumstances in inter-country adoptions such as situations where a child was not named by the birth parents, but by the institution where he or she was relinquished.

The Committee notes the importance of a child’s name to the child’s sense of self and believes that if a child already has an established sense of self around that name, the name should not be changed.

In the case of local adoptions, where ongoing connection with the birth family is more likely, this connection should be an important consideration in making decisions about the retention of a child’s first name. Respect should be given to the wishes of relinquishing parents in relation to the name of their child.

Cultural identity factors are more likely to arise in relation to the naming of a child adopted from overseas but they may also arise in relation to local adoptions. In the 1997 Review of the

\(^{80}\) O and O [2006] FCA 121, per Thackray J at para 24
Adoption Act, it was noted that if children are adopted from overseas, the retention of their first name provides a strong link to their cultural background. It was also noted that a name change can intensify any sense of cultural dislocation which these children may already feel. Article 8 of the United Nations Convention on the Rights of the Child (UNCROC) was cited in support of the 1997 Review Committee’s recommendation that a child’s first name should only be changed in special circumstances.61 The current Review Committee considers that these considerations surrounding the preservation of a child’s name need to be complemented by considerations of cultural dislocation for a child within its adopted culture. Article 8(1) of the UNCROC states that:

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

This provision, whilst acknowledging a child’s right to its name, does not specify that a child’s first name must be maintained. WA’s current adoption laws and the practices of Adoption Services and support groups are sensitive to issues of cultural continuity and links with a child’s birth family where possible.

The Committee supports the principle that a child’s name should be retained, but believes the Act should be more flexible in relation to this issue. The Committee considers that the Family Court is best placed to make determinations about a child’s name and the provisions of the Act should provide sufficient flexibility for the Court to allow changes to a child’s first name where it is in the best interests of the child.

The Family Court, Adoption Services and adoptive parents have all noted that the intent of the naming provisions are currently undermined as parents can change their child’s name by deed poll following the granting of the adoption order. The Committee considers that this issue should be discussed with the Registrar of Births, Deaths and Marriages with a view to amendment, if necessary, of the Births, Deaths and Marriages Registration Act 1998 (WA). Section 74(3) of the Adoption Act 1994, which permits the subsequent change of an adopted child’s name, needs to be retained in case the adoptive parents re-married or the child decided to change its name upon turning 18 or even later in life.

**COMMITTEE’S RECOMMENDATIONS**

| Recommendation 27 | The principle in s 74(2)(aa) of the Adoption Act 1994 should be amended to provide that the Court should have regard to the principle that the child’s first name should be retained within the child’s name. |
| Recommendation 28 | Matters to be taken into account by the Court when making an order about the child’s name should include: |
| | - any views expressed by the adoptee on the subject; |
| | - the adoptee’s relationship with birth parents and any other persons (including grandparents or other relatives); |
| | - the adoptee’s age, maturity and level of understanding and the weight to be given to the adoptee’s views; and |
| | - the value of and need for cultural continuity for the child. |
| Recommendation 29 | Arrangements be made with the Registrar of Births Deaths and Marriages with a view to ensuring that adoptive parents are not permitted to override an order of the Family Court made pursuant to s 74 of the Adoption Act 1994. |

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61 Adoption legislative review – Adoption Act (1994) 1997, op.cit.,p.104
Chapter 8 Adoption Information and Past Adoptions

The Adoption Act 1994, in addition to regulating current adoptions, also provides for access to information by parties to adoptions, and their relatives, where the adoption occurred in the past. Following passage of the Adoption Amendment Act (No.2) 2003, there were significant reforms in this area, with the major reform being the removal of all information vetoes and the prohibition on placement of new contact vetoes. This enabled parties to an adoption, and in some cases their relatives, to access information about an adoption which occurred in the past. These reforms reinforced open adoption principles and affirmed the right of access by parties to an adoption to genealogical information, ending the practice of secrecy which surrounded adoptions in the past.

Despite openness in modern adoptions, there will be an ongoing demand from past adoptees to search for their birth family and from relinquishing parents seeking reunification with a child. Some modern adoptees may also face challenges in contacting their birth family, for example, where a birth father’s consent and involvement in the adoption plan were dispensed with when the person was adopted as a child and there has been no contact since. Therefore the legislation needs to continue to serve the interests of those who have not reaped the benefits of open adoption and who are trying to resolve fundamental issues about their identity. The Committee also notes the limitation of information provisions where, despite an adoption plan, contact with the child’s birth family was not pursued as the child grew up. In addition to examining the adequacy of the provisions regarding information sharing for parties to an adoption and their extended family, this chapter explores the regulation of those involved in reunification work and examines the debate over the continuation of the contact veto regime.

8.1 Access to Adoption Information

Current Law
Division 1 of Part 4 of the Act sets out who must preserve adoption information and who can have access to this information. The three main organisations involved in the ongoing provision of adoption information are Adoption Services, the Family Court and the Registry of Births, Deaths and Marriages. Other bodies which may be involved are private adoption agencies (there are currently none) and organisations which have been involved in the provision of adoption services in the past (eg hospitals).

Under this division, the CEO of the Department has very broad responsibility to establish and maintain services relating to adoption information, including obligations to:

- facilitate the exchange of identifying and non-identifying information between parties to an adoption and their relatives;
- obtain and preserve information about parties to an adoption;
- provide information and counselling to parties to an adoption or an adoption plan about their rights and responsibilities under the Act;
- provide mediation services in relation to matters arising under adoption plans or where parties to an adoption are trying to negotiate contact between them;
- assist parties to an adoption to identify or contact other parties to the adoption;
- provide a way for parties to an adoption to leave messages for each other (subject to existing contact vetoes);
- coordinate the collation, preservation and access to information and documents held by the CEO, private adoption agencies, other adoption organisations, the Family Court and the Registry of Births, Deaths and Marriages;
- develop and supervise the implementation of codes of practice relating to release of information, contacting a party to an adoption and the mediation of disputes between parties to an adoption or an adoption plan;
- conduct training courses for contact and mediation licensees; and
inform the public about the CEO’s functions under the Adoption Act 1994. (s.79(1))

8.1.1 Access to identifying information

Since the removal of all information vetoes from June 2005, the following parties are entitled to have access to identifying information from court proceedings relating to an adoption and the information about the registration of an adoptee’s birth:

- the adoptee;
- a birth parent of the adoptee; and
- an adoptive parent of the adoptee. (ss.84-85)

Another reform introduced in 2003\(^8\) provides for other relatives of parties to an adoption to have access to identifying information in certain circumstances. If a party to the adoption has died the following persons, once over 18 years of age, are entitled to information about the registration of the adoptee’s birth and to the record of court proceedings in relation to the adoption:

- any grandparent of the party to the adoption;
- any descendant of the party to the adoption; and
- any sibling of the party to the adoption. (s.89(1), s.89(4))

The same rights of access to information exist for these people if they are related to an adoptee who cannot be found or contacted (s.90(1), s.90(4)).

Under an adoption plan, the parties to an adoption may agree to greater sharing of information than is provided for under the Act, but an adoption plan cannot restrict access to information as prescribed under the Act (s.81(2)).

People seeking access to identifying information must apply to the CEO, providing sufficient proof of identification. The CEO is to give authorisation for the person to have access to the information unless the CEO thinks there are good reasons for not doing so (eg where threats of physical harm were made), in which case the CEO may give authorisation for limited access to information (s.82(2)). The CEO’s authorisation for access to information may be overruled by an order of the Family Court (s.82(4) or limited where the Court considers that access to such information could place a person, their partner or their children at serious risk (s.83(2)).

If the request for identifying information relates to an adoption where a contact veto is still in place, the person requesting the information must sign an undertaking not to contact the relevant person before the CEO can provide authority for the person to have access to the information (s.103).

8.1.2 Access to non-identifying information

The following parties are entitled to access to non-identifying information about the parties to an adoption:

- the adoptee;
- birth parents of the adoptee;
- adoptive parents of the adoptee;
- grandparents of the adoptee;
- descendants of the adoptee who are over 18 years old;
- siblings of the adoptee, where both the adoptee and the sibling are over 18 years old; and
- any other person who, in the opinion of the CEO, has a suitable reason for having access to the information.

\(^8\) Clause 48 Adoption Act Amendment Bill (No.2) 2002 (WA)
They are only entitled to information that is in the custody, power or control of the CEO or a private adoption agency (although none are currently operating) (s.88).

The CEO may contact birth parents, adoptive parents, adoptees aged 18 years or more and birth siblings of an adoptee aged 18 years or more to request current non-identifying information about one of these other parties. This could include a request for medical information where, for example, it is suspected that a person has a genetic disorder or hereditary disease. However, the person retains the right to refuse to provide such information (s.109).

8.1.3 INFORMATION VETOEES

Until 1 June 2003 parties to an adoption were allowed to place an information veto to prevent other parties to the adoption from accessing identifying information about them. This could prevent, for example, an adoptee discovering the identity of the birth parents if the birth parents placed a veto against the adoptee. In recognition of the fundamental right to information about oneself and one's origins, the Government passed amending legislation in 2003 which caused existing information vetoes to cease to have effect from 1 June 2005 and prevented new information vetoes being lodged from 1 June 2003. At the same time, complementary provisions were introduced so that where identifying information, previously subject to a veto, is requested, it cannot be released until:

- the person requesting information attends an interview with an officer of the Department; and
- information, counselling and mediation is provided to all parties to the adoption and their relatives, as the CEO considers necessary (s.79(3)).

8.1.4 PRESERVATION OF INFORMATION

The Act contains significant obligations, backed up with penalties, for organisations to preserve records relating to adoptions. Court proceedings are required to be preserved, as far as is practicable, indefinitely (s.94(1)). In addition to this, the CEO or any person or organisation involved in conducting adoption services (now or in the past) must preserve documents relating to adoptions for at least 100 years from when the document came into its custody, power or control (s.94(3)). If the person or organisation ceases to provide adoption services, they must ensure relevant documents are transferred to the CEO, unless the CEO is satisfied that there is adequate provision for access to and safekeeping of those documents (s.94(4)).

SUBMISSIONS RECEIVED

Submissions received on these topics came from a variety of people affected by past adoptions, including adoptees who are now adults, birth siblings of adoptees, relinquishing parents and organisations involved in counselling or supporting those who are involved in the process of reunification.

Submissions about removal of information vetoes & access to adoption information

Feedback was mostly positive in relation to the current access to information provisions. Jigsaw, ARMS and ARCS strongly supported the removal of information vetoes and the rights of all persons, including parties to adoption, to information about their origins or descendants. Submissions also reflected on the positive effects of the current rights to information, in particular that:

- Openness in adoption has reduced the stigma on adoptees who choose to research their origins.
- A birth mother’s access to information about her child (such as knowing the name of her adopted child) can significantly reduce the pain of loss. ARMS notes that:
  
  *This has been quite unexpected, just how much difference a small amount of knowledge has made to the wellbeing of many of our members.*

- Access to information has enabled reunification and healing for both adoptees and their birth parents.
However, concerns were also expressed about:

- The limited rights of siblings to information about a biological sibling who was adopted, especially where the birth mother cannot give permission for identifying information to be accessed (eg the birth mother is incapacitated by dementia) or refuses to do so.

- The lack of mandatory counselling when adoption information is released to a person. In a hearing before the Committee, ARCS’ representatives noted that UK adoptees living in Australia undergo mandatory counselling before information is released to them. ARCS believes counselling provides adoptees with the chance to engage with suppressed feelings about their adoption, prepare for reunion, provides insight into what might be happening for them and the persons they might approach and offers connection with a therapeutic support service for any identity issues that may arise following reunion. ARCS considers it is a big assumption to expect a person in these circumstances, who is currently only provided with a list of counsellors, to work through it on their own.

- Restrictions on an adoptee’s access to information about their adoption as a result of freedom of information laws.

- Restrictions on the release of court records which may identify an adoptee’s birth father. Adoption Services notes that often the only place a birth father’s name can be found is in an affidavit filed by the birth mother at the time of the application for adoption. Currently, this court document cannot be released under reg.86(1)(f) if the birth father did not admit parentage at the time. It is noted that this issue arises especially in cases of past step-parent adoptions and privately arranged adoptions, which were arranged by solicitors.

Suggestions to the Committee include:

- Counselling should be mandatory when releasing information.

- The legislation should allow for the release of any court document that identifies the name of the birth father, upon request.

**ADDITIONAL INFORMATION**

There is a continuing, but declining, demand for access to adoption information. In 1998-99 there were 553 requests for identifying information. This fell to 307 requests in 2005-06. Currently, the majority of requests for identifying information are made by adoptees (approx. 67%). Most of these adoptees (64%) are aged between 25-44 years when they seek information, with very few (8%) applying before this age. The next largest group requesting information is birth mothers (approx.12%), followed by requests from other birth relatives (approx 7%). Smaller numbers of requests for information were also received from adoptive mothers, birth fathers, other adoptive relatives and children of an adoptee.

The details of information requests between 1998-99 and 2005-06 are set out in the following table. As can be seen, there is an overall downward trend in the number of requests each year. It is interesting to note that the removal of information vetoes did not result in a spike in the number of requests for identifying information. In fact, the number of requests for identifying information has decreased since 1 June 2003.

