

Adoption and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Adoption and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The *Adoption Act 2009* (the Act) commenced on 1 February 2010, replacing the *Adoption of Children Act 1964*. The Act made significant changes to Queensland's adoption laws, introducing a contemporary framework for the adoption of children in Queensland and from overseas, and greater access to information for parties to adoptions. The Act was developed following extensive community consultation including publication of a consultation paper in 2002 and further public consultation in 2008.

The Act brought Queensland adoption laws into line with other Australian states and territories by introducing open adoption (allowing the child, adoptive parents and birth parents to know each other and the circumstances of the adoption), improving birth parent consent requirements, modernising eligibility criteria and assessment processes and introducing court ordered adoptions.

Given the significant changes made by the Act, a statutory requirement was included (section 327) that the Minister review its operation, as soon as practicable, five years from its commencement. The requirement included that the review must include a review of the effect of the Act on parties to an adoption and their families.

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

The review found, while the Act is continuing to work effectively, there are opportunities to enhance the legislation to continue to enable a contemporary and flexible framework for adoptions in Queensland.

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

Achievement of policy objectives

The Bill:

- expands who is eligible to have his or her name entered or remain in the expression of interest register to include same-sex couples, single persons and persons undergoing fertility treatment;
- removes the offence and associated penalty for a breach of a contact statement for adoptions that occurred before June 1991;
- improves access to information by enabling the chief executive to consider the release of identifying information without consent from adoptive or birth parents in exceptional circumstances; broadens the definition of “relative” for the purposes of accessing or consenting to the access of information, to include future generations and persons recognised as parents and children under Aboriginal tradition and Torres Strait Island custom; and expands when information about a person who may be an adopted person’s biological father may be provided to them;
- requires the court to be satisfied that exceptional circumstances exist before including a change to a child’s first name in a final adoption order;
- enables the chief executive to facilitate contact between parties to an adoption, during an interim adoption order;
- improves processes for adoption of a child by a step-parent;
- makes minor technical amendments to clarify the intent of existing provisions, corrects drafting errors and makes consequential amendments based on the endorsed policy objectives; and
- requires a further review of the operation of the Act in five years’ time.

Eligibility

The expression of interest register is a list of eligible persons who have expressed interest in being assessed for suitability as an adoptive parent. The chief executive may select persons from this register to be assessed for suitability as adoptive parents. Section 76 of the Act provides eligibility criteria for persons who may have their names entered and remain in the expression of interest register. This includes the requirement that the person has a spouse, the person’s spouse is not the same gender, and the person (or their spouse) is not undergoing fertility treatment.

The Bill broadens eligibility criteria to allow same-sex couples, single persons and persons undergoing fertility treatment to have their names entered and remain in the expression of interest register. This will provide a wider pool from which to select persons for assessment for suitability as adoptive parents, in order to meet the needs of children requiring adoption.

Single persons and couples

The Bill amends the Act to allow single persons to express an interest and be assessed for suitability as an adoptive parent.

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

A person who has a spouse must express interest jointly with their spouse.

Where a person on the expression of interest register enters into or ends a spousal relationship, the person will be removed from the register, and may then express interest as a single person or jointly with their new spouse.

The Bill removes the requirement that a couple must have been in a spousal relationship for two years and been living together for two years prior to expressing interest. This will allow a person who has been on the expression of interest register as a single person to make a joint expression of interest with their spouse, immediately upon entering a new spousal relationship. However, the quality and stability of relationship will remain an important consideration in assessing a couple's suitability (under section 128 of the Act).

Same-sex couples

The Bill amends the Act to allow same-sex couples to express an interest and be assessed as for suitability as adoptive parents, by removing the requirement that a person must have a spouse of another gender.

Fertility treatment

The Bill removes the requirement that a person undergoing fertility treatment cannot have the person's name entered or remain in the expression of interest register for selection for assessment for suitability as an adoptive parent. A person may remain on the expression of interest register and, if assessed as suitable, the suitable adoptive parent register, for a significant period of time with no certainty of adoption. It is not considered fair to prevent a person from pursuing parenthood through other means, such as fertility treatment, during this period.

The Bill allows a person to be selected and assessed for suitability as an adoptive parent if undertaking fertility treatment. However, the current eligibility requirements regarding pregnancy and parenthood will remain, specifically:

- a person may not be entered or remain in the expression of interest register if the person is pregnant
- a person may not be entered or remain in the expression of interest register if the person has custody of a child under one year of age (excluding children for whom the applicant is an approved carer)
- an interim adoption order cannot be granted to a person who is pregnant.

Prior to making an expression of interest, persons wishing to be placed on the expression of interest register are advised they will no longer be eligible to remain on the expression of interest register, be selected for assessment, or have an interim order made in their favour if the person, or the person's spouse, becomes pregnant. This advice is also provided prior to being selecting for assessment as a suitable adoptive parent. If a person becomes pregnant while on the suitable adoptive parents register, the person is not considered pregnant until 14 weeks gestation.

Removing restrictions on persons undergoing fertility treatment acknowledges the lengthy period that a person may wait on the expression of interest register and suitable adoptive parents register. It also recognises that it is usually in an adopted child's best interests for an adoptive parent to not be pregnant at the time of an interim adoption order or be caring for another child under one year of age at the time a final adoption order is granted.

Contact statement offence and associated penalty

The Act provides that an adopted person or a birth parent may give the chief executive a contact statement (a signed document) setting out their wishes about being contacted by another stated person (section 269). They may state they do not wish to be contacted or that contact should only occur in a particular way, for example, in writing.

The Act makes it an offence to breach a contact statement for adoptions occurring before June 1991, with a maximum penalty of 100 penalty units or up to 2 years imprisonment (section 272).

The Bill removes this offence and associated penalty. The obligation on the chief executive to communicate information contained in a contact statement (including a person's reasons for providing a contact statement) will be maintained. This obligation must be complied with before any information is given to an applicant.

A person may not be charged with an offence committed prior to commencement of this amendment, as provided by section 11 of the *Criminal Code (Qld)*.

Contact statements are not being removed by the Bill because many people entering into an adoption still wish to have a formal record of their wishes with regard to contact, however the same provisions will apply to everyone affected by a contact statement regardless of when the adoption occurred.

These amendments balance the rights and interests of people who wish to have access to information with the ongoing use of contact statements to establish a person's preference not to be contacted and protect their right to privacy.

Access to information

The Bill amends the Act to improve processes for parties to an adoption to access information.

Definition of "relative"

Section 249 of the Act defines the term "relative" as it relates to persons who may give consent on another person's behalf, or access information on behalf of another person, in certain circumstances. Under the current definition, a relative "means a spouse, parent, sibling or child".

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

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

Records of birth “father”

The Act includes provisions that specify the circumstances in which information about a person’s birth parents may be accessed by an adopted person or an adult relative of the adopted person. The Act defines when a man is considered to be the person’s biological father, and therefore a birth parent (section 250). The chief executive may hold information related to the identity of a person’s father, where the information does not satisfy the definition in section 250. This may include, for example, a name recorded on a document, where there is no evidence the name is actually that of the person’s biological father.

