

Review of the operation of the *Adoption Act 2009*

Final report
July 2016

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Executive summary

This report provides an overview of the review of the operation of the *Adoption Act 2009* (the review) and outlines the results of the public consultation process that may inform proposals to amend adoption legislation, policies and practices in Queensland.

Section 327 of the *Adoption Act 2009* (the Act) requires the Minister administering the Act to review its operation, as soon as practicable, five years from commencement of the Act. The review must examine the effect of the Act on parties to adoption and their families.

The review comprised a range of information sources, including adoption statistics, community correspondence, advice from Queensland Government departments on the day-to-day practical application of the Act and approaches in other states and territories. The review was supported by a comprehensive public consultation that enabled individuals and stakeholders to provide feedback through an online survey, written submissions, interviews and focus groups.

A total of 356 individuals and organisations participated in the public consultation, including:

- 216 individuals who responded to an online survey
- 77 written submissions, provided by:
 - 46 individuals
 - 31 organisations
- 63 individuals who participated in interviews or focus groups.

Participants included individuals from a range of age groups and geographic locations, and with varying adoption experiences. Of the total number of participants, 12 per cent identified as an adopted person, 16 per cent identified as an adoptive parent and 3 per cent identified as a birth parent affected by the repealed *Adoption of Children Act 1964*.

The most common issues raised during the public consultation were suitability and assessment of applicants, consent and dispensation requirements, timeframes in administering adoption processes and eligibility criteria.

The results of the review indicate that the Act is operating as intended. However, some aspects of the Act could be enhanced to ensure Queensland is doing its best to promote the wellbeing and best interests of adopted persons throughout their lives. A small number of operational improvements have also been identified to strengthen Queensland's adoption practices, ensuring that the needs of children requiring adoption continue to be met now and into the future.

Introduction

Background

The Act represents extensive reform to adoption legislation in Queensland including:

- improved consent requirements
- the introduction of the Childrens Court oversight of key adoption process and court-ordered adoptions
- open adoption
- amendments to the expression of interest register and eligibility criteria
- amendments to provide greater access to information to parties to an adoption.

The Act is administered under the guiding principles, including that the wellbeing and best interests of an adopted person, both through childhood and the rest of his or her life, are paramount.

Section 327 of the Act requires that the operation of the Act be reviewed as soon as practicable five years after its commencement, including the effect of the Act on parties to adoptions and their families. Section 327 also requires the Minister to table a report on the outcome of the review in the Legislative Assembly.

The review commenced on 17 September 2015.

Terms of Reference

The Terms of Reference for the review were:

- the extent to which the Act has improved birth parent consent requirements, including to what extent the introduction of the decisions made at the Childrens Court provide for additional and independent oversight in an adoption process

- the operation of the eligibility criteria in the Act and how the operation of the Act has impacted on couples expressing an interest to adopt, including those excluded from expressing interest
- the operation of the Act as it provides for how children can be adopted by a step-parent
- open adoption practice in Queensland
- how the operation of the Act has impacted parties to an adoption and their relatives accessing adoption information, including the operation of contact statements.

Issues determined to be outside the scope of the review were:

- obligations under the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, to which Australia is a signatory
- matters relating to intercountry adoption reforms by the Commonwealth Government and matters falling under the Commonwealth's obligations as set out in the Commonwealth–State Agreement for the Continued Operation of Australia's Intercountry Adoption Programme
- matters relating to surrogacy in Queensland (*Surrogacy Act 2010*).

Methodology

A six-month public consultation was undertaken, supported by the publication of a discussion paper as well as an online survey on the Queensland Government's Get Involved website. Individuals and organisations made written submissions and participated in a range of focus groups and interviews to share their views, expectations and experiences regarding adoption.

Community and government

Community expectations

Community values and expectations regarding adoption in Queensland have continued to evolve. Correspondence received by the Department of Communities, Child Safety and Disability Services (the department) continues to demonstrate the public's desire for review and change.

Since the commencement of the Act, the department has received more than 100 pieces of correspondence on a variety of adoption issues, including intercountry adoption, the eligibility of same-sex couples to express their interest in adoption and the ability for parties to an adoption to access information.

Jurisdictional developments

Since the commencement of the Act, New South Wales, Victoria and South Australia have reviewed their adoption legislation. New South Wales and Victoria have made notable changes, particularly in the areas of contact statement provisions and extending eligibility criteria to include same-sex couples.

On 18 August 2015, the Victorian Government made amendments to the *Adoption Act 1984* (Vic) repealing penalties for birth parents who attempt to contact their adult adopted children. The *Adoption Amendment (Adoption by Same-sex Couples) Act 2015* (Vic) was passed by the Victorian Government on 9 December 2015 and will commence by proclamation. These changes will allow same-sex and gender diverse couples in Victoria to be eligible to adopt, and as such removes discrimination against same-sex couples.

Intra and interagency consultation

In the course of the review, consultation was undertaken with a number of Queensland Government departments as well as within departmental work groups. Feedback from these consultations have assisted the department to understand the implications of the current legislation on day-to-day operations and the issues experienced by staff or reported by clients.

Adoption reports and research

The review has considered the recommendations and conclusions of reports and research conducted at both state and commonwealth levels.

The Australian Institute of Health and Welfare's *Adoptions Australia 2014–15* report presents the latest data on adoption of Australian children and children from overseas, and highlights important contemporary and historical trends in the number of adoptions dating back to 1990–91.¹

The *Commonwealth Contribution to Past Forced Adoption Policies and Practice 2012* report (the Commonwealth Report)² and the recent review conducted by South Australia into its adoption legislation have also been considered.

The Commonwealth Report was the result of an inquiry undertaken by the Senate Community Affairs References (the committee). The committee made 20 recommendations for both commonwealth and state and territory governments. The recommendations included formal statements of apology, a national framework for addressing the consequences of forced adoption, financial and concrete actions of redress, greater funding for support for parties to past forced adoptions, amendments to birth certificates, access to all pre-adoption information, and contact and grievance mechanisms.

The South Australian Government's review of its adoption legislation (the SA review) considered the impact of broad changes in the field of adoption since the last review of its adoption legislation in 1994. Specific issues that were examined as a part of the SA review included adoption information 'vetoes', adult adoption, retention of a child's birth name, adoption by same-sex couples and single

¹ Australian Institute of Health and Welfare, *Adoptions Australia 2014-15*, Child Welfare Series no. 65, Cat. No.CWS 56, Australian Institute of Health and Welfare, Canberra, 2015.

² Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, Senate Printing Unit, Canberra, 2012.

persons, and the discharge of adoption orders. The *Adoption Act 1988 (SA) Review* (the South Australia report),³ an independent report commissioned as part of the SA review, was released in March 2016 and recommended legislative amendment, including provision for adult adoption, changes to eligibility criteria to allow same-sex couples to adopt, and the abolition of the existing contact 'veto' system. The South Australian Government is yet to respond to these recommendations.

³ L. Hallahan, *Adoption Act 1988 (SA) review*, Flinders University, Adelaide, 2015.

Public consultation

Characteristics of participants

In total, 356 individuals and organisations participated in the public consultation. A number of late submissions were received, accepted and have been incorporated into the review's consideration of issues. However, the late submissions may not be included in the total number of participants.

Of the 356 individuals and organisations, the majority were from South East Queensland (63 per cent) and North Queensland (6 per cent). There were 114 participants who identified as having been directly affected by an adoption process, as a birth parent (impacted by the repealed *Adoption of Children Act 1964*), an adopted person, or an adoptive parent.

The views of some participants from other areas of the state were also captured, with 16 participants from Central Queensland, 7 participants from Far North Queensland, and 4 participants from Western Queensland making contributions.

Engagement methods for public consultation

A discussion paper, *Public consultation for the review of the operation of the Adoption Act 2009* (the discussion paper), was developed to support participation in the consultation.

An online survey with questions from the discussion paper was developed for the Get Involved website as another method of engaging the broader community in the review.

Both the discussion paper and online survey were accessible to participants from 17 September 2015 to 11 March 2016.

The department engaged an external specialist to ensure the complexity and sensitivity of engaging with stakeholders was understood and addressed. The external specialist had expertise in working with people who have experienced trauma, grief and loss, and was able to support individuals sharing experiences, while also ensuring information was collected appropriately.

The specialist also conducted targeted consultations with funded organisations providing services to people impacted by adoption, as well as with key adoption stakeholder groups and individuals. Focus group sessions were held in Townsville, Brisbane and on the Sunshine Coast.

Get Involved online survey

The Get Involved online survey asked respondents 11 questions requiring a 'yes', 'no' or 'unsure/blank' response, and provided 11 comment sections for qualitative responses (see Appendix 2). Participants could respond to all, or a selection of, survey questions, demographic questions and comment sections. The two survey questions receiving the highest number of responses related to the Act's eligibility provisions (questions 3 and 4).

Between 17 September 2015 and 11 March 2016, 214 survey responses were received, as well as two informal responses from the comment section. Table One shows the majority of respondents were aged between 25 and 34 years (34 per cent), and 35 and 44 years (27 per cent).

Almost a third of survey respondents had direct experience with adoption, with 29 per cent (61 respondents) identifying as a birth parent (impacted by the repealed *Adoption of Children Act 1964*), adoptive parent or adopted child. The majority of respondents (43 per cent) identified as a community member. Respondents could identify as belonging to more than one stakeholder category and some chose not to identify with a category at all, as demonstrated in Table Two.