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83 DCD submission
84 Adoptions Australia 2005-06 op.cit., Table 4.11
85 Statistics provided by Adoption Services for Financial Year 2005-06
Table 8.1: Information applications lodged, be person lodging application 1998 – 2006
(Id. = Request for identifying information; Non-Id = Request for non-identifying information)

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<td>12</td>
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<td>21</td>
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<tr>
<td>Child of Adopted Person</td>
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<td>10</td>
<td>8</td>
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<td>19</td>
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</table>

Source: AIHW Adoptions Australia reports 1998 - 2006
Note: A person may lodge more than one application in more than one relative status (ie a birth mother could also be an adopted person). A person may also lodge separate applications for identifying or non identifying information.
(a) Other birth relatives can include birth grandparents (maternal and paternal), aunts, uncles or siblings.

COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

Access to information

Adoption Services reports that in a significant number of past adoptions, especially step-parent adoptions and adoptions privately arranged by solicitors, the only document identifying a child’s birth father is an affidavit made by the birth mother which asserts that a certain man is the father of the child. Currently, this information cannot be released unless the father admitted parenthood and evidence was provided to the Court about this at the time. The Committee considers that the information provisions need to be broadened to allow the release of such information to provide searching persons with the greatest possible opportunity to explore their family heritage. To address concerns over possible inaccuracy of this information, searching persons should be provided with information about the possible denial of parenthood in such cases.

The broader issue of the rights of biological siblings of an adoptee to access identifying information has also been raised with the Committee. Currently, such siblings can only access identifying information about their adopted sibling with the birth parent’s consent or after the birth parent has died.

Example: Jenny (23 years old) recently found out from a relative that her mother relinquished a baby for adoption which she gave birth to when she was 18 years old. Jenny was born 5 years later. Jenny’s mother (48 years old) flatly refuses to discuss the adoption with her daughter.

Jenny has always thought she was an only child and often wished for a sibling as she was growing up. She is very keen to search for her sibling. Adoption Service has told her that she can only find out identifying information about the adoption if her mother consents to the release of information, otherwise she must wait for her mother to die or for her sibling to seek out his / her birth family.

Because both Jenny and her sibling are over 18 years old, Jenny is entitled to non-identifying information about the sibling and the family he or she was placed with. Jenny can also leave a confidential message for her adopted sibling with the Adoption Service which can be passed on if the sibling searches for his or her birth family.
Such examples again raise the debate about how far the Act should extend to respect a birth parent’s right to privacy about an adoption ahead of complete openness about an adoption. The Committee notes the potential trauma and damage to family relationships that could be caused by overriding birth parent rights in these situations. However, this must be balanced against the child’s best interests to have access to information about the birth family. The CEO already has the power to contact an adoptee who is aged 18 years or more at the request of a biological sibling to request current non-identifying information about the adoptee, eg to obtain medical information. However, the adoptee retains the right to refuse to provide such information (s.109).

The Committee notes that in the A.C.T., “associated persons” can have access to identifying information about an adoption. A “birth relative” of the adopted child is considered to be an associated person and this includes a biological sibling of an adoptee who was born before the child was adopted.86 The recent discussion paper on the review of the A.C.T.’s adoption laws notes that:

Initial misgivings expressed by some other jurisdictions that information in the A.C.T. would be too readily available to too many people have proved to be unfounded and the supply of adoption information has proceeded largely without controversy. In the 12 years since the legislation was enacted there has been a steady rate of applications numbering over 40 per year with no letters of complaint to the Minister or Ombudsman about the access to information provisions since 1997. This suggests that the provisions are widely accepted in the A.C.T. community.87

The Committee believes that consideration should be given to allowing a sibling access identifying information about a sibling who was adopted. This is information that is directly relevant to a sibling’s links to their genealogy. The Committee believes that the affected individual should only have access to identifying information when they are mature. This will go some way to ensuring that there is understanding of the need to respect the wishes of the adoptee and their adoptive family regarding contact. Specific provisions within the Code of Practice regarding this issue would need to be included to account for the fact that there may still be a party to the adoption who does not wish to be contacted.

The Committee also consulted a Departmental officer with expertise in freedom of information matters and is satisfied that section 81(5) of the Adoption Act 1994 ensures that a person’s rights to information under the Adoption Act 1994 are not unduly inhibited by the Freedom of Information Act 1984. The Committee is advised that where certain persons (i.e. those referred to in Part 4, Division 2 of the Adoption Act 1994) seeking adoption information enquire about doing so under a request made under the Freedom of Information Act 1984 the person is referred to Adoption Services first because the person is likely to be entitled to more information through an application under the Adoption Act 1994. Where a “freedom of information” application is made about another person (such as an adoptee wishes to find out about his or her birth mother) the Department is required to contact the other person to seek their views about release of the information in which case access to this information may be refused. This would not be the case if an application were made under the Adoption Act 1994 where adoptees are entitled to certain information about their birth parents.

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86 Adoption Act 1993 (ACT) ss.4 definition of “relative”, s.58 and s.66
87 ACT Department of Disability, Housing and Community Services, 2006, pp.18-19
COMMITTEE’S RECOMMENDATIONS

Recommendation 30  Affidavits filed with an application for adoption which name a person as the birth parent of an adoptee should be released to persons entitled to identifying information under the Adoption Act 1994. The information and education process associated with a person obtaining access to such records should educate searching persons about possible denial of parentage and a person’s right to privacy and right not to be harassed.

Recommendation 31 Consideration should be given to allowing siblings to have access to identifying information about an adopted sibling.

8.1.5 NOTIFICATION OF DEATHS

If the Registrar of Births, Deaths and Marriages becomes aware that an adoptee has died the Registrar must inform the CEO (s.92(2)). The CEO must then tell the adoptee’s birth parents about their child’s death unless:

- it is not reasonably practicable to inform them; or
- it is not appropriate to inform them, considering the provisions of the adoption plan in relation to that child (s.80(1)).

Similarly, if the CEO becomes aware that one of the other parties to an adoption, such as a birth parent or adoptive parent, has died, the CEO must let the other parties to the adoption know about the death.

If the CEO becomes aware that an adoptee’s biological sibling has died, the CEO must tell the other biological siblings of the death.

The CEO is only required to inform the other persons if it is reasonable and practicable to do so (s.80(2)) and if it is not contrary to the wishes of the other persons (s.80(3)).

COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

The Committee would like to note the importance of these provisions, as outlined by ARCS in its submission. ARCS notes that many birth parents carry ideas about their relinquished child in their minds and hearts for the rest of their lives, imagining their child at each age and developmental stage. ARCS submits that parents should be provided with the opportunity for closure and the ability to grieve fully if their child dies. The provisions outlined above ensure that information about the death of an adopted child can be provided to birth parents if it is not contrary to their wishes and if it is reasonably practicable to do so. Conversely, information about the death of a birth parent can be provided to the parents of adopted children, so that this information can be disclosed to the adopted child at an appropriate time.

8.2 CONTACT VETOES

From the 1920’s until the 1990’s, WA’s adoption laws emphasised privacy for the parties involved ahead of the child’s rights to information about their heritage. Generally, birth parents did not know who their child was placed with, nor were they entitled to information about the child as the child grew up. At the same time, adopted children were often not told that they were adopted, which could result in great distress and identity issues if the child eventually found out about the adoption. However, it was not just adoptive families who desired the protection of these laws. Some birth parents also desired the privacy afforded to them by the adoption laws, despite their grief over the loss of their child, especially where the child’s birth was the result of infidelity or occurred out of wedlock in times when this was socially unacceptable. Some of these birth parents have also kept the secret of an adoption for many years, including from their marital partner and other children. Both of these parties may have expected, given the laws of the day, that the adoption could remain a secret for the rest of their lives.

Adoption laws in Western Australia began to “open up” from October 1986 onwards, when adoptees over the age of 18 years were able to gain access to a certified copy of their original birth certificate after receiving compulsory counselling. However, an adoptee could only access non-identifying information if their birth parent had formally registered an objection on the
Contact Register, maintained by Adoption Services, that they did not wish to have contact with the adopted person.88

The laws were further reformed with the passage of the Adoption Act 1994, which gave birth parents certain rights of access to information about their relinquished child. Adoptions from this date are “open” in the sense that both the birth parents and adoptive parents are now recorded on the child’s birth registration and adoption plans are a compulsory part of the adoption order. These plans are intended to facilitate the ongoing sharing of information and contact between parties to an adoption and their extended families.

The Adoption Act Amendment Bill (No.2) 2003 further strengthened the application of principles of open adoption in WA by starting to wind back the veto provisions and extending rights of access to information, including to certain relatives who were not parties to the adoption such as grandparents and siblings. From 1 June 2003, no new information or contact vetoes could be placed and from 1 June 2005 all existing information vetoes became ineffective. The last bastion of secrecy in WA’s adoption laws is the continuation of contact vetoes lodged prior to 1 June 2003.

Current Law

The provisions dealing with contact vetoes can be found in Division 4, Part 4 of the Act. Under this division, the CEO of the Department for Child Protection is responsible for maintaining a register which records the details of contact vetoes (s.99). A contact veto exists where a person registered a written statement with the CEO of the (then) Department for Community Development before 1 June 2003 which forbids a particular person (for example, an adoptee) from contacting the person who lodges the veto (for example, the adoptee’s birth parent). A contact veto remains effective until one of the following events occurs:

- the person who lodged the veto dies;
- the person who lodged the veto cancels it;
- where the person who lodged the veto specified a time period during which the veto is effective, the time period expires; or
- where a veto was lodged by a guardian on behalf of an adoptee who was under 18 years old at the time, when the adoptee turns 19 (s.100(1)).

It has not been possible to register new contact vetoes since amendments to the Act were effected on 1 June 2003. However, if an adoptee’s guardian placed a contact veto on the adoptee’s behalf before this date, the adoptee is permitted to extend that veto upon reaching the age of 18 and before turning 19 (s.101(3)). Also, persons who lodged vetoes before this date can vary the time period for which the veto remains effective at any time (s.101(2)) or vary the veto in so far as it relates to contact with a specified person (s.102(2)(c)).

If a person approaches the Department seeking contact with another person (eg an adoptee searching for birth parents), the CEO may approach the person who has placed a contact veto and ask that person whether he or she intends it to remain effective in its current form (s.102(2)). The CEO may also arrange for any of the affected parties to be offered counselling in relation to the matter (s.102(3)).

If a person (Person 1) seeks identifying information from the Department about a party to an adoption (Person 2), and a contact veto is in place to prevent Person 1 from contacting Person 2, the CEO must not authorise the release of the information about Person unless Person 1 provides an undertaking to the CEO to not contact Person 2 (either in person, or through an agent) while the contact veto remains in place (s.103). There are penalties of up to a $10 000 fine and imprisonment for 12 months for persons who breach this undertaking, including for agents who have knowledge of the undertaking (s.104).

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88 Department for Community Services Issues paper 1989 op.cit.,p.11-12
Submissions Received

Only one submission was received which supports the continuation of contact vetoes. This submission was made by a couple who adopted a child in the 1970’s. They noted that confidentiality requirements were an integral part of the adoption process at that time. They do not think that changes to information and contact vetoes should apply retrospectively to parties to past adoptions. In particular, they believe that such changes are detrimental to adoptive parents and adoptees who wish to have no contact with birth parents. They consider that it is a form of harassment and a diminution of their rights to confidentiality that Adoption Services are permitted to contact them from time to time to let them know that a birth parent wishes to make contact with them, despite vetoes being in place. This couple recommends that the government should not relax legislative provisions further to encourage or permit contact where it is not wanted.

In contrast, 3 organisations with significant exposure to the ongoing impact of contact vetoes on birth families, adoptive families and adoptees (ARMS, ARCS and Jigsaw) support the abolition of contact vetoes. Their views, as represented to the Committee in their written submissions and at hearings to expand upon their submissions, are set out below.

Jigsaw noted that no law could meet the divergent needs of all parties in this area.

Arguments made against the continuation of contact vetoes included:

- Legislated vetoes have a negative effect upon people who may wish to contact their birth family. Many people seeking reunion have spent years trying to overcome fears of rejection before taking any steps towards reunion. It is very difficult for such people to discover a veto is in place when they start searching.

- Given no new contact vetoes could be lodged after 1 June 2003, vetoes should not be accepted from adoptees whose adoptive parents placed contact vetoes on their behalf while the adoptee was under 18. Abolishing this capacity removes the possibility of parents placing pressure on the child to extend the veto.

- Many people acknowledge the right of a person to say “no” to contact but query why additional legal sanctions (contact vetoes) are available to enforce these wishes when no one else in society is protected in this manner. This submission argued that contact by a searching person should only be considered to constitute a criminal offence when it involves the breaking of “normal” community laws around contact with others such as harassment, stalking, breach of a restraining order. Laws are already in place for such behaviour. Imposing contact vetoes tries to separate adoption from the normal community.

- In the past, there was no advocate to uphold the child’s rights at the time a contact veto was placed, preventing the child from contacting birth relatives. The child was not a party to the agreement which can prevent the child from contacting birth parents for the rest of their lives.

- The experience of those working in the area is that most people respect a person’s wish not to make contact.

- A legal device preventing contact is not necessary because the Department can ask a person who has placed a contact veto if that person is prepared to consider having contact anyway. A person’s situation can change a lot over time but the person may not necessarily have changed the contact veto to reflect this. The wishes of people can change once their children have grown up or their relationship with a partner has broken down.