The Bill provides an adopted person with access to information held in relation to the person’s father, even where it is not confirmed as information about the biological father in accordance with section 250. This will allow an adopted person to receive any information on their adoption file which may assist in identifying their birth father. The adopted person will be provided with a notice stating the information given is not confirmation of the identity of a biological father.

Discretion in exceptional circumstances

The Act specifies various requirements for the access to adoption information, based on the person who is requesting the information and the extent of information being requested. For example, an adopted person who is under 18 years of age may request adoption information only with consent from an adoptive parent.

Generally, when a person requests pre-adoption information, it can be provided only with the consent of the person who is identified by the information. For example, if an adopted child requests information about his or her birth parents, the information can only be provided with the birth parents’ consent. If the person whose consent is required has died or does not have capacity to consent, an adult relative of the person may give consent. There is no provision for an adult relative giving consent on the basis that a person cannot be located. The Bill provides for an adult relative to give consent on behalf of a person who cannot be located after all reasonable enquiries have been made.

Additionally, the Bill introduces discretion for the chief executive to consider that consent to access information is not required in exceptional circumstances. Exceptional circumstances may include where the person and all adult relatives are deceased or an adult relative of the person unreasonably withholds consent.

Child’s name after adoption

When a final adoption order is made by a court, the Act allows the order to include that the child keeps an existing given name or their name is changed as agreed to by the child’s adoptive parents (section 215).

The *United Nations Convention on the Rights of the Child* (the Convention), Article 8.1, includes an undertaking for State Parties to respect the right to preserve a child’s identity including their name, as recognised by law.

The Bill provides greater guidance to the courts regarding circumstances in which a child’s first name can be changed in a final adoption order. This should only be in “exceptional circumstances”, which may include when a child’s name is deemed to be harmful to their wellbeing, such as if the child’s cultural name has a potentially offensive meaning within a Western context.

This amendment supports retaining, as much as possible, a person’s connection with their birth identity.

Contact during interim orders

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

The Bill removes any doubt that face-to-face contact between a child and their birth parents can occur during an interim adoption order and specifies that it may occur through the adoption plan framework.

An adoption plan is a written record agreed to by the parties to an adoption, regarding anything relating to the adopted child's wellbeing or interests. The Act states an adoption plan is required only when a birth parent and prospective adoptive parent wish to have in-person contact; if a child protection order is, or has been in force for the child; or if the child is an Aboriginal or Torres Strait Islander child and the adoptive parents are not from the child's community or language group (sections 170 to 172 of the Act).

The Bill provides that an adoption plan may be used during an interim adoption order, as the basis of agreement to face-to-face contact between the parties to an adoption. This will support the transition to adoption, with continued oversight by the chief executive. Contact will only be facilitated if it is in the best interests of the child and if all parties agree.

Consequential amendments are made to the provisions related to the mailbox service, to facilitate the exchange of information between parties to a proposed adoption, during an interim adoption order. Extending the use of the mailbox service to enable further information exchange supports open adoptions and the use of adoption plans during interim adoption orders under new section 169A.

Adoption by step-parents

The Bill improves the step-parent adoption process by providing that a person may withdraw a step-parent adoption application, clarifying the circumstances in which an application will lapse due to inactivity, and introducing timeframes for applying for adoption orders following receipt of a suitability report. The Bill aims to clarify the scope of "exceptional circumstances" when considering the validity of a step-parent application, by providing an example in the Act.

Closure of step-parent application

Under the Act, a step-parent application lapses if it is inactive for six months due to a lack of consent or a failure by the applicant to provide requested information (section 100).

The Bill extends the circumstances in which a step-parent application will lapse to include when the applicant fails to pay the required assessment fee. If the application lapses due to inactivity, a show cause notice will be issued to the step-parent, unless the lapse is due to required consent not being obtained (section 99).

The Bill also provides a step-parent with the ability to withdraw their application, for example, in situations where a step-parent has decided not to pursue an application that has been commenced.

Timeframe for applying for step-parent adoption order

The Bill introduces a timeframe in which a step-parent, who has been assessed as suitable and provided with a suitability report, must apply to the Childrens Court for a final adoption order. Step-parents are encouraged to apply promptly for a final adoption order when provided with a suitability report. However, there is presently no requirement for making an application in a timely way to ensure the information in the suitability report remains current.

The Bill amends the Act to require an application for a final adoption order to be made to the Childrens Court within one year of a suitability report being issued to the step-parent. After one year from the suitability report being provided, the step-parent will no longer be able to apply for the final adoption order. If the step-parent later wishes to pursue the adoption, the step-parent must first apply to the chief executive to arrange an adoption under section 92, and the chief executive may conduct a new assessment.

Exceptional circumstances

The Act states that a final adoption order in favour of a step-parent should be granted only if there are exceptional circumstances that warrant the making of the order. The Act does not give any guidance on what is meant by “exceptional circumstances” and, as a result, has the potential for the term to be applied inconsistently. The Bill includes an example of exceptional circumstances to provide guidance to courts. Exceptional circumstances may include where a parent of the child is deceased or cannot be located after making all reasonable enquiries.

These changes will improve the step-parent application process by clarifying the existing framework.

Minor and consequential amendments

The Bill also makes minor technical and consequential amendments including:

- correcting an oversight when transitioning the suitable adoptive parents register from the repealed *Adoption of Children Act 1964* to the suitable adoptive parents register under the Act;
- correcting an oversight to allow long-term guardians under the *Child Protection Act 1999* to be selected for assessment of suitability to adoption of a particular child, in the same way that approved carers under the *Child Protection Act 1999* may be selected;
- clarifying that the chief executive’s guardianship does not end when the chief executive is a child’s guardian under section 57 at the time the child dies;
- amending pre-consent timeframes (section 19) to reflect the difference between the date when a person has received pre-consent counselling and the date when a counsellor swears a statement confirming the counselling has been received;
- clarifying that section 60(1)(b) applies if consent (or dispensation) to an adoption has been given by only one parent;
- a consequential amendment to the *Commonwealth Powers (Family Law—Children) Act 1990* (Schedule) which will reflect the new wording of section 188 regarding long-term guardians;
- updating definitions.

Alternative ways of achieving policy objectives

There are no alternative ways in which the policy objectives can be achieved, other than by legislative amendment.

Estimated cost for government implementation

Broadening the eligibility requirements for the expression of interest register to allow same-sex couples, single persons and persons undergoing fertility treatment to place their name on the expression of interest register may increase the administrative burden for the Department of Communities, Child Safety and Disability Services (DCCSDS). However, it is anticipated costs will be absorbed within current budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals – Legislative Standards Act, section 4(2)(a)

Definition of relative for the purposes of consent

Clause 44 amends the definition of “relative” as provided in section 249 of the Act, as it applies to provisions that allow an adult relative to apply for pre-adoption information, or consent to the sharing of pre-adoption information, on another person’s behalf, in limited circumstances. This amendment may be a potential departure from the principle that sufficient regard be given to individual’s rights and liberties including privacy and confidentiality, as it allows an extended group of people to obtain adoption information. Broadening the definition of “relative” is considered necessary for preserving family history and a person’s identity, and is only applied where birth parents or the adopted person is deceased, cannot be located after reasonable enquiries, or does not have capacity to consent.