Table One. Age of Respondents

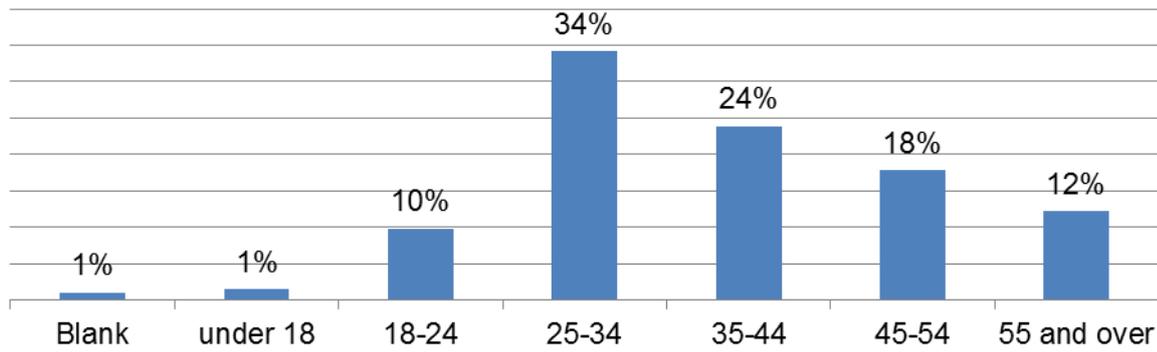
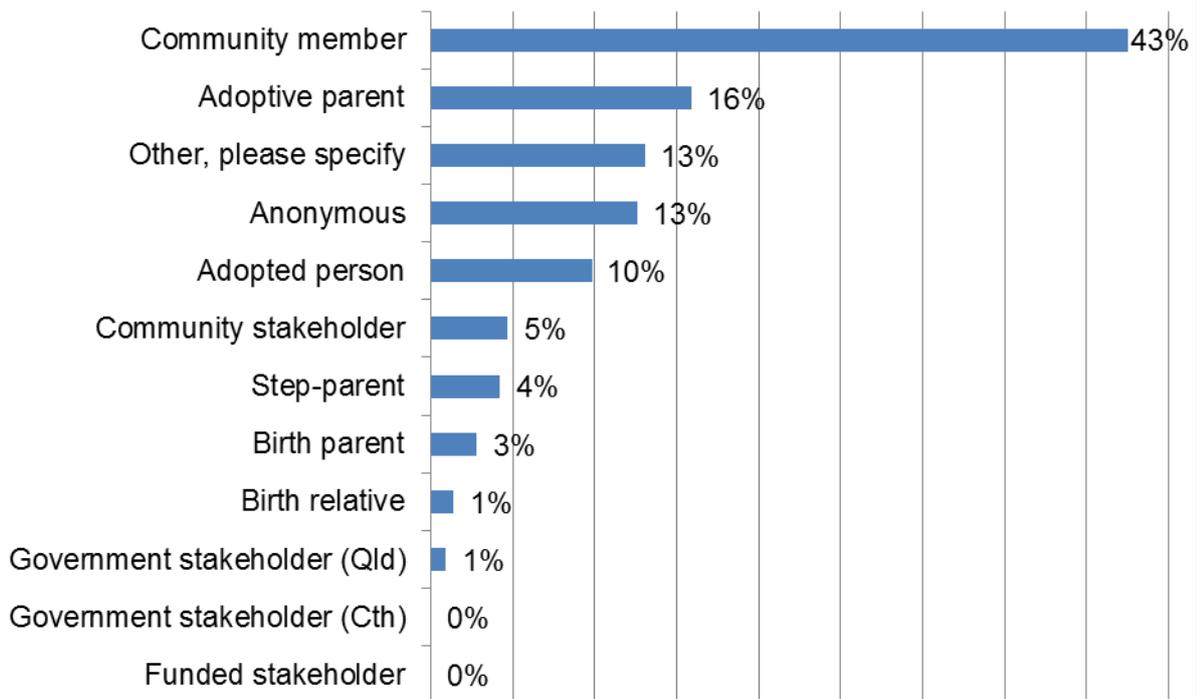


Table Two. Respondent Categories (per cent)



Notable results from the Get Involved online survey include:

- Approximately 80 per cent of all survey respondents thought the eligibility criteria provisions of the Act are unfair.
- Approximately 80 per cent of all survey respondents thought the eligibility criteria provisions of the Act do not continue to meet the needs of children who require adoptive families.
- 75 per cent of all survey respondents reported as having been affected by consent processes under the Act.
- Approximately 55 per cent of all survey respondents believed there should be penalties attached to breaching contact restrictions that someone involved in an adoption has put in place; approximately 25 per cent believe there should be no penalties; and approximately 20 per cent did not respond.
- Approximately 50 per cent of all survey respondents believed there should be restrictions on how people involved in an adoption make contact with each other; approximately 35 per cent believe there should be no restrictions; and 15 per cent did not respond.
- Approximately 50 per cent of all survey respondents thought there are additional aspects that should be considered in a suitability assessment; approximately 35 per cent believe there are no additional aspects that should be considered; and 15 per cent did not respond.

Qualitative data from Get Involved survey respondents focused on same-sex adoption (63 per cent or 136 respondents), contact statements and restrictions (36 per cent or 77 respondents) and breaches of contact statements and penalties (27 per cent or 59 respondents). Divergent views were expressed by respondents regarding contact statements, restrictions and penalties based on individual experiences and knowledge of adoption practices.

Written submissions

Between 17 September 2015 and 11 March 2016, 77 written submissions were received in response to issues raised in the discussion paper.

The department acknowledged the receipt of written submissions received. Some individuals made submissions that provided detailed accounts of the impact adoption has had on their lives. In these situations, individuals were offered face-to-face or telephone consultations where appropriate, or directed to support services such as Post Adoption Services Queensland (PASQ) provided by the Benevolent Society.

Of the 77 written submissions, one was from a birth parent (impacted by the repealed *Adoption of Children Act 1964*) and two were from adoptive parents. There were six submissions from adoption support organisations.

Table Three shows the most frequent issues from the written submissions received, including adoption of children in out-of-home care (52 per cent), suitability and assessment processes (40 per cent), consent and dispensation processes (39 per cent), adoption timeframes (36 per cent), preparation and support involved in adoption (36 per cent) and the inability of same-sex couples to express an interest in becoming a prospective adoptive parent (38 per cent).

External specialist

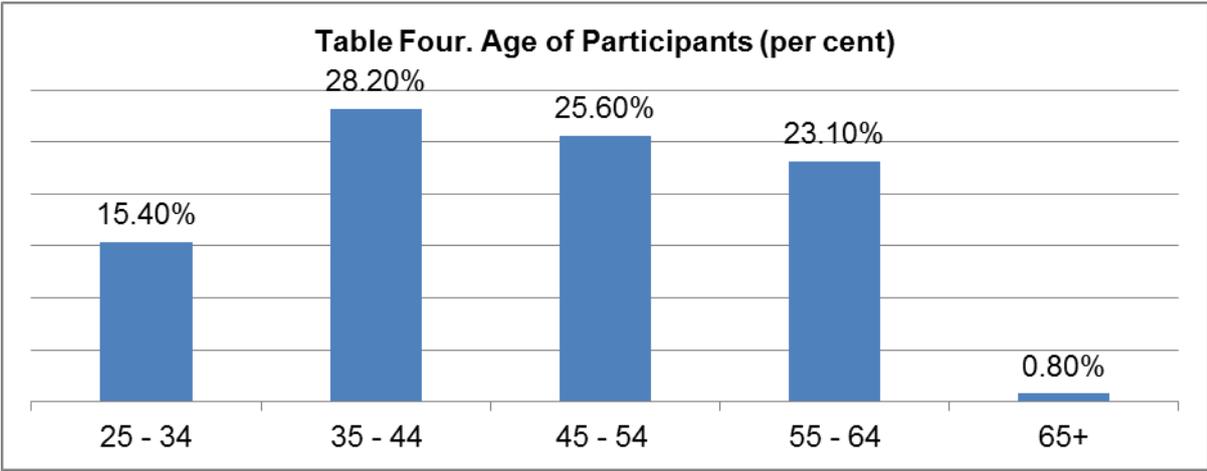
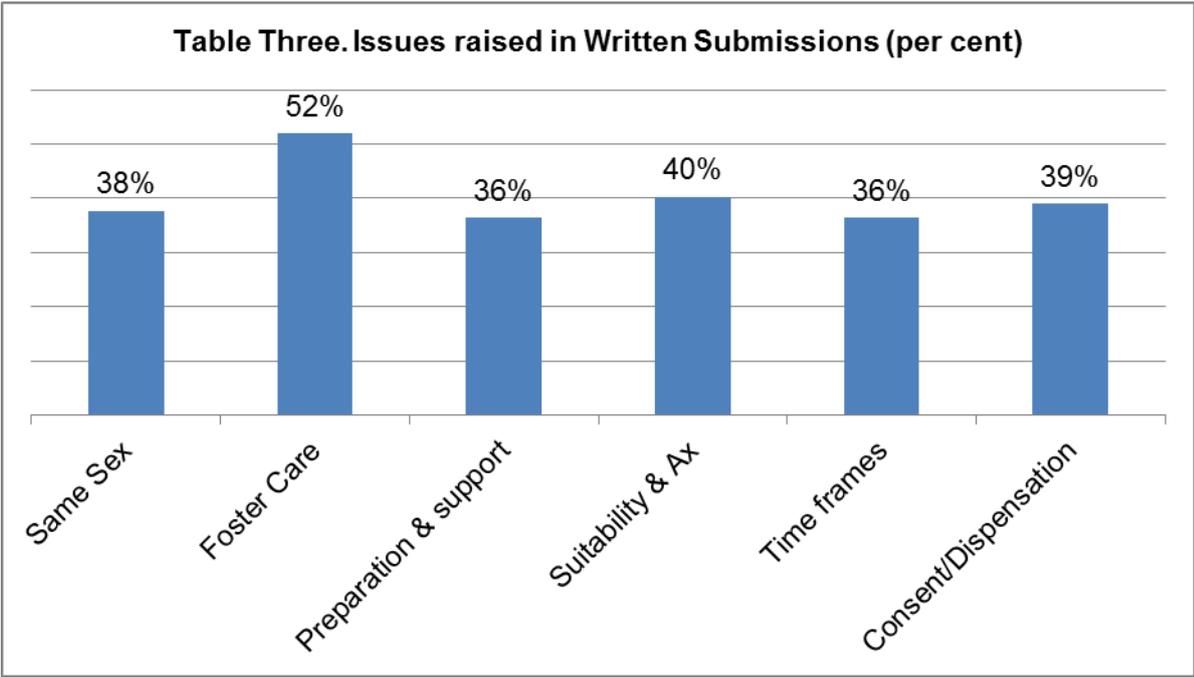
Individuals and stakeholders across Queensland were invited to participate in focus groups and interviews conducted by an external specialist.