- Contact vetoes can make people who are searching for their relatives feel like criminals for having a desire to contact these relatives, despite a veto being in place.

- Issues surrounding contact with other parties to an adoption must be confronted at some point in time. People are currently hiding behind the legal protection of contact vetoes. The law surrounding contact vetoes perpetuates abnormalities that can have significant psychological effects on others.
Suggestions made to the Committee include:

- All current contact vetoes and consequent legal sanctions should be abolished and a “register of wishes” should be established.
- Existing contact vetoes should be removed after two years. All people who have an existing contact veto should be contacted to explain that vetoes are to be removed and offered support and counselling.
- Persons seeking reunification should be advised of the other parties’ wishes and reasons for those wishes at the time of applying for information, so they can take these into consideration in counselling prior to continuing towards reunion.
- Remove the provision that allows an adoptee to extend an existing contact veto indefinitely when they turn 18 years of age and before they turn 19.

The following possible implications if contact vetoes were removed and replaced with a register of wishes were noted:

- Many birth mothers who have placed contact vetoes and are later approached about a reunion are often very angry because they believe they signed a contract to never be contacted again about the adoption. These people would be very angry if these laws were changed retrospectively.
- It would be important for professional people to be involved in facilitating reunions as they are can remain objective with the parties who are pursuing a reunion where contact is not desired.
- Although it would not be an offence to breach a person’s wishes to not be contacted, persons seeking reunification would not want to be rejected if the register said that the found person did not want to be contacted. It is beneficial for searching persons to be forewarned of a found person’s wish not to have contact.
- ARMS have observed that although there are often issues after the reunification of a birth parent and a child, the relationship between birth parents and their grandchildren is often close and not tainted by the abandonment issues which surround adoption. The removal of contact vetoes may provide greater opportunity for such relationships to develop.

**ADDITIONAL INFORMATION**

**Statistics**

As at 30 June 2006, 749 contact vetoes remained in place in Western Australia. Of these:

- 296 (39.5%) were placed by or on behalf of an adoptee;
- 242 (32.2%) were placed by an adoptive mother; and
- 189 (25.2%) were placed a birth mother.  

From 1 January 2000 to 31 March 2007:

- 53 vetoes have been cancelled by 32 adoptees, 13 birth parents and 8 adoptive parents
- 25 vetoes have been varied by 15 adoptees, 6 birth parents and 4 adoptive parents.

Although legislation was introduced in August 2002 to prevent the placement of further contact vetoes, there does not appear to have been a significant increase in the number of contact vetoes placed between January 2002 and 1 June 2003 when the prohibition on new contact vetoes became effective. During this time only 18 new contact vetoes were placed. This compares with 17 new contact vetoes in the preceding 2 years (January 2000 – December 2001). Given that these proposed changes attracted some publicity at the time, some noticeable increase in the lodgement of vetoes might have been expected.

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89 Statistics provided by Adoption Services for Financial Year 2005-06 for Financial Year 2005-06
90 A person may vary a veto only in relation to 1 person at a time if they wish.
91 Statistics provided by Adoption Services on 17 April 2007
Between 1 January 2003 and 31 December 2006, only 1 contact veto has been extended by an adoptee in the year before the adoptee turned 19, as was permitted under the amendments to the Adoption Act 1994 which took effect from 1 June 2003. During this period, Adoption Services contacted 34 adoptive parents in relation to the expiry of these vetoes and the need for the child turning 18 to act to extend the veto before their 19th birthday. This equates to a 3% continuation of contact vetoes by adoptees turning 19.

The falling number of contact vetoes can be seen in the following table. Adoptive parents have recorded the largest drop in the number of contact vetoes lodged by them (from 389 down to 252), followed by adoptees (from 330 down to 296). Anecdotal evidence provided by Adoption Services staff working in past adoptions suggests that some adoptive parents retain a contact veto until the child turns 18 but believe the adoptee can make his or her own choice at that age about contact with the birth family. In relation to vetoes placed by adoptees, it is reported that some keep vetoes in place in order to ease the anxiety of their adoptive parents and may cancel their veto once their adoptive parents have died or when they no longer feel constrained by loyalty to their adoptive parents. Other adoptees were previously not interested in contact with their birth father but a life event such as an illness, marriage, or birth of their own children may cause them to cancel their veto and seek information about, and contact with, their birth family.

Table 8.2: Contact vetoes in place 1999-2006, by person lodging the veto

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</table>

Source: AIHW Adoptions Australia reports 1999-2006

Jigsaw is an organisation which provides search, contact and mediation services to parties to an adoption. From a sample of 302 searches conducted by this organisation on behalf of people seeking to make contact with another party in an adoption, 83% of searches were initiated by an adoptee, 15% by a birth mother and 2% by a birth father.

**Interstate provisions**

There are a variety of models that exist throughout Australia:

- In New South Wales, Queensland and the Northern Territory, contact vetoes have been retained for adoptions finalised before a particular date. In NSW, the date is 26 October 1990; in Queensland it is June 1991; in Northern Territory it is 1994. This is similar to the situation in Western Australia.

- In Victoria, a contact veto cannot be placed. Instead there is a register which allows all people affected by adoption to register their wishes about contact and exchange of information. An authorised agency provides mediation services for birth parents or adoptive parents seeking contact. Adoptees are permitted to make contact without using the authorised agency.

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92 Statistics provided by Adoption Services on 17 April 2007
93 Andrews 2006, p.4
94 Adoptions Australia 2005-06 op.cit., pp 58-62
In South Australia, a contact veto cannot be lodged but persons may still lodge information vetoes in relation to adoptions made before 17 August 1989. These vetoes make contact more difficult.

In Tasmania and the Australian Capital Territory, contact vetoes may still be lodged in relation to current adoptions and it is an offence to breach such a veto.

In the Northern Territory, a contact veto only remains effective if it is renewed every 3 years. The lodgement of new vetoes has not been permitted since 1994.

In New South Wales, the ongoing appropriateness of the contact veto system is being reviewed and the feasibility of introducing a requirement for contact vetoes to be renewed after a specified period or otherwise expired is being examined.\(^{95}\)

The Australian Capital Territory is also considering whether to continue to allow contact vetoes to be placed in the future. A discussion paper from a recent review proposed that in the future, a person could lodge an objection to contact but that this would not be binding. Counselling for persons affected by an objection was considered beneficial, but there was no determination whether it should be voluntary or mandatory. It was proposed that existing contact vetoes continue to have effect.\(^{96}\)

**Committee’s analysis of the issues & findings**

As at 30 June 2006, 749 contact vetoes remain in place in WA. 39.5\% of these were placed by, or on behalf of, an adoptee, 32\% were placed by an adoptive mother and 25\% were placed by a birth mother. The number of contact vetoes in place has steadily declined since the prohibition on the placement of new vetoes came into effect on 1 June 2003. Prior to this date, vetoes remained steady at around 940 vetoes.

As previously noted, the placing of vetoes with relation to adoptions had much to do with the historical context in which it took place, that is, in an era where adoption was kept secret and where the rights to privacy of parties involved in an adoption took precedence over the rights to knowledge about one’s family heritage and identity.

Many other states have reformed their laws to prevent the placement of new contact vetoes. This occurred in New South Wales, Queensland and the Northern Territory during the late 1980’s and early 1990’s. However, most other jurisdictions (including WA) retain contact vetoes which were placed before such changes. The only state which does not have contact vetoes is Victoria. New South Wales is considering following the Northern Territory model, which requires existing contact vetoes to be renewed on a 3-yearly basis.

Openness in modern adoption laws and practices has been facilitated by the removal of legal barriers which had prevented adoptees from accessing information about their birth relatives. This has allowed reunification and healing for many persons involved in past adoptions. Although modern practices allow parties to agree under an adoption plan to have no further contact, contact is encouraged, even if only by exchange of letters at intervals throughout the child’s life.

The Committee has been presented with compelling arguments to remove remaining contact vetoes, including:

- The effect contact vetoes can have on people who are searching for their relatives, making them feel like criminals because they have a “criminal desire” to contact relatives, despite a veto being in place.
- The negative effect that legislated vetoes have upon people who may wish to contact their birth family. They already have to overcome fears of rejection before taking steps towards reunion. It is difficult to discover that a veto is in place at the commencement of a search.
- The fact that every person in society has the right to say “no” to contact from another person but only with respect to adoption does a person have the additional legal sanctions afforded by contact vetoes available to them. A person searching for relatives should only be

\(^{95}\) NSW Department of Community Services, Issues paper 2006, p.5

\(^{96}\) ACT Department of Disability, Housing and Community Services, Discussion Paper 2006 op cit., p.20
committing an offence if they have broken “normal” community laws around contact with others, for example, harassment, stalking, breach of a restraining order.

- The fact that vetoes were placed at a time when no one advocated for the child’s rights. The child was not a party to an agreement which placed a lifetime veto on contact with the child’s birth family. The dilemma now is that the birth parents believe they have entered into an agreement meaning they will never again be contacted about the adoption.

- The reports from those involved in reunification work that most searching people respect another person’s wish to not have contact. Adoption Services reports that, to date, there have not been any formal investigations or prosecutions for an alleged breach of a signed undertaking in relation to a contact veto.

- The Department can already ask a person who has placed a contact veto if he or she is prepared to consider having contact when approached by a searching person. It is the experience of those involved in reunification work that a person’s situation can change a lot over time but the contact veto may not necessarily have been changed to reflect this.

- The argument that issues surrounding contact with other parties to an adoption must be confronted at some point in time. People are currently hiding behind the legal protection of contact vetoes. The law surrounding contact vetoes perpetuates abnormalities that can have significant psychological effects on others.

On the other hand, persons who support the continuation of contact vetoes argue that:

- It would be a breach of faith for the government to change the terms of adoption agreements entered into in the past. The legal conditions under which these people relinquished or adopted a child should be maintained. At the time these people entered into the adoption, it was expected that those conditions would have life-long effect.

- Removing contact vetoes may result in people being forced to reveal an adoption which they have kept secret their whole life. This could cause great stress and trauma to individuals and their families.

The Committee is persuaded by the arguments for the discontinuance of a contact veto system which criminalises contact between parties to adoptions. The Committee considers that a person’s fundamental need to establish his or her identity and explore the family heritage should override considerations of a desire for exclusive privacy for other parties to an adoption. In particular, the Committee objects to the criminalisation of this fundamental desire of adoptees. The Committee acknowledges that the wishes of persons who have current contact vetoes should be respected and therefore recommends that current contact vetoes should be converted into “Statements of objection to contact” and placed on a register. There is reason to believe, from a long history of past adoption mediation practice by both Jigsaw and ARCS, that if contact vetoes were replaced with “Statements of objection to contact”, people seeking reunification are, in the main, likely to respect the wishes of others not to have direct contact. Nevertheless, strategies to minimise the anxiety of those affected by this proposal would need to be in place prior to its implementation. It is recommended that this include correspondence with, and the offer of counselling to, all parties who have placed a contact veto which is still effective. Given that some vetoes may have been placed some time ago and it may not be possible to contact all relevant persons, there should also be advertising of this initiative.

Once a register of “Statements of objection to contact” is in place, persons seeking identifying information about a party who has registered such a statement should be counselled in a similar manner to those who currently request information where a contact veto is in place.
COMMITTEE’S RECOMMENDATIONS

**Recommendation 32** The Adoption Act 1994 should be amended so that it is no longer an offence for a person to contact another person who has placed a contact veto against that person.

**Recommendation 33** Existing contact vetoes should be converted into ‘Statements of objection to contact’ and placed on a register.

**Recommendation 34** Persons who have placed an existing contact veto should be offered counselling prior to the repeal of the offence provisions.

**Recommendation 35** Searching persons must attend an interview with the Department (or a counsellor approved by the Department for this purpose) where identifying information about a person who has registered a ‘Statement of objection to contact’ is to be released. At the interview, the person should be provided with information about an individual’s right to privacy and the reasons, if known, for the other person’s ‘Statement of objection to contact’. If these reasons are not known, the searching person should be provided with general information about the possible ramifications of contacting a person against their wishes.

8.3 LICENSING OF CONTACT MEDIATORS

**CURRENT LAW**

Division 5 of Part 4 of the Act, Part 7 of the Regulations and the Code of Practice (Contact and Mediation Agencies) 1995 contains provisions relating to the licensing and conduct of mediators. Mediators assist persons in the reunification process with other parties to an adoption by acting as agents for their clients to contact a “found party” and negotiate and mediate contact between the client (the “searching party”) and the found party. Other than the CEO, the only persons authorised to act on behalf of another person to establish or negotiate conduct between parties to an adoption are licensed persons, referred to as “Contact and Mediation licensees” (s.105).

The CEO of the Department for Child Protection is responsible for the issue, renewal, suspension and revocation of licences (s.106, Part 7 Regs). Persons must satisfy strict requirements relating to, amongst other things, relevant qualifications, counselling experience, knowledge of the adoption laws, security of records and character before a licence will be granted (regs.61 and 62). An aggrieved person can apply to the State Administrative Tribunal for a review of the CEO’s decisions in relation to a contact and mediation licence (reg.72).

Before contacting a person in relation to an adoption, a contact and mediation licensee must find out from the Department whether a current contact veto is in place in relation to that person. The CEO must provide the licensee with the details of any such contact veto and the licensee must comply with the requirements of the veto. There are serious penalties and licence sanctions for breach of this requirement (s.108).