Discretion in exceptional circumstances

Clauses 45, 48 and 51 amend sections 256, 263 and 265 to allow the chief executive to consider consent is not required to provide certain pre-adoption information, because of exceptional circumstances. Under the Act limited pre-adoption information may be provided without consent to adopted persons who are adults, however, for children and other requests for adoption information, consent of the person whose information is being requested is necessary. The amendments recognise that it is not always possible to gain this consent. Under the Act, an adult relative is able to give consent on behalf of a birth parent, adoptive parent or adopted person in certain circumstances.

This amendment may be a potential departure from the principle that sufficient regard be given to individual’s rights and liberties including privacy and confidentiality because the Bill allows the chief executive to consider exceptional circumstances where consent is not required. To balance the importance of releasing information to a person about their identity, family and heritage with the need to uphold a person’s right to privacy, the Bill makes it clear that consent is not required, only in exceptional circumstances, when all other avenues for obtaining consent have been exhausted.

Definition of “member”

An assessment of a person’s suitability to be a prospective adoptive parent under Part 6 of the Act includes the assessment of a “member” of a person’s household. Clause 66 (dictionary) strengthens the existing provision in the Act (section 111) regarding this assessment by expanding who may be considered a member of a person’s household.

This amendment is a potential departure from the principle that sufficient regard be given to individual’s rights and liberties including privacy and confidentiality of a person who falls within the definition. This potential infringement of privacy is considered necessary to ensure the safety and wellbeing of a child who may be placed in the household. The provision seeks to ensure children who require an adoptive placement are protected and kept safe from any identified risks.

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

Information about a birth “father”

Clauses 46 and 49 insert new sections 256A and 263A to require the chief executive to provide an applicant with information about a person who may be the adopted child’s birth father, regardless of whether the person meets the criteria under section 250. The new sections prescribe that, if the identity of the adopted person’s birth father is not confirmed, the chief executive must give the person notice to this effect and if appropriate in the circumstances, the reasons why the information is not confirmed.

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

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

Request by pre-adoption sibling

Clause 53 removes section 267(3), which prohibits the release of information to a pre-adoption sibling if the adoption occurred before 1 June 1991, and if a contact statement was in place which stated the birth parent did not want to be contacted by the adopted person. Section 267(3) is removed by the Bill, to align with amendments in clause 56 which remove the offence and penalty for a breach of contact statement for adoptions which occurred before June 1991.

The omission of the subsection is potentially a breach of the principle that sufficient regard be given to individual’s rights and liberties including privacy and confidentiality as it allows information to be accessed by a pre-adoption sibling regardless of whether the birth parent has made a contact statement that the birth parent does not wish to be contacted. The

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

This amendment is considered necessary to achieve consistency across the Act by removing all penalties associated with contact statements.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – Legislative Standards Act, section 4(3)(g)

Timeframe for step-parent application

The Bill inserts provisions prescribing a one year timeframe for step-parents to apply to the Childrens Court for an adoption order after being provided with a suitability report from the chief executive (clause 41). Step-parents who have been provided with a suitability report before the commencement of the Amendment Act will have one year from the date of commencement of the Amendment Act, to make an application to the Childrens Court.

This transitional provision (clause 65) may be perceived as a departure from the principle that legislation should not impose obligations retrospectively (*Legislative Standards Act 1992*, section 4(3)(g)), due to the introduction of the one year timeframe. This timeframe is however, considered necessary to avoid unnecessarily long delays between when a step-parent has been provided with a suitability report, and when the step-parent makes an application to the court. This ensures that a suitability report remains current and reflects an accurate account of the person's circumstances. Assessment of suitability and currency of a suitability report is necessary to determine if the adoption is in the child's best interests.

DCCSDS will communicate changes to step-parents who have received a suitability report to advise of the one year timeframe in which to apply to the Childrens Court for a final adoption order.

Contact statements

The Act (section 269) provides an adopted person or a birth parent may give the chief executive a contact statement (a signed document) setting out their wishes about being contacted by another person.

The Act (section 272) makes it an offence to breach a contact statement for an adoption which occurred before June 1991. Clause 56 amends the Act to remove the offence and associated penalty. Contact statements are not being removed by the Bill as many parties to an adoption (including more recent adoptions) still wish to have a formal record of their wishes with regard to contact. The proposed amendment will apply the same provisions to everyone affected by a contact statement regardless of when the adoption occurred.

Removal of the offence and associated penalty is a potential departure from the principle that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (*Legislative Standards Act 1992*, section (4)(3)(g)).

DCCSDS is not aware of any person ever having been charged of an offence for the breach of a contact statement. After commencement of this amendment, a person will not be able to be charged with an offence about a breach of contact statement committed prior to commencement of this amendment, as provided by section 11 of the *Criminal Code (Qld)*.

The obligation on the chief executive to communicate information contained in a contact statement (including a person's reasons for providing a contact statement, if appropriate) will be maintained. This obligation must be complied with before any information is given to an applicant.

A consequential amendment is made by the Bill to remove section 267(3), which may also adversely affect rights and liberties, or impose obligations, retrospectively. Section 267 provides for information requests by adults who would be a sibling of the adopted person if the adoption had not happened (a “pre-adoption sibling”). Section 267(3) prohibits the release of information to a pre-adoption sibling if the adoption happened before 1 June 1991, and if a contact statement was in place which stated that the birth parent did not want to be contacted by the adopted person. Section 267(3) is removed by the Bill, to align with amendments in clause 56 which remove the offence and penalty for a breach of contact statement for adoptions which occurred before June 1991. As it is no longer an offence for a person to knowingly contact a birth parent who has a contact statement in place, it is not necessary to legislate a bar to providing information to a pre-adoption sibling about the adopted person.

This amendment is considered necessary to achieve consistency across the Act by removing all penalties associated with contact statements.

Information provided with the consent of an adoptive parent

Clause 65 inserts new section 357, a transitional provision, to provide clarification where an adoptive parent has provided consent for a request for information by or on behalf of a child prior to the commencement of the amending Act. The provision clarifies that further consent by the adoptive parent is no longer required to provide additional information if an application is made after commencement.

This provision is a potential departure from the principle that legislation should not adversely affect rights and liberties, retrospectively (*Legislative Standards Act 1992*, section (4)(3)(g)). For example, the effect of this amendment may mean that an adopted child may receive information about their possible biological father, that the adoptive parent was not aware would be released at the time that consent to access information was given. This amendment is considered justified on the grounds that it benefits the applicant by not requiring them to seek additional consent and in doing so, prevents unnecessary delay, and is consistent with the main object and the guiding principle of the Act to promote openness and honesty about the child’s adoption.

Consultation

Community

Consultation for the review of the Act was conducted over six months from 17 September 2015 to 31 March 2016. The comprehensive public consultation enabled individuals and stakeholders to provide feedback through an online survey, written submissions, interviews and focus groups.

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

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

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.

Targeted consultation was conducted with key stakeholders on a consultation draft of the Bill on 15 and 17 August 2016. Stakeholders who attended the sessions broadly supported the Bill.