A total of 61 people participated in the external consultation processes, comprising 43 people who participated in interviews and 18 people who participated in focus groups.

While the offer of interviews and focus groups was extended to individuals and stakeholders across Queensland, the majority of participants were located in South East Queensland (73 per cent) and North Queensland (12 per cent).

Two focus groups were held in Brisbane and on the Sunshine Coast and in Townsville. Face-to-face interviews and focus groups were offered to be held in other regional areas, with no uptake. The location of the focus groups was determined by the need in a particular region.

Table Four highlights that the age of the interview and focus group participants were mostly between 35 and 44 years (28 per cent), and 45 and 54 years (26 per cent). Eighty-eight per cent of the total interview and focus group participants were women.

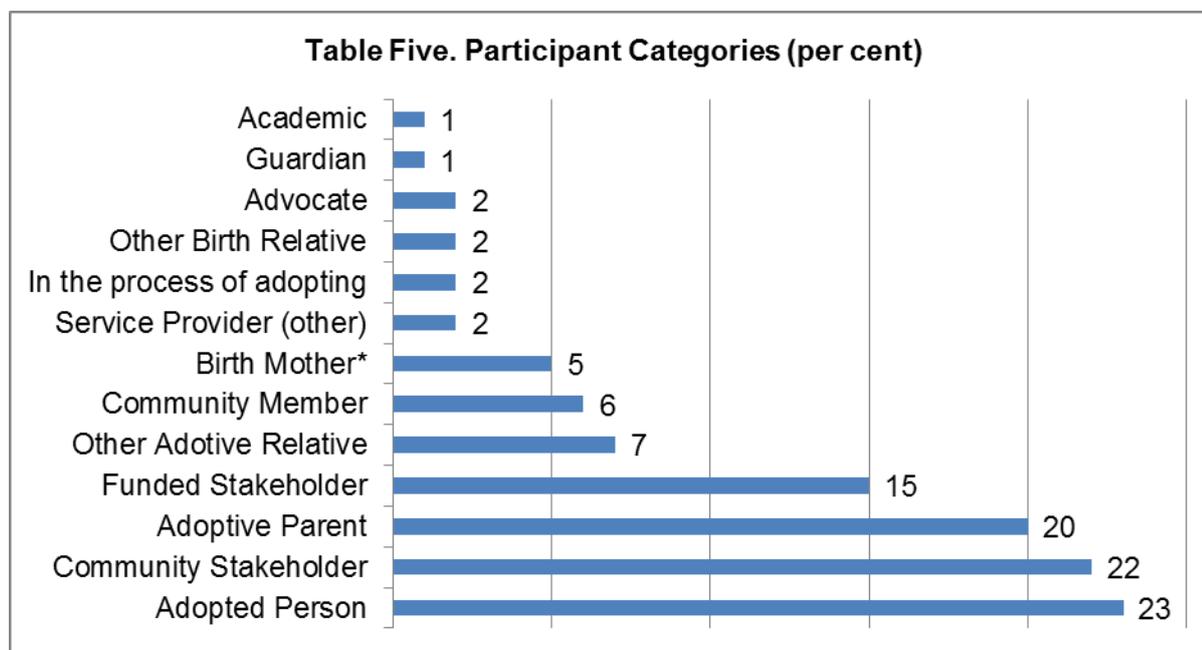


Of the interview and focus group participants:

- 38 per cent identified as an adopted person
- 36 per cent identified as a community stakeholder
- 33 per cent identified as an adoptive parent

- 8 per cent of participants identified as a birth mother (impacted by the repealed *Adoption of Children Act 1964*).

It should be noted that participants could belong to more than one stakeholder category, as demonstrated in Table Five.



*Birth mothers impacted by the repealed *Adoption of Children Act 1964*.

Individuals and stakeholders expressed views on a range of issues throughout the consultation process, including:

- adoption of children from out-of-home care in the child protection system
- contact between birth families and adopted people
- adoption eligibility criteria
- access to adoption information
- adoption of siblings and other family members
- support and education for birth families, adopted persons and adoptive families

- adoption research and data
- regular reviews and community engagement.

Positive feedback was received from participants in the consultation undertaken by the external specialist. This engagement model was effective and well-suited to the target group, with participants reporting that they appreciated both the personal and confidential nature of the consultation.

Adoption themes

The review identified a number of key themes which individuals and stakeholders highlighted as being important to ensure that the Act continues to operate as intended, and continues to provide for the wellbeing and best interests of adopted persons.

Adoption processes

A total of 115 individuals and stakeholders, who contributed to the review through the Get Involved survey or in written submissions, provided feedback on adoption processes. Of these, the majority (61 per cent or 70 respondents) provided feedback about suitability and assessment processes. Other issues raised included timeframes (40 per cent or 46 respondents), preparation and support (38 per cent or 44 respondents) and processes associated with a second adoption (22 per cent or 25 respondents).

Suitability and assessment of applicants to adopt

Sixty-one per cent of individuals and stakeholders (70 respondents) who commented on adoption processes expressed views around suitability and assessment of applicants for adoption, including the complexity and level of involvement.

Processes for suitability and assessment of applicants were viewed by some participants as unnecessarily lengthy, and underpinned by inconsistent levels of support and education. Conversely, a number of responses commended the robustness of the suitability process, acknowledging the rationale for ensuring sufficient assessment of prospective adoptive parents.

The Act provides for suitability assessments of prospective adoptive parents, which is included in the determination of who is considered suitable to adopt a child. Provisions in the Act specifically relate to timing and pace of the assessment with regard to efficiency, fairness and the timing of the application for an adoption order.⁴ When determining whether a person is suitable to be an adoptive parent, consideration

is given to various factors including unacceptable risk of harm to the child, the health of the potential adoptive parents, the guiding principles of the Act, capacity to be an adoptive parent generally, good character, attitudes to children and parenting (particularly adoptive parenting), the quality of the relationship between spouses, infertility and cultural matters.⁵

Degree of preparation and support

Thirty-eight per cent of individuals and stakeholders (44 respondents) who commented on adoption processes, expressed views on the degree of preparation and support provided. Almost all of these comments referred to the need for greater preparation or improved support for adoptees, birth families and adoptive families.

The term 'support' was used regularly with many submissions not providing specifics on support needs or types of support that should be available. Reference was made to support for birth families to participate in open adoption and contact mechanisms such as the mailbox service, provided for in the Act.

Adopting a second child

Twenty-two per cent of individuals and stakeholders (25 respondents) who commented on adoption processes commented on the adoption of a second child. There is frustration with the lengthy timeframes and regulatory processes associated with adopting a second child, advocating for more efficient processes or truncated timeframes. There was a view that consideration should be given to suitability and assessment processes already undertaken as part of a previous adoption, and that waiting periods between adoptions need to be reconsidered.

In Queensland, eligibility to express an interest in adopting a child (including a second adoptive child), includes a requirement that the applicant does not have custody of a child who has been in the person's custody for less than one year.⁶ The assessment process set out in the Act does not specifically regulate the adoption of a

⁴ *Adoption Act 2009* (Qld), s110.

⁵ *Ibid*, s120 - s132.

⁶ *Adoption Act 2009* (Qld), s76.

second child, rather it gives the chief executive flexibility to assess the prospective adoptive parents using the information already gathered and within a timeframe considered necessary and appropriate.⁷

Eligibility criteria to adopt a child

The Expression of Interest Register is a list of eligible persons who have expressed interest in adopting a child. The department can consider selecting people from this register to be assessed to meet the needs of children requiring adoption. Section 76 of the Act contains eligibility criteria for persons wanting to be included on the Expression of Interest Register. This includes the requirement that the person has a spouse of another gender and the person or their spouse is not undergoing fertility treatment.

A total of 210 individuals and stakeholders who contributed to the review through the Get Involved survey or by written submission, provided feedback on eligibility criteria to adopt a child. Of these, the majority of respondents (79 per cent or 165 respondents) provided feedback regarding same-sex couples not being able to adopt under the current Act. Other contributions identified single people not being able to adopt (20 per cent or 42 respondents), couples undergoing fertility treatment (14 per cent or 29 respondents) and couples expecting a baby or who have custody of a child aged less than one year (13 per cent or 28 respondents) not being able to adopt under the current Act.