The conduct of contact and mediation licensees is largely governed by the Code of Practice. This outlines the way in which services are to be provided and requires licensees to, amongst other things:

- Provide services that are respectful of the individuality of clients and found parties and safeguard those persons’ rights to dignity, privacy and self-determination (s.4(2)).
- Act in a non-judgmental manner and not unduly influence any decision to be made by any party (s.5(5)).
- Refer to matters relating to adoption in an objective and factual manner rather than in negative or value-laden terms (s.5(9)).
- Ensure that mediation is not undertaken by any person who is not a licensee (s.5(10)).
- Ensure that all reasonable efforts are made for an optimum outcome for all parties (s.5(10)).
- Terminate relationships with clients when it becomes reasonably clear that clients no longer require, or are not benefiting from, the services (s.5(13)).
Inform clients and found parties about decisions in relation to matters which affect the parties’ interests and about the outcome of mediation (s.6(1)).

Inform the client about information provided by the CEO in response to queries about any current contact veto (s.6(10)).

If there is no current contact veto, establish whether the client has had previous contact with the found party and the outcome of the contact. If the found party has indicated that they wish to have no contact with the client, the licensee must cease services for the client (s.6(11)).

Communicate directly with a found party in a discreet and confidential manner, taking care to avoid the risk of other persons suspecting or learning that a found person may be involved in an adoption. Initial communication should be by telephone or letter, rather than in person. (s.6(12)).

Ensure that found parties who were not previously aware of their adoption are informed of assistance that is available to them to assist them to deal with the implications of this knowledge (s.6(14)).

Ensure that parties participate in a fair and equitable manner. The licensee is to cease acting if any party continues to harass, coerce, intimidate, embarrass or ridicule another party (s.6 (16)).

**SUBMISSIONS RECEIVED**

Relevant issues raised in the submissions received are outlined in the sections 8.3.1 to 8.3.4.

### 8.3.1 Qualifications & Skills of Contact and Mediation Licensees

ARCS supports counselling and mediation by skilled practitioners, considering it benefits all persons involved. The experience of ARCS is that it is helpful for adopted people to prepare for the outreach to their birth family. ARCS notes that there are often pre and post-reunion issues with the parents’ feelings around relinquishment, new relationships, identity, family feelings and boundaries.

Jigsaw considers that Western Australia’s licensing system has worked well during the transition to open records but believes it will prove unnecessarily restrictive in the future, due to requirements for licensees to have 2 years of professional experience in adoption work and given the limited number of people able to get work in this area. Jigsaw submits that professionals have transferable skills and the ability to learn new content quickly. Jigsaw considers that the requirement for mediators to renew their licence every 3 years is expensive, unnecessary and that the resources used could be better directed to client work. The question is raised as to why working in adoption mediation requires greater monitoring and control than mental health, drug and alcohol, marriage counselling and prisons. Jigsaw asserts that the best protection for all involved in mediation lies in the requirement for all agencies to hire professional staff. Jigsaw believes the current system resulted from past experiences of poor outreachs conducted by well-meaning but untrained individuals, but that this no longer occurs.

### 8.3.2 Demand for Services

Adoption Services’ submission notes that there is a decreasing demand for information about past adoptions which they believe will continue. In 1998-99 there were 553 requests for identifying information, compared with 307 in 2005-06. It is believed that the demand for licensed mediators to facilitate contact and provide information may become redundant as numbers dwindle.

### 8.3.3 Code of Practice

Jigsaw considers that the Code of Practice can operate as a de facto veto system. Under the Code of Practice (s.6(1)), where a “found party” has indicated he or she wishes to have no contact with the client, the licensee must cease services for the client. Jigsaw notes that this position elevates the found person’s wishes above the needs of the searching person and can leave the searching person without support from the mediator (despite mediators being there to assist people). Jigsaw notes that, despite this provision, nothing prevents the searching person from contacting the found person directly. Jigsaw also considers that persons involved with adoption are given special
protection from laws concerning harassment, stalking and breach of a restraining order, not offered to other sections of the community. Jigsaw acknowledges that while the only way to avoid this problem is to send the “found person” considerable information upon initial contact, doing so risks the possibility of a secret adoption being exposed. This conflicts with the duty under the Code of Practice to take care to avoid the risk of other persons suspecting or learning that a found person is involved with an adoption (s.6(12)).

Jigsaw also notes that a refusal of contact under s.6(11) appears to apply indefinitely. Jigsaw considers that this provision is contrary to logic and experience, as it is aware of many examples where either an adoptee or birth mother refused contact at first but has had a change of heart a few years later. Jigsaw is concerned that the Code of Practice may also be used by a person to effectively place a veto against a person contacting their entire family.

Jigsaw is also uncertain whether the Code of Practice permits a mediator to tell a relative of a deceased “found person” about the adoption, or the adoptive parents of an adoptee who cannot be found.

Jigsaw considers that the Code is an “academic document which bears little relationship to the actualities of mediation”. Several examples were provided to illustrate this. They include:

- Section 6(7) of the Code of Practice requires licensees to be satisfied that all clients and found parties have access to info about Part 4 of the Act and Part 7 of the Regs. A factual discussion of this nature is impractical in the early stages of an outreach, given the emotional nature of the discussions taking place, and such a discussion may feel irrelevant later. Also, if things go badly and the mediator is prohibited from further contact with a found person, they would be prevented them fulfilling the requirement of this section.

- Section 5(9) of the Code of Practice requires licensees to refer to matters relating to adoption in an “objective and factual manner”, rather than in “negative or value-laden terms”. In Jigsaw’s experience, adoptees and birth mothers experience negative emotions and consequences as a result of adoption. It is difficult to discuss adoption and these issues without breaching the Code. Such discussions may be seen to be “unduly influencing” a client in breach of sections (5)4 or 5(5) of the Code.

8.3.4 Offences for Contact and Mediation Licensees

Jigsaw notes that if an unlicensed person conducts mediation, they are committing an offence (up to $10,000 fine or 12 months imprisonment). Occasionally, Jigsaw receives information about a relative or friend who has made an initial outreach on behalf of the searching person. Although it is explained to the person that this is illegal, there appears to be no point in reporting such matters to police. Therefore, they query the worth of unenforceable laws such as this one. It is also noted that interstate adoption workers are not aware of this restriction.

Opposing views about the way overall way forward in this area were presented. ARCS considers that the requirement for contact and mediation licensees working within a Code of Practice should continue whereas Jigsaw considers that the requirement for licensed mediators should be abolished, including the Code of Practice. Jigsaw recommends that clients should be encouraged to use agencies with “preferred provider status” and/or professional people.

Additional Information

Recent analysis of data collected by Jigsaw between 2003 and 2006 from client files reveals the following about who has initiated searches through this organisation and the initial outcomes of contact with a found party:

- 83% of searches were initiated by an adoptee, 15% were initiated by the birth mother and 2% were initiated by the birth father.

- In cases where an adoptee searched for a birth parent, the initial response of the found person was as follows:
  - 51% agreed to accept a letter or phone call in relation to the adoption.
  - 27% agreed to a meeting.
Adoption Information & Past Adoptions

- 10% agreed to provide information only via the mediator.
- 11% would not provide information or agree to further contact.

In cases where a birth mother searched for an adoptee, the initial response of the adoptee was as follows:
- 65% of adoptees agreed to accept a letter or phone call in relation to the adoption.
- 16% agreed to a meeting.
- 7% agreed to provide information only via the mediator.
- 12% would not provide information or agree to further contact.

It is interesting to note that the “total rejection rate” for both groups was very similar, at 11-12%. 97

Committee’s Analysis of the Issues & Findings

There are currently very few persons licensed to conduct contact and mediation services for others under the Adoption Act 1994. The licensing of these persons is heavily regulated, in contrast to persons working in other situations where sensitive counselling and mediation skills may be required.

Demand for such services is decreasing and is likely to continue to decrease over time. People adopted under the open adoption scheme are more likely to have some knowledge of, and possible contact with, their birth family as they grow up. However, as noted at the start of Chapter 8, even with open adoption there will be circumstances in which an adoptee has had no involvement with a birth parent, for example if the Court has dispensed with the birth parent’s inclusion in the adoption plan.

Although the Committee is concerned that high standards are maintained in this area, the ongoing feasibility of a strict licensing system is questioned. The Committee considers that standards can be maintained by ensuring that new licensees satisfy the criteria for obtaining a licence, as currently prescribed in the Regulations. For persons who have professional qualifications in a relevant field and have undertaken initial training to obtain a licence, the benefits of an ongoing renewal regime are questionable. For those who obtain a licence on the basis of counselling experience in adoption, the Committee considers that ongoing scrutiny of the quality of the person’s capabilities and conduct is warranted. In all cases, the CEO retains the power to suspend or revoke a licence for reasons such as a licensee’s conviction for a relevant offence, contravention of licence conditions, a breach of the Code of Practice and unsuitable professional conduct (r.72). This should provide sufficient protection to members of the public affected by these services.

The Committee is also concerned that the current Code of Practice for contact and mediation is too restrictive and can limit the capacity of mediators to use their expertise to facilitate reunions. It is therefore recommended that the Code of Practice be revised after further consultation with licensed mediators and other relevant interest groups, as part of the implementation of recommendations surrounding the removal of contact vetoes.

Committee’s Recommendations

**Recommendation 36** Persons who wish to provide contact and mediation services relating to adoption in WA must continue to comply with the Adoption Act 1994 and the Code of Practice. However, those who have a tertiary qualification in social work or psychology, and who satisfy other current licensing criteria in Regulation 61, should be approved to practice as a contact and mediation licensee, but should not be required to re-apply for a licence every 3 years.

**Recommendation 37** The Code of Practice should be revised in consultation with licensed mediators and relevant interest groups.

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97 Andrews, op.cit., pp.4 and 7
Chapter 9 Adoption as part of the Continuum of Care

The care of adopted children can be considered on a continuum, with care provided by birth parents at one end and adoptive parents at the other end and where a new parent-child relationship is established between the child and the adoptive parents. Along the way, there are numerous options for the care of a child, which may involve the child being temporarily cared for by relatives, being cared for on a longer-term basis by relative or non-relative foster carers or being cared for in an institution designed to meet the child’s special needs.

Adoption is often considered the “last option” for children in care, as it has the drastic consequence of legally severing the child’s ties with birth parents and birth family. This is reflected in the general principles in section 3 of the Act, where one of the paramount considerations to be taken into account in the administration of the Adoption Act 1994 is that the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child (s.3(1)(c)). This principle implies that persons involved in making decisions about a child’s care should explore other options before pursuing the child’s adoption. To this end, it is appropriate that the Adoption Act 1994 and the Children and Community Services Act 2004 should be administered by the same government agency, the Department for Child Protection which provides the legislative framework for decisions about children in the care of its Chief Executive Officer (CEO).

Major reforms relating to the care of children who are unable to be cared for by their parents were introduced from 1 March 2006 under the Children and Community Services Act 2004. Four new protection orders were introduced including a “protection order (enduring parental responsibility)” which gives a person (other than the Department or a parent of the child), or two people jointly, parental responsibility for a child until the child reaches 18 years of age. This is designed to address issues of legal certainty, parental responsibility and permanency issues for children in long-term foster care. This order lasts until a child turns 18. Carers looking after a child under one of these orders are entitled, if ordered by the Children’s Court, to ongoing financial and other support from the Department, as opposed to the comparatively low levels of government support provided post-adoption. The current payments to “enduring parental carers” are prescribed in regulation 21 of the Children and Community Services Regulations 2006 and provide for payments of $251.93 - $405.45 per fortnight, depending on the age of the child. It is up to the Court to determine, in accordance with this scale, the financial support (if appropriate) which the CEO must provide to the carers. A protection order (enduring parental responsibility) has the benefit of not legally severing the child’s links with its birth family. As the orders have only recently been introduced, it remains to be seen whether they will be used as an option for ensuring permanency and stability in the long term care of children.

CURRENT LAW

Under the Adoption Act 1994, there are 2 ways in which children receiving care from persons other than their own relatives, may be adopted. Firstly, where a child has been in out-of-home care with the same foster carer for more than 3 years, the carer may apply to adopt the child (s.67, s.4). In this case, the child has a pre-existing relationship with the carer. Secondly, where a child is in the care of the CEO, by virtue of an order made under the Children and Community Services Act 2004, the Department may determine, as part of the child’s care plan, that adoption is to be pursued in the best interests of the child. In this case, the Department would be looking to place the child with prospective adoptive parents who have indicated their interest in adopting a child locally. In both cases, the consent of the birth parents is required, unless dispensed with under s.24, and the CEO (as the child’s guardian under the court order) must also provide consent (s.17).

Some parents of a child in care might consent to the child being adopted. However, it is considered more likely that cases will arise where the Department identifies a child for whom adoption is considered the best option but one or both of the parents do not wish to consent to the adoption. For example, a child may be taken into care shortly after birth where both parents are drug-addicted and in a violent relationship and it is determined that the child is in need of protection. The parents already have 4 children taken into the care of the CEO, the last 2 having been under long-term protection orders from shortly after birth. If the parents’ behaviour had been abusive over a long period of time and they had failed to show any interest in establishing or maintaining a
relationship with the children, the Department may apply to dispense with both parents’ consent. However, the parents may still object and refuse to consent to the adoption of their child. In order to justify dispensing with parental consent, the Department would have to establish that one of the grounds under s.24(2) applies. These grounds are outlined in section 3.3.3 of this Report. It may be appropriate in some such cases that the Department has not pursued reunification between the parents and child for at least 12 months (s.24(2)) before applying to dispense with consent.