Consistency with legislation of other jurisdictions

The review considered changes in the field of adoption since the Act was introduced. The Bill is consistent with recent amendments in other jurisdictions, which have made notable changes, particularly in relation to extending eligibility criteria to include same-sex couples and contact statement provisions.

Eligibility criteria – same-sex couples

New South Wales, Western Australia, Tasmania and the Australia Capital Territory all allow same-sex adoption.

The *Adoption Amendment (Adoption by Same-sex Couples) Act 2015* (Vic) commenced on 1 September 2016. These changes allow same-sex and gender diverse couples in Victoria to be eligible to adopt.

South Australia's independent report on the review of the *Adoption Act 1988* (SA) released in March 2016 made a number of recommendations for legislative amendment, including changes to eligibility criteria to allow same-sex couples to adopt. The South Australian Government has not yet responded to these recommendations.

Contact statements

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.

South Australia's independent report on the review of the *Adoption Act 1988* (SA) has also recommended the abolition of the existing contact veto system.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill may be cited as the *Adoption and Other Legislation Amendment Act 2016*.

Part 2 Amendment of Adoption Act 2009

Clause 2 provides that this part amends the *Adoption Act 2009* (the Act).

Clause 3 inserts new section 9A into Part 1, Division 2. The new section clarifies that a person who has a spouse, but has separated from the person's spouse, is considered to be single for the purposes of the Act. This would include, for example, where a person who is legally married has separated from the person's spouse, but is not yet divorced. The term "separately and apart" is consistent with section 49(2) of the *Family Law Act 1975* (Cth) as a precursor for divorce, which states parties may be considered to be living "separately and apart, notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other".

The effect of this amendment is that a person who has separated from their spouse will be able to express interest, and be assessed for suitability, as a single adoptive parent.

The new section will also apply to the definition of "relative" under section 249 of the Act, so that, where a person is living separately and apart from the person's spouse, the spouse will not be considered a relative for the purposes of Part 11 of the Act.

Clause 4 amends section 19 to clarify when a parent may give consent to their child's adoption. Section 19 provides that a parent may not give consent less than 30 days after the child's birth; or less than 14 days after the parent is given documents under section 22; or less than 14 days after the parent is given prescribed information under section 23; or less than 14 days after the day the counsellor swears the statement mentioned in section 175(3)(b). Section 19 is amended to clarify that consent may only be given after the latest of the days listed at subsections (a) to (d).

Subsection (d) is removed and reinserted at subsection (e), and a new subsection (d) is inserted. The new subsection (d) provides that a parent's consent must not be given before the day that is 14 days after the last day the parent received counselling. This amendment acknowledges there may be a delay between the time a parent receives counselling and the time a statement is sworn. This amendment will reduce unnecessary administrative delay.

Clause 5 amends subsection 60(1)(b) to clarify that the chief executive may place a child in the care of one of more of the child's parents if it is at least 30 days since at least one parent's consent for adoption was obtained (or the need for their consent has been dispensed with).

As currently drafted, subsection (1)(b) may be interpreted to provide that consent is required (or the need dispensed with) of both the child's parents. This interpretation is inconsistent with section 57, which provides that the chief executive becomes the child's guardian with only one parent's consent (or the dispensation of its need).

Clause 6 inserts new section 61A to make clear that, where the chief executive is the child's guardian under section 57 (when consent to a local adoption has been given or the need for consent is dispensed with), the guardianship continues in the event that the child dies. This amendment allows the chief executive to make any necessary decisions relating to the deceased child, which may include arranging for the child's funeral and meeting funeral costs.

In such events, the chief executive would consider the preferences of the child's birth parents and prospective adoptive parents, where appropriate. This may include preferences about religious ceremonies and burial. However, the actions required by the chief executive and the parties to an adoption who should be consulted regarding these arrangements will vary on a case-by-case basis.

Clause 7 replaces subsection 68(1) with a new subsection that provides that a person may make an expression of interest in being assessed for suitability to be an adoptive parent. This removes the requirement that a person must have a spouse to make an expression of interest. This amendment allows single persons to express interest in being assessed for suitability to be an adoptive parent.

The clause also replaces subsection (2) with a new subsection that provides that where a person has a spouse, they must make an expression of interest jointly with their spouse.

Clause 8 amends section 69(1) to provide that a person makes an expression of interest by giving the chief executive a signed notice in the approved form. This amendment is made to allow a single person to make an expression of interest in the approved form.

The clause replaces subsection (2) with a new subsection to provide that the form expressing interest must be signed by each adult person who is a member of the person's household at the time the expression of interest is made.

The clause also removes gender specific language from subsection (3)(a).

Subsection (4) is amended to require that the approved form must include information about the assessment to be carried out if the person making the expression of interest is selected for assessment.

Clause 9 amends subsection 70(2) to remove reference to couples, and require a person who has expressed interest in an intercountry adoption to state each country for which the person wishes to be considered. This change is to reflect that a single person may make an expression of interest.

Clause 10 amends subsections 71(1) and (2) to remove references to couples, and provides that a regulation may prescribe requirements that a person must comply with for expressing an interest. Subsection (2)(b)(i) is replaced by a new subsection to provide that a regulation may, for example, require a person, when expressing an interest, be able to demonstrated an ability to personally care for a child full time for a specified period after the child is placed with the person. These changes are to reflect that a single person may make an expression of interest.

Clause 11 amends subsections 73(1) and (2) to remove references to couples. The amended section provides that a person with a current expression of interest may: change the person's preferences in relation to the characteristics of the child the person wishes to adopt, the country the person wishes to be considered for intercountry adoption for, and notify the chief executive of changes to information earlier provided or submit new information. A new subsection (3) is inserted to provide that, if a person made an expression of interest jointly with the person's spouse, the person or the spouse may act under subsection (1) or (2) in relation to the couple's expression of interest. These changes are to reflect that a single person may make an expression of interest.

Clause 12 replaces subsections 75(2)(a) and (b) with a new section to provide the conditions on which chief executive may only, and must, enter a person's name in the expression of interest register.

The new subsection (2)(a) states that the chief executive may only, and must, enter a person's name on the expression of interest register if the person who has a spouse makes an expression of interest jointly with their spouse, and if the chief executive is satisfied the person and their spouse are both eligible to have their names entered in the expression of interest register.

The new subsection (2)(b) states that the chief executive may only, and must, enter a person's (who does not have a spouse) name on the expression of interest register if the person makes an expression of interest and if the chief executive is be satisfied the person is eligible to have the person's name entered in the expression of interest register.

Clause 13 amends subsection 76(1) to broaden the eligibility criteria to allow same-sex couples, single persons and persons undergoing fertility treatment to be entered and remain in the expression of interest register.

Subsection (1) is amended to remove reference to "his or her" and "a woman" to remove gender specific language.

The clause removes the eligibility requirement under subsection (1)(e) which provided that a person undergoing fertility treatment is not eligible to have the person's name entered in the expression of interest register.

Subsections (1)(g) and (h) are removed and replaced with a new subsection (h) which provides that a person who has a spouse is eligible to have the person's name entered in the expression of interest register if the expression of interest was made jointly with the person's spouse, if the spouse is also eligible under subsections (a) to (g), and if the person and the person's spouse are living together. Removing the requirement that a couple must have been in a spousal relationship for at least two years, and have been living together for at least two years, will allow a person who has been on the expression of interest register as a single person to make a new expression of interest with their spouse, immediately upon entering a new spousal relationship.