The majority of respondents who commented on same-sex adoption supported a change to allow adoption by same-sex couples. Only a small number of respondents did not support adoption by same-sex couples. Of the 20 per cent (42 respondents) who commented on adoption by single people, the majority supported changes in eligibility criteria to allow applications by single persons.

Throughout targeted sessions undertaken by the external specialist, stakeholders expressed the view that the eligibility criteria and a thorough assessment process were seen as critical safeguards against the mistakes of the

⁷ Ibid, s110 & s114.

forced adoption era. However, overall, individuals and stakeholders who contributed to the review expressed support for revisiting the eligibility criteria to allow single parent families and same-sex couples to adopt.

New South Wales,⁸ the Australian Capital Territory⁹ and Western Australia¹⁰ allow for adoption by same-sex couples and single persons. Tasmania¹¹ allows for adoption by same-sex couples; however single persons may only adopt in exceptional circumstances.

Victoria has passed the Adoption Amendment (Adoption by Same-Sex Couples) Bill 2015 (which is yet to commence) to amend the *Adoption Act 1984* (Vic) to enable the adoption of children by same-sex couples.

The South Australia report recommends that both same-sex couples and single persons should be allowed to apply to become adoptive parents.¹²

Currently, legislation in Victoria¹³ and South Australia¹⁴ only allows for adoption by a single person in exceptional circumstances. The Northern Territory¹⁵ is the only jurisdiction other than Queensland¹⁶ that generally does not allow same-sex couples and single persons to apply to adopt a child. However, in both jurisdictions single persons may adopt if particular circumstances apply.

Adoption legislation in Victoria,¹⁷ the Australian Capital Territory,¹⁸ the Northern Territory,¹⁹ Western Australia,²⁰ New South Wales,²¹ Tasmania²² and South Australia²³ do not specify if a person can apply to adopt a child while undergoing fertility treatment.

⁸ *Adoption Act 2000* (NSW), s27 & s28.

⁹ *Adoption Act 1993* (ACT), s14 & s16.

¹⁰ *Adoption Act 1994* (WA), s39.

¹¹ *Adoption Act 1988* (Tas), s20.

¹² Hallahan, op. cit., p. 13.

¹³ *Adoption Act 1984* (Vic), s11.

¹⁴ *Adoption Act 1988* (SA), s12.

¹⁵ *Adoption of Children Act 2011* (NT), s13 & s14.

¹⁶ *Adoption Act 2009* (Qld), s76 & 89.

¹⁷ *Adoption Act 1984* (Vic), s11.

¹⁸ *Adoption Act 1993* (ACT), s13 – s17.

¹⁹ *Adoption of Children Act 2011* (NT), ss13 – s17.

²⁰ *Adoption Act 1994* (WA), s39.

²¹ *Adoption Act 2000* (NSW), s26 – s31.

²² *Adoption Act 1988* (Tas), s20.

²³ *Adoption Act 1988* (SA), s12.

Adoption contact

A total of 105 individuals and stakeholders who contributed to the review through the Get Involved survey or a written submission provided feedback on adoption information and contact. Of these, the majority (80 per cent or 84 respondents) provided feedback regarding contact, breaches (59 per cent or 62 respondents), access to information (27 per cent or 28 respondents) and open adoption (14 per cent or 15 respondents).

Contact statements

The review examined if there should continue to be restrictions on how parties to the same adoption make contact with each other and, if so, whether those restrictions should have penalties attached for a breach.

There were mixed responses to this issue, with many individuals expressing a preference for continuing to have some way to record their preferences for contact. Of the 216 individuals who responded through the Get Involved survey, approximately 50 per cent (102 respondents) believe there should be restrictions in how people involved in an adoption make contact with each other, approximately 35 per cent believe there should be no restrictions, while 15 per cent did not respond.

Participants of the targeted consultation sessions with the external specialist expressed strong views about contact statements. Participants reported that the offence provision and its penalties cause considerable trauma and fear, because they imply individuals cannot be trusted and would not do the right thing. Having penalties in the legislation is felt by some to be another rejection and inappropriate state intervention in the life of adoptees and birth families.

Feedback from targeted consultation sessions also revealed that other legal avenues, such as offences for stalking and provisions in privacy legislation, are adequate to avoid unwanted contact, and that specific offence provisions about adoption are unnecessary and traumatising.

According to the Australian Institute of Health and Welfare, there were 2970 contact

statements in place in Queensland, as of 30 June 2015.²⁴ Of these, 1708 contact statements were put in place by adoptees and 1249 by birth mothers.²⁵ Birth fathers have lodged 11 contact statements.²⁶ The overall number has reduced by 19 contact statements since the previous year.²⁷

Penalties for breaches of contact statements

Approximately 55 per cent of respondents from the Get Involved online survey supported penalties for breaching contact statements, with 25 per cent not supporting the penalties. Two stakeholder groups and an individual provided written submissions in support of removing the penalty for a breach of contact statement.

In Queensland, if a person makes contact with the person who put in place a contact statement relating to a pre-June 1991 adoption, in a way that breaches the contact statement, the person may be charged with an offence.²⁸

Access to adoption information

Access to adoption information was a common theme in the views expressed by individuals and stakeholders who participated in the consultation.

There were 105 responses, including written submissions and comments on the Get Involved survey, and six written submissions from stakeholder groups, that emphasised the importance of access to adoption information.

Participants of targeted sessions with the external specialist supported open adoption as a way of maintaining a child's access to their identity. In at least seven interviews, there was specific reference to wanting improved access to information and support about birth fathers.

There was broad agreement that accessing information had improved since the repealed *Adoption of Children Act 1964*, but more could be done to further support people to gain as much information as possible about their

²⁴ Australian Institute of Health and Welfare, op. cit., p. 34.

²⁵ Ibid.

²⁶ Australian Institute of Health and Welfare, op. cit., p. 34.

²⁷ Australian Institute of Health And Welfare, *Adoptions Australia 2013-1*, Child Welfare Series no. 60, Cat. No. CWS 51, Australian Institute of Health and Welfare, Canberra, 2014.

²⁸ *Adoption Act 2009* (Qld), s272

identity and circumstances surrounding an adoption. Comments regarding specific changes to access to adoption information varied greatly. However, suggestions were made about extending the provisions to include family members more broadly.

There was a focus on the need for improving provisions to enable the timely release of medical information, and routine practices of seeking medical information on behalf of adoptees at the time of birth. This is viewed as a natural extension of focusing on, and prioritising, the needs of the child.

Adoption legislation in all state and territories of Australia contain provisions for access to pre-adoption and/or identifying information. According to the Australian Institute of Health and Welfare 2014–15, 2602 applications for information were made in Australia between 2014 and 2015, of which 414 were made in Queensland.²⁹

All states except South Australia³⁰ allow for adoptees under the age of 18 years to apply for this information in varying degrees. However, each state also requires consent to be obtained from the adoptive parent/s and/or birth parents.³¹ Unlike the Australian Capital Territory,³² New South Wales³³ and Western Australia,³⁴ there is no discretionary power in Queensland³⁵ to release information to an adopted person under the age of 18 years if a person required to give consent under the Act cannot be located.

New South Wales,³⁶ Victoria,³⁷ the Northern Territory,³⁸ South Australia³⁹ and the Australian Capital Territory⁴⁰ have legislative provisions

that regulate access to information and apply similar definitions for the term 'relative'. All definitions include grandparents, sons, daughters, brothers, sisters, aunts and uncles. Western Australia⁴¹ includes 'descendants', 'siblings' and 'grandparents', but makes no reference to aunts and uncles, while Tasmania⁴² does not explicitly define the term 'natural relative'. No state or territory specifically allows cousins, relatives under traditional Aboriginal and Torres Strait Islander custom or other significant persons in their definition.⁴³ However, New South Wales⁴⁴ does allow a person who had a close personal relationship with the birth parents or adopted person to apply for adoption information, after the death of that birth parent or adopted person. Queensland is the only state to exclude grandparents and include spouses in its definition of 'relative'.⁴⁵

Under access to information provisions in the Queensland legislation, a man is an adopted person's biological father if:

- he is shown as such on the birth register
- the man consented to the adoption
- the chief executive holds a record or sufficient evidence that the man accepted paternity of the adopted person before or at the time of the adoption
- the chief executive is otherwise satisfied on the balance of probabilities that the man is the adopted person's father.⁴⁶

This allows a man, determined to be the birth father under these provisions, to apply for the release of pre-adoption information about other parties.

The most comparable definition and process for determining a 'biological father' is applied by New South Wales, who use the term 'presumptive father'.⁴⁷ Victoria⁴⁸ and South

²⁹ Australian Institute of Health and Welfare, op. cit., p.30 – 31.

³⁰ *Adoption Act 1988* (SA), s27.

³¹ *Adoption Act 1984* (Vic), s94; *Adoption Act 1988* (Tas), s81; *Adoption Act 1993* (ACT), s68; *Adoption Act 1994* (WA), s84 & s85; *Adoption Act 2000* (NSW), s133C; *Adoption Act 2009* (Qld), s256; *Adoption of Children Act 2011* (NT), s61.

³² *Adoption Act 1993* (ACT), s68.

³³ *Adoption Act 2000* (NSW), s136A.

³⁴ *Adoption Act 1994* (WA), s84.