**SUBMISSIONS**

Submissions in this area explored the options for children in need of care, where the parents were unwilling or unable to care for their own child.

Submissions from ARCS and persons affected by past adoptions encourage the Government to continue to support mothers and assist them to develop the capacity to look after their own children. Other submissions recommended that the child should be placed with family because of the significant impact that adoption can have on a child. One of these submissions stated:

*Mother and child have the right to be supported by the community, as well as their own family. Anything short of this is cruelty for the child, except in the case of proved child abuse.*

ARCS considers that adoption should only be one of the early placement goals if it is not possible to fully facilitate either the parents’ capacity to care for the child in the long-term or find a family placement for the child. ARCS believes that assessment and intervention in the early stages should be considered on a continuum of placement, with adoption being the last option, in accordance with the *Adoption Act 1994.*

The Hon. Colin Barnett MLA challenges the Department’s alleged ideological position that favours keeping families together, arguing that from a child protection perspective, the family is sometimes not the best place for the child. However, he also notes the difficult balancing act involved in child protection, which must balance the risk of leaving children in a potentially unsafe home environment against the risk of causing emotional damage to the children by removing them from their family. He also acknowledges that adoption of vulnerable children may not be the first solution and all efforts should be made to keep families intact. However, when this is clearly impossible and the welfare of a child is in jeopardy, he considers that adoption should be considered as a favourable option.

In another submission, Ms Trudy Rosenwald points to the high number of children in foster care for long periods of time and the low rate of carer adoptions in WA as evidence that there are no effective links between child protection and adoption services for children in WA.

The need for governments to provide support for family carers was also highlighted. The Law Reform Commission of WA notes the practical difficulties experienced by family carers in providing consent to medical procedures, obtaining the child’s identification documents, claiming Medicare or health benefits for the child, obtaining family tax benefits or child support and enrolling the child in school. The Law Reform Commission notes that carers sometimes do not obtain parenting orders due to court costs or are reluctant to undertake formal court proceedings for fear of alienating their own children.

**Permanency for children in care**

The Hon. Colin Barnett MLA notes the significant increase in the number of children in the care of the Department over the last 5 years and that the majority of these children (72%) were in foster care, either with family members or non-relatives. He acknowledges that fostering may be a short-term solution for some children but notes that in other cases children are moved between different foster carers. He considers that such transience and instability is unacceptable for children who are already at risk and argues that the Government should examine more effective, permanent solutions for the increasing number of children in care where parents cannot, or will not, provide adequate care for them and are unlikely to do so in the future. He argues more opportunities

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88 Ms Rosenwald is a PhD student at Edith Cowan University, Registered Psychologist, Contact and Mediation Licensee and an adoptive parent
should be provided for these children to be adopted into nurturing, stable and permanent family environments. He alleges that the government appears to almost completely ignore adoption as a positive option for children in care, despite the growing numbers of children in care.

In an appearance on the ABC’s Stateline programme in November 2006, the former Minister for Child Protection, the Hon. David Templeman MLA, suggested that applicants for adoptive parenthood may wish to consider fostering a child, given the reduced numbers of children available for adoption and the increasing number of children in WA who need a family.99

One couple, already adoptive parents, reported that they investigated fostering a child but found that it is difficult to adopt another child if there is already a foster child in the home. They suggested that there could be more provision to allow for fostered children to remain with a family if another child is placed in the same family for adoption.

Another couple also recognised the potential capacity of persons applying for adoptive parenthood to provide a home for other children in need of care who are not available for adoption. They recommended that, while assessing applicants for adoptive parenthood, the AAC could also consider whether an applicant should be approved as a suitable foster parent.

**ADDITIONAL INFORMATION**

**Statistics about Protection orders (enduring parental responsibility)**

In the 12 months since the introduction of protection orders (enduring parental responsibility), from 1 March 2006 to 31 March 2007, there have been 24 applications for these orders and 15 have been granted. It appears that 5 applications made between January and March 2007 are yet to be determined. Of the 19 applications that have been determined, 15 (78.9%) have resulted in the issue of a Protection order (enduring parental responsibility). Just over half (8) of these of these orders were made in favour of foster parents, with the remainder (7) being made in favour of grandparents or other relatives. The majority of orders granted related to children over the age of 6 years.100

**Statistics about children under long-term care orders**

As part of the new regime of protection orders introduced in March 2006 under the *Children and Community Services Act 2004*, the Department can apply to the Children’s Court for an order that a child be placed under the care of the CEO. The Department may apply for a time-limited protection order or, where it is considered that it is appropriate for the child to remain in the care of the CEO on a long-term basis, the Department may apply for protection order “until 18”. Between 1 March 2006 and 31 March 2007 there have been:

- 153 “until 18” orders and 295 time-limited orders issued where the child was not already on an order in the 2 months prior to the issue date. “Until 18” orders make up 34.2% of this total.
- For children under 1 year old, 41 time-limited orders and 25 “until 18” orders have been issued. “Until 18” orders make up 37.9% of this total.101

It is difficult to provide statistical analysis of children in long-term foster care, as some children may start out on short-term, time-limited orders and eventually end up fostered under long-term arrangements.

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100 Statistics provided by DCP Demand Planning, Research and Evaluation directorate on 2-3 May 2007

101 Statistics provided by DCP Demand Planning, Research and Evaluation directorate on 3 May 2007. Note that under the *Children and Community Services Act 2004* (WA) it is possible to apply to replace or revoke an existing order, so this data represents ‘new children’ under these types of orders. This data excludes other types of orders granted during the period.
Adoption as part of the Continuum of Care

**Ford Report**
The recent report “Review of the Department for Community Development” (the “Ford Report”) highlights the following statistics about the stability of placements for children who are in the care of the Department:

- as at 30 June 2006, 27% of children who have been in care for between 1-12 months have experienced more than two placements;
- for the 1,728 children in care for more than 12 months, 35.9% have been in more than two placements in the past three years;
- 84 children have been in more than seven placements in the period of three years; and
- of the 204 children and young people that exited out-of-home care in 2004-05, 98 (48%) had more than two placements.102

The Report also notes that children who have experienced multiple placements in foster care (general foster care or with relatives) demonstrate poor outcomes in adulthood, including:

- reduced health status;
- lower educational levels;
- higher unemployment and homelessness rates;
- lack of stability in future relationships; and
- a higher incidence of imprisonment, drug abuse and mental health problems.103

The Report also states “In contrast to this, apparently, children who are adopted have better outcomes, similar to those children in the general population.”104 The Committee notes that this conclusion is not fully supported by all available research 105

The Ford Report is concerned that children are provided with permanency, noting that:

...there are situations where the birth family is unwilling or unable to make the necessary adjustments so that their children can return home....Each failed attempt [at reunification] adds to the child’s trauma and distress and, in this way, the child protection system can be seen as having contributed to the abuse.106

As a consequence, the Ford Report recommends that:

**RECOMMENDATION 39** - The Department...engage in community consultation, including with Aboriginal communities, to develop policy on permanency planning and placement and consider whether any legislative amendment (including timeframes), would assist, what ongoing monitoring and support should be provided and identify any other issues.

**Other jurisdictions**
There has been a trend towards strengthening legislative measures for permanency planning for children in care in places such as the United Kingdom, Victoria and New South Wales. In the United Kingdom there has been a strong focus on adoption as a means of achieving this outcome.

The Ford Report notes the planned implementation from March 2007 in Victoria of the Children, Youth and Family Act 2005 (Vic) which provides timeframes in permanency planning for children in care which are linked to the age of the child, recognising children’s different needs for attachment at different ages. This Act reportedly requires a permanency decision to be made no later than 12 months after a child has come into care if the child is less than two years old, within

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102 Ford 2007, p.94
104 The Ford Report (p.94) cites the Crime and Misconduct Commission, 2004, Protecting Children: An Inquiry into Abuse of Children in Foster Care in Queensland, in Department of Child Safety, 2006, Improving Permanency for Children in Care, p 3 in support of this statement.
105 Ed. Howe 1996 citing Thoburn 1996. Also Sellick, Thoburn & Philpott, 2005
106 Ford,2007,op.cit.,p.95
18 months if the child is between two and six years old and within two years if the child or young person is seven years or older.\footnote{ibid., p.95}

In New South Wales, the \textit{Children and Young Persons (Care and Protection) Act 1998} was recently amended to require the Children’s Court to consider and give weight to evidence about a parent’s past history of child abuse or neglect, where that parent has previously had a child removed and not restored to their care or the parent was involved in causing a reviewable death under that Act. These amendments are intended to facilitate the early intervention in cases where a newly born child is at risk of harm.\footnote{Second Reading speech, \textit{Children and Young Persons (Care and Protection) Miscellaneous Amendments Bill 2006} (NSW), Ms Reba Meagher, Minister for Community Services, Hansard, 24 October 2006, p.3273-3274} The \textit{Children and Young Persons (Care and Protection) Act 1998} also expressly provides that where there is not a realistic possibility of a child being restored to its parent’s care, a permanency plan must be presented to the Court which specifies another suitable long-term placement for the child. In preparing this plan, the Director General may consider whether adoption is the preferred option for the child.\footnote{Section 83 \textit{Children and Young Persons (Care and Protection) Act 1998} (NSW)}

In the United Kingdom, a scheme of permanency planning for children in care is designed to reduce the number of pre-adoptive placements for a child in care. This is achieved by ensuring a focus on concurrent planning as part of the child’s care plan which explores both family reunification and permanent placement through adoption, encouraging foster parents who may also want to consider adopting a child to be assessed as adoptive parents and placing young children identified as likely to be in long-term care with foster parents who are also approved as adoptive parents. A decision about what is in the child’s best interests is made by the court.

\textbf{Committee’s analysis of the issues & findings}

There is a perception in the community, reflected in submissions to this review, that adoption provides a superior standard of care for children who cannot remain with their families due to the permanency it provides. A recent study conducted in the United Kingdom, found that both long-term foster carers and adoptive parents were providing good care to children.\footnote{Selwyn & Quinton 2004, p.9}

Although policy and decision-making about the options for children who come into care because they are in need of care and protection under the \textit{Children and Community Services Act 2004} (as opposed to being relinquished for adoption) are not strictly within the terms of reference of this review, they have been raised in submissions made to the Committee. The Committee considers it appropriate to make some overall comments about them because such decisions are made under the \textit{Adoption Act 1994}.

Children enter care for various reasons and, although there are high numbers of children in care at present, only some of these can be resolved by adoption. For example, some children enter care because a parent requires respite. It would not be appropriate to consider adoption in such cases.

Adoption is not a viable option for many older children in long-term care, children with very challenging behaviour, those who do not wish to be adopted or where it is not possible to find adoptive parents for children.\footnote{ibid., p.6} There will also be situations in which the children and birth parents maintain satisfactory contact but the parents are unable to care for the child. For such children, a protection order (enduring parental responsibility) may provide legal permanence and stability. At this stage, it is difficult to measure the relative impact of protection orders (enduring parental responsibility) as they were only introduced from 1 March 2006 and it is rare for a child in care to be adopted.

Even where adoption may be a viable option for some children in long-term foster care, not many prospective adoptive parents want to adopt these children. Adoption Services staff report that, while completing the assessment process a significant number of applicants seek to be approved for both the local and inter-country programmes. However, after approval many do not complete the local adoption profile sent to them, choosing instead to focus on inter-country adoption.
The Department has provided the Committee with anecdotal evidence that children entering care are from increasingly complex family backgrounds, with a much higher incidence of parental drug addiction and mental health problems than in the past. The Department also reports that children are also more likely to present with behavioural problems and have special care needs than in the past. This is consistent with evidence reported in the Ford Report.\(^{112}\) It reinforces the fact that it is difficult to simply compare outcomes for children who are adopted, with those in care. Apart from the higher level of parenting skills which may be required to care for these children, prospective adoptive parents may be deterred from adopting locally as they are more likely to have to confront the complexities of the child’s family in the local situation compared with inter-country adoption.

An additional concern for ensuring stability for children in care is the insufficient number of foster carers available to care for children, including over long periods. The Ford Report commented on over-crowding issues in the homes of foster carers, placement instability for those in care and the difficulties in attracting and retaining foster carers.\(^{113}\) The Committee considers that community perceptions about both adoption and foster care may play a part. In the past, foster care was not promoted as a permanent type of care for children. However, as greater numbers of children enter care for longer periods there is a need for permanency for these children with carers who are prepared to care on a long-term basis. Education of prospective adoptive parents about this need may prompt some of them to consider fostering as a means of providing a family to a child in need. Adoption Services reports that they promote fostering as an alternative to adoption at the information seminars and there have been cases where adoption applicants have become foster carers, but that this is not a common occurrence.

The Manager Adoption Services has informed the Committee that adoptions from care (as opposed to carer adoptions) are rare and he is only aware of one case of adoption from care which has occurred under the Adoption Act 1994. The Committee considers that identifying children in care whose best interests may be met by adoption is a function for the Department in its child protection role. One of the guiding principles which must be observed in carrying out this role is the principle that every child should have stable, secure and safe relationships and living arrangements.\(^ {114}\) The Committee is satisfied that the Adoption Act 1994 provides the Department with the legislative base to pursue adoption from care where it is considered desirable to achieve this outcome.