A new subsection (3) is inserted to provide that, where a person has made an expression of interest jointly with the person's spouse, the person is not eligible to have the person's name remain in the expression of interest register if the spousal relationship ends.

Subsections (1)(ea) and (f) are renumbered as (f) and (g), to reflect the amendments to section 76.

Clause 14 amends section 77 to remove references to couples, and provide that after entering the person's name in the expression of interest register, the chief executive must give the person notice, including an explanation of the selection and assessment process and information about the costs associated.

Clause 15 amends section 79 to provide automatic removal from the expression of interest register for a person who made an expression of interest jointly with the person's spouse, where the person's spouse is no longer on the expression of interest register.

Clause 16 amends section 80(7) to use remove gender specific language.

The clause also removes and replaces subsection (1)(a) with a new subsection to provide that the chief executive must remove a person's name if the person is not eligible to have their name remain in the register.

Clause 17 inserts a new subsection 89(3A) to provide that if the chief executive anticipates a particular child will need an adoptive parent, the chief executive may select the long-term guardian of the child to be assessed for suitability to be the adoptive parent of the child.

Subsection (6)(c) is removed because it is no longer a requirement for a person to have a spouse. This amendment reflects that a single person may be selected and assessed as an adoptive parent.

The clause also removes subsection 89(7)(b)(v) and replaces it with a new subsection which no longer includes the requirement that a person's spouse must not be of the same gender as the person. This amendment reflects that same-sex couples may be selected for assessment for suitability as adoptive parents.

Clause 18 removes subsection 92(1)(h) to remove the requirement that a person's spouse must not be of the same gender as the person.

Subsection (1)(i) is renumbered as (1)(h), to reflect the amendments to section 92. The reference in subsection (2) to subsection (1)(i) is updated to subsection (1)(h) reflect the renumbering.

Clause 19 inserts new section 95A into Part 5, division 1, to provide that a step-parent who has applied to the chief executive under section 92 to adopt their step-child may withdraw the application by providing the chief executive notice that they do not wish to proceed with the adoption. This reflects a similar ability, under section 79(1)(b) for other persons listed on the expression of interest register, to have their name removed from the expression of interest register upon providing a written request to the chief executive.

Clause 20 replaces section 100 with new sections 100 and 100A to provide for the automatic lapsing and other lapsing of a step-parent application. These amendments address an anomaly under the Act which allows a step-parent application to remain open indefinitely, if the prescribed fees have not been paid.

The new section 100 provides that a step-parent application (made under section 92) will automatically lapse where it has been inactive for a continuous period of six months because the appropriate consents (required under section 99) have not been obtained. This is consistent with the existing lapse of application under removed section 100.

The new section 100A provides for another lapsing of application, where the step-parent has not complied with a request by the chief executive to provide relevant information (under section 114) or has not paid the prescribed fee or part of a fee (required under section 112 and the *Adoption Regulation 2009*).

Subsection (2) provides that the chief executive may give the applicant a show cause notice, which states the reasons why the application is inactive; that the chief executive intends to provide a notice to the applicant that the application has lapsed; and that the applicant may give the chief executive with a written response about why the application should not lapse. The applicant must have at least 28 days to provide the reply.

Subsection (3) provides that the chief executive may give the applicant notice that the application has lapsed, after considering any response from the applicant which was provided within the time stated in the show cause notice. Under subsections (4) and (5) if a notice is provided, the application lapses and the chief executive must provide the applicant with an information notice for the decision. Subsection (6) states that the application is inactive if the chief executive is not dealing with the application and the applicant has failed to comply with the requirements under sections 112 or 114.

Clause 21 amends subsection 101(1)(a) to insert new subsections (i) and (ii) to provide that the chief executive must assess a person for suitability if a person selected under section 88 is eligible under section 76, or a person selected under section 89 if the person complies with subsections 89(8)(b)(ii) to (v).

The clause also inserts a new subsection (4) to provide that a person who is eligible to remain on the expression of interest register who becomes pregnant does not become ineligible unless the person is at least 14 weeks pregnant.

Clause 22 removes subsection 112(3)(b) and replaces it with a new subsection to provide that a written requirement for the payment of fees must state the consequences of non-payment of fees may include the lapsing of a step-parent application under the new section 100A.

Clause 23 inserts a note into subsection 114(6)(b) to include a reference to the new section 100A.

Clause 24 amends subsection 115(1)(c) to clarify that the obligation to notify the chief executive of changed or new information applies to information that is relevant to the eligibility criteria for being assessed for suitability to be an adoptive parent.

Clause 25 moves the definition of *infertility* from the dictionary in schedule 3, to section 129, which contains the only reference to *infertility*. Gender specific language is also removed from the definition.

Clause 26 inserts a new subsection 138(5) to provide that the suitability report the chief executive is required to prepare for the Childrens Court remains current for one year after the day it is given to the person.

Subsection (5) is renumbered as subsection (6), to reflect the amendments to section 267.

Clause 27 amends section 146. Subsection (1)(a) is amended to clarify that section 146 applies to a person who is selected from the expression of interest register under section 88. Subsection (1)(a) is also amended to remove gender specific language.

Subsection (1)(b) is replaced with a new subsection to provide that the chief executive must remove a person's name from the suitable parents register, for a person selected for assessment under section 89 if the person: is not a person mentioned under section 89(7)(b)(ii) to (v); or was selected for assessment jointly with the person's spouse and the spousal relationship has ended; or who has a spouse but did not have a spouse when the person was selected for assessment. The effect of this amendment is that a person who has experienced a change to their relationship status, or who does not comply with 89(7)(b)(ii) to (v), will have their name removed from the suitable adoptive parents register.

A new subsection (1A) is inserted to provide that the requirement for a person's name to be removed from the suitable adoptive parents register due to ineligibility, under subsection (1), does not apply to a person in whose favour an interim order has been made, while the interim order is in force.

Subsection (7) is amended to remove gender specific language.

Subsections (1A) to (7) are renumbered to subsections (2) to (8), to reflect the amendments to section 146.

Clause 28 removes subsection 153(2) and the note. This subsection and note are no longer required, because the requirement under section 68 for a person must have a spouse to make an expression of interest has been removed.

Clause 29 removes subsections 159(2) and (3) and replaces them with new subsections (2) to (4).

Subsection (2) provides that a person selected for assessment under section 88 is still eligible to have the person's name entered or remain in the expression of interest register.

Subsection (3) provides that a person selected for assessment under section 89 remains eligible if: the person continues to meet the conditions set out in section 89(8)(b)(ii) to (v); and, for a person who was selected for assessment jointly with a spouse, the person still has a spouse; and for a person who did not have a spouse when selected, the person does not have a spouse.

Subsection (4) is inserted to replace the previous subsection (3) to provide that a person does not become ineligible to have their name remain in the expression of interest register on the grounds of being pregnant, unless the person is at least 14 weeks pregnant.