³⁵ *Adoption Act 2009* (Qld).

³⁶ *Adoption Act 2000* (NSW), s137.

³⁷ *Adoption Act 1984* (Vic), s97.

³⁸ *Adoption of Children Act 2011* (NT), s61.

³⁹ *Adoption Act 1988* (SA), s4 & s27.

⁴⁰ *Adoption Act 1993* (ACT), s58 & s68.

⁴¹ *Adoption Act 1994* (WA), s81.

⁴² *Adoption Act 1988* (Tas).

⁴³ *Adoption Act 1984* (Vic); *Adoption Act 1988* (Tas); *Adoption Act 1988* (SA); *Adoption Act 1993* (ACT); *Adoption Act 1994* (WA); *Adoption Act 2000* (NSW); *Adoption Act 2009* (Qld); *Adoption of Children Act 2011* (NT).

⁴⁴ *Adoption Act 2000* (NSW), s137.

⁴⁵ *Adoption Act 2009* (Qld), s249.

⁴⁶ *Ibid*, s250.

⁴⁷ *Adoption Act 2000* (NSW), s133A.

⁴⁸ *Adoption Act 1984* (Vic), s82.

Australia⁴⁹ use similar processes, however each also make use of definitions or provisions in other legislation, to establish the birth father. The Australian Capital Territory,⁵⁰ Tasmania⁵¹ and the Northern Territory⁵² do not specifically define a birth father or biological father, making reference only to 'natural parents' or 'relinquishing parents'. Western Australia⁵³ does not specify who is a biological father in access to information provisions, however, does so in provisions relevant to consent to adoption, and this definition and process is similar to that of Queensland.

Circumstances for an adoption

A total of 88 individuals and stakeholders who contributed to the review through the Get Involved survey or a written submission provided feedback on the circumstances under which an adoption may occur.

Adoption of children in out-of-home care

Of the 88 responses regarding circumstances of adoption, 80 per cent (70 respondents) concerned adoption of children in out-of-home care.

Responses reflected divergent views as to whether adoption is an appropriate permanency option for children in out-of-home care, and a lack of understanding of the current legislative context. However, the majority of comments provided general support for adoption of children in out-of-home care, in some circumstances.

Some respondents who support adoption of children in out-of-home care arrangements as a permanency option, made reference to the New South Wales Safe Home program that facilitates such arrangements. The New South Wales child protection legislation includes a permanent care hierarchy in which adoption is preferred before long-term guardianship orders.⁵⁴

In Queensland, adoption of children in out-of-home care is enabled by section 89 the Act, which states that an 'approved carer' may be selected to apply to be an adoptive parent of the child. An 'approved carer' is a carer approved under Schedule 3 of the *Child Protection Act 1999*, in whose care the child is placed.

Adoption by step-parents

Only a small number of people (10 out of the 77 written submissions and 216 Get Involved survey responses) commented on the process for children to be adopted by a step-parent. One written submission described the current step-parent process as 'cumbersome'. Three other stakeholder groups supported implementation of an adoption framework similar to New South Wales, in which the adoption by step-parent process includes the step-parent taking responsibility and driving the application process.

In Queensland, step-parents are currently required to seek leave from the Family Court and then apply to the department to arrange the adoption of a step-child.⁵⁵ The department must then obtain any required consents of birth parents and undertake the usual suitability assessments required of all adoptive parents.⁵⁶ Once suitability has been determined, the step-parent may apply to the Childrens Court for an adoption order, and department is responsible for filing the required suitability report.⁵⁷

While the same eligibility and assessment requirements exist as for other prospective adoptive parents, there is an additional assessment provision which provides that the chief executive must also have regard to the nature, closeness and quality of the child's relationship with the step-parent and members of the step-parent's household.⁵⁸

Queensland's current approach is broadly consistent with all other Australian jurisdictions, with the exception of New South Wales. In New South Wales, step-parents can prepare and file their own adoption applications directly with the court if they have the ability to manage the

⁴⁹ *Adoption Act 1988* (SA), s4.

⁵⁰ *Adoption Act 1993* (ACT).

⁵¹ *Adoption Act 1988* (Tas).

⁵² *Adoption of Children Act 2011* (NT).

⁵³ *Adoption Act 1994* (WA), s17.

⁵⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s10A.

⁵⁵ *Adoption Act 2009* (Qld), s92.

⁵⁶ *Ibid*, s98

⁵⁷ *Ibid*, s204.

⁵⁸ *Adoption Act 2009* (Qld), s130.

court procedures and legal issues involved.⁵⁹ As part of the application process, step-parent adoption applications are received and processed by a state court rather than by the department.⁶⁰ Applicants directly arrange and pay for pre-consent counselling services to be provided to both of the step-child's parents, as well as pay an approved assessor to undertake a suitability assessment and prepare a report for the court to decide if an adoption order should be made in their favour.⁶¹ The costs associated with these requirements are met by the step-parent.⁶²

Additional issues

A total of 65 individuals and stakeholders commented on a range of other relevant adoption issues. Of these, the majority of feedback received was in relation to consent and dispensation of consent processes (65 per cent or 42 respondents) and law consistency (54 per cent or 35 respondents).

Consent and dispensation processes

In relation to consent and dispensation of consent processes, there was recognition of the importance of such processes in preventing a return to practices of past forced adoptions. Equally, a number of individuals and stakeholders expressed that existing consent and dispensation processes are onerous and complex, and that greater support and counselling needs to be provided for involved parties.

A common concern raised by individuals and stakeholders who commented on the consent process, was that consent to an adoption can only be given 30 days after a child is born. It was suggested that the consent process start earlier, or even before the birth of the child. However, a smaller number of respondents supported the current consent timeframe or recommended a longer timeframe, as it allows the birth parents time to properly consider both emotional and legal issues, after the birth of a child.

⁵⁹ New South Wales Government, Department of Family and Community Services. 'Intrafamily adoption factsheet', (Sydney, Department of Family and Community Services, 2016), p. 2 - 3.

⁶⁰ Ibid.

⁶¹ Ibid, p. 3 - 4.

⁶² Ibid.

An adoption stakeholder group suggested the 30-day revocation period (or even longer, if necessary) should still be in place once the child is born. However, all counselling and prescribed information should be available prior to the birth of a child.

Similar to Queensland,⁶³ the adoption legislation in the Australian Capital Territory,⁶⁴ New South Wales,⁶⁵ Northern Territory,⁶⁶ Victoria,⁶⁷ Tasmania,⁶⁸ and Western Australia⁶⁹ all contain statutory requirements to obtain informed and voluntary consent from a parent, at a minimum the birth mother of the child, through the provision of relevant information together with professional counselling to enable consent to be informed and voluntarily given by the parent. South Australia's adoption legislation includes the requirement to obtain consent without any reference to the need to provide information or for a parent to undergo counselling to understand the effects of the consent.⁷⁰

Dispensation of the need for a birth parent's consent is allowable under all adoption legislation in Australia. However, a variety of requirements and circumstances apply.⁷¹ In Queensland, the chief executive may make an application to the Childrens Court to dispense with the need for a parent's consent.⁷² A copy of the application to dispense with the need for consent must be served on the relevant birth parent.⁷³ The Childrens Court may dispense with the requirement for service if satisfied with particular matters, for example, the parent/s cannot be located after all reasonable enquiries have been made.⁷⁴

⁶³ *Adoption Act 2009* (Qld), s16, s23 & s24.

⁶⁴ *Adoption Act 1993* (ACT), s26 & s27.

⁶⁵ *Adoption Act 2000* (NSW), s52, s59, s63.

⁶⁶ *Adoption of Children Act 2011* (NT), s27 & s30.

⁶⁷ *Adoption Act 1984* (Vic), s33 & s35

⁶⁸ *Adoption Act 1988* (Tas), s29 & s31.

⁶⁹ *Adoption Act 1994* (WA), s17 & 18.

⁷⁰ *Adoption Act 1988* (SA), s15.

⁷¹ *Adoption Act 1984* (Vic), s43; *Adoption Act 1988* (Tas), s37; *Adoption Act 1988* (SA), s18; *Adoption Act 1993* (ACT), s35; *Adoption Act 1994* (WA), s24; *Adoption Act 2000* (NSW), s66 - s72; *Adoption Act 2009* (Qld) s35 - s41; *Adoption of Children Act 2011* (NT), s35.

⁷² *Adoption Act 2009* (Qld), s35.

⁷³ Ibid, s36.

⁷⁴ Ibid.

Nationally consistent adoption legislation

More than half of those who provided responses commented on the value of nationally consistent adoption legislation, or at least transferable adoption systems and procedures in order to reduce perceived unnecessary restrictions for those who wish to express an interest in adoption in more than one jurisdiction. This is currently not facilitated as the legislation requires the person/s expressing an interest in adoption to be a resident of or domiciled in the state.⁷⁵

Integrated birth certificates and identity

All legal adoptions in Queensland result in a second post-adoption birth certificate being issued by the Registry of Births, Deaths and Marriages (BDM).⁷⁶ The first entry about a person in the birth register or adopted children register is closed under section 41A of the *Births, Deaths and Marriages Registration Act 2003*, when the registrar registers an adoption. The official birth certificate that is issued by BDM will only include information that reflects the child's legal status post adoption.⁷⁷ That is, it will include details of the child's adoptive parents and siblings, but no details about the child's birth family.⁷⁸ Section 290 of the Act enables an adopted person, with the chief executive's authorisation, to obtain their original birth certificate under section 44 of the *Births Deaths and Marriages Registration Act 2003*. However, the original birth certificate will be marked as not being an official document.