The role of Adoption Services has traditionally been viewed as separate from that of child protection. As a result, suitable opportunities for children who are taken into care and for whom adoption may be a desirable option may not have been examined. Recent structural reform in the newly-established Department for Child Protection should address this issue as Adoption Services and Fostering Services are now located under one Director. This Director reports that a new focus for the Department under this restructuring is to more actively integrate adoption and fostering into a continuum of care model.

The Committee considers that there are cases in which adoption from care may be the best option for a particular child and, in line with recommendation 39 of the Ford Report, adoption should be looked at within the development of Departmental permanency planning policies. However, care must be taken to ensure these policies do not promote adoption from care in such a manner as to repeat the forced removals experienced by members of the Stolen Generation or mothers who feel that, under past adoption practices, their babies were taken from them. It is of paramount importance that children should not be made available for adoption if it disrupts functioning family relationships or stable long-term care arrangements with family or foster carers. It is the Committee’s view that the focus should not be on whether, as a matter of policy, adoption is preferable to foster care but it should be ensuring the availability of a range of legislative options when considering the best interests of a particular child.

\(^{112}\) Ford, op.cit., pp.39 & 93

\(^{113}\) ibid., pp.94-95, 100-104

\(^{114}\) Section 9(e) Children and Community Services Act2004 (WA)
COMMITTEE’S RECOMMENDATIONS

Recommendation 38 In line with Recommendation 39 of the Ford Report, the Committee supports the development of a permanency planning policy for children in the care of the CEO of the Department. This policy should include adoption, consistent with section 30(c) of the Adoption Act 1994, in circumstances where there is no other appropriate alternative for the child.
Chapter 10  Administration of Adoption Act & Other Matters

10.1  EXPERIENCES OF PERSONS USING ADOPTION SERVICES

In June 2003, the Department commissioned the Prospective Adoptive Parents Feedback Project which was designed to obtain feedback from prospective adoptive parents about the information provided to them by the Department's Adoption Services unit, the relationship between them and Departmental staff and the support available to applicants for adoptive parenthood. A survey was conducted by an external provider in an anonymous manner, in order to obtain unrestrained feedback. The survey instrument specifically sought negative feedback and critical feedback was encouraged. Overall, applicants rated the services provided well and 84% of respondents were very satisfied or fairly satisfied with Adoption Services.\textsuperscript{115} Although 73% of respondents said there were things about Adoption Services that frustrated them and 69% said that aspects of the process left them stressed, 75% rated their relationship with Adoption Services as “very good or good”. The unit also received high ratings which indicated that respondents thought they were transparent (84%), honest (96%) and trustworthy (88%) all or most of the time.\textsuperscript{116} However, only 19% of respondents saw Adoption Services as a source of support and only 35% said that Adoption Services provided the support along their adoption journey all or most of the time. In general, respondents received support from family and friends. Some were wary of requesting support from Adoption Services as it might be perceived as a weakness and others did not see support as part of the role of Adoption Services.\textsuperscript{117}

The Department’s Consumer Advocacy Service deals with complaints and assists persons who are concerned about Departmental decisions which affect them. This Service has advised the Committee that it receives very few adoption-related complaints as part of its work. It is estimated that the Service receives a maximum of 12 complaints relating to adoptions per year. Given that the Service dealt with 862 cases during 2005-06\textsuperscript{118}, adoption-related complaints appear to constitute less than 1.5% of the cases brought to their attention. Of the complaints received, most relate to inter-country adoption, in particular the changing program requirements and slow process involved in adopting a child from China. The Consumer Advocacy Service also reported that it has received complaints from adoptive parents that Adoption Services staff members are too slow and not putting in sufficient effort, but it is often found that the delay is not caused by the Department. The Consumer Advocacy Service also received complaints from parties to past adoptions who object to contact from another party to the adoption (for example, where an adoptive family is contacted by a birth mother, but the adoptive family has never told the child he/she is adopted).\textsuperscript{119}

A random sample of recent feedback forms completed following an interested person’s attendance at Adoption Services’ initial information seminars held between 2005 and 2007 indicates that:

- 95% of found the information seminar to be “good” to “excellent”;
- 55% rated the overall message given by Adoption Services as “encouraging” and 15% as being “strongly positive."
- 31% found the message to be “neutral” and 16% as “cautionary”; and
- none (0%) of the sample rated the seminar a “discouraging” or “poor”.\textsuperscript{120}

Submissions Received

Generally, the submissions received from adoptive parents expressed concerns about a perceived negative attitude towards adoption within Adoption Services. For example, some people found the initial information seminar to be “off-putting” and thought it made applicants feel like “second class citizens and horrible people for wanting to adopt and take children away from their birth parent”.

\textsuperscript{115} Department for Community Development, 2003 p.ii
\textsuperscript{116} ibid., pp.ii-iii
\textsuperscript{117} ibid., p.ii
\textsuperscript{118} DCD Annual Report 2005-06, p.62
\textsuperscript{119} DCP Consumer Advocacy Service, information provided on 1 May 2007
\textsuperscript{120} Statistics provided by Adoption Services on 10 May 2007
Other submissions claimed that:

- 75% of the information at the seminars was based on what could go wrong and the negative aspects of adoption.

- Although adoptive parents understand the need for a rigorous assessment process, the current system affords prospective adoptive parents very few rights, little support and treats them as a by-product of the process. Instead of balancing the challenges of adoptions with the rewards, the Department focuses exclusively on the challenges.

In contrast, a number of past adoptees gave positive feedback about their experiences with the Department and Jigsaw when seeking reunification with their birth families. One person with an insight into past adoption practices praised the Department’s current practice of educating adoptive parents about parenting a child who has gone through the “trauma” of adoption at the start of their life.

Some approved applicants felt like they were scrutinised in the same manner as persons about whom the Department has child protection concerns and that such treatment was not warranted.

One submission noted that adoptive parents are concerned about making a formal complaint where they are unhappy with Adoption Services, due to fear of jeopardising their applications.

Suggestions to the Committee include:

- Making the complaints process more visible and available for applicants.

- Ensuring staff in Adoption Services are aware of the complaints process and are encouraged to offer it to applicants.

- The Department should acknowledge that it is an additional party to an adoption and must work alongside the other parties - relinquishing parents, adoptive parents and the child.

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

Some participants in the adoption application process may have negative perceptions about the service they receive, arising from anxiety about approval. The Committee considers that adopted children are not receiving the best possible service if, during the early placement period, parents do not feel that they can approach Adoption Services for fear of jeopardising the placement.

The adoption application process is stressful for applicants due to the situation of uncertainty. They can therefore be highly sensitive to perceived unfairness or discrimination relating to events which occur during the process.

The Committee does not consider that Adoption Services or the AAC are “anti-adoption”. The Committee notes that there are decreasing numbers of children relinquished for adoption locally while the rate of approval of applicants is very high. During the adoption process, the differing needs of parties to an adoption must be met. Children’s views are generally unrepresented in the process, unless they are older, and it is therefore the role of Adoption Services to ensure that the child’s best interests are the focus of the adoption process. The high priority given to the needs of children by Adoption Services and the AAC can be perceived as anti-adoption.

Submissions indicate that some of those attending information seminars perceive that Adoption Services is cautious or negative in its portrayal of adoption. However, it is important that adoption information seminars contain information about the challenges of parenting an adopted child. The Department would be failing in its duty if it did not provide such information to prospective adoptive parents. The Committee considers that prospective adoptive parents are provided with ample exposure to both the positive experiences of adoptive families in WA and the associated challenges by attending the compulsory information seminars and receiving the information package. The Committee understands that an ASFC brochure is included in the information package sent to every person who inquires about becoming an adoptive parent. ASFC representatives are present at the initial information seminar and have the opportunity to meet with, and offer support to, prospective adoptive parents. Further to this, ASFC also runs the
inter-country adoption information seminar and there is a link to the ASFC website from the Adoption Services website.

Although the Committee received submissions from some persons who had negative experiences in their dealings with Adoption Services, statistics from other sources support a high level of satisfaction with the services and information provided and a low level of complaints made to the Department’s Consumer Advocacy Service. However, it is of some concern that prospective adoptive parents are hesitant to complain about Adoption Services’ practices for fear of jeopardising their application. The Ford Report made the following comments and recommendation in relation to the Department’s complaints management process:

“A good complaints handling process can contribute to improving the quality of services and help restore public confidence... [the Department] needs to establish a clear complaints handling process with three tiers:

- **STAGE 1: Frontline complaint handling** (District Office) - Staff empowered with clear delegations to resolve complaints at first contact. Staff log complaint details for later analysis

- **STAGE 2: Internal review or investigation** (Head Office) - More senior staff or designated complaint officer review / investigates unresolved complaints

- **STAGE 3: External review** - Still unresolved complaints referred externally. Alternative dispute resolution (e.g. mediation); External agency (e.g. ombudsman); Complainant informed of appeal procedure or other legal remedy

The process needs to provide clarity for both consumers and staff about what constitutes a complaint, who can receive a complaint, how it should be recorded and dealt with, when it should be investigated etc. The description of the system needs to guide consumers clearly to the next steps if they are unhappy with the review outcome. The Consumer Advocate should then be available to support any consumer through the process. It is very important that the three-tier process include referral to an independent review body – the Ombudsman’s office...

**RECOMMENDATION 30 - The Department... develop a three-tiered complaints management process supported by clear policies, guidelines and education programs for consumers and staff. This process be developed in conjunction with the Ombudsman and the Corruption and Crime Commission.**

The Committee supports the Ford Report’s recommendations on this issue. This recommendation was also supported by the Government.

**COMMITTEE’S RECOMMENDATIONS**

**Recommendation 39** A review of the Department’s Adoption Services unit complaints management process should be included in the Department’s implementation of recommendation 30 of the Ford Report.

### 10.2 FLEXIBILITY AND TIMELINESS OF ADOPTION PROCESSES

**CURRENT LAW**

The Act and Regulations provide flexibility to the Department in administering adoption services. A person commences an application to become a prospective adoptive parent by lodging an expression of interest with the Department. This cannot be done unless the person has completed the compulsory information requirements (Reg 37(2)). Although the Act requires the CEO to provide interested persons with information sessions, it does not set out a timeframe in which this is to be done (s.37). However, a person who has completed the information requirements must lodge an expression of interest within 12 weeks of completion for it to be accepted (Reg 37(2)(c)).

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121 Ford op.cit., p.78 - 80
122 Media Statement by the Hon. Alan Carpenter MLA, Premier of Western Australia, Government response to Ford Review to revolutionise child protection in WA, 7 March 2007
Following lodgement of a satisfactory expression of interest, an applicant must wait until the CEO invite them to proceed with the application (Reg 38(1)). The CEO can make such invitations “from time to time”, taking into account:

- the number and requirements of children who have, or are expected to, become available for adoption during a particular period of time;
- the number and attributes of persons who are already registered as approved prospective adoptive parents; and
- any other relevant matter. (Reg 38(2))

However, generally speaking, persons are to be invited to proceed with their application in chronological order of which the expression of interest was lodged unless:

- the CEO is trying to pick an applicant whose attributes would match the wishes expressed by a birth parent who is relinquishing a child for adoption; or
- the applicant has expressed an interest in adopting siblings, a child with a disability, a child more than 12 months old or a child from outside Australia. (Reg 38(3)(b)).

Once a person lodges the application (after being invited to proceed), the CEO is required to appoint an assessor to prepare the assessment report (s.40(1)). However, there is no time period set out in the legislation in which this is to be done.

Following successful completion of the assessment process, a person’s name is placed on a register of approved prospective adoptive parents (s.44(1)(b)). A person must then wait to be selected by the birth parent/s as the prospective adoptive parent for a locally-relinquished child or for his or her file to be sent overseas and a child to be allocated to him or her by another country. Files are sent overseas in order of being completed. The number of overseas children offered to WA-based prospective adoptive parents each year is determined by the criteria in operation, the guidelines or the quota operating for each sending country. Although sending countries may have quotas in place, this does not determine the number of children offered each year as no country can guarantee a certain number of children will be available for adoption.

If a person has been on the register for more than 24 months since being approved, a child cannot be placed with that person unless a re-assessment of the person’s current circumstances has determined that the person is still considered suitable for adoptive parenthood, or the CEO otherwise determines that this is still the case (Reg.40).

**Submissions Received**

Submissions received from prospective adoptive parents included complaints about the current delays in the adoption process. One couple noted the huge increase in waiting times in the last few years to attend initial information seminars (1 month in 2004; 12 months currently) and for an assessor to be appointed (2 months in 2004; 8 months currently). One approved couple reported having been in the adoption process for the last 5 years without being allocated a child.