Clause 30 amends subsection 165(2) to insert references to a proposed adoption and prospective adoptive parents. This amendment reflects the new section 169A, which provides for adoption plans during interim orders. Section 165 provides what an adoption plan is and what it may contain.

Clause 31 amends section 167 to insert a reference to a proposed adoption. This amendment reflects the new section 169A, which provides for adoption plans during interim orders. Section 167 provides for the purpose of an adoption plan.

Clause 32 amends subsection 168(1) to insert a reference to prospective adopted parents. This amendment reflects the new section 169A, which provides for adoption plans during interim orders. Section 168 lists the nature and limitations of an adoption plan.

Clause 33 inserts new section 169A to provide for the making of adoption plans during interim adoption orders.

Subsection (1) provides that section 169A applies if a birth parent and prospective adoptive parent has advised the chief executive that they wish to have face-to-face contact between the child and the child's birth family, during the interim order.

Subsection (2) provides that an adoption plan, between the birth parent and prospective adoptive parents, must be agreed to and include how the contact will occur and the nature and frequency of the contact while the interim order is in force.

The new section 169A is intended to support the transition to adoption, while maintaining continued oversight by the chief executive while the interim order is in force.

Clause 34 amends the heading of section 170 to insert the words "after adoption". This is to clarify that this section relates to in-person contact between a child and the child's birth family after an adoption, not during an interim adoption order.

Clause 35 amends section 173 to include reference to new section 169A, to provide that an adoption plan does not need to be prepared, unless required under sections 169A to 172.

Clause 36 amends subsection 183(1)(d) by inserting a new subsection (1)(d)(v) to require that to make an interim order, the court must be satisfied that each of the prospective adoptive parents is not pregnant (this replaces the same requirement removed from subsection 183(1)(e)).

Subsection (1)(e) is removed and replaced with a new subsection to require that, to make an interim order, the court must be satisfied that an adoption plan required under the new section 169A has been agreed to by the birth parent and prospective adoptive parents.

Subsection (1)(f) is amended to replace reference to part 8, division 2 with reference to sections 170 to 172. This requires that to make an interim order, the court must be satisfied that an adoption plan required under sections 170, 171 or 172 have been agreed to or have been substantially developed.

Clause 37 amends section 188 to include reference to long-term guardians. This will allow the chief executive to apply to the Children's Court to issue a final adoption order to a child's

long-term guardian, where the long-term guardian has been caring for a child for least one year.

Clause 38 amends subsection 189(1)(d) to replace reference to part 8, division 2 with reference to sections 170 to 172. This requires that, to make a final adoption order, the court must be satisfied that an adoption plan required under sections 170, 171 or 172 have been agreed to.

Clause 39 amends subsection 196(g) to require that, to make an interim order, the court must be satisfied that each of the prospective adoptive parents is not pregnant. This replaces the same requirement previously in subsection (h), which is removed to remove gender specific language.

Clause 40 amends section 203 to provide that the definition of suitability report includes reference to the suitability report being current under the new section 138(5).

Clause 41 amends section 204 to provide that, where a step-parent has been assessed as suitable and received a suitability report from the chief executive, and wishes to apply to the Childrens Court for a final adoption order, the step-parent must apply within one year after the day of receipt of the suitability report.

Clause 42 amends subsection 208(c) to remove gender specific language and makes a minor amendment to remove the word “and”.

A note is inserted into subsection (f) to provide an example of what may be regarded as exceptional circumstances when making a final adoption order under section 208. The note provides that exceptional circumstances may include where a parent of the child has died or cannot be located after making all reasonable enquiries.

Clause 43 removes section 215 and replaces it with a new section 215. Subsection (1) provides that a final adoption order for a child must include an order that the child’s existing first given name is to remain the same, and may include an order that the child have either their existing surname or the same surname as an adoptive parent. In relation to the child’s other given names, the new subsection (1)(c) provides that the final adoption order may include an order that the child keep an existing name, or have another given name agreed by the adoptive parents as well as, or instead of, their existing given name.

Subsection (2) provides that, despite the requirement under subsection (1)(a) that a final adoption order must include that the child’s existing first given name is to remain the same, the order may include an order for the child to have another first given name agreed by the adoptive parents if there are exceptional circumstances that warrant an order that the child have another first name.

The subsection also includes a note to provide an example of exceptional circumstances. The note provides that exceptional circumstances may include when a child’s existing first given name is harmful to their wellbeing because the name may be culturally inappropriate.

The existing requirements under subsections (2) to (4) remain and are provided at subsections (3)(a) to (c). These include that the court must make an order that will best promote the child’s wellbeing and best interests; have regard to the child’s right to preserve their identity;

and consider whether the child is generally known by, or identifies with, any of the child's existing names.

Subsection (4) maintains the existing provision at subsection (6) that provides that section 215 does not prevent a change of a child's name under another law after the final adoption order is made.

Clause 44 removes subsection 249 and replaces it with a new subsection that provides a new definition of relative for Part 11. The definition retains the inclusion of a spouse, parent; sibling, or child, and is broadened to also include a grandparent or grandchild of the person, and, for an Aboriginal person or Torres Strait Islander, a person who is regarded as a parent or child under Aboriginal tradition or Island custom. A note is also included to refer to the new section 9A.

Subsection (2) is amended to remove gender specific language and to insert references to child, grandparent or grandchild as a consequence of the amended definition of relative under subsection (1).

Clause 45 removes subsection 256(4)(c)(iii) and replaces it with new subsections (iii) and (iv) to include the birth parent's last known name and each address of the birth parent in the list of pre-adoption information, that is held by the chief executive, and that the chief executive is required to give to the adopted child or an adoptive parent.

Subsection (4)(d)(iii) is removed and replaced with new subsections (iii) and (iv) to provide that the chief executive must give the following pre-adoption information held by the chief executive about another adopted person who is an adult and who shares at least one birth parent with the adopted person (for example, a birth sibling): if the other adopted person's name is different from their name immediately after their adoption, the other adopted person's last known name; and each address of the other adopted person. This information can only be provided with the other adopted person's written consent.

Subsection (6) is removed and replaced with a new subsection to provide that, if a person's consent is required under subsections (2) or (4), an adult relative may provide consent on behalf of the person where the person has died, or chief executive cannot locate the person after making all reasonable enquiries.

Subsection (7) is amended to reflect references to amended subsections (2) and (4).

Subsection (8) is inserted to provide that consent is not required under subsections (1)(b) or (2) if the chief executive considers that, because of exceptional circumstances, consent is not required. The note provides examples of exceptional circumstances: where the person whose consent is required and all adult relatives of the person have died, or where an adult relative of the person unreasonably withholds consent. This discretion for the chief executive is considered necessary and appropriate to allow for the preservation of a person's identity and family history, acknowledging the difficulties in locating relatives of parties to an adoption, sometimes many years after the adoption has been finalised.

Subsection (9) is inserted to provide that when the chief executive is considering whether there are exceptional circumstances under subsection (8), the chief executive may decide that the consent of the birth parent is not required in relation to all the information that can be

given under subsection (4), or all information other than the birth parent's last known name and birth parent's address.