Integrated birth certificates that include both pre and post adoption information were raised by a number of individuals and stakeholders as a means of recognising the adopted person's birth family and adopted family. Participants in the targeted consultation sessions with the specialist consultant reported considerable anguish relating to birth certificates. Most participants held the view that birth certificates should include all of the information from birth through to the adoption, as a record of history and identity, and should include names of birth

parents and the person's original name as well as the adoptive parents and adoptive name.

Some participants expressed the view that access to an integrated birth certificate needs to be easier to make sense of, and to overcome, the damage inflicted by adoption. Support was provided by more recent adoptive parents for birth certificates that help children maintain their full identity and history. Some adopted people recounted the difficulties of having a birth certificate that states they were born overseas, causing problems in areas such as getting a passport and driver's license.

The Commonwealth Report in part recommended that all Australian states and territories adopt an integrated birth certificate for eligible people (recommendation 13).⁷⁹ Such a birth certificate, in one record, would record information on the original parents, adoptive parents and the adoption.

The South Australian review examined the issue of birth certificates for adopted persons and recommended that an adopted child's birth certificate should provide the truest possible account of the biological parentage of the child.⁸⁰

No state or territory has introduced official integrated birth certificates for adoptees. In New South Wales, an adoption certificate that includes pre-adoption information, but is not an official identity document, can be obtained.⁸¹

Retaining a birth name

During the community consultation process, views were also expressed regarding the right of a person to retain, as much as possible, a connection with their birth identity.

Section 215 of the Act allows for several different orders regarding an adopted child's name, ranging from the retention of their original surname and given names, to renaming of a child by a court by changing their given names and surname at the time a final adoption order is made. The court is required to make

⁷⁵ *Adoption Act 2009* (Qld), s76.

⁷⁶ *Births, Deaths and Marriages Registration Act 2003* (Qld), s41A.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Community Affairs References Committee, *op. cit.*, p. 257.

⁸⁰ Hallahan, *op. cit.*, p. 15.

⁸¹ New South Wales Government, Department of Justice, 'Adoptions', *Registry of Births, Deaths and Marriages* (Sydney, New South Wales Government, 2016) <http://www.bdm.nsw.gov.au/Pages/births/adoptions.aspx> [16 June 2016].

the order that will best promote the child's wellbeing and best interests, and is specifically required not to make an order that changes a child's given name unless satisfied the child's wellbeing or best interests would be harmed by retaining their given name.

Legislation in Victoria,⁸² the Northern Territory⁸³ and Tasmania⁸⁴ allow for the court to approve a change of first name or surname if they are satisfied that, as far as practicable, the wishes and feelings of the child have been sought and due consideration given to them, with regard for their age and understanding. The Australian Capital Territory requires that the court consider the proposed first name for the child, any exceptional circumstances that would require the change of a first name and the best interests of the child.⁸⁵ Both New South Wales⁸⁶ and South Australia⁸⁷ necessitate that if a child is 12 years of age or older they must consent to a change of their first name; and that consideration is given to the child's best interests for a change to their surname. For children under the age of 12 years, the court must consider their best interests (in New South Wales)⁸⁸ or wishes (in South Australia)⁸⁹ for a change to either their first name or surname. Western Australian legislation requires that the court must consider the child's cultural background, views on the matter, their relationship with their birth parents and the adoption plan.⁹⁰ Similar to other states, if the child is over the age of 12 years, their consent must be sought for the change of name.⁹¹

The South Australia report recommended that the child's first name should be retained, unless the court considers the child's existing name may be offensive in English or the name is the same as another child's in the family.⁹²

Discharge of adoption

A small number of individuals and stakeholders made reference to adopted people having the right to annul their adoption once they turn 18 years, with the view that the existing process could be simplified.

Under the current legislation in Queensland, a final adoption order can be discharged by an adopted person (if they are an adult), a birth parent, an adoptive parent or the chief executive. The order may only be discharged if:

- consent for the adoption was not given freely and voluntarily by a person with capacity to give consent
- the order was made, or something was done for the purpose of making the order,
 - because of a false or misleading document of representation
 - because a person acted fraudulently or used undue influence on another person
 - it was made in another improper way
- there are other exceptional circumstances that warrant the discharge.

All other states and territories may discharge an adoption order if the order was obtained by fraudulent or improper means, and all except South Australia⁹³ may do so if consent was obtained by fraud or under duress.⁹⁴ Western Australia,⁹⁵ New South Wales,⁹⁶ Tasmania,⁹⁷ Victoria⁹⁸ and the Australian Capital Territory⁹⁹ may also discharge an order if 'exceptional' or 'special' circumstances exist. In South Australia¹⁰⁰ and the Northern Territory,¹⁰¹ the Minister may apply for the discharge of an adoption order; whereas Tasmania¹⁰² and Victoria¹⁰³ allow the adoptive person, adoptive parents and birth parents or person from whom

⁸² *Adoption Act 1984* (Vic), s56.

⁸³ *Adoption of Children Act 2011* (NT), s48.

⁸⁴ *Adoption Act 1988* (Tas), s54.

⁸⁵ *Adoption Act 1993* (ACT), s45.

⁸⁶ *Adoption Act 2000* (NSW), s101.

⁸⁷ *Adoption Act 1988* (SA), s23.

⁸⁸ *Adoption Act 2000* (NSW), s101.

⁸⁹ *Adoption Act 1988* (SA), s23.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Hallahan, *op. cit.*, p.13.

⁹³ *Adoption Act 1988* (SA), s14.

⁹⁴ *Adoption Act 1984* (Vic), s19; *Adoption Act 1988* (Tas), s28; *Adoption Act 1993* (ACT), s39L; *Adoption Act 1994* (WA), s77; *Adoption Act 2000* (NSW), s93; *Adoption Act 2009* (Qld), s219 & s220; *Adoption of Children Act 2011*, s44.

⁹⁵ *Adoption Act 1994* (WA), s77.

⁹⁶ *Adoption Act 2000* (NSW), s93.

⁹⁷ *Adoption Act 1988* (Tas), s28.

⁹⁸ *Adoption Act 1984* (Vic), s19.

⁹⁹ *Adoption Act 1993* (ACT), s39L.

¹⁰⁰ *Adoption Act 1988* (SA), s14.

¹⁰¹ *Adoption of Children Act 2011* (NT), s44.

¹⁰² *Adoption Act 1988* (Tas), s28.

¹⁰³ *Adoption Act 1984* (Vic), s19.

consent was gained to make an application for its discharge, as well as the Secretary and the principal officer of an approved agency. The Australian Capital Territory¹⁰⁴ also allows for all parties to an adoption to make an application, as well as the Minister, the Director-General and the Public Advocate. Western Australia¹⁰⁵ legislation only allows for the Attorney-General, the Chief Executive Officer and the adoptee to apply to the court for a discharge order.

The South Australia report¹⁰⁶ made a recommendation that the *Adoption Act 1988* (SA) be amended to allow for a model for discharging an adoption similar to that of Tasmania, particularly where the model gives primacy to the interests and welfare of the adopted person along with clear guidelines to case manage and support an adopted person.

¹⁰⁴ *Adoption Act 1993* (ACT), s39L.

¹⁰⁵ *Adoption Act 1994* (WA), s77.

¹⁰⁶ Hallahan, op. cit., p. 13.

Results of the review

Responses received from consultation on the review indicate that the Act is operating as intended. However, there is an opportunity to enhance aspects of the legislation to allow for a contemporary and flexible legal framework for adoption in Queensland.

A small number of operational improvements have also been identified, which have the potential to further develop Queensland's adoption practices, to ensure that they continue to meet the needs of children requiring adoption now and into the future.

Changes are proposed to:

- broaden eligibility criteria to enable single persons, same-sex couples and persons undergoing fertility treatment to have their names placed on the expression of interest register
- remove the offence for a breach of contact statement for adoptions that occurred before 1991 while retaining departmental obligations as a safeguard
- enable the chief executive to consider the release of identifying information to persons under 18 years of age in exceptional circumstances, without consent from adoptive or birth parents, and broaden the definition of 'relative' to include future generations of kin
- require the court to be satisfied that exceptional circumstances apply to allow a change of a child's first name in a final adoption order
- enable the chief executive to facilitate contact between parties to an adoption, during interim orders
- streamline processes for adoption by step-parents
- make minor technical amendments to clarify the intent of existing provisions and make consequential amendments based on the endorsed policy objectives
- require a further review of the Act in five years' time.

Next steps

The Queensland Government will continue to consider the input received from the review, including policy, practice and legislative changes that may be required as a result. Any legislative amendments that may be required will be progressed during late 2016. The government remains committed to continuing to engage with all Queenslanders and adoption stakeholders including those who have had an adoption experience.