To resolve these delays, submissions called for extra resources for Adoption Services or involvement of a private agency to meet the demand from those interested in applying for adoptive parenthood. They would also like the legislation to include maximum timeframes for processing applications or provisions requiring the Department to expedite processing of applications, in line with recommendation 17 of the Bishop Report -

**Recommendation 17** – That the Attorney-General approach the respective state and territory ministers and request they amend their adoption legislation to include the provisions of the Hague Convention that require central authorities and competent authorities to expedite adoptions.123

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123 House of Representatives Standing Committee on Family and Human Services “Overseas Adoption in Australia – Report on the inquiry into adoption of children from overseas”, November 2005, paragraph 5.20
One person also considered it was unfair that the Department limits the numbers of persons who can attend the compulsory information seminars, given that this prevents persons from starting the adoption process. Another person considered that regulation 38 should be amended to provide the Department with flexibility to identify and fast-track assessments of applicants where there are “exceptional circumstances”, such as a sending country requesting extra files due to an increase in the number of children awaiting adoption or where a country’s criteria changes and some applicants will be disqualified if they are not promptly assessed.

ADDITIONAL INFORMATION

Adoption Services reports that the current average waiting time before a person can commence the compulsory information seminars is 12 months from the time when they first register their name. Following completion of these seminars and lodgement of an expression of interest, applicants are currently waiting, on average, 8–9 months to be invited to proceed to the assessment stage. In early 2006, there was only a 2–3 month wait to commence the assessment process.\(^\text{124}\)

Waiting times for compulsory information seminars are controlled by Adoption Services, which offers the initial information seminar on a bi-monthly basis to a limited number of persons (20). The frequency of information seminars and the number of persons permitted to attend are currently being limited by Adoption Services to enable it to perform the backlog of work in relation to existing applications, which has exceeded Departmental and assessor capacity.\(^\text{125}\)

Due to the increasing numbers of files to be processed by countries such as China, and the decreasing number of children being made available for inter-country adoption, approximately 10% of prospective adoptive parents whose files have been sent overseas currently need to be reassessed as it has been more than 24 months since the person/s received AAC approval.\(^\text{126}\) The length of time spent waiting before the allocation of a child is offered also extends where applicants decide to change the country to which they would like their file to be sent.

COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS

There are currently significant delays before a person can attend the compulsory information seminars and undergo assessment. There is also a substantial existing “queue” of approved applicants awaiting allocation of a child. In early 2006, WA had 100 files overseas and only expects approximately 30 offers of children each year.\(^\text{127}\) At this rate, some people whose files are already overseas may wait up to 3 years for a child. Between 1 May 2005 and 1 May 2007, of those people who have had a child placed, the average waiting time from AAC approval to placement of a child with a view to adoption was approximately 17 months for local adoptions and 18.5 months for inter-country adoptions.\(^\text{128}\)

Adoption Services is attempting to address delays in assessments by recruiting more contracted assessors. 12 assessors were recruited in February 2007, but 2 have since withdrawn and 2 are currently unavailable for work. Another 2 assessors are being recruited to replace those who have withdrawn, and it is anticipated that more assessors will be required to meet the ongoing demand from applicants.\(^\text{129}\)

However, there is no way to reduce waiting times for a child to be allocated to an approved couple, as this is determined either by selection by birth parents (local adoptions) or matching processes in other countries (inter-country adoptions).

Adoption Services reports that it does not have staff dedicated to deal with applications from prospective adoptive parents, although this is approximately one third of the unit’s business. Adoption Services’ structure is primarily focussed on fulfilling functions related to the placement of children for adoption, such as working with relinquishing parents and supervision of adoptive placements. Since this structure was developed in 2000 the number of applicants for adoptive

\(^{124}\) Statistics provided by Adoption Services on 30 April 2007

\(^{125}\) Information provided by Adoption Services on 30 April 2007

\(^{126}\) Statistics and information provided by Adoption Services on 23 May 2007

\(^{127}\) Statistics provided by Adoption Services on 30 April 2007

\(^{128}\) Statistics provided by Adoption Services on 14 May 2007

\(^{129}\) Information provided by Adoption Services on 30 April 2007
parenthood has grown significantly including many more of these persons applying to adopt a child from another country. The processing of inter-country applications is resource intensive. Extra resources may be required to reduce pressures in this area, should the Government feel it is important to do so.

In relation to submissions about recommendation 17 of the Bishop Inquiry, the Committee notes that under s.134B of the Act, the State Central Authority in WA already has all the duties of a Central Authority under the Hague Convention. In WA, the Minister who administers the Adoption Act 1994 is the State Central Authority. The Minister delegates her functions to Departmental officers. These includes the obligation to comply with Article 9(b) and take all appropriate measures to facilitate, follow and expedite proceedings with a view to obtaining an adoption in accordance with the Convention.

In relation to inter-country adoptions, Adoption Services provides files of approved applicants as requested by sending countries and can increase the number of files provided as requested. The role of WA as part of a receiving State under the Hague Convention is to offer families to meet a need identified by another country, rather than to acquire children to meet a local demand. Many of the people who complained to the Committee about the delays in the adoption process called for extra resources or private adoption agencies to meet the demand from those interested in applying for adoptive parenthood. It is clear that there are already greater numbers of applicants approved to adopt each year than there are children for adoption from sending countries.

Adoption Services reports that it is often difficult to identify prospective adoptive parents who match the birth parents’ wishes for placement of their child. There is currently uncertainty about the circumstances in which the CEO can progress an application outside chronological order under regulation 38. The Committee would like to see a greater pool of prospective adoptive parents made available for local adoptions. While this may result in a greater number of prospective adoptive parents missing out, given the low numbers of children relinquished, the intention is to find the best match for the child.

Although the administration of the Act is naturally affected by available resources and the “queue” of approved persons awaiting the allocation of a child is growing, the Committee does not support the current restriction on numbers attending, or the frequency of, the compulsory information seminars. This policy restriction on a legislative requirement imposes significant waiting times on persons who have expressed an interest to adopt, many of whom will not go on to complete all the compulsory information seminars and lodge an expression of interest. Although those proceeding to the expression of interest stage may still experience frustrating delays at later stages in the process, at least resolution of these issues would be available to those who choose not to proceed.

The restriction applied to information seminars also effectively reduces the pool of prospective adoptive parents from which a match can be made. The Committee believes this is of particular concern for local adoptions where the Department tries to foster ongoing contact between the birth family and the adoptive family for the child’s long-term benefit. It is clearly in the child’s best interests for the child’s birth parents to have the broadest possible choice and to be satisfied with their selection of a family for the child they are relinquishing. This is more likely to facilitate ongoing contact. To this end, the Committee believes that the Department should have greater discretion in the selection of applicants who are invited to proceed from the expression of interest stage to the assessment stage, in line with the wishes of birth parents. For example, the Department may wish to be proactive in assessing younger applicants or applicants with a particular cultural background where this is relevant and meets the wishes of birth parents.

Given the disparity between “supply” and “demand” in this area (see Table 4.1), it is important that Adoption Services continues to manage the expectations of those who attend information seminars about the possible timeframes and outcomes of the process.
Committee’s Recommendations

Recommendation 40 The Department of Child Protection’s Adoption Services unit should remove restrictions on numbers of interested persons who can attend compulsory information sessions provided pursuant to section 37 (1)

Recommendation 41 Regulation 38 should clearly enable the CEO of the Department to progress expressions of interest to the assessment stage outside chronological order to meet the needs of locally relinquished children.

10.3 Use of Private Agencies

Current Law
The Minister may grant a licence to a private agency to conduct “adoption services” and perform other functions for the purposes of the Act (s.9(1)). Since the 2003 amendments, agencies can only apply for a licence when the Minister calls for applications (s.9(2)). The Minister has not done so during this time.

Submissions Received
Adoptive parents are calling for greater involvement of private agencies as they complain that the Department is “anti-adoption”, provides poor service and is not coping with the current demand for services. Some parents believe that they should have a choice of provider and are unhappy that agencies can only apply for a licence if the Minister calls for applications. One submission noted that “this government (must) ensure that exclusivity does not equate to lack of service”.

There has been an equally strong call from persons affected by past adoptions, and organisations who deal with these persons, for the Government to remain the sole provider of adoption services in WA. This is due to concerns that private agencies would be motivated to increase the number of adoptions and may improperly encourage vulnerable mothers to give up their babies for adoption. Persons making these submissions are not confident that private agencies would be impartial and would act in the best interests of the child.

Additional Information
The Bishop Report criticised the WA Government for failing to license bodies to conduct assessment of applicants for inter-country adoption, in addition to counselling or educational functions currently provided by non-government organisations such as ARCS and ASFC. It was stated that:

Although this counselling role gives these groups meaningful work, it does not appear likely to increase the volume of files processed overall. The main bottlenecks in inter-country adoption within Australia relate to parents being approved, which in Western Australia is still within the control of the government department. (para 5.64)

The Bishop Report also considered that one of the reasons community service departments in Australia do not give priority to inter-country adoption is that they are more focussed on children at risk in their own state (para 5.75). The Report recommends that:

Recommendation 18 - The Attorney-General approach the relevant state and territory ministers to amend the Commonwealth-State Agreement to commit the states and territories to provide the necessary training, resources including adequate funding, and policy support to enable suitable non-government organisations of the required standard to be accredited in all jurisdictions (para 5.81).

Committee’s Analysis of the Issues & Findings
There has only been 1 application in 1997 (for a licence) and 1 application in 2003 (for a licence and accreditation for the purposes of Article 9 of the Hague Convention). On each occasion the Minister at the time declined the application.

The State retains ultimate responsibility for the care of children if an adoption endorsed by a private agency breaks down. The assessment of prospective adoptive parents and the supervision of pre-adoptive placements are critical functions to guard against adoption disruption. Although there are delays for persons wanting to become prospective adoptive parents, the Committee considers
that, from the perspective of children to be adopted, these functions are currently adequately provided by contracted assessors, the AAC and Adoption Services. The Committee does not believe that this is likely to change in the future. However, the Committee considers the ability to license private adoption agencies to carry out these functions should be retained. In addition, the Committee believes there may be a role for private agencies to provide post-adoption support for adoptive parents (see section 10.4).

The Committee notes that the soon-to-be established Commissioner for Children and Young People will be able to provide independent review of government provision of services to children, including adoption services.

10.4 Support for Adoptive Parents

Current Law
Following the placement of a child with prospective adoptive parents, there is a minimum 6 month period during which the placement must be supervised to ensure the welfare and interests of the child (s.54, s.56, s.139)

Following the granting of an adoption order, the Department provides mediation or variation services relating to adoption plans (s.47)

Submissions Received
The main points raised in submissions about this issue were:

- Adoptive parents feel like Departmental staff adopt a “child protection mentality” when dealing with applicants, including once they have been approved as prospective adoptive parents and where there is no evidence of a failure in parenting.

- Consideration should be given to the separation of Adoption Services’ compliance or protective role from their support and facilitative role. During the supervision period, Adoption Services is trying to engage and support families but is, at the same time, fulfilling a position of authority in providing a report on the placement. These 2 goals are perceived as conflicting.

- Adoption Services is significantly involved with a couple after placement and prior to the adoption being finalised. However, once the adoption is finalised, families are allegedly left to their own devices. Although many people may be happy for this to occur, it is suggested that the occasional post-adoption order follow-up would benefit some adopted children and adoptive parents.

Suggestions to the Committee include:

- Regulations should specify the maximum number of visits to which families must be subjected where there is no evidence of a parenting problem.

- Adoption Services should either develop an active support mechanism for families, or devolve these responsibilities to the private agencies that are fully supportive of adoptive families and already offer a broad range of services. The compliance role should remain within government.

- Specialist post-placement services should be provided to families.

- Occasional post-adoption order follow-up processes should be implemented, such as a phone call every 12 months to offer further support, assistance or referral.

- The provision of post-placement support services by practitioners independent of the Department’s Adoption Services unit.

Professionals working in this area advocate for specialist adoption services and pro-active support for those parenting adopted children. It was reported that adoptive parents experiencing difficulties are likely to withdraw from their peers to hide their guilt and shame about not measuring up to expectations that they were going to be perfect parents. This can delay a request
for assistance. Older applicants are more likely to have an older, special needs child placed with them and find it more difficult to deal with the child’s challenging behaviour.

**Committee’s Analysis of the Issues & Findings**
The Committee discussed the perceived conflict between the Department’s child protection role and its support role during the placement period. Adoption Services maintains that although the supervision of approved parents is relatively intense, it is geared towards supporting parents. The aim of supervision is to ensure that the child is safe, is not being harmed and is bonding appropriately with the adoptive family. At information seminars, Adoption Services encourages parents to access their support services, but this can be countered by the anxiety of parents worried about approval. Adoption Services believes that the problem is mostly one of perception, as it was reported that the unit receives numerous calls from parents seeking support during the settling-in period. It was also reported that there were only 5 cases in the last 10 years where adoptions were not completed due to concerns which arose during the supervision period, and in 2 of those cases the adoptive parents wanted to abandon the placement.

Supervision of a placement is an important part of finalising the adoption, and is therefore conducted thoroughly by Adoption Services staff members during 6 formal visits over the 6 month supervision period. It is essential that the Court is provided with any relevant information about the success of the placement before making the adoption order.

Stresses naturally arise at the time of arrival of any new child in a family, including an adopted child. The supervision period may involve additional stress due to anxiety about approval of the placement. Adopted children are not receiving the best possible service if, during the placement period, parents feel that they cannot approach the Department because they might jeopardise the placement. It is important that adoptive parents have ongoing access to post-adoptive support services, to identify and address issues which arise after this ‘honeymoon period’. The Committee supports the continued provision and funding of post-adoptive support services, by the Adoption Services and other specialist practitioners.