Clause 46 inserts a new section 256A to require the chief executive to provide a person who has requested information under section 256 with any information the chief executive has about the identity of a person who may be the adopted child's biological father, despite the person not meeting the criteria for being a biological father under section 250. If information is provided under subsection (2), subsection (3) requires the chief executive to provide a notice to the applicant where the identity of the adopted child's biological father is unable to be confirmed, and, if appropriate, the reasons why the information is not confirmed.

Clause 47 amends subsection 257(4)(a)(i) to remove gender specific language.

Subsection (4)(a)(ii) is removed and replaced by the new subsections (ii) and (iii) to require, the chief executive to comply with a request for information by a birth parent (or adult relative of the birth parent, in certain circumstances) about the birth parent's adopted child, by providing the adopted child's last known name, and each address of the child. As a result, subsection (5) is also amended to include reference to any address of the adopted child.

Clause 48 removes subsection 263(2)(c)(iii) and replaces it with new subsection (iii) and (iv) to provide that if an adopted person has requested pre-adoption information from the chief executive, the chief executive must comply with the request by giving the adopted person information held by the chief executive about: the birth parent's last known name at the time of adoption (if the birth parent's last known name is different to what it was at the time of adoption); and each address of the birth parent. This information can only be provided with the birth parent's written consent.

Subsection (2)(d)(iii) is removed and replaced with new subsections (iii) and (iv) to provide that if an adopted person has requested pre-adoption information from the chief executive, the chief executive must comply with the request by giving the adopted person information held by the chief executive about another adopted person who is an adult and who shares at least one birth parent with the adopted person (for example, a birth sibling): if the other adopted person's name is different from their name immediately after their adoption, the other adopted person's last known name; and each address of the other adopted person. This information can only be provided with the other adopted person's written consent.

Subsection (3) is removed and replaced with a new subsection (3) to provide that, if a person's consent is required under subsection (2), an adult relative of the person may give consent if the person has died or the chief executive cannot locate the person after making reasonable enquiries.

Subsection (4) is amended to reflect references to the amended subsection (2).

Subsection (5) is inserted to provide that consent is not required under subsections (2) if the chief executive considers that, because of exceptional circumstances, consent is not required. The note provides examples of exceptional circumstances: where the person whose consent is required and all adult relatives of the person have died, or where an adult relative of the person unreasonably withholds consent. This discretion for the chief executive is considered necessary and appropriate to allow for the preservation of a person's identity and family

history, acknowledging the difficulties in locating relatives of parties to an adoption, sometimes many years after the adoption has been finalised.

Clause 49 inserts a new section 263A to require the chief executive to provide a person who has made a request for information under section 263 with any information the chief executive has about the identity of a person who may be the adopted child's biological father, despite the person not meeting the criteria for being a biological father under section 250. If information is provided under subsection (2), subsection (3) requires the chief executive to provide a notice to the applicant where the identity of the adopted child's biological father is unable to be confirmed, and, if appropriate, the reasons why the information is not confirmed.

Clause 50 removes subsection 264(1) and replaces it with a new subsection to expand the application of section 264. Subsection (1)(a) retains the current provision under subsection (1) and further provides (under new subsection (1)(b)) that an adult relative may request information under section 263 if the chief executive is satisfied the adopted person is unable to be located after making all reasonable attempts.

Clause 51 removes subsection 265(2)(a)(ii) and replaces it with new subsections (ii) and (iii) to provide that if a birth parent has requested information about the adopted person from the chief executive, the chief executive must comply with the request by giving the birth parent information held by the chief executive about: if the adopted person's name is different from their name immediately after their adoption, the adopted person's last known name; and each address of the adopted person. This information can only be provided with the adopted person's written consent.

Subsection 265(3) is amended to provide that, if a person's consent is required under subsection (2), an adult relative of the person may give consent if the chief executive cannot locate the person after making all reasonable enquiries.

Subsections (3) and (4) are amended to reflect references to the amended subsection (2).

Subsection (5) is inserted to provide that consent is not required under subsections (2) if the chief executive considers that, because of exceptional circumstances, consent is not required. The note provides examples of exceptional circumstances: where the person whose consent is required and all adult relatives of the person have died, or where an adult relative of the person unreasonably withholds consent. This discretion for the chief executive is considered necessary and appropriate to allow for the preservation of a person's identity and family history, acknowledging the difficulties in locating relatives of parties to an adoption, sometimes many years after the adoption has been finalised.

Clause 52 removes subsection 266(1) and replaces it with a new subsection to expand the application of section 266. Subsection (1)(a) retains the current provision under subsection (1) and further provides (under new subsection (1)(b)) that an adult relative may request information under section 265 if the chief executive is satisfied the adopted person is unable to be located after making all reasonable enquiries.

Clause 53 removes subsection 267(3), which prohibits the release of information to a pre-adoption sibling if the adoption happened before 1 June 1991, and if a contact statement was in place which stated that the birth parent did not want to be contacted by the adopted person.

This amendment is consistent with the removal of section 272, which removes the offence and penalty for a breach of contact statement for adoptions which occurred before June 1991.

Subsection (4) is amended to reflect the removal of subsection (3).

Subsections (4)(b) and (5) are amended and (4)(c) is inserted to clarify the chief executive may release each address of the adopted person the chief executive may have, where the adopted person has provided consent.

Subsection (5) is also amended to reflect reference to the amended subsection (3).

Subsections (4) to (7) are renumbered to (3) to (6), to reflect the amendments to section 267.

Clause 54 removes section 270 which provided obligations for contact statements relating to post-June 1991 adoptions. This section is no longer necessary, as all contact statements are now dealt with in amended section 271.

Clause 55 amends the heading of section 271, and removes subsection (1)(c) to remove reference to pre-June 1991 adoptions. Section 271 will apply to all contact statements regardless of whether the adoptions happened on, before or after 1 June 1991.

Subsection (3) is amended to remove reference to the offence provision and associated penalty under amended section 272. The existing provisions under subsections (3)(a)(i) and (iii) are reworded to reflect contemporary drafting practice.

Clause 56 removes section 272 to remove the offence and penalty relating to breaches of contact statements for pre-June 1991 adoptions.

Clause 57 removes subsection 278(1) and replaces it with a new subsection to expand the definition of *mailbox service* to also include reference to a proposed adoption.

Clause 58 amends the definition of *identifying information* to expand the definition to also include reference to a proposed adoption.

Clause 59 amends section 280 to extend who is eligible to take part in the mailbox service, to include parties to a proposed adoption, during an interim order.

The new subsection (1AA) is inserted to provide that a party to a proposed adoption may take part in the mailbox service during an interim adoption order.

The new subsection (1AB) is inserted to provide that a child for whom an interim order is in force may only take part in the mailbox service with written consent of the chief executive. Subsection (1AB)(a) provides that if an adoption plan is in place under new section 169A, the parties to the adoption plan must also provide written consent, or under subsection (1AB)(b) if no adoption plan is in place, the parties to the proposed adoption must also provide written consent.

Subsection (2) is amended to remove gender specific language.

Subsection (3) is expanded to allow for an adult relative of a birth parent to also take part in the mailbox service if the chief executive cannot locate the birth parent after all reasonable inquiries.

Subsections (1AA) to (4) are renumbered as subsections (1) to (6), to reflect the amendments to section 280.