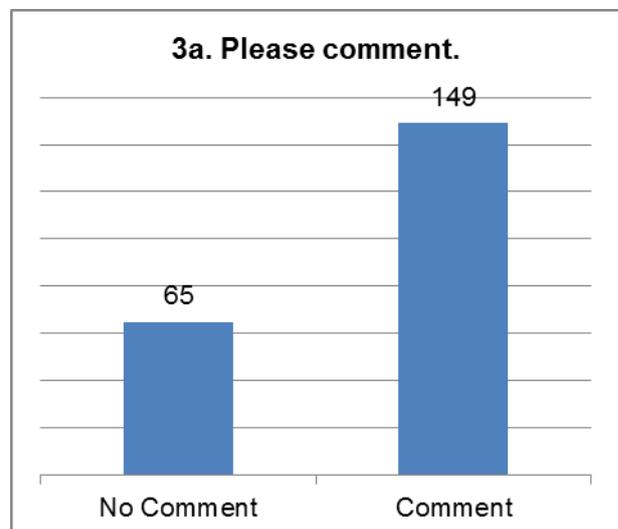
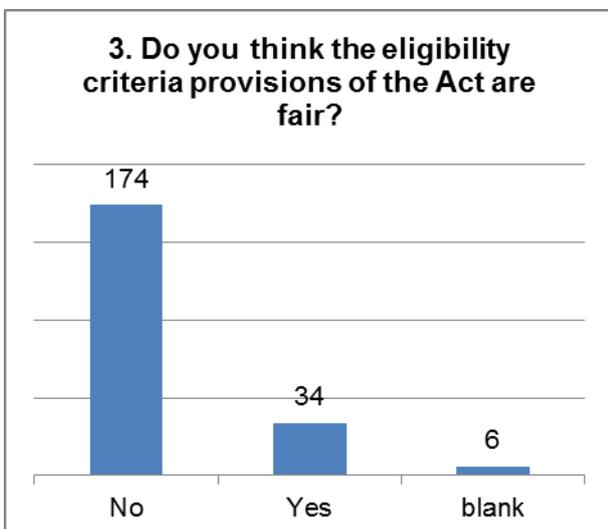
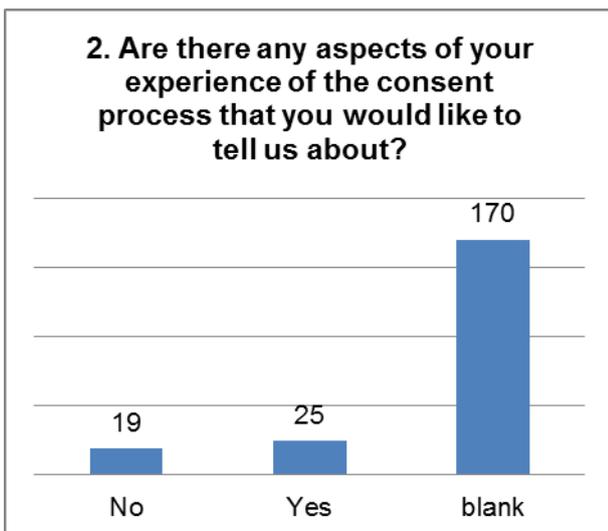
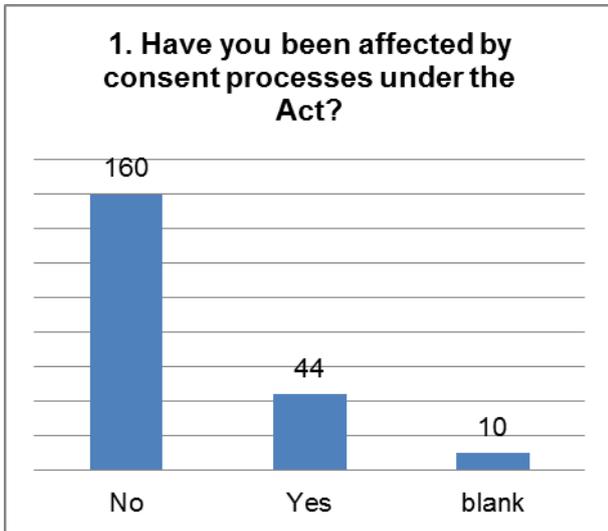
Appendix 1

Organisations that provided written submissions (31 out of 77)

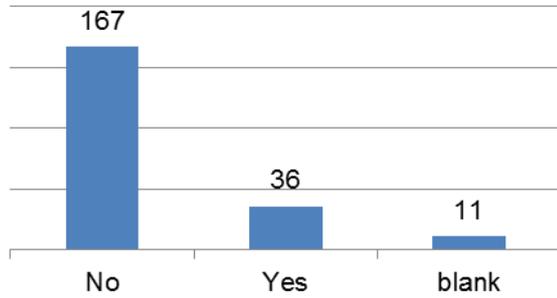
1. National Centre on Adoption and Permanency
2. Parents and Friends of Lesbians and Gays
3. Rainbow Labor
4. Family Inclusion Network Queensland (Townsville) Inc.
5. Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG)
6. Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
7. Harrington Family Lawyers
8. Association for Adoptees Inc.
9. Jigsaw Queensland Inc.
10. Lesbian Gay Bisexual Trans Intersex Legal Service Inc.
11. Australian Christian Lobby
12. Queensland Family and Child Commission
13. Office of the Public Guardian
14. NSW Committee on Adoption and Permanent Care Inc.
15. Griffith Law School, Griffith University
16. Australian Lawyers for Human Rights
17. Australian Marriage Forum
18. Anti Discrimination Commission Queensland
19. PeakCare Queensland Inc.
20. Barnardos Australia
21. Queensland Local Adoption Support Group
22. Women's Forum Australia
23. International Adoptive Families of QLD
24. The Australian Family Association (QLD Branch)
25. Adopt Change
26. Queensland Law Society
27. Queensland Alliance for Kids
28. Benevolent Society
29. Family Inclusion Network
30. Adoption Loss Adult Support Australia Inc.
31. Roman Catholic Archdiocese of Brisbane

Appendix 2

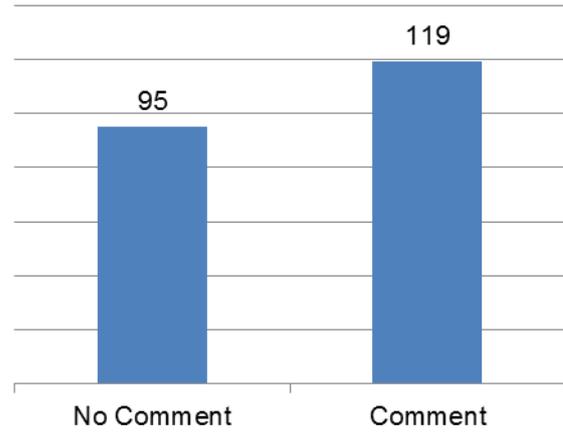
Get Involved online survey questions:



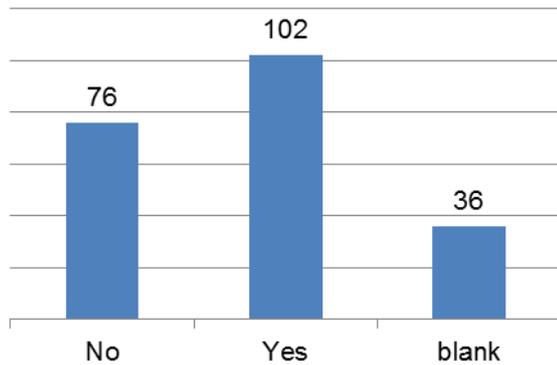
4. Do you think the eligibility criteria provisions of the Act continue to meet the needs of children who require adoptive families?



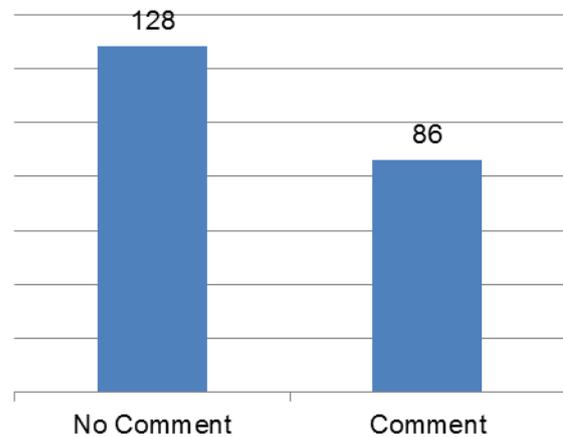
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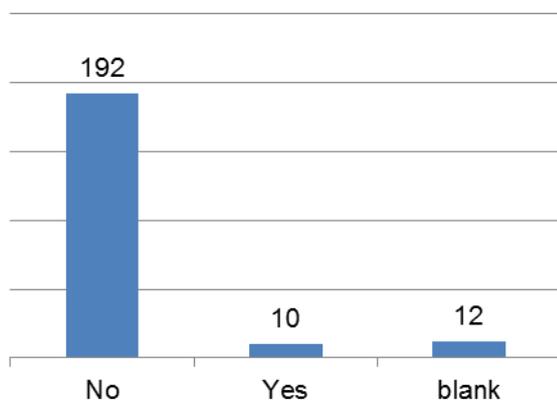
5. Are there additional aspects that should be considered in a suitability assessment?