**Committee’s Recommendations**

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**Recommendation 42** The Department’s Adoption Services unit should retain supervision of placements under ss.54 and 139 of the Adoption Act 1994. However, consideration should be given to separating placement support services and placement supervision. These support services could either be provided separately by the Department or contracted out.

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### 10.5 Fees for Adoption Services

**Current Law**
The Regulations prescribe the fees for information seminars, assessment and registration as a prospective adoptive parent. These fees are currently:

- $110 per session for each person attending a compulsory information seminar about adoptive parenthood (reg.86B);
- $750 for registration as an applicant to be a prospective adoptive parent (reg 87(a));
- $986 for preparation of the assessment report for first-time adoptive parents or $650 for subsequent adoptions (reg 87(b) & (c)); and
- $450 for preparation of the Court report in relation to a step-parent adoption (reg 87A).

Fee exemptions are also provided for those adopting locally (assessment fee exemption) and those adopting a child with a disability (exempt from all fees under Reg.87).

**Submissions Received**
One submission asserted that although the legislation provides for fee exemptions, everyone who adopts in WA has already paid the application and assessment fees. This couple adopted a child with a disability and report that they were not told about the fee exemption.
Review of Adoption Act 1994 (WA)

Adoption Services’ submission notes that the prescribed fees do not reflect the real cost of adoption and are approximately 25% of the fees charged by NSW and Victoria.

ADDITIONAL INFORMATION

Adoption Services reports\(^\text{130}\) that the following fees are charged for an adoption in other parts of Australia:

**Table 10.1: State and Territory government fees and adoptions (\$)**

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>SA</th>
<th>WA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Adoption</td>
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<td>$2,330.00</td>
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<td>$4,229.00</td>
<td>$6,100.00</td>
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<tr>
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<td>$7,733.00</td>
<td>$1,600.00</td>
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<tr>
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</tr>
<tr>
<td>First Adoption</td>
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<td>$950.00</td>
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<td>Free</td>
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</tr>
</tbody>
</table>

**COMMITTEE’S ANALYSIS OF THE ISSUES & FINDINGS**

Fees for adoption services in WA are low compared to other states in relation to intercountry adoptions. As fees for these services are set by Regulations, the Government can amend the prescribed fees as, and when, they see fit. This usually happens upon advice from the Department. The Committee supports the current exemptions for persons who adopt a child locally, in recognition of the care which the State would otherwise have to provide for that child, or for those who adopt a child with a disability. There is an ongoing debate surrounding government subsidisation of the adoption of overseas children, highlighted in the Bishop Report.

10.6 Updating Terminology used in the Act

There are a number of terms used in the Act which need to be updated to reflect legislative reforms. In particular, references to:

- “Director General” should be changed to “CEO” – There has been a change in terminology when referring to the head of the Department under this legislation. Although this has already been reflected in the definition of “CEO” under the Act and throughout most of the Act, 1 reference to the term “Director General” remains in the Act and the Regulations have not been updated in this respect at all.

- “Information vetoes” in Part 6 of the Regulations should be removed as information vetoes became ineffective from June 2005.

- “Guardian” and “guardianship” should be amended to refer to the modern term “parental responsibility” in relation to a child and a definition of the term should be inserted. This will achieve consistency with the use of the term in the Children and Community Services Act 2004 and family law legislation. The definition of “parental responsibility” under the Children and Community Services Act 2004 is:
  
  “parental responsibility”, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

**COMMITTEE’S RECOMMENDATIONS**

Recommendation 43 Terminology in the Adoption Act 1994 should be updated to be consistent with that used in the Children and Community Services Act 2004.

10.7 Administration of Inter-Country Adoptions

Overseas adoptions are today more common than local adoptions. State governments currently have the responsibility for all parts of the adoption process including working with overseas countries that match children with adoptive parents.

\(^{130}\) Information provided by Adoption Services on 7 May 2007
The House of Representatives Standing Committee on Family and Human Services Report on the inquiry into adoption of children from overseas, titled “Overseas Adoption in Australia” (referred to in this report as the “Bishop Report”), recommended that responsibility for establishing and managing overseas adoption programs be transferred to the Attorney-General’s Department.

The Committee welcomes increased Commonwealth responsibility in this area and believes it would be beneficial to have overseas adoption programs nationally coordinated. The Ford Report also supported increased Federal Government responsibility for the establishment and maintenance of inter-country adoption programmes.  

While s.137 of the Act enables the State Minister to make arrangements with overseas governments for the adoption of children, this is both difficult and impractical in reality, as the Federal Government retains constitutional power in relation to the Hague Convention and controls diplomatic avenues for negotiation of such arrangements.

With the resources of High Commissions, Embassies, the Department of Immigration and Citizenship and formal responsibility for the signing the Hague Convention regarding the adoption of children the Federal Government is best placed to be the lead organisation managing relationships with countries sending children to Australia for adoption. This would enable more effective negotiation and monitoring of programmes with sending countries.

The Committee notes that the Bishop Report implies the States are not pursuing enough overseas children for adoption. However, the Committee notes that the experience of State Governments working in this area demonstrates that while there may be large numbers of children who may be in institutions overseas it does not necessarily mean they are available for adoption. Often children may be placed in an institution not because they have been relinquished or orphaned but rather because economic and social circumstances mean that their own families are unable to care for them.

The Committee supports the recommendation in the Ford Report that:

_The State Government progress discussions with the Australian Government on the transfer of the responsibility to that jurisdiction for developing new inter country adoption programs and for maintaining the existing programs._(Recommendation 7)

10.8 Harmonisation of Adoption Laws

The Bishop Report calls for the greater harmonisation of laws, fees and assessment practices, including:

- more general, principle-based criteria in legislation;
- more robust, transparent and documented practices; and
- standardised assessments across the jurisdictions.

Although the Bishop Report talks about harmonisation of laws, it appears to be advocating uniform adoption laws. The Committee does not support uniformity in laws as adoption has evolved in each state as a response to different historical and social contexts, with vastly different consequences to different parties to adoption. A uniformity of laws may remove attributes of Western Australia’s adoption laws that are deemed positive and in the best interests of children. Western Australia’s adoption legislation is modern and has been actively debated, reviewed and amended in consultation with a wide range of Western Australian stakeholders. The Committee notes the participation of Adoption Services in twice-yearly meetings between the States and the Commonwealth to discuss the implementation of the Hague Convention and notes the value these meetings offer in achieving similar provisions for adoption services across the country.

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131 Ford op.cit., pp.51-52 and Recommendation 7

- 112 -
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Children and Community Services Regulations 2006 (WA)
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Adoption of Children Act 1964 (Qld)
Adoption Act 1988 (SA)
Adoption Regulations 2004 (SA)
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Adoption Regulations 2006 (Tas)
Adoption Act 1984 (Vic)
Adoption Regulations 1998 (Vic)
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OTHER REFERENCES


Department for Community Development 2003, *Final Report of the Telephone survey of applicants to obtain feedback on information provided to them by Adoption Service, the relationship between the applicants and Departmental staff and support available to applicants*, Social Systems & Evaluation, Western Australia.


Western Australia, Legislative Assembly 2007, Questions On Notice, 1788, Hansard, pp 404c - 405a/1


Winkler, R. & van Keppel, M. 1984, “Relinquishing Mothers in Adoption: Their Long-term Adjustment”, Monograph Number 3, Institute of Family Studies, Melbourne, Australia.
ANNEXURE 1 - COMPETENCIES EXPECTED OF ADOPTIVE APPLICANTS

1. **Physical Environment**
   Applicants will be able to provide a safe, secure and beneficial physical environment and meet the ongoing material needs of the family.

2. **Family life and functioning**
   Healthy family functioning and structure exists which is characterised by flexibility, closeness, competent communication, democratic parenting, boundaries between parent and child, agreement on important aspects of family life and that the needs of children are considered.

3. **Child rearing beliefs and parenting capacity**
   Applicants demonstrate knowledge of child development stages and have healthy and consistent child rearing beliefs and parenting style.

4. **Child protection**
   Applicants will provide a high standard of care to children that promotes safe and healthy physical, sexual and emotional development through childhood and into adulthood.

5. **Parenting a child from a different ethnic background to that of the adoptive parents**
   Applicants can demonstrate attitudes, knowledge, skills and actions to ensure that the child develops their ethnic identity and knowledge of their cultural heritage.

6. **Children who have additional medical, behavioural or psychological care needs**
   Applicants who wish to adopt a child who has additional medical, behavioural or psychological care needs have realistic expectations of the adoptee, highly developed parenting skills, a very stable and secure relationship and a strong support system.

7. **Personal characteristics and interpersonal skills**
   Each applicant will be of good repute, have a high level of interpersonal skills and there is a strong expectation of retaining health and vigour to raise a child into adulthood and especially during the years of adolescence.

8. **Relationship skills**
   *Couple applicants* – Applicants have a high level of couple satisfaction characterised by: intimacy, competent couple communication, similarity of attitude and levels of self-disclosure, and appropriate conflict resolution.

   *Single applicant* – The applicant has a high level of skills and experience in maintaining relationships characterised by intimacy, and appropriate levels of self-disclosure and conflict resolution.

9. **Problem solving and the willingness to seek and accept support**
   Applicants initiate and access support at times of stress.

10. **Motivation and understanding of adoption**
    Applicants have a motivation to adopt, based on a desire for a child for his or her own sake and understand the implications of adoption for the family.
### ANNEXURE 2 - SUMMARY OF AGE-RELATED CRITERIA IN AUSTRALIAN JURISDICTIONS

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<tr>
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<th>QLD</th>
<th>NSW</th>
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<th>SA</th>
<th>TAS</th>
<th>ACT</th>
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<th>NT</th>
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</thead>
<tbody>
<tr>
<td>Are upper age limits in place?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>If yes, what are upper age limits?</td>
<td>---</td>
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<td>---</td>
<td>If adopting first child:</td>
<td>If first child to be adopted and no other children, the court can only make an order in favour of a person who is not more than 40 years older than child.</td>
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<td></td>
<td></td>
<td>If other children, cannot be more than 45 years older than child. (s.16)</td>
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</tr>
<tr>
<td>If first child to be adopted and no other children, the court can only make an order in favour of a person who is not more than 40 years older than child. (s.16)</td>
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</table>

- For couples – maximum age difference allowed between the child and the youngest applicant is 45 years, and 50 years between the child and the oldest applicant.
- For single persons – the maximum age difference allowed is 45 years.

- For couples – maximum age difference allowed between the child and the youngest applicant is 50 years, and 55 years between the child and the oldest applicant.
- For single persons – the maximum age difference allowed is 50 years. (s.52)
<table>
<thead>
<tr>
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<th>ACT</th>
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</thead>
<tbody>
<tr>
<td>If yes, when are the age limits applied?</td>
<td>---</td>
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<td>---</td>
<td>At placement of the child</td>
<td>At time Court makes order</td>
<td></td>
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<tr>
<td>If no age limits, what reference is made to age or similar criteria?</td>
<td>Eligibility to adopt</td>
<td>Eligibility to adopt</td>
<td>Suitability to adopt</td>
<td>Eligibility to adopt</td>
<td>Suitability to adopt</td>
<td>Eligibility to adopt</td>
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<tr>
<td>Alberta</td>
<td>Person is of good repute and a fit and proper person to fulfil the responsibilities of a parent.</td>
<td>Includes assessment of:</td>
<td>DG must make an assessment, including whether – person on the expression of interest register is of good repute and a fit and proper person to adopt; (s13B)</td>
<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
<td>Applicants accepted for assessment must meet prescribed requirements for approval to adopt, including – capacity to provide a standard of care necessary to protect the safety, welfare and physical health of the child into adulthood (r18, s24(1)(a))</td>
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<tr>
<td>Eligibility to adopt</td>
<td>Special needs list, Overseas register &amp; Local register</td>
<td>Suitability to adopt</td>
<td>DG may review a person's registration and if person is no longer a fit and proper person to adopt, may cancel registration. (r14(8))</td>
<td>Applicants for assessment must meet requirements to be accepted for assessment, including good physical and mental health. (r15)</td>
<td>Applicants for assessment must meet requirements to be accepted for assessment, including good physical and mental health. (r15)</td>
<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
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<td>Assessment process</td>
<td>Must not have a physical or mental condition or disability to the extent that the person could not provide a high level of stable, long-term care. (r4, r7)</td>
<td>Suitability to adopt</td>
<td>DG may review a person's registration and if person is no longer a fit and proper person to adopt, may cancel registration. (r14(8))</td>
<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
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<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
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<tr>
<td>All lists &amp; registers</td>
<td>Capacity to ensure child's safety and well-being;</td>
<td>Suitability to adopt</td>
<td>Suitability to adopt</td>
<td>Suitability to adopt</td>
<td>Suitability to adopt</td>
<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
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<td>Applicants are of good repute and are fit and proper persons to adopt a child. (r10)</td>
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</tbody>
</table>
Other matters relevant to applicant’s capacity to provide for child’s emotional, physical, educational, recreational and social needs.

- adulthood and especially during the years of adolescence.
- The assessment of applicants will take into account the general desirability of placing children with parents who are of an age at which people in NSW become parents.
- An applicant’s state of physical and psychological health should not interfere with their ability to care for a child until the child reaches adulthood.
  (Reg.12, Govt Gazette)