Clause 60 removes section 282 and replaces it with a new section to extend the situations where identifying information may be exchanged between parties to an adoption, using the mailbox service.

Subsection (1) provides that a participant of the mailbox service may only exchange identifying information with another participant while an interim adoption order is in force if an adoption plan under new section 169A has been agreed to, the chief executive has consented to the exchanging of identifying information, and each participant provides a notice of intention that the person wishes to exchange identifying information.

Extending the use of the mailbox service to facilitate the exchange of identifying information between parties to a proposed adoption during an interim adoption order, supports the use of adoption plans during interim adoption orders under new section 169A.

Subsection (2) retains the provisions under existing subsection (1) which apply to a final adoption order.

Subsection (3) provides that, if the participants exchanged information under subsection (1) while an interim adoption order was in place, the participants may still exchange the same type of identifying information after a final adoption order is made if a notice of intention under section 282(2)(b) has been provided by the participants. This means participants who exchanged identifying information during an interim adoption order will not have to cease exchanging the same type of identifying information after a final adoption order because the participants have not yet made a request for information under division 2 or 3.

Subsection (4) retains the provisions under the existing subsection (2), by providing that the exchange of identifying information after a final adoption order under subsection (2)(a) applies to an adult relative of a birth parent who is a participant under section 280(5), as if the birth parent were the participant instead of the adult relative.

Subsection (5) provides that the chief executive may consent to the exchange of identifying information to a participant who is a party to a proposed adoption, if the chief executive is satisfied that the exchanging of information is not likely to be contrary to the child's wellbeing and best interests.

Clause 61 amends subsections 287(4)(b) and (5) to include references to a proposed adoption.

Clause 62 inserts new subsection (d) into section 319 to include a decision under the new section 100A, to allow a person to apply to the Queensland Civil and Administrative Tribunal to have the decision reviewed.

Clause 63 removes section 327 and replaces it with a new section to require the Minister to ensure the operation of the Act is reviewed as soon as practicable after the day that is five

years after the commencement of this Bill. The review must include a review of the effect of the Act on parties to adoptions and their families, and the Minister must table a report on the outcome of the review in the Legislative Assembly.

Clause 64 amends the heading of Part 16, division 2 to include reference to provisions for Act No.29 of 2009.

Clause 65 inserts new Division 3 into Part 16 of the Act, which sets out new sections 347 to 358. These provisions establish transitional arrangements for the amendments contained in this Bill.

The new section 347 is inserted to provide a definition of *pre-amended Act* which is referred to throughout the division.

The new section 348 states that the effect of new section 61A (effect of child's death on chief executive's guardianship) applies to the guardianship of a child under section 57, regardless of whether the child died before commencement.

The new section 349 provides that, where an expression of interest has been made before commencement and the chief executive has not yet decided whether the person's name may be entered in the expression of interest register, the amended eligibility requirements under section 76 will apply.

The new section 350 provides for the right to review and existing reviews of particular decisions under sections 78, 80 and 146. This section clarifies that the pre-amended Act applies in relation to the person's eligibility to have the person's name entered or remain in the expression of interest register or suitable parents register if the chief executive has made a decision to give a person a notice that the person's name has not been entered into the expression of interest register under section 78, to remove a person's name from the expression of interest register under section 80(1)(a), or to remove a person's name from the suitable adoptive parents register under section 146(1); and the time for applying for a review of the decision has not ended. This transitional also applies to a person who has made an application to the Queensland Civil and Administrative Tribunal for a review of a decision made under sections 78, 80(1)(a) or 146(1) and the application has not been finally dealt with.

The new section 351 provides that, where a person has been listed on the expression of interest register before commencement, the amended eligibility requirements under section 76 will apply. This transitional also specifies that the amended eligibility requirements under section 76 apply where a show cause notice has been issued under section 80 to remove the person's name from the expression of interest register.

The new section 352 states that section 101, as amended by the Bill, applies to a person who has been selected for assessment as a suitable adoptive parent under Part 4, division 5, where the chief executive has not yet made a decision that the person is suitable to be an adoptive parent.

The new section 353 provides that, where a person has been entered in the suitable adoptive parents register before commencement, the amended eligibility requirements under the Act apply. This transitional also specifies that the amended eligibility requirements for a person to

remain on the suitable adoptive parents register apply where a show cause notice has been issued under section 146(1) to remove the person's name from the suitable adoptive parents register.

The new section 354 specifies that step-parents who have been provided with a suitability report before commencement, will have one year from commencement to make an application to the Childrens Court for a final adoption order under section 204. This timeframe recognises the need for a current suitability report to determine if the adoption is in the child's best interests, while providing time for the step-parent to be aware of changes to the legislation and their obligations when pursuing adoption of their step-child.

The new section 355 provides that the amended section 215 applies if an application for a final adoption order has been made and the final adoption order has not yet been granted.

The new section 356 states that the amended provisions under Part 11 (access to adoption information) apply where a person has asked the chief executive for information under Part 11 and the chief executive has not finally dealt with the request.

The new section 357 provides that, if an adopted person who is a child made an application to access pre-adoption information under section 256 with the consent of an adoptive parent and the chief executive has finally dealt with the request, further consent is not required from the adoptive parent for the child to ask for further pre-adoption information under section 256 as amended by this Bill. This will include information which may be available under new section 256A, regarding the identity of a person who may be the adopted child's biological father. The amendment benefits the applicant by not requiring them to seek additional consent and in doing so, prevents unnecessary delay in receiving the information.

The new section 358 is provided to clarify the intent of section 338 regarding the suitable adoptive parents register. The section clarifies that, for section 146 (other grounds for removal from the suitable adoptive parents register) and section 159 (eligibility to be selected as a prospective adoptive parent), the person is taken to have been selected for assessment from the expression of interest register. This clarifies that persons whose names transferred from the suitable adoptive parents register under the repealed *Adoption of Children Act 1964* must be eligible under section 159 of the Act to remain in the suitable adoptive parents register under the Act, or the person is removed from the register under section 146.

Clause 66 amends Schedule 3, dictionary, by removing the definition of *fertility treatment* as there is no longer any reference to this in the *Adoption Act 2009*. The definition of *infertility* has been moved to section 129.

A definition of *long-term guardian* is also inserted to the dictionary by virtue of the inclusion of the term long-term guardian in section 188. The definition refers to the definition under Schedule 3 of the *Child Protection Act 1999*.

A definition of *member* of a person's household is inserted into the dictionary to allow the appropriate levels of assessment to be conducted on adult members of a person's household, as per section 111 of the Act.

Part 3 Acts amended

Clause 67 provides that Schedule 1 of the Bill amends the Acts it mentions.

Schedule 1 Acts amended

Adoption Act 2009

These amendments are minor and technical amendments make minor changes to update terminology, notes and cross-references in light of the changes made by the Bill, to remove gender specific language and reflect contemporary drafting practice.

Commonwealth Powers (Family Law – Children) Act 1990

This clause amends of the schedule of the *Commonwealth Powers (Family Law – Children) Act 1990* to include reference to a long-term guardian in section 188 the *Adoption Act 2009*. This is a consequential amendment resulting from Clause 37 of the Bill.

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