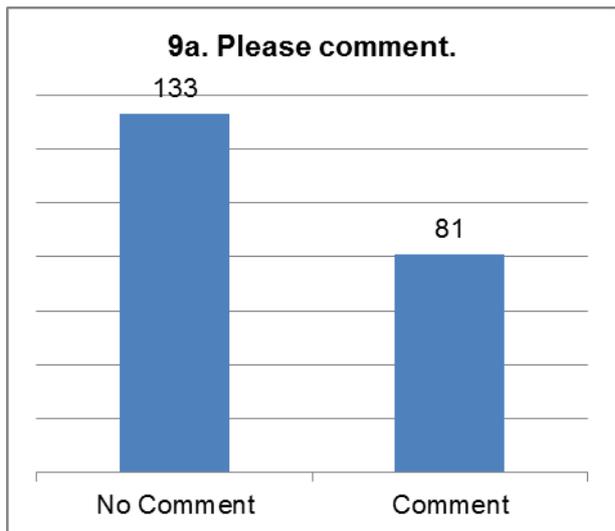
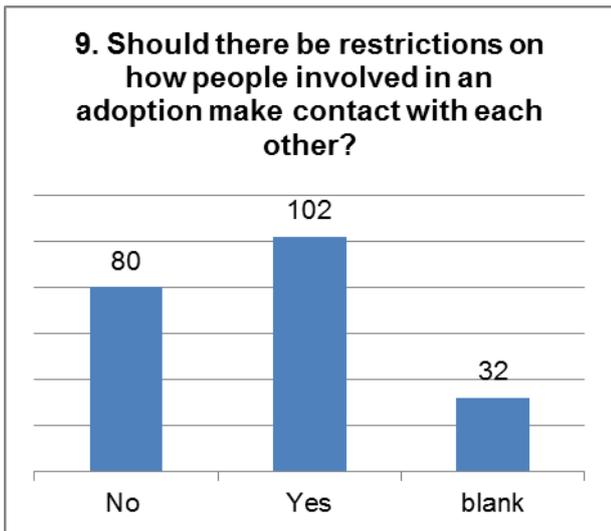
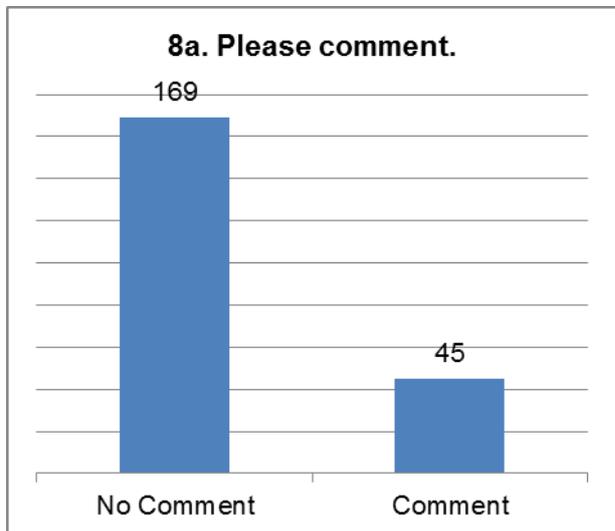
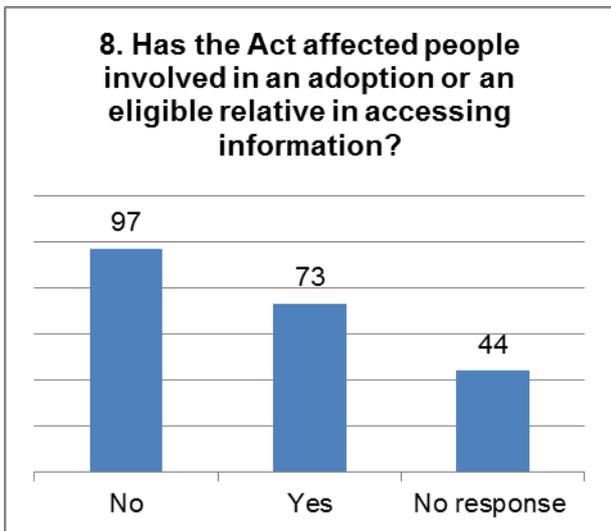
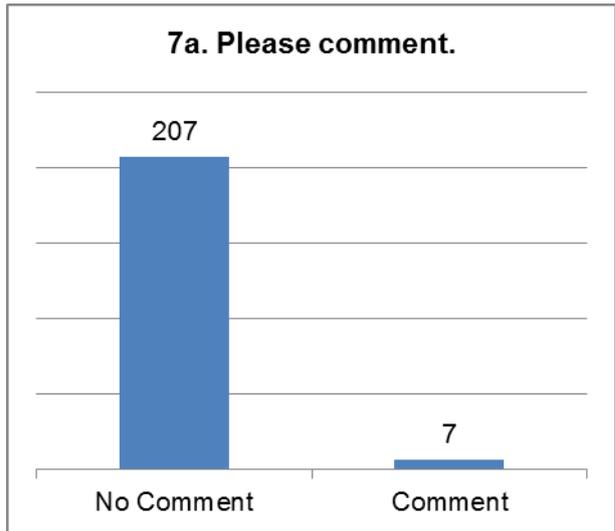
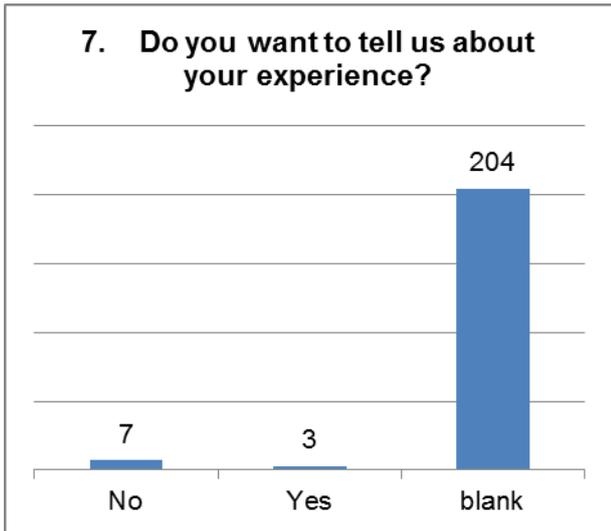


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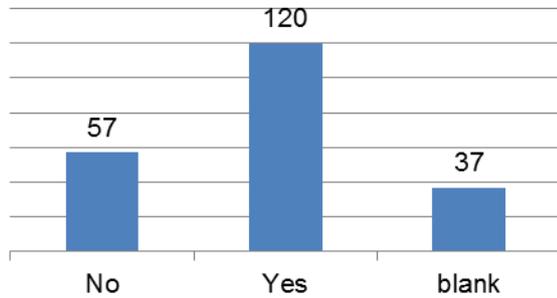


6. Have you been involved in a step-parent adoption?

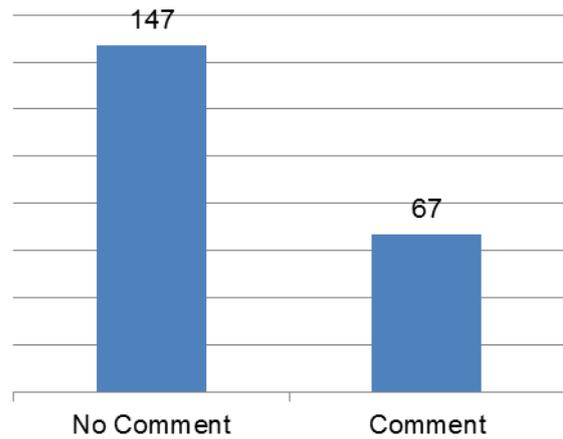




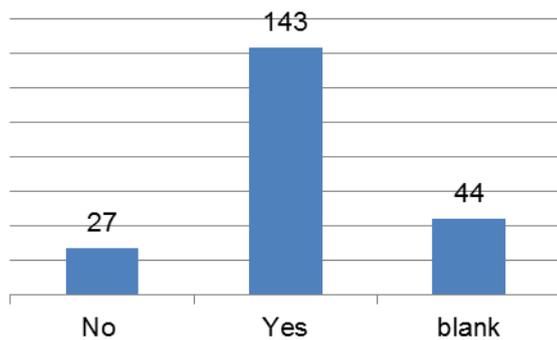
10. Should there be penalties attached to breaching contact restrictions that someone involved in an adoption has put in place?



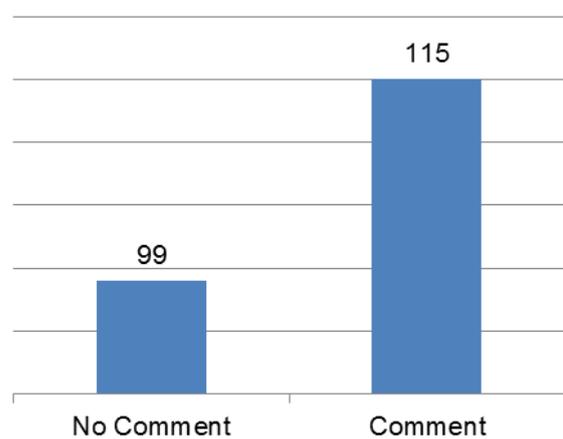
10a. Please comment.



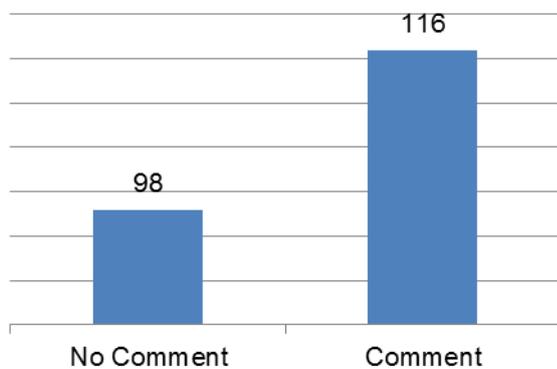
11. Are there approaches to adoption in other States and Territories that Queensland can consider?



11a. Please comment.



12. What is your experience or views of adoption in Queensland over the last 5 years?



13. Is there anything else about your experience with adoption in Queensland that you want to tell us?

